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U.S. Securities Law Briefing. SEC Proposes Amendments to Streamline Disclosure Rules

In connection with its “disclosure effectiveness” initiative, the U.S. Securities and Exchange Commission (the “SEC”) has **proposed a number of amendments** to its rules and forms in order to eliminate redundant, duplicative, overlapping, outdated or superseded requirements.

Comments are due on the proposed amendments 60 days after they are published in the Federal Register.

Overview of amendments

The proposed changes fall into three main categories:

- > *Redundant or duplicative requirements* – The SEC is proposing to eliminate a number of requirements it has identified as requiring substantially the same disclosures as U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), International Financial Reporting Standards (“IFRS”) or other SEC disclosure requirements.
- > *Overlapping requirements* – The SEC is proposing to delete or integrate disclosure requirements that (1) require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS or other disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP, IFRS or SEC disclosure requirements and may no longer be useful to investors. With respect to SEC disclosure requirements that overlap with but require information incremental to U.S. GAAP, the SEC is requesting comment to determine whether to retain, modify, eliminate or refer such requirements to the FASB for potential incorporation into U.S. GAAP.
- > *Outdated requirements* – The SEC is proposing to amend disclosure requirements that have become obsolete as a result of the passage of time or changes in the regulatory, business or technological environment.

Though the proposed amendments are not intended to be significant, the SEC acknowledges that there will likely be some consequences worth noting if the amendments are adopted.

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For instance, some of the proposed changes would result in the relocation of disclosures from outside to inside the financial statements, subjecting the information to annual audit and/or interim review, internal control over financial reporting and interactive data tagging requirements, as applicable. Further, for such disclosures, the safe harbor under the U.S. Private Securities Litigation Reform Act of 1995 would not be available. Conversely, relocation of disclosures from inside to outside the financial statements would do the opposite. Also, the relocation of certain disclosures may affect investors by changing the prominence and/or context of both the relocated disclosures and the remaining disclosures.

Proposed changes to foreign private issuer disclosure

Although most of the proposed amendments would be made to Regulation S-X, Regulation S-K and the domestic issuer forms, a handful are specific to foreign private issuers. Such proposed amendments would primarily be made to Form 20-F, and the possible changes include:

- > *Research and development policies* – The SEC is proposing to amend Item 5.C of Form 20-F, which requires foreign private issuers to describe their research and development policies, where significant, and disclose the amount spent on company-sponsored research and development activities. The item would be amended to delete the requirement to disclose the amount spent, since foreign private issuers are already required to disclose the amount of research and development expenses in the notes to the financial statements.
- > *Ratio of earnings to fixed charges* – The SEC is proposing to delete its requirements in Regulation S-K¹ that issuers registering debt securities disclose the historical and pro forma ratios of earnings to fixed charges, on the basis that there are a variety of analytical tools available to investors that can accomplish a similar objective as the ratio of earnings to fixed charges. Conforming changes would be made to the SEC registration forms, including to Item 3 of Forms F-1, F-3 and F-4. The SEC is also proposing to delete Instruction 7 to “Instructions as to Exhibits” of Form 20-F, which requires foreign private issuers to disclose how any ratio of earnings to fixed charges presented in the filing was calculated, since IFRS already requires disclosure of many of the components of the ratio.
- > *Dividend restrictions* – The SEC is proposing to delete the dividend restriction disclosure requirements in Item 10.F and the Instruction to Item 14.B of Form 20-F, since foreign private issuers are already required to disclose dividend restrictions in the notes to the financial statements.
- > *Market price disclosure* – Item 9.A.4 of Form 20-F requires the following price history of the stock to be offered or listed for both the U.S. market and the principal trading market outside the United States,

¹ Primarily, Items 503(d) and Item 601(b)(12) of Regulation S-K.

as applicable: (i) the annual high and low market prices for the last five full financial years; (ii) quarterly high and low market prices for the last two full financial years and any subsequent period; and (iii) monthly high and low market prices for the last six months. For preemptive share issuances, the issuer must disclose the market prices for the first trading day in the most recent six months, the last trading day before the announcement of the offering and for the latest practicable date. If an issuer's securities are "not regularly traded in an organized market," the issuer must discuss any lack of liquidity. Noting that the daily market prices of most publicly traded common equity securities are readily available for free on numerous websites and would be more up-to-date, the SEC is proposing to amend Item 9.A.4 to require only disclosure of the U.S. and principal market(s) where the issuer's common equity trades and the trading symbol(s) assigned to the issuer's common equity that is traded in the U.S. market and principal market. For those issuers whose common equity is not traded in any established public trading market, disclosure of that fact would still be required.

- > *Exchange rate data* – Item 3.A.3 of Form 20-F requires foreign private issuers to provide exchange rate data where the financial statements required to be provided in Form 20-F are prepared in a currency other than the U.S. dollar. Since more current exchange rate data is available for free on numerous websites, the SEC is proposing to delete Item 3.A.3 of Form 20-F.
- > *Age of financial statements* – Form F-1, through its reference to Item 8.A.4 of Form 20-F, requires that audited financial statements for an initial public offering by a foreign private issuer must not be older than 12 months as of the date of the filing. Audited financial statements for all other foreign private issuer offerings or listings must not be older than 15 months at the time of the offering or listing. Instruction 2 to Item 8.A.4 states that the SEC will waive the 12-month requirement if the foreign private issuer adequately represents that it is not required to comply with the 12-month requirement in any jurisdiction outside the United States, and that complying with the requirement is impracticable or involves undue hardship. However, the issuer must still comply with the 15-month requirement in these circumstances. In light of this instruction, the SEC staff has almost always granted these waiver requests. Thus, the SEC is proposing to amend Instruction 2 to Item 8.A.4 to remove the requirement that foreign private issuers in these situations seek a waiver, enabling foreign private issuers that file the above representations as an exhibit to the registration statement, as currently required, to forgo the 12-month requirement and instead comply with the 15-month requirement without incurring the time and expense associated with the waiver process.
- > *Selected financial data for foreign private issuers reporting under IFRS* – While generally not enforced in practice, General Instruction G(c) of Form 20-F continues to require an issuer that reports under IFRS to

present selected financial data in accordance with U.S. GAAP for the five most recent financial years. To update Form 20-F, the SEC is proposing to amend General Instruction G(c) of Form 20-F to delete the requirement to present selected financial data in accordance with U.S. GAAP; and Instruction 2 to Item 3.A of Form 20-F to explicitly state that selected financial data is required only for the periods for which the issuer has prepared financial statements in accordance with IFRS.

- > *Available information* – Because the SEC’s Public Reference Room is rarely used by the public to obtain or review issuer filings, the SEC is proposing to delete the requirements in various SEC rules and forms to identify the Public Reference Room and disclose its physical address and phone number. Electronic filers will still be required to disclose the SEC’s Internet address and that electronic SEC filings are available there, but the SEC is proposing to delete the qualifier “if you are an electronic filer” as all but a limited number of issuers are now required to file electronically. The SEC is also proposing to amend Forms 20-F and F-1, which do not currently require such disclosure, to align the requirements for foreign private issuers with domestic issuers.
- > *Currency for FPI financial statements* – The SEC is proposing to delete, as duplicative of other SEC rules, the last sentence of Rule 3-20(d) of Regulation S-X. The sentence directs a FPI to Item 17(c)(2) of Form 20-F to quantify any departures from the Rule 3-20(d) methodology for presenting transactions in the currency of the primary economic environment in which it conducts its business.

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Please see [our chart](#) for further details on the other proposed amendments.

We will continue to monitor developments in this area and welcome any queries you may have.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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