

Client Alert

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SEC Proposes Disclosure Simplification Rules

On July 13, 2016, the US Securities and Exchange Commission (the “SEC”) proposed amendments to Regulation S-K, Regulation S-X and other disclosure requirements under the federal securities laws that over time may have become redundant, duplicative, overlapping, outdated or superseded. The SEC also seeks comment on various disclosure requirements that overlap with, but require information incremental to, US GAAP to determine whether to retain, modify, eliminate or refer them to the Financial Accounting Standards Board (“FASB”) to be considered for incorporation into US GAAP. The proposed rules represent the latest step in the SEC’s ongoing “disclosure effectiveness” initiative and in part satisfy a mandate under the Fixing America’s Surface Transportation Act. Comments are due 60 days after publication of the proposed rules in the Federal Register.

Redundant or Duplicative Requirements

Several of the proposed amendments would delete requirements contained in Regulation S-K or Regulation S-X that duplicate requirements under US GAAP or International Financial Reporting Standards (“IFRS”). The SEC [proposal](#) in particular focuses on disclosure requirements regarding:

- Foreign Currency
- Consolidation
- Obligations
- Income Tax Disclosures
- Warrants, Rights and Convertible Instruments
- Related Parties
- Contingencies
- Earnings per Share
- Insurance Companies
- Bank Holding Companies
- Changes in Accounting Principles
- Interim Adjustments
- Interim Financial Statements
- Report Furnished to Security Holders

Overlapping Requirements: Proposed Deletions

The SEC proposes to delete a variety of requirements that provide for disclosures that convey similar information due to overlapping US GAAP, IFRS or SEC mandates, or provide for disclosure incremental to overlapping US GAAP, IFRS or SEC disclosure rules that may no longer be useful to investors.

The proposed deletions include disclosures about:

- REITs
- Consolidation
- Repurchase and Reverse Repurchase Agreements
- Derivative Accounting Policies
- Distributable Earnings for Registered Investment Companies
- Insurance Companies
- Interim Financial Statements
- Segments
- Geographic Areas
- Seasonality
- Research and Development Activities
- Warrants, Rights and Convertible Instruments
- Dividends
- Equity Compensation Plans
- Ratio of Earnings to Fixed Charges
- Invitations for Competitive Bids

Overlapping Requirements: Proposed Integration

Conversely, the SEC also proposes to integrate disclosure requirements that overlap with, but require information incremental to, other disclosure requirements. Proposed topics for integration include:

- Foreign Currency Restrictions
- Restrictions on Dividends and Related Items
- Geographic Areas

Overlapping Requirements: Potential Modifications, Eliminations or FASB Referrals

The SEC also solicits comment on disclosure requirements that overlap with, but require information incremental to, US GAAP to determine whether to retain, modify, eliminate or refer them to the FASB for potential incorporation into US GAAP. These topics include disclosures regarding:

- REITs
- Consolidation
- Discount on Shares
- Assets Subject to Lien
- Obligations

- Preferred Shares
- Income Tax Disclosures
- Related Parties
- Repurchase and Reverse Repurchase Agreements
- Interim Financial Statements
- Products and Services
- Major Customers
- Legal Proceedings
- Oil and Gas Producing Activities

Outdated Requirements

The proposing release identifies several outdated requirements that have become obsolete as a result of the passage of time or changes in the law, technology or business practices. These requirements include:

- Stale Transition Dates
- Income Tax Disclosures
- Available Information in the SEC Public Reference Room
- Market Price Disclosure
- Exchange Rate Data
- Age of Financial Statements in Foreign Private Issuer Initial Public Offerings

Superseded Requirements

The proposing release also contains several proposed amendments addressing superseded requirements, including technical corrections intended to address recent legislation, more recently updated SEC disclosure requirements or more recently updated US GAAP requirements. Examples identified in the SEC proposal include disclosures relating to:

- Auditing Standards
- Statement of Cash Flows
- Gain or Loss on Sale of Properties by REITs
- Consolidation
- Development Stage Entities
- Insurance Companies
- Bank Holding Companies
- Discontinued Operations
- Pooling-of-Interests
- Statement of Comprehensive Income

- Extraordinary Items
- Cumulative Effect of Changes in Accounting Principles
- Published Report Regarding Matters Submitted to Vote of Security Holders
- Selected Financial Data for Foreign Private Issuers that Report under IFRS
- Canadian Regulation A Issuers
- Non-Existent or Incorrect References

Next Steps

While the SEC's recent [concept release](#) on business and financial disclosure under Regulation S-K focused on broad themes, the SEC's proposing release on disclosure simplification focuses on a variety of much more discrete topics. The proposing release notes that in many cases, the streamlining of disclosure requirements would result in the relocation of disclosures within a filing, potentially changing the prominence or context of both the relocated disclosures and the remaining disclosures. To the extent disclosure migrates into the financial statements from other narrative text outside the financial statements, such disclosure would no longer benefit from the protections of the Private Securities Litigation Reform Act for forward-looking statements, which may cause public companies to be less forthcoming with such forward-looking information. The SEC also notes that certain proposed amendments would replace some existing rules that have bright-line disclosure thresholds with rules that do not.

As always, we encourage public companies to comment on the proposed rules. Given the technical nature of many of the proposed amendments, perspectives of the issuer community will be especially important to the SEC as it considers whether to adopt any of the proposals as final rules.

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