



# Defining Issues<sup>®</sup>

## SEC proposes changes to Regulation S-K

October 20, 2017

KPMG reports on the SEC’s proposal<sup>1</sup> to modernize and simplify disclosure requirements to reduce the burden on companies, including smaller companies conducting IPOs.

### Applicability

Public companies, including registered investment companies and registered investment advisers.

### Key facts and impacts

The SEC proposed changes to Regulation S-K and related rules and forms for domestic and foreign companies, excluding Canadian filers using Form 40-F.

The proposed rule was mandated by law and is also part of the SEC’s broader review of its disclosure framework, and would:

- update, streamline and simplify disclosure requirements by eliminating duplicate or immaterial disclosures;
- incorporate changes since the rule was adopted; and
- leverage technology to enhance access to information.

The SEC believes the proposed changes would reduce the costs imposed on preparers while continuing to provide investors access to information to make informed decisions, and therefore would promote an efficient capital market. Comments are due 60 days after its publication in the Federal Register.

Management’s Discussion and Analysis	
Current Regulation S-K guidance	Proposed changes
<ul style="list-style-type: none"> <li>— Discusses financial condition, changes in financial condition and results of operations <b>for the three-year period</b> covered by the financial statements.</li> </ul>	<ul style="list-style-type: none"> <li>— Limits the periods covered to the <b>two most recent fiscal years</b> presented in the financial statements if the earliest year:               <ul style="list-style-type: none"> <li>— is not material to understanding the financial statements; and</li> <li>— is included in the prior year Form 10-K or Form 20-F filed on EDGAR.</li> </ul> </li> </ul>

<sup>1</sup> [FAST Act Modernization and Simplification of Regulation S-K](#), Release Nos. 33-10425; 34-81851; IA-4791; IC-32858, October 11, 2017

## Management’s Discussion and Analysis

Current Regulation S-K guidance	Proposed changes
— Refers to five-year selected financial data where trend information is relevant.	— Eliminates reference to five-year selected financial data.

### KPMG observation

The SEC encouraged companies and management to take a “fresh look” at their MD&A to enhance the quality of the disclosures. Companies also were encouraged to use any presentation tailored to their circumstances that would enhance financial statement disclosure, rather than automatically using a year-to-year comparison.

Companies would not be required to hyperlink to the third year MD&A included in a previously filed annual report. This proposal is intended to discourage repetition of disclosures that are no longer material.

The SEC did not propose guidance about when a discussion of the third year would be material, but requested comments on whether it should allow companies to exclude the third year if there has been a material change due to a restatement or retrospective adoption of a new accounting principle in the financial statements.

This consideration may be particularly important as new accounting standards such as leases and revenue are adopted over the next two years.<sup>2</sup>

## Description of property

Current Regulation S-K guidance	Proposed changes
Disclose the location and general character of the principal plants, mines and other materially important physical properties of the company and its subsidiaries.	<ul style="list-style-type: none"> <li>— To the extent material, disclose the location and general character of principal physical properties.                             <ul style="list-style-type: none"> <li>— May disclose properties on a collective basis, if appropriate.</li> </ul> </li> <li>— No change for disclosures for the mining, oil and gas and real estate industries due to the material nature of these properties.</li> </ul>

### KPMG observation

The disclosure requirement had previously focused on ‘principal plants, mines and other important physical properties’. The proposed changes emphasize materiality and whether the properties are material to the business.

The proposed changes recognize the potential irrelevance of a physical property to certain types of businesses (e.g. service companies).

<sup>2</sup> ASC 606, Revenue from Contracts with Customers, and ASC 842, Leases

Exhibits and confidential information	
Current Regulation S-K guidance	Proposed changes
Companies may omit filing complete copies of exhibits, other than schedules or attachments that are relevant to investment decisions, for material plans of acquisition, reorganization, arrangement, liquidation or succession.	<ul style="list-style-type: none"> <li>Allows companies to omit complete copies, other than schedules or attachments that are relevant to a user's investment decision, for all filed exhibits.</li> <li>Limits the two-year look-back period for filing material contracts to newly reporting companies.</li> </ul>
Companies may omit information from material contracts if the information is both (i) not material and (ii) competitively harmful if they submit a confidential treatment request first.	<ul style="list-style-type: none"> <li>Companies may omit or redact confidential information (including personally identifiable information) from material contract exhibits without submitting a confidential treatment request.</li> <li>Expands disclosure requirements in the list of subsidiaries exhibit to include legal entity identifiers (LEIs),<sup>3</sup> if one has been obtained, for the company and each of its subsidiaries.</li> </ul>

**KPMG observation**

Currently the SEC requires companies that do not want certain information included in filed documents to be made public (e.g. negotiated royalties) to request confidential treatment.

