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SEC Issues Final Rule to Update Disclosures for Banking Registrants

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Background

On September 11, 2020, the SEC issued a [final rule](#)¹ that updates and expands the statistical disclosure requirements for bank and savings and loan registrants. The final rule (1) eliminates disclosure items that overlap with SEC rules, U.S. GAAP, or IFRS® Standards and (2) replaces Industry Guide 3, “Statistical Disclosure by Bank Holding Companies” (herein referred to as “Guide 3”), with updated disclosure requirements codified in a new Subpart 1400 of Regulation S-K.

The final rule reflects the SEC’s consideration of changes in the banking sector since the last substantial update of Guide 3 over 30 years ago as well as stakeholder feedback on the SEC’s September 2019 proposed rule. Overall, the amendments in the final rule were issued substantially as proposed.

Like the disclosures required under Guide 3, the disclosures required under the final rule do not have to be presented in the notes to the financial statements.

¹ SEC Final Rule Release No. 33-10835, *Update of Statistical Disclosures for Bank and Savings and Loan Registrants*.

Key Changes Resulting From the Final Rule

The table below outlines the substantive changes to disclosure requirements as a result of the final rule.

Topic	Existing Rule — Guide 3	Final Rule — Regulation S-K, Subpart 1400
Entities within scope	<p>Guide 3 applies to bank holding companies (BHCs). Given its relevance for all registrants engaged in lending and deposit activities, Guide 3 is currently applied in practice by banks, savings and loan holding companies (SLHCs), savings and loan associations, and other financial services registrants.</p> <p>Guide 3 is applicable to both domestic and foreign registrants. Foreign registrants may request to omit information that is unavailable or cannot be compiled without unwarranted or undue burden or expense.</p>	<p>As noted in the final rule, the SEC believes that “there is not a large population of non-bank and savings and loan registrants that are providing Guide 3 disclosures today that will be outside the scope of Subpart 1400 of Regulation S-K.”</p> <p>The final rule applies to BHCs, banks, SLHCs, and savings and loan associations, including both domestic and foreign registrants. The scope was determined to be appropriate since the final rule (1) links the disclosure requirements to categories or classes of financial instruments that are disclosed in the registrant’s financial statements prepared under U.S. GAAP or IFRS Standards, (2) aligns the reporting-period requirements with those required to be presented in the financial statements, and (3) exempts registrants that report under IFRS Standards from certain disclosure requirements.</p> <p>Further, all registrants are permitted to omit information that is unknown or not reasonably available to the registrant under Rule 409 of the Securities Act of 1933 and Rule 12b-21 of the Securities Exchange Act of 1934; therefore, the unwarranted or undue burden or expense exception existing under Guide 3 is eliminated by the new rule.</p>



Connecting the Dots

In connection with the final rule’s codification of the entities within the scope of Regulation S-K, Subpart 1400, the final rule also updates Regulation S-X, Rule 9-01, to align the entities within the scope of Article 9 with those of Subpart 1400 (i.e., the entities within the scope of Article 9 have expanded from BHCs and banks to BHCs, banks, SLHCs, and savings and loan associations).

As stated in the final rule, the SEC “noted that, if registrants other than bank and savings and loan registrants believe the Article 9 presentation would be material to an understanding of their business, the proposed rules would not preclude that presentation for those registrants.”

The final rule also deletes Regulation S-X, Rule 9-03(7)(a)–(c), which requires certain loan disclosures on the balance sheet because of overlap with U.S. GAAP and IFRS Standards.

Topic	Existing Rule — Guide 3	Final Rule — Regulation S-K, Subpart 1400
Reporting periods	<p>Guide 3 requires registrants to provide disclosures for (1) five years if they are related to loan portfolios and summary of loan loss experience and (2) three years for all other annual disclosures. The only exceptions are registrants with assets of less than \$200 million or a net worth of \$10 million or less; such registrants may provide all required disclosures for only two years.</p> <p>To ensure that the information is not misleading, Guide 3 requires registrants to provide interim disclosures if “a material change in the information presented or the trend evidenced thereby has occurred.”</p>	<p>The final rule applies to “each annual period for which Commission rules require a registrant to provide financial statements.” Generally, under Regulation S-X, Article 3, registrants are required to provide two years of balance sheets and three years of income statements, except for smaller reporting companies and emerging growth companies in IPOs of common equity securities, which may provide only two years of income statements.</p> <p>As noted in the final rule, the SEC believes “it is appropriate to align the required reporting periods with the relevant annual periods . . . because the Subpart 1400 of Regulation S-K disclosures are integrally related to the financial statements.”</p> <p>The final rule codifies the existing interim disclosure requirements.</p>
Distribution of assets, liabilities, and stockholders’ equity; interest rates and interest differential	<p>Guide 3 requires disclosure of the following:</p> <ul style="list-style-type: none"> • Average balance sheets — All major categories of interest-earning assets and interest-bearing liabilities, as defined below. <p>Major categories of interest-earning assets should include:</p> <ul style="list-style-type: none"> ◦ Loans, taxable investment securities, nontaxable investment securities, and interest-bearing deposits in other banks. ◦ Federal funds sold, securities purchased with agreements to resell, and other short-term investments. ◦ Any other significant assets. <p>Major categories of interest-bearing liabilities should include:</p> <ul style="list-style-type: none"> ◦ Savings deposits, other time deposits, and short- and long-term debt. ◦ Any other significant liabilities. 	<p>The final rule codifies and updates disclosure requirements related to average balance sheets to further disaggregate the following, if deemed to be material:</p> <ul style="list-style-type: none"> • Federal funds purchased. • Securities purchased with agreements to repurchase. • Commercial paper. <p>The final rule codifies the existing disclosure requirements related to margin and average spread, volume and rate analysis, and foreign activities.</p>

