

Public Companies Practice



2021 FORM 10-K, PROXY SEASON AND OFFERING PREPAREDNESS TOOLKIT

QUICK REFERENCE GUIDE TO RECENT AND UPCOMING RULE CHANGES

Includes SEC actions, new laws, stock exchange items, proxy advisor pronouncements and major investor philosophy

In the last two years the SEC has issued dozens of proposals, final rule makings and other guidance, most of which makes (or will make) significant changes to long-standing disclosure, investment and financial reporting rules. This toolkit is designed to give you ready access to the formal text of those rules and related releases and guidance. We have organized this with an emphasis of items currently in effect. At the end, we also include some links to additional information from proxy advisors, NYSE/Nasdaq, major investors and other resources relevant to the 2021 Form 10-K and Proxy Season, as well as M&A deals. We trust you find this information helpful, but do not hesitate to contact your go-to lawyer at King & Spalding or any of the persons listed on the last page.

SEC RULE CHANGES

Effective Date ¹	Summary of Key Changes	Key Rules Impacted ²	SEC Release
PERIODIC REPORTS AND PROXY STATEMENTS			
April 27, 2020	Revised definitions of “accelerated filer” and “large accelerated filer” and transition thresholds for exiting filer status and revised 10-K cover page to include new check-the-box indicating whether an auditor attestation is included in the 10-K filing.	Rule 12b-12 Form 10-K	Final Rule (Release No. 34-88365) Correction (Release No. 34-88365A) Proposed Rule (Release No. 34-85814)

¹ Date shown is the Effective Date of the new rules, unless indicated otherwise.

² Please review all underlying releases to see all rules implicated.



Effective Date ¹	Summary of Key Changes	Key Rules Impacted ²	SEC Release
	Under the new rules, an issuer is not an “accelerated filer” if the issuer (i) is eligible to be a smaller reporting company (“SRC”) and (ii) had revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. However, an SRC with (i) a public float between \$75 million and \$250 million, and (ii) \$100 million or more in annual revenues would still be an “accelerated filer” <u>as well as</u> an SRC in accordance with the June 2018 amendments to the definition of an SRC.		
November 2, 2020 <i>Proxy voting advisors subject to the final rules are not required to comply with the Rule 14a-2(b)(9) amendments until December 1, 2021.</i>	Revised Rule 14a to require proxy voting advisors (e.g., ISS/Glass Lewis) to provide investors with new disclosures and notices in order for those advisors to benefit from proxy statement exemptions.	Rule 14a-1 Rule 14a-2 Rule 14a-9	Final Rule (Release No. 34-89372) Supplemental Guidance (Release No. IA-5547)
November 9, 2020	Revised Reg S-K disclosure requirements (business section; human capital; legal proceedings; risk factors) to update and discourage repetitive disclosures and eliminate others. See K&S Client Alert: SEC Adopts Amendments to Modernize Regulation S-K .	Reg S-K Item 101 Reg S-K Item 103 Reg S-K Item 105	Final Rule (Release No. 33-10825) Proposed Rule (Release No. 33-10668)
December 8, 2020	Revised the definition of “accredited investor” to add a new category of qualifying natural persons and entities and to make certain other modifications to the existing definition.	Rule 144A Rule 215 Reg D, Rule 501(a)	Final Rule (Release No. 33-10824) Proposed Rule (Release No. 33-10734)
January 1, 2021	Amended the significance tests in the definition of “significant subsidiary,” and the financial disclosure requirements for acquisitions and dispositions of businesses, including real estate operations and investment companies.	Reg S-X Rule 1-02(w) Reg S-X Rule 3-05 Reg S-X Rule 3-14 Reg S-X Rule 6-11 Reg S-X Article 8 Reg S-X Article 11 Rule 12b-2 Rule 405	Final Rule (Release No. 33-10786) Technical Correction (Release No. 33-10762A) Proposed Rule (Release No. 33-10635)



