

SEC Adopts Amendments to Regulation S-K Items 101, 103, and 105

During an open meeting last week, the Securities and Exchange Commission (SEC) voted 3 to 2 to adopt amendments modernizing the description of business (Item 101), legal proceedings (Item 103), and risk factors (Item 105) disclosures that registrants are required to make pursuant to Regulation S-K. Chairman Jay Clayton highlighted in his opening remarks that the amendments are the product of the SEC's efforts to review and improve the disclosure framework. Chairman Clayton also highlighted the fact that it has been more than 30 years since the rules have been revised, noting that the world economy has changed significantly since the 1970s and 1980s when the rules were set. Chairman Clayton stressed that the amendments build upon the SEC's "materiality-based disclosure framework." Emphasizing an improvement in the rules that received his full support – that of increased focus on human capital disclosures - Chairman Clayton added, "human capital accounts for and drives long-term business value in many companies much more so than it did 30 years ago." Commissioners Allison Herren Lee and Caroline Crenshaw submitted dissenting votes stating that in failing to take up the matters of diversity and climate change risk, the amendments fail to address two issues modern investors consider in determining a company's long term sustainability.

Under the rule amendments, the SEC significantly revises public company business disclosure rules for the first time in more than 30 years. The amendments were crafted from a proposed rule released in August 2019 that was part of a comprehensive review by the SEC of the disclosure requirements per a study mandated by the JOBS Act.

In modernizing the rules, the SEC makes the following updates to Regulation S-K, among other things:

- Revise Item 101(a) by making the description of general development of business largely principles-based, requiring disclosure of information material to understanding the description, eliminating the prescribed five-year timeframe for the disclosure, and permitting a registrant to provide only updates on material developments of its business in filings after its initial filing.
- Revise Item 101(c) by making the narrative description of business less burdensome by "clarifying and expanding its principles-based approach," as well as specifically requiring the disclosure of material human capital resources including material human capital measures or objectives on which management focuses in managing the business and including in the regulatory compliance disclosure requirements all material government regulations, not just environmental.
- Revise Item 103 by expressly stating that legal proceeding disclosures may be provided by hyperlinks or cross-references to disclosures located elsewhere in the documents and providing for increased disclosure thresholds and flexible disclosure requirements related to environmental proceedings.
- Revise Item 105 to require that risk factor disclosures include a maximum two-page summary if the risk factors exceed 15 pages, are only those that are "material" as opposed to the "most significant" factors, and are organized under appropriate headings, as well as requiring that all risk factors related to investment in the securities be disclosed under a separate heading at the end of the risk factor section.

The amendments will be effective 30 days after publication in the Federal Register.



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