

## Press Release

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# SEC Proposes Rules to Simplify and Streamline Disclosures in Certain Registered Debt Offerings

### **FOR IMMEDIATE RELEASE**

**2018-143**

*Washington D.C., July 24, 2018* — The Securities and Exchange Commission today voted to propose rule amendments to simplify and streamline the financial disclosure requirements applicable to registered debt offerings for guarantors and issuers of guaranteed securities, as well as for affiliates whose securities collateralize a registrant's securities.

The proposed amendments to Rules 3-10 and 3-16 of Regulation S-X would focus disclosures on information that is material to investors given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens for registrants. By reducing compliance burdens, the proposed amendments should further encourage issuers to register debt offerings, and thus provide investors with additional protections that are not present in unregistered offerings.

"I have seen firsthand instances in which an issuer did not pursue SEC registration of a debt offering that included a subsidiary guarantee or pledge of affiliate securities as collateral because of the costs and, in particular, time burdens of these rules," said Chairman Clayton. "The proposed rules are intended to make the disclosures easier for investors to understand and to encourage these offerings to be conducted on a SEC-registered basis."

The proposal will have a 60-day public comment period following its publication in the Federal Register.

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### **FACT SHEET**

#### **Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities**

**July 24, 2018**

The Securities and Exchange Commission today proposed amendments to the financial disclosure requirements in Rule 3-10 of Regulation S-X for guarantors and issuers of guaranteed securities registered or being registered, as well as the financial disclosure requirements in Rule 3-16 of Regulation S-X for affiliates whose securities collateralize securities registered or being registered. If adopted, the proposed changes would amend both Rules 3-10 and 3-16 and relocate part of Rule 3-10

and all of Rule 3-16 to new Article 13 in Regulation S-X, which would comprise proposed Rules 13-01 and 13-02.

## **Background**

Both Rules 3-10 and 3-16 affect disclosures made in connection with registered debt offerings and subsequent periodic reporting:

- Rule 3-10 requires financial statements to be filed for all issuers and guarantors of securities that are registered or being registered, but also provides several exceptions to that requirement. These exceptions are typically available for individual subsidiaries of a parent company when certain conditions are met, including that the parent company provides certain disclosures in its consolidated financial statements. If the conditions are met, separate financial statements of each qualifying subsidiary issuer and guarantor may be omitted.
- Rule 3-16 requires a registrant to provide separate financial statements for each affiliate whose securities constitute a substantial portion of the collateral, based on a numerical threshold, for any class of registered securities as if the affiliate were a separate registrant.

## **Highlights**

The proposed changes are intended to:

- focus disclosures on the information that is material given the specific facts and circumstances;
- make the disclosures easier to understand;
- reduce the cost of compliance for registrants and encourage potential issuers to offer guaranteed or collateralized securities on a registered basis, thereby affording investors protections they may not be provided in offerings conducted on an unregistered basis; and
- facilitate, through lower costs and burdens of compliance, issuers' flexibility to include guarantees or pledges of affiliate securities as collateral when they structure debt offerings, which may increase the number of registered offerings that include these credit enhancements and could result in a lower cost of capital and an increased level of investor protection.

## **Proposed Amendments to Rule 3-10**

Under the proposed amendments, Rule 3-10 would continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met and the parent company provides supplemental financial and non-financial disclosure about the subsidiary issuers and/or guarantors and the guarantees. Similar to the existing rule, the proposed rule would provide the conditions that must be met in order to omit separate subsidiary issuer or guarantor financial statements. Proposed Rule 13-01, contained in new Article 13 of Regulation S-X, would specify the disclosure requirements for the accompanying proposed disclosures. The proposed amendments would:

- replace the condition that a subsidiary issuer or guarantor be 100% owned by the parent company with a condition that it be consolidated in the parent company's consolidated financial statements;
- replace condensed consolidating financial information, as specified in existing Rule 3-10, with certain proposed financial and non-financial disclosures. The proposed financial disclosures would consist of summarized financial information, as defined in Rule 1-02(bb)(1) of Regulation S-X, of the issuers and guarantors, which may be presented on a combined basis, and reduce the number of periods presented. The proposed non-financial disclosures, among other matters, would expand

the qualitative disclosures about the guarantees and the issuers and guarantors, as well as require disclosure of additional information that would be material to holders of the guaranteed security;

- permit the proposed disclosures to be provided outside the footnotes to the parent company's audited annual and unaudited interim consolidated financial statements in the registration statement covering the offer and sale of the subject securities and any related prospectus, and in certain Exchange Act reports filed shortly thereafter;
- require that the proposed disclosures be included in the footnotes to the parent company's consolidated financial statements for annual and quarterly reports beginning with the annual report for the fiscal year during which the first bona fide sale of the subject securities is completed; and
- require the proposed financial and non-financial disclosures for as long as the issuers and guarantors have an Exchange Act reporting obligation with respect to the guaranteed securities rather than for as long as the guaranteed securities are outstanding.

### **Proposed Amendments to Rule 3-16**

The proposed amendments to the disclosure requirements in Rule 3-16 would be amended and relocated to proposed Rule 13-02, in new Article 13 of Regulation S-X. Among other things, the proposed amendments would:

- replace the existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with financial and non-financial disclosures about the affiliate(s) and the collateral arrangement as a supplement to the consolidated financial statements of the registrant that issues the collateralized security;
- permit the proposed financial and non-financial disclosures to be located in filings in the same manner as described above for the disclosures related to guarantors and guaranteed securities; and
- replace the requirement to provide disclosure only when the pledged securities meet or exceed a numerical threshold relative to the securities registered or being registered with a requirement to provide the proposed financial and non-financial disclosures in all cases, unless they are immaterial to holders of the collateralized security.

### **What's Next?**

The proposal will be subject to a 60-day public comment period.

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## **Related Materials**

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- [Proposed rule](#)