



New Developments Summary

SEC amends disclosure requirements

Final rule simplifies and modernizes Regulation S-K

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The SEC recently adopted the [Final Rule, FAST Act Modernization and Simplification of Regulation S-K](#), to streamline and increase the utility of SEC filings while continuing to require issuers to disclose material information to investors. The Final Rule amends Regulation S-K largely consistent with the SEC staff's 2016 [Report on Modernization and Simplification of Regulation S-K](#) and the related [proposing rule release](#). Most of the amendments are effective on May 2, 2019 and will impact domestic issuers, foreign private issuers, investment companies, and investment advisers.

A. Key amendments

The [Final Rule](#) is intended to modernize and simplify Regulation S-K and includes amendments to a number of the SEC's rules and forms. In particular, the amendments to S-K Item 303, *Management's discussion and analysis of financial position and results of operations*, S-K Item 102, *Description of properties*, and S-K Item 503(c), *Risk factors*, are expected to reduce instances of repetitive or immaterial disclosure. In addition, the amendments to Regulation S-K, Item 601, *Exhibits*, permit entities to redact certain confidential information without submitting a confidential treatment request to the Commission, and are expected to result in increased efficiency and cost savings for registrants without substantially changing disclosure content.

The SEC highlighted certain amendments in a table on pages 9 and 10 of the Final Rule, as summarized below.

Rule	Summary description of amended rules
S-K Item 303 and Form 20-F, Item 5	Registrants will generally be able to exclude discussion of the earliest of three years in Management's Discussion and Analysis (MD&A) if they have already included the discussion in a prior filing.
S-K Items 601(b)(10) and 601(b)(2) and investment company registration forms	Registrants will be able to omit confidential information in material contracts and certain other exhibits without submitting a confidential treatment request to the Commission, so long as the information (i) is not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed.
S-K Item 601(b)(10)	Only newly reporting registrants will be required to file material contracts that were entered into within two years of the applicable registration statement or report.
S-K Item 601(a)(5) and investment company forms	Registrants will not be required to file attachments to their material agreements if such attachments do not contain material information or were not otherwise disclosed.
S-K Item 102	Registrants will need to provide disclosure about a physical property only to the extent that it is material to the registrant.

Forms 8-K, 10-Q, 10-K, 20-F and 40-F	Registrants will be required to disclose on the form's cover page the national exchange or principal U.S. market for their securities, the trading symbol, and the title of each class of securities.
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	Registrants will no longer be required to file as an exhibit any document or part thereof that is incorporated by reference in a filing, but instead will be required to provide hyperlinks to documents incorporated by reference.
Forms 10-K, 10-Q, 8-K, 20-F, and 40-F	Registrants will be required to tag all cover page data in Inline XBRL.
Regulation S-T Rules 102, 105, 201, 202, and 311; Form N-CSR; and investment company registration forms	Investment companies will be required to file reports on Form N-CSR and registration statements and amendments thereto in HTML format and to provide hyperlinks to exhibits and other information incorporated by reference.

Amendments that will likely impact financial reporting are discussed in further detail below. Due to the legal nature of many of the amendments, entities will find it beneficial to work with securities counsel in implementing the amendments.

B. Disclosure simplification

MD&A

The Final Rule includes several amendments to the instructions to S-K Item 303 to provide increased flexibility to registrants in the presentation of MD&A while continuing to require disclosure of all information necessary to understand the registrant's financial condition and results of operations.

The Final Rule amends Instruction 1 to Item 303(a) as follows:

- Permits registrants to omit the discussion of the earliest period presented when a filing includes financial statements covering three years, if such discussion has previously been included in an SEC filing. If a registrant takes advantage of this option, it must disclose in the current filing where users may find the omitted discussion, including the prior filing and location therein.
- Clarifies that registrants may use any presentation that they believe best enhances a reader's understanding of the entity's results and eliminates the reference to year-to-year comparisons to remove the implication that a year-to-year comparison is the most appropriate presentation.
- Removes the reference to S-K Item 301, *Selected financial data*, which generally requires tabular disclosure of selected financial data for the last five years. This reference was removed because S-K Item 303(a)(3)(ii) already requires disclosure of known trends and uncertainties.

