

SEC Adopts Amendments to Simplify and Update Disclosure Requirements

On August 17, 2018, the Securities and Exchange Commission (SEC) announced amendments to certain disclosure requirements that it views as “duplicative, overlapping, or outdated in light of other Commission disclosure requirements, US generally accepted accounting principles (GAAP), or changes in the information environment.” These amendments were adopted as part of the SEC’s efforts to implement the Fixing America’s Surface Transportation Act. The formal adopting release is available [here](#) and a “demonstration version” reflecting the text of the specific amendments is available [here](#). The amendments are effective 30 days after publication in the federal register.

Appendix A is a summary of the more significant disclosure changes adopted by the SEC. These changes primarily impact Regulation S-K disclosure requirements in periodic reports and registration statements, and also include several Regulation S-X disclosure requirements related to financial statements and certain requirements specifically related to REITs.

In addition to these changes, the SEC also removed multiple SEC disclosure requirements that it views as redundant or duplicative of other existing SEC, GAAP, or IFRS disclosure requirements. The eliminated items primarily encompass SEC Regulation S-X disclosure requirements that duplicate existing GAAP disclosures required in the financial statement footnotes. As such, the removal of these additional requirements will not result in any practical change to current disclosures. Summaries of the additional amendments to remove redundant or duplicative disclosure requirements can be found on pages 29-35, 60-61 and 77 of the [adopting release](#).

The SEC has deferred rulemaking on numerous other existing SEC disclosure requirements and has instead referred these items to the Financial Accounting Standards Board (FASB) to consider whether they should be incorporated into GAAP due to their significant overlap with existing GAAP requirements. The SEC has asked the FASB to complete this process, and determine whether to add the referred disclosure items to the FASB’s technical standard-setting agenda, within 18 months. The disclosure requirements referred to the FASB relate to, among other things:

- Foreign currency disclosures [Rule 3-20(d) of Regulation S-X];
- Repurchase and reverse repurchase agreements [Rule 4-08(m)(1) of Regulation S-X];
- Equity compensation plan disclosures [Rule 201(d) of Regulation S-K];
- Discounts on shares [Rule 4-07 of Regulation S-X];
- Income tax disclosures [Rule 4-08(h) of Regulation S-X]; and
- Major customers [Item 101(c)(1)(vii) and Item 101(h)(4)(vi) of Regulation S-K].

Additional disclosure items referred to the FASB for potential incorporation into GAAP are summarized on pages 93-97 of the [adopting release](#).

As part of its amendments, the SEC also deleted certain disclosure requirements that have become obsolete due to the passage of time (e.g., outdated cross-references or transition dates) and cleaned-up various non-existent or incorrect references and typographical errors.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Shelly Heyduk, an O'Melveny partner licensed to practice law in California, Robert Plesnarski, an O'Melveny partner licensed to practice law in the District of Columbia and Pennsylvania, and Sarah J. Levesque, an O'Melveny counsel licensed to practice law in California, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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Appendix A

Summary of Most Significant SEC Disclosure Amendments

Topic	Rule(s) Impacted	Exchange Act Forms Implicated ¹	Change / Amendment
Regulation S-K			
Research & Development Spend ²	Item 101(c)(1)(xi) [non-SRC] Item 101(h)(4)(x) [SRC]	Form 10-K Form 10	Eliminates the requirement to disclose the amount spent on R&D activities for all years presented in the report. Reasonably similar disclosures will continue to be required in the financial statement footnotes under US GAAP and IFRS.
Segments	Item 101(b) ³	Form 10-K Form 10	Eliminates the requirement to disclose in the “Business” section of the filing, for each segment of the registrant’s business, revenues from external customers, a measure of profit or loss, and total assets for the last three years. Also eliminates the requirement to restate in the “Business” section certain prior period information when reportable segments change and to discuss interim segment performance that may not be indicative of future operations. The changes have no effect on segment disclosures required in the MD&A and financial statements, and disclosures similar to those eliminated will continue to be required in the financial statement footnotes under US GAAP.
Geographic Areas	Item 101(d)(1)-(3)	Form 10-K Form 10	Eliminates the requirement to disclose in the “Business” section of the filing certain financial information by geographic area (or to provide a cross-reference to where such information appears in the financial statements). Also eliminates the requirement to describe in the “Business” section of the filing any risks attendant to the foreign operations of the registrant and any dependence on one or more segments upon such foreign operations. To ensure that issuers continue to assess whether a segment’s dependence on foreign operations implicates any known trends or uncertainties requiring disclosure in the MD&A section of the filing, the SEC has also amended the introductory

¹ This column lists only those Exchange Act forms applicable to US issuers. This column does not include Securities Act forms or forms applicable to foreign private issuers, which include, but are not limited to, Forms S-1, S-3, S-4, S-8, S-11, 20-F, 40-F, 6-K, F-1 and F-3.

² Item 5.C of Form 20-F and Item 7(a)(1)(iii) of Form 1-A, both of which required information similar to 101(c)(1)(xi) of Regulation S-K, were also deleted.

