SEC ADOPTS FINAL RULE IMPLEMENTING AMENDMENTS TO REGULATION S-K, REGULATION S-X, AND OTHER SECURITIES LAWS TO SIMPLIFY DISCLOSURE REQUIREMENTS

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In August 2018, the Securities and Exchange Commission (the "Commission") adopted amendments to certain disclosure requirements set forth in Regulation S-K, Regulation S-X, and other Commission rules and forms promulgated under the Securities Act of 1933, as amended; the Exchange Act of 1934, as amended; and the Investment Company Act of 1940, as amended. The adopted amendments amend certain disclosure requirements that have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, generally accepted accounting principles in the United States ("U.S. GAAP"), International Financial Reporting Standards ("IFRS"), or changes in the information environment. The Commission believes the amendments will facilitate the disclosure of information to investors and simplify compliance without significantly altering the total mix of information provided to investors. The adopted amendments will become effective 30 days after the date of publication in the Federal Register.

REDUNDANT OR DUPLICATIVE REQUIREMENTS

The Commission identified and adopted amendments to eliminate certain disclosure requirements set forth in Regulation S-X that are redundant or duplicative to other disclosure requirements in order to simplify issuer compliance efforts in light of the obligation to provide substantially the same information to investors under other requirements. A few examples include, among others:

- *Related Party Transactions*: The reference to identification of related-party transactions in **Rule 4-08(k)(l) of Regulation S-X**, will be eliminated on the basis that it is redundant or duplicative to **ASC 850-10-50-1**, which requires disclosure of related-party transactions and certain common control relationships.
- *Earnings per Share*: The reference to "earnings per share" in the first sentence of **Rule 10-01(b)(2) of Regulation S-X**, which also requires the presentation of earnings per share on the face of an interim income statement, will be eliminated on the basis that it is redundant or duplicative to **ASC 270-10-50-1b**, which requires disclosure related to interim financial statements and summarized interim financial data.

The Commission also adopted amendments that will eliminate redundant or duplicative disclosure requirements set forth in Regulation S-X relating to financial statement consolidation; debt obligations; income tax disclosures; warrants, rights, and convertible instruments; contingencies; and certain other provisions affecting insurance companies.

OVERLAPPING REQUIREMENTS

The Commission identified and adopted amendments to eliminate certain disclosure requirements that are related to, but not the same as, U.S. GAAP, IFRS, or other Commission disclosure requirements. A few examples include, among others:

- *Research and Development Activities*: The following Commission disclosure requirements will be eliminated on the basis that these requirements overlap with the disclosures required by U.S. GAAP in the footnotes to the financial statements:
  - **Item 101(c)(1)(xi) of Regulation S-K** (for non-smaller reporting companies) and **Item 101(h)(4)(x) of Regulation S-K** (for smaller reporting companies), which requires disclosure, if material, of the amount spent on research and development activities for all years presented.
  - **Item 5.C of Form 20-F**, which requires foreign private issuers to describe their research and development policies, where significant, and disclose the amount spent on company-sponsored research and development activities.
  - **Item 7(a)(1)(iii) of Form 1-A**, which requires Regulation A issuers to disclose, if material, the amount spent on research and development activities for all years presented.
- *Warrants, Rights, and Convertible Instruments*: **Item 201(a)(2)(i) of Regulation S-K**, which requires disclosure on Form S-1 or Form 10 of the amount of common equity subject to outstanding options, warrants, or convertible securities when the class of common equity has no established U.S. public trading market, will be eliminated on the basis that it overlaps with U.S. GAAP, which more broadly requires disclosure of the terms of significant contracts to issue additional shares, the number of shares authorized for certain equity awards, and, in the calculation of diluted earnings per share, the weighted-average incremental shares that would be issued from the assumed exercise or conversion of options, warrants, and convertible securities.
- *Ratio of Earnings to Fixed Charges*: **Item 503(d) of Regulation S-K** requires issuers that register debt securities to disclose the historical and pro forma ratios of earnings to fixed charges. Regulation S-K also requires issuers that register preference equity securities to disclose the historical and pro forma ratio of combined fixed charges and preference dividends to earnings (collectively, "ratio of earnings to fixed charges"). Item 601(b)(12) of Regulation S-K further requires the filing of an exhibit setting forth the computation of any ratio of earnings to fixed charges. These disclosure requirements will be eliminated on the basis that they overlap with both U.S. GAAP and IFRS, which require disclosure of many of the components commonly used in these ratios.
- *Dividends*: The first sentence of **Item 201(c)(1) of Regulation S-K**, which requires issuers to disclose the frequency and amount of cash dividends declared, will be eliminated on the basis that it overlaps with the as-amended **Rule 3-04 of Regulation S-X**, which will require disclosure of the amount of dividends in interim periods, similar to **Item 201(c)(1) of Regulation S-K**. The frequency of dividends will be evident from this revised disclosure.
- *Segments*: **Item 101(b) of Regulation S-K**, which requires disclosure of segment financial information, restatement of prior periods when reportable segments change, and discussion of interim segment

performance that may not be indicative of current or future operations, will be eliminated on the basis that it overlaps with U.S. GAAP and **Item 303(b) of Regulation S-K**, which require similar disclosures. Note, these segment-related disclosures will continue to be available in the notes to the financial statements.

