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## SEC adopts final amendments to disclosure requirements under Regulation S-K

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On August 26, 2020, the Securities and Exchange Commission (“SEC” or the “Commission”) adopted final amendments to Regulation S-K to modernize reporting companies’ disclosures describing their business, legal proceedings, and risk factors, which has not undergone significant revisions in over 30 years. The amendments are intended to improve the readability of disclosure documents, reduce the disclosure of repeated or immaterial information, and add efficiencies to the compliance efforts of reporting companies. The amendments, part of the Commission’s ongoing Disclosure Effectiveness Initiative, are adopted substantially as proposed in August 2019 and summarized in our prior [alert](#), with certain modifications described below.

In adopting the final amendments, the Commission highlights that many of the amendments reflect the Commission’s “long-standing commitment to a principles-based, registrant-specific approach to disclosure.” The amendments to Regulation S-K Items 101(a) (description of the general development of the business), 101(c) (narrative description of the business), and 105 (risk factors) emphasize the flexible, principles-based approach by articulating a disclosure concept rather than a specific line-item requirement. Company management will be required to evaluate the significance of information in the context of the company’s overall business and financial circumstances, and to determine, based on materiality, whether disclosure is necessary and at what level. In contrast, the final amendments to Item 103 (legal proceedings) continue to mostly follow a prescriptive approach of employing bright-line, quantitative thresholds to specify when disclosure is required, while allowing a company to select its own threshold with certain limitations.

A chart summarizing the final amendments and the corresponding current requirements, with significant changes highlighted in bold, is included at the end of this alert. The full text of the final amendments is available [here](#). The final amendments will become effective 30 days after publication in the *Federal Register*. The amendments to Items 101 and 103 will apply to all domestic registrants and foreign private issuers that file on domestic forms. The amendments to Item 105, however, apply to all foreign private issuers as well as domestic registrants.

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## What should companies be doing now?

With an effective date of 30 days after publication, companies should begin considering now whether they will want to make any changes to the relevant business, legal proceedings, and risk factors disclosures in upcoming periodic reports (Forms 10-Q and 10-K) and registration statement filings in light of the final amendments. In addition, companies will want to review their disclosure controls and procedures, and prepare to implement any necessary changes to those protocols.

Companies are encouraged to take a hard look at their disclosures in these areas in light of the final amendments, with a focus on tailoring their disclosures to the company's particular facts and circumstances to facilitate investors' understanding of the company's business, financial condition, and prospects as viewed by management. This review will also provide an opportunity to streamline and reorganize disclosures, where appropriate, to improve readability. While many of the revisions represent incremental changes or codify what is already current practice for many reporting companies (e.g., grouping risk factors under relevant headings, including discussion of all material effects of compliance with government regulations applicable to the company's operations rather than just environmental regulations, and cross-referencing legal proceedings disclosures to eliminate duplication), others — such as changes to business strategy and disclosures regarding human capital resources — introduce sensitive topics and will require careful consideration based on each company's specific circumstances to tailor meaningful disclosures appropriately.

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## Summary of Final Amendments

<b>Regulation S-K Item 101(a): General Development of Business</b>	
<i>Current Rule</i>	<i>Final Amendment</i>
<p>Requires a description of the general development of the business of the company during the <b>past five years</b>, or such shorter period as the company may have been engaged in business.</p> <p>In describing the general development of the business, Item 101(a)(1) requires disclosure of:</p> <ol style="list-style-type: none"> <li>(1) The year in which the company was organized and its form of organization;</li> <li>(2) The nature and results of any bankruptcy, receivership, or similar proceedings with respect to the company or any of its significant subsidiaries;</li> <li>(3) The nature and results of any other material reclassification, merger, or consolidation of the company or any of its significant subsidiaries;</li> <li>(4) The acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and</li> <li>(5) Any material changes in the mode of conducting the business.</li> </ol>	<p><b>Eliminates the five-year disclosure timeframe<sup>1</sup></b> and requires companies to <b>focus on the information material to an understanding of the general development of their business</b>, regardless of a specific timeframe.</p> <p><b>Provides an optional method for companies, in filings after the initial registration statement, to provide only an update of the general development of the business</b> focused on all of the material developments that have occurred since its most recent full discussion of the development of its business from a single previously filed registration statement or report, which must be hyperlinked and incorporated by reference.</p> <p><b>Provides a non-exclusive list of four disclosure topics</b> that should be addressed to the extent material to an understanding of the general development of the company's business:</p> <ol style="list-style-type: none"> <li>(1) <b>Material changes to a previously disclosed business strategy;</b></li> <li>(2) Bankruptcy, receivership, or any similar proceeding;</li> <li>(3) The nature and effects of any material reclassification, merger, or consolidation of the company or any of its significant subsidiaries; and</li> <li>(4) The acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business.</li> </ol>

<sup>1</sup>Similarly, the SEC also adopted amendments to Item 101(h) to eliminate the provision that requires smaller reporting companies to describe the development of their business during the last three years, and will direct smaller reporting companies, in describing the development of their business, to provide information for the period of time that is material to an understanding of the general development of the business.

