SEC Adopts Disclosure Update and Simplification Rules

AUGUST 21, 2018

Last week, the Securities and Exchange Commission voted to amend disclosure requirements "that have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), or changes in the information environment." The final rule amendments, which primarily make fairly technical revisions to disclosure requirements under Regulations S-X and S-K, further the Division of Corporation Finance's initiative to improve disclosures for investors and issuers and were promulgated as part of the SEC's statutory mandate under the Fixing America's Surface Transportation (FAST) Act. As Chairman Clayton noted, the "amendments are an example of how thoughtful reviews can prompt changes for the benefit of investors, public companies, and our capital markets."

The final rule amendments are in part an outgrowth of the SEC's "disclosure simplification" initiative, which dates back to 2013. (See our June 30, 2016 and February 20, 2014 posts) While the final rule amendments are relatively consistent with the SEC's proposed rules that were released for comment in October 2017, the adopting release highlights a number of departures from the proposal. As an illustration of the dynamic in which the rule amendments were finalized, the adopting release describes the Financial Accounting Standards Board's (FASB's) decision in March 2018 not to amend U.S. GAAP to include a definition of materiality and to clarify that the historical view of how an issuer applies materiality has not changed. FASB's decisions in this regard addressed many concerns expressed by commenters on the proposed rule that were submitted prior to FASB's decision. As a result, the SEC was able to eliminate certain disclosure requirements in the final rule amendments, on the basis that U.S. GAAP does require the same or similar disclosures.

Perhaps most notably, with respect to certain disclosures that may overlap or duplicate U.S. GAAP, the SEC retained its current disclosure requirements and referred such disclosures to FASB for further review. The SEC has requested that FASB, within 18 months from the publication of the final rule amendments in the Federal Register, determine which referred disclosure items to add to its standard-setting agenda. The SEC indicated that it may revisit such disclosure matters in the future depending on the outcome of FASB's review. Some examples of disclosures referred to FASB include those with respect to foreign currency requirements for foreign private issuers, repurchase and reverse repurchase agreements, derivative accounting policies, and equity compensation plans.

With respect to certain other proposed amendments, the SEC decided to retain a number of disclosure requirements and *not* to refer such disclosures to FASB at this time, based on a further review and concerns expressed by commenters. As an example, the SEC had solicited comment regarding whether to retain, modify, eliminate or refer the requirement to disclose legal proceedings under Item 103 of Regulation S-K to FASB, which overlaps in part with obligations for issuers to disclose loss contingencies under U.S. GAAP, but, based on numerous commenters' concerns, decided to retain its disclosure requirement, concluding that further consideration is warranted with respect to the implications of potential changes to such requirements under U.S. GAAP and SEC rules.

The final rule amendments become effective 30 days from publication in the Federal Register, possibly becoming effective before the end of the third calendar quarter. To assist in understanding the adopted rule amendments and the disclosures referred to FASB for review, the SEC has provided a mark-up of its current rules. Looking forward, companies will want to review the placement of their existing disclosures and examine whether room exists to remove duplicative or overlapping disclosure in accordance with the final rule amendments. Further, companies will want to monitor developments from FASB over the next 18 months as additional disclosure simplification may be on the horizon.

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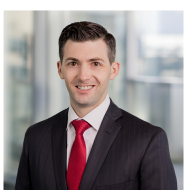

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