

SEC Updates Its Disclosure Rulebook

August 20, 2018

Prompted by Congress, changes are modest in scope

When it enacted the [Fixing America's Surface Transportation \(FAST\) Act of 2015](#), Congress ordered the SEC to amend Regulation S-K by June 1, 2016 in order to eliminate provisions that are “*duplicative, overlapping, outdated, or unnecessary*.” On Friday, a few hours after the President [tweeted](#) that he had directed the SEC to study a shift from quarterly to half-year financial reporting, the SEC finalized a series of somewhat less far-reaching [amendments](#) to its rules and forms designed to address requirements that have become “*redundant, duplicative, overlapping, outdated, or superseded*” in light of other SEC or GAAP disclosure requirements and changes in the information environment. The amendments are welcome, but are only modestly incremental since most of the changes simply clean up stale references and duplicative rules. With one or two exceptions, the review did not result in significant changes to remove disclosure that many view as “*unnecessary*” for lack of materiality.

But this is certainly a step in the right direction – the world, the economy and the markets change and the regulator should periodically prune its rulebook instead of allowing disclosure requirements to accrete over time – and we've seen [recent promising initiatives](#) by the SEC and its Division of Corporation Finance to consider more carefully whether the costs of certain financial statement requirements are justified in light of their usefulness to investors. And so we remain encouraged that Friday's announcement marks the beginning rather than the culmination of the SEC's efforts to make sure the regulatory burden is constantly measured against neutral standards of effectiveness and efficiency; indeed the SEC stated that Friday's amendments “are part of an initiative by the Division of Corporation Finance to review disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers.”

Many of the changes reflected in the amendments merely clean up references or cross-references that have become outdated as accounting terminology has changed (such as replacing references to “income statement” with “statement of comprehensive income” and removing the concept of “extraordinary” charges) or as the SEC has over time revised its various forms and rules. Other changes are unlikely to be noticed because companies and practitioners have long-since deemed the required information immaterial. Below we highlight some of the more (and some of the less) significant changes reflected in the amendments, which will be effective in late September.

- **Segment disclosure in the “Business” section**

Financial information about segments will no longer be required in the “Business” section of a prospectus or periodic report.

- **R&D information in the “Business” section**

The amount of company-sponsored research and development expense will no longer be required to be disclosed in the “Business” section of a prospectus or periodic report.

- **Geographic disclosure in the “Business” section**

A geographic breakdown of revenues and assets will no longer be required in the “Business” section of a prospectus or periodic report.

- **No more references to the Public Reference Room**

Given the widespread availability of the internet, the SEC has deleted mandatory references to the Public Reference Room and will let investors rely on the internet instead.

- **Mandatory disclosure of company websites**

Previously, companies were only “encouraged” to provide their website addresses.

- **Market price information**

Companies will no longer need to disclose high and low trading prices for their common stock in the last two years in prospectuses and annual reports given how readily available this information is.

- **Seasonality disclosure in interim reports**

The MD&A section of an interim report will no longer be required to include a discussion of seasonality.

- **Ratio of earnings to fixed charges**

Companies will no longer be required to provide the ratio of earnings to fixed charges (or fixed charges and preferred stock dividends) when registering debt or preferred stock. Companies will also be able to omit the corresponding calculation exhibit from their registration statements and periodic reports.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

Bruce K. Dallas	650 752 2022	bruce.dallas@davispolk.com
Joseph A. Hall	212 450 4565	joseph.hall@davispolk.com
Michael Kaplan	212 450 4111	michael.kaplan@davispolk.com

© 2018 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy policy](#) for further details.