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Securities Law ADVISORY ■

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SEC Replaces Industry Guide 3 and Modernizes Disclosures for Banking Registrants

On September 11, 2020, the U.S. Securities and Exchange Commission (SEC) adopted, in substantially the form it had previously proposed, new rules to update and expand the statistical disclosures that bank and savings and loan registrants are required to provide to investors. The new rules replace Industry Guide 3, Statistical Disclosure by Bank Holding Companies with updated disclosure requirements into a new Subpart 1400 of Regulation S-K. These updated disclosure requirements also eliminate certain disclosure requirements that overlap with other SEC disclosure requirements, U.S. generally accepted accounting principles (GAAP), or International Financial Reporting Standards (IFRS). The new rules are the first substantive changes to the statistical disclosure requirements for financial institutions in more than 30 years.

The new rules apply to domestic and foreign bank holding companies, banks, savings and loan holding companies, and savings and loan associations. The new rules require disclosures for each annual period presented and any additional interim period in the event of a material change during the interim period.

The SEC's rules require disclosures for:

- Distribution of assets, liabilities, and stockholders' equity; the related interest income and expense; and interest rates and interest differential.
- Weighted average yield of investments in debt securities by maturity.
- Maturity analysis of the loan portfolio, including the amounts that have predetermined interest rates and floating or adjustable interest rates.
- Certain credit ratios and the factors that explain material changes in the ratios, or the related components during the periods presented.
- The allowance for credit losses by loan category.
- Bank deposits, including average amounts and rate paid and amounts that are uninsured.

According to the SEC, the rules aim to streamline compliance efforts and decrease reporting burdens for registrants and to enhance comparability across issuers. The changes also form part of the SEC's Division of Corporation Finance's (CorpFin) disclosure effectiveness initiative.

Background

In March 2017, the SEC issued a request for comment on possible changes to Guide 3, and on September 17, 2019, the SEC announced proposed rules to significantly update the statistical disclosures required of banks, bank holding companies, savings and loan associations, and savings and loan holding companies.

Guide 3 represents the policies and practices of CorpFin in administering the disclosure requirements applicable to bank and bank holding company registrants, but is not a rule or regulation of the SEC. In practice, however, the disclosures called for by Guide 3 are generally treated as disclosure requirements. While Guide 3 has occasionally been subject to minor revisions, its last substantive update occurred in 1986. Over the years since Guide 3 was last updated, significant reporting changes have been implemented through new accounting standards issued by the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) and by the SEC through other rulemaking proceedings. As a result, many disclosures called for by Guide 3 duplicated FASB/IASB standards and other SEC disclosure rules.

Most public comments to the SEC's September 17, 2019 proposed rules supported the changes to Guide 3.

Detailed Summary of the Final Rules

Codification, scope, and reporting period

Certain Guide 3 disclosures will be updated and codified into a new Subpart 1400 of Regulation S-K, which applies to banks, bank holding companies, savings and loan associations, and savings and loan holding companies. Subpart 1400 will apply to both domestic and foreign registrants.

Subpart 1400 reduces the reporting periods previously required under Guide 3 and aligns them with the relevant annual periods required by SEC rules for a registrant's financial statements. Under the final rule, "reported period" for purposes of Subpart 1400 of Regulation S-K means: (1) each *annual period* for which SEC rules require a registrant to provide financial statements; and (2) *interim period* disclosures if there is a material change in the information or trends during the interim period.

Item 1402: Distribution of Assets, Liabilities, and Stockholders' Equity; Interest Rates; and Interest Differential

Item 1402 of Regulation S-K codifies all the average balance sheet, interest and yield/rate analysis, and rate/volume analysis disclosure items currently in Item I of Guide 3, along with General Instruction 7 and Instruction 5 of Item I of Guide 3. The SEC also adopted the requirement to disaggregate the categories of interest-earning assets and interest-bearing liabilities required to be disclosed.

Item 1403: Investments in Debt Securities

Item 1403 of Regulation S-K codifies the requirement to disclose the weighted average yield for each range of maturities by category of debt securities required to be disclosed in the registrant's GAAP or IFRS financial statements. The final rules only apply to debt securities that are not carried at fair value through earnings. Because they substantially overlap with GAAP and IFRS disclosure requirements, the final rules do not codify the following disclosure items in Item II of Guide 3: (1) book value information; (2) the maturity analysis of book value information; and (3) the disclosures related to investments exceeding 10% of stockholders' equity.

