



## Securities Law ADVISORY ■

**FEBRUARY 10, 2020**

### SEC Proposes Rules to Modernize Items 301, 302, and 303 of Regulation S-K

On January 30, 2020, the Securities and Exchange Commission (SEC) voted to propose additional amendments that will simplify financial disclosure requirements in Regulation S-K. The proposed amendments were designed to eliminate redundant disclosures within the Management's Discussion and Analysis (MD&A) section and simplify compliance. The proposal is part of the SEC's bigger initiative, the Report on Review of Disclosure Requirements in Regulation S-K, to modernize disclosure and compliance requirements.

The SEC also announced the release of nonbinding staff guidance on key performance indicators and metrics within MD&A.

#### Modernizing Regulation S-K

The [proposed amendments](#) eliminate the requirements under Item 301, selected financial data, and Item 302, supplementary financial data, from Regulation S-K. The staff found both items to be duplicative and tailored the amendments to focus on information that is material to investors and registrants.

Additionally, the proposal seeks to amend the MD&A requirements in Item 303 as follows:

- Item 303(a) will include a new disclosure, *Objective*, which will require the registrant to state the principal objectives of its MD&A.
- Item 303(a) will be amended to stress the importance of MD&A for both *Full fiscal years* (proposed Item 303(b)) and *Interim periods* (proposed Item 303(c)).
- Item 303(a)(4) *Off-balance-sheet arrangements* disclosures will be replaced with a principles-based instruction to prompt registrants to discuss off-balance-sheet arrangements in the broader context of MD&A.
- Item 303(a)(5) will be eliminated, including the *Tabular disclosure of contractual obligations*, which the SEC believes is sufficiently covered in registrants' financial statements.

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- Item 303(b)(4) will include a new *Critical accounting estimate* disclosure to help clarify and codify existing SEC guidance in this area.
- Item 303(b) will be revised to allow registrants to compare their most recently completed quarter to the immediately preceding quarter rather than just the corresponding quarter of the prior year, as currently required.
- Item 303(c), *Safe harbor*, and Item 303(d), *Smaller reporting companies*, will be eliminated to be consistent with the elimination of Items 303(a)(3)(iv) and 303(a)(5).

To ensure regulatory consistency, the SEC is also proposing amendments to Forms 20-F and 40-F. Specifically, Item 3.A of Form 20-F (Selected Financial Data), Item 5 of Form 20-F (Operating and Financial Review and Prospects), General Instruction B.(11) of Form 40-F (Off-Balance-Sheet Arrangements), and General Instruction B.(12) of Form 40-F (Tabular Disclosure of Contractual Arrangements) will be amended to conform to the proposed requirements of Regulation S-K.

## Management's Discussion and Analysis Guidance

The SEC also announced [guidance](#) on key performance indicators and metrics within MD&A. The SEC previously noted that “companies should consider whether disclosure of all key variables and other factors that management uses to manage the business would be material to investors, and therefore required” when presenting MD&A to investors.

The guidance is intended to help companies comply with existing requirements and to further consider to include necessary material information. In deciding to do so, the SEC advises companies to consider:

- Whether an existing regulatory disclosure framework applies, such as generally accepted accounting standards (GAAP) or, for “non-GAAP measures,” Regulation G or Item 10 of Regulation S-K.
- What additional information may be necessary to provide adequate context for an investor to understand the metric presented, including a clear definition, why it is useful, and how it is calculated.
- Whether there are estimates or assumptions underlying the metric and whether further disclosure of such estimates or assumptions is necessary for the metric not to be materially misleading.

The SEC also advises companies that decide to change or alter their metrics from one period to another to disclose:

- The differences in the way the metric is calculated or presented compared to prior periods.
- The reasons for the changes.
- The effects the changes may have on amounts or other information.
- The differences in methodology and results that would reasonably be expected to be relevant to an understanding of the company's performance or prospects.

## Going Forward

The proposed amendments will have a 60-day public comment period once they are published in the *Federal Register*.

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