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Accounting & Auditing Update

SEC Proposes Amendments to MD&A Section of Regulation S-K

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The Securities and Exchange Commission (SEC) recently issued proposed amendments to modernize and eliminate certain duplicative registrant disclosures in Regulation S-K. The proposed amendments generally relate to the Management's Discussion and Analysis (MD&A) section. The objective of these proposed amendments is to benefit investors and simplify compliance for issuers.

The proposed amendments would:

- eliminate Item 301 of Regulation S-K, Selected Financial Data, and Item 302 of Regulation S-K, Supplementary Financial Information (as the required information is largely duplicative of other existing requirements in Regulation S-K), and
- amend Item 303 of Regulation S-K, MD&A, to streamline the required disclosures and focus on material information.

Summary of Proposed Amendments

Item Number and Description	Summary of Proposed Amendment
Item 301 – presents selected financial data in comparative tabular form for each of the registrant's last five fiscal years and for any additional fiscal years necessary to keep the information from being misleading.	To be eliminated. The SEC noted the same information can now be readily accessed online and easily compiled by investors.
Item 302(a) – requires disclosure in the footnotes to the audited financial statements of selected quarterly financial data for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are required.	To be eliminated. The SEC noted most of the financial data can be found in prior quarterly reports on Form 10-Q. As for fourth quarter data, which is not otherwise required to be disclosed in a Form 10-Q, the SEC notes that such data can be calculated from a registrant's Form 10-K and its third quarter Form 10-Q.
Item 302(b) – requires registrants engaged in oil and gas producing activities to present additional supplementary information.	To be eliminated. The information currently required by the SEC and U.S. GAAP for oil and gas producing activities currently has some overlap. The Financial Accounting Standards Board (FASB) is currently working on a proposal update to require incremental disclosures currently required under Item 302(b). If the proposed Accounting Standards Update (ASU) is adopted, the requirements of Item 302(b) would be duplicative of U.S. GAAP with the SEC proposing to eliminate Item 302(b), subject to the proposed ASU becoming final.
Item 303(a) – MD&A disclosures in annual filings.	A number of changes were made to this item number. They are enumerated below.
Item 303(b) – interim disclosures which currently require registrants to compare the current quarter to the previous year's quarter.	Would provide registrants with the option to compare the most recently completed quarter to the corresponding quarter of the prior year or the

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	immediately preceding quarter. If the registrant elects to discuss changes from the immediately preceding sequential quarter, a summary of financial information for that quarter would have to be provided and the prior quarter's EDGAR filing would have to be identified.
Item 303(c) – prescriptive requirements for off-balance sheet arrangement disclosures.	Would be replaced with more principle-based requirements as information concerning off-balance sheet arrangements and contractual obligations would be removed. The proposal would require the MD&A to address commitments or obligations with unconsolidated entities that would have a material effect on the registrant's financial condition, operations or liquidity.
Item 303(d) – exception for smaller reporting companies for exemption to disclose information about inflation and contractual obligations.	Item 303(d) would be eliminated as such disclosures would be eliminated for all registrants.

Item 303(a) – MD&A Disclosures in Annual Filings

A number of changes were made to Item 303(a), some of which are:

(1) To clarify and emphasize the objectives of the MD&A for full years and interim periods. The SEC's objective is that the proposed changes would enable investors to see a registrant through the eyes of management.

(2) To add product lines as an example of other subdivisions of a registrant's business that should be discussed when, in the registrant's judgment, such a discussion would be necessary to an understanding of the company's business.

(3) As part of the discussion on capital resources, a description as of the latest fiscal period of the registrant's material cash requirements, including: (1) the anticipated source of funds needed to satisfy such cash requirements, and (2) the general purpose of such requirements.

(4) A description of the causes of material changes from year-to-year in financial statement line items when it is necessary to an understanding of the registrant's business as a whole.

(5) To require disclosure of events that are reasonably likely to cause a material change in the relationship between costs and revenues.

(6) To eliminate the requirement to discuss the effect of inflation and changing prices. Note, however, that registrants would still be expected to discuss the impact of inflation or changing prices if they are part of a known trend or uncertainty that has had, or is reasonably expected to have, a material favorable or unfavorable impact on net sales, revenue, or income from continuing operations.

(7) To modify the requirement to disclose off-balance sheet arrangements by eliminating the definition of such arrangements and requiring a discussion of commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities that have, or are reasonably likely to have, a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources.

(8) To eliminate the requirement to present a table of contractual obligations because much of the required information overlaps with U.S. GAAP.

(9) To codify the SEC's interpretive guidance to disclose critical accounting estimates. The proposal would require registrants to disclose why the estimate is subject to uncertainty, how much each estimate has changed in the reporting period and the sensitivity of the reported amounts to fluctuations in the material methods assumptions and estimates underlying the calculation.

Other Considerations

The proposed amendments would also provide a consistent approach to MD&A for domestic registrants and foreign private issuers who file Form 20-F. As for Canadian foreign private issuers that are eligible to use Canadian disclosure documents to satisfy the SEC's registration and disclosure requirements, Form 40-F would be amended to eliminate the requirement to present a table of contractual obligations and to make corresponding changes to the off-balance sheet disclosure requirements.

Additional conforming amendments would be made to disclosures of:

- Pro Forma Financial Statements and Selected Financial Data,
- Significant Obligors of Pool Assets,
- Credit Enhancement and Other Support
- Certain Derivatives Instruments,
- Forms S-1 and F-1 under conditions providing for the use of a summary prospectus pursuant to Securities Act Rule 431, and
- Form S-4, Form F-4 and Schedule 14A in respect of business combinations.

The proposal is subject to a 60-day comment period following its publication in the Federal Register.

For a complete version of the rule proposal, click here.

Contact Us

If you have any questions about these new proposed rules applicable to SEC-regulated companies – or any other accounting and auditing matters – please contact any of the following or the partner in charge of your account:

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