

## SEC Proposes Modernization and Simplification of Regulation S-K

### IN SHORT

**The Situation:** In an effort to reduce compliance and cost burdens, the SEC has proposed amendments to some of the rules and forms associated with Regulation S-K.

**The Result:** The proposed modifications relate to property descriptions, the management discussion and analysis section ("MD&A"), risk factors, exhibit requirements, and other matters.

**Looking Ahead:** Although most of the amendments will result in minor changes for filers, a few could meaningfully streamline the reporting process.

On October 11, 2017, the SEC proposed amendments to Regulation S-K and related rules and forms as required by the Fixing America's Surface Transportation Act. The proposed amendments are intended to modernize and simplify certain disclosure requirements in Regulation S-K in a way that reduces costs and burdens on registrants while continuing to provide all material information to investors.

#### The Proposed Amendments

The proposed amendments include changes that: (i) update and streamline the current required disclosure framework and process; (ii) update rules to account for developments that have occurred since those rules were adopted or last amended; and (iii) require additional disclosure or the incorporation of new technology.



A majority of the proposed amendments are peripheral in nature and will not significantly affect registrants' disclosure obligations under Regulation S-K.



Among other changes, the proposed amendments contemplate the following modifications to Regulation S-K:

**Description of Property (Item 102)**—Clarify that required disclosure is limited to physical properties only to the extent they are material to the registrant's business.

**MD&A (Item 303(a))**—Eliminate discussion of the earliest year in a filing covering three years if: (i) that discussion is not material to the reader's understanding of the registrant's financial condition and results of operations; and (ii) the registrant has previously filed its Form 10-K on EDGAR, including discussion of the earliest year.

**Section 16(a) Compliance (Item 405)**—(i) Permit registrants to rely on Section 16 reports filed on EDGAR and not require registrants to limit their inquiry to those filings; (ii) permit registrants to exclude the "Section 16(a) Beneficial Ownership Reporting Compliance" heading when there is nothing to report; and (iii) eliminate Rule 16a-3(e)'s requirement that reporting persons furnish Section 16 reports to the registrant.

**Corporate Governance (Item 407)**—Clarify that emerging growth companies are not required to provide a compensation committee report in connection with their annual reports.

**Risk Factors (Item 503(c))**—Eliminate enumerated risk factor examples provided in the instructions in an effort to encourage registrants to focus on their own risk identification processes.

**Exhibits (Item 601)**—(i) Require registrants to include a description of their registered securities as an exhibit to their Form 10-Ks (this description is currently required only for registration statements); (ii) allow registrants to omit schedules and attachments from *all* filed exhibits if they do not contain material information and the information is not otherwise disclosed in the exhibit (this accommodation is currently available only for specified exhibits such as merger agreements); (iii) permit registrants to omit confidential information from material contracts without filing a confidential treatment request where that information is not material and public disclosure of that information would be competitively harmful; (iv) limit the two-year look-back test for material contracts to newly reporting registrants; and (v) require registrants to include on their subsidiaries exhibit the legal entity identifier for each entity.

**Incorporation by Reference (Item 10(d))**—Eliminate the five-year limit for the incorporation of documents by reference.

In addition, the proposed amendments would require EDGAR filings to include active hyperlinks to information incorporated by reference if that information is available on EDGAR (current rules require hyperlinks to most exhibits).

A majority of the proposed amendments are peripheral in nature and will not significantly affect registrants' disclosure obligations under Regulation S-K. The few amendments that do present impactful changes aim to alleviate some of the burdens currently associated with the relevant items and should streamline preparation of filings going forward.

The [full release detailing the proposed amendments can be found on the SEC's website](#). Comments on the proposed amendments are due 60 days after their publication in the *Federal Register*.

## TWO KEY TAKEAWAYS

1. The proposed amendments are intended to modernize and simplify disclosure requirements while still ensuring that appropriate information is available to investors.
2. Changes include the streamlining of the disclosure process, updates to rules in response to certain developments, and requirements regarding additional disclosure or new technology integration.

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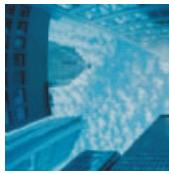
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