³ Item 7(b) of Form 1-A, applicable to Regulation A issuers, has also been amended to remove the requirement to cross-reference in the business description section to the issuer’s segment disclosures under US GAAP or IFRS. In addition, Item 3-03(e) of Regulation S-X has been eliminated because it is redundant with US GAAP with respect to segment disclosures required to be included in the financial statement footnotes.

Topic	Rule(s) Impacted	Exchange Act Forms Implicated ¹	Change / Amendment
			language in Item 303(a) to incorporate an express reference to “geographic areas.”
Geographic Areas	Item 101(d)(4) Item 303(b)	Form 10-Q Form 10-K Form 10	Eliminates the requirement of Item 101(d)(4) to disclose, when interim financial statements are presented, a discussion of the facts that indicate the three-year financial data for geographic performance may not be indicative of current or future operations. Instead, the introductory language in Item 303(a) has been revised to add an explicit reference to “geographic areas” to clarify that a discussion of geographic areas are required to be discussed in the MD&A pursuant to other existing requirements (e.g., Instruction 3 to Item 303(a) and Instruction 4 to Item 303(b)) if they are important to understanding a registrant’s ongoing business.
Seasonality	Instruction 5 to Item 303(b)	Form 10-Q Form 10	Eliminates the requirement to disclose in the MD&A for any interim period any seasonal aspects of the registrant’s business that have had a material effect upon its financial condition or results of operations. Disclosures conveying reasonably similar information continue to be required in the financial statement footnotes under US GAAP and other disclosure requirements in Item 303 require forward-looking disclosure in the MD&A to the extent the effects of seasonality may become material.
Ratio of Earnings to Fixed Charges & Preferred Stock Dividends and Related Computation ⁴	Item 503(d) Item 601(b)(12) ⁵	Form 10-K Form 10	Eliminates the requirement to disclose the historical and pro forma ratios of earnings to fixed charges and of combined fixed charges and preference dividends to earnings. Also eliminates the requirement to disclose or file, where applicable, the computation of the ratio calculation.
Frequency and Amount of Dividends	Item 201(c)(1)	Form 10-Q Form 10-K Form 10	Eliminates the requirement to narratively disclose the frequency and amount of cash dividends declared in narrative form. Instead, amended Rule 3-04 of Regulation S-X will now require disclosure of the amount of

⁴ Instruction 7 to “Instructions to Exhibits” of Form 20-F, which required foreign private issuers to disclose how any ratio of earnings to fixed charges presented in the filing was calculated, was also deleted.

⁵ Conforming amendments have also been made to Item 503(a) and Item 601(c) of Regulation S-K, Item 1010 of Regulation M-A and various Securities Act registration forms.

Topic	Rule(s) Impacted	Exchange Act Forms Implicated ¹	Change / Amendment
			dividends declared in interim periods in the financial statements and related footnotes.
Restrictions that Materially Limit Ability to Pay Dividends ⁶	Item 201(c)(1)	Form 10-Q Form 10-K Form 10	Moves the Regulation S-K requirement to disclose restrictions that currently or are likely to materially limit the registrant's ability to pay dividends (including restrictions on the ability of the registrant's subsidiaries to transfer funds to it in the form of cash dividends, loans or advances) and a Regulation S-X requirement to disclose certain dividend restrictions (Rule 4-08(d)(2)) to existing Rule 4-08(e)(3) of Regulation S-X, thereby requiring disclosure about dividend restrictions only in the financial statement footnotes.
Market Price Disclosure ⁷	Item 201(a)(1)	Form 10-K Form 10	Eliminates the requirement for registrants whose common equity is traded on an established public trading market to disclose the high and low sale prices for each quarter within the two most recent fiscal years and subsequent interim periods. Registrants must now disclose (i) the principal US market(s) where each class of common equity is traded and the trading symbol(s) used by the market(s) for each such class (or principal foreign public trading market(s) and applicable trading symbol(s) for foreign issuers), (ii) if its common equity is not traded on an exchange, that any over-the-counter quotations in such trading systems reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily reflect actual transactions, and (iii) if applicable, that it has no class of common equity traded on an established public trading market, the range of high and low bid information, if applicable, for each quarter for the last two fiscal years and any subsequent interim period and the source and nature of such quotations.
Public Reference Room	Item 101(e)(2) [non-SRC] Item 101(h)(5)(iii) [SRC]	Form 10-K Form 10	Eliminates the requirement to identify the SEC's Public Reference Reading Room and to disclose its physical address and phone number.

⁶ Item 10.F and Instruction to Item 14.B of Form 20-F, which require disclosure of dividend restrictions or limitations on the payment of dividends, have also been deleted because similar disclosures are required in the financial statement footnotes or another section of Form 20-F (Item 5.B.1(b)). Additional amendments to disclosure requirements related to restrictions on the payment of dividends and related items were also made to specified rules in Regulation S-X (Rules 1-02 and 4-08(e)).