The Final Rule includes conforming amendments to Form 20-F to maintain a consistent approach to MD&A for domestic registrants and foreign private issuers.



Grant Thornton insights: Amendments to MD&A requirements

Omission of the earliest year of MD&A

Entities considering whether to omit MD&A covering the earliest of the three years presented in the financial statements will need to consider whether, in some situations, such MD&A could be material information for investors. For example, the accounting guidance for certain events, such as a discontinued operation or a combination of entities that were previously under common control, may require prior period financial statements to be retrospectively revised. The revisions to S-K Item 303 do not indicate that registrants are precluded from omitting the discussion of the earliest period presented when the financial statements for that period have been retrospectively revised in the current filing. However, registrants in this situation that wish to omit the earliest period may want to consider if MD&A for the earliest period should be provided when revisions to the financial statements are material.

Alternative methods to present MD&A

As the Commission acknowledges in its adopting release of the Final Rule, many registrants will likely continue to use a year-over-year comparison because this presentation is familiar and appropriate in many cases. However, registrants are encouraged to take advantage of the flexibility to consider other forms of presentation. For example, some entities may conclude that it is more useful to provide an analysis of the periods presented on a discrete basis, rather than a year-over-year comparison. Such an analysis may be appropriate when, for example, one of the periods presented includes a significant acquisition or disposition and the periods presented are not comparable.

Other notable simplified disclosures

Description of property

S-K Item 102 requires disclosure about an entity's physical properties. However, the SEC observed that for certain entities, such as a technology company whose physical properties are limited to leased office space for its corporate headquarters and ancillary facilities, physical property may not be material to an investor's understanding of the entity.

The Final Rule amends S-K Item 102 to clarify that, for most industries, disclosure about a physical property is only required to the extent that the physical property is material to the registrant. The Final Rule also clarifies that S-K Item 102 disclosures may be provided on a collective basis when appropriate. In light of the significance of property disclosures for registrants in the mining, real estate, and oil and gas industries, the SEC did not amend any of the instructions of Item 102 for those industries.

Risk factors

Prior to May 2, 2019, S-K Item 503(c) included a list of example risk factors, such as a registrant's lack of operating history or lack of profitable operations in recent periods. To promote principles-based, entity-specific disclosures, the SEC removed the example risk factors from S-K Item 503(c) in the Final Rule.

Entities that have previously disclosed immaterial risks based on the example risk factors may consider removing or tailoring these disclosures, as appropriate.

C. New requirements

Expanded use of hyperlinks and Inline XBRL

To facilitate investors' access to information, the Final Rule requires all data points on the cover pages of Forms 10-K, 10-Q, 8-K, 20-F, and 40-F to be presented in HTML format and tagged using Inline XBRL. These forms were also amended to require registrants to disclose the national exchange or principal U.S. market for their securities, the trading symbol, and the title of each class of securities on the cover page.

The Final Rule includes several provisions related to the use of hyperlinks, as follows:

- The new requirement to hyperlink to information that is incorporated by reference if that information is available on EDGAR. The amendments also retain the requirement to describe the location of information incorporated by reference to mitigate the impact of inaccurate hyperlinks.
- The prohibition from incorporating by reference or cross-referencing disclosures outside of the financial statements into the financial statements, other than where expressly permitted by or required by the Commission's rules or by U.S. GAAP or IFRS Standards, as applicable.
- The clarification that registrants will still be permitted to hyperlink within a filing, subject to the preceding prohibition.

The Final Rule also includes amendments to several rules and forms applicable to investment companies and investment advisers in order to make the rules regarding incorporation by reference and hyperlinking consistent with that for operating companies.