Effective Date ¹	Summary of Key Changes	Key Rules Impacted ²	SEC Release
January 4, 2021	<p>Revised financial disclosure requirements for guarantors and issuers of guaranteed securities registered or being registered, and issuers' affiliates whose securities collateralize securities are registered or being registered.</p> <p>Among other things, companies with registered debt securities that are guaranteed by related entities are required to file an Exhibit 22 under new Regulation S-K Item 601(b)(22) listing (i) each affiliate whose securities are pledged as collateral for the company's debt securities and (ii) the securities pledged.</p>	<p>Reg S-X Rule 3-10 Reg S-X Rule 3-16 Reg S-X Rule 8-01 Reg S-X Rule 8-03 Reg S-X Rule 10-01 Reg S-X Rule 13</p>	<p>Final Rule (Release No. 33-10762) Technical Correction, (Release No. 33-10762A)</p>
January 4, 2021	<p>Amended procedural requirements and resubmission thresholds with respect to shareholder proposals.</p> <p>Among other things, the new rule creates a tiered system under which a shareholder can satisfy three alternative thresholds to be eligible to submit a proposal for inclusion in a company's proxy statement: (i) continuous ownership of at least \$2,000 of the company's securities for at least three years; (ii) continuous ownership of at least \$15,000 of the company's securities for at least two years; or (iii) continuous ownership of at least \$25,000 of the company's securities for at least one year.</p> <p>See K&S Client Alert: SEC Approves Polarizing 14a-8 Reforms.</p>	<p>Rule 14a-8</p>	<p>Final Rule (Release No. 34-89964) Proposed Rule (Release No. 34-87458)</p>
February 10, 2021 <i>Amendments do not require companies to comply with the amended rules until the first fiscal year that ends on or after August 9, 2021, but filers may do so on a voluntary basis.</i>	<p>Revised certain disclosure requirements relating to selected financial data and streamlined supplementary financial information and MD&A disclosures.</p>	<p>Reg S-K Item 301 Reg S-K Item 302 Reg S-K Item 303</p>	<p>Final Rule (Release No. 33-10890) Proposed Rule (Release No. 33-10750)</p>
February 25, 2021	<p>Issued guidance on use of key performance indicators and metrics in MD&A.</p> <p>Of note, the SEC emphasized that companies should identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual company. The guidance includes a list of metrics that may be considered KPIs.</p>	<p>Reg S-K Item 303</p>	<p>Interpretative Guidance (Release No. 33-10751)</p>



Effective Date ¹	Summary of Key Changes	Key Rules Impacted ²	SEC Release
March 15, 2021	Revised disclosure requirements of resource extraction issuers to include new disclosures regarding payments made to the U.S. federal government or foreign governments for the commercial development of oil, natural gas, or minerals.	Rule 13q-1 Form SD	Final Rule (Release No. 34-90679) Proposed Rule (Release No. 34-87783)
Comments Due: February 9, 2021	<p>Proposed amendments to Rule 701 and Form S-8 designed to simplify and redesign the manner in which issuers grant securities to employees in compensatory transactions.</p> <p>Among other things, issuers may add additional plans to an existing Form S-8 by filing an automatically effective post-effective amendment to a previously filed Form S-8, and may use a single Form S-8 to register multiple incentive plans and are not required to allocate registered securities among incentive plans.</p>	Rule 701 Form S-8	Proposed Rule (Release No. 33-10891)
PRIVATE PLACEMENTS AND REGISTRATIONS			
August 1, 2020 ³ <i>Some amendments become effective August 1, 2021 and compliance with certain disclosures are staggered between August 1, 2021 and February 1, 2023.</i>	Revised requirements regarding registration, communications and offering processes for business development companies and other closed-end investment companies.	Rule 134 Rule 138 Rule 168 Rule 169 Rule 164 Rule 172 Rule 173 Rule 405 Rule 433 Rule 486 Form N-2	Final Rule (Release No. 33-10771) Proposed Rule (Release No. 33-10619)
Comments Due: February 9, 2021	Proposed temporary rules to facilitate participation by Certain “Platform Workers” in compensatory offerings under Rule 701 and Form S-8.	Rule 701 Form S-8	Proposed Rule (Release No. 33-10892)
March 15, 2021 ⁴	Revised exempt offering framework to raise investment limits, clarify rules regarding communications and eligibility criteria with respect to Reg D, Reg A and Crowdfunding exemptions.	Reg A Reg D	Final Rule (Release No. 33-10884) Proposed Rule (Release No. 33-10763)

³ Additionally, certain amendatory instructions are effective for different periods.

⁴ Please note that certain amendatory instructions are effective for different periods.



