



Securities Law ADVISORY ■

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SEC Proposes Amendments to Update and Simplify Disclosure Requirements

On July 13, 2016, the Securities and Exchange Commission (SEC) proposed amendments to its disclosure requirements to eliminate redundant, overlapping, outdated or superseded provisions that have resulted over time due to changes in SEC disclosure requirements, generally accepted accounting principles (GAAP), International Financial Reporting Standards (IFRS) and technology. These amendments are part of the SEC staff's Disclosure Effectiveness Initiative, which is a broad-based review of the SEC's disclosure and related presentation and delivery requirements for public companies. The review is intended to modernize disclosure requirements for the benefit of both investors and issuers. The proposed changes could potentially impact the location and prominence of impacted disclosure, including the applicability of the safe harbor provided by the Private Securities Litigation Reform Act of 1995 (PSLRA), and could result in additional disclosure for smaller reporting companies (SRCs) and other issuers.

Key Takeaways

The proposed changes are mostly technical corrections and are not intended to significantly alter the total mix of information provided to investors. However, the SEC acknowledges that implementation of the proposed disclosure requirements may result in relocation of certain disclosures within a filing that could change the disclosure's level of prominence in the filing as well as the context in which the disclosure is made. In addition, certain proposed changes may result in either more or less disclosure depending on the type of entity or the particular disclosure measurement.

Financial statement disclosures

In many instances, disclosures currently required under Regulation S-K would move from outside the financial statements, typically from within Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A), to within the financial statements. As part of an issuer's financial statements, these relocated disclosures would be subject to audit and interim period review by the issuer's auditors, the

issuer's internal control over financial reporting and XBRL tagging requirements. The SEC also notes that the safe harbor under the PSLRA would no longer be available to disclosures that are relocated from the MD&A or elsewhere to within the financial statements, which may result in less forward-looking information disclosed within filings.

Impact on smaller reporting companies and other issuers

The SEC staff has also identified certain SEC disclosure requirements that overlap with, but require information incremental to, GAAP. Unlike SEC disclosure rules, GAAP does not scale disclosure requirements by issuer status. Therefore, incorporation of these overlapping SEC disclosures into GAAP could result in the application of some of these requirements to SRCs, Regulation A issuers and crowdfunding issuers that report under GAAP.

Bright-line threshold disclosures

The SEC notes in the proposal that some of its disclosure rules contain bright-line thresholds for disclosure that duplicate other reporting requirements that do not specify such thresholds. The elimination of bright-line thresholds would potentially change the disclosure provided to investors since an issuer could determine disclosure based on its assessment of materiality of the information. The SEC is requesting comment on whether to continue with bright-line threshold tests and whether to modify or provide alternate disclosure thresholds.

Background

Pursuant to the Jumpstart Our Business Startups (JOBS) Act, in December 2013, the SEC staff issued its [Report on Review of Disclosure Requirements in Regulation S-K](#) containing recommendations on how to make the registration process more efficient and less burdensome for the SEC and emerging growth companies.¹ Following the report, in September 2015, the SEC published a [request for comment](#) on the effectiveness of certain financial disclosure requirements in Regulation S-X, and in April 2016, the SEC issued a concept release seeking public comment on modernizing certain disclosure requirements of Regulation S-K.² The current proposal is part of the comprehensive evaluation of the staff's disclosure requirements recommended in the report and part of the SEC's efforts to implement provisions of the Fixing America's Surface Transportation (FAST) Act, which directs the staff to eliminate provisions of Regulation S-K that are duplicative, overlapping, outdated or unnecessary.

Framework of Proposed Amendments

The proposed amendments are organized into the following categories:

- *Redundant or duplicative requirements*, which the SEC proposes to eliminate since GAAP, IFRS or other SEC disclosure mandates require substantially the same disclosures. Examples of these amendments include the elimination of duplicative disclosure requirements in both MD&A and the financial statements.

¹ Our client advisory discussing the SEC staff's S-K Report is available at [SEC Issues Staff Report on Review of Regulation S-K](#).

² Our client advisory discussing the SEC staff's S-K Concept Release is available at [SEC Issues Concept Release Seeking Comment on Regulation S-K](#).

- *Overlapping requirements*, which are related to, but not the same as GAAP, IFRS or other SEC disclosures requirements. Thus, the SEC proposes to:
 - Delete certain overlapping requirements (e.g., elimination of the equity compensation plan information table currently required by Form 10-K);
 - Integrate certain overlapping requirements; or
 - Retain, modify, eliminate or refer certain overlapping requirements to the Financial Accounting Standards Board (FASB) for potential incorporation into GAAP, depending on the comments the SEC receives in response to the proposal.

Examples of these amendments include disclosure requirements related to legal proceedings and significant customers, which differ in scope between Regulation S-K and GAAP.

- *Outdated requirements*, which the SEC proposes to eliminate because they have become obsolete with the passage of time or changes in the regulatory, business or technological environment. Examples of these amendments include references to the availability of company filings at the SEC's Public Reference Room and detailed disclosures of high and low sale prices for issuers with common equity traded on an established public market, due to the ease of obtaining this information online.
- *Superseded requirements*, which the SEC proposes to eliminate since they are inconsistent with recently passed legislation, more recently updated SEC requirements or more recently updated GAAP.

Next Steps

The SEC is soliciting comment on the proposed amendments, including comment on whether to retain, modify or eliminate certain disclosure requirements that overlap with GAAP or refer them to the FASB for potential incorporation into GAAP. Comments can be submitted [through the SEC's website](#) for 60 days following the publication of the proposed rule in the *Federal Register*.

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