

Snapshot

SEC proposal modernizes Regulation S-K disclosures

The SEC issued a [Proposed Rule](#), *Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, to modernize, simplify and enhance certain Regulation S-K disclosure requirements.

The proposed amendments would eliminate Regulation S-K, Item 301, *Selected financial data*, and Item 302, *Supplementary financial information*, and would update certain requirements of S-K Item 303, *Management's discussion and analysis of financial condition and results of operations*.

The comment period ends 60 days after the Proposed Rule is published in the *Federal Register*.

MD&A

In general, the proposal would expand the principles-based nature of the Management's Discussion and Analysis (MD&A) disclosure framework and would codify previously existing Commission guidance¹ on this topic. The proposal would also streamline disclosures and avoid redundancy between MD&A and existing U.S. GAAP disclosure requirements.

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Further expansion of the principles-based MD&A disclosure framework, with clearly established objectives, may reduce the amount of boilerplate disclosures in SEC filings. However, meeting the proposed disclosure objectives will require thoughtful analysis and commentary from registrants. If the Proposed Rule is adopted, registrants will need to carefully consider whether they have provided adequate disclosure of material information where certain prescriptive requirements would be removed, such as the contractual obligations table.

Despite voluminous, existing interpretive guidance, MD&A has long been one of the most frequently commented upon areas in SEC filings. Some of the proposed amendments, such as the requirement to disclose the *reason* for material changes in financial statement line items and the codification of guidance regarding critical accounting estimates, address common themes in SEC staff comments.

¹ See [Management's Discussion and Analysis of Financial Condition and Results of Operations: Certain Investment Company Disclosures](#), Release No. 33-6835 (May 18, 1989), and [Commission](#)

[Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations](#), Release Nos. 33-8350 (December 29, 2003).

The table below provides an overview of certain proposed amendments.

Item number or instruction	Description of proposed amendment
Item 303(a), <i>MD&A</i>	Adds an explanation of the objective of MD&A.
Item 303(a)(2), <i>Capital resources</i>	Amends the current disclosure requirement, which is limited to capital expenditures, to require registrants to broadly discuss material cash needs, including the purpose and the anticipated sources of funds, irrespective of whether the need is for capital expenditures, business operations, or capital investments.
Item 303(a)(3)(ii), <i>Results of operations</i>	Adds a disclosure threshold for items that are <i>reasonably likely</i> to (as opposed to <i>will</i>) cause a material change in the relationship between costs and revenues.
Item 303(a)(3)(iii), <i>Results of operations</i> Instruction 4 (material changes in line items)	Clarifies the current requirement for narrative discussion of an increase in net sales or revenues to require registrants to provide the <i>reasons</i> for the material change in the net sales or revenues. Also clarifies that when material changes in a line item offset each other, registrants should provide a qualitative and quantitative discussion of the underlying reasons why.
Item 303(a)(3)(iv), <i>Results of operations</i> Instructions 8 and 9 (inflation and price changes)	Eliminates the requirement to discuss the impact of inflation and price changes. Registrant would still be required to discuss inflation and price changes if they are part of a known trend or uncertainty that the registrant reasonably expects to have, or if they have already had, a material impact on net sales, revenue, or income from continuing operations.
Item 303(a)(4), <i>Off-balance sheet arrangements</i>	Replaces the existing, prescriptive disclosure requirement with a new principles-based instruction, which would require registrants to discuss off-balance sheet commitments or obligations with unconsolidated entities that may have a material current or future effect on their financial condition.
Item 303(a)(5), <i>Contractual obligations</i>	Eliminates the current requirement to disclose a prescribed table of contractual obligations.
Item 303, <i>Critical accounting estimates</i>	Codifies existing interpretive guidance to explicitly require disclosure of critical accounting estimates in new Regulation S-K, Item 303(b)(4) to define critical accounting estimates and to avoid duplication with the financial statements. The proposal would require registrants to disclose, to the extent material, why the estimate is subject to uncertainty, how much each estimate has changed during the reporting period, and the sensitivity of the reported amounts to fluctuations in the material methods, assumptions, and estimates underlying the calculation.
Item 303(b), <i>Interim periods</i>	Provides registrants with the flexibility to compare the most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or to the immediately preceding quarter.
Item 303(d), <i>Smaller reporting companies</i>	Eliminates the current requirement in this section to conform with the proposed amendments discussed above.

Other proposed amendments

Regulation S-K, Item 301 currently requires a registrant that is not a smaller reporting company, as well as certain emerging growth companies (EGCs), to disclose selected financial data derived from audited financial statements covering the last five fiscal years and any additional periods to keep the disclosure from being misleading. The proposal would eliminate Item 301 as the financial data required by this item is included in a registrant's prior filings, which can be accessed on the SEC's EDGAR database. In the case of an IPO registration statement, the proposal notes that the majority of IPO candidates are EGCs and, in most cases, are currently only required to provide two years of financial data under Item 301.

The proposal would also eliminate Regulation S-K, Item 302(a), which currently requires disclosure of certain quarterly financial data for the two most recent fiscal years, and would eliminate Item 302(b), *Information about oil and gas producing activities*. The disclosure required by Item 302(a) can be obtained or compiled based on the information available on EDGAR, and S-K Item 302(b) overlaps with current and proposed U.S. GAAP requirements.

The SEC has also proposed certain parallel amendments to financial disclosures provided by foreign private issuers as well as certain conforming amendments to Forms 20-F and 40-F.

Contacts



Kendra Decker
Partner-in-charge
SEC Regulatory Matters
T +1 202 521 1530
E kendra.decker@us.gt.com



Rohit Elhance
Partner
SEC Regulatory Matters
T +1 202 861 4110
E Rohit.Elhance@us.gt.com

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