



## Securities Law ADVISORY ■

**AUGUST 29, 2018**

### SEC Approves Amendments to Update and Simplify Disclosure Requirements

On August 17, 2018, the Securities and Exchange Commission (SEC) [announced](#) the adoption of amendments to certain disclosure requirements that have become duplicative, overlapping, or outdated in light of other SEC disclosure requirements, U.S. generally accepted accounting principles (GAAP), or changes in the information environment. The amendments, which were proposed on July 13, 2016, largely impact Regulation S-X, Regulation S-K, and certain SEC forms. The SEC also announced that it is referring certain requirements that overlap with, but require information incremental to, GAAP to the Financial Accounting Standards Board (FASB) for consideration for incorporation into GAAP. The amendments will be effective 30 days from publication in the *Federal Register*, which is projected to be late September 2018.

#### **Key Takeaways**

The changes are mostly cleanup in nature and are not intended to significantly alter the total mix of information provided to investors. However, because some amendments result in the relocation of disclosures within a filing, issuers should be aware of the resulting consequences. Specifically, the relocation of certain disclosures from outside to inside the financial statements will subject such disclosures to:

- Annual audit and/or internal review.
- International control over financial reporting (ICFR).
- XBRL tagging requirements.

Furthermore, the safe harbor under the Private Securities Litigation Reform Act of 1995 (PSLRA) for forward-looking statements will no longer be available for the disclosures that are relocated from outside to inside the financial statements. The amendments will have the opposite effect on disclosures that are relocated from inside to outside the financial statements. Companies should also keep in mind that the relocation of disclosures within a filing could impact the prominence of such disclosure and the context of both the relocated disclosure and the remaining disclosure.

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## Highlights of the Amendments

### *Elimination of redundant or duplicative disclosures*

The amendments eliminate a number of disclosure requirements that require substantially the same disclosures as GAAP, other SEC disclosure requirements, or both. As the SEC staff notes, in the case of amendments to redundant and duplicative disclosures, elimination will not affect compliance with the underlying requirement. Topics covered include foreign currency, consolidation, changes in outstanding debt obligations, income tax disclosures, warrants, rights, and convertible instruments, related parties, contingencies, earnings per share, insurance companies, bank holding companies, changes in accounting policies, interim adjustments, and interim financial statements.

### *Deletion or integration of overlapping disclosures*

- **Research and Development (R&D) Activities:** The amendments delete the requirement pursuant to Regulation S-K Items 101(c)(10)(xi) and 101(h)(4)(x) to include the amount spent on R&D activities in the business description section of an issuer's periodic report or prospectus because GAAP requires reasonably similar disclosure in the notes to an issuer's financial statements. This is an instance of disclosure being relocated from outside to inside an issuer's financial statements.
- **Warrants, Rights, and Convertible Instruments:** Item 201(a)(2)(i) of Regulation S-K requires disclosure on Form S-1 or Form 10 of the amount of common equity subject to outstanding options, warrants, or convertible securities when the class of common equity has no established U.S. public trading market. The amendments eliminate Item 201(a)(2)(i) since GAAP elicits similar information for inclusion in the notes to the financial statements.
- **Ratio of Earnings to Fixed Charges:** Noting that a variety of analytical tools are available to investors that may accomplish a similar objective as the ratio of earnings to fixed charges, the amendments remove the requirement that issuers that register debt securities disclose the historical and pro forma ratios of earnings to fixed charges (Item 503(d) of Regulation S-K and Item 1010(a)(3) of Regulation M-A), the requirement that issuers that register preference equity securities disclose the historical and pro forma ratio of combined fixed charges and preference dividends to earnings (Items 503(e) and 601(c) of Regulation S-K), and the requirement to file an exhibit setting forth the computation of any ratio of earnings to fixed charges pursuant to Item 601(b)(12) of Regulation S-K.
- **Segments:** The amendments eliminate Item 101(b) of Regulation S-K, which requires disclosure of segment financial information in the business description, restatement of prior periods when reportable segments change, and discussion of interim segment performance that may not be indicative of current or future operations. This information will no longer be required in the business description section of an issuer's periodic report or prospectus. As the SEC noted, similar disclosures will continue to be available in the notes to the financial statements pursuant to GAAP and in the MD&A pursuant to Item 303(b) of Regulation S-K.

