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# SEC Issues Proposed Rule to Modernize and Simplify Certain Regulation S-K Requirements

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## Background

On October 11, 2017, the SEC issued a [proposed rule](#)<sup>1</sup> in response to recommendations in the SEC staff's [Report on Modernization and Simplification of Regulation S-K](#), which was issued on November 23, 2016.<sup>2</sup> The proposed rule would make specific revisions to a limited group of items in Regulation S-K and is intended to streamline and improve disclosures. Regulation S-K requirements, which are the central repository for nonfinancial statement disclosures in SEC registration statements and periodic filings, were established more than 30 years ago, and the modernization of these requirements has been called for as a result of evolving business models, new technology, and changing investor needs.

<sup>1</sup> SEC Release No. 33-10425, *FAST Act Modernization and Simplification of Regulation S-K*.

<sup>2</sup> Both the SEC staff's report and the SEC's proposed rule were issued under a mandate in the Fixing America's Surface Transportation Act (commonly referred to as the "FAST Act").

## Key Proposed Changes

The proposed changes to Regulation S-K would affect U.S. registrants, foreign private issuers, and investment companies. The effect on each type of registrant would vary depending on the amendment proposed. The SEC stated that the intent of the proposals is to improve the readability of filed documents and simplify registrants' compliance efforts without significantly altering the total mix of information that is ultimately provided to investors.

The most significant of the SEC's proposed changes to the selected group of Regulation S-K disclosure requirements are as follows:

- *MD&A* — Registrants that present three years of audited financial statements are currently required to address their changes in financial conditions and results of operations for each year, typically by providing year-to-year comparisons between each period. The proposed rule would permit registrants to forgo discussion of the comparison of the earliest prior years (year 2 to year 3) if information is no longer material and was previously disclosed in the prior year's Form 10-K. In addition, the instructions to the MD&A rules would be updated to clarify that a registrant may use judgment in determining what *type* of presentation would most clearly communicate results and trends to investors. For example, in certain circumstances, a narrative discussion about specific periods on a stand-alone basis may be more meaningful than period-to-period comparisons.



### Connecting the Dots

The proposed rule is intended to eliminate the repetition of disclosure that is no longer material and is designed to give registrants more flexibility to determine how to present the discussion and analysis in MD&A. A registrant should consider the total mix of available information, including the impact of any recastable events (e.g., a discontinued operation or other retrospective accounting change), when determining materiality and the most appropriate presentation. Through the proposed rule, the SEC invites registrants to “take a fresh look” at MD&A and consider whether alternate presentations would enhance a reader's understanding of the company's operations.

- *Description of property* — Regulation S-K currently requires disclosure of information related to the “location and general character of the principal plants, mines and other materially important physical properties of the registrant.” The SEC has observed that this requirement may have prompted disclosures about physical property that is not material to the operations of the company. For example, certain registrants in the service or technology industry may not have material physical properties. The proposed rule would clarify that disclosure about properties is required only to the extent that the physical properties are material and “may be provided on a collective basis, if appropriate.” This proposed change would not be available to registrants in the oil and gas, mining, and real estate industries, in which such disclosure is generally considered significant.
- *Risk factors* — Current guidance in Regulation S-K requires disclosure of the most significant risk factors related to a registrant's offering or business and includes specific examples of factors that a company may consider for such disclosure. Although the current requirement is intended to be principles-based, the inclusion of risk factor examples led certain registrants to disclose information that was generic or not specific to those registrants. The proposed rule would eliminate the examples from the risk factor disclosure requirements to encourage registrants to revisit their risk assessment and disclose the risks that are most significant to them.

- *Redaction of confidential information* — Registrants are currently able to request approval from the SEC to redact information in exhibits that is not material and would cause competitive harm to the company. The proposed amendments would streamline this process by allowing registrants to omit such information, as well as personally identifiable information, without having to first request confidential treatment from the SEC. Registrants would instead need to mark the exhibits from which information has been omitted and include a statement prominently on the first page of each exhibit to indicate that the redacted information has been omitted.



### Connecting the Dots

This proposal would change the process related to the confidential treatment of information but would not change a registrant's responsibility to provide required disclosures. Exhibits would still be subject to SEC staff review, and confidential-treatment redactions could be challenged.

