

CLIENT MEMORANDUM

SEC Proposes Specific Disclosure Simplifications

Technical Changes Proposed as Part of Ongoing Disclosure Reforms

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As part of its ongoing disclosure effectiveness review, the SEC recently proposed modifying disclosure requirements that have become duplicative, overlapping, outdated or superseded in light of other SEC requirements, disclosure mandated by U.S. GAAP or International Financial Reporting Standards (“IFRS”) or technological or other developments.¹ The proposing release is an incremental step forward in these disclosure simplification initiatives, following the SEC’s concept release issued in April, in which it broadly reviewed much of Regulation S-K and sought input on how best to simplify and modernize current disclosure requirements, so that material information can be most effectively presented.²

Duplicative Requirements

The release identifies various requirements under Regulation S-X or Regulation S-K that mandate disclosures substantially similar to those required under U.S. GAAP, IFRS or other SEC rules, and proposes to eliminate those that are duplicative. Examples include 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

¹ See SEC Release No. 33-10110, *Disclosure Update and Simplification*, available [here](#).

² See our client memorandum, *SEC Issues Concept Release on Modernizing Regulation S-K*, available [here](#).

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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 proposes to simplify compliance efforts, while providing substantially the same information to investors.

Overlapping Requirements

The release examines what it considers to be “overlapping” requirements that are related to, but not the same as, U.S. GAAP, IFRS or other SEC rules. These disclosure requirements convey reasonably similar information or require disclosures incremental to the overlapping SEC rules or accounting principles. With respect to the latter category, the SEC seeks feedback on whether to delete these overlapping provisions entirely, integrate them with their respective counterparts, modify them in part or refer them to the Financial Accounting Standards Board (“FASB”) for potential incorporation into U.S. GAAP.

The overlapping requirements proposed for deletion or integration include provisions relating to:

- material events subsequent to the end of the fiscal year and changes in accounting principles reportable in interim filings;
- segment financial information;
- financial information by geographic area;
- seasonality;
- material research and development expenditures;
- the frequency and amount of cash dividends;
- tabular disclosure of changes to employee equity plans;
- ratios of earnings to fixed charges;
- invitations for competitive bids;
- foreign currency restrictions; and
- restrictions on dividends.

Overlapping requirements that the SEC is soliciting feedback on to determine whether to retain, modify, eliminate or refer them to the FASB include disclosures regarding assets subject to liens, uncured or waived defaults, changes in debt

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obligations, financing arrangements, income taxes, related party transactions, revenues from major products or services, major customers and loss contingencies and significant legal proceedings.

Prominence and “Bright-Line” Threshold Issues

In considering potential changes to disclosure, the SEC notes that streamlining overlapping requirements may create problems resulting from the relocation of disclosed information. The release repeatedly points out that the location of some disclosure provides a level of prominence or context that enhances the efficacy of the disclosure. Similarly, proposed amendments that would relocate certain disclosure from outside to inside the financial statements would thereby subject this information to audit or review, internal control over financial reporting and XBRL tagging requirements, as well as eliminate the protections provided by the safe harbor for forward-looking statements under the Private Securities Litigation Reform Act. The unavailability of this safe harbor may, in turn, deter companies from disclosing certain forward-looking information.

The SEC also cautions that eliminating seemingly redundant requirements may in practice elicit less or different disclosure. For instance, many of the SEC rules proposed for elimination or integration due to apparent redundancies provide bright-line disclosure thresholds, while their counterparts under U.S. GAAP, IFRS or other SEC rules do not. If the bright-line thresholds are eliminated, companies may choose to disclose less than what was previously required by the arguably redundant rules.

Outdated and Superseded Requirements

The release also identifies disclosure requirements that, as a result of the passage of time or changes in the regulatory, business or technological environment, have become obsolete or ineffectual. For example, the SEC proposes replacing disclosure of the high and low sale prices for an issuer’s common stock with a requirement that the issuer need only provide its ticker symbol, reasoning that this information is readily available online. Similarly, the SEC suggests deleting 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. Another vestige of a bygone era proposed for elimination is 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 proposes extending the current requirement for issuers to disclose their Internet address to all filers.

The SEC also proposes updating certain disclosure requirements to remedy inconsistencies that have developed over time among the various accounting, auditing and SEC disclosure frameworks. The proposed amendments aim to revise SEC disclosure requirements in light of changes to U.S. GAAP, such as 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, the release is another step in the SEC's long-term efforts to simplify and modernize the reporting process. It encourages public comment, both on the issues specifically discussed in the release and other suggestions for improving the disclosure scheme. Although the release aims to reduce compliance burdens, it recognizes that even something as uncontroversial as eliminating duplicative or overlapping requirements may raise other concerns regarding the prominence or even the detail of the required disclosures.

Comments on the proposed amendments must be submitted by October 3, 2016.

If you would like to submit comments on the release or if have any questions regarding this memorandum, please contact Christopher Greer (212 728-8214; cgreer@willkie.com), Jeffrey S. Hochman (212 728-8592; jhochman@willkie.com) or the Willkie attorney with whom you regularly work.

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