

[Securities Regulation Daily Wrap Up, TOP STORY—Commission adopts changes to Reg S-K, \(Nov. 20, 2020\)](#)

Securities Regulation Daily Wrap Up

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The amendments aim to eliminate duplicative disclosures and modernize and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants.

The SEC has voted to adopt amendments to modernize, simplify, and enhance certain financial disclosure requirements in Regulation S-K. 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. The rules become effective 30 days after publication in the Federal Register (*Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, [SEC Release No. 33-10890](#), November 19, 2020).

Amendments proposed. Earlier this year, the Commission proposed amendments to Regulation S-K, and related rules and forms to: (1) eliminate Item 301, Selected Financial Data and Item 302, Supplementary Financial Information; and (2) modernize, simplify, and enhance the disclosure requirements in Item 303, MD&A.

The Commission also proposed certain parallel amendments to financial disclosure requirements applicable to foreign private issuers (FPIs). The proposed amendments were part of an ongoing, comprehensive evaluation of disclosure requirements and focused on modernizing and improving disclosure by reducing costs and burdens while continuing to provide investors with all material information.

Comments were largely supportive, and the SEC adopted the changes with some modifications to address the commenters' concerns.

Overview of changes. The final amendments to Items 301, 302, and 303 of Regulation S-K, consistent with the proposal, are intended to reduce duplicative disclosure and focus on material information. They eliminate Item 301 (Selected Financial Data); and modernize, simplify, and streamline Item 302(a) (Supplementary Financial Information) and Item 303 (MD&A).

Specifically, these amendments will:

- revise Item 302(a) to replace the current requirement for quarterly tabular disclosure with a principles-based requirement for material retrospective changes;
- add a new Item 303(a), *Objective*, to state the principal objectives of MD&A,
- amend Item 303(a), Full fiscal years (amended Item 303(b)) and Item 303(b), *Interim periods* (amended Item 303(c)) to modernize, clarify, and streamline the items;
- replace Item 303(a)(4), *Off-balance sheet arrangements*, with an instruction to discuss such obligations in the broader context of MD&A;
- eliminate Item 303(a)(5), *Tabular disclosure of contractual obligations*, and amend Item 303(b)(1), *Liquidity and Capital Resources*, to specifically require disclosure of material cash requirements from known contractual and other obligations as part of an enhanced liquidity and capital resources discussion; and
- add a new Item 303(b)(3), *Critical accounting estimates*, to clarify and codify Commission guidance on critical accounting estimates.

Certain parallel amendments to Forms 20-F and 40-F, as well as other conforming amendments to the Commission's rules and forms, as appropriate, were also adopted.

Compliance. According to a [press release](#), while the amendments will become effective 30 days after publication in the Federal Register, registrants will be required to comply with the rule beginning with the first fiscal year ending on or after the date that is 210 days after this publication date (the "mandatory compliance date"). 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 disclosures responsive to an amended item in its entirety.

Commission perspectives. According to SEC Chairman Jay Clayton, "Today's rules will improve the quality and accessibility of the disclosures that companies provide their investors, including, importantly giving investors greater insight into the information management uses to monitor and manage the business. The improved approach to these disclosures reflects the broad diversity of issuers in our public markets and will allow investors to make better capital allocation decisions, while reducing compliance burdens and costs and maintaining strong investor protection."

Two commissioners, however, voiced some reservations about the changes. While expressing thanks to the various divisions for proceeding so quickly from proposal to adoption in less than one year, and praising many of the changes that will be beneficial for investors, commissioners Allison Herren Lee and Caroline A Crenshaw nevertheless took [exception](#) to two significant aspects of the rule change to S-K Item 303.

First, the commissioners were not supportive of the elimination of certain disclosures and the tabular presentation of contractual information that currently provides investors with critical insight into supply chain and risk management. Rather than eliminating duplicative disclosures, the rule change eliminates one of the key categories of obligations, purchase obligations that may not consistently be available elsewhere, they said. The final rule eliminates the contractual obligations table over the objections of commenters including the SEC's own Investor Advisory Committee, they pointed out. "Given the relevance of these items to assessments of market performance, we disagree with the policy choice to eliminate them," they concluded.

Second, the rule fails to address climate risk, the commissioners said. Many companies simply do not make these disclosures, they added, and the majority of U.S.-based large companies have failed to acknowledge the financial risks of climate change in their filings. Further, research and analysis have shown that a principles-based approach, coupled with voluntary disclosure, results in non-standardized, inconsistent, and incomparable disclosures when disclosure metrics are not uniform. And the task of pricing and comparing these risks and opportunities is, at best, unduly burdensome, they said. And without specific requirements, much of the information is simply not there to be worked into market participants' analysis.

The release is [No. 33-10890](#).

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