

Summary of SEC's FAST Act Amendments and Additional Guidance on Confidential Treatment Requests

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Revised 10-K, 10-Q and 8-K Cover Pages Included

The Securities and Exchange Commission finalized amendments to its regulations to modernize and simplify disclosure requirements for public companies, investment advisors and investment companies, consistent with the Commission's mandate under the Fixing America's Surface Transportation (FAST) Act. The SEC subsequently released an additional announcement on the amendments to the confidential treatment request requirements. This update focuses on amendments relevant to public companies generally, and excludes analysis specific to investment advisors and investment companies.

While the amendments generally streamline or abridge disclosure requirements, and notably, shorten the MD&A and eliminate confidential treatment requests for material contracts in many circumstances (over the dissent of Commissioner Robert Jackson), new disclosure requirements include:

- Additional market-related information and Inline XBRL tagging for the cover pages of Form 10-K, Form 10-Q and Form 8-K,
- Hyperlinking information incorporated by reference into reports and registration statements from other EDGAR filings, and
- The creation of a Form 10-K exhibit containing the description of securities.

Effective dates are as follows:

- Changes to the confidential treatment request process became effective immediately on publication in the Federal Register on April 2, 2019.
- The other changes, including amended cover pages for Form 10-K, Form 10-Q and Form 8-K, will be effective on or after May 2, 2019, 30 days after the final rule was published in the Federal Register. These cover pages have not yet been posted by the SEC, so the exact placement of the additional information has not been finalized, but we are providing markups of the Form 10-K cover page [here](#), Form 10-Q cover page [here](#) and Form 8-K cover page [here](#).

Related People

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Related Capabilities

- Corporate Governance & Compliance
- Capital Markets

- Deadlines to tag data on cover pages are consistent with the three-year phase in to comply with other Inline XBRL requirements: reports for periods ending on or after June 15, 2019 (large accelerated filers), June 15, 2020 (accelerated filers), and June 15, 2021 (all other filers).

The FAST Act amendments are the latest in the SEC's ongoing initiatives to streamline disclosure requirements under its rules and regulations, and they follow the SEC's adoption of the Disclosure Update and Simplification amendments that were effective as of November 5, 2018. See our updates [here](#).

For public company reporting and registration and offering of securities, the FAST Act amendment highlights include:

Rules/Forms Amended	Nature of Amendment
Cover Pages of Periodic and Current Reports	
Form 10-K, 10-Q, 8-K, 20-F and 40-F; Rule 11 and 406 of Regulation S-T; and Item 601(b)(104) of Regulation S-K	• Adds disclosure of the national exchange or principal U.S. market for the company's securities, the trading symbol and title of each class of securities • Tags all cover page data in Inline XBRL • Eliminates checkbox on the cover page of Form 10-K where the company indicates that there is no disclosure of delinquent Section 16 filers
Incorporation by Reference and Cross-Referencing in Reports and Registration Statements	
Exchange Act Item 10(d)	• Removes general prohibition on incorporation by reference of documents filed more than five years ago
Securities Act Rule 411(b)(4); Exchange Act Rules 12b-23(a)(3) and 12b-32; Item 601(b)(13) of Regulation S-K; and Regulation S-T Rules 102 and 105	• Requires hyperlinks to EDGAR documents incorporated by reference, instead of attaching them as exhibits • Amendments are not required solely to correct an inaccurate hyperlink, unless that hyperlink was included in a pre-effective registration statement. However, the location of the information incorporated by reference should be included.
Securities Act Rule 411; Exchange Act Rule 12b-23; and Forms S-1, S-3, S-11	• Prohibits incorporation by reference of financial statements from other filings or cross-referencing from other parts

and F-1	of a filing into financial statements, except as otherwise specifically permitted by SEC rules
MD&A	
Item 303 of Regulation S-K and Form 20-F	- Increases flexibility in discussing two vs three years of financial results in the MD&A, allowing companies to exclude the earliest of the three years if the MD&A from any prior EDGAR filing includes a discussion of that year. - Materiality, as always, remains the primary consideration. - While Instruction 1 of Item 303 will now eliminate the reference to trends in five-year selected financial data, the materiality analysis remains the same. - While Instruction 1 of Item 303 will now clarify that companies may use any basis of presentation, the SEC anticipates that many companies will continue to provide year-to-year comparisons. - Companies eliminating the earliest year must identify the location in the prior filing where the omitted discussion may be found.
Risk Factors	
Item 105 and 503(c) of Regulation S-K	- Relocates Item 503(c) to a new Item 105, recognizing that risk factors are business-related and not just offering-related - Eliminates specific examples of risk factors
Description of Properties	
Item 102 of Regulation S-K	Clarifies that disclosure need only be provided about a physical property to the extent that it is material to the company
Governance Provisions	
Items 401, 405 and 407 of Regulation S-K; and Exchange Act Rule 16a-3(e)	- Changes caption from “Executive Officers of the Registrant” to “Information About Our Executive Officers” - Changes caption from “Section 16(a) Beneficial Ownership Reporting Compliance” to “Delinquent Section

