

Capital Markets & Securities

September 5, 2018

SEC Adopts Amendments to Simplify and Modernize Disclosure Requirements

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What You Need To Know:

- In July 2016, the Securities and Exchange Commission proposed amendments to certain disclosure requirements that have become redundant, outdated, or superseded.
- On August 17, 2018, the Securities and Exchange Commission adopted most of the proposed changes to Regulation S-K, Regulation S-X, and numerous forms.
- The Securities and Exchange Commission believes the amendments will facilitate the disclosure of information to investors and simplify compliance without significantly

On August 17, 2018, in efforts to comply with its congressional mandate to modernize the nation's securities laws, the Securities and Exchange Commission (the "SEC" or, the "Commission") adopted amendments to certain disclosure requirements that have become "redundant, duplicative, overlapping, outdated, or superseded." These amendments were made in light of other Commission disclosure requirements, changes in U.S. Generally Accepted Accounting Principles ("GAAP"), or changes in the marketplace. At the Commission's own admission, the changes are minor and meant only to simplify disclosure requirements without "significantly altering the total mix of information provided to investors." While the changes do not seem to be material to investors, they do relieve issuers of a substantial number of disclosure requirements. The amendments appear in Regulation S-K, Regulation S-X, and various Securities Act of 1933 (the "Securities Act") forms, including Form S-1 and Form S-3.

The table below highlights some of the most significant amendments to Regulation S-K the Commission has adopted. For a complete list of amendments, including those to Regulation S-X (the Commission's accounting rules) and certain Securities Act forms, see SEC Release No. 33-10532, available on the Commission's website ([here](#)).

Basis for Amendment	Regulation S-K Item	Disclosure Requirement	Commission's Reasoning
Overlapping Requirements	Item 101(b)	Disclosure of segment financial information in "Description of Business" section of filings.	Eliminated due to duplicative disclosures appearing in Item 303(b) and the notes to financial statements.
Overlapping Requirements	Item 101(c)(1)(v)	Seasonality of results of operations.	Retained seasonality disclosure but eliminated related Instruction 5 to Item 303(b) due to overlapping informational requirements.
Overlapping Requirements	Items 101(c)(1)(xi) and 101(h)(4)(x)	Disclosure, if material, of the amounts spent on research and development activities for all years presented.	Eliminated due to duplicative disclosure requirements in the notes to financial statements and GAAP requirements.
Overlapping Requirements	Items 101(d)(1), (d)(2), and (d)(3)	Disclosure of financial information by geographic location, risks associated with an issuer's foreign operations, and any segment's dependence on foreign operations.	Eliminated due to duplicative disclosures in Item 303(a) and GAAP requirements, including notes to financial statements. Also added requirement to specifically reference "geographic areas" in Item 303's MD&A disclosures.
Overlapping Requirements	Item 101(d)(4)	When interim financial statements are presented, discussion of the facts that indicate three-year financial data for geographical performance may not be indicative of current or future operations.	Eliminated due to similar disclosures in Item 303(a) and Instruction 4 to Item 303(b). Also added requirement to specifically reference "geographic areas" in Item 303's MD&A disclosures.
Outdated Requirements	Items 101(e)(2) and 101(h)(5)(iii)	Identification of the Commission's Public Reference Room and disclosure of its physical address and phone number.	Eliminated due to the limited use of the Public Reference Room. Retained requirement to disclose the Commission's website and Internet availability of filings. Eliminated the qualifier "if you are an electronic filer" because all but a limited number of Registrants file electronically. Added requirement for all issuers to disclose their Internet address if they have one.
Outdated Requirements	Item 201(a)(1)	Disclosure of principal U.S. market(s) where a Registrant's common equity is traded, high and low trading prices, and price of common equity as of the latest practicable date.	Revised to (i) remove "established" from "principal established foreign public trading market" to be consistent with domestic companies' disclosure requirements; (ii) require OTC companies to disclose that any quotations reflect inter-dealer prices, without retail mark-up/down or commissions, and may not reflect actual transactions; (iii) require issuers with no established trading market to disclose that fact and the range of high and low bid information, if applicable, for each quarter over last two fiscal years; and (iv) remove requirement to disclose sale or bid prices for companies traded in established public trading market, and instead require disclosure of trading symbol only.

