



SEC Votes to Adopt Rule Amendments to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K

Sep 2, 2020

Reading Time : **8 min**

By: Rosa A. Testani

Background

The amendments are part of a comprehensive evaluation of the SEC's disclosure requirements that was recommended in the SEC staff's [Report on Review of Disclosure Requirements in Regulation S-K](#) (S-K Study), which was mandated by Section 108 of the [Jumpstart Our Business Startups Act](#) (JOBS Act). Based on recommendations in the S-K Study, the SEC staff launched the [Disclosure Effectiveness Initiative](#). The overall objective of the Disclosure Effectiveness Initiative was to improve the SEC's disclosure regime for both investors and registrants.

The SEC noted in the [adopting release](#) for the final amendments that the disclosure requirements in Items 101, 103 and 105 of Regulation S-K have not undergone significant revisions in over 30 years, while many changes have occurred in our capital markets and the domestic and global economy in that time, including changes in the mix of businesses that participate in our public markets, changes in the way businesses operate, changes in technology (in particular technology that facilitates the provision of, and access to, information) and other changes that have occurred simply with the passage of time.

In response to the [proposed amendments](#) released in August 2019, which we discussed in a previous [post](#), the SEC received and considered numerous comment letters. The SEC ultimately adopted the amendments substantially as proposed, with certain modifications, discussed below.

Amendments to Regulation S-K

Item 101(a) – General Development of Business (excluding Smaller Reporting Companies)

The final amendments amend Item 101(a) by:

- making the Item largely principles-based, requiring disclosure of information material to an understanding of the general development of the business;
- replacing the previously prescribed five-year timeframe with a materiality framework;
- providing the following non-exclusive list of the types of information that a registrant may need to disclose (to the extent material to an understanding of the registrant's business):
 - any material changes to a previously disclosed business strategy (*new item*);
 - the nature and effects of any material bankruptcy, receivership, or any similar proceeding with respect to the registrant or any of its significant subsidiaries (*currently covered in Item 101(a)(1), with the amendments adding the "material" qualifier before "bankruptcy, receivership or any similar proceeding"*);
 - the nature and effects of any material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries (*currently covered in Item 101(a)(1)*); and
 - the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business (*currently covered in Item 101(a)(1)*); and
- permitting a registrant, in filings other than an initial registration statement to provide only an update of the general development of the business focused on material developments that have occurred since its most recent full discussion of the general development of its business so long as such full discussion is incorporated by reference (and includes an active hyperlink to the one registration statement or report filed with the SEC that included such full discussion).

Item 101(c) – Narrative Description of Business

The final amendments amend Item 101(c) by:

- clarifying and expanding the principles-based approach of the Item with the following non-exclusive list of disclosure topic examples (drawn in part from the topics currently contained in Item 101(c)) that a registrant may need to disclose to the extent material to an understanding of the registrant's business:

- revenue-generating activities, products and/or services and any dependence on revenue-generating activities, key products, services, product families or customers, including governmental customers (*currently covered in Item 101(c)(1)(i) and (vii)*);
- the status of development efforts for new or enhanced products, trends in market demand and competitive conditions (*currently covered in Item 101(c)(1)(ii) and (x)*);
- sources and availability of raw materials (*currently covered in Item 101(c)(1)(iii)*);
- the duration and effect of all patents, trademarks, licenses, franchises and concessions held (*currently covered in Item 101(c)(1)(iv)*);
- a description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government (*currently covered in Item 101(c)(1)(ix)*);
- the extent to which the business is or may be seasonal (*currently covered in Item 101(c)(1)(v)*);
- compliance with government regulations, including environmental regulations (*modifies current Item 101(c)(1)(xii) and refocuses the regulatory compliance requirement by including all government regulations, not just environmental laws*); and
- human capital disclosure (*modifies current Item 101(c)(1)(xiii) so that, in addition to the number of persons employed, now includes any human capital measures or objectives that the registrant focuses on in managing the business, such as those that address the development, attraction and retention of personnel*).

Item 101(h) – General Development of Business (Smaller Reporting Companies)

The final amendments amend Item 101(h) by:

- replacing the previously prescribed three-year timeframe with a materiality framework; and
- permitting a registrant, in filings other than an initial registration statement to provide only an update of the general development of the business focused on material developments that have occurred since its most recent full discussion of the general development of its business so long as such full discussion is incorporated by

reference (and includes an active hyperlink to the one registration statement or report filed with the SEC that included such full discussion).

Item 103 – Legal Proceedings

The final amendments amend Item 103 by:

- expressly stating that the required information may be provided by hyperlink or cross-reference to legal proceedings disclosure located elsewhere in the same document to eliminate duplicative disclosure; and
- increasing the existing quantitative threshold for disclosure of certain environmental proceedings from the current \$100,000 (which was set in 1982) to (x) \$300,000, or (y) at the registrant's election, a different threshold that it determines is reasonably designed to result in disclosure of material environmental proceedings (provided that the threshold does not exceed the lesser of \$1 million or one percent of the current assets of the registrant and is disclosed in the report).

