



ALERT

SEC Issues Concept Release on Modernizing Regulation S-K

The SEC recently published a concept release seeking comments about how to modernize public companies' business and financial disclosures made in periodic reports and registration statements that are required by Regulation S-K.¹ The SEC's review focused on recommendations made in a report mandated by the Jumpstart Our Business Startups Act.²

Key Facts

- The SEC's Disclosure Effectiveness Initiative review included:
 - What information companies must disclose to comply with SEC rules;
 - How information is presented;
 - Where information is disclosed; and
 - How best to leverage technology.
- Through its review the SEC wants to:
 - Understand whether the current disclosures help investors make informed investment and voting decisions; and
 - Find out what changes to disclosure requirements would enhance the usefulness of information provided to investors and identify outdated or unnecessary disclosures.
- Comments are due July 21.

Key Impacts

- While the SEC's concept release does not immediately affect public company financial reporting, it may significantly impact future reporting.
- The SEC has not yet proposed changes to financial reporting requirements. Instead, it will review the comments before determining whether to update, modify, or remove disclosure requirements.

¹ [SEC Release No. 33-10064](#), Business and Financial Disclosure Required by Regulation S-K, available at www.sec.gov.

² [Report on Review of Disclosure Requirements in Regulation S-K As Required by Section 108 of the Jumpstart Our Business Startups Act](#), available at www.sec.gov.



It has been over 30 years since the SEC reorganized and expanded Regulation S-K to be its centralized source of nonfinancial statement disclosure requirements.

The concept release discusses the history of Regulation S-K and previous modernization initiatives and studies. It requests feedback on 340 questions related to the following areas.

Disclosure Framework

- Effectiveness of principles-based and prescriptive disclosure requirements
- Definition of disclosure materiality
- Audience for disclosures (presumed level of investor sophistication)
- Compliance and competitive costs of disclosures
- Benefits of disclosures for registrants and investors

Information for Investment and Voting Decisions

Description	Regulation S-K
Core company business information	<ul style="list-style-type: none"> • Item 101, Description of Business • Item 102, Description of Property
Company performance, financial information, and future prospects	<ul style="list-style-type: none"> • Item 301, Selected Financial Data • Item 302, Supplementary Financial Information • Item 303, Management's Discussion and Analysis of Financial Condition and Results of Operations
Risk and risk management	<ul style="list-style-type: none"> • Item 503(c), Risk Factors • Item 305, Quantitative and Qualitative Disclosures about Market Risk
Capital stock description and recent sales of unregistered securities of the registrant	<ul style="list-style-type: none"> • Item 201(b), Holders • Items 202, Description of Registrant's Securities • Item 701(a)–(f), Sales of Securities and Proceeds • Item 703, Purchases of Equity Securities by the Issuer and Affiliated Purchasers
Exhibit presentation and requirements	<ul style="list-style-type: none"> • Item 601, Exhibits • Item 601(b)(10), Material Contracts • Item 601(b)(18), Preferability Letter (for voluntary accounting changes)

Presentation and Delivery of Important Information

The SEC also is requesting information about how readability and navigability can be improved in filings, specifically related to the following items.

- Use of cross-referencing
- Hyperlinks
- Company websites
- Incorporation by reference
- Layered reporting
- Structured data
- Disclosure formats

Other Topics

- What are the cost and benefits of quarterly interim reporting, and should the frequency be reconsidered?
- Are disclosures about public policy and sustainability matters (e.g., climate change, resource scarcity, and corporate social responsibility) important to investors' decision making? Specifically, what information is useful, and what is the cost of these disclosures?
- Should scaled (reduced) disclosure requirements that are available to smaller reporting entities and emerging growth companies be expanded or eliminated, and should these scaled requirements be available to other categories of registrants?
- Are the disclosures in the industry guides useful, and should these be incorporated into Regulation S-K?

Contact us: This is a publication of KPMG's Department of Professional Practice 212-909-5600

Contributing authors: Melanie F. Dolan, Timothy M. Phelps, and Erin A. Balog

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