

New SEC Rules Eliminates Duplicative, Overlapping, Outdated Disclosure Requirements

August 19, 2018 – Governance & Compliance Insider
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The Securities and Exchange Commission (SEC) announced last Friday that it has adopted amendments to certain disclosure requirements that have become duplicative, overlapping, or outdated in light of other Commission disclosure requirements, US Generally Accepted Accounting Principles (GAAP), or changes in the information environment. These amendments were originally proposed in 2016, in order to implement provisions of the Fixing America's Surface Transportation (FAST) Act.

While a more complete summary of the changes is provided below, notable amendments include:

- the elimination of requirements for pro forma information on business combinations in interim filings, because similar disclosure may be found in Form 8-K filings; and
- the elimination of requirements for financial information broken out by segment and geography in a business description contained in SEC reports and registration statements, because similar discussions may be found in the financial statement footnotes and/or the MD&A, when these topics are material to an understanding of the business.

Overall, the amendments are not intended to alter the mix of information available to investors in SEC reports and registration statements. As a result, companies should take care to cross-reference applicable overlapping disclosure and to continue to disclose segment and geographically-specific information in other parts of their filings, including in the risk factors and the MD&A, to the extent that the discussion is material to an understanding of the business.

Where there are redundant and overlapping disclosure requirements from SEC rules and GAAP standards established by the Financial Accounting Standards Board (FASB), the amendments attempt to reduce issuers' compliance burden. The SEC has referred certain proposed amendments to FASB for their consideration in making consistent changes to future GAAP standards, and commentators have encouraged both agencies

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to continue to coordinate on their reporting standards.

Multiple categories of issuers will be impacted by the amendments. Specifically:

- Regulation S-K amendments relate to domestic issuers and foreign private issuers that choose to file on domestic forms.
- Regulation S-X amendments relate to domestic issuers and foreign private issuers that report under US GAAP or reconcile to US GAAP.
- Certain amendments affect asset-backed issuers, Regulation A issuers and companies regulated under the Investment Company Act.

The amendments will be effective 30 days from publication in the Federal Register.

Furthermore, the SEC staff has been directed to review the amendments' impact on disclosure and capital formation within five years and to report back to the Commission.

Here are highlights of the SEC rules that have been eliminated or streamlined:

- **Overlapping requirements, which are related to, but not the same as GAAP, IFRS, or other Commission disclosure requirements.** Disclosure requirements that convey similar information, or that are incremental but no longer useful, have been deleted, while incremental, overlapping requirements have been integrated with other SEC rules. Notable disclosure requirements that have been deleted include: (1) derivative accounting policies under Rule 4-08(n) of Regulation S-X, which are already addressed in financial statement footnotes under US GAAP, except for the requirement to disclose where in the statement of cash flows the effect of derivative financial instruments is reported; (2) amounts spent on research and development activities in the business description, in accordance with Item 101(c) of Regulation S-K, since this information will remain in the financial statement footnotes and the MD&A, when material; (3) dilution from the amount of common equity subject to outstanding options, warrants, or convertible securities, when the class of common equity has no established US public trading market, which must be disclosed in Form S-1 or Form 10 under Item 201(a)(2)(i) of Regulation S-K; (4) historical and pro forma ratios of earnings to fixed charges for issuers that register debt securities or preference securities, and an exhibit setting forth the computation of any ratio of earnings to fixed charges disclosed in an SEC report, required by Regulation S-K; (5) pro forma financial information in interim filings for business combinations, in accordance with Rule 8-03 and Rule 10-01 of Regulation S-X, because US GAAP and Item 9.01 of Form 8-K result in similar disclosure; (6) financial information about segments in the business description, pursuant to Item 101(b) of Regulation S-K, which will continue to be available in the footnotes to the financial statements and the MD&A, when material; (7) financial information by geographic area, pursuant to Item 101(d) of Regulation S-K, which will continue to be available in the footnotes to the financial statements and the MD&A, when material; and (8) information on the seasonality of the business in interim reports, pursuant to Instruction 5 to Item 303(b) of Regulation S-K, which will continue to be available in the MD&A, when available.
- **Outdated requirements, which have become obsolete as a result of the passage**

of time or changes in the regulatory, business, or technological environment.

In addition to eliminating outdated transition disclosure requirements, the Commission amended rules that have become outdated due to changes in the regulatory, business and technological environment. These amendments are described in detail starting on page 101 of the adopting release. (1) With regard to market price disclosure required under Item 201(a)(1) of Regulation S-K and Item 9.A.4 of Form 20-F, issuers whose common equity is traded in an established public trading market will only be required to disclose the trading symbol, instead of sale or bid prices, of their stock. (2) Domestic and foreign private issuers may delete requirements to identify the Public Reference Room and its physical address and phone number in their reports and registration statements, since investors now use the Internet to access filings. (3) Furthermore, all issuers will be required to disclose their Internet address if they have one. (4) Foreign private issuers will no longer be required to disclose exchange rate data when financial statements are prepared in a foreign currency in Form 20-F, since exchange rate information is readily available free on a number of websites.

- **Redundant and duplicative requirements, which require substantially similar disclosures as GAAP, International Financial Reporting Standards (IFRS), or other Commission disclosure requirements.** These amendments are summarized in a series of tables starting on page 29 of the adopting release. While they will not substantially change disclosure, they are intended to alleviate confusion and inconsistency by eliminating redundant and duplicative disclosure requirements, including Regulation S-X requirements on: the consolidation of financial statements, disclosure of significant changes in debt obligations, income tax rate reconciliation, title and amount of securities subject to warrants, rights and convertible instruments, identification of related party transactions, material contingencies in interim financial statements, presentation and computation of earnings per share, disclosure specific to insurance companies and bank holding companies, reasons for changes in accounting principles in an interim period, examples of interim period adjustments, common control transactions disclosed in interim financial statements, the disclosure of discontinued operations in interim financial statements, and incorporation by reference into Form 10-Q of reports furnished to security holders.
- **Superseded requirements, which are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated GAAP.** The SEC adopted a series of amendments to reflect more recently updated US GAAP requirements or more recently updated Commission disclosure requirements. These amendments are described starting on page 108 of the adopting release and include: (1) elimination of a requirement under Rule 3-15(a)(1) of Regulation S-X that REITs separately present all gains and losses on the sale of properties outside of continuing operations in the income statement, which was inconsistent with a US GAAP requirement that only applies to discontinued operations; (2) elimination of certain Regulation S-X requirements related to consolidation of financial statements that were inconsistent with US GAAP provisions related to difference in fiscal periods, the Bank Holding Company Act of 1956 and intercompany transactions; (3) elimination of certain Regulation S-X requirements for development stage companies; (4) removal of certain Regulation S-X requirements for insurance companies that conflicted with US GAAP; (5) elimination of references to "extraordinary items" in SEC rules and forms, consistent with US GAAP; and (6) replacement of references to "generally accepted auditing standards" (GAAS) with PCAOB standards.

