Cooley

SEC Adopts Final Rules to Modernize and Simplify Regulation S-K

April 30, 2019

On March 20, 2019, the SEC adopted, with a dissent by Commissioner Robert Jackson, changes to its rules and forms designed to modernize and simplify disclosure requirements. The final amendments, **FAST Act Modernization and Simplification of Regulation S-K**, which were adopted largely as originally proposed in October 2017, are part of the SEC's ambitious housekeeping effort, the Disclosure Effectiveness Initiative. The amendments are intended to eliminate outdated, repetitive and unnecessary disclosure, lower costs and burdens on companies and improve readability and navigability for investors and other readers.

The final amendments effect a number of useful changes, such as generally eliminating the need to include discussion in MD&A about the earliest of three years of financial statements, permitting omission of schedules and attachments from most exhibits, limiting the two-year lookback for material contracts, and streamlining the rules regarding incorporation by reference and other matters. They also impose some new obligations, such as a requirement to file as an exhibit a description of the securities registered under Section 12 of the Exchange Act and a requirement to data-tag cover page information and hyperlink to information incorporated by reference.

Certainly one of the most welcome changes is the SEC's innovative new approach to confidential treatment, which will allow companies to redact confidential information from exhibits without the need to submit in advance formal confidential treatment requests. This new approach became effective on April 2. The remainder of the final amendments will become effective on May 2, with the exception of new cover page data-tagging requirements, which are subject to a three-year phase-in.

(The final amendments also include certain parallel changes to investment company and investment adviser rules and forms, not discussed in this alert.)

Below is a slimmed down version of the table of changes that the SEC included in the adopting release:

Rule	**Summary description of amended rules**
Regulation S-K, Item 303 and Form 20-F	Registrants will generally be able to exclude discussion of the earliest of three years in MD&A if they have already included the discussion in a prior filing.

Rule	Summary description of amended rules
Regulation 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 is (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed.
Regulation S-K, Item 601(b)(10)	Only newly reporting registrants will be required to file material contracts that were entered within two years of the applicable registration statement or report.
Regulation 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.
Regulation 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 cover page the national exchange or principal US market for their securities, the trading symbol, and 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.

We have summarized below the principal changes resulting from the final amendments:

Management's discussion and analysis of financial condition and results of operations (Item 303)

Omission of earliest year discussion. Currently, in MD&A, companies generally provide two comparative year-to-year discussions of three annual fiscal years (*i.e.*, year 3 compared to year 2 and year 2 compared to year 1). Under the final amendments, where a company provides in its filing financial statements covering three years, the company may omit the MD&A

discussion of the earliest of the three years if that discussion was already included in any of the company's prior filings on EDGAR that required disclosure in compliance with Item 303 of Regulation S-K. A company electing to omit that earliest-of-three discussion must include a statement that identifies the location of the omitted discussion in its prior filing.

Note that this provision does not affect smaller reporting companies that limit their disclosure to the two-year period covered by their financial statements or emerging growth companies to the extent they provide only two years of audited financials in their IPO registration statements. Conforming changes are also included for foreign private issuers in Item 5 of Form 20-F.

Tailored presentations. Revised Instruction 1 now emphasizes that companies may tailor their presentations using any format that would enhance a reader's understanding, not solely year-to-year comparisons. However, the SEC does not expect the revision to have much impact and anticipates that many companies will continue to provide year-to-year comparisons as they have in the past.

