

# Memorandum

## SEC Proposes Further Modernization of Regulation S-K

August 19, 2019

In its newest step towards disclosure modernization, the SEC has [proposed amendments](#) to three disclosure areas where it considers the rules to be outdated and/or overly prescriptive. These areas include the description of business, legal proceedings and risk factors. In most respects, the new rules would be more principles-based, giving more flexibility to management to tailor disclosures based on what is material to the business. With respect to legal proceedings disclosure, the SEC has proposed to retain the prescriptive disclosure framework to promote comparability among companies and to make easier to determine when information must be disclosed. The proposed amendments are summarized below.

The proposed amendments to the description of business and legal proceedings disclosure will affect only domestic issuers and foreign private issuers that have elected to file on domestic forms. In contrast, the proposed amendment to risk factors disclosure will affect both domestic companies and foreign private issuers filing registration statements on Forms F-1, F-3, and F-4. Form 20-F risk factor disclosure, however, is not currently proposed to be modified (although the SEC has requested comment on this point).

### **Description of Business—Eliminate Prescribed Timeframe and Adopt Principles-Based Approach**

- Require principles-based disclosure of information material to an understanding of the general development of the business without reference to a specific timeframe.
- Following a company's initial registration statement, the proposed amendments would expressly permit a company to provide only an update of material developments in the reporting period along with a hyperlink to the previous disclosure that, together with the update, would contain the full discussion of the general development of the business.
- The proposed amendments would also add an additional requirement to disclose, to the extent material to an understanding of the company's business, material changes to a company's previously disclosed business strategy (but there would be no requirement to disclose strategy in the first instance).

## Description of Business—Clarify and Expand Principles-Based Approach

- Non-exclusive list of disclosure topics based on a subset of topics currently contained in the rules. Disclosure would only be required to the extent material to an understanding of the business taken as a whole.
- New topics would include a description of the company’s human capital resources, such as measures or objectives that address the attraction, development, and retention of personnel, and the material effects of compliance with material government regulations, not just environmental laws.

## Legal Proceedings—Replace Outdated Dollar Threshold

- Consistent with wide-spread practice, the proposed amendments expressly state that the required information may be provided by including hyperlinks or cross-references to legal proceedings disclosure located elsewhere in the document, such as the financial statements footnotes.
- Revise the \$100,000 threshold for disclosure of environmental proceedings to which the government is a party to \$300,000 to adjust for inflation.

## Risk Factors—Incentives to Limit Lengthy and Generic Risk Disclosures

- Require summary risk factor disclosure if the risk factor section exceeds 15 pages.
- Change the disclosure standard from the “most significant” factors to the “material” factors.
- Require risk factors to be organized under relevant headings, with any risk factors that may generally apply to any company or any securities offering disclosed at the end of the risk factor section under a separate “General Risk Factors” caption.

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