



Recent SEC rule changes update and simplify disclosure requirements

By Kelly D. Babson

The Securities and Exchange Commission (SEC) recently adopted a variety of form changes and rule amendments (Amendments) intended to streamline certain disclosure requirements. Proposed in July 2016¹ and approved in August 2018,² the Amendments are part of the SEC Division of Corporation Finance's disclosure effectiveness initiative and also are responsive to certain disclosure reform mandates of the Fixing America's Surface Transportation (FAST) Act. The Amendments will become effective 30 days after the date the 314-page adopting release is published in the *Federal Register* and will apply to registration statements, proxy statements, periodic reports and certain other reports filed on or after that date. Public companies should be updating disclosure controls to reflect these changes and those with a fiscal year ending December 31 therefore should begin to prepare to reflect the changes in their upcoming third-quarter Form 10-Q filings.

What has changed?

The Amendments, which are largely technical, include a host of eliminations and revisions affecting dozens of Regulation S-X accounting requirements involving financial statement reporting and related footnotes and disclosures required by Regulation S-K items and other SEC rules, as well as corresponding revisions to various forms. Intended to update and simplify disclosure requirements, and thereby reduce compliance burdens on public companies without materially changing the total mix of information available to investors, the Amendments address certain disclosure requirements that: (1) are redundant or duplicative based on substantial similarity to U.S. Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS) or other SEC disclosure requirements; (2) overlap and are related to, but not the same as, GAAP, IFRS or other SEC disclosure requirements; (3) are outdated due to the passage of time or changes in the regulatory, business or technological environment; and (4) have

¹ [Proposing release](#).

² [Adopting release](#). The SEC also published a marked version of the Amendments which highlights the changes adopted to existing regulations and is available [here](#).

been superseded because they are inconsistent with recent legislation or more recently updated SEC or GAAP disclosure requirements.

For the most part, the Amendments represent incremental changes to existing disclosure obligations and do not create substantive new requirements. Public companies should take note, however, that as a result of the relocation of certain disclosures to the financial statements, the disclosures will be subject to annual audit and interim review by auditors, as well as internal control over financial reporting and XBRL tagging requirements. Additionally, the safe harbor for forward-looking statements will not apply to such disclosures. Although the Amendments are primarily applicable to public reporting companies (including domestic companies and foreign private issuers), certain of the Amendments also apply to Regulation A issuers, investment companies, investment advisers, broker-dealers and nationally recognized statistical ratings organizations.

In addition to adopting the Amendments, the SEC referred to the Financial Accounting Standards Board (FASB) certain disclosure requirements that overlap with GAAP, and in some cases provide incremental information, for potential incorporation into GAAP. Disclosure items retained and referred to the FASB include, among others, certain disclosures relating to a company's repurchase and reverse repurchase agreements, equity compensation plans, major customers, income taxes and revenue from products and services. The SEC is requesting that the FASB consider the referred items for addition to the FASB's agenda for GAAP standard-setting within 18 months of the adopting release's publication in the *Federal Register*.

Although included for possible revision in the July 2016 proposing release, the SEC did not amend or refer to the FASB for possible incorporation into GAAP the disclosures related to legal proceedings required under Item 103 of Regulation S-K. Disclosures regarding legal proceedings therefore will continue to be required when called for by Item 103 of Regulation S-K, as well as in the financial statement footnotes as called for by Accounting Standards Codification Topic 450. In retaining Item 103 of Regulation S-K in its current form pending further consideration of the implications of potential changes to the current disclosure requirements, the SEC noted the differences in the disclosures called for by Item 103 and those required under GAAP and the safe harbor protection currently available for forward-looking statements contained in Item 103 disclosures, as well as the possibility that integration of these related but distinct requirements would expand disclosure to include immaterial items and increase compliance costs.

Highlights of the Amendments

Amendments of particular note for public companies are summarized in the table on the following pages.

