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Seven Key Ways the SEC's Disclosure Proposal May Affect Your Periodic Reporting

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On Wednesday, the SEC **proposed amendments** to its disclosure requirements for public companies based on recommendations in the staff's FAST Act Report and as part of a broader review of the disclosure system. The comment period is open for sixty days.

The ***WSJ* fairly characterized** the changes as "modest and technical," and Commissioner Piwowar is quoted as saying the amendments are intended to be incremental. Our client memo describing all of the proposed reforms will be issued shortly. The main areas that would impact periodic reporting and do not relate to securities offerings include:

You may not need to describe any properties. To combat immaterial disclosures about office space, the proposal requires that companies disclose physical properties only to the extent material, and the information can be provided on a collective basis instead of by each property.

You may not need to discuss the earliest year in MD&A. Discussion of the earliest year when the financial statements cover three years would not be required if that discussion is not material and the company had previously filed information about that year in an earlier Form 10-K.

You don't always have to provide year-to-year comparisons in MD&A. Although it was always the rule, the proposal makes clear that year-to-year comparisons are not required and companies could decide that a narrative discussion for some or all of the years is a better format.

There is no need to repeat executive officer information in a proxy statement if it is already in the Form 10-K. Codifying a staff interpretation, the proposal will change the relevant instructions so that information about executive officers that are placed in a Form 10-K should not be repeated in a proxy statement. The 10-K caption will be retitled "Information about our Executive Officers."

The proxy statement doesn't need to include a section on Section 16 reporting compliance if there are no delinquencies to report. Again consistent with a staff interpretation, there will be no need to include any discussion of Section 16 ownership reporting if all reports were adequately and timely filed.

You will need to update the audit committee report. The proposal eliminates and replaces references to outdated audit standards, which will need to be reflected in future audit committee reports.

Some of the exhibit requirements are changing. The proposal includes several modifications to filing exhibits, including a new exhibit to provide a brief description of a company's registered securities, omitting schedules and similar attachments to contracts if they are immaterial and not already disclosed and allowing the redaction of confidential information without first submitting a confidential treatment request.

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