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Regulation S-K Amendments Promise FAST Relief for Advisers and Funds

By John I. Sanders and Lauren Henderson

On October 11, 2017, the SEC issued a [Proposed Rule](#) to modernize and simplify disclosure requirements in Regulation S-K.^[1] The Proposed Rule, authorized by the Fixing America's Surface Transportation Act (the "FAST Act"), is intended to reduce the costs and burdens on registrants while still providing investors with disclosures that are user friendly, material, and free of unnecessary repetition.^[2] The Proposed Rule, if adopted, would amend rules and forms used by public companies, investment companies, and investment advisers.^[3] The most notable provisions of the Proposed Rule include the following:

- Eliminating risk factor examples from Item 503(c) of Regulation S-K because the examples do not apply to all registrants and may not actually correspond to the material risks of any particular registrant;^[4]
- Revising requirements related to descriptions of property owned by the registrant in Item 102 of Regulation S-K to emphasize materiality;^[5]
- Eliminating undertakings that are unnecessarily repetitious from securities registration statements;^[6]
- Changing exhibit filing requirements and allowing flexibility in discussing historical periods in the Management's Discussion and Analysis; ^[7]
- Permitting registrants to omit confidential information (e.g., personally identifiable information and material contract exhibits) from Item 601 without submitting a confidential treatment request;^[8] and
- Using hyperlinks in forms to help investors access documents incorporated by reference.^[9]

The SEC will accept public comments on the Proposed Rule for sixty days before determining whether to issue a final rule or amend the proposal and seek additional public comment.^[10] We are hopeful the Proposed Rule will be well-received by all stakeholders and be finalized relatively quickly. We invite you to contact us directly if you have any questions about the SEC's Proposed Rule or Regulation S-K generally. **John I. Sanders and Lauren Henderson** are associates based in the firm's Winston-Salem office. ^[1] SEC, *SEC Proposes Rules to Implement FAST Act Mandate to Modernize and Simplify Disclosure* (Oct. 11, 2017), available at <https://www.sec.gov/news/press-release/2017-192>. ^[2] *Id.* ^[3] *Id.* ^[4] SEC, *Proposed Rule: FAST Act Modernization and Simplification of Regulation S-K*, Release No. 33-10425; 34-81851; IA-4791; IC-32858, available at <https://www.sec.gov/rules/proposed/2017/33-10425.pdf>. ^[5] *Id.* ^[6] *Id.* ^[7] *Id.* ^[8] *Id.* ^[9] *Id.* ^[10] *Id.*