

SEC Proposes Amendments to Update and Simplify Disclosure Requirements as Part of Overall Disclosure Effectiveness Review

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On July 13, 2016, the Securities and Exchange Commission (the “**SEC**”) [announced](#) proposed amendments in order to update and simply its disclosure requirements. The SEC’s proposed rule (the “**Proposed Rule**”) can be found [here](#).

What is the Proposed Rule?

In an effort to eliminate redundant or outdated provisions, in light of changes in other SEC disclosure requirements, U.S. generally accepted accounting principles (“**GAAP**”), International Financial Reporting Standards (“**IFRS**”) and technology, the Proposed Rule sets forth certain proposed modifications in these disclosure requirements designed to ease the burden on public companies and others subject to the SEC’s public reporting requirements, while retaining sufficient publicly disclosed information for investors to continue to make informed investment decisions. The Proposed Rule is part of the SEC’s efforts to implement the Fixing America’s Surface Transportation (FAST) Act which requires the SEC to eliminate duplicative or unnecessary provisions of Regulation S-K.

What type of entities will be affected by the Proposed Rule?

The Proposed Rule would apply to companies subject to the reporting requirements of the Securities Exchange Act of 1934 (the “**Exchange Act**”) (including foreign private issuers). In addition, portions of the Proposed Rule would apply to, among others, issuers offering securities under Regulation A, issuers regulated under the Investment Company Act of 1940, broker-dealers and investment advisors.

What are some examples of disclosure requirements the SEC proposes to change?

The Proposed Rule discusses 15 categories of redundant or duplicative requirements, 38 categories of overlapping requirements, six categories of outdated requirements, and 16 categories of

superseded requirements. For overlapping requirements, the SEC is not proposing amendments currently. Instead, they are seeking comments to such requirements which may inform future amendments to their disclosure rules. The SEC is also seeking comment on whether incremental SEC disclosure requirements should be retained, modified, eliminated or, instead, referred to the Financial Accounting Standards Board for potential incorporation into GAAP.

An example of redundant or duplicative requirements includes disclosure of related party transactions. Rule 4-08(k)(l) of Regulation S-X (as well as Item 404 of Regulation S-K) mandates identification of related party transactions, while Accounting Standards Codification 850-10-50-1 requires much of the same disclosure under GAAP.

An example of overlapping requirements is disclosure of the ratio of earnings to fixed charges. Companies that register debt securities (including companies that become subject to the Exchange Act reporting requirements through an SEC-registered exchange offer following a high yield bond offering) are required to disclose the historical and pro forma ratio of earnings to fixed charges under Item 503(d) of Regulation S-K. Furthermore, Item 601(b)(12) of Regulation S-K mandates the filing of an exhibit setting forth the computation of the ratio of earnings to fixed charges. In the Proposed Rule, the SEC notes that both GAAP and IFRS require disclosure of many of the components of this ratio, as well as information from which other ratios that convey reasonably similar information about an issuer's obligation to meet its financial obligations may be computed. Therefore, the ratio of earnings to fixed charges may no longer be necessary for investors to understand a public company's wherewithal to repay its debts.

An example of an outdated requirement is the requirement, under Item 201(a)(1) of Regulation S-K, to disclose the stock market on which a Company's stock trades along with historical stock price information. The SEC notes in the Proposed Rule that there are many free websites that offer this information (in greater detail) than is required by the SEC disclosure rules.

An example of a superseded requirement relates to disclosure of discontinued operations. Instruction 1 to Rule 11-02(b) of Regulation S-X makes reference to discontinued segments and Item 302(a)(3) of Regulation S-K requires a description of the effect of any disposals of segments of a business. The SEC points out in the Proposed Rule that the GAAP definition of discontinued operations has changed multiple times since the SEC disclosure rules were adopted and now such GAAP definition no longer includes any reference to the term "segment."

What Do I Need To Do Now?

The SEC is seeking comments on the Proposed Rules. If you are interested in influencing the SEC's decision-making process regarding any of the proposed amendments, you are invited to send comments to the SEC pursuant to the instructions laid out in the Proposed Rule.

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