## Item 101(c): Narrative Description of Business

<i>Current Rule</i>	<i>Final Amendment</i>
<p>To the extent material to an understanding of the company's business taken as a whole, the description must include:</p> <ol style="list-style-type: none"><li>(1) Principal products produced and services rendered;</li><li>(2) New products or segments;</li><li>(3) Sources and availability of raw materials;</li><li>(4) Intellectual property;</li><li>(5) Seasonality of the business;</li><li>(6) Working capital practices;</li><li>(7) Dependence on certain customers;</li><li>(8) Dollar amount of orders in backlog believed to be firm;</li><li>(9) Business subject to renegotiation or termination of government contracts;</li><li>(10) Competitive conditions;</li><li>(11) The material effects of compliance with environmental laws; and</li><li>(12) Number of employees.</li></ol>	<p><b>Provides a non-exclusive list of items that should be considered and described, to the extent material to an understanding of the company's business,</b> including (at the segment level, where appropriate):</p> <ol style="list-style-type: none"><li>(1) Revenue-generating activities, products, and/or services, and any dependence on key products, services, product families, or customers, including governmental customers;</li><li>(2) Status of development efforts for new or enhanced products, trends in market demand, and competitive conditions;</li><li>(3) Resources material to the company's business, including raw materials and the duration and effect of all patents, trademarks, licenses, franchises, and concessions held;</li><li>(4) Material portion of the business that may be subject to renegotiation of profits or termination of contracts at the election of the government;</li><li>(5) Seasonality of the business;</li><li>(6) To the extent material to an understanding of the business taken as a whole, <b>disclosure of the material effects that compliance with government regulations, including environmental regulations,</b> may have upon the capital expenditures, earnings, and competitive position of the company and its subsidiaries, as well as disclosure of the <b>estimated capital expenditures for environmental control facilities</b> for the current fiscal year and any other subsequent period that is material; and</li><li>(7) To the extent such disclosure is material to an understanding of the company's business taken as a whole, a description of a company's <b>human capital resources,</b> including the number of persons employed and any other human capital measures or objectives that company management focuses on in managing the business.</li></ol>

<b>Item 103: Legal Proceedings</b>	
<i>Current Rule</i>	<i>Final Amendment</i>
<p>Requires disclosure of any material pending legal proceedings (other than ordinary routine litigation incidental to the business) to which the company or any of its subsidiaries is a party or of which any of their property is the subject. Disclosure shall include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, and a description of the factual basis alleged to underlie the proceeding and the relief sought. Similar information is to be included for such proceedings known to be contemplated by governmental authorities.</p> <p>Requires that disclosure of any proceeding under environmental laws to which a governmental authority is a party be included unless the company reasonably believes it will not result in sanctions of <b>\$100,000</b> or more.</p>	<p><b>Expressly allows companies to use hyperlinks or cross-references to legal proceedings disclosure elsewhere in the filing</b> (such as in MD&amp;A, risk factors, or the notes to the financial statements) to avoid duplicative disclosure.</p> <p><b>Updates the disclosure threshold to \$300,000 for environmental proceedings in which the government is a party</b>, to account for inflation (the current \$100,000 threshold was set in 1982), but <b>allows companies to select a different threshold</b> that they determine is reasonably designed to result in disclosure of material environmental proceedings, provided that the threshold does not exceed the lesser of \$1 million or 1 percent of the current assets of the company and that the company discloses such selected threshold (including any changes thereto).</p>
<b>Item 105: Risk Factors</b>	
<i>Current Rule</i>	<i>Final Amendment</i>
<p>Requires disclosure of the <b>most significant</b> factors that make an investment in the company or offering speculative or risky, and specifies that the discussion should be concise and organized logically.</p>	<p>(1) <b>Requires summary risk factor disclosure</b> of no more than two pages, with a series of concise, bulleted, or numbered statements disclosed at the end of the risk factor section summarizing the principal factors that make an investment in the company or offering speculative or risky, <b>if the risk factor section exceeds 15 pages;</b></p> <p>(2) <b>Replaces the requirement to disclose the “most significant” factors with the “material” factors;</b> and</p> <p>(3) <b>Requires companies to organize risk factors under relevant headings, with any generic risk factors included last under a separate heading.</b></p>