- *Schedules and attachments to exhibits* — The current requirement to include all schedules and attachments has been viewed by some registrants as burdensome and unnecessary. The proposed amendments would permit schedules and attachments to exhibits to be omitted unless they contain information that is material and not otherwise disclosed. A registrant would still be required to identify any omitted schedules and attachments in the exhibit list.
- *Hyperlinks and cross-referencing* — The proposal includes requirements for the use of hyperlinks to documents incorporated by reference to other SEC filings. Cross-referencing from elsewhere within a filing, including from the financial statements to other locations in a Form 10-K, would generally be permitted but would not be required. However, the proposed rule would specifically prohibit financial statements from cross-referencing or incorporating information from outside the financial statements, unless specifically permitted by SEC rules, to prevent confusion about whether such information is or has been subject to audit or review by the registrant's external auditor.
- *Legal entity identifiers (LEIs)* — An LEI is a globally recognized, 20-character, alphanumeric code that uniquely identifies legal entities engaged in financial transactions.<sup>3</sup> The proposed amendments would require a registrant to disclose LEIs for the registrant and certain subsidiaries to the extent that those entities have obtained LEIs.
- *Other amendments that would require additional disclosure or incorporate new technology* — These changes include:
  - XBRL tagging<sup>4</sup> on the cover page of certain forms filed under the Securities Exchange Act of 1934 (the "Exchange Act"), including Forms 8-K, 10-K, 10-Q, 20-F, and 40-F.
  - The inclusion of the trading symbol for each class of registered securities on the cover page of such forms.
  - A new exhibit that would include a description of a registrant's securities.
  - Parallel amendments to certain rules and forms applicable to investment companies that require hyperlinking and HTML.<sup>5</sup>

<sup>3</sup> More information about LEIs can be found on the Global Legal Entity Identifier Foundation's [Web site](#).

<sup>4</sup> A machine-readable format using eXtensible Business Reporting Language (XBRL).

<sup>5</sup> HyperText Markup Language, a standard markup language for creating Web pages and Web applications.

## Disclosure Effectiveness Initiative

The proposed amendments are another step in the SEC's ongoing [disclosure effectiveness](#) initiative, a broad-based review of the Commission's disclosure, presentation, and delivery requirements for public companies that has been underway for several years. See the [appendix](#) to this *Heads Up* for summaries of the SEC's disclosure effectiveness projects as well as Deloitte resources that provide additional information about each project.

In recent [testimony](#) before the House Committee on Financial Services, SEC Chairman Jay Clayton discussed the SEC's commitment to advancing its disclosure effectiveness initiative, reporting that the SEC has made significant progress over the past year on projects related to the initiative. Chairman Clayton stated that the SEC is developing recommendations to finalize rule amendments that would eliminate redundant, overlapping, outdated, or superseded disclosure requirements and update the definition of a "smaller reporting company," which could increase the number of registrants eligible to provide scaled disclosures. He also referenced ongoing projects on (1) changes to Regulation S-X related to requirements for financial statements of entities other than the registrant and (2) industry-specific disclosure requirements in industry guides applicable to mining<sup>6</sup> and bank holding companies.<sup>7</sup> Stay tuned for future developments on these initiatives.

## Requests for Comment

The SEC is interested in feedback from investors, companies, and other market participants on the proposed rule and does not require a specific format for the submission of comments. The proposed rule includes 97 numbered requests for comment. 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 can be submitted through the SEC's [Web site](#) and are due 60 days after publication of the proposed rule in the *Federal Register*. Any comments submitted will be posted to the SEC's Web site.

<sup>6</sup> SEC Industry Guide 7, "Description of Property by Issuers Engaged or to Be Engaged in Significant Mining Operations."

<sup>7</sup> SEC Industry Guide 3, "Statistical Disclosure by Bank Holding Companies."

## Appendix — SEC’s Disclosure Effectiveness Initiative: Project Summaries and Deloitte Resources

The table below (1) summarizes certain projects that are directly or indirectly related to the SEC’s disclosure effectiveness initiative and (2) provides relevant Deloitte resources that contain additional information about the projects. For more information, see the [SEC Spotlight](#) and Deloitte’s August 26, 2014, [Heads Up](#) on the initiative.

