

Updates

April 29, 2019

SEC's FAST Act Disclosure Simplification Amendments Effective May 2

The Securities and Exchange Commission (SEC) [recently adopted rule amendments](#) to modernize and simplify certain disclosure requirements in Regulation S-K and related SEC rules and forms under the Securities Act of 1933, as amended (Securities Act), and the Securities Exchange Act of 1934, as amended (Exchange Act), as required by a mandate under the 2015 Fixing America's Surface Transportation (FAST) Act. The amendments will be effective on May 2, 2019, with the following exceptions: (1) the rules allowing companies to file redacted material contracts without submitting a confidential treatment request (CTR) were effective on April 2, 2019; and (2) the Inline XBRL requirements for cover pages will have a three-year phase-in that is consistent with the effective dates for Inline XBRL.

Some of the more impactful rule changes include:

- Cover pages for Forms 10-K, 10-Q and 8-K have been updated to require, for each class of exchange-listed securities, disclosure of (1) the title of the class, (2) the trading symbol and (3) the national exchange or principal U.S. market on which it is registered.
- For a filing containing financial statements covering a three-year period, discussion of the earliest of the three years may be omitted if it was included in a prior SEC filing.
- The heading for disclosure regarding compliance with Section 16(a) filing requirements has changed from "Section 16(a) Beneficial Ownership Reporting Compliance" to "Delinquent Section 16(a) Reports."
- Registrants are no longer required to submit a CTR prior to filing a redacted exhibit that is a material contract or a plan of acquisition, reorganization, arrangement, liquidation or succession, as long as the redacted information is not material and is likely to cause competitive harm to the company if publicly disclosed. The SEC also updated the process for extending the confidential term of previously granted confidential treatment orders, releasing a [one-page application form](#) in which the registrant must confirm that the most recently submitted CTR continues to be true, complete and accurate regarding the information for which the applicant is seeking extended confidential treatment.
- Registrants will be required to tag *all* cover page data in Inline XBRL on reports for fiscal periods ending on or after (1) June 15, 2019, for large accelerated filers, (2) June 15, 2020, for accelerated filers, and (3) June 15, 2021, for all other filers. (Those registrants that are already voluntarily filing forms in Inline XBRL need not comply with this requirement until they are required to comply with the Inline XBRL requirements.)

The table below summarizes the key amendments to the disclosure requirements of U.S. public companies (other than investment companies).

| Topic | Applicable Rule(s) | Applicable Form(s) or Filing(s) | Amendment(s) |
|--------------|---------------------------|--|---------------------|
|--------------|---------------------------|--|---------------------|

MD&A

Reg. S-K, Item
303(a) (Instruction
1)

Form 10-K;
Registration
statement

Exclusion of Earliest Year's Financials. When financial statements included in a filing cover a three-year period, registrants may now exclude the discussion in the MD&A of the earliest of the three years if it has already been included in a prior SEC filing, so long as the filing identifies where the discussion may be found in the prior SEC filing.

Tailoring the Presentation. Removed the explicit reference to year-to-year comparisons as the default format for the MD&A. Although registrants were already permitted to use other formats, this amendment indicates that the SEC does not view one mode of presentation as preferable to another.

Redactions. Registrants will be able to omit confidential information in material contracts and certain other exhibits, without submitting a CTR to the SEC, if the information is both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. Registrants must mark the exhibit index and exhibit to clearly show that the information is omitted.

2-year Lookback. Previously, registrants were required to file all material contracts not made in the ordinary course of business if (1) the contract would be performed in whole or in part after filing, or (2) it was entered into within two years before the filing. Now, only newly reporting companies need to look back two years for fully performed material contracts.

Schedules. Registrants may now omit entire schedules and similar attachments from *all* exhibits unless they contain material information or that information is otherwise disclosed in the exhibit or the disclosure document. This allowance previously applied only to schedules and attachments to plans of acquisition, reorganization, arrangement, liquidation or succession.

Personally Identifiable Information. Registrants may omit PII (e.g., bank account numbers, social security numbers, home addresses and similar information) from exhibits without making a CTR.

Description of Securities. Registrants must provide a description of their securities (i.e., the information required by Regulation S-K Item 202(a)–(d) and (f)) as an exhibit to Form 10-K.

