

SEC Staff Report of Disclosure Requirements Contains Few Specific Recommendations

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The SEC staff recently issued a [report](#), as mandated under the JOBS Act, on its review of the disclosure provisions under Regulation S-K. [Chair White](#) and [Commissioner Gallagher](#) had previously referred to the report in their speeches criticizing the existing disclosure regime and alluding to possible changes.

While over 100 pages, the bulk of the report is a historical accounting of the evolution of the current requirements. The staff recommendations do not begin until page 92 and comprise less than 12% of the entire document. According to the report, the overarching issues to be addressed include the possibility of principle-based disclosure rather than increasing static imperatives, scaling disclosure in accordance with different categories of issuers, a framework that distinguishes between “core” disclosure vs. periodic disclosure and offering information, and improving readability while discouraging repetition. Potential reviews of the following were briefly addressed:

- consolidating risk-based disclosure such as risk factors, legal proceedings and market risk disclosure;
- updating the relevancy of disclosures regarding businesses and properties;
- avoiding boilerplate for corporate governance requirements;
- addressing concerns that executive compensation disclosure is too long and technical; and
- making offering-related disclosure reflect the existing market.

Every line item was at least touched upon, as other areas mentioned include industry guides, Regulation M-A, the financial requirements in Regulation S-X and what amounts to additional rules contained in forms like Form 10-K. The report, however, does not address the staff interpretations, guidance and comment letters that influence the amount and type of disclosures companies provide in complying with Regulation S-K.

The absence of specific details in the report reflects the staff’s beliefs that more information and review is necessary before specific recommendations can be formulated, including as to how disclosure can be simplified and technology can play a role, while economic analysis of the impact of any possible changes must be conducted. The staff suggests a plan that would identify the broad topics to be covered, and then determine preliminary issues and ways to gather information from necessary parties for that topic, all prior to recommending any revisions. Recognizing a targeted review could allow for quicker changes, the staff ultimately recommends a comprehensive approach instead. It is unclear what next steps, if any, will be taken in this regard.

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

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