

SEC Proposes Amendments to Streamline Regulation S-K Disclosure Requirements

I. Background

The Securities and Exchange Commission (“SEC”) recently proposed amendments (“Proposed Amendments”)¹ to the disclosures currently required by Regulation S-K for public companies, investment companies and investment advisers.

The Proposed Amendments are based on the Staff’s report,² mandated by Section 72003 of the Fixing America’s Surface Transportation (“FAST”) Act,³ outlining specific Staff recommendations to simplify and modernize the Regulation S-K disclosure requirements. The purpose of the mandated amendments to the disclosures, according to the FAST Act, is to “further scale or eliminate requirements . . . to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors” and “eliminate provisions . . . required for all issuers, that are duplicative, overlapping, outdated, or unnecessary.”⁴

II. Highlights of the Proposed Amendments

While the Proposed Amendments largely mirror the recommendations contained in the Staff’s report, several changes were made.⁵ According to the SEC, the Proposed Amendments would, among other things:

- Revise rules and forms to update, streamline or otherwise improve the SEC’s disclosure framework by eliminating the risk factor examples listed in the disclosure requirement and revising the description of property requirement to emphasize the materiality threshold;
- Update rules to account for developments since their adoption or last amendment by eliminating certain requirements for undertakings in registration statements, including the Item 512(c), (d), (e) and (f) undertakings;
- Simplify disclosure or the disclosure process, including proposed changes to exhibit filing requirements and the related process for confidential treatment requests and changes to Management’s Discussion and Analysis that would allow for flexibility in discussing historical periods; and

¹ U.S. SEC. AND EXCH. COMM’N, FAST ACT MODERNIZATION AND SIMPLIFICATION OF REGULATION S-K, <https://www.sec.gov/rules/proposed/2017/33-10425.pdf>; See also “SEC Proposes Rules to Implement FAST Act Mandate to Modernize and Simplify Disclosure,” U.S. SEC. AND EXCH. COMM’N (October 11, 2017), <https://www.sec.gov/news/press-release/2017-192>.

² *Report on Modernization and Simplification of Regulation S-K* (Nov. 23, 2016), available at <https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf>.

³ Fixing America’s Surface Transportation Act (“FAST Act”), Pub. L. No. 114-94, 129 STAT. 1312.

⁴ FAST Act § 72002(1)-(2).

⁵ For example, the FAST Act report recommended that the SEC revise Item 303(a) to clarify that a registrant need only provide a period-to-period comparison for the two most recent fiscal years covered by the financial statements and hyperlink to the prior year’s annual report for the earlier of the year-to-year comparisons. However, in the proposal, the SEC proposes amending Item 303 to eliminate discussion of the earliest year in certain situations to discourage repetition.

CAHILL

- Incorporate technology to improve access to information by requiring data tagging for items on the cover page of certain filings and the use of hyperlinks for information that is incorporated by reference and available on EDGAR.

The SEC's proposal also includes parallel amendments to several rules and forms applicable to investment companies and investment advisers. These parallel amendments include proposed changes that would require certain investment company filings to include a hyperlink to each exhibit listed in the exhibit index and to submit each exhibit in HyperText Markup Language (HTML) format. The SEC is seeking public comment on the proposed rules for 60 days after they are published in the Federal Register.⁶

* * *

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Bradley J. Bondi at 202.862.8910 or bbondi@cahill.com; Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Kimberly Petillo-Décossard at 212.701.3265 or kpetillo-decossard@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Kaitlyn Pasco at 212.701.3859 or kpasco@cahill.com.

⁶ The Proposed Amendments has not been published in the Federal Register at the date of this Memorandum.