Effective Date ¹	Summary of Key Changes	Key Rules Impacted ²	SEC Release
	Of note, the SEC has adopted new Rule 152, which provides a comprehensive integration framework for issuers conducting concurrent public and private offerings. Additionally, the SEC adopted new rules designed to allow for certain activities (e.g., “demo days”) without such interactions constituting a general solicitation.	Regulation Crowdfunding	
Comments Due: March 22, 2021	Proposed amendment to revise the holding period determination for securities acquired upon the conversion or exchange of certain “market-adjustable securities” and to update and simplify Form 144 filing requirements.	Rule 144	Proposed Rule (Release No. 33-10911)
OTHER NOTABLE CHANGES AND GUIDANCE			
Issuance Date: December 19, 2019 (Updated September 9, 2020)	Guidance regarding confidential treatment applications. Of note, companies are permitted to omit confidential information from material contracts without having to submit a formal confidential treatment request (“CTR”), so long as the redacted information is not material and would likely cause competitive harm to the company if publicly disclosed (or, effective March 15, 2021 under the new standard, “if the registrant customarily and actually treats that information as private or confidential”).	Rule 406 Rule 24b-2	CF Disclosure Guidance: Topic No. 7
January 15, 2020	Congress prohibited the SEC from using any appropriated funds “to finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax-exempt organizations, or dues paid to trade associations.”	Section 631 of the Consolidated Appropriations Act, 2021	
July 1, 2020 ⁵	Revised disclosure requirements and summary prospectuses for portfolio companies associated with variable annuity and variable life insurance contracts.	Rule 498A Form N-3 Form N-4 Form N-6	Final Rule (Release No. 33-10765) Technical Correction (Release No. 33-10765A) Proposed Rule (Release No. 33-10569)
December 7, 2020	Amended rules governing SEC’s whistleblower program to provide greater clarity to whistleblowers and with the intent to increase the program’s efficiency and transparency.	Rule 21-F	Final Rule (Release No. 34-89963) Proposed Rule (Release No. 34-83557)

⁵ Please note that certain amendatory instructions are effective for different periods.



Effective Date ¹	Summary of Key Changes	Key Rules Impacted ²	SEC Release
Issuance Date: December 22, 2020	Guidance regarding certain disclosures required in SPAC IPOs and business combination transactions.	Reg S-K Form S-4	CF Disclosure Guidance: Topic No. 11
January 1, 2021	Congress expanded SEC authority to seek disgorgement for SEC violations and extended the statute of limitation on disgorgement and other equitable remedies from 5 to 10 years.	Section 21(d) of the Exchange Act	N/A
February 9, 2021	Permitted use of electronic signatures in documents in connection with electronic filing. Of note, if using an electronic signature, the signatory must have manually signed a blanket attestation stating that the use of an electronic signature will constitute the legal equivalent of the individual's manual signature for authentication purposes. The attestations must be retained for as long as the signatory may use an electronic signature to sign an SEC filing (and in any case, at least seven years), and issuers must furnish a copy of the manual signature to the SEC upon request.	Reg S-T Rule 301 Reg S-T Rule 302 EDGAR Filer Manual Vol. 2 changes	Final Rule (Release No. 33-10889)
June 9, 2021	Updated independent auditor requirements.	Reg S-X Rule 2-01	Final Rule (Release No. 33-10876) Proposed Rule (Release No. 33-10738)



Issuance Date ⁶	Topic	Guidance
COVID-19 RELIEF AND GUIDANCE		
March 24, 2020 (Updated June 25, 2020 and November 20, 2020)	Division of Corporation Finance Statement regarding relief against requirements for manual signatures in Light of COVID-19 concerns.	SEC Statement
March 25, 2020	Division of Corporation Finance's views regarding disclosure, reporting earnings and other securities law obligations to consider in light of COVID-19.	CF Disclosure Topic No.9 – Coronavirus (COVID-19)
March 13, 2020 (Updated April 7, 2020)	Division of Corporation Finance's views regarding conducting Annual Meetings in light of COVID-19 concerns.	SEC Guidance
April 10, 2020 (Updated June 25, 2020)	Division of Corporation Finance Statement regarding requirements for Form 144 paper filings in light of COVID-19 concerns.	SEC Guidance
April 23, 2020; (Updated June 25, 2020)	Division of Corporation Finance Statement regarding requirements for other (non-Form 144) paper filings in light of COVID-19 concerns.	SEC Guidance
May 4, 2020 ⁷	Temporary Amendments to Regulation Crowdfunding.	Temporary Final Rule (Release No. 33-10781)
April 27, 2020 (Updated May 4, 2020)	Division of Corporation Finance's responses to questions about funds, advisers, and certain institutional investment managers that file Form 13F affected by COVID-19.	Division of Investment Management's COVID-19 Related FAQ
June 23, 2020	Division of Corporation Finance's additional views regarding disclosure considerations regarding operations, liquidity and capital resources in light of COVID-19.	CF Disclosure Topic 9A - Coronavirus (COVID-19)
August 4, 2020	Division of Corporation Finance Statement Regarding submission of supplemental materials and information subject to confidential treatment requests in light of COVID-19 concerns.	SEC Guidance

⁶ Date shown is the Issuance Date of the guidance/relief unless otherwise noted.

