



February 16, 2017

Interim Final SEC Rule Amending Form 10-K to Allow a Summary Section

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An interim final rule of the U.S. Securities and Exchange Commission (SEC), which became effective on June 9, 2016, amended Form 10-K to allow (but not require) issuers to provide a summary section in their annual reports so long as each item in the summary “is presented fairly and accurately” and includes a cross-reference by hyperlink to the more detailed material contained in the issuer’s Form 10-K to which the item relates. Issuers that summarize information that is incorporated by reference into the Form 10-K from an exhibit that is filed with the form must include a hyperlink from the summary to the accompanying exhibit.

The new section 16 is intended to provide issuers with flexibility in preparing the summary and does not prescribe the length of the summary (other than to state that the summary shall be brief), specify the Form 10-K disclosure items that should be covered by the summary or dictate where the summary must appear in the Form 10-K. Information may be included in the summary only if it is included in the Form 10-K when the form is filed. The summary cannot refer to information to be filed in a subsequent SEC filing, such as a proxy statement. An issuer that includes a summary in its Form 10-K filing is not required to subsequently file an amendment to that Form 10-K to expand the summary just to include Part III information (which includes disclosure about executive officers, directors and executive compensation) incorporated by reference into the Form 10-K from a proxy or information statement filed after the Form 10-K is filed. The issuer must, however, indicate that the summary does not include Part III information.

Few issuers have traditionally included a summary section in their Form 10-Ks and, given that the new rules do not require a summary and the previous rules did not prohibit an issuer from including a summary, it is questionable whether the new rules will have a noticeable impact on Form 10-K practice.

If you have any questions regarding the foregoing, please contact [Jeffrey Nadler](#) (212.588.5505), [Scott D. Fisher](#) (212.588.5596) or [Paul Watkins](#) (212.588.5547) in our New York office.

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