

Client Alert

Current Issues Relevant to Our Clients

January 8, 2014

SEC Publishes Staff Report on Reforming the Current Disclosure Regime

In accordance with provisions of the Jumpstart Our Business Startups Act, enacted in 2012 (the “JOBS Act”), the staff of the Securities and Exchange Commission (the “SEC”) recently published a report (the “SEC Report”) on its review of disclosure requirements under SEC Regulation S-K.¹

The SEC Report (1) presents the regulatory history of the SEC’s current disclosure regime and Regulation S-K, as well as an overview of prior SEC initiatives to review and modernize such regime, (2) presents a detailed review of the disclosure items in Regulation S-K, SEC Industry Guides² and related rules and forms, (3) summarizes input received from commentators on applicable provisions of the JOBS Act and (4) concludes with a discussion of SEC staff recommendations of potential next steps for consideration by the commissioners of the SEC. A copy of the SEC Report is available [here](#).

Although we do not recommend any immediate action in response to the SEC Report, clients should be aware that the SEC may be amending certain disclosure requirements in the future. Such amendments may affect disclosures made in various SEC filings, including securities offering documents, proxy statements and Forms 8-K, 10-Q and 10-K. In formulating any amendments, the SEC will likely seek comment from market participants, including public companies, investors, investment banking professionals and industry experts. Clients should look to future Chapman Client Alerts for information and guidance concerning any subsequent SEC action on disclosure reform.

This Client Alert summarizes certain key provisions of and SEC staff recommendations discussed in the SEC Report.

Background

The JOBS Act mandates that the SEC conduct a review of Regulation S-K to (1) comprehensively analyze the current registration requirements of such regulation and (2) determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for emerging growth companies.³

Since the disclosure requirements in Regulation S-K have an impact not only on the costs and burdens of conducting registered offerings, including IPOs by emerging growth companies, but also on the ongoing compliance burden associated with public companies generally, the SEC staff concluded that a review of all requirements of Regulation S-K would facilitate the improvement of disclosure requirements applicable to companies at all stages of development, not only for companies that qualify as emerging growth companies.

¹ Regulation S-K sets forth the non-financial statement disclosure requirements for various SEC filings made by public companies, including disclosures made in registration statements, proxy statements and Forms 8-K, 10-Q and 10-K.

² From time to time, the SEC has published disclosure guides for the preparation and filing of registration statements and periodic reports for companies in certain industries (see, for example, *Industry Guide 3: Statistical Disclosure by Bank Holding Companies*). A copy of the SEC Industry Guides is available [here](#).

³ The JOBS Act defines an “emerging growth company” as one that had not completed its first registered sale of common equity securities on or before December 8, 2011 and has total annual gross revenues of less than \$1 billion during its most recently completed fiscal year. Pursuant to the JOBS Act, emerging growth companies may take advantage of a variety of scaled disclosure and other benefits, including exemptions from or modifications to certain Regulation S-K disclosure requirements.

SEC Report Recommendations

Disclosure Reform – Proposed Approach. As part of its disclosure review, the SEC staff evaluated the benefits of pursuing a comprehensive versus a targeted approach in developing specific recommendations to reform the SEC's current disclosure regime. Although the SEC commissioners will ultimately determine which approach the staff should pursue, the SEC staff recommends a comprehensive approach as such approach would provide the staff with the opportunity to review and update disclosure requirements on a wholesale basis, taking into account the overall appropriateness of substantive requirements. This approach, however, would likely be a long-term project involving significant staff resources.

Alternatively, a targeted approach to disclosure reform would provide the SEC staff with the opportunity to review and update disclosure requirements on a topic-by-topic basis, potentially allowing for a more in-depth analysis of each topic and for amendments to be made more quickly. The SEC staff, however, believes that such an approach could inhibit efforts to simplify the disclosure regime as a whole, resulting in less streamlined disclosure overall.

Disclosure Reform – General Recommendations. In addition to the recommendation that any amendment to the current disclosure regime emphasize a principles-based (as opposed to a rules-based) approach, the SEC Report identifies the following general issues that the SEC staff believes should be addressed in any disclosure review and related reform:

- Include an evaluation of:
 - the appropriateness of current scaled disclosure requirements and whether further scaling would be appropriate for emerging growth companies or other categories of companies; and
 - the methods of information delivery and presentation via the EDGAR system and other means (e.g., requiring companies to file a "core" disclosure or "company profile" document with information that changes infrequently, periodic and current disclosure filings with information that changes from period to period and transactional filings that have information relating to specific offerings or shareholder solicitations).
- Consider ways to present information that would improve the readability and navigability of disclosure documents by:
 - discouraging repetition and disclosure of immaterial information;
 - reevaluating the use of quantitative thresholds and other standards of materiality; and
 - reassessing mandatory disclosure of information that is already readily accessible to market participants (e.g., historical stock price information currently available on various websites).

Disclosure Reform – Potential Areas for Further Study. The SEC Report also summarizes the SEC staff's preliminary suggestions of potential areas in the current disclosure regime for further study and information gathering, including:

- Regulation S-K (including reviewing disclosure requirements relating to risk, business and operations, corporate governance, executive compensation, securities offerings and exhibits).
- Emerging growth companies (including reviewing the differences between small business and emerging growth company disclosure requirements, and the definitional thresholds for smaller reporting companies and accelerated and large accelerated filers).
- SEC Industry Guides (including reviewing whether such Guides continue to elicit useful investor information and conform to industry practice and trends, as well as developments in applicable international regulatory reforms).
- Financial reporting (including reviewing current financial reporting requirements of Regulation S-X⁴ and disclosure requirements that may now be redundant with financial statement disclosure requirements mandated at a later time).
- Current SEC rules and forms (including reviewing disclosure requirements in current rules and forms, such as Forms 8-K, 10-Q and 10-K).

⁴ Regulation S-X sets forth the current format and content disclosure requirements for financial reports required to be included in certain SEC filings.

Next Steps. The SEC staff believes that the SEC Report serves as an important starting point in reforming the current disclosure regime, but that further study and information gathering is warranted. In particular, input from market participants (including public companies, investors, investment banking professionals and industry experts) is needed to facilitate the identification of ways to (1) update or add disclosure requirements that are material to an investment or voting decision, (2) streamline and simplify disclosure requirements to reduce the costs and burdens on public companies, including emerging growth companies, and (3) enhance the presentation and communication of information and understand how technology can play a role in addressing these issues.

The SEC staff will seek guidance from the SEC commissioners as to the approach it will pursue and the areas of further study it will undertake in reforming the current disclosure regime. As of the date of this Client Alert, no specific timeframe with respect to any related future action by the SEC has been published.

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