

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

Release No. 33-10198; 34-78687; File No. S7-18-16

**REQUEST FOR COMMENT ON SUBPART 400 OF REGULATION S-K DISCLOSURE
REQUIREMENTS RELATING TO MANAGEMENT, CERTAIN SECURITY HOLDERS
AND CORPORATE GOVERNANCE MATTERS**

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Commission is requesting public comment on certain disclosure requirements in Regulation S-K relating to management, certain security holders, and corporate governance matters contained in Subpart 400. This request is part of an initiative by the Division of Corporation Finance to review the disclosure requirements in Regulation S-K to consider ways to improve them for the benefit of investors and registrants. Comments received in response to this request for comment will also inform the Commission's study on Regulation S-K, which is required by Section 72003 of the Fixing America's Surface Transportation Act ("FAST Act").

DATES: Comments should be received on or before October 31, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-18-16 in the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-18-16. This file number should be included in the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Eduardo A. Aleman, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551-3430, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Background and Discussion

Over the years, the Commission has evaluated its disclosure regime and engaged periodically in rulemakings designed to enhance its disclosure and registration requirements.¹

¹ For a summary of the relevant history and background of Regulation S-K, see *Business and Financial Disclosure Required by Regulation S-K*, Release No. 33-10064 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)] (“Regulation S-K Concept Release”).

Most recently, the Commission published a concept release to seek public comment on modernizing certain business and financial disclosure requirements in Regulation S-K.² The purpose of the Regulation S-K Concept Release is to assess whether the business and financial disclosure requirements in Regulation S-K continue to provide the information that investors need to make informed investment and voting decisions. The Regulation S-K Concept Release focuses on the business and financial disclosures that registrants provide in their periodic reports, which are a subset of the disclosure requirements in Regulation S-K, because many of them have changed little since they were first adopted and are often the foundation of the disclosures investors look to when making investment decisions. These requirements have also been revisited by the Commission or the staff less frequently in the recent past than other disclosure requirements in Regulation S-K, such as executive compensation and governance contained in Subpart 400 of Regulation S-K.³ Last year, the Commission also published a request for comment to seek public input about the financial disclosure requirements in Regulation S-X for certain entities other than a registrant.⁴

² *See id.*

³ *See, e.g., Executive Compensation and Related Person Disclosure*, Release No. 33-8732A (Aug. 29, 2006) [71 FR 53157 (Sept. 8, 2006)]; *Proxy Disclosure Enhancements*, Release No. 33-9089 (Dec. 16, 2009) [74 FR 68333 (Dec. 23, 2009)]; *Staff Observations in the Review of Executive Compensation Disclosure*, Division of Corporation Finance (Oct. 9, 2007), available at <https://www.sec.gov/divisions/corpfin/guidance/execcompdisclosure.htm>. As the Commission noted in the Regulation S-K Concept Release, the scope of that release does not include certain disclosure requirements for information other than business and financial disclosures, such as Subpart 400, which requires disclosure about management and certain security holders as well as corporate governance matters. *See* Regulation S-K Concept Release, *supra* note 1, at Section I, n. 4. This request for comment directly covers those subjects.

⁴ *See Request for Comment on the Effectiveness of Financial Disclosures about Entities Other Than the Registrant*, Release No. 33-9929 (Sept. 25, 2015) [80 FR 59083 (Oct. 1, 2015)].

These efforts, in addition to this request for comment, are part of a comprehensive evaluation of the Commission’s disclosure requirements recommended in the staff’s Report on Review of Disclosure Requirements in Regulation S-K (“S-K Study”), which was mandated by Section 108 of the Jumpstart Our Business Startups Act (“JOBS Act”).⁵ As noted in the Regulation S-K Concept Release, based on the S-K Study’s recommendation and at the request of the Chair, Commission staff initiated a comprehensive evaluation of the type of information our rules require registrants to disclose, how this information is presented, where and how this information is disclosed, and how the Commission can leverage technology as part of these efforts (collectively, “Disclosure Effectiveness Initiative”). Section 72003(a) of the FAST Act⁶ also requires the Commission to carry out a study of the requirements contained in Regulation S-K.⁷ Specifically, Section 72003(a) requires that the study of Regulation S-K:

- Determine how best to modernize and simplify such requirements in a manner that reduces the costs and burdens on issuers while still providing all material information;
- Emphasize a company-by-company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across registrants; and

⁵ Pub. L. 112-106, Sec. 108, 126 Stat. 306 (2012). Section 108 of the JOBS Act requires the Commission to conduct a review of Regulation S-K to determine how such requirements can be updated to modernize and simplify the registration process for emerging growth companies. The S-K Study is available at <http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>. For a further discussion of the S-K Study, see the *Regulation S-K Concept Release*, *supra* note 1, at Section II.C.