Basis for Amendment	Regulation S-K Item	Disclosure Requirement	Commission's Reasoning
Overlapping Requirements	Item 201(a)(2)(i)	Disclosure 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.	Eliminated due to duplicative disclosure requirements in the notes to financial statements and GAAP requirements.
Overlapping Requirements	Item 201(c)(1)	Disclose frequency and amount of cash dividends declared.	Eliminated due to Regulation S-X Rule 3-04 requirement to disclose the amount of dividends in interim periods.
Outdated Requirements	Item 302(a)(1)	Disclosure of "income (loss) before extraordinary items and cumulative effect of a change in accounting" in supplemental quarterly financial information.	Revised to require the disclosure of "income (loss) from continuing operations" and "per share data based upon income (loss) from continuing operations" and "per share data based upon net income (loss)."
Outdated Requirements	Item 406(d)	References to Item 10 of Form 8-K.	Replaced with correct references to Item 5.05 of Form 8-K.
Overlapping Requirements	Items 503(d) and 601(b)(12)	If debt securities or preference equity securities are registered, disclosure of historical and pro forma ratios of fixed earnings to fixed charges and/or preference dividends, and related exhibit.	Eliminated due to the fact that (i) analytical tools are available that enable investors to calculate similar ratios and information; (ii) debt investors often negotiate contractual agreements with issuers to obtain financial information to meet their needs; (iii) companies are already required to discuss the material impacts of debt covenants to the extent they are reasonably likely to limit the company's ability to undertake additional financings or are reasonably likely to be breached; and (iv) Item 504 requires similar disclosures.
Overlapping Requirements	Item 504 Instruction 3	Requirement to disclose the sources of any material amounts of other funds needed to accomplish the specific purpose.	Eliminated due to redundant references in Instruction.
Outdated Requirements	Item 508(e)	Reference to National Association of Securities Dealers and to Rules of Fair Practice.	Replaced with reference to Financial Industry Regulatory Authority ("FINRA") and FINRA Rules.
Overlapping Requirements	Item 601(b)(11)	Disclosure of the computation of earnings per share in annual filings.	Eliminated due to duplicative disclosure requirements in GAAP.
Overlapping Requirements	Item 601(b)(19)	Incorporation by reference into Form 10-Q of information that is separately made available to security holders.	Eliminated due to duplicative disclosures in General Instruction D(3) to Form 10-Q and Item 601(b)(13).
Outdated Requirements	Item 601(b)(22), including accompanying inclusion in Exhibit Table within Item 601	Disclosure of published reports regarding matters submitted to vote of security holders.	Eliminated due to changes made in 2009 to disclose shareholder voting results in Form 10-K and Form 10-Q, as well as Item 5.07 of Form 8-K.

Basis for Amendment	Regulation S-K Item	Disclosure Requirement	Commission's Reasoning
Outdated Requirements	Item 601(b)(26)	Disclosure of invitations for competitive bids.	Eliminated because disclosure does not provide additional value to investors, since those participating in the competitive bid would directly receive the invitation, and all other investors would have access to the registration statement covering the securities offered at competitive bidding, as well as the results of the competitive bidding and the terms of reoffering.

Additionally, the Commission forwarded to the Financial Accounting Standards Board (“FASB”) items of Regulation S-K and Regulation S-X that overlap with GAAP requirements, but where Regulation S-K or Regulation S-X may call for more information. The Commission has requested that FASB assess whether the incremental differences can be reconciled or incorporated into GAAP. The Commission requested that FASB complete this assessment within 18 months after the amendments are published in the Federal Register.

All the amendments listed above, as well as the others discussed in the Adopting Release, will become effective 30 days after publication in the Federal Register.

Contacts

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