Recent Amendments That Are Now Applicable to Upcoming Annual Reports On Form 10-K

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Now that the amendments adopted last year are applicable, calendar year reporting companies will need to update their disclosures in the Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) section of their upcoming annual reports on Form 10-K. The SEC press release announcing the ammendents stated they are "intended to enhance the focus of financial disclosures on material information for the benefit of investors, while simplifying compliance efforts for registrants." This Alert summarizes the key changes to the MD&A section and certain financial disclosure requirements set forth in these amendments.

Selected Financial Data (Item 301 of Regulation S-K)

The amendments eliminated the Item 301 requirement to provide selected financial data for each of the last five fiscal years. Nevertheless, the SEC still encourages reporting companies "to consider whether trend information for periods earlier than those presented in the financial statements may be necessary as part of MD&A's objective to provide material information relevant to an assessment of the financial condition and results of operations." Reporting companies may decide to include a table of selected financial data under these circumstances as one of the ways they describe such trend information.

Supplementary Financial Information (Item 302 of Regulation S-K)

Under the amendments, selected quarterly date of specified operating results will be required only when there are one or more retrospective changes that pertain to the financial statements for any of the quarters within the two most recent fiscal years that are material either individually or in the aggregate. If that is the case, reporting companies must provide the reasons for the material changes and the summarized financial information and earnings per share reflecting such changes for each affected quarterly period and the fourth quarter in the affected year. Retrospective changes that could trigger this disclosure include a change in accounting principle, correction of an error or disposition of a discontinued business. The SEC did not eliminate the requirement in Item 302 for companies engaged in oil and gas producing activities to disclose information about those activities for each period presented since the FASB has not adopted its expected accounting standards updates that would duplicate this requirement at the time of the adoption of these amendments.

MD&A (Item 303 of Regulation S-K)

Objectives
A new Item 303(a) was adopted to require the disclosure of the objectives of MD&A. This is consistent with prior SEC guidance, but now codifies the requirement to explain the objectives of MD&A using a principles-based and company-specific approach. The objectives should specify that the MD&A section will include descriptions and amounts of matters that have had a material impact on reported operations and those that, based on management's assessment, are reasonably likely to have a material impact on future operations. The instructions make it clear that this section is intended to enhance a reader's understanding of the company's financial condition, cash flows, changes in financial condition, and results of operations.

Material Changes
Item 303(b) now provides that companies must describe the underlying reasons for material changes in quantitative terms as well as qualitative terms. If quantifying the reasons for a specific change is difficult, the SEC encourages companies to explain the challenges to the extent possible.

Results of Operations
The SEC has attempted to streamline the discussion of the results of operations as follows:

- Changes in Net Sales or Revenues: The current rule only requires disclosure of material increases in net sales or revenues, while amended Item 303(b)(2)(iii) requires discussion of material changes in net sales or revenues. This may be due to changes in prices, the amount of goods or services sold or the introduction of new products or services developed internally or acquired.
- Known Trends and Uncertainties: Amended Item 303(b)(2)(ii) was tweaked so that reporting companies are now required to disclose known trends and uncertainties that are reasonably likely (rather than those the registrant reasonably expects) to have a material impact on net sales/revenues or income from continuing operations.
- Inflation and Price Changes: Former Item 303(a)(3)(iv) was eliminated. Reporting companies are now only required to disclose the impact of inflation and price changes if they are reasonably likely to be material as with other known trends or uncertainties.

Liquidity and Capital Resources
Material Cash Requirements (Item 303(b)(1)): Under this revised rule, reporting companies must disclose "material cash requirements," which includes contractual obligations in addition to capital expenditures. Reporting companies are still required to disclose the general purpose of the requirement and the anticipated funding source.

Table of Contractual Obligations (former Item 303(a)(5)): Reporting companies are no longer required to provide a table of contractual obligations over five years and beyond. New instruction 8 to Item 303(b) reminds reporting companies that under the principle-based approach being used, they will still need to discuss commitments or obligations that have, or are reasonably likely to have, a material current or future effect on their financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources as part of their discussion of material cash requirements.

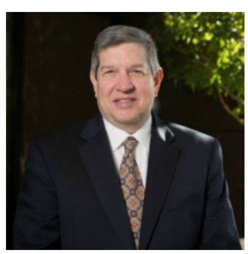
Off-Balance Sheet Arrangements: Rather than requiring the disclosure of off-balance sheet arrangements under former Item 303(a)(4), the new principle-based instruction 8 to Item 303(b) requires the discussion of such arrangements that are, or are reasonably likely to be, material.

Critical Accounting Estimates: New Item 303(b)(3) requires disclosure of qualitative and quantitative information necessary to understand the estimation uncertainty and the impact the estimate has had or is reasonably likely to have on financial condition and results of operations if the information is material and reasonably available. Reporting companies should also include a discussion of why the estimate is subject to uncertainty; how much each estimate has changed over a relevant period; and the sensitivity of the reported amounts to the material methods, assumptions and estimates underlying its calculation. Instruction 3 to Item 303(b) also emphasizes that this disclosure of critical accounting estimates must supplement, but not duplicate, the description of accounting policies in the notes to financial statements.

Interim Periods

Former Item 303(b) was renumbered as Item 303(c), but now permits reporting companies to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or the immediately preceding quarter. If a company chooses to compare its current quarter to the immediately preceding quarter, it must include the prior quarter's summary financial information or identify the company's SEC filing where the information is presented. If a company changes the prior quarter to which it compares, it must disclose the rationale for the change and present both comparisons in the filing in which the change is disclosed.

For questions regarding these amendments to Items 301, 302 and 303 of Regulation S-K in preparing your annual report on Form 10-K, please contact your GableGotwals attorney or a member of our Corporate & Securities team.



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