



Hot Topic: Regulation S-K

SEC amends Regulation S-K to streamline disclosures

December 9, 2020 (Updated January 12, 2021¹)



SEC amends² Regulation S-K to simplify MD&A and other financial disclosures for the benefit of investors and companies.

Key facts

The SEC adopted the rule amendments as part of its ongoing evaluation of disclosure requirements in Regulation S-K. The Commission's efforts began with the 2016 concept release³, and continued earlier this year with a proposal⁴ seeking comments on modernizing the disclosures required by Regulation S-K. The amended rules eliminate duplicative or outdated disclosures, replace certain prescriptive requirements with a principles-based approach, codify and clarify existing SEC guidance and further leverage current technology. The amendments are intended to encourage registrants to provide more robust and informative disclosures focusing on material information to facilitate investors' decision making and enhance investor protection.

In the amended rules, the SEC reiterated that materiality remains the underlying principle of its disclosure framework. Rather than prescriptive requirements, the SEC incorporated a principles-based approach and prompted companies to integrate such discussions within the context of MD&A, to the extent material.

The changes will affect domestic registrants with certain conforming amendments made to disclosure requirements applicable to foreign private issuers. The rule amendments become effective on February 10, 2021. Compliance with the amended rules is required beginning with the fiscal year ending on or after August 9, 2021 (e.g. year ending December 31, 2021 for calendar year-end companies).

Early compliance, in filings made after February 10, 2021, is allowed if companies comply with an amended Item in its entirety. For example, if a company's filing date for its Form 10-K for the year ended December 31, 2020 is after February 10, 2021, the company could comply with all amendments within Item 303 in the filing.

¹ See [Federal Register Vol. 86, No. 6 January 11, 2021](#). The most recent Reg S-K amendments now have an effective date of February 10th, after the publication in the Federal Register (MD&A, selected financial data, and supplementary financial information – quarterly info).

² [Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information](#), SEC Release No. 33-10890; 34-90459; IC-34100; November 19, 2020

³ Concept release, [Business and Financial Disclosure Required By Regulation S-K](#), SEC Release No. 33-10064; 34-77599; April 13, 2016 and KPMG's Defining Issues, [SEC issues concept release on modernizing Regulation S-K](#), April 2016

⁴ Proposed rule, [Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information](#), SEC Release No. 33-10750; 34-88093; IC-33795; January 30, 2020

Key impacts

The amendments eliminate disclosure of:

- five years of selected financial data;
- the discussion of inflation and changing prices; and
- the tabular presentation of contractual obligations.

In addition, the amendments replace certain prescriptive requirements with principles-based requirements:

- Selected quarterly financial data will only be required if there are one or more material retrospective changes to any quarters in the two most recent years.
- Material off-balance sheet arrangements will not be required to be presented under a separate caption, and instead a company will disclose the existence of material arrangements within MD&A.

Once adopted, companies may decide to voluntarily include quarterly financial data in their annual filings. When this information is required to be included in accordance with Regulation S-K Item 302(a), current PCAOB auditing standards⁵ require an auditor to conduct a fourth quarter review. However, if this information is voluntarily disclosed a fourth quarter review will no longer be required.

The final rule also amends several MD&A disclosure requirements. In particular, the SEC established clear, defined objectives for MD&A. These objectives were derived and relocated from the current instructions and require disclosure of:

- material information relevant to the assessment of a company's financial results, including an evaluation of the amounts and certainty of cash flows;
- material financial and statistical data that a company believes will enhance an investor's understanding of its financial results; and
- material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future performance.

Companies will be required to provide a narrative description of financial statements that enables investors to see a company 'from management's perspective,' which will codify current SEC guidance. The stated intent of these defined objectives is to emphasize the purpose of MD&A at the outset to provide clarity and encourage companies to tailor disclosures more appropriately.

Other key proposed amendments to MD&A are summarized in the following table.

Description	Current rule/guidance	Final rule
Capital resources	<ul style="list-style-type: none">— Disclose material commitments for capital expenditures as of the latest fiscal period.— Indicate the purpose of the commitments and anticipated sources of funds needed to satisfy such commitments.	Expand discussion to include material cash <i>requirements</i> , which may include but not be limited to commitments for capital expenditures and known contractual and other obligations.

