

Heads Up

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Remodeling Disclosure Requirements

SEC Concept Release Seeks Comments on Regulation S-K

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On April 13, 2016, the SEC unanimously approved the issuance of a [concept release](#)¹ (the “release”) that seeks feedback from constituents on modernizing certain business and financial disclosure requirements of Regulation S-K. The main requirements of Regulation S-K, which is the central repository for nonfinancial statement disclosure requirements for public companies, were established more than 30 years ago, and the modernization and optimization of these requirements may be called for as a result of evolving business models, new technology, and changing investor interests.

The release is part of the SEC’s ongoing [disclosure effectiveness](#) initiative, which is a broad-based review of the Commission’s disclosure, presentation, and delivery requirements for public companies. It follows the SEC’s issuance last fall of a [request for comment](#) that sought feedback on the effectiveness of financial disclosure requirements in Regulation S-X that apply to certain entities other than the registrant.²

What's In

The 341-page release, which provides a comprehensive history of Regulation S-K, includes 340 numbered requests for comment that range from general to very specific and address topics such as the following:

- *The overall disclosure framework* — The release seeks input on the effectiveness of principles-based and prescriptive disclosure requirements, materiality, and the audience for disclosure (e.g., level of investor sophistication that should be presumed by registrants when preparing filings, and whether different investors need different information). The release also asks constituents to discuss compliance and competitive costs of disclosures as well as the benefits of disclosures for both registrants and investors.
- *Disclosures for investment and voting decisions* — The release focuses on specific business and financial disclosure requirements in Regulation S-K, many of which have changed little since they were first adopted. The SEC seeks to “assess whether [such requirements] continue to provide the information that investors need to make informed investment and voting

¹ SEC Concept Release No. 33-10064, *Business and Financial Disclosure Required by Regulation S-K*.

² See Deloitte’s October 6, 2015, [Heads Up](#) for more information about the request for comment.

decisions” or whether they may be outdated or unnecessary. These include requirements related to the following:

- *Core company business information* — The release seeks input on disclosure requirements related to a registrant’s business, technology and intellectual property rights, government contracts and regulation, employees, and property. Specific questions in the release focus on the usefulness of this core business information to investors and whether additional or reduced disclosure requirements should be considered.
- *Company performance, financial information, and future prospects* — The release contains questions on whether the SEC should modify or eliminate requirements for selected and supplementary financial data tables. It also seeks input on ways to improve the overall quality of MD&A disclosures and specifically asks respondents to comment on requirements related to forward-looking information, key indicators, results of operations, liquidity and capital resources, off-balance sheet arrangements, contractual obligations, and critical accounting estimates. In addition, the release requests feedback on whether the periods of comparison in MD&A should be revised to discuss results for two years instead of three years and whether auditor involvement should be required for MD&A and selected and supplementary financial data tables.
- *Risk and risk management* — The release requests feedback on ways to improve risk-factor disclosures, including whether registrants should be required to identify and rank their top 10 risk factors. In addition, it asks (1) whether registrants should describe their risk management process; (2) whether, under current risk disclosure requirements, registrants effectively communicate emerging risks as well as risks that are most important to investors and avoid disclosures that are overly generic; and (3) about the costs and benefits of market risk disclosures.
- *Securities of the registrant* — The release seeks input on the requirement to describe capital stock and recent sales of unregistered securities, including whether such information should be eliminated or provided in an alternative manner from the current requirements.
- *Industry guides* — The release requests input on whether the disclosures in the SEC’s industry guides³ are useful to investors and whether the guides should be updated or incorporated into Regulation S-K. In her [remarks](#) at an open meeting on the release, SEC Chair Mary Jo White indicated that there are separate work streams on potential updates to Guide 3 and Guide 7 (which address disclosures for companies with banking and mining operations, respectively).
- *Public policy and sustainability matters* — The release seeks feedback on the disclosure of sustainability and public policy matters, characterized broadly as environmental, social, and governance (ESG) concerns. The SEC is asking registrants for input on the importance of ESG disclosures to investors’ decisions, what a disclosure framework for ESG matters might look like, and the costs and challenges related to providing these disclosures.
- *Exhibits* — The release requests feedback on various requirements for exhibits to SEC filings, including material contracts and preferability letters from auditors for a change in accounting principle.
- *Scaled requirements* — The release includes questions on whether the reduced or scaled disclosures that are available to smaller reporting companies (SRCs) and emerging growth companies (EGCs) should be offered to other categories of larger registrants, and whether the SEC should expand or eliminate any of the scaled disclosure requirements for SRCs and EGCs.
- *Frequency of interim reporting* — The release seeks input on the cost benefits of interim reporting on Form 10-Q. It also asks whether the SEC should consider changing the content requirements of those reports as well as whether it should reconsider the frequency of interim reporting (e.g., semiannual, quarterly, or monthly).

³ There are currently five industry guides that address disclosures by bank holding companies, oil and gas operations, real estate limited partnerships, property-casualty insurance underwriters, and mining operations.

- *Presentation and delivery* — The SEC is requesting feedback on how to improve the “readability and navigability” of information in Commission filings and has therefore requested comments on the use of cross-referencing, hyperlinks, incorporation by reference, layered reporting, structured data, company Web sites, and different disclosure formats.

What’s Out

As noted above, the release focuses on select business and financial disclosures in Regulation S-K. Public-company disclosure issues that are not a focus of the release include compensation and governance information required in proxy statements, non-GAAP measures,⁴ inline XBRL,⁵ modernization of the SEC’s EDGAR system, and disclosures required for foreign private issuers, business development companies, and other categories of registrants.

Those topics may be considered in future stages of the SEC’s disclosure effectiveness project, and some could be the subject of future requests for input. The SEC noted in the release, however, that it encourages comments on any disclosure topic, even if it is outside the specific focus of this release.

What You Can Do

A concept release is an early but important step in the rulemaking process. The SEC is interested in feedback from investors, companies, and other market participants on the release and does not require a specific format for the submission of comments. Some commenters may choose to present their views in a narrative format without any reference to specific questions posed by the SEC, and others may choose to answer all, or only some, of the specific requests for comment. Any format is acceptable, and the SEC encourages all types of feedback.

Comments on the release are due 90 days after its publication in the *Federal Register*.

⁴ For more information, see Deloitte’s April 7, 2016, *Heads Up* on the top 10 questions to ask when using a non-GAAP measure.

⁵ While the release currently seeks comment on the general benefits and costs of structured data, it does not specifically address inline XBRL, which would allow companies to file the required information and data tags in one document rather than providing a separate exhibit for the interactive data. However, in her remarks, Chair White indicated that the SEC staff is separately preparing a proposal for the Commission’s consideration that would allow companies to file financial statements in inline XBRL.

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