

CLIENT ALERT

SEC Adopts Disclosure Simplifications

Technical Changes Adopted as Part of Ongoing Disclosure Reforms

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As part of its ongoing disclosure effectiveness review, the SEC recently amended or eliminated a number of disclosure requirements that have become duplicative, overlapping, outdated or superseded by other SEC requirements, disclosures mandated by U.S. GAAP or International Financial Reporting Standards (“IFRS”) or technological or other developments.¹ Although modest, these amendments represent another incremental step forward in the SEC’s disclosure simplification initiatives announced in its previous concept release in which it broadly reviewed much of Regulation S-K and sought input on how to best simplify and modernize current disclosure requirements so that material information could be most effectively presented.² In this latest release, the SEC adopted many of the technical amendments as previously proposed³ and eliminated certain redundant or obsolete requirements, such as duplicative segment, geographic and research and development financial information, stock trading price data and the ratio of earnings to fixed charges, but referred other potential changes to the Financial Accounting Standards Board (the “FASB”) for further consideration.

The amendments take effect thirty days following publication in the Federal Register.

¹ See SEC Release No. 33-10532, *Disclosure Update and Simplification*, August 17, 2018, available [here](#).

² See SEC Concept Release No. 33-10064, *Business and Financial Disclosure Required by Regulation S-K*, April 13, 2016, available [here](#), and our related client memorandum, *SEC Issues Concept Release on Modernizing Regulation S-K*, available [here](#).

³ See SEC Release No. 33-10110, *Disclosure Update and Simplification*, July 13, 2016, available [here](#), and our related client memorandum, *SEC Proposes Specific Disclosure Simplifications*, available [here](#).

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Duplicative Requirements

In the adopting release, the SEC identified and eliminated various requirements under Regulation S-X or Regulation S-K that mandated disclosures substantially similar to those required under U.S. GAAP, IFRS or other SEC rules. For example, the SEC eliminated duplicative requirements related to disclosure of significant debt issued following the latest balance sheet date, income tax reconciliations, information regarding warrants or other rights, related party transactions, material contingencies in interim financial statements, presentation of earnings per share, reasons for material accounting changes in an interim period and effects of discontinued operations in interim financial statements. By eliminating these duplicative requirements, the SEC simplified compliance efforts while ensuring that substantially the same information is provided to investors.

Overlapping Requirements

As part of its review, the SEC examined what it considers to be “overlapping” requirements that are related to, but not the same as, U.S. GAAP, IFRS or other SEC rules. The SEC found that these disclosure requirements conveyed reasonably similar information or required disclosures incremental to the overlapping SEC rules or accounting principles.

The below table summarizes certain disclosure requirements that the SEC deleted or revised. The SEC referred other “overlapping” requirements to the FASB for potential incorporation into U.S. GAAP as part of the FASB’s standard-setting process. Depending on whether and how the FASB incorporates these overlapping requirements, the SEC will decide whether to eliminate additional requirements.

Rule Changes		
Current Rule	Change	Reason for Change
<i>Items 101(c)(1)(xi) and 101(h)(4)(x) of Regulation S-K, Item 5.C of Form 20-F and Item 7(a)(1)(iii) of Form 1-A.</i>	Deletion of requirement to disclose material research and development expenditures.	Duplicative of U.S. GAAP, IFRS and Regulation S-K requirements.
<i>Items 503(d) and 601(b)(12) of Regulation S-K and Instruction 7 to “Instructions as to Exhibits” of Form 20-F.</i>	Deletion of requirement to disclose ratio of earnings to fixed charges.	Duplicative of U.S. GAAP, IFRS and Regulation S-K requirements.