Observations and commentary

- The final amendments reflect two significant changes from the proposal. The SEC had originally proposed to eliminate discussion of the earliest year on two conditions: the first condition was "(i) that discussion is not material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations." However, a number of commenters questioned how the "material to an understanding" condition would be interpreted and applied in practice and suggested that the uncertainty (and potential litigation risk) would cause some companies to be reluctant to omit the discussion of the earliest year "for fear that their judgment would be challenged." In response, the SEC deleted the first condition, but not without first making plain that the elimination was more in the nature of a clarification than of a substantive change. Emphasizing that "[m]ateriality remains, as always, the primary consideration," the SEC characterized the change as a recognition "that the language of the proposed condition was superfluous and never intended to modify, supplement, or alter the overarching materiality analysis that management must undertake with respect to the information it provides investors in MD&A." While a discussion of the prior year could, under some circumstances, be material,

  > "in many cases the entirety of the discussion of the earliest year that was presented in the MD&A of a prior filing would not need to be reiterated if, in management's view, that discussion is not necessary to understand the financial condition, changes in financial condition, and results of operations. This is the standard that applies to all of MD&A, and our amendments do not change that standard. A registrant's obligation is to provide investors with all material information, customized in light of the company's particular circumstances, and presented in a manner that best reflects the discussion and analysis of the business as seen through the eyes of those who manage that business. We continue to encourage registrants to take the opportunity to reevaluate their disclosure in light of these amendments and determine whether a discussion of the earliest year's information remains material. We believe these amendments underscore the continuing relevance of the Commission's guidance in the 2003 MD&A Release that 'it is increasingly important for companies to focus their MD&A on material information. In preparing MD&A, companies should evaluate issues presented in previous periods and consider reducing or omitting discussion of those that may no longer be material or helpful, or revise discussions where a revision would make the continuing relevance of an issue more apparent.'"

- Given that these discussions of the earliest year have already largely been written, the change will save space, but typically not much time or effort. The question that arises, however, is under what circumstances would companies view a discussion of the earliest year to be material and therefore include it in MD&A? In the proposal, the SEC had asked whether companies should be prohibited from excluding the earliest year "if there has been a material change to either of the two earlier years due to a restatement or a retrospective adoption of a new accounting principle." However, the SEC elected not to add that (or any other) condition that would preclude companies from omitting disclosure of the earliest year in specified situations, notwithstanding suggestions from some commenters. Although there are clearly no bright lines, nevertheless, the question still may provide an indication of the type of situation where companies may want to consider if the additional year could be material under their particular circumstances.
- The second condition originally proposed in connection with elimination of the earliest-of-three discussion was that the company has filed its prior year Annual Report on Form 10-K on EDGAR containing MD&A for that omitted year. The final amendments expand that second condition to allow companies to rely on *any* prior EDGAR filings that include the referenced discussion, not

just the prior Form 10-K, so long as the prior filing that includes the relevant discussion is clearly identified.

Exhibits (Item 601)

Confidential treatment. The SEC has adopted a new approach designed to significantly streamline the confidential treatment process as applied to Regulation S-K Item 601(b)(10), material agreements, and Item 601(b)(2), plans of acquisition. Under these new provisions, companies will be able to omit or redact from these exhibits confidential information that is not material and would likely cause competitive harm if publicly disclosed *without* having to submit an unredacted copy and formal confidential treatment request in advance to the staff, as is currently required. Instead, companies will simply mark the exhibit index to indicate that portions of the exhibit have been omitted, mark the filed exhibit with brackets to show specifically where information has been omitted and add a "prominent statement" on the first page of the redacted exhibit to indicate that marked information has been omitted from the exhibit because it is both (i) not material and (ii) would likely cause competitive harm to the company if publicly disclosed.

The SEC staff may, however, still request that companies provide, on a supplemental basis, an unredacted paper copy and supporting analyses regarding materiality and competitive harm. Using Rule 83, companies could request confidential treatment of the supplemental information provided while in the possession of the staff. If the staff determined that the supplemental rationale did not support the redactions, the staff may request that the exhibit be refiled to disclose additional information. After the staff has completed its review of the supplemental materials, the company *should request return or destruction* of the supplemental material submitted under Rule 418 or Rule 12b-4, as applicable. And, because the SEC would not retain an unredacted copy or supplemental materials, no CTR would be required for FOIA purposes.

