

Press Release

SEC Amends Rules to Improve Disclosure and Encourage Issuers to Conduct Debt Offerings on a Registered Basis

FOR IMMEDIATE RELEASE

2020-52

Washington D.C., March 2, 2020 — The Securities and Exchange Commission adopted amendments to the financial disclosure requirements applicable to registered debt offerings that include credit enhancements, such as subsidiary guarantees. These changes are intended to both improve the quality of disclosure and increase the likelihood that issuers will conduct debt offerings on a registered basis.

The amended rules focus on the provision of material, relevant, and decision-useful information regarding guarantees and other credit enhancements, and eliminate prescriptive requirements that have imposed unnecessary burdens and incentivized issuers of securities with guarantees and other credit enhancements to offer and sell those securities on an unregistered basis. In doing so, the final amendments are intended to improve disclosure and reduce the SEC registration-related compliance burdens for issuers, including the time burden of collecting information that will no longer be required, and provide investors with protections that would not be present in an unregistered offering.

"The changes we are adopting today demonstrate how the Commission can modernize its rules and simultaneously increase investor protection, reduce compliance burdens and enhance capital formation," said SEC Chairman Jay Clayton. "This is another example of our career staff applying their unparalleled experience and expertise to bring forward a pragmatic and effective modernization of our disclosure requirements."

The amendments will be effective on Jan. 4, 2021, but voluntary compliance will be permitted in advance of the effective date.

FACT SHEET

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

March 2, 2020

Action

The Securities and Exchange Commission today voted to adopt amendments to the financial disclosure requirements for guarantors and issuers of guaranteed securities registered or being registered in Rule 3-10 of Regulation S-X, and affiliates whose securities collateralize securities registered or being registered in Rule 3-16 of Regulation S-X. As adopted, Rule 3-10 will be amended and partly relocated to new Rule 13-01, and the requirements in Rule 3-16 will be replaced with the requirements in new Rule 13-02. New Rules 13-01 and 13-02 will comprise new Article 13 in Regulation S-X.

Background

Existing Rules 3-10 and 3-16 both 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 amendments are intended to:

- Improve the rules by requiring disclosures that focus investors on the information that is material given the specific facts and circumstances and by making 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.

Amendments to Rule 3-10

Under the amendments, Rule 3-10 will 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 amended rule will provide the conditions that must be met in order to omit separate subsidiary issuer or guarantor financial statements. New Rule 13-01, will specify the accompanying amended disclosure requirements. The amendments will:

- 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 new financial and non-financial disclosures. The amended financial disclosures will 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 amended non-financial disclosures, among other matters, will expand the qualitative disclosures about the guarantees and the issuers and guarantors. Consistent with the existing rule, disclosure of additional information about each guarantor will be required if it would be material for investors to evaluate the sufficiency of the guarantee;
- Permit the amended disclosures to be provided outside the footnotes to the parent company's audited annual and unaudited interim consolidated financial statements in all filings; and
- Require the amended financial and non-financial disclosures for as long as an issuer or guarantor has an Exchange Act reporting obligation with respect to the guaranteed securities rather than for as long as the guaranteed securities are outstanding.

Amendments to Rule 3-16

The disclosure requirements in Rule 3-16 will be replaced with the amended disclosure requirements in new Rule 13-02 (although existing Rule 3-16 will remain in place for transitional purposes). Among other things, the amendments will:

- Replace the existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with amended 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. The registrant will be permitted to provide the amended financial and non-financial disclosures outside the footnotes to its audited annual and unaudited interim consolidated financial statements in all filings; 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.

What's Next?

The amendments will be effective on Jan. 4, 2021. However, voluntary compliance with the final amendments will be accepted in advance of the Jan. 4, 2021, effective date.

###

Related Materials

- [SEC Final Rule](#)