

Preparing for the 2021 Annual Report and Proxy Statement Season

January 29, 2021 Bruce Newsome, Matthew Fry

PRACTICES Capital Markets and Securities, Corporate

A significant number of recent updates to SEC disclosure obligations will be effective for the 2021 Form 10-K and proxy statement season. Below is a list of important items that public companies should consider for the upcoming reporting cycle. Note that this list is limited to SEC-required updates and does not cover other updates that should be taken into consideration, such as ESG disclosure, board composition, state laws regarding virtual and hybrid annual meetings and voting guidelines of proxy advisory firms and institutional investors, which are beyond the scope of this alert.

SEC Modernization of Business, Legal Proceedings and Risk Factors

The SEC adopted several amendments to Items 101, 103 and 105 of Regulation S-K which are currently in effect:

Description of Business; Reg. S-K Item 101

Development of Business. The amendments create a more flexible, principles-based approach by replacing the previously prescribed five-year timeframe (and three-year timeframe applicable to smaller reporting companies) with a materiality framework that requires disclosure of information material to an understanding of the general development of the business. Disclosure of developments is required only to the extent material to an understanding of the general development of the company's business. Companies that have already made an initial filing of a registration statement are further permitted to provide only an update on – rather than a full discussion of – the general development of the business, if they incorporate by reference the full discussion and include a single hyperlink to the prior filing.

Human Capital Resources. The amendments also updated the non-exclusive list of topics that a company may disclose regarding its business. Perhaps most importantly, the amendments require that registrants, to the extent material to an understanding of an issuer's business, include a description of their human capital resources, including human capital measures or objectives that the registrant focuses on in managing the business. "Human capital" was purposefully left undefined because this concept will evolve over time and should be tailored to individual companies and industries. Companies are taking a wide variety of approaches on human capital resources disclosures as the human capital measures and objectives of each company vary significantly. Smaller reporting companies are not required to present human capital resources disclosure.

[Read the full alert here.](#)