

# SEC Adopts Amendments to Simplify and Update Disclosure Requirements

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On August 17, 2018, the Securities and Exchange Commission (“SEC”) adopted amendments to eliminate or modify certain disclosure requirements that have become duplicative, overlapping or outdated in light of other SEC disclosure requirements, US Generally Accepted Accounting Principles (“GAAP”) or “changes in the information environment.”

The amendments, which are part of the SEC’s efforts to implement a mandate of the Fixing America’s Surface Transportation (“FAST”) Act, are intended to simplify and update the disclosure of information to investors and reduce compliance burdens for companies, without significantly altering the total mix of information available to investors. The SEC also referred certain disclosure requirements to the Financial Accounting Standards Board (“FASB”) for potential incorporation into GAAP.<sup>1</sup>

Many of the amendments were adopted substantially in the form in which they were proposed in July 2016, except for several amendments that the SEC determined not to adopt.<sup>2</sup>

The amendments will become effective 30 days after their publication in the Federal Register.

## Changes to Regulation S-K

The SEC revised or eliminated the following items:

Regulation S-K Item Affected	Disclosure Requirement	Change and Reason for Elimination or Revision
Description of Business Item 101	<i>Segment Information (Item 101(b) (and a related requirement in Rule 3-03(e) of Reg. S-X))</i>  Disclosure of segment information in the business section, including restatement of prior periods and discussion of interim segment performance that may not be	Eliminated  Similar disclosure is required under GAAP and/or MD&A and will continue to be available in the notes to financial statements.

<sup>1</sup> The SEC’s announcement can be found [here](#) and the final rules are available [here](#). In addition, a “demonstration version” of the new rules, showing the changes being made to existing rules, is available [here](#).

<sup>2</sup> One overlapping provision that was proposed to be eliminated is being retained and referred to FASB for potential incorporation into GAAP is Regulation S-K Item 201(d), which provides for tabular disclosure regarding existing equity compensation plans.

	indicative of current or future performance.	
	<p><i>Research and Development (R&amp;D) (Item 101(c)(1)(xi) (and corresponding requirements for smaller reporting companies and for foreign private issuers in Form 20-F and Form 1-A))</i></p> <p>Amounts spent on research and development activities for all years presented, if material.</p>	<p>Eliminated</p> <p>GAAP requires similar disclosure in the notes to financial statements. The SEC also noted that R&amp;D trend information, if material, would still be required in MD&amp;A and that companies may otherwise voluntarily provide such disclosure.</p>
	<p><i>Geographic Areas (Item 101(d)(1), (2) and (3))</i></p> <p>Disclosure of financial information by geographic area, including risks associated with foreign operations and any segment's dependence on foreign operations.</p>	<p>Eliminated</p> <p>Such disclosures are required under GAAP and/or Reg. S-K Item 503(c) relating to risk factors, and will therefore continue to be available in the notes to financial statements or the risk factors section. To highlight their importance, the SEC added an explicit reference to "geographic areas" in Reg. S-K Item 303(a) (MD&amp;A).</p>
	<p><i>Geographic Performance (Item 101(d)(4))</i></p> <p>When interim financial statements are presented, discussion of facts that indicate that three year financial data for geographic performance may not be indicative of current or future operations.</p>	<p>Eliminated</p> <p>Such disclosures are similar to requirements in instructions to Reg. S-K Item 303(a) and (b). In addition, Item 303 (MD&amp;A) is being revised to expressly refer to "geographic areas" as a topic to address when appropriate to an understanding of the business.</p>
	<p><i>Where You Can Find More Information (Portion of Item 101(e)(2) (and comparable requirements in smaller reporting company rules and SEC forms))</i></p> <p>Requirement to identify the SEC's public reference room and its physical address and phone number.</p>	<p>Revised</p> <p>Issuers do not have to identify the SEC's public reference room, address or phone number. Issuers are still required to disclose the SEC's Internet address and state that electronic filings are available there.</p> <p>The qualifying phrase "if you are an electronic filer" has also been eliminated because almost all issuers are required to file electronically. The SEC also added a requirement for all issuers (including smaller reporting companies) to disclose their website addresses, if they have one.</p>

