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# SEC Amendments to MD&A and Other Financial Disclosure Requirements Become Effective

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## I. Background

The recent Securities and Exchange Commission (the “SEC”) amendments to the financial disclosure requirements of Regulation S-K (including Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”)), which were originally proposed in January of 2020<sup>1</sup> and adopted in November of 2020,<sup>2</sup> became effective on February 10, 2021. The amended rules will apply to a registrant’s first fiscal year ending on or after August 9, 2021, but a registrant may also choose to apply the amended rules at any time after the effective date so long as the disclosure provided is responsive to the entire amended item and the registrant continues to apply the amended rules going forward. Below, we discuss certain principal areas where the final amendments diverge from the amendments as proposed.

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## II. Changes to Final Rules

### A. Item 302(a) Supplementary Financial Information – Disclosure of Material Quarterly Changes

The SEC proposed to eliminate Item 302(a), which requires registrants to (1) disclose selected quarterly financial data, (2) describe the reasons for any differences when there are variances from previous quarterly results, and (3) describe the impact of any unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years. The adopted amendments instead retain Item 302(a) with modifications to require the registrant to provide an explanation of material changes and to disclose summarized financial information for each affected quarterly period in addition to the fourth quarter in the affected year. In the Adopting Release, the SEC acknowledged comments that fourth quarter information may not be readily available but stated that the amendment does not require disclosure of the fourth quarter financials on a standalone basis and that the information can be derived from annual results.

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<sup>1</sup> For the full text of the proposing release, see Securities and Exchange Commission, Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33-10750, available at <https://www.sec.gov/rules/proposed/2020/33-10750.pdf> (January 30, 2020), and for our discussion of the then-current rules and the proposed amendments, see SEC Proposes to Amend Financial Disclosure Requirements of Regulation S-K, available at <https://www.cahill.com/publications/firm-memoranda/2020-02-25-sec-proposes-to-amend-financial-disclosure-requirements-of-regulation-s-k> (February 25, 2020).

<sup>2</sup> For the full text of the adopting release, see Securities and Exchange Commission, Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33-10890, available at <https://www.sec.gov/rules/final/2020/33-10890.pdf> (November 19, 2020) [hereinafter the “Adopting Release”]. Unless otherwise specified, quoted statements in this memorandum are taken from the Adopting Release.

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## B. Item 303(a) – MD&A – Objective

In an effort to restructure and streamline Item 303, the SEC proposed to include a new Item 303(a), which requires registrants to state the principal purposes of their MD&A disclosures. The adopted rule includes slight modifications to emphasize that MD&A disclosure must include matters “that are reasonably likely based on management’s assessment to have a material impact on future operations” and is “expected to better allow investors to view the registrant from management’s perspective” (emphasis added). Additionally, the SEC updated the proposed rule to explicitly incorporate cash flows as part of the MD&A discussion.

## C. Item 303(b) – MD&A – Full Fiscal Years

The SEC proposed to amend Item 303(b) to, among other things, remove the term “reportable” when referring to the relevant business segments to be discussed. After reviewing the comments received, the SEC decided to retain the term and noted that it was not their intent to “suggest a further disaggregation of MD&A beyond the reportable segment level.” Additionally, the SEC slightly modified the proposed rules to clarify the “reasonably likely” standard throughout the Item. The SEC stated that it believes using a uniform standard will avoid confusion and inconsistency.

Many commenters expressed concerns over the sensitivity analysis required by new Item 303(b)(3). In order to address these concerns, the SEC modified the final rule to make clear that “(i) the application of the material and reasonably available qualifier applies to all parts of the disclosure, not just to quantitative information; (ii) the discussion on how much each estimate has changed may also be met through a discussion of changes in the assumptions during the period; and (iii) the disclosure of changes in the estimate/assumption will cover a ‘relevant period,’ rather than a ‘reporting period.’”

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## III. Conclusion

The amended rules are intended to revise and eliminate overlapping or unnecessary disclosure requirements and to reduce the burden on registrants, while also enhancing readability to benefit investors. The amended rules are also quite detailed and complex. Registrants should familiarize themselves with all aspects of the amended rules that apply to them and work closely with their advisors as compliance with the amended rules becomes mandatory.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Geoffrey E. Liebmann (partner) at 212.701.3313 or [gliebmann@cahill.com](mailto:gliebmann@cahill.com); Bruna Amaral (associate) at 212.701.3389 or [bamaral@cahill.com](mailto:bamaral@cahill.com) or Michael Chaia (associate) at 212.701.3335 or [mchaia@cahill.com](mailto:mchaia@cahill.com) or email [publications@cahill.com](mailto:publications@cahill.com).

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