



## Securities Law ADVISORY ■

**DECEMBER 4, 2020**

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

On November 19, 2020, the Securities and Exchange Commission (SEC) [adopted amendments](#) to Regulation S-K in an effort to modernize, simplify, and enhance certain financial disclosure requirements. The amendments are intended to enhance the focus of financial disclosures on material information for the benefit of investors, while simplifying compliance efforts for registrants.

#### Modernizing Regulation S-K

##### ***Eliminating selected and supplementary financial data (Items 301 and 302)***

The adopted amendments eliminate the requirements under Item 301 (Selected Financial Data), meaning registrants will no longer be required to provide five years of selected financial data. Similarly, the amended rules eliminate the requirements under Item 302 (Supplementary Financial Information), meaning registrants will no longer be required to provide two years of tabular selected quarterly financial data. The staff found both items to be duplicative and tailored the amendments to focus on information that is material to investors and registrants.

##### ***Modifications of MD&A (Item 303)***

Additionally, the amendments modify the Management's Discussion and Analysis (MD&A) requirements in Item 303 as follows:

- Item 303(a) includes a new disclosure item, *Objective*, which requires a registrant to state the principal objectives of its MD&A.
- Item 303(a)(2), *Capital resources*, requires registrants to provide material cash requirements, including commitments for capital expenditures, as of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.
- Item 303(a)(3)(ii), *Results of operations*, requires registrants to disclose known events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments.
- Item 303(a)(3)(iii), *Results of operations*, clarifies that a discussion of material *changes* in net sales or revenue is required (rather than only material *increases*).

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- Item 303(a)(3)(iv), *Results of operations*, Instructions 8 and 9 regarding inflation and price changes, has been eliminated. Registrants are still required to discuss these matters if they are part of a known trend or uncertainty that has had, or the registrant reasonably expects to have, a material favorable or unfavorable impact on net sales, revenue, or income from continuing operations.
- Item 303(a)(4), *Off-balance-sheet arrangements*, replaces disclosures with a principles-based instruction to prompt registrants to discuss off-balance-sheet arrangements in the broader context of MD&A. Under the new instruction, registrants will be required to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on such registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources even when the arrangement results in no obligation being reported in the registrant's consolidated balance sheets.
- Item 303(a)(5), *Contractual obligations*, has been eliminated, including the *Tabular disclosure of contractual obligations*, which the SEC believes is sufficiently covered in registrants' financial statements.
- Instruction 4 to Item 303(a) (Material changes in line items), incorporates a portion of the instruction into amended Item 303(b). The instruction clarifies that when there are material changes in a line item, including when material changes within a line item offset one another, disclosure of the underlying reasons for these material changes in quantitative and qualitative terms is required.
- Item 303(b), *Interim periods*, permits registrants to compare their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter, rather than just the corresponding quarter of the prior year.
- Item 303(b)(4) includes a new *Critical accounting estimate* disclosure to help clarify and codify existing SEC guidance in this area.
- Item 303(c), *Safe harbor*, and Item 303(d), *Smaller reporting companies*, have been eliminated to be consistent with the elimination of Items 303(a)(3)(iv) and 303(a)(5).

To ensure regulatory consistency, the SEC also adopted certain parallel amendments to the financial disclosure requirements that apply to foreign private issuers, including 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) are being amended to conform to the new requirements of Regulation S-K.

## Going Forward

The amendments will become effective 30 days after they are published in the *Federal Register*. Registrants are required to comply with the rule beginning with the first fiscal year ending on or after the date that is 210 days after publication in the *Federal Register*. Registrants will be required to apply the amended rules in a registration statement and prospectus that on its initial filing date is required to contain financial statements for a period on or after the mandatory compliance date. Although registrants will not be required to apply the amended rules until their mandatory compliance date, they may comply with the final amendments any time after the effective date, so long as they provide disclosure responsive to an amended item in its entirety.

A discussion of the proposed amendments can be found [here](#).

## Summary of the Final Amendments

### Overview

Current Item or Issue	Summary Description of Amended Rules
Item 301, <i>Selected financial data</i>	Registrants will no longer be required to provide 5 years of selected financial data.
Item 302(a), <i>Supplementary financial information</i>	Registrants will no longer be required to provide 2 years of tabular selected quarterly financial data. The item will be replaced with a principles-based requirement for material retrospective changes.
Item 303(a), <i>MD&amp;A</i>	Clarify the objective of MD&A and streamline the 14 instructions.
Item 303(a)(2), <i>Capital resources</i>	Registrants will need to provide material cash requirements, including commitments for capital expenditures, as of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.
Item 303(a)(3)(ii), <i>Results of operations</i>	Registrants will need to disclose known events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments.
Item 303(a)(3)(iii), <i>Results of operations</i>	Clarify that a discussion of material <i>changes</i> in net sales or revenue is required (rather than only material <i>increases</i> ).
Item 303(a)(3)(iv), <i>Results of operations</i>  Instructions 8 and 9 (Inflation and price changes)	The item and instructions will be eliminated. Registrants will still be required to discuss these matters if they are part of a known trend or uncertainty that has had, or the registrant reasonably expects to have, a material favorable or unfavorable impact on net sales, or revenue, or income from continuing operations.
Item 303(a)(4), <i>Off-balance-sheet arrangements</i>	The item will be replaced by a new instruction to Item 303. Under the new instruction, registrants will be required to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on such registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources even when the arrangement results in no obligation being reported in the registrant's consolidated balance sheets.
Item 363(a)(5), <i>Contractual obligations</i>	Registrants will no longer be required to provide a contractual obligations table. A discussion of material contractual obligations will remain required through an enhanced principles-based liquidity and capital resources requirement focused on material short- and long-term cash requirements from known contractual and other obligations.
Instruction 4 to Item 303(a) (Material changes in line items)	Incorporate a portion of the instruction into amended Item 303(b). Clarify in amended Item 303(b) that where there are material changes in a line item, including where material changes within a line item offset one another, disclosure of the underlying reasons for these material changes in quantitative and qualitative terms is required.
Item 303(b), <i>Interim periods</i>	Registrants will be permitted to compare their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter. Registrants subject to Rule 3-03(b) of Regulation S-X will be afforded the same flexibility.
Critical Accounting Estimates	Registrants will be explicitly required to disclose critical accounting estimates.