This new approach is also being extended to certain exhibit-related requirements in specified disclosure forms for which Item 601(b)(10) does not apply, such as Form 20-F (for foreign private issuers), as well as Item 1.01 (entry into a material definitive agreement) of Form 8-K (to the extent exhibits are filed with the intent of incorporating them into future filings in satisfaction of Item 601(b)(10)).

Under special transition provisions, a company that has a confidential treatment request pending may withdraw its pending application. However, the SEC advises that the company should refile the exhibit in redacted form in an amended filing that conforms to the amended rules and coordinate with the Assistant Director responsible for reviewing the company's filings. The staff will continue to process, following established procedures, any pending CTRs that have not been withdrawn.

Omission of personally identifiable information. New paragraph 601(a)(6) codifies the current staff practice of allowing companies to omit personally identifiable information from exhibits without the need for a CTR. Personal identifying information is information the disclosure of which would be "a clearly unwarranted invasion of personal privacy (*e.g.*, disclosure of bank account numbers, social security numbers, home addresses and similar information)." Comparable provisions are being added to the exhibit requirements of Item 1016 of Regulation M-A.

Omission of schedules and attachments from exhibits (Item 601(a)(5)). Generally, companies are required to file complete copies of exhibits, including every single attachment, no matter how immaterial or irrelevant; only Item 601(b)(2) allows acquisition agreements to be filed without schedules or similar attachments if they are not material. New paragraph 601(a)(5) will likewise permit omission of schedules and similar attachments to other exhibits filed under Item 601, so long as they do not contain material information and the information is not otherwise disclosed in the exhibit or the disclosure document. Companies will instead be required to file with each exhibit (unless already otherwise included) a list briefly identifying the contents of the omitted schedules and would be required to furnish the omitted schedules supplementally upon request of the staff (although, unlike the current version of Item 601(b)(2), no *explicit agreement* to furnish them will be required). Comparable provisions are added to the exhibit requirements of Item 1016 of Reg M-A.

Limit the two-year look back for material contracts (Item 601(b)(10)(i)). Currently, companies are required to file every contract not made in the ordinary course of business if the contract is material and (i) to be performed after the filing of the registration statement or report *or* (ii) was entered into not more than two years before the filing, even if fully performed. The final amendments limit the application of the two-year look-back requirement for exhibits only to newly reporting companies (*i.e.,* companies that, at the time of filing, are not subject to 13(a) or 15(d) Exchange Act reporting requirements, certain shell companies and any company that has not filed an annual report since the revival of a previously suspended reporting obligation). The reason for the change is that companies that are already reporting companies will have previously filed those contracts, and they will be available on EDGAR.

Description of securities (Item 601(b)(4)). Currently, a description of securities is required (under Item 202 of Regulation S-K) only in registration statements. To increase ease of access to information about classes of securities, the final amendments require companies to file descriptions of their securities registered under Section 12 of the Exchange Act as exhibits to Form 10-K (Item 601(b)(4)). Note that, to the extent that a company has previously filed an exhibit to a Form 10-K containing the new required Item 202 disclosure, it could incorporate that exhibit by reference and hyperlink to the previously filed exhibit in future Form 10-K filings, assuming that the information remains unchanged. Existing disclosure obligations regarding modifications to the rights of security holders and amendments to charters and bylaws under Form 8-K and Schedule 14A remain in place, including the requirement to file a complete copy of any amended charter or bylaws. Under new Item 601(b)(4)(vi), any modifications and amendments during a fiscal year should also be reflected in the Item 202 disclosure provided in the exhibit, *even if not material*.

Foreign private issuers. Under the final amendments, foreign private issuers will be required to provide comparable information in exhibit filings for Form 20-F, but not Form 40-F.

Form 8-K. The final amendments add a number of the new exhibit-related provisions to Item 1.01 of Form 8-K, including new provisions regarding confidential treatment (to the extent exhibits are filed with the intent of incorporating them into future filings in satisfaction of Item 601(b)(10)), omission of schedules and similar attachments and omissions for personally identifiable information.

