

## SEC Adopts Amendments to Regulation S-K Business Description, Legal Proceedings and Risk Factors Disclosure Requirements

Continuing its program to modernize, simplify and improve the usefulness of disclosure by reporting companies to the investing public, the Securities and Exchange Commission (SEC) has amended the business description, legal proceedings and risk factor requirements under Regulation S-K, which have not been significantly revised in more than 30 years. Noting that these disclosure rules, in part, are prescriptive, in adopting these changes the SEC emphasized the principles-based aspect of the amended rules arising from the materiality standard that underlies their application.

Following are the most significant changes:

### S-K Item no.: 101(a) & (h)

**Item description:** general development of business

#### Description of change

Prescribed timeframe for disclosure is eliminated; reporting company may choose longer or shorter period than previously required, based on its assessment of materiality to investors.

Updating of this item can be limited to events occurring since the last full description of the general development of the business if a link to the report or registration statement containing that description is included in the updating disclosure. To prevent piecemeal disclosure, each update must include all changes occurring in all periods subsequent to the report or registration statement containing the latest full disclosure.



If a reporting company has previously included a description of its business strategy — as many issuers do in their initial public offering (IPO) prospectuses — it must report any material change in the strategy (but may avoid disclosing competitively harmful details if unnecessary to provide material information to investors).

### S-K Item no.: 101(c)

**Item description:** narrative description of business

#### Description of change

List of required disclosure topics is replaced with principles-based list of examples of similar topics.

Required disclosure added:

- Material effects of compliance with government regulations, including the estimated capital expenditures for environmental control facilities for the current fiscal year and material subsequent periods.
- Description of human capital resources and strategies tailored to the particular issuer's facts and circumstances.

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## S-K Item no.: 103

**Item description:** legal proceedings

### Description of change

Clarification that disclosure may be satisfied by hyperlink or cross-reference to legal proceedings disclosure elsewhere in the document — such as in Management Discussion & Analysis (MD&A), Risk Factors or a note to the financial statements — to avoid duplicative reporting.

Threshold of monetary sanctions for reporting environmental proceedings is raised to \$300,000, but reporting company may use higher threshold if the amount is included in the disclosure. In any case, minimum threshold is lower of \$1 million and 1% of current assets.

## S-K Item no.: 105

**Item description:** risk factors

### Description of change

Although the rules and the SEC have long stated that only risks specific to the reporting company should be included in its risk factors and generic risk factors should be excluded, the SEC has recognized that some reporting companies ignore that directive. Accordingly, the amendments to risk factors disclosure requirements include:

- Summary of risk factors required if risk factors exceed 15 pages; summary cannot exceed two pages.
- Risk factors must be organized under relevant headings in addition to the subcaptions that are currently required.
- Risks that could apply generally to any company or offering of securities must be set forth at the end of the risk factors section under the caption General Risk Factors.

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