**Management's Discussion and Analysis of financial condition and results of operations for Item 303**

<b>Current Structure</b>	<b>Amended Structure</b>
N/A	Item 303(a), <i>Objective</i>
Item 303(a), <i>Full fiscal years</i>	Item 303(b), <i>Full fiscal years</i>
Item 303(a)(1), <i>Liquidity</i>	Item 303(b)(1), <i>Liquidity and Capital Resources</i>
Item 303(a)(2), <i>Capital resources</i>	(i) <i>Liquidity</i> (ii) <i>Capital Resources</i>
Item 303(a)(3), <i>Results of operations</i>	Item 303(b)(2), <i>Results of operations</i>
(i) <i>Unusual or infrequent events</i>	(i) <i>Unusual or infrequent events</i>
(ii) <i>Known trends or uncertainties</i>	(ii) <i>Known trends or uncertainties</i>
(iii) <i>Material increases</i>	(iii) <i>Material changes</i>
(iv) <i>Inflation and changing prices</i>	
Item 303(a)(4), <i>Off-balance-sheet arrangements</i>	Replace with Instruction 8 to Item 303(b)
Instructions 1, 2, 3, 4, and 5 to Item 303(a)(4)	
Item 303(a)(5), <i>Tabular disclosure of contractual obligations</i>	Eliminate (with some content incorporated into Item 303(b)(1) ( <i>Liquidity and Capital Resources</i> ) and Instruction 4 to Item 303(b))
2003 MD&A Interpretative Release, <i>Critical accounting estimates</i>	Item 303(b)(3), <i>Critical accounting estimates</i>
Instruction 1 to Item 303(a)	Instruction 1 to Item 303(b) (with amendments)
Instruction 2 to Item 303(a)	Eliminate (with content incorporated into <i>Objective</i> )
Instruction 3 to Item 303(a)	Eliminate (with content incorporated into <i>Objective</i> )
Instruction 4 to Item 303(a)	Instruction 2 to Item 303(b) (with amendments and some content incorporated into Item 303(b))
N/A	Instruction 3 to Item 303(b)
Instruction 5 to Item 303(a)	Instruction 4 to Item 303(b) (with amendments and content incorporated into Item 303(b)(1) ( <i>Liquidity and Capital Resources</i> ))
Instruction 6 to Item 303(a)	Instruction 5 to Item 303(b) (with minor amendments)
Instruction 7 to Item 303(a)	Instruction 6 to Item 303(b)
Instruction 8 to Item 303(a)	Eliminate
Instruction 9 to Item 303(a)	Eliminate
Instruction 10 to Item 303(a)	Instruction 7 to Item 303(b)
Instruction 11 to Item 303(a)	Instruction 9 to Item 303(b) (with amendments)
Instruction 12 to Item 303(a)	Instruction 10 to Item 303(b) (with nonsubstantive amendments)
Instruction 13 to Item 303(a)	Eliminate
Instruction 14 to Item 303(a)	Eliminate

<b>Current Structure</b>	<b>Amended Structure</b>
Item 303(b), <i>Interim periods</i>	Item 303(c), <i>Interim periods</i>
(1) Material changes in financial condition	(1) Material changes in financial condition
(2) Material changes in results of operations, Rule 3-03(b) of Regulation S-X matters	(2) Material changes in results of operations <ul style="list-style-type: none"> <li>(i) Material changes in results of operations (year-to-date)</li> <li>(ii) Material changes in results of operations (quarter comparisons)</li> </ul>
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 2, 3, 4, 6, 8, and 11 to proposed Item 303(b))
Instruction 2 to Item 303(b)	Eliminate
Instruction 3 to Item 303(b)	Eliminate
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c)

### **Final amendments**

<b>Current Structure</b>	<b>Amended Structure</b>
Item 303(b), <i>Interim periods</i>	Item 303(c), <i>Interim periods</i>
(1) Material changes in financial condition	(1) Material changes in financial condition
(2) Material changes in results of operations, Rule 3-03(b) of Regulation S-X matters	(2) Material changes in results of operations <ul style="list-style-type: none"> <li>(i) Material changes in results of operations (year-to-date)</li> <li>(ii) Material changes in results of operations (quarter comparisons)</li> </ul>
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 2, 3, 4, 6, 8, and 11 to amended Item 303(b))
Instruction 2 to Item 303(b)	Eliminate
Instruction 3 to Item 303(b)	Eliminate
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c)
Instruction 5 to Item 303(b)	Eliminate
Instruction 6 to Item 303(b)	Eliminate
Instruction 7 to Item 303(b)	Eliminate
Instruction 8 to Item 303(b)	Instruction 11 to amended Item 303(b)

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