



SEC Amends Rules for Financial Disclosures Related to M&A Activity

MAY 27, 2020

On May 21, 2020, the Securities and Exchange Commission (SEC) voted to amend the requirements for public company disclosure of financial information related to significant acquisitions and divestitures of business. This marks the SEC's latest action to improve both the substance and preparation of M&A-related financial disclosure. These amendments were adopted with the goal of enhancing the quality of information conveyed to investors, while alleviating the costs and complexities companies face when preparing such disclosures. As provided in the [adopting release](#), the final amendments will:

- update the significance tests used under Rule 1-02(w) and other SEC rules by:
 - revising the investment test, when applied to acquisitions and dispositions, to compare the registrant's investments in and advances to the acquired or disposed business to the registrant's aggregate worldwide market value;
 - adding a revenue component to the income test;
 - expanding the use of pro forma financial information in measuring significance; and
 - conforming, to the extent applicable, the significance tests and thresholds for disposed businesses to those used for acquired businesses;
- enhance the required disclosure for the aggregate effect of acquisitions for which financial statements are not required or not yet required by eliminating the disclosure of historical financial statements for insignificant businesses and expanding the pro forma financial information to depict the aggregate effect of acquisitions;
- reduce filing requirements for acquired business financial statements to cover no more than the two most recent fiscal years, instead of the current three;
- permit disclosure of financial statements that omit certain expenses for certain acquisitions of a component of an entity;
- permit the use of, or reconciliation to, International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB) for the financial statements presented, in certain circumstances;

- no longer require presentation of separate acquired business financial statements once the business has been included in the registrant’s post-acquisition financial statements for nine months or a complete fiscal year, depending on the level of significance (a change which is particularly helpful to foreign private issuers and first-time registrants);
- amend the pro forma financial information requirements to enhance the content and relevance of information, including the addition of separate columns for “Transaction Accounting Adjustments” and “Autonomous Entity Adjustments” (if the registrant was previously part of another entity) and an optional “Management Adjustments” column to show synergies or dis-synergies;
- align the requirements for acquisitions of real estate operations in Rule 3-14 with the requirements of Rule 3-05 where there are no unique industry considerations;
- codify existing accommodations for acquisitions of oil-and gas-producing operations which permit presentation of abbreviated financial statements;
- add new financial disclosure requirements tailored for registered investment companies for acquired funds; and
- clarify when financial statements and pro forma financial information are required, and update the language used in the SEC rules to take into account concepts that have developed since adoption of the rules more than 30 years ago.

Notably, Commissioner Allison Herren Lee dissented to the adoption of the amendments, expressing concern that they fail to adequately address risks of reduced transparency for investors regarding the economics of an acquisition and the risk of increasing market concentration, which could result in “predatory takeovers of smaller, struggling businesses.” The final amendments will become effective beginning with fiscal years after December 31, 2020, with earlier voluntary compliance permitted on condition that public companies adopt the amendments in their entirety.

For additional information regarding any of the above items, or with respect to any questions relating to a specific company or situation, please contact your Winston relationship attorney.

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