

Regulation S-K Concept Release Raises Critical Questions about Disclosure of Risk Factors, Sustainability and Public Policy Issues

April 20, 2016 | Client Update | 2-minute read

As previously discussed in our [prior post](#), the SEC concept release on Regulation S-K encourages interested parties to comment on all aspects of business and financial rules that govern companies' periodic reporting. Here we focus on two of those areas.

Risk Factors Disclosure. According to the concept release, studies show companies include an average of 22 different risk factors in about 8 pages, and risk factors disclosure has increased from 2006 to 2013 by more than 85% in word count relative to the total word count in a Form 10-K. Even though companies are only required to disclose material changes in quarterly reports, it is not unusual for companies to repeat the entire laundry list.

The SEC is exploring ways to make risk factor disclosure more meaningful by encouraging greater specificity and context. Some of the ideas will make companies shudder, such as requiring companies to discuss the probability of occurrence and the effect on performance for each risk factor, disclose the facts and circumstances that make a risk material to a particular company, and identify and disclose in order a company's ten most significant risk factors without limiting the total number of risks disclosed.

Sustainability Disclosure. The Commission is considering whether to require line-item specific environmental and social policy disclosure in a company's periodic reporting, a move away from the approach it adopted in 1975 when it last considered the issue. The SEC acknowledges that many companies consider this information to be immaterial, and in fact many believe that sustainability or policy-driven disclosure requirements have the goal of altering corporate behavior rather than providing useful disclosure.

The Commission is seeking input on whether there are specific issues of this type that are necessary for informed voting and investment decisions. The rulemaking petition asking the SEC to adopt rules requiring political spending disclosure is mentioned.

Perhaps evidencing doubt toward those companies that argue that this type of information is not at all useful, the SEC wants to know why some companies are voluntarily providing sustainability reporting outside of Commission filings on their websites. If they were to propose line-item disclosure requirements on sustainability and public policy issues, the SEC asks whether there are specific frameworks that should be used.

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.