Observations and commentary

- It is important to note the emphasis in the adopting release that the amendments related to confidential treatment, "do not substantively alter registrant disclosure requirements – they do not affect the principles of what a registrant may or may not permissibly redact from its disclosure for reasons of confidentiality, nor do they change the fundamental disclosure obligations a registrant owes its shareholders under the federal securities laws. Rather, the amendments recognize that the administrative process by which registrants currently are permitted to protect confidential information in certain exhibits is not the most efficient way to serve investors' interests." In addition, the release cautions that the SEC and the staff retain the "prerogative to scrutinize the appropriateness of a registrant's omissions of information from its exhibits." Accordingly, companies may redact information only if it is not material and would likely cause competitive harm to the company if publicly disclosed. (Note that this standard is slightly different from the typical FOIA Exemption 4 standard, which was generally applicable to CTRs under the prior process, although the required analysis is largely the same.) With the admonition in the adopting release that no substantive change in the requirements for confidential treatment was intended, as well as its emphasis on the continuation of staff review, the SEC is making clear that it expects companies to adhere to the same obligations to narrowly frame the redactions, to have a defensible basis under the rules for the request and to observe any other requirements that continue to apply.
- In **this statement**, SEC Commissioner Robert Jackson voiced his dissent from adoption of the final amendments. One of reasons for his dissent was the "most troubling" decision regarding the confidential treatment process, which, in his view "removes our staff's role as gatekeepers when companies redact information from disclosures – despite evidence that redactions already deprive investors of important information." Historically, Jackson observes, companies work with the staff to agree on permitted redactions:

  > "There are often good reasons for our staff to permit redactions. But recent research shows that redactions *already*

> include information that insiders or the market deems material – showing how important careful review of these requests can be for investors. Today's rule removes both the requirement that firms seek staff review before redacting their filings and the requirement that companies give our staff the materials they intend to redact. The release doesn't grapple with the effects of that decision for the marketplace. But one thing is clear: In a world where redactions already rob the market of information investors need, firms will now feel more free to redact as they wish. And investors, without the assurance that redactions have been reviewed by our staff, will face more uncertainty."

- The new approach to confidential treatment will allow a company to avoid preparing and submitting the typical CTR letter exhaustively detailing its rationale for confidentiality at the time of submission of the exhibit, a process that can be time-consuming on the front end and can result in delays at the back end. However, given that the staff can still request that the company provide a formal supporting analysis, companies should keep a record of the reasons for each redaction and make sure that each redaction is appropriate and justifiable under the principles governing confidential treatment. We may see an enhanced effort by the staff to review these exhibits, including making requests for unredacted copies and supporting analyses, in the near term as it tests compliance with the new approach.
- If a company has previously received an order granting confidential treatment under a previously filed CTR and that order is about to expire, then, to continue to protect the confidentiality of the information post-expiration in the event of a FOIA request, in the past, the company would have needed to file an application for an extension under Rules 406 or 24b-2 prior to the order's expiration. Fortunately, to streamline the extension process, the staff has developed a new, one-page **short-form application**. The application requires the company to:
  - affirm that the information in the most recent CTR "continues to be true, complete and accurate" regarding the confidential information;
  - indicate whether the company is requesting an extension of an additional three, five or ten years;
  - provide a brief explanation to support the request; and
  - email the application to **CTExtensions@sec.gov**, which address should be used, as the name suggests, exclusively for CT extensions.
- Companies may want to consider, going forward, whether to change the language in their material agreements that permits disclosure of the agreement "as required by law," given that the staff will no longer be putting its imprimatur on the extent of the redactions. Instead, companies may want to include provisions that allow disclosure "as required by law or applicable rules, as determined by the company in good faith or upon the advice of counsel."

