

Memorandum

SEC Seeks Public Comment for Next Phase of Disclosure Effectiveness Initiative

September 1, 2016

On August 25, 2016, the Securities and Exchange Commission (“SEC”) issued a short request for comment on the disclosure requirements codified in Items 401 through 407 of Regulation S-K, which relate primarily to “a registrant’s management, certain security holders, and corporate governance matters.”¹ The request for comment is part of the SEC’s “Disclosure Effectiveness Initiative” – a comprehensive evaluation of the SEC’s disclosure requirements recommended by the SEC staff in its Report on Review of Disclosure Requirements in Regulation S-K, which was mandated by the Jumpstart Our Business Startups Act (“JOBS Act”). The request for comment is also intended to inform the SEC “in carrying out the study of Regulation S-K required by Section 72003(a)” of the Fixing America’s Surface Transportation Act (“FAST Act”).

In April of this year, the SEC issued a lengthy concept release, seeking public comment on modernizing “business and financial disclosures that registrants provide in their periodic reports, which are a subset of the disclosure requirements in Regulation S-K.”² In that release, the SEC explicitly noted that it was “not at [that] time revisiting other disclosure requirements in Regulation S-K, such as executive compensation and governance.” With its current request for public comment, the SEC is signaling that it is beginning to collect input on the following disclosure requirements in Regulation S-K:

- Item 401, which requires certain disclosures regarding a registrant’s directors, executive officers, promoters and control persons;

¹ [Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters](#), Release No. 33-10198, 34-78687; File No. S7-18-16 (Aug. 25, 2016), at 5.

² [Business and Financial Disclosure Required by Regulation S-K](#), Release No. 33-10064, 34-77599; File No. S7-06-16 (Apr. 13, 2016), at 6. For a summary of this concept release, see Simpson Thacher & Bartlett LLP, [“SEC Issues Concept Release Regarding Modernization of Business and Financial Disclosure Requirements”](#) (May 24, 2016).

- Item 402, which requires disclosure of “all plan and non-plan compensation awarded to, earned by, or paid to a registrant’s named executive officers and directors”;
- Item 403, which requires disclosure of certain information pertaining to the security ownership of certain beneficial owners and management;
- Item 404, which requires a description of certain transactions with related persons, promoters and certain control persons;
- Item 405, which requires the identification of each person who was required to but failed to file on a timely basis reports required by Section 16(a) of the Securities Exchange Act of 1934, as amended, during the most recent fiscal year or prior fiscal years;
- Item 406, which requires disclosure of whether the registrant has adopted a code of ethics that applies to certain of the registrant’s executive officers or persons performing similar functions and, if the registrant has not adopted such a code of ethics, an explanation as to why it has not done so; and
- Item 407, which requires various disclosures pertaining to the registrant’s corporate governance, including with regard to director independence, board meetings and committees, shareholder communications, and board leadership structure.

The SEC is requesting public comment on the issues the SEC staff should consider in its review of these items of Regulation S-K, “including, among other things, how best to modernize and simplify these disclosure items in view of the objectives of the Regulation S-K study set forth in” the FAST Act “and whether additional disclosures in these areas are necessary or appropriate to facilitate investor protection, to maintain fair, orderly, and efficient markets, and/or to facilitate capital formation.” The SEC is also interested in “comments on how information can be presented to improve its readability, navigability and comparability and how technology and structured data can facilitate data aggregation and analysis.”

Comments are due 60 days following the publication of the request for comment in the federal register.

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or yafit.cohn@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

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