Disclosure Effectiveness Initiative	
Project	Summary and Relevant Deloitte Resources
<a href="#">Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant</a> (September 2015)	<p><b>Summary:</b> Assessment of the effectiveness of financial disclosure requirements in Regulation S-X that apply to certain entities other than the registrant (i.e., acquired businesses, equity method investees, guarantors, and issuers of guaranteed securities and affiliates whose securities collateralize registered securities).</p> <p><b>Deloitte Resources:</b> October 6, 2015, <a href="#">Heads Up</a> and November 23, 2015, <a href="#">comment letter</a>.</p>
<a href="#">Business and Financial Disclosure Required by Regulation S-K</a> (Concept Release, April 2016)	<p><b>Summary:</b> Potential modernization of certain of Regulation S-K’s business and financial disclosure requirements.</p> <p><b>Deloitte Resources:</b> April 18, 2016, <a href="#">Heads Up</a> and July 15, 2016, <a href="#">comment letter</a>.</p>
<a href="#">Modernization of Property Disclosures for Mining Registrants</a> (Proposed Rule, June 2016)	<p><b>Summary:</b> Proposed modernization of the property disclosure requirements for mining properties to align them with current industry and global standards and regulatory requirements.</p> <p><b>Deloitte Resource:</b> June 17, 2016, <a href="#">news article</a>.</p>
<a href="#">Disclosure Update and Simplification</a> (Proposed Rule, July 2016)	<p><b>Summary:</b> Proposed amendments to disclosure requirements that may be redundant, duplicative, or outdated, or may overlap with other SEC, U.S. GAAP, or IFRS disclosure requirements.</p> <p><b>Deloitte Resources:</b> July 18, 2016, <a href="#">Heads Up</a> and October 5, 2016, <a href="#">comment letter</a>.</p>
<a href="#">Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters</a> (August 2016)	<p><b>Summary:</b> Assessment of the disclosure requirements in Regulation S-K, Subpart 400, related to compensation as well as requirements related to corporate governance matters.</p> <p><b>Deloitte Resource:</b> August 26, 2016, <a href="#">news article</a>.</p>
<a href="#">Exhibit Hyperlinks and HTML Format</a> (Proposed Rule, August 2016)	<p><b>Summary:</b> Proposed requirements to make filings more navigable and require registrants to include hyperlinks to exhibits listed in the index of certain filings.</p> <p><b>Deloitte Resource:</b> August 31, 2016, <a href="#">news article</a>.</p>
SEC Actions Complementing the Disclosure Effectiveness Initiative	
<a href="#">Form 10-K Summary</a> (Interim Final Rule, June 2016)	<p><b>Summary:</b> Revisions to requirements that permit, but do not require, registrants to provide a summary of business and financial information in Form 10-K as long as the summary contains cross-references with hyperlinks to the related disclosures in Form 10-K.</p> <p><b>Deloitte Resource:</b> June 2, 2016, <a href="#">journal entry</a>.</p>
<a href="#">Order Granting Limited and Conditional Exemption Under [the Exchange Act]</a> (June 2016)	<p><b>Summary:</b> Order allowing certain companies to use inline XBRL to voluntarily file structured financial statement data through March 2020.</p> <p><b>Deloitte Resource:</b> June 13, 2016, <a href="#">news article</a>.</p>

(Table continued)

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## SEC Actions Complementing the Disclosure Effectiveness Initiative

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Project	Summary and Relevant Deloitte Resources
<a href="#">Amendments to Smaller Reporting Company Definition</a> (Proposed Rule, June 2016)	<b>Summary:</b> Proposal to increase the public float threshold from the current \$75 million to less than \$250 million to expand the number of companies that qualify for this classification and therefore take advantage of certain scaled disclosure requirements in Regulation S-X and Regulation S-K. <b>Deloitte Resources:</b> June 29, 2016, <a href="#">journal entry</a> and August 23, 2016, <a href="#">comment letter</a> .
<a href="#">Report on Modernization and Simplification of Regulation S-K</a> (November 2016)	<b>Summary:</b> Report on certain specific SEC staff recommendations regarding ways to streamline and improve disclosures. <b>Deloitte Resource:</b> November 29, 2016, <a href="#">news article</a> .
<a href="#">Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosure by Bank Holding Companies)</a> (March 2017)	<b>Summary:</b> Request for comments on existing disclosure requirements for bank holding companies and other registrants in the financial services industry, including potential new or revised disclosures, the possible elimination of certain existing redundant disclosure requirements, the scope and applicability of Guide 3, and the impact of regulation on bank holding companies. <b>Deloitte Resources:</b> March 1, 2017, <a href="#">news article</a> and June 1, 2017, <a href="#">comment letter</a> .
<a href="#">Inline XBRL of Tagged Data</a> (March 2017)	<b>Summary:</b> Proposed rule that would require the use of Inline XBRL format for the submission of operating company financial statement information and mutual fund risk/return summaries. <b>Deloitte Resources:</b> March 2, 2017, <a href="#">news article</a> and May 5, 2017, <a href="#">comment letter</a> .

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