⁷ Item 9.A.F of Form 20-F, which required information similar to Item 201(a)(1) of Regulation S-K, was similarly amended.

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Issuer's Internet Address	Item 101(e) [non-SRC] Item 101(h)(5) [SRC]	Form 10-K Form 10	The amended rule now requires <u>all</u> issuers to disclose their Internet addresses if they have one. The prior rule required this disclosure only for accelerated and large accelerated filers.
Warrants, Rights & Convertible Instruments	Item 201(a)(2)(i)	Form 10	Eliminates the requirement to disclose in a Form S-1 or Form 10 the amount of common equity subject to outstanding options, warrants or convertible securities, when the class of common equity has no established US public trading market. Reasonably similar (but slightly broader) disclosures continue to be required in the financial statement footnotes under US GAAP.
Invitations for Competitive Bids	Item 601(b)(26)	--	Eliminates the requirement to file as an exhibit to certain reports any form of communication that was an invitation for a competitive bid to be sent or given to any person.
Regulation S-X⁸			
Pro Forma Business Combination Information in Interim Financial Statements	Rule 8-03(b)(4) [non-SRC] Rule 10-01(b)(4) [SRC]	Form 10-K Form 10-Q Form 10	Eliminates the Regulation S-X requirement to disclose supplemental pro forma information (<i>i.e.</i> , pro forma revenue, net income, net income attributable to the registrant, net income per share and, for certain companies, income from continuing operations) about business combinations. US GAAP and Item 9.01 of Form 8-K will continue to require reasonably similar disclosures to those being deleted in Regulation S-X.
Derivative Accounting Policies	Rule 4-08(n) [non-SRC] Note 2(b) to Rule 8-01 [SRC]	Form 10-K Form 10-Q Form 10	Eliminates the Regulation S-X requirement applicable to derivative financial instruments and derivative commodity instruments to disclose, where material, the accounting policy; the criteria required to be met for each accounting method used; the accounting method used if those criteria were not met; the method used to account for terminations of derivatives designated as hedges or derivatives used to affect the terms, fair values or cash flows of a designated item; the method used to account for derivatives when the designated item matures, is sold, is extinguished, or is terminated; and how the derivative instruments are reported in the financial statements. ASC 815-10-50 under US GAAP continues to require reasonably similar information. The SEC also

⁸ In addition to the Regulation S-X amendments summarized in this Appendix, the SEC also removed multiple SEC disclosure requirements that it views as redundant or duplicative of other existing SEC or GAAP disclosure requirements. Summaries of these additional amendments can be found on pages 29-35, 60 and 77 of the [adopting release](#).

Topic	Rule(s) Impacted	Exchange Act Forms Implicated ¹	Change / Amendment
			referred to the FASB for potential incorporation into GAAP the requirement to disclose where in the statement of cash flows the effect of derivative financial instruments is reported.
Interim Financial Statements - Changes in Accounting Principles	Rule 8-03(b)(5) [non-SRC] Rule 10-01(b)(6) [SRC]	Form 10-Q Form 10	Eliminates the requirement to disclose the date of and reasons for any material accounting change in interim financial statements. US GAAP will continue to require disclosure of the accounting change in the period of the change.
Subsequent Events in Interim Financial Statements	Rule 8-03(b)(2) [non-SRC] Rule 10-01(a)(5) [SRC]	Form 10-Q Form 10	Eliminates the Regulation S-X requirement to disclose material events subsequent to the end of the most recent fiscal year. The requirements of Regulation S-K (<i>i.e.</i> , the requirement of Item 303(b) to disclose material changes in financial condition from the end of the preceding fiscal year) and US GAAP will continue to encompass similar disclosures.
Regulation S-X REIT-Specific Amendments			
Status as a REIT	Rule 3-15(b)	Form 10-K Form 10-Q Form 10	Eliminates the requirement that a REIT disclose in the financial statement footnotes its status as a real estate investment trust under applicable provisions of the Internal Revenue Code and the assumptions on which the REIT has relied in making or not making provisions for federal income taxes. The requirements of Regulation S-K (Items 101(a)(1), 503(c) and 303(a)(3)(ii)) will continue to encompass these disclosures.
Gains or Loss on Sale of Properties by REITs	Rule 3-15(a)(1)	Form 10-K Form 10-Q Form 10	Eliminates the requirement that a REIT present separately all gains and losses on the sale of properties outside of continuing operations in the income statement. US GAAP will continue to require disclosure of gains and losses on disposals that meet the definition of discontinued operations.
Undistributed Gain or Loss on Sale of Properties by REITs	Rule 3-15(a)(2)	Form 10-K Form 10-Q Form 10	Eliminates the requirement that a REIT include in its balance sheet the balance of undistributed income from other than gain or loss on the sale of properties and the accumulated undistributed net realized gain or loss on the sale of properties, as the disclosure does not provide meaningful information to investors and US GAAP requires a presentation of components of stockholders' equity.

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