⁵ PCAOB AS 4105, *Reviews of Interim Financial Information*

Description	Current rule/guidance	Final rule
Results of operations	<ul style="list-style-type: none"> — Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations. — If the company knows of events that will cause a material change in the relationship between costs and revenues, the change in the relationship must be disclosed. 	Clarify a disclosure threshold of <i>reasonably likely</i> to cause (as opposed to <i>will cause</i>) a material change in the relationship between costs and revenues.
	To the extent material increases in net sales or revenues are disclosed, provide a narrative discussion of increases attributable to increases in prices, volume of goods or services being sold, or to the introduction of new products or services.	Codify existing guidance by requiring disclosure of the <i>reasons underlying</i> material <i>changes</i> (i.e. increases and decreases) in net sales or revenues.
Material changes in line items	Disclose the <i>causes</i> for material changes from year to year in one or more line items.	<ul style="list-style-type: none"> — Require discussion of the <i>underlying reasons</i> for material changes in quantitative and qualitative terms. — Codify existing SEC guidance by requiring discussion of material changes to include those <i>within</i> a line item that offset one another.
Interim periods	Require the current quarter financial information to be compared to the corresponding quarter of the prior year.	<ul style="list-style-type: none"> — Permit a comparison of the current quarter to <i>either</i> the corresponding quarter of the prior year, <i>or</i> the immediately preceding prior quarter. — If a company elects to discuss changes from the immediately preceding prior quarter, a summary of financial information that is the subject of the discussion for that quarter or reference to the prior filing that includes such information is required. — If a company elects to change its comparison, an explanation of the reason for the change and presentation of both comparisons in the filing where the change was made is required.
Critical accounting estimates	<ul style="list-style-type: none"> — No current rule explicitly requires disclosure of critical accounting estimates. — Existing fundamental MD&A disclosure requirements require disclosure of material implications of uncertainties associated with the methods, assumptions and estimates underlying the registrant’s critical accounting measurements. 	<ul style="list-style-type: none"> — Define and explicitly require disclosure of critical accounting estimates. — Require disclosure for each critical accounting estimate, to the extent material, regarding: <ul style="list-style-type: none"> – why the estimate is subject to uncertainty; – how much each estimate and/or assumption has changed during the relevant period; and – the sensitivity of the reported amounts to the material methods,

Description	Current rule/guidance	Final rule
		assumptions and estimates underlying the estimate's calculation.

KPMG observations: Critical accounting estimates

The SEC stated that the requirement to disclose critical accounting estimates will not necessarily result in duplicative disclosure with critical audit matters.

A critical audit matter is considered from the auditor's point of view, while a critical accounting estimate is considered from a company's point of view. Further, a critical accounting estimate may not be a critical audit matter because it may not involve especially challenging, subjective or complex *auditor* judgment. Similarly, a critical audit matter may not be a critical accounting estimate because the matter may not involve *estimation uncertainty* that can materially affect the financial statements.

Also, a critical audit matter isn't necessarily itself a material account or disclosure to the financial statements. Conversely, a critical accounting estimate is a material account to the financial statements.

The rule proposal included the elimination of Item 302(b) (Supplementary Financial Information - Information about Oil and Gas Producing Activities) on the condition that the FASB finalized amendments to US GAAP that would have made this information duplicative. However, these US GAAP amendments are not yet finalized and as a result the SEC will retain Item 302(b) and may reconsider that Item at a later date.

Related content

KPMG has reported on SEC rules and guidance related to Regulation S-K.

- [SEC finalizes rule to streamline bank disclosures](#), October 2020
- [SEC modernizes Reg S-K disclosures](#), August 2020
- [SEC stresses importance of disclosure during COVID-19](#), April 2020
- [SEC rule affects financial disclosures of certain registered debt instruments](#), March 2020
- [SEC issues MD&A guidance on KPIs and metrics](#), February 2020
- [SEC issues C&DIs on revised MD&A rules](#), January 2020
- [SEC amends Regulation S-K disclosures](#), April 2019
- [SEC simplifies and updates disclosure requirements](#), August 2018

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