

TYPES NOT MAPPED YET August 15, 2019 | TTR not mapped yet | David J. Kaufman

Proposed changes to Regulation S-K impacting disclosures

The SEC proposed sweeping rule changes to enhance disclosures for investors and streamline compliance for public companies. These changes would impact the following fundamental Regulation S-K items:

- The development of the issuer's business (Item 101(a));
- The narrative description of the issuer's business (Item 101(c));
- Material legal proceedings (Item 103); and
- Risk factors (Item 105).

The proposed changes seek to make disclosures more readable and discourage repetitive and immaterial disclosures.

Item 101(a) would be amended to add a non-exhaustive list of the categories of disclosure that may need to be made, and would require disclosure only if the information is material to grasping the development of the business. This list would include events that may affect operations of the business, including material changes to the business strategy. Additionally, the Item, as proposed to be changed, would permit the issuer to provide only an update of the information in subsequent filings, with the inclusion of a link to relevant prior filings.

The changes to Item 101(c) would embrace a "principles-based" framework, permitting discussion of enumerated topics only to the extent material to the business. These topics would include, among others already listed in the Item, human capital resources and government regulation.

The amendments proposed to Item 103 would make it clear that the requirement can be satisfied by link or cross-reference to another part of the document, to cut down on repetitive disclosures. The instructions to the Item, which currently require the inclusion of environmental proceedings involving the government where the amount at stake is at least \$100,000, would be amended to increase this threshold to \$300,000.

Item 105, as currently in effect, requires issuers to provide a discussion of the "most significant" risk factors involved in an investment in the issuer's securities. The proposed rule would change the standard from the "most significant" factors to "material" ones. It would also require the factors to be grouped under relevant headings, with risks generally applicable to any investment in securities to be grouped together at the end. Additionally, if an issuer's risk factor discussion were to exceed 15 pages, it would be required to include a summary risk factor disclosure.

Comments on the proposed rules are due 60 days after it is published in the Federal Register, which is likely to yield a due date in mid-to-late October. If the proposed rules become final, it seems unlikely—but not impossible—that the changes would be effective prior to the filing of the Form 10-Ks for the fiscal year ended December 31, 2019.

These new rules could have broad implications for public company disclosure. These issues should work closely with their legal counsel to take advantage of these new pronouncements and ensure that their filings comply with all applicable SEC rules.

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