

SEC Proposes to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors

The U.S. Securities and Exchange Commission (the “SEC”) on August 8, 2019, proposed amendments to modernize the description of (i) business, (ii) legal proceedings, and (iii) risk factor disclosures that registered companies are required to make pursuant to Regulation S-K (Items 101, 103 and 105, respectively, thereunder). The SEC Commission is proposing amendments to these items to improve these disclosures for investors and to simplify compliance for registered companies. More specifically, the proposed amendments are intended to improve the readability of disclosure documents, as well as discourage repetition and disclosure of information that is not material.

Background

These proposals are part of a comprehensive evaluation of the SEC Commission’s disclosure requirements that was recommended in the SEC staff’s Report on Review of Disclosure Requirements in Regulation S-K (“S-K Study”). The report was mandated by Section 108 of the Jumpstart Our Business Startups Act (“JOBS Act”). Based on the S-K Study’s recommendation, the staff at the SEC initiated an evaluation of the information the SEC’s rules require registered companies to disclose, how this information is presented, where this information is disclosed, and how the SEC can better leverage technology as part of these efforts (collectively, the “Disclosure Effectiveness Initiative”). The overall objective of the Disclosure Effectiveness Initiative is to improve the SEC’s disclosure regime for both investors and registered companies.

In developing the proposed amendments, the SEC Commission considered input from comment letters received in response to these disclosure modernization efforts. The SEC Commission also took into account the SEC staff’s experience with Regulation S-K arising from the Division of Corporation Finance’s disclosure review program and changes in the regulatory and business landscape since the adoption of Regulation S-K.

Related Capabilities

- Corporate Governance & Compliance
- Capital Markets

Highlights

The proposed amendments would revise Items 101(a) (description of the general development of the business), 101(c) (narrative description of the business), and 105 (risk factors) to emphasize a more principles-based approach because businesses differ in terms of which aspects of these disclosures are material to them. Such a flexible approach, as opposed to prescriptive requirements, may elicit more relevant disclosures about these items. The proposed amendment of Item 103 (legal proceedings) would continue the current prescriptive approach because that requirement depends less on the specific characteristics of registered companies.

In particular, the proposed amendment of Item 101(a) would:

- make it largely principles-based by providing a non-exclusive list of the types of information that a registered company may need to disclose, and by requiring disclosure of a topic only to the extent such information is material to an understanding of the general development of a registered company's business;
- include as a listed disclosure topic, to the extent material to an understanding of the registered company's business, transactions and events that affect or may affect the company's operations, including material changes to a registered company's previously disclosed business strategy;
- eliminate a prescribed timeframe for this disclosure; and
- permit a registered company, in filings made after a company's initial filing, to provide only an update of the general development of the business that focuses on material developments in the reporting period, and with an active hyperlink to the registered company's most recent filing that, together with the update, would contain the full discussion of the general development of the registered company's business.

The proposed amendment of Item 101(c) would:

- clarify and expand its principles-based approach, by including disclosure topics drawn from a subset of the topics currently contained in Item 101(c);
- include, as a disclosure topic, human capital resources, including any human capital measures or objectives that management focuses on in managing the business, to the extent such disclosures would be material to an understanding of the registered company's business, such as, depending on the nature of the registered company's business and workforce, measures or objectives that address the attraction, development, and retention of personnel; and
- refocus the regulatory compliance requirement by including material government regulations, not just environmental provisions, as a topic.

The proposed amendment of Item 103 would:

- expressly state that the required information about material legal proceedings may be provided by including hyperlinks or cross-references to legal proceedings disclosure located elsewhere in the document in an effort to encourage registered companies to avoid duplicative disclosure; and
- revise the US\$100,000 threshold for disclosure of environmental proceedings to which the government is a party to US\$300,000 to adjust for inflation.

The proposed amendment of Item 105 would:

- require summary risk factor disclosure if the risk factor section exceeds 15 pages;
- refine the principles-based approach of that rule by changing the disclosure standard from the “most significant” factors to the “material” factors required to be disclosed; and
- require risk factors to be organized under relevant headings, with any risk factors that may generally apply to an investment in securities disclosed at the end of the risk factor section under a separate caption.

What’s Next?

The proposal will be subject to a 60-day public comment period. The full text of the proposal can be found here: [Modernization of Regulation S-K Items 101, 103, and 105.](#)