

# The SEC Adopts Amendments to Further Simplify and Modernize Disclosure Requirements

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**PRACTICES** Capital Markets and Securities, Corporate

On March 20, 2019, the Securities and Exchange Commission (the “**SEC**”) adopted amendments to further simplify and modernize disclosure requirements applicable to public companies. The amendments are intended to reduce repetition of duplicative information, leverage advancements in technology and enhance the quality and accessibility of company disclosures. Among the more welcome of the updates is a streamlined approach to confidential treatment, which permits companies to redact information from certain exhibits without submitting a confidential treatment request. The confidential treatment amendments became effective upon publication of the final rule release in the Federal Register on April 2, 2019. Many of the other amendments, including amendments providing the flexibility to exclude the earliest of three years of discussion in MD&A and omit attachments to material agreements, become effective on May 2, 2019.

While many of the updates reduce or simplify disclosure obligations, registrants should note that several of the amendments entail additional disclosure requirements, including: changes to the cover pages of Exchange Act forms to require disclosure of trading markets and ticker symbols; hyperlinking requirements for information incorporated by reference into registration statements, prospectuses and reports; and the requirement to file a description of securities as an exhibit to annual reports on Form 10-K.

These amendments are in addition to the SEC’s disclosure simplification amendments that became effective in November 2018.

The full text of the final rule may be accessed [here](#). A copy of our alert concerning the SEC’s disclosure simplification update that became effective in November 2018 is available [here](#).

## Selected Amendments

The following table, which is not intended to be comprehensive, summarizes certain of the more significant amendments to Regulation S-K and related rules and forms:

Rule	Amendment Summary
<b>Description of Property</b>  Reg. S-K Item 102	Amendments allow registrants to provide disclosure concerning a physical property only if such property is material to the registrant.
<b>MD&amp;A</b>  Reg. S-K Item 303	Amendments allow registrants to generally exclude the earliest of three years of comparative financial results in MD&A if they have included the discussion in any prior filing on EDGAR and that discussion is not necessary to an understanding of the registrant’s financial condition, changes in financial condition and results of operations. Registrants excluding the discussion of the earliest year based upon these amendments

must identify the location in the prior filing where the omitted discussion may be found.

Further, the amendments remove the instruction requiring registrants to present data in a year-over-year comparison format, instead allowing registrants discretion to present this information in any way that enhances the reader's ability to understand the registrant's financial condition, changes in financial condition and operating results.

**Directors, Executive Officers, Promoters and Control Persons** Amendments clarify that identity and background information about executive officers is not required to be repeated in proxy or information statements if such information has already been included in the registrant's Form 10-K.

Reg. S-K Item 401

**Beneficial Ownership Reporting Compliance** Amendments permit and encourage registrants not to provide disclosure for delinquencies under Section 16(a) if the registrant has no delinquencies to report. The amendments also change the caption from "Section 16(a) Beneficial Ownership Reporting Compliance" to "Delinquent Section 16(a) Reports."

Reg. S-K Item 405

In addition, the amendments eliminate the checkbox on the cover page of Form 10-K where a registrant indicates whether there are any Section 16 delinquencies to report.

**Corporate Governance** Amendments modify several corporate governance disclosure requirements listed in Item 407 of Regulation S-K.

Reg. S-K Item 407 (Items 407(d)(3)(i)(B) and 407(e)(5)) *Item 407(d)(3)(i)(B) – Audit Committee Report.* Amendments update an outdated reference to auditing standards to be referenced in the audit committee report and instead refer more broadly to the applicable requirements of the Public Company Accounting Oversight Board and the SEC.

*Item 407(e)(5) – Compensation Committee Report.* Amendments explicitly exclude emerging growth companies from the requirement to provide a compensation committee report.

**Outside Front Cover Page of the Prospectus** Amendments modify several disclosure requirements concerning the outside front cover page of prospectuses.

Reg. S-K Item 501(b) (Items 501(b)(1), 501(b)(3), 501(b)(4) and 501(b)(10)) *Item 501(b)(1) – Registrant Name.* Amendments eliminate instruction discussing when a name change may be required and related exceptions to that requirement.

*Item 501(b)(3) – Offering Price of Securities.* Amendments allow registrants to provide a cross-reference on the cover page to a more detailed description of the method for calculating the offering price of securities included later in the prospectus rather than including all of such information on the cover page.

*Item 501(b)(4) – Market for the Securities.* Amendments clarify rule to require disclosure of the principal United States market or markets for

securities being offered even if such market is not a national securities exchange, so long as the registrant actually sought and achieved a quotation on such market through a registered broker-dealer.

*Item 501(b)(10) – “Red Herring” Legend.* Amendments allow registrants to omit the portion of the “subject to completion” or “red herring” legend referring to state blue sky laws where such language would be inapplicable.

