

SEC Open Meeting to Consider Proposed Rules to Largely Technical Regulation S-K Changes Recommended by SEC Staff Under the FAST ACT

October 6, 2017 | Client Update | 3-minute read

The SEC will hold an open meeting on Wednesday, October 11 at 10:00 a.m. to consider whether to propose amendments based on the recommendations in the staff's Report on Modernization and Simplification of Regulation S-K. [The report](#) was required by the FAST Act and issued in November 2016. Some of the suggestions are fairly technical, and some have been incorporated in the recent adoption of the requirements to include hyperlinked exhibits. Others, including those related to MD&A disclosure, are more meaningful. A brief summary of the main points are set forth below, with the relevant rules listed.

General

- Permit incorporation by reference of documents that have been on file with the Commission for more than five years, but require specific descriptions of the locations of such documents and a hyperlink to the incorporated document on EDGAR. (Item 10(d))
- Allow companies to satisfy disclosure requirements in prospectuses by incorporating information by reference to the financial statements. (Item 10(d))

Company business information

- Clarify that a description of property is required only to the extent that physical properties are material to a company's business. (Item 102)

Company performance, financial information and future prospects (MD&A)

- Clarify that a company need only provide a period-to-period comparison for the two most recent fiscal years presented in the financial statements and may hyperlink to the prior year's annual report for the additional period-to-period comparison. (Item 303(a))
- Eliminate the requirement to disclose a table of contractual obligations and instead require companies to include a hyperlink to the relevant financial statement notes, while requiring additional narrative discussion of liquidity that describes material changes to contractual obligations and the ability to pay such obligations over time. (Items 303(a)(1) and 303(a)(5))

Management and certain security holders, corporate governance

- Codify the staff interpretations that the business experience of directors, executive officers and nominees need not be included in proxy statements for executive officers if it is included in the Form 10-K. (Item 401)
- Clarify that companies may rely solely on a review of Section 16 reports submitted on Edgar for any reporting delinquencies and eliminate the requirement that reporting persons furnish to the company Section 16 reports filed by them or on their behalf. (Item 405)

- Require a Section 16(a) Beneficial Ownership Reporting Compliance section only if companies have delinquencies to report.
- Remove outdated auditing standard references. (Item 407)
- Clarify that emerging growth companies are not required to provide a compensation committee report. (Item 407)

Exhibits

- Require companies to file a description of their securities as an exhibit to Form 10-K, as currently required under Item 202 for registration statements.
- Allow the omission of attachments and schedules filed with exhibits, unless they contain information that is material to an investment decision that has not been disclosed otherwise.
- Limit the two-year look back period for the filing of material contracts to newly reporting companies, since existing companies would have previously filed them.
- Require disclosure of legal entity identifiers for the company and significant subsidiaries.

There are a number of other provisions related to the forefront of the registration statements and the cover page of prospectuses and the plan of distribution and undertaking sections.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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 notice for further details.