Item 105 – Risk Factors

In an effort to address the increased length of risk factor disclosure and avoid the common practice of disclosing risk factors that are similar to those used by others in the registrant's industry without tailoring the disclosure to a specific registrant's circumstances and risk profile, the final amendments amend Item 105 by:

- requiring summary risk factor disclosure (consisting of a series of concise, bulleted or numbered statements summarizing the principal factors that make an investment in the registrant or offering speculative or risky) of no more than two pages if the risk factor section exceeds 15 pages;
- refining the principles-based approach of Item 105 by changing the standard for disclosure from the "most significant" risks to disclosure of "material" risks; and
- requiring risk factors to be organized under relevant headings in addition to the subcaptions currently required, with any risk factors that may generically apply to an investment in securities disclosed at the end of the risk factor section under a separate caption titled "General Risk Factors."

A comparison of the current Items 101, 103 and 105 to the revised Items is available in Appendix I, [available here](#).

Analysis

The SEC believes that modernizing these items will result in improved disclosure, tailored to reflect registrants' particular circumstances, and reduce disclosure costs and burdens. The adopting release focuses on two underlying themes for many of the amended disclosure requirements, which reflect the SEC's commitment to a principles-based, registrant-specific approach to disclosure, and are intended to be rooted in materiality and facilitate an understanding of a registrant's business, financial condition and prospects through the lens through which management and the board of directors manage and assess the performance of the registrant (although prescriptive in some respects).

This first underlying theme is that the subject disclosure requirements are based on a principles-based, rather than a prescriptive, approach (with the exception of the amendments to legal proceedings disclosure, which retains, but increases, the prescriptive threshold for environmental proceedings to which the government is a party, but also allows the registrant to elect to determine another threshold, subject to certain requirements). For example, the SEC noted in the adopting release that in response to the COVID-19 pandemic, the Division of Corporation Finance closely monitored registrants' disclosure about how COVID-19 affected their financial condition and results of operations (see Division of Corporate Finance guidance [here](#) and [here](#)). Per the adopting release, SEC staff observed that the principles-based disclosure requirements generally elicited detailed discussions of the impact of COVID-19 on registrants' liquidity position, operational constraints, funding sources, supply chain and distribution challenges, the health and safety of workers and customers, and other registrant- and sector-specific matters.

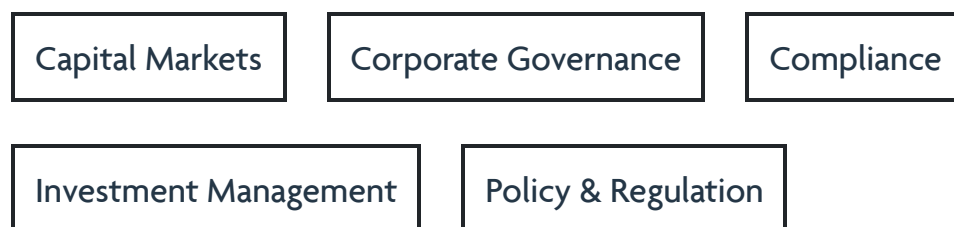
Of note, public statements made by Commissioners [Lee](#) and [Crenshaw](#) explaining their dissenting votes expressed concern that adherence to principles-based disclosures went too far and the amendments failed to adequately deal with climate change risk, human capital and diversity. Commissioner Crenshaw advocated for the establishment of an internal task force to study how investors can and do use those and other Environmental, Social and Governance (ESG) metrics as well as the formation of an external ESG Advisory Committee to provide advice and guidance over the longer term to the SEC. As noted by Commissioner Lee, the SEC received thousands of comment letters regarding the inclusion of climate risk in the amendments, however the adopting release discussed specific requirements suggested by certain commenters as inconsistent with the principles-based nature of the amendments and climate risk was not specifically addressed in the final amendments. However, registrants are

reminded that they should continue to reference the 2010 Commission Guidance Regarding Disclosure Related to Climate Change when evaluating existing disclosure requirements as they apply to climate change matters.

The second underlying theme is that disclosure of the subject information is only required to the extent such information is material to an understanding of the registrant's business. As noted in the adopting release, information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. Both of these themes are consistent with findings from studies the SEC staff has conducted over the past several years as part of the Disclosure Effectiveness Initiative.

Generally, these amendments are intended to reduce existing disclosure in a registrant's filing that may be repetitive, not applicable, or not material. However, in the case of changes to a previously disclosed business strategy or strategies regarding human capital, the amendments may add disclosure to a registrant's filing.

Categories



© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and

other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.