Description of property (Item 102)

Because the current rule sometimes elicits disclosure regarding property that is not really material, such as information regarding corporate headquarters or other office space, the final amendments clarify that disclosure regarding properties is required only to the extent that the property is material to the company and encourage each company to "engage in a comprehensive consideration of the materiality of its properties." The amendments also clarify that the disclosure "should focus on physical properties that are material to the registrant and may be provided on a collective basis, if appropriate." The revisions also harmonize some of the descriptors (other than the industry-specific descriptors) by providing a uniform standard of disclosure based on materiality.

Incorporation by reference and cross-referencing of information

Streamline rules. The final amendments streamline the current hodgepodge of rules associated with incorporation by reference, such as by rescinding Rule 12b-32 and including its substance in Rule 12b-23, and consolidating procedural incorporation rules into Regulations C and 12B.

Hyperlinks. The final amendments facilitate investor access to incorporated documents through the use of hyperlinks. Rule 411 and Rule 12b-23 are being amended to require hyperlinks to information that is incorporated by reference if that information is

available on EDGAR. Companies will be required to include, at the location of the information, an express statement clearly identifying the document where the incorporated information was originally filed or submitted and the location of the information within that document. Note that the requirements for hyperlinking of incorporated material are generally similar to the requirements for exhibit hyperlinking, including requiring documents that are subject to hyperlinking to be filed in HTML.

Elimination of five-year limitation on incorporation (Item 10(d)). Currently, under Item 10(d), incorporation beyond five years is prohibited, except for documents contained in registration statements and documents identified by file number. The final amendments eliminate the current five-year limitation, which, in light of the current electronic filing system, has become an anachronism. Instead, companies will now be required to describe the location of the information incorporated by reference and include hyperlinks to incorporated documents when filed on EDGAR.

In addition, the prohibition in Item 10(d) on incorporation of a portion of a document that itself also incorporates pertinent information by reference is being moved into other incorporation rules (Rule 411, Rule 12b-23).

No filing copies of incorporated information (Rule 12b-23 and Rule 411). The final amendments also eliminate another relic: the requirement in Rule 12b-23 (which applies to Exchange Act filings) and Rule 411 (which applies to Securities Act filings) to file as exhibits copies of any information incorporated by reference. Likewise eliminated is the corresponding exhibit requirement in Item 601, as well as the provision in Item 601(b)(13) that requires Forms 10-Q to be filed as exhibits when they are incorporated by reference into a filing (because hyperlinks to the incorporated information will now be required).

Incorporation into financial statements. The final amendments prohibit incorporation by reference or cross-referencing in the financial statements to information outside the financial statements *except* where otherwise specifically permitted or required by SEC rules or by US GAAP or IFRS as issued by the IASB, as applicable. The rationale for this prohibition is that incorporation or cross-referencing *into* the financials can raise questions as to the scope of the auditor's responsibilities, potentially creating confusion about the scope of the material that has been audited. The final amendments do not change the current rules on incorporation by reference *from* the financial statements *into* other filings or incorporation of financial information *from* other filings to satisfy financial reporting.

Observations and commentary

Although the requirements for hyperlinking to information incorporated by reference are similar to those for hyperlinking to exhibits, there are some key (and welcome) differences. Companies will not be "required to file an amendment to a document solely to correct an inaccurate hyperlink, unless that hyperlink was included in a *pre-effective* registration statement, similar to the existing requirements for exhibit hyperlinking. An inaccurate hyperlink alone would neither render the filing materially deficient nor affect a registrant's eligibility to use Form S-3, Form SF-3, or Form F-3." In contrast to exhibit hyperlinking, however, a company will not be "required to correct inaccurate hyperlinks to information incorporated by reference in an effective registration statement by including a corrected hyperlink in a subsequent periodic report or a post-effective amendment." That's because the SEC believes that correction in this context could just create confusion. By comparison, for exhibit hyperlinks, the "corrected hyperlink would be unobtrusively located in the exhibit index with other exhibits." In addition, the SEC believes, the requirement in the final amendments to "describe the location of the information incorporated by reference should mitigate the impact of any inaccurate hyperlinks."