Exhibits

Reg. S-K, Items
601(a) and 601(b)

Form 10-K;

Form 10-Q;

Form 8-K;

Registration
statement

5-year Sunset. Eliminated the prohibitions against incorporating documents that have been on file with the SEC for more than five years, which had previously been subject to broad exceptions.

Hyperlinking Information Incorporated by Reference. Eliminated the requirement that certain documents (or parts thereof) incorporated by reference in a filing be filed as an exhibit. Instead, filings will be required to include hyperlinks to such documents available on EDGAR.

Financial Statements. Prohibits registrants from incorporating by reference or cross-referencing information outside of the financial statements into the financial statements included in the filing.

Proxy vs. 10-K. Clarified that if *all* information required by Item 401 regarding the registrant's executive officers is included in Part I of Form 10-K, it does not need to be repeated in the registrant's proxy statement.

Caption. Revised the required caption for the Item 401 disclosure if it is included in Part I of Form 10-K from "Executive officers of the registrant" to "Information about our Executive Officers."

Copies of Section 16 Reports. Eliminated the requirement that reporting persons furnish copies of Section 16 reports to the registrant and clarified that registrants may rely on Section 16 reports that have been filed on EDGAR.

Caption. Changed the caption for Item 405 disclosure from "Section 16(a) Beneficial Ownership Reporting Compliance" to "Delinquent Section 16(a) Reports." The revised rule also encourages registrants with no delinquencies to report to exclude this caption entirely.

Cover Page of Form 10-K. Removed the checkbox on the cover page of Form 10-K relating to disclosure of Section 16 delinquencies.

Incorporation by Reference

Reg. S-K, Item 10(d);
Form 10-K;
Form 10-Q;
Form 8-K;
Registration statement

Reg. S-K, Items 601(b)(13) and (99)(ii); Securities Act Rule 411 and Exchange Act Rule 12b-23

Directors and Executive Officers

Reg. S-K, Item 401
Form 10-K;
Proxy statement;
Registration Statement

Compliance with Section 16(a) of the Exchange Act

Reg. S-K, Item 405;
Exchange Act
Section 16a-3(e)
Form 10-K

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|--|---|---|--|
| Properties | Reg. S-K, Item 102 | Form 10-K; Registration statement | Materiality. Clarified that disclosures regarding physical properties are required only to the extent that the properties are material to the registrant. |
| Risk Factors | Reg. S-K, Items 105 and 503(c) | Form 10-K; Form 10-Q; Registration statement | Examples. Eliminated the specific risk factor examples enumerated in Item 503 to discourage "boiler plate" risk factors. Relocated risk factor rule from Item 503(c) to Item 105. |
| XBRL | Reg. S-T, Rule 406 | Form 10-K; Form 10-Q; Form 8-K | Inline XBRL. Required tagging of <i>all</i> cover page data in Inline XBRL for registrants that are required to submit reports in Inline XBRL format. |
| Trading Symbol and Stock Exchange | Reg. S-K, Item 501(b)(4) | Form 10-K; Form 10-Q; Form 8-K | Stock Exchange. Required, for each class of exchange-listed securities, cover page disclosure of (1) the title of the class, (2) the trading symbol and (3) the national exchange or principal U.S. market. Form 10-K previously required disclosure of title and exchange, but Forms 10-Q and 8-K did not have such requirements. |
| Prospectus Cover Pages | Reg. S-T, Rule 406; Reg. S-K, Item 501(b)(1); Reg. S-K, Item 501(b)(4); Reg. S-K, Item 501(b)(10) | Form 10-K; Form 10-Q; Form 8-K; Registration statement; Prospectus | Offering Price. Where the offering price will be determined by a method or formula, registrants may state this clearly and refer to a more detailed explanation of the method or formula in the prospectus, rather than providing the full explanation on the cover page. |
| | | | Market for the Securities. Requires disclosure on the outside front cover page of the prospectus of the principal U.S. market or markets for the securities being offered. Previously, such disclosure applied only to securities listed on a national securities exchange registered with the SEC under Section 6 of the Exchange Act. |
| | | | "Subject to Completion" Legend. Permits registrants to exclude from the outside front cover page of the prospectus the portion of the "red herring" legend relating to state law for offerings that are not prohibited by state blue sky laws. |

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