

Publications

Securities Alert: SEC Proposes to Modernize and Simplify Regulation S-K

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On October 12, 2017, the Securities and Exchange Commission (SEC) proposed amendments to various items of Regulation S-K that are intended to (1) modernize and simplify certain disclosure requirements in Regulation S-K and related rules and forms and (2) improve the readability and navigability of disclosure documents and discourage repetition and disclosure of immaterial information. The following discussion summarizes the significant proposed amendments.

Item 102 (Properties)

The proposed rules would amend Item 102 of Regulation S-K to only require disclosure with respect to properties that are material to the registrant. The proposed amendments to Item 102 are intended to eliminate disclosure of immaterial properties that registrants have included in their periodic reports.

Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations)

The proposed amendments to Item 303 of Regulation S-K would eliminate the requirement to discuss the earliest year in filings that cover three years if (1) the discussion is not material to an understanding of the registrant's financial condition, changes in financial condition and results of operations, and (2) the Form 10-K filed by the registrant for the prior year contains MD&A for the earliest of the three years included in the financial statements of the current filing. Accordingly, if the proposed rules would be effective for the Form 10-K that cover a registrant's 2017, 2016 and 2015 fiscal years, the MD&A included in the Form 10-K would not be required to discuss the registrant's 2015 fiscal year.

Item 405 (Compliance with Section 16(a) of the Exchange Act)

The proposed amendments to Item 405 would revise the heading used for reporting Section 16(a) reporting delinquencies from “Section 16(a) Beneficial Ownership Reporting Compliance” to “Delinquent Section 16(a) Reports” and add an instruction to Item 405 encouraging registrants to exclude the heading and related disclosure if they have no delinquencies to report. The proposed amendments would also eliminate the checkbox on the cover page of Form 10-K relating to Item 405 disclosures.

Item 601 (Exhibits)

The proposed amendments would amend Item 601(b)(4) to require registrants to provide a brief description of their securities that are registered under Section 12 of the Exchange Act as an exhibit to their Form 10-K. If a registrant has previously filed the required description as an exhibit, and so long as there has not been any change to the information included in the description, the proposed amendments would permit the registrant to incorporate the information by reference and provide a hyperlink to the previously filed exhibit.

The proposed amendments would also permit registrants to omit schedules and attachments to all exhibits unless the schedules or attachments contain material information that is not otherwise disclosed in the exhibit or the disclosure document, provided that registrants must include a list that briefly identifies the contents of any omitted schedules and attachments. Registrants are currently only permitted to omit schedules and attachments to plans of acquisition, reorganization, arrangement, liquidation or succession.

The proposed amendments would amend Item 601(b)(10) to permit registrants to omit confidential information from material contracts filed pursuant to that item without submitting a confidential treatment request to the SEC if the omitted information is immaterial and would be competitively harmful if publicly disclosed. Registrants would be required to mark the exhibit index to identify the omitted portions of the exhibits and include a prominent statement on the first page of each redacted exhibit that information in the marked sections of the exhibit has been omitted from the filed version of the exhibit. Registrants would also be required to indicate with brackets where the information has been omitted from the filed version of the exhibit.

Periodic Report Cover Pages

The proposed amendments would expand inline XBRL tagging requirements to apply to all information on the cover pages of Form 10-Ks, Form 10-Qs and Form 8-Ks. In addition, the proposed amendments would require the cover pages of each of these forms to disclose the trading symbol for each class of securities registered pursuant to Section 12(b) of the Exchange Act. The proposed amendments would also require the cover pages of Form 10-Qs and Form 8-Ks to include the title of each class of securities registered pursuant to Section 12(b) of the Exchange Act and each exchange on which they are registered as currently required for Form 10-Ks.

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