

# PUBLICATION

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## SEC Proposes to Amend Required Disclosures under Regulation S-K

August 27, 2019

**On August 8, 2019, the Securities and Exchange Commission (the SEC) proposed amendments to update and modernize the required disclosures under Regulation S-K relating to a registrant's description of its business, legal proceedings, and risk factors. The SEC intends for such amendments to improve disclosures for investors, simplify compliance for registrants, and avoid duplicative disclosure. The proposed rules are in furtherance of the SEC's Disclosure Effectiveness Initiative, pursuant to which the SEC's Division of Corporation Finance is reviewing the disclosure requirements of Regulation S-K and Regulation S-X.**

The proposed amendments would revise the following Items of Regulation S-K: Description of Business (Item 101), Legal Proceedings (Item 103), and Risk Factors (Item 105). The proposed amendments would revise Regulation S-K to:

1. Item 101(a) (General Development of Business)

Provide a non-exclusive list of the types of information that a registrant may need to disclose, including transactions and events that may affect the company's operations, and require disclosure of a topic only to the extent such information is material to an understanding of the registrant's business;

Eliminate the five-year disclosure timeframe for disclosure under this Item (and eliminate the corresponding three-year disclosure timeframe for smaller reporting companies set forth in Item 101(h)) and instead require registrants to focus on disclosure of the information that is material to an understanding of the development of the registrant's business, without regard to a specified timeframe; and

For filings after a registrant's initial registration statement, require only an update of the general development of the business, focusing on material developments, if any, during the reporting period (for example, if the registrant's business strategy has changed during the period). The proposed amendments also require registrants to incorporate by reference and include a hyperlink to the most recently filed disclosure that would present a full description of the development of the business.

2. Item 101(c) (Narrative Description of Business)

Include the following non-exclusive list of disclosure topics, some of which are existing disclosure topics and some of which are new, which need only be disclosed to the extent they are material to an understanding of the registrant's business taken as a whole:

- Revenue-generating activities, products and/or services, and any dependence on key products, services, product families, or customers, including governmental customers;
- Status of development efforts for new or enhanced products, trends in market demand and competitive conditions;
- Resources material to a registrant's business, including raw materials and patents, trademarks, licenses, franchises and concessions held;

- 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;
- The extent to which the business is or may be seasonal;
- Compliance with material governmental regulations, including environmental regulations; and
- Human capital resources, including any human capital measures or objectives on which management focuses in running the business.

Note that the SEC is not proposing to amend the disclosure standards for smaller reporting companies regarding business development, description of business and other information set forth in Item 101(h)(1)-(6). Accordingly, smaller reporting companies may continue to provide a less detailed description of their business, consistent with the scaled disclosure requirements currently applicable for these companies.

### 3. Item 103 (Legal Proceedings)

Expressly provide that registrants may provide hyperlinks or cross-references to legal proceedings disclosure located elsewhere in the document in order to avoid duplicative disclosure; and

Raise the threshold dollar amount for disclosure of environmental proceedings with the government from \$100,000 to \$300,000.

### 4. Item 105 (Risk Factors)

Require a summary of the risk factor disclosures if the risk factor section exceeds 15 pages;

Revise the disclosure standard from the "most significant" factors that make a registrant's securities speculative or risky to the "material" factors; and

Require registrants to organize risk factors under relevant headings (which we note most registrants already do).

The SEC is seeking public comments on the proposed rules. Comments should be received on or before October 22, 2019.

If you have any questions about the proposed amendment to the rules, or the comment period, please contact any member of [Baker Donelson's Securities Team](#).