

# SEC Eliminates and Amends Certain Disclosure Requirements of Regulation S-K

On November 19th, the SEC adopted more amendments to the disclosure requirements of Regulation S-K. The adopted amendments are largely consistent with those proposed in January and are intended to reduce disclosures that are duplicative and emphasize information within management's discussion and analysis (MD&A) that is material to the investors. The amendments clarify the overall objective of MD&A and promote a principles-based approach to certain disclosures.

Under the new rule, the discussion should "allow investors to view the registrant from management's perspective" and include:

- "Material information relevant to an assessment of the financial condition and results of operations of the registrant, including an evaluation of the amounts and certainty of cash flows from operations and from outside sources.
- Material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations.
- The material financial and statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, cash flows and other changes in financial condition, and results of operations."

A summary of the more significant changes is detailed below.

## Eliminate Duplicative Disclosures

- The requirement to disclose a selected financial data table under S-K Item 302 is eliminated. This information is included in prior filings widely available on Edgar and material information pertinent to a trend illustrated within the table already requires disclosure under S-K Item 303.
- For the same rationale outlined above, the requirement to disclose quarterly supplementary financial data under S-K Item 302(a) is now only required for periods that include material retrospective changes.
- The requirement to disclose a contractual obligations table under S-K Item 303(a)(5) is replaced with an enhanced discussion of liquidity and capital resources focused on material short- and long-term cash requirements from known contractual and other obligations.

## Simplify Current Disclosure Requirements

- Rather than a requirement to separately caption off balance sheet obligations under S-K Item 303(a)(4)A, registrants should include a discussion within the context of MD&A of commitments or obligations (including contingent obligations) that have, or are reasonably likely to have, a material current or future effect on their financial condition, results of operations, liquidity, etc.
- Instruction 4 of S-K Item 303(a) is clarified to explicitly require disclosure of the underlying reason for material changes in a line item, including when offset by another material change.

## Enhance Disclosure Requirements

- Under S-K Item 303(b)(2), registrants are permitted to discuss material changes in the results of operations for the most recent current quarter as compared to the immediately preceding quarter or corresponding quarter of the prior year.
- The discussion of material cash requirements is expanded under S-K Item 303(a)(2) to include not only capital expenditures, but also funds necessary, and sources of such funds, to maintain current operations, complete projects underway, and achieve stated objectives or plans.
- S-K Item 303(b)(3) now defines and codifies legacy guidance for disclosures of critical accounting estimates. “Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant.” Companies will be required to “provide qualitative and quantitative information necessary to understand the estimation uncertainty and the impact the critical accounting estimate has had or is reasonably likely to have on financial condition or results of operations to the extent the information is material and reasonably available.” Companies will need to describe why “each critical accounting estimate is subject to uncertainty and, to the extent the information is material and reasonably available, how much each estimate and/or assumption has changed over a relevant period, and the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation.” The disclosure “must supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements.”

The final rules are effective 30 days after publication in the Federal Register. Registrants will be required to apply the amended rules for their first fiscal year ending on or after 210 days after publication in the Federal Register (referred to as the “mandatory compliance date”). Registrants are required to apply the amendments in a registration statement that, on its initial filing date, is required to include financial statements for a period on or after the mandatory compliance date. Early compliance is permitted following the effective date if the disclosures are responsive to the amended item in its entirety.

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