

SEC Adopts Amendments to Streamline Disclosure Requirements

September 7, 2018

In August 2018, the Securities and Exchange Commission (SEC) adopted [rule amendments](#) to streamline its disclosure requirements by eliminating or updating certain requirements that:

- are redundant, duplicative or overlapping because they require substantially the same disclosures as U.S. Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS) or other SEC disclosure requirements;
- are outdated due to the passage of time or changes in the regulatory, business or technological environment; and
- have been superseded because they are inconsistent with recent legislation or more recently updated GAAP or SEC disclosure requirements.

The SEC's stated goal was to update and simplify its disclosure requirements without materially changing the total mix of information available to investors. The amendments are part of the ongoing Disclosure Effectiveness Initiative led by the SEC's Division of Corporation Finance to review and improve the effectiveness of its disclosure requirements for the benefit of companies and investors. The SEC is also adopting the amendments as part of its efforts to implement the Fixing America's Surface Transportation (FAST) Act.

The amendments adopted in August 2018 are separate from the rules proposed by the SEC in October 2017 to modernize and simplify certain Regulation S-K requirements as mandated by the FAST Act. The most noteworthy of those rule proposals would (i) streamline MD&A disclosure by eliminating discussion of the earliest of the three years covered in the financial statements in certain situations and (ii) significantly reduce the need to submit confidential treatment requests when public companies omit information from their exhibit filings. See our Sidley Update, available [here](#), for a detailed summary of those rule proposals, which will be the subject of future SEC rulemaking.

The amendments are substantially similar to those [proposed](#) by the SEC in July 2016 and do not impose any new significant disclosure obligations. In addition to the 314-page adopting release, the SEC published a 205-page [marked version](#) highlighting the specific changes adopted. The SEC estimates that the amendments will reduce slightly the reporting burden on roughly 7,570 U.S. public companies and 745 foreign private issuers. The amendments will be effective 30 days after the adopting release is published in the *Federal Register*.

The amendments affect various Regulation S-K items, Regulation S-X rules and other SEC rules and forms. Personnel responsible for SEC reporting should familiarize themselves with the amendments, which will affect the disclosures made in periodic reports and registration statements filed after the amendments take effect. The table below summarizes the most significant amendments relevant to U.S. public companies.

Disclosure Requirement	Summary of Amendment and Rationale
Research & Development Activities Regulation S-K Items 101(c)(1)(xi) and 101(h)(4)(x)	Companies will no longer be required to disclose amounts spent on research and development activities in the business description section of a filing because GAAP and IFRS require reasonably similar disclosures in the notes to the financial statements. Companies will still be required to disclose trend information related to research and development activities and expenses in MD&A where material.

Segments Regulation S-K Item 101(b)	<p>Companies will no longer be required to disclose financial information about segments in the business description section of a filing because SEC rules, GAAP and IFRS require reasonably similar disclosures in MD&A and in the notes to the financial statements.</p>
Geographic Areas Regulation S-K Items 101(d)(1), (2), (3) and (4) and 303(a) and 503(c)	<p>Companies will no longer be required to disclose financial information by geographic area in the business description section of a filing because GAAP and other Regulation S-K items require similar disclosures. For example, significant risks relating to a company's foreign operations are required to be disclosed in the risk factors section. The SEC is adding an explicit reference to "geographic areas" in Item 303(a) to clarify that companies are required to disclose geographic factors in the required discussions of business risk and trends in MD&A if necessary to an understanding of the business.</p>
Seasonality Instruction 5 to Regulation S-K Item 303(b)	<p>Companies will no longer be required to discuss seasonality in MD&A in interim reports because GAAP requires seasonality disclosures in the notes to the interim financial statements. The SEC is retaining the seasonality disclosure requirements in Regulation S-K Item 101(c)(1)(v) applicable to annual reports.</p>
Ratio of Earnings to Fixed Charges Regulation S-K Items 503(d) and 601(b)(12)	<p>Companies that register debt will no longer be required to disclose the historical and pro forma ratios of earnings to fixed charges, and companies that register preferred stock will no longer be required to disclose the historical and pro forma ratios of combined fixed charges and preferred stock dividends to earnings. They will also no longer be required to file an exhibit to a filing setting forth the computation of any ratio of earnings to fixed charges.</p> <p>Certain components commonly used in the ratio of earnings to fixed charges (e.g., income, interest expense, lease expense) are already required to be disclosed under GAAP and IFRS. Therefore, investors can use information readily available in the financial statements to calculate their own ratios measuring a company's ability to meet its financial obligations. In addition, debt investors can negotiate with companies to obtain financial information that is more relevant and useful than the ratio of earnings to fixed charges. Finally, companies will still be required to disclose the material effects of fixed charge coverage covenants if they are reasonably likely to be breached or limit the company's ability to obtain additional financing.</p>
Changes in Stockholders' Equity and Dividends Per Share in Interim Financial Statements Regulation S-K Item 201(c)(1) and Regulation S-X Rule 3-04	<p>Companies will no longer be required to disclose the frequency and amount of cash dividends declared. Instead, amended Rule 3-04 of Regulation S-X will require disclosure of the amount of dividends in interim periods, similar to Regulation S-K Item 201(c)(1).</p> <p>Amended Rule 3-04 will also extend to interim periods the annual requirement to disclose changes in stockholders' equity and dividends per share for each class of shares rather than only for common stock. The SEC clarified that the disclosure must include year-to-date information and subtotals for each interim period.</p>
Restrictions on Dividends Regulation S-K Item 201(c)(1) and Regulation S-X Rule 4-08(e)(3)	<p>Companies will now be required to describe dividend restriction and related disclosures (i.e., specifically (1) the restrictions subsidiaries' ability to transfer funds to the company and (2) the amount of restricted net assets) <i>when material</i>, rather than using the current bright line test of when restricted net assets exceed a 25% threshold.</p>
Market Price Information Regulation S-K Item 201(a)	<p>Companies will no longer be required to disclose the high and low trading prices for their common stock for each quarter within the last two years. Instead, the SEC will require each company with publicly traded common stock to disclose its ticker symbol, which investors can use to obtain stock price and other information that is more current and useful than historical stock price information.</p>
SEC Public Reference Room	<p>Companies will no longer be required to direct investors to the SEC's public reference room to review their SEC filings and may instead refer them solely to the SEC's website.</p>

Regulation S-K Items 101(e)(2) and (h)(5)(iii) and various forms	
Company Websites Regulation S-K Items 101(e)(3) and (h)(5)(iii) and various forms	Companies will be required (rather than merely encouraged) to disclose their Internet addresses in filings so investors are aware of an additional resource for company information.

The SEC is also referring certain disclosure requirements that overlap with, but require more information than, GAAP to the Financial Accounting Standards Board (FASB) for consideration to be incorporated into GAAP reporting requirements. The SEC is asking the FASB to consider the referrals within 18 months of the adopting release being published in the *Federal Register*. The SEC will retain these disclosure requirements while the FASB considers whether to add the referred disclosure items to its agenda of projects for potential standard-setting.