



March 27, 2019

## SEC Adopts “FAST Act” Disclosure Simplifications

On March 20, 2019, the SEC [announced](#) the adoption of final rules intended to modernize and simplify disclosure requirements for public companies under Regulation S-K and related rules and forms. The SEC [initially proposed](#) these rule amendments on October 11, 2017, as mandated by the 2015 Fixing America’s Surface Transportation Act (the “FAST Act”), which required the SEC to implement changes to Regulation S-K in the hopes of modernizing and simplifying its disclosure requirements. The adopted rules will comply with the FAST Act’s mandate by improving the quality and accessibility of disclosure in filings, clarifying ambiguous disclosure requirements, removing redundancies and leveraging the use of technology. These changes will no doubt save registrants’ time and money, with the added benefit of increasing investor access to information without reducing the availability of material information.

### Overview

While we encourage you to read the [full text](#) of the final rules, some of the more notable rule changes include the following:

- Item 102 of Regulation S-K has been revised to only require disclosure of a physical property to the extent that such property is material to the registrant’s business.
- Item 303(a) of Regulation S-K has been revised to (i) remove the requirement that discussion in the MD&A be formatted in a year-over-year comparison (allowing more flexibility in presentation) and (ii) allow a registrant that is including in a filing financial statements that cover three years to omit discussion in the MD&A of the earliest of the three years if it was already included in any prior filings.
- Item 405 of Regulation S-K has been revised to (i) clarify that registrants may rely on Section 16 reports filed on EDGAR to assess whether there are any Section 16 delinquencies to disclose; (ii) change the disclosure heading from “Section 16(a) Beneficial Ownership Reporting Compliance” to “Delinquent Section 16(a) Reports”; and (iii) encourage registrants to exclude this heading altogether when there are no delinquencies to report.
- Item 503 of Regulation S-K (risk factors) has been relocated to Item 105, and the list of example risk factors is being eliminated to emphasize the SEC’s principles-based approach to risk factor disclosure.
- Item 601(b) of Regulation S-K has been revised to allow a registrant to redact confidential information in exhibits without submitting a confidential treatment request to the SEC, so long as the information (i) is not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed. The SEC clarified that the same changes will extend to Item 1.01 of Form 8-K to the extent such exhibits are filed with the intention of being incorporated into future filings to satisfy Item 601(b)(10).

- Item 601(b)(4) has been revised to require that registrants attach as an exhibit to Form 10-K the information set forth in Item 202 (description of registrant’s securities).
- Item 601(a)(5) has been adopted to allow registrants to omit attachments to their material agreements if such attachments (i) do not contain material information and (ii) were not otherwise disclosed in the exhibit or filing itself.
- Item 601(a)(6) has been adopted to allow registrants to redact personally identifiable information from exhibits without submitting a confidential treatment request.
- Item 601(b)(10)(i) has been revised so that only “newly reporting registrants” are required to file as material contracts under Item 601 those contracts not made in the ordinary course of business that are “entered into not more than two years before such filing”.
- Rule 406 of Regulation S-T and Item 601(b)(104) to Regulation S-K have been adopted to require that registrants tag all form cover page data in Inline XBRL.
- Rule 411, Rule 12b-23, and Rule 0-4 and Securities Act Forms S-1, S-3, S-11, and F-1 have been revised to prohibit a registrant from causing its financial statements to cross-reference or incorporate by reference information contained outside the financial statements unless otherwise specifically permitted or required by other rules.
- Form 10-K’s cover page has been revised to eliminate the checkbox in which the registrant indicates that there is no disclosure of delinquent filers in the Form 10-K and, to the best of the registrant’s knowledge, such disclosure will not be included in a definitive proxy or information statement incorporated by reference.

### Timing

Generally, each of these final rules will be effective thirty days after it is published to the Federal Register. However, the final rules relating to the redaction of confidential information in certain exhibits will be effective immediately upon publication to the Federal Register, and the rules requiring that registrants tag data on the cover pages of certain filings are subject to a three-year phase-in period, with large accelerated filers required to begin compliance with the Inline XBRL requirements for fiscal periods ending on or after June 15, 2019.

### Additional Information

This legal update is merely a summary of the final rules adopted by the SEC and does not purport to be a complete discussion of all rule changes. Complying with the SEC rules and regulations is a complex task within an ever-changing environment. If you have questions about the final rules discussed above or the FAST Act, please contact your Kutak Rock attorney or one of the authors listed below. For more information regarding our practices, please visit us at [www.KutakRock.com](http://www.KutakRock.com).

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