

LEGAL UPDATES AND NEWS

Update for SEC Disclosure Requirements

The Securities and Exchange Commission (the “SEC”) recently adopted amendments to further modernize and simplify the disclosure requirements for filings submitted to the SEC. These changes are part of the SEC’s initiative, mandated under the FAST Act, to review its disclosure requirements and modernize and simplify the disclosure and compliance obligations of SEC reporting companies, which includes changes made late last year that are generally applicable to Annual Reports on Form 10-K (see our newsletter regarding the earlier changes, [available here](#)). Most of the changes resulting from the current amendments will become effective on May 2, 2019 (except for changes related to the redaction of confidential information, which became effective on April 2, 2019, and the new cover page XBRL tagging requirements, which are subject to a three-year phase in, depending on the company’s SEC filer status, as described below).

MD&A Disclosure

The disclosure required in the Management’s Discussion and Analysis (“MD&A”) section of documents filed with the SEC have been amended so that SEC registrants that currently provide three years’ of financial statements need only provide discussion for the two most recent years in the MD&A section rather than for three years. A Company may take advantage of this change if it provided discussion regarding the earliest of the three years in an earlier filing with the SEC and identifies the location in the prior filing where such discussion can be found.

Exhibits

The amendments will result in multiple changes to Item 601 of the SEC’s Regulation S-K, which governs the disclosure requirements for exhibits to SEC filings.

Omission of Certain Information Provided in Exhibits

The SEC has eliminated its previous requirement that a company submit a confidential treatment request if it wishes to redact information from a material contract or acquisition agreement that is included as an exhibit to a filing with the SEC. Instead, companies are now allowed to redact confidential information from such exhibits, provided the information would likely cause competitive harm if publicly disclosed and is not material; however, the SEC staff is expected to monitor redactions and may request that a copy of the unredacted agreement be submitted to the staff and that written analysis supporting the redactions also be submitted.

SEC filers will now be able to omit schedules and/or attachments to a filing’s exhibit on a greater range of exhibits, provided the schedule or attachment does not contain material information not otherwise disclosed in the exhibit or disclosure document. Under the SEC’s previous disclosure rules, such omissions were only available for schedules and attachments to

exhibits that were organization-changing agreements (such as acquisition agreements), but they will now be available for all exhibits filed with the SEC under Item 601 of Regulation S-K.

The SEC is also codifying its current practice of allowing companies to redact personal information from exhibits, such as persons' bank account numbers, social security numbers and home addresses, if disclosure of such information would be an unwarranted invasion of personal privacy.

Fully Performed Contracts

Material contracts will now only need to be provided as exhibits to a filing with the SEC if the contract must be performed in whole or in part at or after the filing. This is more limited than the previous requirement to file every material contract entered into within two years prior to the filing. This change will not apply to a "newly reporting registrant" (generally, a company that (1) is not subject to the SEC's reporting requirements at the time of filing, (2) has not filed an annual report since reviving a previously suspended reporting obligation or (3) is a shell company), which must continue to file all material contracts entered into within two years prior to the filing.

Section 16 Reporting Compliance

Section 16 persons will no longer be required to furnish Section 16 reports to the registrant. Reporting companies will now be permitted to rely on filings made with the SEC by Section 16 persons to determine whether any disclosure will be needed regarding delinquencies in Section 16 filings. The disclosure heading for this section in filings with the SEC should be changes from "Section 16(a) Beneficial Ownership Reporting Compliance" to "Delinquent Section 16(a) Reports" and reporting companies are encouraged to remove the heading from their filings if there are no reportable Section 16(a) delinquencies. In conjunction with these changes, the checkbox on the cover page of Annual Reports on Form 10-K indicating whether there is disclosure of delinquent filers should be removed.

XBRL

Certain filings with the SEC, including Forms 10-K, 10-Q and 8-K, will require Inline XBRL tagging of the information contained on the cover page of the form. This requirement will be phased in over a three-year period, which matches the phased-in timing of the SEC's requirement to tag periodic financial statements using Inline XBRL: (1) beginning with fiscal periods ending on or after June 15, 2019 for large accelerated filers that use GAAP, (2) beginning with fiscal periods ending on or after June 15, 2020 for accelerated filers that use GAAP, and (3) beginning with fiscal periods ending on or after June 15, 2021 for all other filers.

Other Changes

- **SEC Filings Cover Pages** – On the cover page of certain filings with the SEC, including Forms 10-K, 10-Q and 8-K, SEC filers will now be required to include information regarding the stock exchange on which any class of its securities is listed, the title of each class of its securities and trading symbols of such securities.
- **Incorporation by Reference** – Companies filing with the SEC will be required to hyperlink documents that they incorporate by reference into their filings. Furthermore, the

prohibition on the incorporation by reference of documents that have been on file with the SEC for more than five years is being lifted.

- **Emerging Growth Companies** – The SEC has clarified that since they are not required to provide a compensation discussion and analysis section, emerging growth companies do not need to provide a compensation committee report in filings where it would otherwise be required.
- **Description of Securities** – Until now, SEC filers have only been required to provide a description of their securities in a registration statement. Such description will now be required as an exhibit to the Annual Report on Form 10-K. This description can be incorporated by reference and hyperlinked from the registration statement.

Practical Considerations

These new amendments to the SEC’s rules and regulations are generally consistent with other recent changes that the SEC has implemented as part of its Disclosure Effectiveness Initiative. SEC filers should carefully review the disclosure they are providing in their filings with the SEC to take advantage of these changes to ensure that their filings are in compliance with the technical changes to the SEC forms. Furthermore, as we noted in our previous newsletter, companies should continue to be on the lookout for additional changes to the SEC’s disclosure requirements as the SEC continues to coordinate with the Financial Accounting Standards Board on changes related to GAAP.

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