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SEC Concept Release Considers Format and Delivery Changes for Periodic Reporting

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In our prior posts here and here, we considered certain aspects of the SEC concept release that asks for comments on changes to Regulation S-K disclosure. In this last post, we look at the options to amend the way disclosure is presented and delivered.

The concept release evaluates different ways to provide information with the goal of improving the "readability and navigability" of disclosure, as well as discourage repetition and disclosure of immaterial information. Much of the focus is on how to take advantage of the Internet. This section provides the greatest opportunity for innovation, but there is a strain of caution that stems from being aware that SEC rules do not lend itself to an overhaul that would make reading SEC documents akin to perusing the *Wall Street Journal*. A variety of possibilities are raised, with questions that tend to focus on barriers to the format proposed, even for formats that are currently permitted:

- ***Cross-references*** used to reduce repetition and as a navigation tool, noting that commenters already have trouble finding the source being referenced because they are not clear enough and questions that ask whether specific guidance or rules should be introduced to increase consistency across filings;
- ***Incorporation by reference***, with concerns that investors may not be able to identify information that has changed from previously disclosed information and should the SEC require companies to highlight those changes from the company's last report;
- ***Hyperlinks outside the Edgar system***, with questions on whether further "disaggregation" of company disclosure into multiple filings would hinder disclosure quality;
- ***Company websites*** wholly independent of Edgar for providing information, with questions on whether investors need specialized equipment or knowledge for this purpose, and how long companies should preserve the materials on the websites. The SEC also concentrated on allowing only certain categories of information to be located only on websites, such as exhibits;
- ***Specific formatting requirements*** that would require a standardized layout, encourage the use of tabular or graphic presentation, or even present disclosure in Q&A or checklist format;
- ***Layered disclosure*** (summary presentations before the details), probably viewed with the least interest in the release as only one generic question was asked, although numerous ideas such as having corporate "tabs" of basic information that would not need to be repeated was raised by commenters; and
- ***Structured disclosure*** (use of data tagging), discussed with greater passion about the multiple ways disclosure could be tagged.

The opportunity to bring periodic reporting into the digital age has probably been met with the most enthusiasm by issuers with respect to the disclosure effectiveness project, but the concept release does not seem to be as ready to embrace the leap.

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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