- **Geographic Areas:** The amendments eliminate: Items 101(d)(1) and 101(d)(2) of Regulation S-K, which require disclosure of financial information by geographic area in the business section, since GAAP requires similar disclosure; Item 101(d)(3), which requires disclosure of any risks associated with an issuer's foreign operations and any segment's dependence on foreign operations, but is largely encompassed by the disclosures that result from compliance with other parts of Regulation S-K; and Item 101(d)(4), which requires, when interim financial statements are presented, a discussion of the facts that indicate that the three-year financial data for geographic performance may not be indicative of current or future operations.
- **Seasonality:** The amendments remove Instruction 5 to Item 303(b) of Regulation S-K, which requires issuers to include in their MD&A discussion any seasonal aspects of their business that have had a material effect upon its financial condition or results of operations. The SEC believes that compliance with GAAP will convey reasonably similar information. It should be noted that this deletion gives rise to a change in disclosure prominence since GAAP requires seasonality disclosures in the financial statements, rather than in MD&A.
- **Interim Financial Statements – Material Events Subsequent to the End of the Most Recent Fiscal Year:** The amendments eliminate the requirements to disclose material events subsequent to the end of the most recent fiscal year (Rules 8-03(b)(2) and 10-01(a)(5) of Regulation S-X) since they require disclosures that are encompassed by the disclosures that result from compliance with GAAP and Regulation S-K, in combination.
- **Restrictions on Dividends and Related Items:** The amendments consolidate SEC requirements mandating disclosure about restrictions on the payment of dividends and related items in the financial statements and make other updates.

In the amendments, the SEC referred certain previously proposed amendments to the FASB and requested that the FASB determine whether the referred disclosure items will be added to its agenda of projects for potential standard setting within 18 months of publishing the final rule in the *Federal Register*.<sup>1</sup>

### **Updates to outdated disclosures**

- **Market Price Disclosure:** The amendments eliminate from Item 201(a)(1) the detailed disclosure requirement of historical price information for issuers whose common equity is traded in an established public trading market and replace it with disclosure of the trading symbol.
- **SEC Public Reference Room:** The amendments delete the requirements in Regulation S-K and certain registration forms<sup>2</sup> to identify the Public Reference Room and disclose its physical address and phone number.

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<sup>1</sup> Among the proposed changes referred to the FASB is the potential elimination of the equity compensation plan information table currently required by Form 10-K, which was highlighted in our [client advisory](#) analyzing the proposed rule.

<sup>2</sup> Item 101(e)(2) and Item 101(h)(5)(iii) of Regulation S-K; Forms S-1, S-3, S-4, S-11, F-1, F-3, and F4; Item 1118(b) of Regulation AB; and Forms SF-1, SF-3, N1A, N-2, N-3, N-5, N6, and N-8B-2.

- **Internet Websites:** The amendments require all issuers, not just accelerated and large accelerated filers, to disclose the SEC's Internet address and include a statement that electronic SEC filings are available there<sup>3</sup> and disclose their own Internet addresses, if they have one.<sup>4</sup>

### ***Elimination of superseded disclosures***

Recognizing that accounting, auditing, and disclosure requirements have changed over time, the SEC also adopted amendments to update certain financial reporting requirements under Regulation S-X to reflect more recently updated GAAP requirements or more recently updated SEC disclosure requirements. Notably, the changes cover the following topics: gains or loss on sales of properties by REITs, certain requirements related to consolidation, development stage companies, insurance companies, replacing references to generally accepted auditing standards (GAAS) with references to applicable Public Company Accounting Oversight Board (PCAOB) standards, disclosure of shareholder voting results under Item 601(b)(22) of Regulation S-K, and correcting various incorrect references and typographical errors.

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<sup>3</sup> Item 101(e)(2) of Regulation S-K; and Forms S-1, S-3, S-4, S-11, F-1, F-3, F-4, 20-F, SF-1, SF-3, and N-4.

<sup>4</sup> Items 101(e) and 101(h)(5) of Regulation S-K; and Forms S-3, S-4, F-1, F-3, F-4, 20-F, SF-1, and SF-3.

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500  
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100  
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260  
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001  
 SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650-838-2000 ■ Fax: 650.838.2001  
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333