

Securities Alert



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SEC Approves Proposed Amendments to Regulation S-K

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On August 8, 2019, the Securities Exchange Commission (SEC) [proposed amendments](#) to Regulation S-K that would modernize the disclosures required by S-K Item 101 (description of business), S-K Item 103 (legal proceedings) and S-K Item 105 (risk factors). None of these disclosure items has undergone significant revisions in over 30 years. The proposals continue comprehensive evaluation, modernization and simplification of the SEC's disclosure requirements recommended in the SEC staff's December 2013 [Report on Review of Disclosure Requirements in Regulation S-K](#). This summary highlights important proposed changes to the S-K Items noted above.

Proposed Amendment of S-K Item 101(a) – General Development of Business

S-K Item 101(a) requires a description of the general development of the company's business during the past five years. The proposed amendment to S-K Item 101(a):

- makes the required disclosure largely principles-based by providing a non-exclusive list of the types of information that a company may need to disclose and limit the required disclosure to information material to an understanding of the general development of the company's business;
- includes as a listed disclosure topic, to the extent material to an understanding of the company's business, transactions and events that affect or may affect the company's operations, including material changes to a company's previously disclosed business strategy;

- eliminates a prescribed timeframe for business development disclosure; and
- allows a company, in filings made after its initial filing, to provide only an update of the general development of the business that focuses on material developments in the reporting period covered by the current filing, with a hyperlink to the company's prior filing that, together with the update, would contain the full discussion of the general development of the company's business.

Proposed Amendment of S-K Item 101(c) – Narrative Description of Business

S-K Item 101(c) requires a narrative description of 12 enumerated items related to the company's business. The proposed amendment to S-K Item 101(c):

- replaces the current list of disclosure topics, many of which date to 1973, with an updated and principles-based disclosure framework, with disclosure being required only to the extent that a topic is material to an understanding of the company's business;
- includes, as a disclosure topic, human capital resources, including measures and objectives used to manage the company's business, to the extent that these measures are material to an understanding of the company's business – such as recruitment, development and retention of personnel as opposed to simply stating the number of persons employed; and
- amends the regulatory compliance topic to go beyond the current environmental disclosures and include compliance with any material government regulations.

Proposed Amendment of S-K Item 103 – Legal Proceedings

S-K Item 103 requires disclosure of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the company or any of its subsidiaries is a party or of which any of their property is the subject. The proposed amendment to S-K Item 103:

- expressly states that the required disclosure may be provided through hyperlinks or cross-references to legal proceedings disclosure located elsewhere in the document; and
- increases the disclosure threshold for disclosure of environmental proceedings to which the government is a party from \$100,000 to \$300,000.

Proposed Amendment of S-K Item 105 – Risk Factors

S-K Item 105 requires disclosure of the most significant factors that make an investment in the company or offering speculative or risky. The proposed amendment to S-K Item 105:

- requires summary risk factor disclosure if the risk factor section exceeds 15 pages;
- refines the principles-based approach by changing the disclosure standard from "most significant" factors to "material" factors; and
- requires companies to organize their risk factor disclosure under relevant headings, with risk factors that could apply generally to any investment in securities, if disclosed, required to appear at the end of the risk factor section under a separate caption, such as "General Risk Factors."

The proposed amendments are intended:

- to continue to improve the SEC's disclosure regime for both companies and investors,
- to simplify compliance,

- to improve the readability of disclosure documents,
- to discourage repetition and disclosure of non-material information and
- to emphasize a more flexible principles-based approach to disclosure.

The proposed amendments are subject to a public comment period that will end 60 days after the proposals are published in the *Federal Register*.

Nelson Mullins attorneys have broad experience in advising public companies regarding their compliance with the SEC's periodic reporting requirements. For more information regarding the proposed amendments to Regulation S-K and related securities law implications, contact your Nelson Mullins attorney or any of the other experienced Nelson Mullins attorneys listed.

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