

Client Update

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

NEW YORK

Matthew E. Kaplan
mekaplan@debevoise.com

Alan H. Paley
ahpaley@debevoise.com

Steven J. Slutzky
sjslutzky@debevoise.com

Anne C. Meyer
acmeyer@debevoise.com

Katie Hermann
klhermann@debevoise.com

On June 1, the SEC issued an interim final rule amending Part IV of Form 10-K to add new Item 16, which allows, but does not require, filers to include in their Form 10-K a summary of business and financial information contained in the annual report. The rule, mandated under the FAST Act, became effective on June 9, 2016 upon publication in the Federal Register. The public comment period will remain open for 30 days.

The amendment allows considerable flexibility with respect to the summary's form 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. However, the amendment does require the summary to include hyperlinks to the related, more detailed disclosure item in the Form 10-K or, if the information is incorporated by reference in the Form 10-K, to the Form 10-K exhibit containing the incorporated information. If information responsive to Part III of Form 10-K is to be incorporated by reference to a proxy statement to be subsequently filed, the summary is not permitted to summarize such information and must indicate that it omits Part III information.

As in the case of a prospectus summary, a Form 10-K summary should be a fair and balanced summary of the more complete information included elsewhere in the annual report. To minimize risk of any claim that a Form 10-K summary is materially misleading or omits material information, we recommend that, as is customary in a prospectus summary, it include a brief cautionary preface. In upholding the dismissal of claims predicated on the misleading nature of a prospectus summary, the Second Circuit has pointed to the presence of such a cautionary preface.

* * *

Please do not hesitate to contact us with any questions.