

# SEC Reporting & Compliance Alert

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## SEC Proposes to Modernize Certain Disclosure Requirements

On October 11, 2017, the U.S. Securities and Exchange Commission (SEC) voted unanimously to propose changes that would modernize and simplify the disclosure items in Regulation S-K and related rules and forms. The proposed changes reflect a push by the SEC to reduce costs and burdens on public companies while continuing to ensure all material information is provided to investors. Many of the proposed changes are based on recommendations made by the SEC staff as part of a study required by the Fixing America's Surface Transportation (or FAST) Act.

The SEC's proposing release covers a broad range of disclosure requirements. The following are some of the more significant changes being proposed:

- **Management's Discussion and Analysis (Item 303).** The SEC's proposal would modify the requirement in Item 303(a) that companies provide a year-over-year comparison of their financial condition, changes in financial condition and results of operations for all three years covered in the financial statements. Specifically, companies no longer would be required to provide a year-over-year comparison for the earliest of the three-year period if the information was included in the prior year's Form 10-K and is no longer material to investors.
- **Exhibits (Item 601).** The SEC's proposal would significantly change rules governing the obligation to file material contracts as exhibits with filings made with the SEC. A summary of those proposed changes is set forth below.

Redaction of Terms Without a Confidential Treatment Request. The proposed revisions to Item 601(b)(10) would permit companies to omit immaterial, competitively sensitive information that has not been made public from material contracts filed with the SEC without having to submit a formal confidential treatment request. If adopted, this would fundamentally change the process companies are required to follow to redact such information.

The current process requires companies to submit an application for confidential treatment at the time the redacted exhibit is filed. The confidential treatment request must, among other things, detail why the redacted terms are not material and why their public disclosure would result in substantial competitive harm, as well as include an unredacted copy of the exhibit. If the application is granted, confidential treatment generally would remain in effect for no more than 10 years (after which the unredacted copy could be released to the public).

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The proposed changes would eliminate the existing, burdensome process and instead only require the submission of a detailed written analysis and an unredacted copy of the exhibit upon the SEC's formal request. If adopted, the new process not only would be more efficient for companies, it would decrease significantly the probability that unredacted copies of important agreements would be released to the public.

## Omission of Schedules and Other Attachments to Exhibits.

The proposed revisions would also allow companies to omit schedules and similar attachments to any exhibit required by Item 601, including material contracts, unless those schedules or attachments contain material information that is not otherwise disclosed. This would effectively extend an accommodation already available for plans of acquisition, reorganization, arrangement, liquidation and succession. As is the case for those types of plans, the proposed rules would require each exhibit to include a list describing the contents of any omitted schedules and attachments, and companies would be required to provide a copy of the omitted contents to the SEC staff upon request.

Redaction of Personally Identifiable Information (PII). The proposed revisions would codify the SEC staff's position that allows the omission of PII (e.g., Social Security numbers) from filed exhibits without a confidential treatment request.

- Description of Properties (Item 102). While physical property is material to certain companies — such as those in the manufacturing sector — it may not be material to others, such

as those in the service or information technology sectors. In its current form, Item 102 often results in the description of a company's headquarters and similar office space and facilities even though these descriptions may not be material. The SEC's proposal would revise Item 102 to refer to properties that are material to the company in order to place further emphasis on materiality as a threshold for disclosure.

- Hyperlinking. The SEC recently implemented new rules requiring companies to include hyperlinks to exhibits in exhibit indexes. (For additional information concerning this requirement, please see our [March 17, 2017, client alert](#).) The SEC's proposal would expand the hyperlinking requirements to other information available on EDGAR that is incorporated by reference into an SEC filing. The SEC expects that, if adopted, the new hyperlinking requirements would help improve the readability and navigability of disclosure documents and discourage repetition of disclosure.

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Comments on the proposed amendments are due 60 days after the publication of the proposing release in the Federal Register and may be submitted on the SEC's website. Any final amendments to the SEC rules based on these proposed changes would require further action by the SEC and, as a result, will likely not be in effect any earlier than mid-2018. Additional information is available in the [proposing release](#) and the SEC's [press release](#).

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