⁶ Pub. L. 114-94, Sec. 72003, 129 Stat. 1312 (2015).

⁷ In conducting this study, the Commission is required to consult with the Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies.

- Evaluate methods of information delivery and presentation and explore methods for discouraging repetition and the disclosure of immaterial information.⁸

Request for Comment

The initiative to review the disclosure requirements in Regulation S-K is intended to result in recommendations and proposals that will improve our disclosure system for the benefit of investors and registrants. The purpose of this request for comment is to solicit public input on Subpart 400 of Regulation S-K, which requires certain disclosures about a registrant's management, certain security holders, and corporate governance matters.⁹ The input can include comments on existing requirements in these rules as well as on potential disclosure issues that commenters believe the rules should address.¹⁰ The comments received in response to this request for comment, as well as comments received in response to the Regulation S-K Concept Release, will inform the Commission in carrying out the study of Regulation S-K required by Section 72003(a) of the FAST Act.¹¹

- Item 401 of Regulation S-K generally requires certain disclosures about a registrant's directors, executive officers, promoters and control persons.¹²

⁸ Pub. L. 114-94, Sec. 72003, 129 Stat. 1312 (2015).

⁹ 17 CFR 229.401 *et seq.*

¹⁰ For example, as noted in the *Regulation S-K Concept Release*, *supra* note 1, this could include industry-specific disclosure requirements, information about sustainability and governance matters, and additional instances in which scaled disclosure could be implemented.

¹¹ Comment letters received in response to this request for comment will be considered in connection with any future rulemaking related to the disclosure requirements in Subpart 400 of Regulation S-K. If the Commission proposes changes to these disclosure requirements the proposed changes will be subject to public notice and comment.

¹² 17 CFR 229.401.

- Item 402 of Regulation S-K generally requires disclosure of all plan and non-plan compensation awarded to, earned by, or paid to a registrant’s named executive officers and directors.¹³
- Item 403 of Regulation S-K generally requires a description of the security ownership of certain beneficial owners and management.¹⁴
- Item 404 of Regulation S-K generally requires a description of certain transactions with related persons, promoters and certain control persons.¹⁵
- Item 405 of Regulation S-K generally requires a registrant to identify certain persons who failed to file on a timely basis, as disclosed in certain forms, reports required by Section 16(a) of the Securities Exchange Act¹⁶ during the most recent fiscal year or prior fiscal years.¹⁷
- Item 406 of Regulation S-K generally requires disclosures about whether the registrant has adopted a code of ethics that applies to certain of the registrant’s executive officers,

¹³ 17 CFR 229.402. Item 402 also describes the disclosure requirements for certain categories of registrants such as foreign private issuers and smaller reporting companies. The Commission has a number of outstanding proposals related to executive compensation disclosure and listing requirements. *See Disclosure of Hedging by Employees, Officers and Directors*, Release No. 33-9723 (Feb. 9, 2015) [80 FR 8485 (Feb. 17, 2015)]; *Pay Versus Performance*, Release 34-74835 (Apr. 29, 2015) [80 FR 26329 (May 7, 2015)]; *Listing Standards for Recovery of Erroneously Awarded Compensation*, Release No. 33-9861 (July 1, 2015) [80 FR 41143 (July 14, 2015)]. This release requests comment on the disclosure requirements in Item 402 generally and is not intended to solicit specific comment on those proposals.

¹⁴ 17 CFR 229.403.

¹⁵ 17 CFR 229.404.

¹⁶ 15 U.S.C. 78p.

¹⁷ 17 CFR 229.405.

or persons performing similar functions, and, if it has not adopted such a code of ethics, an explanation why it has not done so.¹⁸

- Item 407 of Regulation S-K generally requires certain corporate governance disclosure about director independence, board meetings, various board committees (*e.g.*, nominating, audit and compensation committees) and any process for shareholder communications.¹⁹

In connection with the staff's continuing Disclosure Effectiveness Initiative and corresponding work on the FAST Act mandate, the Commission welcomes public comments on the issues that the staff should consider in conducting its review of Subpart 400 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 Section 72003 of 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. In addition to the substance of the disclosure requirements, the Commission welcomes comments on how information can be presented to improve its readability,

¹⁸ 17 CFR 229.406.

¹⁹ 17 CFR 229.407.

navigability and comparability and how technology and structured data can facilitate data aggregation and analysis. All interested parties are invited to submit their views and any data, in writing, on any matter relating to Subpart 400 of Regulation S-K.

By the Commission.

Brent J. Fields
Secretary

Dated: August 25, 2016