

Alert

November 24, 2020



SEC Adopts Amendments to MD&A and Other Financial Disclosures

On November 19, 2020, by a three-to-two vote, the Securities and Exchange Commission (SEC) voted to adopt amendments to Regulation S-K in an effort to modernize, simplify, and enhance certain financial disclosures. The SEC indicated that the changes are intended to simplify compliance requirements for issuers and improve the “focus of financial disclosures on material information for the benefit of investors.” SEC Chairman Jay Clayton noted in the SEC’s [press release](#) that the amendments take into account “the broad diversity of issuers in [the] public markets and will allow investors to make better capital allocation decisions, while reducing compliance burdens and costs and maintaining strong investor protection.” Commissioners Allison Herren Lee and Caroline A. Crenshaw issued a [joint statement](#) noting that the amendments should not have eliminated the contractual obligations table and that the principles-based disclosure requirements do not address climate risk. They did note that there was a silver lining to the final rule as it left open for “an opportunity going forward to address climate, human capital, and other ESG risks, in a comprehensive fashion with new rulemaking specific to these topics.”

The final rule was based on amendments [proposed](#) in January 2020 and follows [recent rule amendments](#) by the SEC as part of its ongoing comprehensive evaluation of requirements intended to improve the existing disclosure regime, in many cases by moving away from specific disclosure requirements to a more principles-based approach. The final rule amends Items 301, 302, and 303 of Regulation S-K.

Under the amendments, Item 301 of Regulation S-K, Selected Financial Data, is eliminated. Item 301 was adopted in 1970 when information was not so easily accessible in order to provide data regarding trends. The final rule noted that the information required by this item can be easily retrieved through the SEC’s Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) in prior filings and that the costs and complexity for companies to compile the information outweighs any benefits to its inclusion in filings. The SEC also believes that disclosures required under Item 303 of Regulation S-K (MD&A) will continue to provide material information regarding trends. The final rule further stated, however, that registrants should consider whether a tabular disclosure of financial information as part of an introductory section or overview, including to demonstrate material trends, would be appropriate.

Item 302(a), Supplementary Financial Information, is simplified and streamlined under the amendments. The SEC revised Item 302(a) by replacing the current requirement for quarterly tabular disclosure with a principles-based requirement for material retrospective changes. The final rule retains Item 302(a), which would have been eliminated in the proposed rule, but to require disclosure “only when there are one or more retrospective changes that pertain to the statements of comprehensive income for any of the quarters within the two most recent fiscal years and any subsequent interim period for which financial statements are included or required to be included” in the filing and an explanation of the reasons for such material changes. As a result, material changes will be highlighted under the revised Item 302(a), thereby providing more meaningful disclosure for investors.

Finally, the majority of the changes in the final rule are to Item 303 of Regulation S-K,



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Related Practice Areas

- Corporate
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Management’s Discussion and Analysis (MD&A). The paragraphs within the original Item 303 as well as the instructions were reorganized, recategorized, and streamlined.

In summary, the significant changes to Item 303 are as follows:

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The addition of a new Item 303(a), Objective, which requires a summary of the principal objectives of the MD&A;

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New Item 303(a)(1) and (2) amends Item 303(b)(1) to modernize, enhance, and clarify disclosure requirements for liquidity and capital resources;

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New Item 303(a)(3) amends Item 303(b)(2)) to clarify, modernize, and streamline disclosure requirements for results of operations;

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The addition of a new Item 303(b)(3), Critical Accounting Estimates, which clarifies and codifies the SEC’s guidance on critical accounting estimates;

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Current Item 303(a)(4), Off-balance Sheet Arrangements, is replaced with an instruction to discuss such obligations in the broader context of MD&A;

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Current Item 303(a)(5), Tabular disclosure of contractual obligations, is eliminated in light of the amended disclosure requirements for liquidity and capital resources and certain overlap with information required in the financial statements; and

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New Item 303(b), Interim Periods amends Item 303(c) to provide flexibility to registrants to tailor their comparison of interim periods in such a fashion that is more relevant to their business cycles.