- *Geographic Areas*: The requirements in **Items 101(d)(1)** and **101(d)(2) of Regulation S-K**, which require disclosure of financial information by geographic area, will be eliminated on the basis that they overlap with U.S. GAAP, which requires similar disclosures. Further, the requirement in **Item 101(d)(3) of Regulation S-K** that requires disclosures of any risks associated with an issuer's foreign operations and any segment's dependence on foreign operations, will be eliminated on the basis that it overlaps with disclosures that appear to be largely encompassed by the disclosures that result from compliance with other parts of Regulation S-K. For example, **Item 503(c) of Regulation S-K** requires disclosure of significant risk factors, and **Item 303(a) of Regulation S-K** requires disclosure of trends and uncertainties by segment, if appropriate to an understanding of the issuer as a whole, which would include disclosure of a segment's dependence on foreign operations. **Item 303(a) of Regulation S-K** was amended to add an explicit reference to "geographic areas."
- *Seasonality*: Instruction 5 to **Item 303(b) of Regulation S-K**, which requires a discussion of any seasonal aspects of an issuer's business where the effect is material, and **Item 101(c)(1)(v) of Regulation S-K**, which requires annual seasonality disclosure, will be eliminated on the basis that they overlap with. U.S. GAAP.

The Commission also adopted amendments that will eliminate overlapping disclosure requirements relating to derivative accounting policies and foreign currency restrictions, among others. The Commission referred certain other current disclosure requirements included in the proposed amendments and discussed by commenters to the Financial Accounting Standards Board ("FASB") for potential incorporation into U.S. GAAP. FASB has 18 months to determine whether U.S. GAAP should be amended accordingly.

OUTDATED REQUIREMENTS

The Commission identified and adopted amendments to eliminate certain disclosure requirements that have become obsolete as a result of the passage of time or as the regulatory, business, or technological environments have changed over time. A few examples include, among others:

- *Market Price Disclosure*: **Item 201(a)(1)(ii) of Regulation S-K**, which requires issuers to disclose if the principal U.S. market is an exchange and the high and low sale prices for their common equity for each quarter within the two most recent fiscal years and subsequent interim period, will be eliminated on the basis that this disclosure requirement is outdated, as the daily market prices of most publicly traded common equity securities, including those quoted on an automated quotation system, are readily available free on numerous websites, including the exchanges' or quotation systems' websites.
- *Identification of Public Reference Room*: The Commission will eliminate the requirement to identify the Public Reference Room and disclose its physical address and phone number on the basis that this requirement is outdated, as the Commission's Public Reference Room is rarely used by the public to obtain or review issuer filings, and paper filings are now only permitted (and sometimes required) in very limited circumstances.

- *Disclosure of Internet Address(es)*: The Commission adopted amendments that will require all issuers to disclose their Internet address(es) (or, in the case of asset-backed issuers, the address of the specified transaction party), if they have one.

The Commission also adopted amendments that will eliminate outdated disclosure requirements relating to stale transition dates, certain income tax disclosures, and exchange rate data, among others.

SUPERSEDED REQUIREMENTS

The Commission identified and adopted amendments to eliminate certain disclosure requirements that have been superseded due to new Commission disclosure requirements, which has resulted in inconsistencies. A few examples include, among others:

- *Matters Submitted to Vote of Security Holders*: **Item 601(b)(22) of Regulation S-K** (including accompanying inclusion in the Exhibit Table within Item 601), which requires issuers to file a published report regarding matters submitted to vote of security holders, will be eliminated on the basis that it is superseded by the changes made in 2009 to disclose shareholder voting results in **Forms 10-K** and **10-Q** and **Item 5.07 of Form 8- K**.

- *Extraordinary Items*: **Item 302(a)(1) of Regulation S-K**, which requires disclosure of income (loss) before extraordinary items and the cumulative effect of a change in accounting in supplemental quarterly financial information, will be eliminated in part with respect to disclosure of extraordinary items on the basis that it is superseded by FASB's elimination of extraordinary items from U.S. GAAP.

The Commission also adopted amendments that will eliminate superseded disclosure requirements relating to consolidated and combined financing statements, gains or loss on sale of properties by REITs, and development stage companies, among others.

IMPORTANT CONSIDERATIONS

The Commission noted that certain of the amendments will result in the relocation of disclosures from outside to inside the financial statements, subjecting this information to annual audit and/or interim review, internal control over financial reporting ("ICFR"), and XBRL tagging requirements, as applicable. The safe harbor under the Private Securities Litigation Reform Act of 1995 ("PSLRA") would not be available for such disclosures. Conversely, relocation of disclosures from inside to outside the financial statements would have the opposite effect. This information would not be subject to annual audit and/or interim review, ICFR, and XBRL tagging requirements, as applicable, while the safe harbor under the PSLRA would be available.

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