⁷ The amendments are effective from May 4, 2020, through March 1, 2021; the amendments apply to securities offerings initiated under Regulation Crowdfunding between May 4, 2020, and August 31, 2020.



OTHER 2021 GUIDELINES AND RESOURCES

GLASS LEWIS

[Glass Lewis 2021 U.S. Voting Guidelines](#)

[Glass Lewis 2021 ESG Initiatives Voting Guidelines](#)

ISS

[ISS 2021 U.S. Voting Guidelines](#)

[ISS 2021 Updates \(Benchmark Policy Changes\)](#)

[ISS Compensation Policies FAQ](#)

[ISS Equity Compensation Plans FAQ](#)

[ISS Pay-for-Performance Mechanics](#)

[ISS Peer Group FAQ](#)

[ISS Total Shareholder Return Information for U.S. Performance-Related Policies](#)

[ISS 2021 Sustainability U.S. Proxy Voting Guidelines](#)

[ISS 2021 Sustainability U.S. Policy Voting Guidelines Updates](#)

BLACKROCK

[BlackRock 2021 Proxy Voting Guidelines](#)

[Larry Fink's 2021 Letter to CEOs](#)

STATE STREET

[CEO's Letter on State Street's 2021 Proxy Voting Agenda](#)

[State Street Guidance on Enhancing Racial and Ethnic Diversity Disclosure](#)

[Diversity Strategy, Goals & Disclosure: State Street's Expectations for Public Companies](#)

VANGUARD

[Vanguard 2020 U.S. Proxy Voting Policy](#)

[Vanguard Statement on Annual Shareholder Meetings During COVID-19](#)

NYSE

[NYSE Listed Company Compliance Guidance Letter \(January 14, 2021\)](#)

[NYSE Proposed Rule Change regarding shareholder approvals and related party transactions \(Release No. 34-90803; December 28, 2020\)](#)

NASDAQ

[Nasdaq Proposed Rule Change regarding board diversity \(Release No. 34-90574; December 4, 2020\)](#)

[Nasdaq Release regarding submission of proposal regarding board diversity \(January 10, 2021\)](#)

OTHER HELPFUL K&S RESOURCES

[K&S Client Alert: Significant 2021 Proxy Advisor Policy Changes \(December 7, 2020\)](#)

[K&S Key Proxy Statement Disclosure Trends: Corporate Governance \(October 5, 2020\)](#)

[K&S Key Proxy Statement Disclosure Trends Beyond Compliance \(October 15, 2020\)](#)

[K&S Key Proxy Statement Disclosure Trends: Executive Compensation \(October 28, 2020\)](#)

[K&S ESG Agenda \(October 2020\)](#)

[K&S Client Alert: BlackRock's 2021 Policy Guidance \(December 11, 2020\)](#)



KEY CONTACTS IN KING & SPALDING'S CAPITAL MARKETS AND CORPORATE GOVERNANCE TEAM



Keith Townsend
ktownsend@kslaw.com
+1 404 572 3517



Richard Fields
*Director – Corporate
Stakeholder Engagement*
rfields@kslaw.com
+1 212 556 2134



Cal Smith
calsmith@kslaw.com
+1 404 572 4875



Jonathan Newton
jnewton@kslaw.com
+1 713 276 7382



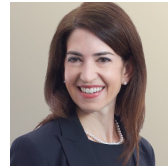
Heath Trisdale
htrisdale@kslaw.com
+1 713 276 7405



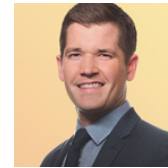
Tim Fesenmyer
tfesenmyer@kslaw.com
+1 212 556 2336



Michael Hamilton
mhamilton@kslaw.com
+1 713 276 7404



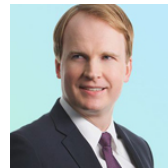
Liz Morgan
emorgan@kslaw.com
+1 212 556 2351



Zack Davis
zdavis@kslaw.com
+1 404 572 2770



Zach Cochran
zcochran@kslaw.com
+1 404 572 2784



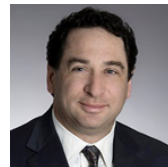
Rob Leclerc
rleclerc@kslaw.com
+1 404 572 2781



Shahla Hazratjee
shazratjee@kslaw.com
+1 713 276 7388



Laura Bushnell
lbushnell@kslaw.com
+1 650 422 6713



Larry Yanowitch
lyanowitch@kslaw.com
+1 703 245 1001



Martin Oberst
moberst@kslaw.com
+1 404 572 2771