

SEC Reporting & Compliance Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square
New York, NY 10036
212.735.3000

SEC Proposes to Modernize Business, Legal Proceeding and Risk Factor Disclosure Requirements Under Regulation S-K

On August 8, 2019, the Securities and Exchange Commission (SEC) announced proposed amendments to modernize the rules requiring description of business, legal proceeding and risk factor disclosures pursuant to Regulation S-K. The proposed amendments are intended to improve the readability of disclosures for investors and simplify compliance requirements for companies. Below is a summary of the highlights from the proposal.

Proposed Amendments

Notably, the proposed amendments eliminate certain prescriptive requirements to reflect a more principles-based approach to disclosures relating to the description of business (Item 101) and risk factors (Item 105), by focusing on information that is material to an investor's understanding of a company's business and avoiding redundant disclosures. Although the proposal contemplates potentially incorporating parallel changes across all forms filed by foreign private issuers, including annual reports on Form 20-F, the proposed changes regarding risk factors would apply to foreign private issuers filing registration statements on Forms F-1, F-3 and F-4.

Description of Business (Items 101(a) and (c)). In particular, the proposed amendments would provide a nonexclusive list of the types of information that a company may need to disclose, based on a principles-based approach that requires disclosure of a topic only to the extent such information is material to an understanding of the general development of the business. For example, a company would describe its dependence on key products and services that are material instead of focusing on products and services that meet the quantitative thresholds based on revenue currently prescribed in Item 101(c)(1)(i).

As proposed, the revised list of disclosure topics relating to the general development of a company's business and accompanying business description would include the following:

- Transactions and events that affect or may affect a company's operations, including material changes to a previously disclosed business strategy;
- Bankruptcy, receivership or any similar proceeding;
- The nature and effects of any material reclassification, merger or consolidation of the company or any of its significant subsidiaries;
- The acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business;

SEC Reporting & Compliance Alert

- Revenue-generating activities, products and/or services and any dependence on revenue-generating activities, key products, services, product families or customers, including governmental customers;
- Status of development efforts for new or enhanced products, trends in market demand and competitive conditions;
- Resources material to a company's business, such as (i) sources and availability of raw materials and (ii) the duration and effect of all patents, trademarks, licenses, franchises and concessions held;
- A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government; and
- The extent to which the business is or may be seasonal.

In addition, the proposed amendments would, among other changes:

- Require, to the extent material, new disclosures regarding "human capital resources," which includes any human capital measures or objectives that management focuses on in managing the business and would replace the requirement to disclose the number of employees, as currently prescribed in Item 101(c)(1)(xiii). Depending on the nature of the company's business and workforce, this would require disclosure of measures or objectives that address the attraction, development and retention of personnel;
- Expand the current requirement to disclose the impact of environmental regulations to cover all material government regulations;
- Eliminate the five-year look back to focus on material developments of a company's business, regardless of a specific time frame; and

- Require only updated disclosures in subsequent filings of material developments in the reporting period, along with a hyperlink to the most recent filing that, together with the update, provides a full discussion of the general development of the business.

Legal Proceedings (Item 103). The proposed amendments would, among other changes:

- Triple the dollar threshold for environmental proceedings involving governmental parties from \$100,000 to \$300,000 to adjust for inflation; and
- Clarify that hyperlinks or cross-references to legal proceedings disclosure elsewhere in the document (*e.g.*, notes to the financial statements) are permitted to avoid duplication.

Risk Factors (Item 105). The proposed amendments would, among other changes:

- Require a summary if the risk factors section exceeds 15 pages;
- Replace the disclosure standard from "most significant" to "material" risk factors to focus on risks that are important to investors in making an investment decision; and
- Require risk factors to be organized under relevant headings, with risks generally applicable to an investment in securities at the end under a separate caption, to help investors better understand lengthy risk factor disclosures.

* * *

The proposal is subject to a 60-day public comment period following its publication in the Federal Register. The proposing release also includes 47 questions requesting public comment, which may result in changes to the proposed amendments.

More information is available in the SEC's [proposing release](#) and [accompanying press release](#).

SEC Reporting & Compliance Alert

Contacts

Brian V. Breheny

Partner / Washington, D.C.
202.371.7180
brian.breheny@skadden.com

Andrew J. Brady

Of Counsel / Washington, D.C.
202.371.7513
andrew.brady@skadden.com

Hagen J. Ganem

Counsel / Washington, D.C.
202.371.7503
hagen.ganem@skadden.com

Josh LaGrange

Counsel / Palo Alto
650.470.4575
josh.lagrang@skadden.com

Ryan J. Adams

Associate / Washington, D.C.
202.371.7526
ryan.adams@skadden.com

Andrew T. Bond

Associate / Washington, D.C.
202.371.7244
andrew.bond@skadden.com

Blake M. Grady

Associate / Washington, D.C.
202.371.7591
blake.grady@skadden.com

Caroline S. Kim

Associate / Washington, D.C.
202.371.7555
caroline.kim@skadden.com

Justin A. Kisner

Associate / Washington, D.C.
202.371.7367
justin.kisner@skadden.com