The final rule will become effective 30 days after publication in the Federal Register and issuers will be required to comply with the amended items beginning with the first fiscal year ending on or after about seven months (210 days) after publication in the Federal Register.

**SEC Final Rule: Release No. 33-10890
Management’s Discussion and Analysis, Selected Financial Data,
and Supplementary Financial Information**

Current Item or Issue	Summary Description of Amended Rules	Principal Objective(s)	
Item 301, Selected financial data	Registrants will no longer be required to provide 5 years of selected financial data.	Modernize disclosure requirement in light of technological developments and simplify disclosure requirements.	

Current Item or Issue	Summary Description of Amended Rules	Principal Objective(s)	
Item 302(a), Supplementary financial information	Registrants will no longer be required to provide 2 years of tabular selected quarterly financial data. The item will be replaced with a principles-based requirement for material retrospective changes.	Reduce repetition and focus disclosure on material information. Modernize disclosure requirement in light of technological developments.	
Item 303(a), MD&A	Clarify the objective of MD&A and streamline the fourteen instructions.	Simplify and enhance the purpose of MD&A.	
Item 303(a)(2), Capital resources	Registrants will need to provide material cash requirements, including commitments for capital expenditures, as of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.	Modernize and enhance disclosure requirements to account for capital expenditures that are not necessarily capital investments.	
Item 303(a)(3)(ii), Results of operations	Registrants will need to disclose known events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments.	Clarify item requirement by using a disclosure threshold of “reasonably likely,” which is consistent with the Commission’s interpretative guidance on forward-looking statements.	
Item 303(a)(3)(iii), Results of operations	Clarify that a discussion of material <i>changes</i> in net sales or revenue is required (rather than only material <i>increases</i>).	Clarify MD&A disclosure requirements by codifying existing Commission guidance.	
Item 303(a)(3)(iv), Results of operations Instructions 8 and 9 (Inflation and price changes)	The item and instructions will be eliminated. Registrants will still be required to discuss these matters if they are part of a known trend or uncertainty that has had, or the registrant reasonably expects to have, a material favorable or unfavorable impact on net sales, or revenue, or income from continuing operations.	Encourage registrants to focus on material information that is tailored to a registrant’s businesses, facts, and circumstances.	

Current Item or Issue	Summary Description of Amended Rules	Principal Objective(s)	
<p>Item 303(a)(4), Off balance sheet arrangements</p>	<p>The item will be replaced by a new instruction to Item 303. Under the new instruction, registrants will be required to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on such registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources even when the arrangement results in no obligation being reported in the registrant's consolidated balance sheets.</p>	<p>Prompt registrants to consider and integrate disclosure of off-balance sheet arrangements within the context of their MD&A.</p>	
<p>Item 303(a)(5), Contractual obligations</p>	<p>Registrants will no longer be required to provide a contractual obligations table. A discussion of material contractual obligations will remain required through an enhanced principles-based liquidity and capital resources requirement focused on material short- and long-term cash requirements from known contractual and other obligations.</p>	<p>Promote the principles based nature of MD&A and simplify disclosures.</p>	
<p>Instruction 4 to Item 303(a) (Material changes in line items)</p>	<p>Incorporate a portion of the instruction into amended Item 303(b). Clarify in amended Item 303(b) that where there are material changes in a line item, including where material changes within a line item offset one another, disclosure of the underlying reasons for these material changes in quantitative and qualitative terms is required.</p>	<p>Enhance analysis in MD&A. Clarify MD&A disclosure requirements by codifying existing Commission guidance on the importance of analysis in MD&A.</p>	
<p>Item 303(b), Interim periods</p>	<p>Registrants will be permitted to compare their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter. Registrants subject to Rule 3-03(b) of Regulation S-X will be afforded the same flexibility.</p>	<p>Allow for flexibility in comparison of interim periods to help registrants provide a more tailored and meaningful analysis relevant to their business cycles.</p>	
<p>Critical Accounting Estimates</p>	<p>Registrants will be explicitly required to disclose critical accounting estimates.</p>	<p>Facilitate compliance and improve resulting disclosure. Eliminate disclosure that duplicates the financial statement discussion of significant policies. Promote meaningful analysis of measurement uncertainties.</p>	

