

Proposed Expanded SEC Disclosure Schedule

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The following is a list 20 proposed expanded corporate disclosure items, which have been selected for their financial value-relevance, as well as their ability to enhance corporate governance and responsibility. The proposed disclosure items can be categorized as: those that require new issues to be discussed, items that provide more detailed instructions to existing requirements, and those that change materiality thresholds.

General information

To provide context to existing corporate disclosures, inform analysis on corporate strategy, market positioning, etc.

1. List of countries where company has facilities or operations, and nature of the operations (e.g. sales, manufacturing, assembly, etc.) (new)
2. List of major suppliers for core business operations (new)
3. For non-retail companies, list largest 20 customers by percentage of sales
4. Number of employees employed with the U.S. and abroad. Total number covered by a labor union within the U.S. and abroad, along with name of union and status of union-management relations.

Good Actor indicators

To provide indicators of the integrity of management, compliance with applicable laws, and recognized areas of corporate citizenship.

1. Disclosure of compliance with Foreign Corrupt Practices Act (new)
2. Disclose security arrangements with state police and military forces or with third party military or paramilitary forces (new)
3. Disclosure of company-adopted human rights, including standards and codes including brief description of internal and external monitoring mechanisms (new)
4. Amount and content of business/trade with countries that is officially discouraged as a matter of national policy (because of, for example, hostile relations or abuse of human rights), J-7 countries or companies on the List of Foreign Asset Controls (new)

Expenditures

To provide additional information regarding company expenditures

1. Corporate contributions to political organizations directly or through Political Action Committees (PACs), classified by party affiliation of the beneficiary, names of all PACs established by the company, and amounts dispensed in contributions. Amounts spent on lobbying activities, including payments to law or public relations firms. Amounts contributed by the company to trade associations for special political or lobbying campaigns, over and above normal membership dues (new)

Potential Liabilities

To provide leading indicators of potential liabilities that may occur as a result of remediation, lawsuits, fines, endangered contracts, or damage to brand equity.

1. TRI emissions data: current estimates of air and water emissions, by specific site, category and quantity (new)
2. State by product category number of outstanding claims and number and aggregate value of settlements related to product liability, injury, and wrongful deaths.
3. State by product category number and value of product recalls.
4. State outstanding cases and number and aggregate value of National Labor Relations Board and/or National Mediation Board charges and findings of fact. (detail)
5. State outstanding cases and number and aggregate value of Department of Labor charges under the FLSA and findings of fact
6. State number and aggregate value of complaints filed at and violations found by the Equal Employment Opportunity Commission and/or Office of Federal Contract Compliance Programs. (new)

Potential trends and uncertainties

To provide indicators of trends in potential liabilities, consumer and market demand, pertinent regulation, etc.

1. Environmental disclosure: change materiality threshold to account for cumulative environmental liabilities, penalties, settlements, fines, and violations. (threshold)
2. Identify any domestic or international trends in customer or stakeholder complaints, accidents, or any recently published peer reviewed scientific literature that the company is aware of that may be suggestive of the potential for the company's products, services or activities to cause serious harm to human health or the environment. The company may also state whether it has other countervailing (exculpatory) evidence or studies. (detail)
3. List and discuss significant environmental problems caused by normal use of the company's product by the ultimate customers.
4. State number and aggregate value of complaints filed at and violations found by OSHA under the categories "fatality," "serious," "willful" and "repeat." (new)
5. Provide specific instruction regarding the disclosure of uncertain financial risks posed by prospective environmental regulations.

Several proposed items essentially change the materiality threshold for disclosure of issues that taken individually (such as a product recall for a single product, a particular site that requires environmental clean-up, or an individual wrongful death settlement) may not be material, but in aggregate may be significant. The Big Five accounting firms recommended to the Securities and Exchange Commission that the SEC should require companies to disclose information that "the likelihood that a statement that is currently immaterial may have an effect in future periods because, for example, of a cumulative effect that builds over several periods."ⁱ

General information

To provide context to existing corporate disclosures, inform analysis on corporate strategy, market positioning, etc.

1. *List of countries where company has facilities or operations (new)*

This information is provided by Dun&Bradstreet, but is outdated within 3-6 months given the large amount of mergers & acquisitions. This data could inform investors of a company's exposure to country risks.