Lightning round

The final amendments also included a number of more detailed changes to the rules and forms, designed to provide consistency and to update, streamline and rationalize the requirements.

Management, security holders and corporate governance

Directors, executive officers, promoters, and control persons (Item 401)

- Clarifies that instruction 3 to Item 401(b) (which allows disclosure of information about executive officers to be included in Part I of Form 10-K without requiring repetition in the proxy statement) applies to any executive officer disclosure required by Item 401 generally (such as the "bad boy" provisions of Item 401(f)) by making it a general instruction to Item 401; and
- Revises the Item 401 caption to read "Information about our Executive Officers."

Compliance with Section 16(a) of the Exchange Act (Item 405)

- Allows companies to rely on Section 16 reports filed on EDGAR (as opposed to only on paper) when assessing whether there are any Section 16 delinquencies that must be disclosed under Item 405;
- Eliminates the requirement for insiders to furnish Section 16 reports to the company on paper;
- Changes the caption related to Section 16 reporting delinquencies from "Section 16(a) Beneficial Ownership Reporting Compliance" to "Delinquent Section 16(a) Reports";
- Encourages companies to exclude the caption "Delinquent Section 16(a) Reports" when the company does not have Section 16(a) delinquencies to report; and
- Eliminates the checkbox on the cover page of Form 10-K relating to Item 405 disclosures and the related instruction in Item 10 of Form 10-K.

Corporate governance (Item 407)

- Changes the outdated auditing standard, AU section 380, *Communication with Audit Committees,* referred to in the Audit Committee Report, Item 407(d)(3)(i)(B), to refer instead to the applicable requirements of the PCAOB and the SEC (which is general enough to accommodate future changes)*;* and
- Revises Item 407(g) to clarify that, because an EGC is not required to provide a Compensation Discussion and Analysis, its compensation committee will not be required to provide a Compensation Committee Report, as would otherwise have been required by Item 407(e)(5) (stating whether it has reviewed and discussed the CD&A and whether it recommended to the board that the CD&A be included in the annual report or proxy statement).

Registration statement and prospectus provisions

Outside front cover page of the prospectus (Item 501(b))

Determination of offering price

- Permits the method of determining pricing to be disclosed in the prospectus elsewhere than on the cover page, provided that the company includes on the cover page a clear statement that the offering price will be determined by a particular method or formula that is described in the prospectus, along with a cross-reference to that disclosure and a page number highlighted by prominent type (similar to the cross-reference to "Risk Factors"); and
- Does not change the instruction regarding disclosure of the market and market price of the securities as of the latest practicable date for securities to be offered at market price, or where the offering price is to be determined by a formula related to market price.

Principal US trading market (Item 501(b)(4))

- Requires (in addition to the current requirement to disclose the national securities exchange where the securities are listed), for securities not listed on an exchange, disclosure of the principal US trading market or markets for the securities being offered, so long as the company, through the engagement of a registered broker-dealer, has actively sought and achieved quotation on

those markets; and

- Requires disclosure of the corresponding trading symbols.

Red herring legend (item 501(b)(10))

- Permits companies to exclude, where appropriate, from the red herring legend a statement regarding state law prohibitions if not applicable (*e.g.*, because of preemption of state blue sky laws under NSMIA, determined on an offering-by-offering basis).

Confusing company names (Item 501(b)(1))

- Eliminates the portion of the instruction to Item 501(b)(1) (which refers to misleading or confusing company names) that discusses when a name change may be required and the exception to that requirement.

Plan of distribution (Item 508)

- Amends Rule 405 to define a "sub-underwriter" as a dealer that is not itself in privity of contract with the issuer, but is participating as an underwriter in an offering by committing to purchase securities from a principal underwriter. Item 508 requires disclosure about the plan of distribution for securities in an offering, including information about underwriters, as well as a general statement if a dealer is paid any additional discounts or commissions for acting as a "sub-underwriter," currently an undefined term.

