SEC Adopts Amendments to Update and Simplify Disclosure Requirements

On August 17, 2018, the U.S. Securities and Exchange Commission ("SEC") announced the adoption of amendments to eliminate or modify certain disclosure requirements that are "redundant, duplicative, overlapping, outdated, or superseded" in light of other SEC disclosure rules, U.S. generally accepted accounting principles ("GAAP") or changes in the information environment.

The amendments are intended to update and simplify the disclosure of information to investors and reduce compliance burdens for companies without significantly altering the total mix of information available to investors.

The amendments are intended to update and simplify the disclosure of information to investors and reduce compliance burdens for companies without significantly altering the total mix of information available to investors. The amendments will become effective 30 days after the date of publication in the Federal Register, which is expected to occur shortly, and could affect the preparation of third quarter 2018 reports on Form 10-Q for calendar year-end companies.

The SEC is also referring certain disclosure requirements that overlap with GAAP, but require incremental information, to the Financial Accounting Standards Board ("FASB") for consideration for potential incorporation into GAAP. The SEC is requesting that FASB determine whether the referred disclosure items will be added to FASB's agenda for GAAP standard-setting within 18 months of publication of the adopting release in the Federal Register.

Background

The amendments are part of an initiative by the SEC's Division of Corporation Finance to review disclosure requirements and consider improvements for the benefit of investors and companies. The amendments are part of the SEC's efforts to implement the Fixing America's Surface Transportation (FAST) Act, which, among other things, requires the SEC to eliminate provisions of Regulation S-K that are duplicative, overlapping, outdated or unnecessary. The amendments are generally consistent with those proposed by the SEC in July 2016. Companies should expect additional changes in the future as part of the SEC's ongoing efforts to simplify and modernize disclosure requirements.

Summary of the Amendments

The summary below focuses on those amendments that are expected to be most relevant to the reporting obligations of U.S. public companies in periodic reports and prospectuses.

Segments Disclosure in the "Business" Section. Financial information about segments will no longer be required in the description of the business section because GAAP and SEC rules require similar disclosure in the notes to the financial statements and the MD&A section, respectively.

R&D Disclosure in the "Business" Section. The amount spent on R&D activities, if material, will no longer be required in the description of the business section because GAAP requires similar disclosure in the notes to the financial statements and SEC rules require disclosure of trend information related to R&D activities and expenses, where material, in the MD&A section.

Geographic Areas Disclosure in the "Business" Section. Financial information by geographic area will no longer be required in the description of the business section because GAAP requires similar disclosure in the notes to the financial statements. Similarly, disclosure of risks associated with a company's foreign operations and any segment's dependence on foreign operations will no longer be required in the description of the business section because it overlaps with disclosure intended to be included in the risk factors section and the MD&A section. The amendments add an express reference clarifying that "geographic areas" should be discussed in the MD&A section when a description would be appropriate to an understanding of the company's business.

Seasonality in Interim Reports. Seasonality disclosure will no longer be required in the body of interim reports, particularly in the MD&A section, because GAAP requires overlapping disclosure in the notes to the interim financial statements. Seasonality disclosure will continue to be required in the body of annual reports.

Market Price of Listed Common Equity. The high and low prices of common equity traded on an established public trading market will no longer be required to be disclosed because such information is now readily available on numerous websites. Companies will be required to disclose their trading symbols.

Cash Dividends Disclosure. The frequency and amount of cash dividends declared for the two most recent fiscal years and any subsequent interim periods presented will no longer be required in the body of periodic reports or prospectuses because Regulation S-X is being amended to require similar disclosure in the notes to the financial statements. Similarly, disclosure of restrictions that currently or are likely to materially limit a company's ability to pay dividends on its common equity will no longer be required in the body of periodic reports or prospectuses because such disclosure requirement will be consolidated under the Regulation S-X rule requiring similar disclosure in the notes to the financial statements.

Ratio of Earnings to Fixed Charges. Issuers that register debt or preferred securities will no longer be required to disclose the ratio of earnings to fixed charges and file an exhibit setting forth the related computations because GAAP requires disclosure of many of the components commonly used in these ratios, investors can

The amendments are part of an initiative by the SEC's Division of Corporation Finance to review disclosure requirements and consider improvements for the benefit of investors and companies.

calculate or find similar financial information elsewhere and, in the case of certain debt and preferred securities investors, such investors can negotiate to receive specific financial information.

SEC Public Reference Room Address and Website. The physical address and phone number of the SEC's Public Reference Room will no longer be required to be disclosed because SEC filings are widely available on the Internet, including on the SEC's EDGAR website.

Derivative Accounting Policies Covered by GAAP. Disclosure regarding accounting policies for certain derivative instruments will no longer be required by Regulation S-X (other than to specify that such disclosure shall be included in the statement of cash flows, which requirement the SEC has referred to the FASB for potential incorporation into GAAP) because GAAP has a comprehensive accounting model for contracts that meet the definition of a derivative financial instrument and requires such disclosure in the notes to the financial statements.

Pro Forma Business Combination Information in Interim Filings. Disclosure regarding pro forma financial information in interim filings for business combinations will no longer be required by Regulation S-X because GAAP also requires supplemental pro forma information about business combinations in the notes to interim financial statements. While Regulation S-X and GAAP differ in scope and line item disclosure requirements, GAAP and Item 9.01 of Form 8-K result in disclosures similar to the corresponding requirements of Regulation S-X.

For further information, read the SEC's adopting release.

The SEC also provided an unofficial redline of the changes.

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

Joshua N. Korff, P.C.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
www.kirkland.com/jkorff
+1 212 446 4943

Robert M. Hayward, P.C.
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
www.kirkland.com/rhayward
+1 312 862 2133

Ross M. Leff
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
www.kirkland.com/rleff
+1 212 446 4947