

CLIENT BRIEF | SEC Adopts Rule to Simplify Redacting Confidential Information in Exhibit Filings

March 26, 2019 | On March 20, 2019, the SEC adopted a rule that will allow companies to omit confidential information from most exhibits without filing a confidential treatment request.

In this significant development, registrants may now omit confidential information from material contracts filed under Item 601(b)(10) of Regulation S-K and agreements under Item 601(b)(2) without submitting a confidential treatment request (CTR) if and when the registrant determines that such information is (i) not material and (ii) would likely cause competitive harm if publicly disclosed.

Under the new rule, registrants will still be required to mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted. They must also include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed. The registrant also must indicate within the exhibit where information is omitted from the filed version.

Registrants should note that the amendment modifies the CTR process only, and not the underlying substantive requirements for determining whether redacted information is eligible for confidential treatment.

According to the SEC, the amendment will “modernize and simplify disclosure requirements for public companies, investment advisers, and investment companies” and make it easier to access material information within company disclosures.

The amendment will become effective immediately upon publication in the Federal Register.

For more information about the recent SEC rule adoption and its impact on companies’ compliance efforts, please contact Geoff Morgan or Jessica Fairchild.

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