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SEC Issues Final Ruling to Modernize and Simplify Regulation S-K

[AUDIT, PUBLIC COMPANIES](#)

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On March 20, 2019, the Securities and Exchange Commission (SEC) issued final amendments to various Regulation S-K items that are intended to simplify and modernize certain Regulation S-K disclosure requirements. With the release of the final amendments, the SEC hopes to reduce the costs and burdens on registrants while continuing to provide all material information to investors, improve readability and navigability of disclosure documents, and discourage disclosure of information that is clearly immaterial and repetitive within SEC filings. The focus of the amendments were on Description of Property (Item 102), Management's Discussion and Analysis (Item 303), Risk Factors (Item 503(c)), and Exhibits (Item 601).

Item 102 of Regulation S-K requires that registrants disclose the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. The final ruling explains that the registrant only needs to disclose information about physical properties to the extent that it is material to the registrant. The ruling leaves the decision up to the registrant to determine which properties deserve discussion based on entity-specific circumstances. The registrant's analysis and description of property may be on an individual or collective basis.

Item 303 of Regulation S-K requires that registrants discuss their financial condition, changes in financial condition and results of operations for each year presented by the financial statements. The final ruling now allows registrants who are providing financial statements covering a three-year period to omit the discussion of the earliest year presented. The omission is only allowed if such discussion was already included in prior filings on the Electronic Data Gathering, Analysis and Retrieval (EDGAR) database. If the registrant elects not to include the discussion of the earliest year, the registrant must clearly identify the location in the prior filing where the discussion may be found.

Item 503(c) of Regulation S-K requires disclosure of the most significant factors that make an offering speculative or risky. The final ruling moved the location to Item 105 of Regulation S-K and eliminated the specific risk factor examples. The SEC wants registrants to revisit and focus on their own, entity-specific, risk identification process rather than addressing each risk factor example that was previously included in Item 503(c), regardless of the overall significance to the registrant.

Item 601 of Regulation S-K requires registrants to file an exhibit of each of their material contracts entered into within the preceding two years. The final ruling permits registrants to omit confidential information from material contracts filed without the need to submit a confidential treatment request if the redacted information is not material and if the redacted information would likely cause competitive harm to the registrant if disclosed. Additionally, registrants now have the ability to omit personally identifiable information without having to first submit a confidential treatment request. Only newly reporting registrants

will be required to file material contracts that were entered into within two years of the applicable registration or report. Registrants with established reporting histories will no longer be subject to the two-year lookback requirement because investors will continue to have access to any material agreement through the EDGAR database.

The amendments are generally effective 30 days after their publication in the Federal Register

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