



Securities Quarterly

Fall 2019

Welcome to the first issue of Securities Quarterly, a publication that will provide updates and guidance on securities regulatory and compliance issues. In this edition, we look at recent developments affecting periodic reporting requirements that issuers should consider as they prepare their 10-Q filings for the third quarter of 2019.

Additional risk factors. Consider if updated or new risk factors are necessary to address cybersecurity risks and/or the impact of tariffs if material to the registrant, and whether any additional disclosures are necessary in the MD&A, contingencies and/or legal proceedings sections.

Phase-in requirements for Inline XBRL. In June 2018, the Securities and Exchange Commission (SEC) adopted amendments requiring the phase-in of Inline XBRL, a format allowing filers to embed XBRL data directly in an HTML document. Issuers using U.S. GAAP have a three-year phase-in period to comply with Inline XBRL requirements, which begins June 15, 2019 for large accelerated filers, June 15, 2020 for accelerated filers, and June 15, 2021 for all other filers. The requirements will be triggered upon the first Form 10-Q filing for the fiscal period ending on or after the applicable compliance date. Issuers using Inline XBRL should identify Interactive Data Files as “Exhibit 101” with the word “inline” within the title description (for example, “formatted in inline XBRL”).

Updated form cover pages. In connection with the implementation of the FAST Act disclosure simplification amendments to Regulation S-K (effective May 2, 2019), the new rules require certain changes to the cover pages for Forms 10-K, 10-Q and 8-K, as well as Forms 20-F and 40-F. Cover pages to these forms should now contain the listing of the national exchange or principal U.S. market for securities, the issuer’s trading symbol and the title of each class of securities registered under Section 12 of the Exchange Act. In addition, issuers are required to tag all

cover page data in Inline XBRL for these forms (expanded from the data points required under current XBRL tagging requirements), subject to the three-year phase-in periods described above. Item 601(b) of Regulation S-K includes a new Exhibit 104 (Cover Page Interactive Data File) requirement, which should be included on the exhibit list to capture any cover page information that is not embedded in a filing’s cover page. For Forms 8-K, no standalone reference to Exhibit 104 is required if no other exhibit is being filed under Item 9.01(d).

Hyperlinked documents. The FAST Act amendments also permit the use of hyperlinks to documents previously filed on EDGAR for documents that are incorporated by reference instead of filing each document as a separate exhibit. An amendment filing is required for correcting an inaccurate hyperlink.

Simplified exhibits. The SEC also amended Item 601(a)(5) of Regulation S-K, which historically required the filing of complete copies of exhibits, including schedules, appendices and other attachments (regardless of whether the schedule, appendix or attachment is material). The amendments now permit the omission of entire schedules or attachments to an exhibit if the omitted portions are not material and not otherwise disclosed in the exhibit or disclosure document itself. If information is omitted, the exhibit must include a note that briefly identifies the contents of the omitted information, unless the exhibit already conveys the subject matter of the omitted schedule or attachment. The SEC also amended Item 601(b)(10)(i),

which required the filing of a material contract not made in the ordinary course of business if the contract is less than two years old and/or otherwise scheduled to be performed after the filing of a periodic report. The amended rule now limits the application of the two-year lookback to only “newly reporting registrants,” as defined in the amendments.

Omission of non-material information in exhibits. The SEC now allows registrants to omit confidential information in material contracts and certain other exhibits without submitting a confidential treatment request to the SEC if as the information omitted is not material and would likely cause competitive harm to the registrant if disclosed. If information is omitted, the exhibit index should be marked to indicate that portions of the exhibit have been omitted and include a “prominent statement” on first page of the redacted exhibit that certain information has been excluded. See Item 601(b)(10) of Regulation S-K.

FOR MORE INFORMATION

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