

# SEC Modernizes Financial Disclosure Requirements for Public Companies

On November 19, 2020, the U.S. Securities and Exchange Commission (SEC) adopted amendments to modernize a number of financial disclosure requirements in Regulation S-K. The amended rules take effect on February 10, 2021. Companies will be required to comply with the amended rules for their first fiscal year ending on or after August 9, 2021. A company may elect to comply before its mandatory compliance date if it complies with all of the amended rules in their entirety.

The amendments include the following:

Elimination of Item 301 – Selected Financial Data. The amendments eliminate Item 301, which had required the presentation of five years of selected income statement and balance sheet data and any additional years required to make the information not misleading. The SEC concluded that selected financial data is duplicative of information contained elsewhere in the financial statements and that the earlier years are readily available through earlier filings. To the extent trend data is material, companies may still need to include such data in MD&A.

Item 302 – Supplementary Financial Data. Currently, Item 302(a)(1) requires disclosure of selected quarterly financial data and Item 302(a)(2) requires disclosure of variances in those results from amounts previously reported in a Form 10-Q. The amendments generally eliminate the need to provide selected quarterly financial data. Instead, disclosure will be required where there are one or more material, retrospective changes to the statement of comprehensive income for any quarter in the past two fiscal years.

Item 303 – Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A). Item 303 requires disclosure of information relevant to an understanding of the company's financial condition, changes in financial condition and results of operations. The amendments restructure and streamline MD&A as follows:

- Add a new Item 303(a), Objective, to state the principal objectives of MD&A. These objectives include the following:

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- Material information relevant to an assessment of the financial condition and results of operations of the company, including an evaluation of the certainty 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 future financial condition.
- Material financial and statistical data that the company believes will enhance a reader's understanding of the company's financial condition, cash flows and other changes in financial condition or results of operations.
- Amend current Item 303(a)(1) and (2) (amended Item 303(b)(1)) to enhance and clarify disclosure requirements for liquidity and capital resources. Under this amended item, a company should broadly disclose all material cash requirements (not just capital expenditures), the general source of funds needed to satisfy such requirements and the general purpose of such requirements.
- Amend current Item 303(a)(3) (amended Item 303(b)(2)) to clarify and streamline disclosure requirements for results of operations. The amended item requires a company to disclose events that it knows are *reasonably likely* to cause (as opposed to *will* 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. In addition, where the financial statements reveal material changes from period-to-period in one or more line items, a company must describe the underlying reasons for these material changes in quantitative and qualitative terms.
- Add a new Item 303(b)(3), Critical accounting estimates, to clarify and codify SEC guidance on critical accounting estimates.
- Replace current Item 303(a)(4), Off-balance sheet arrangements, with an instruction to discuss such obligations in the broader context of MD&A.



- Eliminate current Item 303(a)(5), Tabular disclosure of contractual obligations, in light of the amended disclosure requirements for liquidity and capital resources and certain overlap with information required in the financial statements.
- Amend current Item 303(b), Interim periods (amended Item 303(c)), to allow for flexibility in the comparison of interim periods. The amendments permit a company to discuss material changes in results of operation either from the corresponding quarter of the preceding fiscal year or the immediately preceding sequential quarter. If a company elects to discuss the immediately preceding sequential quarter, then it must provide in summary form the financial information for such sequential quarter or identify the company's prior filings on EDGAR that include such information. If a company later changes the form of period-to-period presentation, it must discuss the reasons for changing the basis of comparison and provide both comparisons in the first filing in which the change is made.

If you have any questions about the new rules or other securities law matters, please contact [Benjamin Lombard](#), another member of the Securities Team or your Reinhart attorney.

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