The SEC proposed allowing companies to mark in a filed exhibit where information has been omitted without requesting confidential treatment. The SEC did not propose any changes about companies' responsibility to determine whether all material information has been disclosed and whether they can redact the information.

The SEC noted that exhibits would continue to be reviewed by SEC staff to determine whether the redactions appear to be appropriate.

If companies cannot support the redaction, the SEC staff may require the company to file an amendment to include the redacted information.

The proposal to include an LEI for the company and its subsidiaries is required only if an LEI has been obtained. An LEI is a 20-character, alpha-numeric code that allows for unique identification of entities in financial transactions.

The SEC believes that because LEIs are increasingly used there is a need to improve transparency by clearly identifying participants.

### Incorporation by reference

Under the proposed rule, companies must hyperlink to information incorporated by reference from previously filed documents (on EDGAR) to improve navigation within documents and reduce repetitive disclosures. They would no longer be prohibited from incorporating by reference documents that have been filed with the SEC for more than five years.

The proposed rule also would amend Form 10, Form 10-K and Form 20-F to allow companies to exclude item numbers and captions, as commonly required by Exchange Act forms, or create captions tailored to their disclosures.

This proposal would not affect captions required by the forms or Regulation S-K such as risk factors.

<sup>3</sup> [Identity, Identification and Identifiers: The Global Legal Entity Identifier System](#), November 8, 2016

©2017 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

## KPMG observation

Currently there is no prohibition on cross-referencing to or incorporating information from the financial statements to satisfy Regulation S-K disclosure requirements. The proposed changes would specifically prohibit companies from cross referencing and incorporating information from outside of the financial statements into their financial statements. This proposal addresses concerns about the scope of an auditor's responsibilities in an audit or review.

The proposed changes to Form 10, Form 10-K and Form 20-F would allow companies to exclude item numbers and captions. The SEC intends that this would reduce unnecessary cross referencing when the information being disclosed may apply to more than one disclosure item. The SEC does not believe that eliminating the item numbers and captions would interfere with clear disclosures, but instead would give companies flexibility to tailor disclosures and improve readability.

## Manner of delivery and tagging cover page data

Current Regulation S-K guidance	Proposed changes
Companies must file their financial statements as an exhibit using XBRL, and only a specific group of data points that appear on the cover page of a filing must be tagged in XBRL.	<ul style="list-style-type: none"><li>— Requires XBRL tagging of all cover page information of Form 10-K, Form 10-Q, Form 8-K, Form 20-F and Form 40-F.</li><li>— Would not apply to Form 20-F and Form 40-F when used as registration statements.</li><li>— Expands the guidance to require the cover page to include the ticker symbol for each class of securities registered, which also must be tagged in XBRL.</li></ul>

## Other changes

The SEC proposed other technical corrections to consolidate disclosures or eliminate obsolete requirements.

The SEC also proposed eliminating the risk factor examples in S-K Item 503(c) to encourage preparers to focus on specific material risks, and clarify that not all of the examples would need to be addressed if the risk is not significant.

## KPMG comments on other proposals

KPMG has commented on SEC proposals made as part of its Disclosure Effectiveness Initiative.

- [Business and Financial Disclosure Required by Regulation S-K](#) (File No. S7-06-16)
- [Disclosure Update and Simplification](#) (File No. S7-15-16)
- [Effectiveness of Financial Disclosures about Entities Other than the Registrant](#) (File No. S7-20-15)

## Contributing authors

Melanie F. Dolan; [Erin L. McCloskey](#); [Timothy M. Phelps](#)

## KPMG's Financial Reporting View

[kpmg.com/us/frv](http://kpmg.com/us/frv)

## kpmg.com/socialmedia



The descriptive and summary statements in this newsletter are not intended to be a substitute for the potential requirements of the proposed rule or any other potential or applicable requirements of the accounting literature or SEC regulations. Companies applying U.S. GAAP or filing with the SEC should apply the texts of the relevant laws, regulations, and accounting requirements, consider their particular circumstances, and consult their accounting and legal advisors. Defining Issues® is a registered trademark of KPMG LLP.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

©2017 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.