

Practice Update

SEC Amendments to Update and Simplify Disclosure Requirements Become Effective November 5, 2018

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On October 4, 2018, the Securities and Exchange Commission (the “Commission”) published the [final rule](#) adopting amendments to certain disclosure requirements that have become duplicative, overlapping, or outdated in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles (“GAAP”), or changes in the information environment. The final rule becomes effective on November 5, 2018.

On August 17, 2018, the Commission [issued a release](#) adopting the amendments, which will eliminate certain:

- Redundant and duplicative disclosure requirements, which require substantially similar disclosures as GAAP, International Financial Reporting Standards (“IFRS”), or other Commission disclosure requirements.
- Overlapping disclosure requirements, which are related to, but not the same as GAAP, IFRS, or other Commission disclosure requirements.
- Outdated disclosure requirements, which have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment.

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- Superseded disclosure requirements, which are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated GAAP requirements.

The Commission indicated that the amendments are intended to simplify compliance and facilitate the disclosure of information to investors without significantly altering the total mix of information available to investors.

The demonstration version of the Commission's amendments, which shows added text underlined and deleted text struck out, can be found [here](#).

Highlights of the Amendments

Redundant and Duplicative Requirements

Section II.B.2 of the [adopting release](#) includes a table listing the eliminated provisions of Regulation S-X as well as the corresponding GAAP requirements relating to, among other items, financial statement consolidation, debt obligations, income tax disclosures, warrants, rights and convertible instruments, related party identifications, material contingencies, earnings per share, and certain disclosures of insurance companies.

Overlapping Requirements

Section III.B. of the [adopting release](#) includes a table listing the eliminated and amended provisions of Regulation S-X relating to, among other items, REIT disclosures of undistributed gains or losses, REIT status, fiscal period consolidation, distributable earnings for registered investment companies, liability assumptions for insurance companies, changes in accounting principles for interim financial statements, dividends, and invitation for competitive bids. The adopting release also eliminates the following requirements:

- Disclosure of the amount spent on research and development activities, information by geographic area, the risks associated with foreign operations, and segment financial information in the business section of a prospectus or periodic report;
- Discussion of seasonality in the Management Discussion and Analysis section of quarterly reports on Form 10-Q;
- disclosure of the frequency and amount of any cash dividends in an annual report, Form S-1 of other relevant filings under Item 201(c)(1) of Regulation S-K (the amendments also consolidate disclosure requirements regarding restrictions that currently, or are likely to, materially limit a company's ability to pay dividends on its common equity);
- Disclosure of the ratio of earnings to fixed charges and ratio of combined fixed charges and preference dividends to earnings in connection with offerings of debt securities and/or preferred stock, as applicable, and the related exhibit setting forth the computation of such ratios; and
- Inclusion of pro forma financial information in interim filings for business combinations under Rule 8-03(b)(4) and Rule 10-01(b)(4) of Regulation S-X.

Outdated Requirements

The adopting release also modifies certain obsolete requirements, and eliminates others such as stale transition dates and requirements to identify and disclose the physical address and phone number of the Public Reference Room. The adopting release now requires all issuers to disclose their internet addresses if they have one. Previously, companies were encouraged to provide their website addresses. The most significant update to outdated requirements relates to the market price disclosure requirements in Item 201(a)(1) of Regulation S-K, which was amended as follows:

- Issuers with one or more classes of common equity will be required to identify the principal U.S. markets where each class is traded and the corresponding trading symbols used by the markets for each class of common equity. Foreign issuers will also be required to identify the principal foreign public trading markets, if any, and the trading symbols, for each class of their common equity.
- Issuers with common equity that is not traded on an exchange will be required to indicate, as applicable, that any over-the-counter market quotations in these trading systems reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not necessarily represent actual transactions.
- Issuers with no class of common equity traded in an established public trading market will be required to state that fact and disclose the range of high and low bid information, if applicable, for each full quarter within the last two fiscal years and any subsequent interim period. Also, these issuers must disclose the source and explain the nature of the quotations.

The amendment eliminates the requirement to disclose sale or bid prices for most issuers with common equity traded in a public trading market and now requires disclosure of the issuer's trading symbol.

Superseded Requirements

The adopting release also updates disclosure requirements to reflect changes in legislation and more recently updated Commission or GAAP disclosure requirements, such as eliminating references to pooling-of-interests accounting treatment and "extraordinary items," changing references to Generally Accepted Auditing Standards that should be references to the standards of the Public Company Accounting Oversight Board (United States) or to "applicable professional

standards,” and conforming the definition in Rule 12b-2 of “significant subsidiary” to the definition in Regulation S-X. Sections V.B. and V.C. of the adopting release describe certain other eliminations and amendments with more specificity.

The Commission also did a general update to correct incorrect references, outdated references, and typographical errors that were still part of the disclosure requirements. The general update did not have any material impact on the meaning and substance of such affected disclosure requirements.

Referrals to FASB

The Commission also determined in the adopting release to refer certain disclosure requirements that overlap with but require information incremental to GAAP to the Financial Accounting Standards Board (“FASB”) for its consideration regarding whether to incorporate such disclosure requirements into GAAP. These disclosure requirements include disclosure relating to discount on shares, income tax disclosures, major customers, products and services, legal proceedings, related parties, products and services, and equity compensation plans

Key Takeaways

Although the changes can be described as primarily clean-up in nature, the impact of some of the changes should be carefully evaluated by companies. For example, the relocation of certain disclosures from one section of a filing to another section of a filing may alter the prominence and context of the relocated disclosures and the remaining disclosures. Additionally, relocating disclosure from outside of the financial statements to within the financial statements also has certain impacts, including subjecting the information to annual audit and/or interim review, internal control over financial reporting, and XBRL tagging requirements, while making the safe harbor under

the Private Securities Litigation Reform Act of 1995 unavailable for such disclosures.

Companies should prepare for incorporation of these changes in upcoming periodic filings and registration statements. They can impact calendar year-end reporting companies as early as their third quarter reports on Form 10-Q.

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