2. *List of major suppliers for core business operations (new)*

This information provides investors with information on a company's production and value chain, and could inform shareholders of a company's exposure to country risks

3. *For non-retail companies, list largest 20 customers by percentage of sales*

A listing of a company's largest customers provides investors with important data on which to analyze a company's strategic positioning in the marketplace, its vulnerability to customer trends and conditions.

4. *Number of employees employed with the U.S. and abroad. Total number covered by a labor union within the U.S. and abroad, along with name of union and status of union-management relations.*

Levels of unionization, both domestically and abroad provides basic information to investors about labor-management relations. Generally, registrants the only obvious threshold for disclosing information on union-management relations is with cases of strikes, work stoppages, lockouts, and other grave situations; shareholders should receive more detailed information on labor-management relations before these situations arise.

Good Actor indicators

To provide indicators of the integrity of management, compliance with applicable laws, and recognized areas of corporate citizenship.

1. *Disclosure of compliance with Foreign Corrupt Practices Act (new)*

Regulation S-K, Item 303 specifically instructs foreign issuers to consider governmental economic, fiscal, monetary, or political policies or factors that have or could materially affect their operations or investments by United States nationals. However, SEC rules do not provide instruction for US-based multinational companies and its compliance with similar US foreign policy-related laws. Notably, the accounting provisions of the Foreign Corrupt Practices Act itself do not provide companies with explicit materiality guidance.

Compliance with the U.S. Foreign Corrupt Practices Act, which seeks to address corruption and bribery, can also be viewed as a "good actor" indicator.

2. Disclose security arrangements with state police and military forces or with third party military or paramilitary forces (new)

Disclosure of security arrangements would help inform investors of the expenditures related to operating in countries or areas with high levels of political risk. Such company-specific disclosure is more helpful to investors than relying on general sovereign risk data.

3. Disclosure of company-adopted human rights, including standards and codes including brief description of internal and external monitoring mechanisms (new)

Disclosure of human rights standards, particularly for companies with international operation, assist investors in determining how a company is managing one of the most consumer-sensitive issues in the global marketplace. The most prominent example of how human rights-related issues can impact financial performance is Nike and the consumer campaign against the company's sweatshop conditions in Asia.

4. Amount and content of business/trade with countries that is officially discouraged as a matter of national policy (because of, for example, hostile relations or abuse of human rights), J-7 countries or companies on the List of Foreign Asset Controls (new)

SEC rules do not provide sufficient instruction for US-based multinational companies and its compliance with foreign policy objectives. Such information could provide investors with a picture of a company's exposure to country risks, particularly as countries of concern (formerly referred to as "rogue" countries) may be subject to future US sanctions.

Expenditures

To provide additional information regarding company expenditures

1. Corporate contributions to political organizations directly or through PACs (new)

This information provides guidance to shareholders as to company expenditures to influence public policy; institutional investors may agree or disagree with the registrant's use and magnitude of such lobbying expenditures.

Potential Liabilities

To provide leading indicators of potential liabilities that may occur as a result of remediation, lawsuits, fines, endangered contracts, or damage to brand equity.

1. Toxic Release Inventory emissions data: current estimates of air and water emissions, by specific site, category and quantity (new)

TRI chemicals emissions have been demonstrated to be value-relevant, and are an indicator of risk and, if not properly managed, potential for Superfund liability.

2. State by product category number of outstanding claims and number and aggregate value of settlements related to product liability, injury, and wrongful deaths.

A record of numerous small offenses may reveal an inattentive/ineffective management and inadequate systemic controls.

3. *State by product category number and value of product recalls.*

Product quality is a key driver in corporate value. For manufacturing companies, information about product recalls can be a more objective indicator of product quality than customer surveys.

4. *State outstanding cases and number and aggregate value of National Labor Relations Board and/or National Mediation Board charges and findings of fact. (detail)*

Currently, SEC requirements require disclosure of imminent strikes or work stoppages. Providing information on NLRB/ NMB charges provides a better picture and can be a leading indicator of the state of management-labor relations.

5. *State outstanding cases and number and aggregate value of Department of Labor charges under the Fair Labor Standards Act and findings of fact. (detail)*

Similarly, providing information on Department of Labor charges provides investors with a clearer picture of labor issues and can be a leading indicator of labor relations.

