

[Securities Regulation Daily Wrap Up, TOP STORY—SEC proposes updates to Reg. S-K business, legal proceedings, risk factor disclosures, \(Aug. 9, 2019\)](#)

Securities Regulation Daily Wrap Up

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Proposed updates to Regulation S-K Items 101, 103, and 105 would improve and simplify disclosure requirements to reflect developments in the decades since adoption and provide flexibility to tailor disclosures to the registrants' unique circumstances.

The SEC has proposed amendments that would modernize the description of business, legal proceedings, and risk factor disclosures required under Regulation S-K. According to the Commission, the disclosures required by Items 101, 103, and 105 have not been significantly revised in over 30 years, and the proposed amendments will reflect the many changes in the markets, economy, and technology since then. The proposed amendments are intended to improve the readability of disclosure documents and to discourage repetition and disclosure of information that is not material (*Modernization of Regulation S-K Items 101, 103, and 105*, [Release No. 33-10668](#), August 8, 2019).

The proposed amendments are an outgrowth of the JOBS Act-mandated [review](#) of Regulation S-K's disclosure requirements released in 2013. The requirements were revisited in a 2016 [concept release](#) in which comment was sought on, among other matters, modernizing business and financial disclosure requirements. In particular, the Commission sought input on whether certain disclosure requirements should be more principles-based (relying on the registrant's evaluation of the significance of the information), prescriptive (bright-line, quantitative thresholds), or a combination of both. In the proposed amendments, the Commission has chosen a mix of approaches in order to elicit the most relevant disclosures.

"The world economy and our markets have changed dramatically in the more than 30 years since the adoption of our rules for business disclosures by public companies. Today's proposal reflects these significant changes, as well as the reality that there will be changes in the future," said Chairman Jay Clayton. "I applaud the staff for their efforts to modernize and improve our disclosure framework, including recognizing that intangible assets, and in particular human capital, often are a significantly more important driver of value in today's global economy. The proposals reflect a thoughtful mix of prescriptive and principles-based requirements that should result in improved disclosures and the elimination of unnecessary costs and burdens."

Proposed modernization. The proposed amendments would revise Items 101(a), 101(c) and 105 to emphasize a more principles-based approach. According to the Commission, the current disclosure requirements may not reflect what is material to every business, and prescriptive disclosure requirements can become outdated in these areas.

The proposed amendments to Item 101(a) (description of the general development of the business) would:

- require disclosure of information material to an understanding of the general development of the business and eliminating a prescribed timeframe for this disclosure; and
- permit a registrant, after an initial filing, to provide only an update of the general development of the business focusing on material developments in the reporting period—with a hyperlink to the registrant's most recent filing—that, together with the update, would contain the full discussion of the general development of the registrant's business.

The proposed amendments to Item 101(c) (narrative description of the business) would:

- clarify and expand its principles-based approach, with disclosure topics drawn from a subset of the topics currently contained in Item 101(c);
- include, as a disclosure topic, human capital resources, including any human capital measures or objectives that management focuses on in managing the business, to the extent such disclosures would be material to an understanding of the registrant's business; and
- refocus the regulatory compliance requirement by including material government regulations, not just environmental laws, as a topic.

The proposed amendments to Item 105 (risk factors) would:

- require summary risk factor disclosure if the risk factor section exceeds 15 pages;
- refine the principles-based approach of Item 105 by changing the disclosure standard from the "most significant" factors to the "material" factors; and
- require risk factors to be organized under relevant headings, with any risk factors that may generally apply to an investment in securities disclosed at the end of the risk factor section under a separate caption.

In contrast, the proposed amendments to Item 103 (legal proceedings) take a prescriptive approach because that requirement depends less on the specific characteristics of individual registrants. The proposed amendments would:

- expressly state that the required information may be provided by including hyperlinks or cross-references to legal proceedings disclosure located elsewhere in the document in an effort to encourage registrants to avoid duplicative disclosure; and
- revise the \$100,000 threshold for disclosure of environmental proceedings to which the government is a party to \$300,000 to adjust for inflation.

Comments sought. In addition to specific requests concerning elements of each Item, the Commission encourages the submission of comments on any aspect of the proposed amendments. Comments should be received within 60 days of the release's publication in the *Federal Register*.

The release is [No. 33-10668](#).

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