	16(a) Reports” and eliminate requirement that officers provide copies of Section 16 reports • Updates audit committee report reference, from “matters required by AU section 380, <i>Communication with Audit Committees</i>” to refer more broadly to “the applicable requirements of the Public Company Accounting Oversight Board (“PCAOB”) and the Commission” • Exempts EGCs from compensation committee report requirement
Prospectus Cover Page	
Item 501 of Regulation S-K	• Explicitly allows companies to include a clear statement on the cover page, when applicable, that the offering price will be determined by a particular method or formula that is more fully explained in the prospectus, instead of on the cover page • Discloses on the cover page the principal United States market or markets for the securities being offered (even if they are not national securities exchanges) and the corresponding trading symbols; OTC markets are not required to be disclosed • Shortens the “subject to completion” legend required under Item 501(b)(10) for preliminary prospectuses, by permitting companies to delete, as appropriate, the statement that the prospectus is not an offer to sell or a solicitation of an offer to buy securities in any state where the offer or sale is not permitted
Prospectus Plan of Distribution	
Item 508 of Regulation S-K	• Adds definition of “sub-underwriter”
Undertakings in Registration Statements	
Item 512 of Regulation S-K	• Eliminates undertakings in paragraphs 512(c), (d), (e) and (f), as unnecessary or duplicative
Confidential Treatment of Material Contracts and Certain Other Exhibits	

Item 601(b)(10) and (b)(2) of Regulation S-K; Form 20-F	• Allows omission of confidential information from material contracts and agreements related to material plans of acquisition, reorganization, arrangement, liquidation or succession, without filing a confidential treatment request, so long as the information is (i) not material and (ii) would likely cause competitive harm to the company if publicly disclosed, which is the same standard as previously used • No expiration date for confidential treatment vs a prior limit of 10 years (in the absence of an extension) • See the process outlined below this table. • The SEC and its staff retain a prerogative to review the appropriateness of omissions. • Comparable amendments will be made to Form 20-F and Item 1.01 of Form 8-K, to the extent material contracts are filed as exhibits.
Other Amendments to Exhibits	
Item 601(a)(6) of Regulation S-K; Item 1016 of Regulation M-A; Form 20-F	• Allows companies to omit personally-identifiable information (PII) from required exhibits without submitting a confidential treatment request, if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy • No analysis supporting the redactions is required at time of filing.
Item 601(b)(4)(vi) of Regulation S-K; Form 20-F	• Adds a new exhibit under Item 601(b)(4)(vi) that includes the description of securities required by Item 202(a)-(d) and (f) as an exhibit to Form 10-K, rather than limiting this disclosure to registration statements • Incorporation by reference from an earlier exhibit filed under Item 601(b)(4)(vi) will be allowed, so long as the information has not changed. • Non-material changes to the rights and privileges of securities will not require separate disclosure on Form 8-K. However, if any changes are made, whether material or non-material, new Item 601(b)(4)(vi) will require companies to update the

	description of securities in the exhibit filed with their Form 10-K.
Item 601(b)(10)(i) of Regulation S-K and related Instruction 1; Form 20-F	Only “newly reporting registrants” will be required to file material contracts that were entered within two years of the applicable registration statement or report; for all reporting companies, material contracts that are to be performed in whole or in part at or after the filing of the registration statement or report will still need to be filed.
Item 601(a)(5) and (b)(2) of Regulation S-K; Item 1016 of Regulation M-A; Form 20-F	- Permits companies to omit entire schedules and similar attachments to all required exhibits, provided: (i) the schedules and similar attachments did not contain material information and (ii) were not otherwise disclosed in the exhibit or the disclosure document. - The filed exhibit must still contain a list briefly identifying the contents of any omitted schedules and attachments, but will no longer need to include an explicit agreement to furnish a supplemental copy of any omitted schedule to the Commission upon request. - Nonetheless, companies may be required to provide a copy of any omitted schedule to the Commission staff upon request.

SEC’s Additional Guidance on Confidential Treatment Requests

Pursuant to the SEC announcement cited at the beginning of this update, companies may now file redacted material contracts without applying for confidential treatment of the redacted information if the redacted information (i) is not material and (ii) would be competitively harmful if publicly disclosed. In order to file redacted material contracts, companies must:

- Mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted;
- Include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed; and
- Indicated with brackets where the information has been omitted from the filed version of the exhibit.

The SEC will review these filings for compliance with the new rules. Requests for supplemental information in connection with this review will be separate from regular

filing review requests in order to minimize risk of inadvertent disclosure of the information. Companies must provide their responses to requests for supplemental information separately from their responses to regular filing review requests. Companies may also request confidential treatment of the supplemental information pursuant to Rule 83 of the SEC's Rules of Practice.

Consistent with historical practice, the Division will ask registrants to resolve any questions relating to redacted exhibits in registration statements before submitting a request for acceleration of the effective date.

The new rules have not changed a company's ability to request confidential treatment pursuant to Rule 406 of the Securities Act of 1933 or Rule 24b-2 of the Securities Exchange Act of 1934, and the Division and its staff will continue to process new applications as well as pending applications that are not withdrawn following established procedures.

If a company had a confidential treatment request pending as of April 2, 2019, the company may withdraw its pending request and amend its filing to conform to the new rule requirements for the redacted exhibits. Companies should contact the Assistant Director office responsible for reviewing their filings to coordinate the withdrawal of a confidential treatment application.