

SEC ADOPTS SIMPLIFIED DISCLOSURE REQUIREMENTS

April 30, 2019

I. **Executive Summary:** On March 20, 2019, the U.S. Securities and Exchange Commission (“SEC”) adopted amendments to modernize and simplify its disclosure rules for reporting companies, investment advisors, and investment companies. The amendments to SEC Regulation S-K and associated rules and forms, which will become effective on May 2, 2019 (with exceptions stated below), thirty days after publication in the Federal Register, are expected to benefit investors by eliminating outdated and redundant disclosure and facilitating investor access to material information and ability to analyze it. The rule amendments should also benefit the reporting companies, investment advisors and investment companies themselves by relieving them of filing obligations that provide little benefit to investors. Finally, the amendments to the reporting company disclosure regime are part of an ongoing effort by the SEC to simplify and harmonize the patchwork of disclosure requirements across the entire securities regulatory regime.

II. The Regulation S-K Amendments.

- a. Omission of Schedules and Attachments. Regulation S-K Item 601(a)(5) is amended to permit the omission from filing by reporting companies of non-material schedules and attachments to all exhibits, not just acquisition agreements, as was the case previously.
- b. Redaction of Material Contract Exhibits. The Regulation S-K amendments to Regulation S-K Items 601(b)(2) and (10) permit reporting companies to redact confidential information (including personal data identification information, which should assist with European Union General Data Protection Regulation (“GDPR”) compliance) in commercial contracts annexed as exhibits to SEC filings without making a “confidential treatment request” and filing an unredacted copy of the contract as long as the redacted material is, in the companies’ judgment, not material (to investors) and would be likely to cause competitive harm if disclosed in the public filing. Redactions must be clearly labeled and indicated. The SEC may request the unredacted contract and the basis for the claims of lack of materiality and potential for competitive harm. An equivalent change is made for foreign private issuers reporting on Form 20-F.

- c. Two-Year Lookback for Material Contracts. Regulation S-K Item 601(b)(10) is amended to limit the two-year lookback required for filing material contracts not in the ordinary course of business to be performed on or after the report or registration statement filing or up to two years before the filing even if fully performed to newly reporting companies only. Not-in-the-ordinary-course-of-business material contracts that remain executory at or following the filing must still be filed by all reporting companies.
- d. Management's Discussion and Analysis of Financial Condition and Results of Operations. Regulation S-K Item 303 is amended to permit a reporting company to omit discussion of the earliest of the three fiscal years generally included in year-to-year comparison discussions if the company was required to provide that discussion in a prior filing. Companies are encouraged to use any presentation, including narrative form, that facilitates the reader's comprehension. A company omitting the earliest year discussion must identify where in the prior filing the discussion was made. An equivalent change is made for foreign private issuers reporting on Form 20-F. Companies making an initial public offering must still provide three years of MD&A comparison.
- e. Risk Factors. The Regulation S-K amendments relocate the disclosure of risk factors from Item 503(c) to a new Item 105. Enumerated "sample" or generic risk factors that many companies included whether relevant or not are eliminated to encourage more thoughtful, principles-based enumeration of significant risk factors.
- f. Incorporation by Reference. Incorporation by reference is only permitted when permitted by SEC Rules, U.S. GAAP (Generally Accepted Accounting Principles) or IFRS (International Financial Reporting Standards). Regulation S-K Item 10(d) is amended to allow incorporation by reference of filed documents further back than five years, which is currently prohibited. Reporting companies incorporating by reference will be required to provide the location of the incorporated information and give an EDGAR hyperlink for it.
- g. Description of Property. Reporting companies will be required by the Regulation S-K amendment to Item 102 to disclose only properties that are material, and may list them collectively when appropriate.
- h. Executive Officers. The Regulation S-K amendments provide that Item 401 disclosures about executive officers need not be made in proxy statements if already made on Form 10-K.

- i. XBRL Tagging of Forms. The Regulation S-K amendments require all cover page information on periodic and current reports to be presented and tagged with XBRL (eXtensible Business Reporting Language) links. This amendment will be phased in between June 15, 2019 and June 15, 2021 reports, depending on the size of the reporting company.
- j. Trading Symbols. The Regulation S-K amendments require the trading symbol and title for each class of the trading company's securities to be presented on the report's cover page.

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