



Securities Law ADVISORY ■

SEPTEMBER 6, 2016

SEC Seeks Public Comment on Disclosure Requirements in Subpart 400 of Regulation S-K

On August 25, 2016, the Securities and Exchange Commission (SEC) announced that it is [seeking public comment](#) on Subpart 400 of Regulation S-K, which requires certain disclosures about an issuer's management, certain security holders and corporate governance matters. The request is part of the SEC staff's Disclosure Effectiveness Initiative, a comprehensive evaluation of the SEC disclosure regime intended to modernize and simplify requirements for the benefit of investors and issuers.

Key Takeaways

The SEC is soliciting comment on the existing requirements of Subpart 400 of Regulation S-K as well as potential disclosure issues that commenters believe the rules should address. For example, the SEC noted that comments could include industry-specific disclosure requirements, information about sustainability and governance matters, and additional instances in which scaled disclosure could be implemented.

Unlike earlier Disclosure Effectiveness Initiative action relating to Regulation S-K, the SEC did not include proposed changes to the existing disclosure requirements. If the SEC proposes any changes to Subpart 400 in the future, they would be subject to public notice and comment.

Subpart 400 of Regulation S-K contains the following items that generally require:

- Disclosures about an issuer's directors, executive officers, promoters and control persons, or persons performing similar functions (Item 401).
- Disclosure of all plan and non-plan compensation awarded to, earned by, or paid to an issuer's named executive officers and directors (Item 402).
- Description of the security ownership of certain beneficial owners and management (Item 403).
- Description of "related party transactions," which are transactions between the issuer and related persons, promoters and certain control persons (Item 404).
- Identity of certain persons who failed to file on a timely basis, as disclosed in certain forms, reports required by Section 16(a) of the Securities Exchange Act during the most recent fiscal year or prior fiscal years (Item 405).
- Disclosures about whether the issuer has adopted a code of ethics that applies to certain of the issuer's executive officers, or persons performing similar functions, and if it has not adopted such a code of ethics, an explanation of why it has not done so (Item 406).

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- Corporate governance disclosures about director independence, board meetings, various board committees (e.g., nominating, audit and compensation committees) and any process for shareholder communications (Item 407).

Background

In December 2013, pursuant to the Jumpstart Our Business Startups (JOBS) Act, 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 The report launched an ongoing review of the disclosure regime that has come to be known as the Disclosure Effectiveness Initiative. The SEC has since taken the following actions to advance the recommendations:

- In September 2015, the SEC announced a [request for comment](#) on the effectiveness of certain financial disclosure requirements in Regulation S-X for certain entities other than an issuer.
- In April 2016, the SEC published a [concept release](#) seeking public comment on updating certain business and financial disclosures of Regulation S-K, as well as their presentation and delivery.²
- In June 2016, the SEC issued a proposed rule to modernize disclosure requirements for mining properties by aligning them with current industry and global regulatory practices and standards.
- In August 2016, the SEC issued a [proposed rule](#) to eliminate redundant, overlapping, outdated or superseded disclosure requirements that have resulted over time due to changes in SEC disclosure requirements, generally accepted accounting principles (GAAP), International Financial Reporting Standards (IFRS) and technology.³

Next Steps

Comments can be submitted [through the SEC's website](#) for 60 days following the publication of the request for comment in the *Federal Register*. Comments received in response to this request will be considered during future rulemakings related to Subpart 400 and will also inform the SEC's study of Regulation S-K, which is required by Section 72003 of the Fixing America's Surface Transportation (FAST) Act.

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](#).

³ Our client advisory discussing the SEC staff's proposed rule is available at [SEC Proposes Amendments to Update and Simplify Disclosure Requirements](#).

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