



## **SEC Proposes Amendments to Modernize and Simplify Regulation S-K**

Oct 17, 2017

Reading Time : **5 min**

By: Jason Daniel

### **Management's Discussion and Analysis (MD&A)**

#### **Permit Elimination of Earliest Year of Results of Operations Discussion**

Permit registrants to eliminate the discussion of the earliest year of results of operations when financial statements included in a filing cover three years if (i) that discussion is not material to an understanding of the registrant's financial condition, changes in financial condition and results of operations; and (ii) the registrant has filed its prior-year Form 10-K on EDGAR, which includes MD&A covering such period. (Item 303(a) of Regulation S-K)

### **Confidential or Immaterial Information**

#### **Permit Redaction of Confidential Information in Material Contract Exhibits**

Permit registrants to omit confidential information from filed material contracts where such information is both (i) not material and (ii) competitively harmful if publicly disclosed, even where the registrant has not submitted a confidential-treatment request to the SEC. Instead, registrants would be required to (i) mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted (ii) include a prominent statement on the first page of each redacted exhibit that information in the marked sections of the exhibit has been omitted from the filed version of the exhibit and (iii) indicate with brackets where the information has been omitted from the filed version of the exhibit. Notwithstanding the proposed revisions, upon request by the SEC staff, registrants would be required to promptly provide an unredacted copy of the contract, together with their analysis of materiality and

competitive harm (which analysis may be filed with a confidential treatment request). (Item 601(b)(10) of Regulation S-K)

### **Permit Redaction of Personally Identifiable Information (PII)**

Permit registrants to omit Personally Identifiable Information (PII) without submitting a confidential-treatment request under Rule 406 or Rule 24b-2. Under the proposed amendment, registrants also would not be required to provide an analysis to redact PII from exhibits. (Item 601(a)(6) of Regulation S-K)

### **Permit Redaction of Schedules and Attachments to Exhibits**

Similar to the existing accommodation in Item 601(b)(2), permit registrants to omit entire schedules and similar attachments to exhibits, unless they contain material information and unless that information is not otherwise disclosed in the exhibit or the disclosure document. Also similar to Item 601(b)(2), registrants would be required to provide with each exhibit a list briefly identifying the contents of any omitted schedules and attachments. Notwithstanding the proposed revisions, upon request by the SEC staff, registrants would be required to provide, on a supplemental basis, a copy of any omitted schedules or attachments. (Item 601(a)(5) of Regulation S-K)

## **Exhibits**

### **Limitation of Two-Year Look Back for Material Contracts**

Remove the requirement for registrants to file a material contract that has been fully performed before the filing of a registration statement or report, but was entered into within two years of such filing. The proposed amendment would exclude “newly reporting registrants.” (Item 601(b)(10)(i) of Regulation S-K)

### **Disclosure of Legal Entity Identifier (LEI)**

In their exhibit listing all of their significant subsidiaries, require registrants to include the LEI (i.e., a 20-character, alpha-numeric code that allows for unique identification of entities engaged in financial transactions), if one has been obtained, of the registrant and each subsidiary listed. (Item 601(b)(21)(i) of Regulation S-K)

## **Description of Registered Securities**

Require registrants to provide a brief description of their securities registered under Section 12 of the Exchange Act (i.e., registered capital stock, debt securities, warrants, rights, American Depositary Receipts, and other securities) as an exhibit to Form 10-K, rather than limiting this disclosure to registration statements. The proposed amendment would exclude market information for securities other than common equity, where there is an established trading market for those securities. When previously filed, and assuming that there has been no material change, registrants may incorporate the information by reference and provide a hyperlink to the previously filed exhibit. (Item 601(b)(4)(vi) of Regulation S-K)

## **Other**

### **Description of Property**

Permit registrants to limit the disclosure of physical properties to the extent material. The proposed amendment would clarify that the disclosure should focus on physical properties that are material to the registrant and may be provided on a collective basis, if appropriate. Given the particular significance of this disclosure for registrants in the mining, real estate, and oil and gas industries, however, the proposed amendment would not modify the requirement that such registrants provide a detailed description regarding properties on a property-by-property basis. (Item 102 of Regulation S-K)

### **Tagging Cover Page Data**

Require registrants to tag all of the information on the cover pages of Forms 10-K, 10-Q, 8-K, 20-F and 40-F in Inline XBRL (i.e., XBRL data embedded into the HTML document, instead of the traditional method of attaching as a separate exhibit). In addition to the existing data points on the covers of these forms, the proposed amendment would add the trading symbol for each class of registered securities as an additional data point to be tagged in Inline XBRL. Because, unlike Forms 10-K, 20-F and Form 40-F, the cover pages of Forms 10-Q and 8-K do not currently require disclosure of the title of each class of securities and each exchange on which they are registered, the cover pages of these forms would be revised to include such disclosure in addition to the trading symbol. (New Rule 406 of Regulation S-T, new Item 601(b)(104) of Regulation S-K, new paragraph 104 to the “Instructions as to Exhibits” of Form 20-F and new paragraph B.17 to the “General Instructions” of Form 40-F)

## **Background**

The proposed amendments, based on recommendations made in the SEC staff’s [Report on Modernization and Simplification of Regulation S-K](#), were mandated by Section 72003 of the [Fixing America’s Surface Transportation Act](#) (FAST Act) and, together with previously proposed amendments mandated by Section 72002 of the FAST Act, are the result of a congressional directive to “modernize and simplify [the] requirements [of Regulation S-K] in a manner that reduces the costs and burdens on issuers while still providing all material information.” The changes are consistent with the SEC’s ongoing “[Disclosure Effectiveness Initiative](#)”, whereby it is considering whether existing disclosure requirements should be modified or eliminated, whether new disclosure requirements should be created, and whether disclosures could be presented and provided more effectively.

## Additional Information

Comments on the proposed amendments are due 60 days after publication in the Federal Register and may be submitted [online](#). For additional commentary on the proposed amendments, please see the prepared remarks of Chairman [Jay Clayton](#), Commissioner [Kara M. Stein](#) and Commissioner [Michael S. Piwowar](#).

## Categories

Policy & Regulation

Compliance

© 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.