

SEC Reporting & Compliance Alert

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SEC Issues Concept Release Seeking Feedback on Business and Financial Disclosure Requirements

On April 13, 2016, the U.S. Securities and Exchange Commission (SEC) issued a concept release seeking feedback on ways to modernize the business and financial disclosure requirements of Regulation S-K. The 341-page release focuses primarily on whether the SEC's current disclosure requirements continue to elicit important information for investors and how registrants can most effectively present such information. While the release covers a wide array of disclosure topics, it does not seek to revisit those requirements related to executive compensation and governance or applicable only to foreign private issuers or business development companies.

Overview. Disclosure topics on which the SEC seeks feedback in the concept release include, among others, core business information, risk and risk management, management's discussion and analysis, public policy and sustainability matters, and certain exhibit-filing requirements. In addition, the release raises fundamental questions about the SEC's general disclosure framework, such as whether the SEC should rely more heavily on prescriptive-based rather than principles-based disclosure requirements and whether registrants should be allowed to assume a minimum sophistication level from the readers of their SEC filings. The release also seeks input on the use of tools such as cross-referencing, incorporation by reference, hyperlinks and company websites, as well as other ways the disclosure requirements could improve the readability and navigability of SEC filings.

The questions raised by the SEC in the release include, among others:

- How could we improve risk factor disclosure? For example, should we revise our rules to require that each risk factor be accompanied by a specific discussion of how the registrant is addressing the risk?
- Should we require auditor involvement (*e.g.*, audit, review or specified procedures) regarding the reliability of MD&A disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?
- Are there specific sustainability or public policy issues that are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues?
- Should we increase or reduce the environmental disclosure required by Item 101(c)(1) (xii)?

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- Foreign regulations, including foreign tax rates and treaties, may have a material impact on a registrant's operations. Should we specifically require registrants to describe foreign regulations that affect their businesses? If so, what specific information and level of detail should we require?
- Would any additional disclosure about a registrant's properties be important to investors? If so, what additional disclosure would be important? What would be the challenges to registrants of requiring disclosure of any such additional information, and what would be the benefits to investors?
- Can we lower the cost to registrants of providing information to investors, including considerations such as advancements in technology and communications, and if so, how?

For the full list of topics and questions raised by the SEC, please see a copy of the release available [here](#).

Next Steps. Comments in response to the concept release are

due within 90 days after the release's publication in the Federal Register. Any changes to the SEC's rules as a result of the comments received in response to the release will require the SEC to propose and adopt, after a public comment period, new or revised rules. As a result, any such potential changes are not likely to be in effect any earlier than 2018.

Related Action. The concept release is the most recent product of the SEC's Disclosure Effectiveness Initiative, the SEC's in-depth review of Regulations S-K and S-X that seeks to improve the disclosure requirements for both investors and registrants. In September 2015, the SEC published a Request for Comment on Regulation S-X, which focused on the requirements for financial disclosures that companies must file about acquired businesses, affiliated entities, guarantors and issuers of guaranteed securities. There have not yet been any proposed changes to Regulation S-X in response to such Request for Comment, which is available [here](#).

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