



## *SECURITIES CLIENT ALERT*

### **SEC Proposes to Modernize MD&A and Financial Disclosures in Regulation S-K**

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On January 30, 2020, the U.S. Securities and Exchange Commission proposed significant amendments to the financial disclosure requirements of Regulation S-K. The purpose of the proposed amendments is to modernize and enhance MD&A disclosures and eliminate duplicative disclosure requirements. They are based in part on recommendations in the 2013 Report on Review of Disclosure Requirements in Regulation S-K and the 2016 FAST Act Report. Broadly speaking, the proposed amendments would eliminate Items 301 (selected financial data) and 302 (supplementary financial information) and significantly amend Item 303 (MD&A).

#### **Eliminating Items 301 and 302**

The staff of the SEC (Staff) proposed eliminating Item 301, which requires companies to provide a summary of their last five years of financial history in table form in their annual reports. The Staff believe this data is duplicative of other financial disclosures and unnecessary given the requirement under Item 303 to discuss and analyze trends in MD&A. Similarly, the Staff proposed eliminating the requirement in Item 302 to provide selected quarterly financial data for each full quarter within the two most recent fiscal years, reasoning this data is readily available in quarterly reports. Lastly, the Staff proposed eliminating the requirement in Item 302 for companies engaged in oil and gas producing activities to disclose information about those activities for each period presented, given that the Financial Accounting Standards Board is poised to adopt accounting standards updates that would duplicate this requirement.

#### **Amending Item 303**

In general terms, Item 303 requires companies to disclose information so that investors can assess a company's financial condition and the results of its operations. The Staff proposed amending Item 303 to, among other things:

- Add a new paragraph 303(a) (objective) that incorporates much of the substance of Instructions 1– 3 to current Item 303(a) (to be recaptioned as 303(b)) to emphasize the objective of MD&A for both full fiscal years and interim periods.
- Amend current Item 303(a)(2) (capital resources) to modernize and enhance the current requirement, which is limited to capital expenditures, to specifically require a discussion of material cash requirements.
- Amend current Item 303(a)(3)(ii) (results of operations) to clarify that a company should disclose reasonably likely changes in the relationship between costs and revenues.
- Amend current Item 303(a)(3)(iii) and Instruction 4 to Item 303(a) to enhance analysis in MD&A by clarifying that a company should include in its MD&A a discussion of the reasons underlying material changes from period-to-period in one or more line items.

- Eliminate current Item 303(a)(3)(iv), which requires companies to discuss the impact of inflation and changing prices where material (along with the related Instructions 8 and 9 to Item 303(a)).
- Replace current Item 303(a)(4) (off-balance sheet arrangements), which requires companies to provide off-balance sheet arrangement disclosures in a separately captioned section, with an instruction emphasizing the importance of discussing these obligations in the broader context of MD&A disclosure when such obligations have or are reasonably likely to have a material current or future effect on a company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources.
- Eliminate current Item 303(a)(5) (tabular disclosure of contractual obligations), which requires companies to provide a tabular disclosure of contractual obligations, in order to promote the principles-based nature of MD&A and to avoid overlap with information required in the financial statements.
- Amend current Item 303(b) (interim periods) to give companies more flexibility by allowing them to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or to the immediately preceding quarter. The amendment would also require companies to present both comparisons and explain the reason for changing their quarterly comparison in the filing announcing the change.
- Eliminate current Items 303(c) (safe harbor) and 303(d) (disclosure obligations of smaller reporting companies) as conforming changes.

Companies have 60 days after the proposed amendments are published in the federal register to submit any comments to the SEC. Jeffrey T. Haughey and Jeff Roderick are attorneys in GableGotwals' Corporate & Securities Law Group. For more information on the proposed amendments and how they may impact your company, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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