

SEC Proposes Simplified Guarantor and Pledgor Disclosures in Registered Debt Offerings

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On July 24, 2018, the Securities and Exchange Commission (the “SEC”) voted to propose rule amendments aimed at simplifying certain financial disclosure requirements for guarantors, issuers and pledgors in registered debt offerings. In a press release, the SEC stated that the proposed amendments are intended to focus disclosures on the information that is material given the specific facts and circumstances, make the disclosures easier to understand, and reduce the costs and burdens of compliance for registrants.

If adopted, the new rules could encourage issuers to access the registered debt markets more often because, among other things, they would not have to provide the more-detailed condensed consolidating financial information regarding the guarantor subsidiaries that is currently required in the registration statement. Historically, many issuers have opted to issue debt privately under Rule 144A to sidestep the requirements of Rule 3-10 and Rule 3-16 of Regulation S-X in connection with the primary offering disclosure.

View the [proposed rule](#). In Appendix A to the release, the SEC has provided a helpful table that compares the existing rules with the amended rules (as proposed).

Currently, Rule 3-10 requires financial statements to be filed for all issuers and guarantors of securities that are registered or being registered, but also provides several exceptions that are available for wholly owned subsidiaries of a parent company when certain conditions are met and the consolidated financial statements of that parent company include the condensed consolidating financial information specified in Rule 3-10. Several of the proposed amendments relate to the disclosures required when these exceptions apply.

The proposed amendments to Rule 3-10 would:

- Replace the condition that a subsidiary issuer or guarantor be 100 percent owned by the parent company with the condition that the subsidiary issuer or guarantor be consolidated in the parent company’s consolidated financial statements
- Replace the detailed condensed consolidating financial information required under existing Rule 3-10 with supplemental financial and non-financial information about the issuers, guarantors and guarantees — referred to in the release as “Proposed Alternative Disclosures” — consisting of (i) “summarized financial information” (as specified in Rule 1-02(bb) of Regulation S-X) of the issuer and each guarantor, and (ii) certain non-financial disclosures about the issuers, the guarantors and the terms and conditions of the guarantees
- Reduce the number of reporting periods for which the summarized financial information is required to be presented, such that the summarized financial information would be required to be presented only as of the end of, and for the most recently ended, fiscal year and interim

period included in the parent company's consolidated financial statements

- Allow the Proposed Alternative Disclosures to be provided outside of the financial statements and the notes to the financial statements, thereby avoiding the requirement for this information to be audited and tagged for XBRL
 - The Proposed Alternative Disclosures may be presented in management's discussion and analysis of financial condition and results of operations in (i) the registration statement covering the debt securities being offered and sold, and (ii) annual reports and quarterly reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act") required to be filed during the fiscal year in which the first sale of the debt securities is completed
 - However, the Proposed Alternative Disclosures would be required to be included in a note to the parent company's consolidated financial statements in its annual and quarterly reports under the Exchange Act, beginning with the annual report for the fiscal year during which the first sale of the subject securities is completed
- Require the Proposed Alternative Disclosures for as long as the issuers and guarantors have a reporting obligation under the Exchange Act with respect to the guaranteed securities (rather than for as long as the guaranteed securities are outstanding, which is the current requirement under existing Rule 3-10)
- Eliminate the requirement to provide pre-acquisition financial statements of recently acquired subsidiary issuers and guarantors

Rule 3-16 of Regulation S-X currently requires a registrant to provide separate financial statements for each affiliate whose securities constitute a substantial portion of the collateral for any class of registered securities as if the affiliate were a separate registrant. The proposed amendments would relocate all of the Rule 3-16 requirements to a new Article 13 of Regulation S-X containing new Rule 13-02, and would:

- Replace the existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with financial and non-financial disclosures about the affiliate(s) and the collateral arrangements as a supplement to the consolidated financial statements of the registrant issuing the collateralized security
- Permit the proposed financial and non-financial disclosures to be located in filings in the same manner as described above for the disclosures related to guarantors and guaranteed securities
- Remove the current requirement to provide disclosure only when the pledged securities meet or exceed a numerical threshold relative to the securities registered or being registered, and replace it with a requirement to provide the proposed financial and non-financial disclosures in all cases, unless the disclosure is immaterial to holders of the collateralized security (in which case the registrant must state so and explain the reasons therefor)

The proposed rules are open for public comment for a 60-day comment period that begins when the proposed rules are published in the Federal Register.

If you have any questions, please contact a member of our [Capital Markets and Securities Practice Group](#).