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SEC Proposes Amendments to Regulation S-K Disclosure Requirements

Proposal Would Make Disclosures of Business and Risk Factors More Principles-Based and Update Certain Requirements for Disclosure of Legal Proceedings

SUMMARY

On August 8, 2019, the Securities and Exchange Commission proposed amendments to disclosures of business, legal proceedings and risk factors under Regulation S-K. The amendments are intended to improve the readability of disclosure documents for investors, to discourage repetition and disclosure of immaterial information and to simplify compliance for registrants.

PROPOSED AMENDMENTS

The proposed amendments are the latest stage in the Securities and Exchange Commission's ("SEC") ongoing evaluation of its Regulation S-K disclosure requirements. The SEC's proposal addresses several items of Regulation S-K, which have not undergone significant revisions in over 30 years. Notable proposals include:

- **Items 101(a) and (c) (Business).** Item 101(a) requires an issuer to describe the general development of its business during the past five years, or such shorter period as the issuer has been engaged in business. The SEC's proposal would eliminate the prescribed five-year timeframe for this disclosure and would permit an issuer, in filings made after its initial filing, to provide only an update that focuses on material developments during the reporting period, along with a hyperlink to the issuer's most recent filing containing this information. The hyperlink together with the update would contain the full discussion of the general development of the issuer's business. In addition, the SEC is proposing to make the rule more principles-based by providing a non-exclusive list of the types of information that an issuer may need to disclose, and by requiring disclosure of a topic only to the extent such information is material to an understanding of the general development of an issuer's business. The list of disclosure topics would include material bankruptcy, receivership,

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or any similar proceeding; the nature and effects of any material reclassification, merger or consolidation of the issuer or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and, to the extent material to the understanding of an issuer's business, transactions and events that affect or may affect an issuer's operations, including material changes to a previously disclosed business strategy.

The SEC's proposed amendments to Item 101(c) would (1) clarify and expand its principles-based approach by revising the list of disclosure topics to include only a subset of the topics currently contained in Item 101(c), (2) include human capital resources as a new disclosure topic, which would include any human capital measures or objectives that management focuses on in managing the business to the extent those are material to an understanding of the registrant's business, and (3) modify the regulatory compliance disclosure requirement to cover not only environmental regulations, but also other material government regulations.

- **Item 103 (Legal Proceedings).** The proposed revisions to Item 103 would:
 - expressly permit disclosure regarding material legal proceedings to be provided by including hyperlinks or cross-references to legal proceedings information located elsewhere in the document; and
 - update the \$100,000 threshold for disclosure of environmental proceedings to which the government is a party to \$300,000, in order to account for inflation since the \$100,000 threshold was originally set in 1982.
- **Item 105 (Risk Factors).** The SEC's proposals to amend Item 105 would:
 - require summary risk factor disclosure if the risk factor section exceeds 15 pages;
 - change the disclosure standard from requiring disclosure of the "most significant" risk factors to requiring disclosure of "material" risk factors; and
 - require risk factors to be organized by headings and require that any risk factors generally applicable to an investment in securities be disclosed at the end of the risk factor section under a separate heading.

Under the proposed amendments, conforming changes would also be made to Item 101(h), which is applicable to smaller reporting companies, in order to eliminate the three-year timeframe for describing the general development of their business. However, the requirement that a smaller reporting company must provide the same information for its predecessor(s), if it has not been in business for three years, would be retained.

The proposed amendments to Items 101 and 103 would only affect domestic registrants and foreign private issuers that have elected to file on domestic forms. By contrast, the proposed amendments to Item 105 would affect both domestic registrants and foreign private issuers filing on Forms F-1, F-3 and F-4.

NEXT STEPS

The proposed amendments are available on the SEC's website at <https://www.sec.gov/rules/proposed/2019/33-10668.pdf>. The public comment period will be open for 60 days after publication of the proposed amendments in the Federal Register.

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CONTACTING SULLIVAN & CROMWELL LLP

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CONTACTS

New York

Ari B. Blaut	+1-212-558-1656	blauta@sullcrom.com
Robert E. Buckholz	+1-212-558-3876	buckholzr@sullcrom.com
Catherine M. Clarkin	+1-212-558-4175	clarkinc@sullcrom.com
Donald R. Crawshaw	+1-212-558-4016	crawshawd@sullcrom.com
Robert G. DeLaMater	+1-212-558-4788	delamaterr@sullcrom.com
Robert W. Downes	+1-212-558-4312	downesr@sullcrom.com
John E. Estes	+1-212-558-4349	estesj@sullcrom.com
William G. Farrar	+1-212-558-4940	farrarw@sullcrom.com
John P. Mead	+1-212-558-3764	meadj@sullcrom.com
Scott D. Miller	+1-212-558-3109	milleresc@sullcrom.com
Robert W. Reeder III	+1-212-558-3755	reederr@sullcrom.com
Rebecca J. Simmons	+1-212-558-3175	simmonsr@sullcrom.com
William D. Torchiana	+1-212-558-4056	torchianaw@sullcrom.com
Benjamin H. Weiner	+1-212-558-7861	weinerb@sullcrom.com

Washington, D.C.

Robert S. Risoleo	+1-202-956-7510	risoleor@sullcrom.com
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Los Angeles

Patrick S. Brown	+1-310-712-6603	brownp@sullcrom.com
Alison S. Ressler	+1-310-712-6630	resslera@sullcrom.com

SULLIVAN & CROMWELL LLP

Palo Alto

Scott D. Miller	+1-650-461-5620	millersc@sullcrom.com
Sarah P. Payne	+1-650-461-5669	paynesa@sullcrom.com
John L. Savva	+1-650-461-5610	savvaj@sullcrom.com

London

Chris Beatty	+44-20-7959-8505	beattyc@sullcrom.com
Kathryn A. Campbell	+44-20-7959-8580	campbellk@sullcrom.com
Oderisio de Vito Piscicelli	+44-20-7959-8589	devitopiscicellio@sullcrom.com
John Horsfield-Bradbury	+44-20-7959-8491	horsfieldbradburyj@sullcrom.com
John O'Connor	+44-20-7959-8515	oconnorj@sullcrom.com
Evan S. Simpson	+44-20-7959-8426	simpsons@sullcrom.com

Paris

William D. Torchiana	+33-1-7304-5890	torchianaw@sullcrom.com
----------------------	-----------------	--

Frankfurt

Krystian Czerniecki	+49-69-4272-5525	czernieckik@sullcrom.com
---------------------	------------------	--

Sydney

Waldo D. Jones Jr.	+61-2-8227-6702	jonesw@sullcrom.com
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Tokyo

Izumi Akai	+81-3-3213-6145	akaii@sullcrom.com
Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com

Hong Kong

Garth W. Bray	+852-2826-8691	brayg@sullcrom.com
Ching-Yang Lin	+852-2826-8606	linc@sullcrom.com
Chun Wei	+852-2826-8666	weic@sullcrom.com

Beijing

Gwen Wong	+86-10-5923-5967	wonggw@sullcrom.com
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