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Rule Changes		
Current Rule	Change	Reason for Change
<i>Item 201(c)(1) of Regulation S-K and Rules 3-04, 8-03 and 10-01 of Regulation S-X.</i>	Deletion of requirement in Item 201(c)(1) of Regulation S-K to disclose frequency and amount of cash dividends declared. Amending Rules 8-03 and 10-01 of Regulation S-X to mandate that Rule 3-04 of Regulation S-X be applied to interim periods.	Duplicative of Regulation S-X requirements.
<i>Item 601(b)(26) of Regulation S-K and its accompanying reference in Item 601 of Regulation S-K.</i>	Deletion of requirement to disclose invitations for competitive bids.	Duplicative of information investors participating in competitive bids can already access and receive.
<i>Item 101(b) of Regulation S-K, Item 7(b) of Form 1-A and Rule 3-03(e) of Regulation S-X.</i>	Deletion of requirement to disclose segment financial information.	Duplicative of U.S. GAAP and Regulation S-K requirements.
<i>Items 101(d)(1), 101(d)(2), 101(d)(3) and 303(a) of Regulation S-K.</i>	Deletion of requirements in Items 101(d)(1), 101(d)(2) and 101(d)(3) of Regulation S-K to disclose financial information by geographic area. Amending Item 303(a) of Regulation S-K to add explicit reference to “geographic areas.”	Duplicative of U.S. GAAP and Regulation S-K requirements.
<i>Instruction 5 to Item 303(b).</i>	Deletion of requirement to disclose seasonality in interim periods.	Duplicative of U.S. GAAP requirements.
<i>Rules 8-03(b)(2) and 10-01(a)(5) of Regulation S-X.</i>	Deletion of requirement to disclose material events subsequent to end of most recent fiscal year.	Duplicative of U.S. GAAP and Regulation S-K requirements in combination.
<i>Rules 3A-02(d), 3-20, 3-20(b) and 3-20(d) of Regulation S-X.</i>	Relocation from Rule 3A-02(d) to Rule 3-20(b) of requirement to disclose effect of foreign subsidiaries’ currency exchange restrictions upon consolidated financial position and operating results of issuer and its subsidiaries. Deletion in title of Rule 3-20 of reference to foreign private issuers. Replacement in Rule 3-20(d) of “selected” with “used” in phrase “currency selected for reporting purposes.”	To streamline disclosure requirements.

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Rule Changes		
Current Rule	Change	Reason for Change
<i>Item 201(c)(1) of Regulation S-K, Rules 1-02, 4-08(d)(2), 4-08(e), 5-04, 7-04, 7-05 and 9-06 of Regulation S-X, Items 10.F and 14.B of Form 20-F and Instruction to Item 14.B of Form 20-F.</i>	Consolidation, revision, movement or deletion of certain requirements to disclose restrictions on payment of dividends and related items.	To simplify disclosure requirements.

Overlapping requirements that the SEC determined *not* to modify at this point, but instead referred to the FASB for further consideration, include disclosures regarding currency requirements of foreign private issuers, assets subject to liens, uncured or waived defaults, changes in debt obligations, financing arrangements, income taxes, related party transactions, revenues from major products or services and major customers. The SEC decided not to make any changes in the disclosure requirements for loss contingencies and significant legal proceedings, nor to refer such topics to the FASB for further review, as the SEC itself further considers these important disclosures.

Outdated and Superseded Requirements

The SEC removed or updated certain disclosure requirements that have become obsolete or ineffectual as a result of the passage of time or changes in the regulatory, business or technological environment. For example, the SEC eliminated the need to disclose high and low sale prices for an issuer's common stock (requiring instead only disclosure of the ticker symbol), reasoning that this information is readily available online. Similarly, the SEC deleted the provision requiring foreign private issuers to provide exchange rate data where the financial statements are prepared in a currency other than the U.S. dollar, as this information is easily found on numerous websites. The SEC eliminated another vestige of a bygone era by removing the requirement that issuers disclose the availability of their filings at the SEC's Public Reference Room in Washington, DC. On the other hand, the SEC retained and extended to other issuers the requirement to disclose their Internet address.

The SEC also updated certain disclosure requirements to remedy minor inconsistencies that have developed over time among the various accounting, auditing and SEC disclosure frameworks, and corrected various outdated cross-references and typographical errors. The SEC revised certain additional disclosure requirements in light of changes to U.S. GAAP, including by making conforming changes to the statement of cash flows and statement of comprehensive income and information relating to consolidation, discontinued operations and pooling-of-interests.

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Conclusion

While comprised largely of technical changes, these recent amendments represent another welcome step in the SEC's long-term efforts to simplify and modernize the reporting process. As the adopting release noted, the amendments are a result of the staff's ongoing evaluation of the disclosure requirements, and we look forward to additional, more expansive changes.

If you have any questions regarding this client alert, please contact the following attorney or the Willkie attorney with whom you regularly work.

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