Item 1404: Loan Portfolio

Item 1404 of Regulation S-K streamlines a number of the loan portfolio disclosures currently required by Item III of Guide 3 and codifies the requirement to disclose the maturity by loan category disclosure currently called for by Item III.B of Guide 3, with the loan categories based on the categories required by GAAP or IFRS. Item 1404 also requires additional maturity categories to provide investors with sufficient information on the potential interest rate risk associated with the loans in the portfolio. The final rule codifies the existing Guide 3 instruction stating that the determination of maturities should be based on contractual terms and also codifies the language, as proposed, regarding the "rollover policy" for these disclosures. Further, the final rules codify the disclosure items in Item III.B of Guide 3 regarding the total amount of loans due after one year that have predetermined interest rates or floating or adjustable interest rates, and specifies that this disclosure should be disaggregated by the loan categories disclosed in the registrant's GAAP or IFRS financial statements (i.e., due in one year or less, after one year through five years, after five years through 15 years, and after 15 years).

Item 1404 does not codify Item III.A (loan category disclosures), Item III.C (loan portfolio risk elements), and Item III.D (other interest-bearing assets), all previously required by Guide 3.

Item 1405: Allowance for Credit Losses

Item 1405 of Regulation S-K codifies the requirement to provide a tabular allocation of the allowance disclosures based on the loan categories presented in the GAAP financial statements for registrants applying or reconciling to GAAP, but does not apply to IFRS registrants because IFRS already requires this information at a similar level of disaggregation in the financial statements. The final rules also codify the requirement to disclose disaggregated net charge-off ratios.

For each reported period, a registrant must disclose the following credit ratios, along with each component of the ratio's calculations, including a discussion of the factors that led to material changes in the ratios or their related components for the periods presented: (1) allowance for credit losses to total loans outstanding at each period end; (2) nonaccrual loans to total loans outstanding at each period end; (3) allowance for credit losses to nonaccrual loans at each period end; and (4) net charge-offs during the period to average loans outstanding during the period.

Item 1406: Deposits

Item 1406 of Regulation S-K codifies the majority of the disclosure items in Item V of Guide 3, with some revisions.

For each reported period, a registrant must separately present the average amount of, and the average rate paid on, each of the following deposit categories that exceed 10% of average total deposits: (1) non-interest-bearing demand deposits; (2) interest-bearing demand deposits; (3) savings deposits; (4) time deposits; and (5) other deposits. Additional categories that describe the nature of the deposits can be used if the registrant believes them to be more appropriate. If material, the registrant must separately present domestic deposits and foreign deposits for the amounts reported for those categories. If material, the registrant also must separately disclose the aggregate amount of deposits by foreign depositors in domestic offices, without identifying the nationality of the depositors.

As of the end of each reported period, the registrant must separately present the amount of uninsured deposits. As of the end of the latest reported period, the registrant must disclose U.S. time deposits exceeding the FDIC insurance limit and time deposits that are otherwise uninsured by time remaining until maturity of: (1) three months or less; (2) over three through six months; (3) over six through 12 months; and (4) over 12 months.

Existing Guide 3 disclosures not codified; changes to Article 9 of Regulation S-K

The final rules do not codify the requirement to disclose the four ratios (return on assets, return on equity, a dividend payout ratio, and an equity to assets ratio) called for in Item VI of Guide 3, nor do the final rules codify the short-term borrowing disclosure items in Item VII of Guide 3. Instead, the final rules codify, as part of Item 1402 of Regulation S-K, the average balance and related average rate paid for each major category of interest-bearing liability disclosures currently called for by Item I.B.1 and I.B.3 of Guide 3, and further require disaggregation of the major categories of interest-bearing liabilities to include those referenced in Item VII of Guide 3 and Article 9 of Regulation S-X.

The final rules also amend Rule 9-01 of Regulation S-X to include savings and loan associations and savings and loan holding companies.

Going Forward

The new rules become effective 30 days after publication in the *Federal Register* and will apply to fiscal years ending on or after December 15, 2021. However, the SEC will accept voluntary compliance before the mandatory compliance date. Guide 3 will be rescinded effective January 1, 2023.

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