

Hot Topic: Guide 3

SEC finalizes rule to streamline bank disclosures

October 5, 2020



The disclosure requirements are codified in new Subpart 1400 of Regulation S-K and replace Industry Guide 3¹

Background

Guide 3² is the Industry Guide that applies to bank holding companies. Since the last substantive revision to Guide 3 in 1986, the Securities and Exchange Commission (“SEC” or “Commission”) has adopted new disclosure requirements and the FASB and IASB have issued accounting standards that have changed the financial reporting disclosure obligations for registrants engaged in material lending and deposit activities. Consequently, significant overlap exists between the Guide 3 disclosure requirements and those required by new SEC rules and accounting standards.

Accordingly, the SEC announced on September 11, 2020 that it finalized updated rules in a new Subpart 1400 of Regulation S-K (“the final rule”), which updates and expands the statistical disclosures that bank and savings and loan registrants currently provide to investors. It also eliminates certain disclosure requirements that are duplicative of other Commission rules and requirements of US GAAP or IFRS. Guide 3 will be rescinded effective January 1, 2023.

Public companies that are banks, bank holding companies, savings and loan associations, and savings and loan holding companies are affected by the SEC’s changes, which apply to both domestic registrants, including Regulation A issuers and foreign registrants. According to the SEC, the final rule aims to streamline compliance efforts, decrease reporting burdens for registrants and enhance comparability among issuers.

Key facts

Clarification of scope of disclosures: The final rule will apply to banks and savings and loan registrants. The SEC did not expand the scope to include other registrants in the financial services industry, such as insurance companies, online marketplace lenders or financial technology companies. The SEC believes registrants can easily ascertain whether they are a bank or savings and loan

¹ SEC Release No. 33-10835, Final Rule, [Update of Statistical Disclosures for Bank and Savings and Loan Registrants](#)

² SEC Industry Guides, [Guide 3, Statistical disclosure by bank holding companies](#)

registrant, which will reduce confusion about whether the disclosure requirements apply to non-bank companies.

Location of disclosures: The final rule does not specify the location in which the required disclosures should be presented. Rather, the final rule allows registrants to choose the location of the disclosures, whether it be in the MD&A (outside of the financial statements) or notes to the financial statements. If the required disclosures are presented outside the financial statements, they do not have to be audited.

Reporting period: The SEC defined the term reporting period to mean each annual period required by SEC rules for a registrant’s financial statements because these disclosure requirements are integral to a registrant’s financial statements. Interim period disclosures are required to the extent there is a material change in the information.

Rule 9-01 of Regulation S-K: The final rule also amended Rule 9-01 to include savings and loan associations and savings and loan holding companies, to align with the applicability of Subpart 1400 of Regulation S-K. Registrants that believe the presentation under Article 9 would be material to the understanding of their business are not precluded from applying the requirements of Article 9.

Foreign filers

The disclosure requirements also apply to foreign registrants. The SEC recognized that there are many differences between US GAAP and IFRS regarding their alignment to certain disclosure requirements in Guide 3, including the measurement of credit losses and financial instruments.

The final rule explicitly exempts foreign private issuers applying IFRS from disclosure requirements that do not apply under IFRS or contradict it. The SEC believes this exemption substantially addresses the challenges foreign registrants may face if they had to apply additional disclosure requirements.

The SEC rule is intended to provide registrants with the flexibility to identify specific categories and classes of instruments that should be disclosed. In certain instances, the final rule specifically links the disclosure requirements to the categories or classes of financial instruments disclosed in the US GAAP or IFRS financial statements.

What are the changes in the disclosure requirements?

This table summarizes and compares the disclosure requirements in new Subpart 1400 to the previous requirements under Guide 3.