		(Viewed as rarely used.)
Market for Registrant's Common Equity  Portion of Item 201(a)(1) (and comparable requirements in Form 20-F)	Requirement to disclose the high and low sales prices for common equity listed on a US exchange for each full quarterly period within the two most recent fiscal years.	Revised  Issuers are no longer required to disclose this information. Issuers with one or more classes of common equity will be required to identify the principal US markets where each class is traded and the corresponding trading symbols used by the markets for each class of common equity. Foreign issuers will be required to identify the principal foreign public trading markets, if any, and the trading symbols, for each class of their common equity.  (Requirement to disclose trading prices viewed as obsolete in light of the availability of market quotes on numerous websites.)
Warrants, Rights and Convertible Instruments  Portion of Item 201(a)(2)(i)	Requirement to disclose in Form S-1 or Form 10 the amount of common equity subject to outstanding options, warrants or convertibles, when the class of common equity has no established US public trading market.	Eliminated  GAAP requires similar disclosure in the notes to financial statements.
Dividends  Portion of Item 201(c)(1)	Frequency and amount of cash dividends declared.  Restrictions, including on the ability of subsidiaries to transfer funds to their parent, that currently, or are likely to, materially affect the issuer's ability to pay dividends.	Eliminated  Amended Reg. S-X Rule 3-04 will require disclosure of dividend amounts in interim periods and the frequency will be evident from such disclosure.  Requirements relating to the restrictions on the ability to transfer funds are being consolidated into a single requirement in Reg. S-X Rule 4-08(e)(3), while equity compensation plan disclosures are being referred to FASB.
Extraordinary Items  Portion of Item 302(a)(1) relating to supplemental quarterly financial information	References to "extraordinary items" and "cumulative effect of a change in accounting principles."	Revised  References to "income (loss) before extraordinary items and cumulative effect of a change in accounting" will be replaced with "income (loss) from continuing operations."  (FASB eliminated the term "extraordinary items" from GAAP

		and the requirement to report cumulative effect of a change in accounting principle in the income statement in January 2015.)
Seasonality Instruction 5 to Item 303(b)	Seasonal aspects of business in MD&A in interim reports, to the extent material.	Eliminated  Disclosure is required under GAAP in combination with the remainder of Item 303. However, the SEC retained the requirement in Item 101(c)(1)(v), which requires disclosure of seasonality at the segment level, to the extent material to the business as a whole, due to concern about potential loss of information in the fourth quarter.
Ratio of Earnings to Fixed Charges  Item 503(d) (and Item 1010(a)(3) of Regulation M-A) and Item 601(b)(12)(exhibit) and comparable requirement in Form 20-F	Historical and <i>pro forma</i> ratios of earnings to fixed charges and/or preference dividends, along with related exhibit.	Eliminated  Due to: (i) a variety of analytical tools are available to investors to provide similar information; (ii) debt investors often negotiate contractual agreements to obtain specific financial information as needed; (iii) companies are required to disclose material impacts of debt covenants to the extent reasonably likely to limit future financings or to be breached; and (iv) Item 504 of Reg. S-K requires disclosure of the offering's effect on fixed charges, such as the interest rate, maturity and amount of proceeds used to discharge indebtedness.
Exhibits  Item 601	Computation of earnings per share (Item 601(b)(11))	Eliminated  Addressed by GAAP and Reg. S-X.
	Incorporation of information provided to security holders into 10-Q (Item 601(b)(19))	Eliminated  Addressed in Item 601(b)(13) and Instruction D.3 to Form 10-Q.
	Published report regarding matters submitted to vote of security holders (Item 601(b)(22))	Eliminated  Redundant in light of changes made in 2009 to disclose voting results in Item 5.07 of Form 8-K and Forms 10-K and 10-Q.