Other notable new requirements

Description of registrant's securities

Prior to May 2, 2019, the disclosures required under S-K Item 202, *Description of registrant's securities*, were required only in registration statements. These disclosures require a description of the terms and investors' rights related to capital stock, debt securities, warrants and rights, and other securities and American Depositary Receipts.

The Final Rule adds a new exhibit to Form 10-K, required under amended S-K Item 601(b)(4), which requires the information required under S-K Item 202(a) through (d) and (f) to be filed as an exhibit to Form 10-K for each security registered under Exchange Act, Section 12. As a result, investors will be able to access a description of their rights as securities holders by referencing the registrant's most recent annual report.

Market for the securities

S-K Item 501(b)(4), *Market for the securities*, has historically required a registrant to disclose on the cover page of a registration statement or prospectus the name of any national securities exchange¹ that lists the securities being offered, as well as the trading symbols of those securities. To expand this disclosure to include markets other than a national securities exchange, such as over-the-counter (OTC) market, the Final Rule expands the scope of Item 501(b)(4) to “only the principal United States markets where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation.” Because registrants cannot always control whether their securities are quoted on an OTC market, the expanded scope is restricted to registrants that actively pursue quotation.

Entities with securities that are quoted on an OTC market may need to consider whether these securities fall within the expanded scope of S-K Item 501(b)(4) and whether they must present those disclosures on the cover page of a registration statement or prospectus.

D. Confidential information

S-K Item 601(b)(10) requires registrants to file certain material contracts as exhibits. Previously, in order to redact immaterial, sensitive information included in material contracts, registrants could request that the Commission grant confidential treatment.

Effective April 2, 2019, if a material contract includes information that is (1) immaterial and (2) would likely cause competitive harm to the registrant if publicly disclosed, registrants may redact the confidential information from the material contract without submitting a confidential treatment request to the SEC. In addition, personally identifiable information may also be omitted from material contracts without submitting a request for confidential treatment. The Final Rule also amends Form 20-F to maintain a consistent approach to the requirements for filing exhibits for both domestic registrants and foreign private issuers.

Under the amended rules, registrants continue to be required to mark² exhibits where confidential information has been redacted. The SEC staff will, in the course of filing reviews, evaluate whether the redaction of confidential information from exhibits is appropriate. If the staff determines information was inappropriately redacted it may require a registrant to file previously redacted information.

The staff of the SEC’s Division of Corporation Finance (CorpFin) issued an [announcement](#) to explain the new requirements regarding redacted information and CorpFin’s process to review filings for compliance with the new requirements. The announcement also provides guidance regarding transition issues related to confidential treatment request applications pending at the effective date of the new requirements.

¹ A “national securities exchange” is defined in the Exchange Act as a securities exchange that has registered with the Commission under Exchange Act, Section 6.

² See the requirements for marking exhibits subject to confidential treatment on pages 21 and 22 of the [Final Rule](#) and in the CorpFin announcement, [New Rules and Procedures for Exhibits Containing Immaterial, Competitively Harmful Information](#).

E. Effective dates

Other than as noted below, the amendments are effective May 2, 2019.

The amendments related to the redaction of confidential information were effective April 2, 2019.

The requirement to tag data on the cover page of certain filings in Inline XBRL is subject to a three-year phase-in, consistent with the phase-in of Inline XBRL. Accordingly, operating company filers are required to comply with the cover page tagging requirements beginning with the first Form 10-Q filed for a fiscal period ending on or after the applicable compliance date, as follows:

- Large accelerated filers that prepare their financial statements in accordance with U.S. GAAP are required to comply beginning with fiscal periods ending on or after June 15, 2019.
- Accelerated filers that prepare their financial statements in accordance with U.S. GAAP are required to comply beginning with fiscal periods ending on or after June 15, 2020.
- All other operating company filers are required to comply beginning with fiscal periods ending on or after June 15, 2021.

Certain amendments related to hyperlinking and HTML for investment company filings are effective for filings submitted on or after April 1, 2020. Earlier application is permitted.

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