



Defining Issues[®]

SEC amends Regulation S-K disclosures

March 28, 2019

KPMG reports on the SEC’s amendments¹ to modernize and simplify disclosure requirements.

Applicability

Public companies, including registered investment companies and registered investment advisers. These amendments impact domestic and foreign companies, but they exclude Canadian filers using Form 40-F.

Key facts and impacts

The SEC approved a final rule that substantially adopts disclosure requirements that were proposed in October 2017.² The changes are part of the SEC’s broader review of its disclosure framework.

The changes are intended to:

- streamline and simplify disclosures;
- modernize rules that had not been recently updated; and
- leverage technology to enhance investors’ access to information.

The final rule also makes similar changes for investment companies and investment advisers.

The SEC believes the amendments will significantly reduce preparers’ time and costs while continuing to provide access to material information for investors.

Management’s Discussion and Analysis	
Rule	What changed?
Item 303 and Form 20-F	<ul style="list-style-type: none"> — Generally limits the periods covered to the two most recent fiscal years presented in the financial statements, if the earliest year is included in a prior EDGAR filing. — Companies that elect to not include a discussion of the earliest year must clearly identify where the omitted disclosure appears in a prior filing. — Eliminates reference to five-year selected financial data.

¹ FAST Act Modernization and Simplification of Regulation S-K, SEC Release Nos. 33-10618; 34-85381

² Proposed Rule, FAST Act Modernization and Simplification of Regulation S-K, SEC Release Nos. 33-10425; 34-81851, October 11, 2017; and KPMG’s Defining Issues No. 17-26, SEC proposes changes to Regulation S-K

KPMG observation

The changes to the requirement to present a third year in MD&A are intended to discourage repetition of disclosures, enhance the quality of presentation and reduce compliance costs and burdens. The amendments eliminate specific reference to a year-over-year comparison, which

the SEC stated may allow for a more tailored presentation. When material to the presentation in the current year, companies will still need to present the third year information. The SEC did acknowledge, however, that in many cases this information would not need to be repeated.

Description of property

Rule	What changed?
Item 102	<ul style="list-style-type: none">— To the extent material, disclose the location and general character of principal physical properties. A company may disclose properties on a collective basis, if appropriate.— However, no changes were made to disclosures for the mining, oil and gas and real estate industries due to the material nature of these properties.

KPMG observation

Even though the current rule limits disclosure to properties that are materially important, the SEC noted that this disclosure has not been consistently applied. The amendments reemphasize that management must consider how material the properties are.

The SEC's release cited the potential lack of importance of a physical property to certain types of businesses (e.g. service companies). The SEC amended its rule to achieve

greater consistency of disclosures in industries not specifically identified in the regulations.

Companies will also need to consider whether it might be more meaningful to disclose aggregated groups of properties.

The SEC did not change industry-specific property disclosure requirements, such as those for the mining, oil and gas and real estate industries, because of their significance and the unique considerations involved.

Confidential information in material contracts exhibits

Rules	What changed?
Items 601(a)(5) and investment company forms	Companies can omit complete copies, other than schedules or attachments that are relevant to a user's investment decision, for filed exhibits.

Confidential information in material contracts exhibits

Rules	What changed?
Items 601(b)(10) and 601(b)(2), and investment company registration forms	Companies can omit or redact confidential information (including personally identifiable information) from material contract exhibits without submitting a confidential treatment request, if the information is both: <ul style="list-style-type: none"> — not material; and — competitively harmful to the company if publicly disclosed.
Item 601(b)(10)(i)	Limits the two-year look-back period for filing material contracts to newly reporting companies. ³

KPMG observation

Consistent with the current rule, companies must indicate on exhibits whether information has been omitted, and if so that the criteria for omission have been met. They must also mark in the exhibit where information has been omitted.

The changes no longer require a company to request confidential treatment from the SEC staff, which can be burdensome.

With these amendments, the SEC emphasized that the changes are meant to drive efficiency,

and it believes significant time and cost savings will be achieved.

The SEC said that exhibits will continue to be reviewed by staff to determine whether the redactions are appropriate. If a company cannot support the redaction, the SEC staff may require that it amend its filing.

Additionally, the SEC codified that personally identifiable information from Item 601 exhibits can be omitted without requesting confidential treatment.

Incorporation by reference, including financial statements

The amendments⁴ address the concerns about the scope of an auditor's responsibilities in an audit or review.

Companies will be specifically prohibited from cross referencing and incorporating information outside their financial statements into their financial statements, unless otherwise specifically permitted or required by SEC rules or by the US GAAP or IFRS accounting standards.

Additionally, companies will be required to hyperlink to information incorporated by reference from previously filed documents on EDGAR to improve navigation within documents and reduce repetitive disclosures.

Companies are no longer prohibited from incorporating by reference documents that have been filed with the SEC for more than five years.⁵

³ As defined in the amendment to Instruction 1 of Item 601(b)(10)

⁴ Securities Act Rule 411(b)(4); Exchange Act Rules 12b-23(a)(3) and 12b-32; Investment Company Act Rule 0-4; and Regulation S-T Rules 102 and 105

⁵ A company is not permitted to incorporate by reference a destroyed document because its disclosure would be incomplete.

Manner of delivery and tagging cover page data

Forms	What changed?
10-K, 10-Q, 8-K, 20-F and 40-F	<ul style="list-style-type: none"> — Requires iXBRL tagging of all cover page information. — Does not apply to Form 20-F and Form 40-F when used as registration statements. — Expands the guidance to require that the cover page include the ticker symbol for each class of securities registered, which also must be tagged with iXBRL.

Disclosure	Change
Executive officer disclosures	Clearer instruction that these disclosures do not need to be duplicated, and requires a plain-English caption in the introduction.
Section 16 reports on EDGAR	Companies can rely on Section 16 reports, disclosing beneficial ownership greater than 10 percent, filed in EDGAR; changes the disclosures about individuals who failed to file such reports.
Emerging growth companies	Adds specific exclusions from Compensation Committee reporting requirements.
Prospectus cover page	Adds a requirement to reference, when applicable, where the method or formula to calculate share price is located, and disclose the national securities exchange and the trading symbol.
Risk factor examples in S-K Item 503(c)	Eliminates examples to encourage preparers to provide more meaningful information by focusing on specific material risks tailored to their circumstances.
Description of registered securities	Requires a description of registered securities compliant with Item 202 as an exhibit to Form 10-K, in addition to the description provided in the registration statements.
Schedules and attachments	Allows exclusion of schedules and attachments to exhibits that are not material to investors.

Effective dates

Amendment	Effective date
Redaction of confidential information in material contracts exhibits	On publication in the Federal Register.
iXBRL tagging the cover pages of certain filings	<ul style="list-style-type: none"> — Subject to a three-year phase in, depending on the filing status of the registrant. <ul style="list-style-type: none"> — Large accelerated filers using US GAAP: fiscal periods ending on or after June 15, 2019. — Accelerated filers using US GAAP: fiscal periods ending on or after June 15, 2020. — All other filers: fiscal periods ending on or after June 15, 2021. — Applies to the first Form 10-Q filing for a fiscal period ending on or after the applicable compliance date for domestic form filers. — Form 20-F and 40-F filers do not have quarterly reporting filing obligations and are not affected by this provision.
Certain investment company filings in HTML format with hyperlinks	For registration statements and Form N-CSR filings made on or after April 1, 2020. Early adoption is permitted.
Other amendments	30 days after publication in the Federal Register.

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KPMG's Financial Reporting View

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