

THE NATIONAL LAW REVIEW

FAST Act Update: SEC Adopts Amendments to Modernize and Simplify Public Disclosure

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What Happened?

On March 20, 2019, the SEC adopted amendments to modernize and simplify disclosure requirements for public companies. Specifically, the SEC adopted amendments to modernize its disclosure requirements for public filings in a way that the SEC believes will minimize the costs and burdens on public companies while continuing to provide all material information to investors.

Why It Matters

Investors will benefit from these new amendments as they eliminate out-of-date, repetitive and unnecessary disclosure, and should simplify the process by which they assess material information. The SEC hopes investors will benefit from its work to improve disclosure, as they focus on modernizing their disclosure system to meet the expectations of today's investors while eliminating unnecessary costs and burdens.

The Amendments

The amendments are consistent with the SEC's mandate under the FAST Act, and are based on recommendations in the SEC staff's FAST Act Report and an overall review of the SEC's disclosure rules.

Specifically, the amendments will (i) allow companies to redact confidential information from most exhibits without filing a confidential treatment request, (ii) provide more flexibility in the discussion of historical periods in Management's Discussion and Analysis, known as the MD&A, by removing the requirement to include a discussion about the earliest of the three years in such section and allowing a company to tailor their presentation in a way meaningful to investors, not just based on year-over-year comparisons and (iii) incorporate technology to improve access to information on the cover page of certain filings. In addition, the amendments will streamline the cover pages to public companies' filings, so investors will be able to identify the national stock exchange and trading symbol without having to read the entire filing.

Some Thoughts

These amendments will serve as a useful step towards the SEC's goal of simplifying and cleaning up public company disclosures; however, some of these amendments will have more of an impact than others.

We believe the most notable amendment will be the omission of confidential information from most exhibits without filing a confidential treatment request. These requests, known as CTRs, are time-intensive and require approval from the SEC, which can take 30 days or more. The major pitfall for these CTRs is that the SEC will not declare a company's pending registration statement effective while a CTR is being reviewed, which, of course, can delay, or cause a company to lose, its ability to raise much needed capital. With this amendment, companies will be able to redact appropriate confidential information based on extensive and longstanding SEC guidance without causing any delay to their capital raising efforts.

We expect that the amendments related to the MD&A section will have a lesser impact on public disclosure. While the SEC believes companies will benefit from increased flexibility regarding their MD&A presentation, we expect



Article By [Nimish Patel](#)
[Blake Baron](#)
[Mitchell Silberberg & Knupp LLPMSK Blog](#)

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most companies to continue to disclose their financial results in a manner consistent with their prior filings, including year-over-year-comparisons, because such presentations are familiar to investors and are appropriate methods for such disclosure. It is also important to note that smaller reporting companies are able to disclose two years of financial statements instead of three years, so the amendment to omit the earliest of three years in the MD&A will not have an impact on their filings.

What Happens Next?

These amendments take effect 30 days after they are published in the Federal Register, except that the amendments relating to the redaction of confidential information in certain exhibits will go effective upon publication in the Federal Register.

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