

September 1, 2020

SEC Amends Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K

by [Victoria C. Liu](#)

On August 26, 2020, the Securities and Exchange Commission (SEC) adopted amendments to update the description of business (Item 101), legal proceedings (Item 103), and risk factor (Item 105) disclosures that registrants are required to make pursuant to Regulation S-K. The SEC press release announcing the amendments is available [here](#) and the final rule is available [here](#). The amendments will be effective 30 days after publication in the Federal Register.

The final amendments to Regulation S-K will, among other things:

- amend Item 101(a) to:
 - require disclosure of information material to an understanding of the general development of the registrant’s business, while also eliminating the previously prescribed five-year timeframe for such disclosure (similar amendments were also made to Item 101(h), to apply a materiality framework and eliminate the previously prescribed three-year timeframe for such disclosure by smaller reporting companies); and
 - permit a registrant to provide only an update of the general development of the business rather than a full discussion. The update must disclose the material developments that have occurred since the registrant’s most recent filing containing a full discussion of the general development of its business, and incorporate by reference that prior discussion;
- amend Item 101(c) to:
 - clarify and expand its principles-based approach, with a non-exclusive list of disclosure topic examples drawn in part from topics currently contained in Item 101(c). The disclosure topics from Item 101(c) that were retained, with some changes, as examples under the final amendments are: (1) principal products produced and services rendered, and dependence on certain customers; (2) new products and competitive conditions; (3) sources and availability of raw materials and intellectual property; (4) business subject to renegotiation or termination of government contracts; (5) seasonality of the business; and (6) the number of persons employed;
 - include, as a new disclosure topic, a description of the registrant’s human capital resources to the extent such disclosures would be material to an understanding of the registrant’s business. We note that the SEC chose not to define “human capital resources” because, as noted in the final rule

release, the term may evolve over time and may be defined by different companies in ways that are industry specific. While the final rule does list a few human capital measures and objectives that may be material, depending on the nature of the registrant's business and workforce, such as measures or objectives to address the attraction, development, and retention of personnel, the SEC emphasized in the final rule release that these were only examples and not mandates; and

- refocus the regulatory compliance disclosure requirement by including as a topic all material government regulations, not just environmental laws;
- amend Item 103 to:
 - expressly state that the required information may be provided by hyperlink or cross-reference to legal proceedings disclosure located elsewhere in the document to avoid duplicative disclosure; and
 - implement a modified disclosure threshold for certain governmental environmental proceedings resulting in monetary sanctions that increases the existing quantitative threshold for disclosure of those proceedings from \$100,000 to \$300,000, and allowing the registrant, at its election, to select a different threshold that it determines is reasonably designed to result in disclosure of material environmental proceedings, provided that the threshold does not exceed the lesser of \$1 million or one percent of the current assets of the registrant; and
- amend Item 105 to:
 - require summary risk factor disclosure of no more than two pages if the risk factor section exceeds 15 pages;
 - refine the principles-based approach of Item 105 by requiring disclosure of "material" risk factors that make an investment in the registrant or offering speculative or risky (as opposed to the most "significant" factors); and
 - require risk factors to be organized under relevant headings in addition to the subcaptions currently required, with any risk factors that may generally apply to an investment in securities disclosed at the end of the risk factor section under a separate caption.

We invite you to contact us directly if you have any questions regarding the description of business, legal proceedings, and risk factors disclosures under Regulation S-K.