Topic	Existing Rule — Guide 3	Final Rule — Regulation S-K, Subpart 1400
Distribution of assets, liabilities, and stockholders' equity; interest rates and interest differential (cont.)	<ul style="list-style-type: none"> • Margin and average spread — Average interest-earning assets, average interest-bearing liabilities, average yield for each major category of interest-bearing asset and total, average rate paid for each major category of interest-bearing liability and total, and net yield on interest-earning assets. • Volume and rate analysis — Changes in interest income and interest expense, with analyses of the changes in volume and rate. • Foreign activities — For registrants that are required to separate disclosures under Regulation S-X, Item 9-05, the disclosures listed above in this topic should be separated by domestic and foreign categories. 	
Investment portfolio	<p>Guide 3 requires disclosure of the following:</p> <ul style="list-style-type: none"> • Book value — The book value of investments in obligations of: <ul style="list-style-type: none"> ◦ The U.S. Treasury and other U.S. government agencies and corporations. ◦ U.S. states and political subdivisions. ◦ Other securities, including bonds, notes, debentures and stock of business corporations, foreign governments, and political subdivisions, intergovernmental agencies, and the Federal Reserve bank. • Maturity — For each of the above investment categories, Guide 3 requires registrants to disclose the amount of the investments that are due: <ul style="list-style-type: none"> ◦ In one year or less. ◦ After one year through five years. ◦ After five years through ten years. ◦ After ten years. 	<p>Because of overlap with U.S. GAAP and IFRS Standards, the final rule eliminates the book value, maturity, and issuer concentration disclosure requirements.</p> <p>The final rule codifies the existing guidance that requires disclosure of the weighted-average yield for each range of maturities by category of debt securities, but this requirement applies only to debt securities that are not held at fair value for which disclosure is required in the financial statements.</p> <p>The final rule also adds the requirement to disclose how the weighted-average yield has been calculated.</p>

Topic	Existing Rule — Guide 3	Final Rule — Regulation S-K, Subpart 1400
Investment portfolio (cont.)	<ul style="list-style-type: none"> • Weighted-average yield — For each range of maturity listed above. • Issuer concentration — The name of each issuer and the aggregate book value and aggregate market value of its securities if the aggregate book value of such securities exceeds 10 percent of stockholders' equity. 	
Loan portfolio	<p>Guide 3 requires disclosure of the following:</p> <ul style="list-style-type: none"> • Types of loans — Loans by category of customer. • Maturities and sensitivities of loans to changes in interest rates: <ul style="list-style-type: none"> ◦ Balance of loans due: <ul style="list-style-type: none"> ▪ In one year or less. ▪ After one year through five years. ▪ After five years. ◦ For all loans due after one year, balance of loans that have: <ul style="list-style-type: none"> ▪ Predetermined interest rates. ▪ Floating or adjustable interest rates. • Risk elements — Nonaccrual, past due, and restructured loans; potential problem loans; name of the country and aggregate amount of cross-border outstanding loans to borrowers if they exceed 1 percent of total assets; and any concentration of loans that exceeds 10 percent of the total loans, which are not otherwise separately disclosed. • Other interest-bearing assets — The nature and amounts of any other interest-bearing assets that would be disclosed if those assets were loans. 	<p>Because of the overlap with SEC rules, U.S. GAAP, and IFRS Standards, the final rule eliminates disclosure requirements related to types of loans, risk elements, and interest-bearing assets.</p> <p>The final rule codifies the existing guidance related to the maturities and sensitivities of loans to changes in interest rates. However, a registrant must present each category as disclosed in its financial statements prepared under U.S. GAAP or IFRS Standards. It also adds the requirement to further disaggregate the range of loans due after five years into two categories: (1) after five years through 15 years and (2) after 15 years.</p> <p>Further, the final rule clarifies the “rollover policy” for the disclosures mentioned in this topic — to the extent that noncontractual rollovers or extensions are included in the measurement of the allowance for credit losses under U.S. GAAP or IFRS Standards, such rollovers or extensions should be included in the classification of the maturities, and the policy should be disclosed.</p>

(Table continued)

