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SEC Seeks Comment on Reg S-K Business and Financial Disclosure Requirements

The Securities and Exchange Commission has issued a concept release seeking comments to modernize the business and financial reporting requirements of Regulation S-K, the foundation of business and financial disclosure in periodic reports. Under the Jumpstart Our Business Startups (JOBS) Act and Fixing America's Surface Transportation (FAST) Act of 2015, the SEC is required to modernize and simplify the registration process for emerging growth companies and address duplicative, outdated or unnecessary disclosure.

In addition to responses to 340 numbered questions regarding specific items of Regulation S-K, the SEC is also seeking comment more generally on:

- Whether or how specific disclosures are important for investment and voting decisions.
- Whether current requirements appropriately balance costs and benefits of disclosure.
- Whether or how to modernize methods used to present, aggregate and disseminate disclosure.
- Whether sunset provisions or other means of determining or maintaining the efficacy of disclosure rules should be adopted.
- Whether disclosure should be adapted for varying audiences that may have, for example, different informational expectations or levels of business sophistication.
- Whether the SEC's materiality concept is appropriate.

Soliciting comment regarding virtually all Regulation S-K provisions applicable to U.S. domestic reporting companies (other than the executive compensation and corporate governance regimes and audit committee disclosures, which the SEC is reviewing separately), the SEC queried, among other things, how management's discussion and analysis might be improved; whether disclosure for smaller reporting companies and emerging growth companies is appropriately scaled or these concessions should be extended to other classes of issuers; whether exhibit requirements and related confidential treatment procedures are appropriate; whether environmental, social and governance (ESG), political spending, risk management process disclosure or industry-specific key performance indicators (KPIs) should be required; and whether quarterly reporting should be made more or less frequent.

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In addition, the release seeks input on improving the readability and navigability of disclosure documents generally and related aspects of information technology, including regarding use of a company's website for disclosure, XBRL (eXtensible Business Reporting Language) and formatting reports to enhance readability.

Comments are due July 21, 2016.

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