Topic	Existing Guide 3 requirements vs. Subpart 1400 of Regulation S-K
Scope	<p>Guide 3 – I. General instructions</p> <p>Applies to bank holding companies.</p> <p>However, the disclosures called for by Guide 3 were also provided by other registrants with material lending and deposit activities, including savings and loan holding companies.</p>

Topic	Existing Guide 3 requirements vs. Subpart 1400 of Regulation S-K
	<p data-bbox="537 268 1135 300">Regulation S-K - Item 1401 general instructions</p> <p data-bbox="537 321 1403 384">Applies to bank holding companies, banks, savings and loan associations, and loan holding companies.</p> <p data-bbox="537 394 1390 485">The scope was not expanded to include other registrants in the financial services industry, or other entities that undertake material lending or deposit activities.</p>
<p data-bbox="232 516 475 548">Foreign registrants</p>	<p data-bbox="537 510 943 541">Guide 3 – I. General instructions</p> <p data-bbox="537 562 1411 653">Disclosure requirements for foreign registrants to the extent requested information is available without unwarranted or undue burden or expense, which was required to be brought to the attention of the SEC staff.</p> <p data-bbox="537 667 1141 699">Regulation S-K - Item 1401 General instructions</p> <p data-bbox="537 730 1377 793">The concept of unwarranted or undue burden or expense from Guide 3 was not codified in Subpart 1400 of Regulation S-K.</p> <p data-bbox="537 804 1360 867">However, other changes included in Subpart 1400 mitigate the effect, including:</p> <ul data-bbox="594 877 1406 1098" style="list-style-type: none"> <li data-bbox="594 877 1373 968">— linking disclosure requirements to categories or classes of financial instruments disclosed in the registrant’s US GAAP or IFRS financial statements; <li data-bbox="594 978 1406 1041">— changing the definition of reporting periods to align with financial statement requirements; and <li data-bbox="594 1045 1386 1098">— requirements explicitly exempt IFRS registrants from certain of the disclosure requirements.
<p data-bbox="232 1140 475 1203">Reporting period – Annual and interim</p>	<p data-bbox="537 1134 943 1165">Guide 3 – I. General instructions</p> <p data-bbox="537 1186 824 1218">Requires disclosures of:</p> <ul data-bbox="594 1228 1406 1518" style="list-style-type: none"> <li data-bbox="594 1228 1393 1291">— (a) each of the last three fiscal years of the registrant, except as provided in paragraphs (b) and (c) below; <li data-bbox="594 1297 1406 1360">— (b) each of the last five fiscal years of the registrant with respect to Items III and IV, except as provided in paragraph (c) below; <li data-bbox="594 1367 1406 1457">— (c) each of the last two fiscal years with respect to all items, if the registrant had assets of less than \$200,000,000 or net worth of \$10,000,000 or less as of the end of its latest fiscal year; and <li data-bbox="594 1463 1279 1518">— (d) any additional interim period necessary to keep the information from being misleading. <p data-bbox="537 1549 1141 1581">Regulation S-K - Item 1401 General instructions</p> <p data-bbox="537 1602 824 1633">Requires disclosures of:</p> <ul data-bbox="594 1644 1414 1770" style="list-style-type: none"> <li data-bbox="594 1644 1382 1707">— Each annual period for which a registrant is required to provide financial statements under Regulation S-X. <li data-bbox="594 1713 1414 1770">— Any interim period with a material change in the information from the prior annual period to update those disclosures.

