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# SEC Becoming More User-Friendly With Disclosure Trims

By **Tom Zanki**

*Law360 (September 5, 2018, 10:09 PM EDT)* -- The U.S. Securities and Exchange Commission is moving forward with several measures to simplify disclosure requirements, most of which securities and capital markets attorneys say are individually small but could add up to a more issuer-friendly regulatory environment.

The SEC on Aug. 17 approved amendments to its disclosure rules that would eliminate requirements considered unnecessary because they overlap with other SEC rules or disclosures already required by the U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards. Other rules have become outdated given changes to modern means of communication, the SEC said.

Taken as a whole, several lawyers said the changes — the result of a Congressional mandate to trim or eliminate duplicative information — are mostly technical and won't save public companies much money. That said, the SEC's efforts to prune its regulatory tree after years of adding new branches are seen by some as a step in the right direction.

"It's definitely progress and it's helpful," Covington & Burling LLP partner David Engvall said. "But it's not going to really significantly affect any company's overall disclosure costs."

The SEC's most recent amendments, which take effect 30 days after publication in the Federal Register, follow a mandate from Congress in the Fixing America's Surface Transportation Act. The 2015 legislation ordered the SEC to review its Regulation S-K — which lays out various reporting requirements for public companies — and reduce or abolish disclosures that are considered redundant or immaterial.

The SEC scrapped a litany of requirements, including eliminating certain disclosures about research and development activity where similar information is already required as part of a company's financial statements.

Companies will also no longer be required to provide a ratio of earnings to fixed charges — which measures an issuer's ability to service fixed financing expenses, such as interest costs — on grounds that investors can access many analytical tools that accomplish a similar objective.

In addition, issuers will also no longer need to disclose their high and low stock prices of recent years — information widely available online — and instead only be required to disclose their stock symbol. These are mostly marginal changes when viewed individually, lawyers said.

But attorneys note that the SEC's current approach is consistent with its general policy to pare back rules rather than add new ones. Chairman Jay Clayton, who was appointed by President Donald Trump, took the helm last year calling for more promotion of capital formation. Clayton selected former Simpson Thacher & Bartlett LLP partner Bill Hinman to lead the Division of Corporation Finance, which reviews public company disclosures for materiality, as part of that effort

"The bottom line is CorpFin is doing good things, but this particular release was really just done to comply with a Congressional mandate," Davis Polk & Wardwell LLP partner Joseph Hall said of the amendments approved on Aug. 17. "There is a lot of cleanup that should have been done anyway."

At a speech last week, Clayton said the cumulative effect of these and other changes pushed by the SEC will benefit capital markets over the long term.

"While these rule changes may appear technical, I anticipate they — taken together with other capital formation initiatives at the commission — will yield substantial benefits for public companies and investors," Clayton told a group of entrepreneurs last week in Nashville, Tennessee.

The SEC's latest action followed a measure proposed in July that is intended to simplify financial disclosures for companies when conducting certain registered debt offerings. Hall and Engvall said that proposal is more meaningful in terms of facilitating transactions.

According to accounting firm Ernst & Young, the SEC's July 24 proposal would narrow the circumstances that require a company to file separate financial statements of subsidiary issuers and guarantors, among other changes aimed at easing disclosure rules for issuers.

The SEC also said the proposal would make disclosures easier to understand and improve market transparency by encouraging companies to conduct more registered debt offerings.

In a release supporting the measure, Clayton said he has seen companies decline to pursue registered debt offerings that included a subsidiary guarantee or pledge of affiliate securities as collateral because of the time and costs associated with complying with current rules.

The public will be able to comment on the SEC's debt offering proposal for 60 days after it is published in the Federal Register. Though she supported the proposal, SEC commissioner Kara Stein expressed certain reservations, namely that the proposal centers on the idea that current disclosures may not be necessary for investors and that current SEC rules "require unnecessary detail."

"Reducing the information provided to investors on the basis that such information may be too much for investors to handle is a precarious road to walk down," Stein said in July.

The SEC's actions this summer follow another proposal last October aimed at simplifying disclosure, also mandated by the FAST Act. That proposal would allow companies to pare back certain disclosures, such as property holdings, among other incremental changes.

Drinker Biddle & Reath LLP partner Elizabeth Diffley described the SEC's August efforts to simplify disclosure requirements as akin to cutting one's daily trip to Starbucks — a small daily savings that doesn't make an immediate splash but adds up over time.

Now that the agency is back to its full five-member slate following Wednesday's Senate confirmation of new commissioner Elad Roisman, attorneys will be closely watching what else the SEC proposes.

"This is the easy stuff to do and hopefully it's the beginning of more substantive things," Diffley said.

--Editing by Kelly Duncan and Alanna Weissman.