Undertakings (Item 512)

- Eliminates a number of undertakings as duplicative or obsolete, including Item 512(c) (warrants and rights offerings), (d) (competitive bids), (e) (incorporated annual and quarterly reports) and (f) (securities certificates).

Risk factors (Item 503(c))

- Relocates "Risk Factors" from Item 503(c) to a new, separate item (Item 105), to reflect the application of risk factor disclosure requirements to registration statements on Form 10 and periodic reports; and
- Eliminates the currently enumerated examples of possible risk factors included in Item 503 to reinforce the Item's principles-based approach, to encourage companies to focus on their own risk-identification processes and to avoid leading companies to believe they must address these factors, regardless of the significance to their specific businesses.

XBRL tagging

- Requires that all of the information on the cover pages of Form 10-K, Form 10-Q, Form 8-K, Form 20-F and Form 40-F appear in HTML format and be tagged in Inline XBRL (*i.e.,* embedded into the document);
- Requires companies to file with each of those forms a "Cover Page Interactive Data File";
- Requires the cover pages of these forms to include the trading symbol for each class of registered securities;
- Requires, for Forms 10-Q and 8-K, inclusion of the title of each class of securities and each exchange on which they are registered; and
- Provides for phased compliance dates for the requirements to tag data on the cover pages of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F in Inline XBRL. These dates are identical to the compliance dates for mandatory compliance with the Inline XBRL rules, and vary depending on the type of filer as set forth in the SEC's table below.

Operating companies	Compliance date

Operating companies	Compliance date
Large accelerated filers that prepare their financial statements in accordance with US GAAP	Reports for fiscal periods ending on or after June 15, 2019
Accelerated filers that prepare their financial statements in accordance with US GAAP	Reports for fiscal periods ending on or after June 15, 2020
All other filers	Reports for fiscal periods ending on or after June 15, 2021

Note, however, that domestic filers will be required to comply *beginning with their first Form 10-Q* for a fiscal period ending on or after the applicable compliance date, as opposed to the first filing for a fiscal period ending on or after that date. For example, "a Form 10-Q filer in the first phase-in group with a calendar fiscal year end will be required to begin compliance with its Form 10-Q for the period ending June 30, 2019. As a further example, a Form 10-Q filer in the first phase-in group with a June 30 fiscal year end will be required to begin compliance with its Form 10-Q for the period ending September 30, 2019."

Observations and commentary

The SEC did not adopt proposed amendments to Form 10, Form 10-K and Form 20-F to allow exclusion of item numbers and captions and to permit companies to create their own captions tailored to their disclosure. Likewise, the SEC did not adopt proposed amendments to Regulation S-K Item 601(b)(21)(i), requiring disclosure of legal entity identifiers ("LEIs") – 20-character, alpha-numeric codes that permit unique identification of entities engaged in financial transactions – if obtained, for the company and the significant subsidiaries identified on Exhibit 21, which seemed to be a favored project of former Commissioner Kara Stein. Interestingly, the other reason for Jackson's dissent was the failure to adopt the proposal to require disclosure of LEIs. In his view, the "financial crisis taught regulators that firms' complex structures made it impossible to identify the corporate entities responsible for risk-taking," and, to address that problem, "investors, market participants, and regulators around the world support" the LEI concept. Although the majority may view the LEI requirement as too expensive, he observed, "the costs of disclosing a 20-character code are unlikely to be meaningful. The *market* might impose a penalty upon companies that do not obtain an LEI and then disclose that fact. But giving investors information they need to price decisions like that is a benefit, not a cost, of our securities laws. Instead, the majority leaves investors wondering what the absence of an LEI disclosure means."

Key Contacts

Kenneth Guernsey San Francisco	kguernsey@cooley.com +1 415 693 2091
Chadwick Mills San Francisco	cmills@cooley.com +1 650 843 5654
Cydney Posner San Francisco	cposner@cooley.com +1 415 693 2132
Julia Boesch San Francisco	jboesch@cooley.com +1 415 693 2326