

SEC Updates Requirements for Business, Legal Proceedings and Risk Factor Disclosures

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The Securities and Exchange Commission (the “SEC”) has adopted amendments to Regulation S-K to update the description of business (Item 101), legal proceedings (Item 103), and risk factors (Item 105) that public companies are required to provide in certain registration statements and reports. These disclosure requirements have not undergone significant revisions in over 30 years. In related remarks, SEC Chair Jay Clayton emphasized the modernizing impact of the amendments, and their basis in materiality judgments and the principles-based disclosure framework.

A tabular summary of the changes can be found on page 8 in the [adopting release](#). Among other things, the amendments that impact the business description:

- adopt a principles-based approach to the business description (which appears in certain registration statements and the annual report), eliminating the prescribed five-year time frame, and permitting a company to disclose only material developments that have occurred since its most recent full business description, with the full business description incorporated by reference from a prior filing; and
- provide an updated, non-exclusive list of examples for the business description, adding a description of 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 business; material changes to a registrant’s previously disclosed business strategy; and a description of all material government regulations, not just environmental laws.

The amendments that impact the description of legal proceedings:

- specify that the required information on legal proceedings may be provided by hyperlink or cross-reference to another part of the document; and
- increase the threshold for disclosure of governmental environmental proceedings resulting in monetary sanctions, from \$100,000 to \$300,000, but also allow a company, at its election, to select a different threshold that it determines is reasonably designed to result in disclosure of material environmental proceedings, provided that the threshold does not exceed the lesser of \$1 million or one percent of the company’s current assets.

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- If a company chooses to use a threshold other than the \$300,000 threshold, it must disclose that threshold (including any change thereto) in each annual and quarterly report.
- As an aside, "environmental proceedings" historically have been construed broadly by the SEC, including issuance of informal or formal notices of violation, administrative orders, civil suits in which a party seeks injunctive relief and civil fines, or criminal prosecutions.

The amendments that impact risk factors:

- require summary risk factor disclosure of no more than two pages if the risk factor section exceeds 15 pages, namely, a series of concise, bulleted or numbered statements summarizing the principal factors that make an investment in the company or offering speculative or risky; and
- require risk factors to be organized under relevant headings in addition to the subcaptions currently required, 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 for "General Risk Factors."
 - The SEC notes that except for the heading for general risk factors, the amendments do not specify other headings that companies should use, and many companies already organize their risk factor disclosure through groupings of related risk factors and the use of headings.

These amendments will become effective 30 days after publication in the Federal Register, potentially in time to impact third quarter reports by calendar year-end companies. However, the impact may be limited, since quarterly reports on Form 10-Q do not include a business description, and they only require the disclosure of material developments in legal proceedings and material changes in risk factors, as previously disclosed in the last Form 10-K.

The final amendments to Items 101 and 103 will affect only domestic registrants and "foreign private issuers" that have elected to file on domestic forms subject to Regulation S-K disclosure requirements. Regulation S-K does not apply to foreign private issuers unless a form reserved for foreign private issuers (such as Securities Act Form F-1, F-3, or F-4) specifically refers to Regulation S-K.