**Risk Factors**

Amendments delete enumerated risk factor examples and moves the risk factors disclosure rule from Item 503 to a new Item 105.

Reg. S-K Item 503(c)

**Plan of Distribution**

Amendments clarify Item 508 by defining “sub-underwriter” in Rule 405 as “a dealer that is participating as an underwriter in an offering by committing to purchase securities from a principal underwriter for the securities, but is not itself in privity of contract with the issuer of the securities.”

Reg. S-K Item 508

**Undertakings**

Amendments eliminate requirement to disclose undertakings required and described under Items 512(c) (warrant and rights offerings), 512(d) (competitive bids), 512(e) (incorporated annual and quarterly reports) and 512(f) (equity offerings of nonreporting registrants).

Reg. S-K Item 512

**Exhibits**

Amendments modify several disclosure requirements concerning exhibits, including confidential treatment requests.

Reg. S-K Item 601

(Items 601(a)(5), 601(a)(6), 601(b)(2), 601(b)(4) and 601(b)(10))

*Item 601(a)(5) – Schedules and Attachments.* Amendments allow registrants to omit schedules or attachments to their exhibits if such attachments do not contain material information and are not otherwise disclosed in the exhibit or disclosure document. However, the registrant must include a list briefly identifying the contents of omitted schedules and attachments.

*Item 601(a)(6) – Personally Identifiable Information.* Amendments codify the practice of allowing registrants to omit personally identifiable information from exhibits without the requirement to submit a confidential treatment request.

Items 601(b)(2) and (b)(10) – Filing of Redacted Agreements. Amendments allow registrants to omit confidential information in material contracts and certain other exhibits filed with the SEC without submitting a confidential treatment request if the information is (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed. However, registrants must still comply with existing procedural requirements related to identifying information that has been redacted from exhibits. In addition, the SEC will continue to selectively review redacted materials.

*Item 601(b)(4) – Description of Securities.* Amendments require registrants to provide the information required by Item 202(a)-(d) and (f) as a new exhibit to Form 10-K. This exhibit requires a brief description of the registrant’s registered capital stock, debt securities, warrants, rights, American Depositary Receipts and other securities. Previously, this information was only required to be filed within registration statements.

*Item 601(b)(10)(i) – Material Contracts Two-Year Lookback.* Amendments adopt a definition for “newly reporting registrant” and require only newly reporting registrants to file material contracts that were entered into within two years of the applicable registration filing. Under current requirements, the rule requires all registrants, including registrants with established reporting histories, to file material agreements for a two-year lookback period. All registrants will continue to be required to file material contracts that must be performed in whole or in part at or after the filing of the registration statement or report.

## **Incorporation by Reference**

Securities Act Rule 411; Exchange Act Rule 12b-23; and Forms S-1, S-3, S-11 and F-1

*Active Hyperlinks.* Amendment requires active hyperlinks to information on EDGAR if it has been incorporated by reference into a registration statement, prospectus or report. This will require registrants to include hyperlinks to Forms 10-K, 10-Q and 8-K and definitive proxy statements when those forms are incorporated by reference.

*Financial Statement Cross References.* Amendments prohibit registrants from responding to financial statement disclosure obligations by incorporating information by reference or cross-referencing other materials outside of the financial statements unless cross-references or incorporation by reference are expressly permitted in response to such disclosure requirements under applicable rule or regulation.

## **XBRL Tagging**

Forms 8-K, 10-Q, 10-K, 20-F and 40-F

Amendments require registrants to tag all filing cover page data in Inline XBRL.

## **Cover Page Data**

Forms 8-K, 10-Q, 10-K, 20-F and 40-F

Amendments require registrants to disclose on the cover page of forms the national exchange or principal U.S. market for their securities registered under Section 12(b) as well as the title of class and trading symbol of each such registered security.

## **Effective Dates of Amendments**

Amendments addressing redaction of confidential information in specified exhibits were effective as of April 2, 2019, when the final rule release was published in the Federal Register. All other amendments (excluding XBRL) become effective May 2, 2019.

Amendments addressing XBRL cover page tagging are subject to a three-year phase-in tied to the phase-in for Inline XBRL, as follows:

- Large Accelerated Filers – must comply for reports with fiscal periods ending on or after June 15, 2019
- Accelerated Filers – must comply for reports with fiscal periods ending on or after June 15, 2020
- All Other Filers – must comply for reports with fiscal periods ending on or after June 15, 2021

Depending upon the filing date and nature of the registrant, the amendments could impact reporting for the quarter ended March 31, 2019.

For additional information, including other changes to reporting requirements mandated by the final rule, please contact any member of Haynes Boone’s [Capital Markets and Securities Practice](#)

[Group.](#)