Current Structure of Item 303	Amended Structure of Item 303
N/A	Item 303(a), <i>Objective</i>
Item 303(a), <i>Full fiscal years</i>	Item 303(b), <i>Full fiscal years</i>
Item 303(a)(1), <i>Liquidity</i> Item 303(a)(2), <i>Capital resources</i>	Item 303(b)(1), <i>Liquidity and Capital Resources</i> (i) Liquidity (ii) Capital Resources
Item 303(a)(3), <i>Results of operations</i> (i) Unusual or infrequent events (ii) Known trends or uncertainties (iii) Material increases (iv) Inflation and changing prices	Item 303(b)(2), <i>Results of operations</i> (i) Unusual or infrequent events (ii) Known trends or uncertainties (iii) Material changes
Item 303(a)(4), <i>Off-balance sheet arrangements</i>	Replace with Instruction 8 to Item 303(b)
Instructions 1, 2, 3, 4, and 5 to Item 303(a) (4)	
Item 303(a)(5), <i>Tabular disclosure of contractual obligations.</i>	Eliminate (with some content incorporated into Item 303(b)(1) (Liquidity and Capital Resources) and Instruction 4 to Item 303(b))
2003 MD&A Interpretative Release, Critical accounting estimates	Item 303(b)(3), <i>Critical accounting estimates</i>
Instruction 1 to Item 303(a)	Instruction 1 to Item 303(b) (with amendments)
Instruction 2 to Item 303(a)	Eliminate (with content incorporated into <i>Objective</i>)
Instruction 3 to Item 303(a)	Eliminate (with content incorporated into <i>Objective</i>)
Instruction 4 to Item 303(a)	Instruction 2 to Item 303(b) (with amendments and some content incorporated into Item 303(b))
N/A	Instruction 3 to Item 303(b)
Instruction 5 to Item 303(a)	Instruction 4 to Item 303(b) (with amendments and content incorporated into Item 303(b)(1) (Liquidity and Capital Resources))
Instruction 6 to Item 303(a)	Instruction 5 to Item 303(b) (with minor amendments)
Instruction 7 to Item 303(a)	Instruction 6 to Item 303(b)

Current Structure of Item 303	Amended Structure of Item 303
Instruction 8 to Item 303(a)	Eliminate
Instruction 9 to Item 303(a)	Eliminate
Instruction 10 to Item 303(a)	Instruction 7 to Item 303(b)
Instruction 11 to Item 303(a)	Instruction 9 to Item 303(b) (with amendments)
Instruction 12 to Item 303(a)	Instruction 10 to Item 303(b) (with non-substantive amendments)
Instruction 13 to Item 303(a)	Eliminate
Instruction 14 to Item 303(a)	Eliminate
Item 303(b), <i>Interim periods</i> (1) Material changes in financial condition (2) Material changes in results of operations, Rule 3-03(b) of Regulation S-X matters	Item 303(c), <i>Interim periods</i> (1) Material changes in financial condition (2) Material changes in results of operations (i) Material changes in results of operations (year- to-date) (ii) Material changes in results of operations (quarter comparisons)
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 2, 3, 4, 6, 8, and 11 to proposed Item 303(b))
Instruction 2 to Item 303(b)	Eliminate
Instruction 3 to Item 303(b)	Eliminate
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c)
Instruction 5 to Item 303(b)	Eliminate
Instruction 6 to Item 303(b)	Eliminate
Instruction 7 to Item 303(b)	Eliminate
Instruction 8 to Item 303(b)	Instruction 11 to Item 303(b)
Item 303(c), <i>Safe harbor</i>	Eliminate
Item 303(d), <i>Smaller reporting companies</i>	Eliminate