Topic	Existing Rule — Guide 3	Final Rule — Regulation S-K, Subpart 1400
Allowance for credit losses	<p>Guide 3 requires disclosure of the following:</p> <ul style="list-style-type: none"> • Loan losses: <ul style="list-style-type: none"> ◦ Rollforward analysis of loan loss experience, including charge-offs and recoveries by type, as well as net charge-offs and provisions. ◦ Allocation of the allowance for loan losses. • Credit ratios — Ratio of net charge-offs to average loans outstanding on a consolidated basis. 	<p>Because of the overlap with U.S. GAAP and IFRS Standards, the final rule eliminates the disclosure requirement related to the rollforward analysis of loan losses.</p> <p>The final rule codifies the disclosure requirement related to the allocation of the allowance for loan losses, but it requires the tabular allocation to be based on the loan categories presented in the U.S. GAAP financial statements. This amendment does not apply to registrants that report under IFRS Standards because IFRS Standards already require disclosure of this information at a similar level of disaggregation in the financial statements.</p> <p>The final rule also codifies the disclosure requirement related to credit ratios, but it requires this ratio to be based on the loan categories presented in the financial statements prepared under U.S. GAAP or IFRS Standards, instead of on a consolidated basis as is currently required by Guide 3. Further, the final rule requires the disclosure of the following credit ratios on a consolidated basis:</p> <ul style="list-style-type: none"> • Allowance for credit losses to total loans. • Nonaccrual loans to total loans. • Allowance for credit losses to nonaccrual loans. <p>Registrants are also required to include (1) a disclosure of each of the components used in all credit ratios presented and (2) a discussion of the factors that affected material changes in the ratios or related components.</p>
Deposits	<p>Guide 3 requires disclosure of the following:</p> <ul style="list-style-type: none"> • Average amounts of and average rates paid for certain deposit categories that exceed 10 percent of average total deposits. • Amount outstanding of certain time deposits of \$100,000 or more. • Aggregate amount of deposits by foreign depositors in U.S. offices, if material. 	<p>The final rule generally codifies existing disclosure requirements under Guide 3 and adds the following updates:</p> <ul style="list-style-type: none"> • Amends the requirement to disclose the amount outstanding of certain time deposits (second requirement on the left in the Deposits topic). Registrants are now required to disclose the amount of time deposits in uninsured accounts by maturity, including the separate presentation of: <ul style="list-style-type: none"> ◦ U.S. time deposits in amounts in excess of the FDIC insurance limit. ◦ Time deposits that are otherwise uninsured.

Topic	Existing Rule — Guide 3	Final Rule — Regulation S-K, Subpart 1400
Deposits (cont.)		<ul style="list-style-type: none"> Defines “uninsured deposits for bank and savings and loan registrants that are U.S. federally insured depository institutions as the portion of deposit accounts in U.S. offices that exceed the FDIC insurance limit or similar state deposit insurance regimes and amounts in any other uninsured investment or deposit account that are classified as deposits and not subject to any federal or state deposit insurance regimes.” <p>The determination of uninsured deposits should be “based on the same methodologies and assumptions used for regulatory reporting requirements, to the extent applicable.”</p> <p>The final rule permits a registrant “to disclose uninsured deposits . . . based on an estimate . . . if it is not reasonably practicable to provide a precise measure of uninsured deposits,” as long as (1) the estimate is “based on the same methodologies and assumptions used for regulatory reporting requirements” and (2) use of the estimate is appropriately disclosed.</p>
Return on equity and assets	<p>Guide 3 requires disclosure of the:</p> <ul style="list-style-type: none"> Return on assets. Return on equity. Dividend payout ratio. Equity to assets ratio. 	<p>The final rule eliminates the disclosure requirements for these ratios because such ratios are not unique to bank and savings and loan registrants and other SEC rules already offer relevant guidance (i.e., MD&A requirements to identify and discuss key performance measures if they are used to manage the business and would be material to investors).</p>
Short-term borrowings	<p>Guide 3 requires disclosure of the following for each category of short-term borrowings:</p> <ul style="list-style-type: none"> The amounts outstanding, weighted-average interest rate, and general terms of the borrowings. The maximum amount of borrowings in each category outstanding as of any month-end during each reported period. The approximate average amounts outstanding and the approximate weighted-average interest rate. 	<p>These requirements are eliminated by the final rule because the SEC believes such items are substantially covered by existing SEC rules, U.S. GAAP, and IFRS Standards, as well as updates included within the final rule itself.</p>

Next Steps

The final rule is effective 30 days after publication in the *Federal Register* and will apply to fiscal years ending on or after December 15, 2021, the mandatory compliance date. Once the final rule is effective, voluntary compliance is permitted in advance of the mandatory compliance date as long as the final rule is adopted in its entirety (i.e., Regulation S-K, Subpart 1400, is applied and Guide 3 is disregarded). Registrants interested in voluntary early compliance should monitor the *Federal Register* to determine when the final rule becomes effective. If registrants choose not to comply with the final rule before the mandatory compliance date, they should continue to apply the guidance in Guide 3 until the final rule is adopted.

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