

# SEC Adopts Amendments to Modernize Public Company Disclosure Requirements

On August 26, 2020, the U.S. Securities Exchange Commission (SEC) adopted amendments to modernize a number of disclosure requirements in Regulation S-K. Regulation S-K was adopted in 1977 to provide uniform and integrated disclosure in quarterly and annual reports filed by public companies under the Securities Exchange Act of 1934 and in registration statements filed under the Securities Act of 1933. Regulation S-K contains line-item disclosure requirements in specific areas.

Although the amendments are fairly modest overall, they do advance principles-based disclosure in some areas and reduce some duplicative disclosure. The amendments take effect 30 days after publication in the Federal Register.

The amendments include the following:

## Item 101 – Description of Business

- Eliminating the prescribed five-year timeframe (three years for smaller reporting companies) for the description of the general development of a company's business. Instead, material developments must be disclosed, including material changes to a business strategy, bankruptcy or similar proceedings, and material acquisitions or dispositions.
- Once a company's business development has been disclosed, subsequent filings only need to disclose material changes if the company includes a hyperlink to the full disclosure of its business development in a single previously filed document.
- As noted, there is a specific requirement to disclose material changes to a previously disclosed business strategy. The rules do not mandate that a company must disclose its business strategy, but many public companies do so.
- Replacing a list of up to 12 topics in describing a company's business with a more principles-based approach focusing on materiality. There is a shorter, non-exclusive list of five topics to consider.
- Adding a specific line item to describe a company's human capital resources to the extent material to an understanding of the company's business. Disclosure should include the number of employees and any human capital measures or objectives the company focuses on in managing its business. Consistent with the SEC's principles-based approach, there are not a lot of details as to what

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types of disclosure must be included, and the SEC did not adopt suggestions from commenters for mandated disclosure topics such as diversity, worker safety and employee turnover rates. Two of the five commissioners dissented from the new rule, in part, because of the failure to address such topics.

### **Item 103 – Legal Proceedings**

- In order to reduce duplicative disclosure, permitting a company to hyperlink to a description of legal proceedings elsewhere in the document, including in MD&A, risk factors or notes to the financial statements.
- Increasing the disclosure threshold for environmental proceedings in which the government is a party from \$100,000 to \$300,000 in monetary sanctions. A company also has the flexibility to adopt a higher threshold up to the lesser of \$1 million or 10 percent of current assets, but it must disclose that it has adopted such a higher threshold and must determine that such threshold is reasonably designed to result in disclosure of material proceedings.

### **Item 105 – Risk Factors**

- Requiring summary risk factor disclosure if the risk factor section exceeds 15 pages. The summary would consist of concise, bulleted or numbered statements summarizing the principal risks in the front part of the document. This risk factor summary may not exceed two pages. Most IPO registration statements currently include such summary risk factor disclosure.
- Requiring that risk factors be organized under relevant headings with a sub-caption for each actual risk factor. Many companies already do so.

If you have any questions about the new rules or other securities law matters, please contact a member of the [Securities Team](#) or your Reinhart attorney.

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