



Updated as of September 9, 2020

## SEC Adopts Modernization Amendments to Regulation S-K

On August 26, 2020, the SEC adopted [final rules](#) to modernize and simplify disclosure requirements for public companies under Regulation S-K. The adopted rules amend Items 101(a), 101(c), 103 and 105 of Regulation S-K and will become effective 30 days after publication to the Federal Register (which has not occurred as of the date of this publication).

### Overview

Under the adopted amendments:

#### Item 101(a) (General Development of Business)

- Registrants need only disclose information that is “material” to an understanding of the general development of their business, eliminating the five-year and three-year (for smaller reporting companies) prescribed timeframes;
- Prescribed disclosure topics are replaced with a non-exclusive list of the types of information that registrants need to disclose to the extent material to an understanding of their business; and
- After initial filings, registrants may provide only an update of the general development of the business rather than a full discussion, to include only material developments that have occurred since the most recent full discussion (such update to incorporate the prior full discussion by reference).

#### Item 101(c) (Narrative Description of Business)

- A non-exclusive list of disclosure topic examples is now provided to clarify the principles-based approach to this Item;
- Registrants are required to disclose their “human capital resources” to the extent material to an understanding of their business, including any human capital measures or objectives they focus on in managing the business (examples to include measures and objectives that address the development, attraction and retention of personnel); and
- Registrants are required to disclose *all* material government regulations, not only the environmental regulation disclosure currently required.

#### Item 103 (Legal Proceedings)

- The required information about material legal proceedings may be provided by including hyperlinks or cross references to legal proceedings disclosed elsewhere in the filing (e.g., notes to financials, risk factors or MD&A); and
- The threshold for disclosure of environmental proceedings to which the government is a party is increased from \$100,000 to \$300,000; *provided, however*, that registrants are permitted to select a higher threshold that they determine is reasonably designed to result in disclosure of material environmental

proceedings, so long as the threshold does not exceed the lesser of \$1 million or 1% of the registrant's current assets.

#### Item 105 (Risk Factors)

- Filings that include risk factor sections exceeding 15 pages are required to include a summary risk factor section of two pages or less (i.e., bulleted or numbered list of principal risk factors);
- The disclosure standard for risk factors is changed from “most significant” factors to “material” factors, which is intended to focus registrants on only those risks reasonable investors would attach importance in making an investment or voting decision; and
- Risk factors will be required to be organized under relevant subsections (with headings), with any risk factors that may apply to an investment in securities generally disclosed at the end of the section under a separate caption.

#### **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, 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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