

SEC Reporting & Compliance Alert

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SEC Proposes Amendments To Enhance MD&A Disclosures and Issues New MD&A Interpretative Guidance

The SEC issued documents on January 30, 2020, regarding management discussion and analysis (MD&A) and other disclosures.

Proposed Rule Amendments

The SEC issued proposed amendments to its MD&A disclosure rules, which it stated would, among other things:

- add a new Item 303(a), *Objective*, to state the principal objectives of MD&A;
- replace Item 303(a)(4), *Off-balance sheet arrangements*, with a principles-based instruction to prompt registrants to discuss off-balance sheet arrangements in the broader context of MD&A;
- eliminate Item 303(a)(5), *Tabular disclosure of contractual obligations* given the overlap with information required in the financial statements and to promote the principles-based nature of MD&A;
- add a new disclosure requirement to Item 303, *Critical accounting estimates*, to clarify and codify existing Commission guidance in this area; and
- revise the interim MD&A requirement in Item 303(b) to provide flexibility by allowing companies 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 SEC is seeking comments on these proposals before possibly adopting final amendments. As a result, we do not expect that any final amendments based on these proposals would be in effect until late 2020, at the earliest.

MD&A Interpretative Guidance

The SEC issued MD&A interpretative guidance on the use of key performance indicators and metrics in the MD&A. The guidance provides, among other things, that when performance indicators and metrics are disclosed in the MD&A, companies should consider “the need to include such further material information, if any, as may be necessary in order to make the presentation of the metric, in light of the circumstances under which it is presented, not misleading” and “what additional information may be necessary to

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provide adequate context for an investor to understand the metric presented.” Based on the facts and circumstances, the SEC generally would expect the following disclosures about key indicators and metrics:

- a clear definition of the metric and how it is calculated;
- a statement indicating the reasons why the metric provides useful information to investors; and
- a statement indicating how management uses the metric in managing or monitoring the performance of the business.

The guidance will be effective when it is published in the Federal Register, but if applicable the guidance should be considered immediately.

Chairman Statement

SEC Chairman Jay Clayton issued a statement noting the items discussed above, as well as providing an update on the SEC’s focus on environmental- and climate-related disclosures. The statement also addressed the impact of the coronavirus:

Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers. However, how issuers plan for that uncertainty and how they choose to respond to events as they unfold can nevertheless be material to an investment decision.

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