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The Amendments — Top ten changes for public companies

	Disclosure topic	Rule reference	Summary of changes
1	Segment Financial Information	Regulation S-K Item 101(b)	Eliminated requirement to disclose financial information about segments in the “Business” section because similar disclosures are required in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section (MD&A) and the notes to the financial statements.
2	Research & Development Activities	Regulation S-K Items 101(c)(1)(xi) and 101(h)(4)(x)	<p>Eliminated requirement to disclose material amounts spent on research and development activities in the “Business” section because reasonably similar disclosures are required in the notes to the financial statements.</p> <p>As relevant, however, disclosure of material trends related to research and development activities and expenses should continue to be addressed in MD&A.</p>
3	Geographic Area Financial Information	Regulation S-K Items 101(d)(1), (2) and (4) and 303(a)	Eliminated requirement to disclose financial information by geographic area in the “Business” section because similar disclosures are required to be included in the notes to the financial statements. Also revised Item 303(a) to clarify that MD&A discussion of geographic factors is required if necessary to an investor’s understanding of the business.
4	Risks Associated with Foreign Operations	Regulation S-K Items 101(d)(3)	Eliminated requirement to disclose risks associated with the company’s foreign operations and any segment’s dependence on foreign operations because similar disclosures are required to be included elsewhere (e.g., in MD&A (see above) and “Risk Factors”).
5	Seasonality — Interim Reports	Instruction 5 to Regulation S-K Item 303(b)	<p>Eliminated requirement to provide seasonality disclosure in MD&A in interim reports because similar disclosure is required in the notes to the interim period financial statements.</p> <p>Seasonality disclosure will continue to be required, however, in annual reports as currently called for by Item 101(c)(1)(v) of Regulation S-K.</p>

	Disclosure topic	Rule reference	Summary of changes
6	Ratio of Earnings to Fixed Charges	Regulation S-K Items 503(d) and 601(b)(12)	<p>Eliminated requirement for companies that register debt to disclose the historical and pro forma ratios of earnings to fixed charges because many of the underlying components are readily available and other available ratios and analytical tools provide similar information to allow investors to assess the issuer's ability to service its debt. Similarly, eliminated requirement for companies that register preferred stock to disclose the historical and pro forma ratios of combined fixed charges and preferred stock dividends to earnings. Also eliminated requirement to file related exhibits presenting the computation of such ratios.</p> <p>As relevant, however, disclosure of the material impacts of fixed charge coverage covenants should continue to be addressed in MD&A if such covenants are reasonably likely to limit the company's ability to obtain additional financing or reasonably likely to be breached.</p>
7	Dividend History	Regulation S-K Item 201(c)(1) and Regulation S-X Rule 3-04	Eliminated Regulation S-K requirement to disclose the frequency and amount of cash dividends declared because similar information will be required in the notes to the financial statements under amended Rule 3-04 of Regulation S-X.
8	Restrictions on Dividends	Regulation S-K Item 201(c)(1) and Regulation S-X Rules 4-08(d)(2) and (e)(3)	Consolidated Regulation S-K and Regulation S-X requirements regarding dividend restrictions and related items under amended Rule 4-08(e)(3) of Regulation S-X. Eliminated related bright-line disclosure thresholds in favor of a materiality standard.
9	Trading Prices of Listed Common Equity	Regulation S-K Item 201(a)(1)	Eliminated requirement to disclose quarterly high and low prices of common equity publicly traded on an established trading market because detailed historical market price information for such securities is readily available from numerous sources free of charge. Companies that have common equity traded on an established trading market will be required, however, to disclose their trading symbols and, in the case of foreign issuers, their principal foreign public trading markets.
10	SEC Public Reference Room & Website/Issuer Website	Regulation S-K Item 101(e)	<p>Eliminated requirement to identify the SEC's Public Reference Room and provide its physical address and phone number. However, as applicable, filings must continue to disclose the SEC's internet address and include a statement that electronic SEC filings are available there, free of charge.</p> <p>Added requirement for all companies, regardless of filer type, to disclose their website address (if any).</p>