6. *State number and aggregate value of complaints filed at and violations found by the EEOC and/or Office of Federal Contract Compliance Programs. (new)*

This information can provide leading indicators of discrimination and harassment before such issues create legal liabilities. On June 20, 2000 302 employees of Nextel Communications Inc. filed a racial and sexual discrimination complaint against the company seeking \$2 billion, company shares fell from around \$69 to around \$62.ⁱⁱ Other recent discrimination cases include the January 2001 \$5 billion racial discrimination lawsuit against Microsoft, and last year's Coca-Cola's racial discrimination lawsuit that was settled for \$192 million, not including legal fees of \$20 million.ⁱⁱⁱ Regarding complaints or violations found by the Office of Federal Contract Compliance Programs, Staff Accounting Bulletin 99 states that information may be material if it reflects a company's compliance with contracts. However, no further instruction is provided to registrants, and disclosure of OFCCP data would be a robust indicator of such contractual compliance.

Potential trends and uncertainties

To provide indicators of trends in potential liabilities, consumer and market demand, pertinent regulation, etc.

1. *Change materiality threshold to account for cumulative environmental liabilities, penalties, settlements, fines, and violations. (threshold)*

Investors and insurers are unable to determine whether environmental liabilities in aggregate may be materially significant. In response to the lack of adequate information on environmental liabilities, the insurance industry has been supporting the creation of a voluntary environmental liabilities estimation and disclosure format that is being developed through the American Society for Testing and Materials. The proposed

ASTM disclosure standards call for the disclosure of environmental liabilities if, in aggregate, they are material.

2. *Identify any domestic or international trends in customer or stakeholder complaints, accidents, or any recently published peer reviewed scientific literature that the company is aware of that may be suggestive of the potential for the company's products, services or activities to cause serious harm to human health or the environment.* (detail)

This kind of information on trends, if deemed to be material, should be reported in Management Discussion and Analysis section of a company's 10-K filing, in which registrants disclose known events, trends or uncertainties that could affect liquidity, capital resources, or results of operations. Although companies commonly consider the effect of impending regulations, Item 303 does not provide sufficient instruction for registrants to disclose consumer and scientific trends.

Such trends are playing an increasingly influential role in the results of company operations, and can be a leading indicator of future regulation. For example, activism from anti-smoking advocates created significant consumer and eventually legal impacts for the tobacco industry; similarly, a union-led consumer boycott of Crown Petroleum could have resulted in as much as 7.2% in sales of gasoline in the first half of 1999. Finally, the consumer backlash against genetically engineered food and led activists to perform independent lab tests of genetically engineered corn, which eventually resulted in a loss of \$100m for Aventis.

3. *List and discuss significant environmental problems caused by normal use of the company's product by the ultimate customers.*

Shareholders should be apprised of products that, from normal use, potentially pose significant environmental or human health problems. Such potential problems should be disclosed before they are manifest through lawsuits or legal liabilities; recent examples would include health problems associated with breast implants, and the safety issues associated Firestone/Bridgestone tires.

4. *State number and aggregate value of complaints filed at and violations found by OSHA, under the categories "fatality," "serious," "willful" and "repeat," including lost work days.* (new)

OSHA information already reported to the federal government and is value-relevant for shareholders. In particular, OSHA data such as lost work days, fatalities, and near-miss accidents are value-relevant and can provide a leading indicator of future workplace safety.

5. *Provide specific instruction regarding the disclosure of uncertain financial risks posed by prospective environmental regulations.*

Although Regulation S-K, Item 303 requires disclosure of trends or uncertainties that may have a material impact on the company, members of the CSWG has documented numerous cases where prospective environmental regulations were not disclosed,^{iv} indicating that registrants and investors would benefit from the specific mention of environmental regulation as a type of trend or uncertainty.

ⁱ Big Five Audit Materiality Task Force: Status Report and Initial Recommendations, August 1998

ⁱⁱ "Atlanta bucks trend of rising EEOC cases," Atlanta Business Chronicle, June 23, 2000.

ⁱⁱⁱ Armour, Stephanie, "Bias suits are on the rise," Des Moines Register, 10 Jan 2001.

^{iv} See for example, *Coming Clean*, a 2000 report from World Resources Institute, which find that several forest products companies did not adequately disclose the material effects of pending environmental regulations, despite the fact that they companies themselves identified these risks. Similarly, a March 2001 complaint to the SEC by Friends of the Earth - UK and Friends of the Earth - US revealed that Scotts Company failed to disclose the fact that impending regulations on peatlands in the UK would result in the possible closing of three major Scotts peat mines.