On August 26, the U.S. Securities and Exchange Commission (SEC) adopted significant rule changes to Regulation S-K, including changes to risk factor disclosures by public reporting entities, which will impact public companies and private investors. The changes to modernize the disclosure provisions of Regulation S-K are the most extensive in 30 years.

Regulation S-K (17 CFR 229.10 et seq.) sets forth the disclosures companies are required to include in their registration statements, periodic reports, and other forms filed with the SEC under the Securities Act of 1933 and the Securities Exchange Act of 1934. These changes are part of the SEC’s “Disclosure Effectiveness Initiative,” which aims to simplify and modernize disclosures in the Commission’s ongoing effort to promote a balance of prescriptive and principles-based requirements in its regulatory scheme. Three important amendments are as follows:

1. **Item 101 Regarding the Description of Business**

The SEC adopted two revisions to Item 101(a). One revision requires disclosure of
information material to an understanding of the general development of the business and eliminates a prescribed timeframe for this disclosure. The other revision requires only an update of the general development of the business in filings made after a registrant’s initial filing. These changes may eliminate duplication of quantitative information that the registrant already provides in its financial statements.

The SEC’s major revision to Item 101(c) includes human capital resources as a disclosure topic, including any measures or objectives that management focuses on in managing the business, to the extent they would be material to an understanding of the registrant’s business. At the August 26 hearing adopting these rules, SEC Chairman Jay Clayton noted that human capital plays a more significant role in driving long-term business value than when Regulation S-K was last comprehensively changed. The amendment also changed Item 101(c) by clarifying and expanding its principles-based approach through including a non-exclusive list of disclosure topic examples.

2. Item 103 Regarding Legal Proceedings

The SEC made two revisions to Item 103 which govern the description of legal proceedings. Revised Item 103 expressly states that the required information may be provided by including hyperlinks or cross-references to a legal proceedings disclosure located elsewhere in the document. The SEC also raised the $100,000 threshold for disclosure of environmental proceedings to which the government is a party to $300,000. This dollar amount threshold also allows the registrant, at its election, to select a different threshold that it determines is reasonably designed to result in disclosure of material environmental proceedings, provided that the threshold does not exceed the lesser of $1 million or 1 percent of the current assets of the registrant.

3. Item 105 Regarding Risk Factor Disclosures

The SEC amended Item 105 to require summary risk factor disclosure of no more than two pages if the risk factor section exceeds 15 pages; refine the principles-based approach by requiring disclosure of "material" risk factors; and require risk factors to be organized under relevant headings in addition to the subcaptions currently required, with any risk factors that may generally apply to an investment in securities disclosed at the end of the risk factor section under a separate caption. These organizational and structural revisions are intended to combine under the same umbrella offering-related risk disclosure requirements with periodic and registration risk disclosure reporting requirements.

These amendments will become effective 30 days after publication in the Federal Register.

The changes to Regulation S-K were not adopted unanimously. Two commissioners expressed concern that a preoccupation with principles-based and prescriptive requirements fails to address equally important concerns held by investors and entities, namely disclosure of diversity and climate risk. Commissioner Allison Herren Lee remarked at the hearing that there were thousands of comments
expressing concerns about requiring disclosure about diversity and climate risk. Additionally, she pointed out that nearly all market participants use diversity and climate risk as a significant driver in decision-making, capital allocation, pricing, and value assessments.

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