	Invitations for competitive bids (Item 601(b)(26))	Eliminated  Unnecessary, as bidders would directly receive the invitation and other investors would have access to the registration statement covering the securities offered at the competitive bidding.
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## Changes to Regulation S-X and Accounting Requirements

The SEC identified for elimination a number of SEC accounting requirements, primarily in Regulation S-X, that are substantially redundant or duplicative of GAAP (or IFRS) requirements, or other SEC disclosure requirements.<sup>3</sup>

## Referrals to FASB for Further Consideration

The SEC identified a number of areas where its disclosure requirements overlap with, but require incremental information to, GAAP, and is referring these to FASB for consideration as to whether it should incorporate such requirements into GAAP as part of its normal standard-setting process, with a view to potentially eliminating the SEC disclosure requirement if integrated into GAAP.<sup>4</sup>

## Practical Considerations

While many of the changes are incremental and will likely not have a significant impact on reporting practices, there are a few key considerations that issuers should keep in mind:

- Audit concerns related to movement of disclosure into the financial statements: It is important to note that where the amendments result in relocation of disclosure into the financial statements, the new disclosure

<sup>3</sup> Specifically, the SEC eliminated the requirements in Regulation S-X to disclose:

- Derivative accounting policies, except to the extent not addressed by GAAP; and
- Supplemental *pro forma* financial information in interim filings for business combination required under Rule 8-03(b)(4) and 10-01(b)(4) of Regulation S-X in light of overlapping requirements with GAAP and Item 9.01 of Form 8-K; however, the *pro forma* disposition disclosure requirement is being retained.

The SEC also adopted conforming changes to Regulation S-X to integrate certain financial reporting requirements relating to:

- Disclosure of foreign currency exchange restrictions on the issuer's financial position and operating results; and
- Disclosure of restrictions on the payment of dividends or net assets.

The SEC also deleted several financial reporting requirements in Regulation S-X that have been superseded by changes in GAAP or other SEC requirements over time, including with respect to:

- Gains or loss on sales of properties by REITS;
- Various requirements relating to consolidation;
- Development stage companies;
- Insurance companies;
- Replacing references to GAAS with applicable PCAOB references; and
- Various other items (as set forth in the tables on pages 120-123 and 127 of the adopting release).

<sup>4</sup> These include: (i) currency requirements for foreign private issuers; (ii) repurchase and reverse repurchase agreements; (iii) effect of derivatives on statements of cash flows; (iv) certain equity compensation plan information; (v) discount on shares in the equity section of financial statements; (vi) income taxes in the notes to financial statements; (vii) major customers (Item 101(c)(1)(vii) of Reg. S-K); and (viii) additional financial reporting items set forth in the table on pages 93 - 97 of the adopting release.

The SEC considered but ultimately declined to refer Regulation S-K Item 103 relating to legal proceedings to FASB for possible integration with GAAP.

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becomes subject to audit or interim review and audit of internal control over financial reporting, which could create potential issues with respect to verification and auditability.

- XBRL tagging of information in the financial statements: XBRL tagging requirements apply to information in the financial statements, so any disclosures that are relocated to the financial statements will have to be tagged accordingly.
- Liability concerns for forward-looking information in the financial statements: The safe harbor for forward-looking information under the Private Securities Litigation Reform Act of 1995 does not apply to the financial statements. Therefore, relocation of disclosure into the financial statements without the safe harbor protection may make issuers hesitant to supplement required disclosures in the financial statements with forward-looking information. The SEC noted that it did not adopt any requirements to disclose forward-looking information in the financial statements and pointed out that issuers can provide such information outside of the financial statements.
- Disclosure Location Considerations: The SEC acknowledged that relocation of certain disclosures may affect their prominence. Therefore, issuers should consider appropriate context, placement and prominence when implementing these changes.

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