Topic	Existing Guide 3 requirements vs. Subpart 1400 of Regulation S-K
Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential	<p>Guide 3 – II. Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential</p> <p>Requires disclosures of:</p> <ul style="list-style-type: none"> — Average balance sheets, showing interest income and expense and average rates and yield on all major categories of assets and liabilities, as follows: <ul style="list-style-type: none"> – interest earning assets – loans, taxable investment securities, nontaxable investment securities, interest bearing deposits in other banks, fed funds sold and securities purchased with agreements to resell, other short-term investments and other. – interest bearing liabilities – savings deposits, other time deposits, short-term debt, long-term debt and other. — Analysis of net interest, including for each major category of interest-earning assets and liabilities, the average amount outstanding during the period and interest earned or paid and the average yield or average rate paid. In addition, inclusion of the total average yield or effective rate paid for interest-earning assets and liabilities and the net yield on interest-earning assets. — For the latest two fiscal years, present (1) the dollar amount of change in interest income and (2) the dollar amount of change in interest expense.
	<p>Regulation S-K –Item 1402 Distribution of assets, liabilities, and stockholder's equity; interest rates and interest differential</p> <p>Requires disclosure of all of the average balance sheet, interest and yield/rate analysis, and rate/volume analysis disclosure requirements in Guide 3 , with disaggregation of interest-earning asset and interest-bearing liability categories.</p> <p>Item 1402 further expands the requirements to separate federal funds sold from securities purchased with agreements to resell, federal funds purchased from securities sold under agreements to repurchase, and commercial paper.</p> <p>Subpart 1402 also codifies General Instructions from Guide 3 related to disclosure of 'foreign' data and segregation between domestic and foreign activities.</p>
Investment in debt securities	<p>Guide 3 – II. Investment portfolio</p> <p>Requires disclosures of:</p> <ul style="list-style-type: none"> — Weighted average yield for each range of maturities by category of debt securities. — Amount of each investment category at period end, which is due in (1) in one year or less, (2) after one year through five years, (3) after five years through ten years, and (4) after ten years. — As of the end of the latest reported period, the name of any issuer, and the aggregate book value and aggregate market value

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	<p>of the securities of such issuer, when the aggregate book value of its securities exceeds 10% of stock-holders' equity.</p> <p>Regulation S-K – Item 1403 Investment in debt securities</p> <p>Requires disclosures of:</p> <ul style="list-style-type: none"> — Weighted average yield for each range of maturities by category of debt securities that are not carried at fair value through earnings, using categories required by US GAAP or IFRS. — How the weighted average yield is calculated. — Whether yield on tax-exempt obligations has been computed on a tax-equivalent basis and changes in tax-exempt portfolio.
Loan portfolio	<p>Guide 3 – III. Loan portfolio</p> <p>Requires disclosures of:</p> <ul style="list-style-type: none"> — Types of loans at the end of each period, for specified domestic (commercial, real estate, etc.) and foreign (governments and official institutions, etc.) categories with totals that agree to the categories on the balance sheet. — The maturity by loan category (as listed above) of loans that are: (1) due in one year or less, (2) due after one year through five years and (3) due after five years. — The total amount of loans due after one year that have (a) predetermined interest rates and (b) floating or adjustable interest rates. — Certain risk elements of the loan portfolio, including disclosure for (1) nonaccrual, past due and restructured loans, (2) potential problem loans and (3) foreign outstandings. — The nature and amount of other interest-bearing assets. <p>Regulation S-K – Item 1404 Loan portfolio</p> <p>Requires disclosure:</p> <ul style="list-style-type: none"> — As of the end of the latest reported period, presented separately, of the amount of loans in each category for which disclosure is required in the financial statements that are due: (1) in one year or less, (2) after one year through five years, (3) after five years through 15 years, and (4) after 15 years. — Of the total amount of loans due after one year that have (a) predetermined interest rates and (b) floating or adjustable interest rates. <p>While Item 1404 requires similar disclosures as Guide 3, Item 1404 modifies the disclosure requirement by:</p> <ul style="list-style-type: none"> — adding additional maturity categories to provide investors with sufficient information on the potential interest rate risk associated with the loans in the portfolio; — eliminating the exclusion of certain loan categories required under Guide 3 (real estate-mortgage, installment loans to individuals and lease financing) from these disclosures and the aggregation of other loan categories (foreign loans to

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	<p>governments and official institutions, banks and other financial institutions, commercial and industrial and other loans); and</p> <ul style="list-style-type: none"> — eliminating certain other disclosure requirements, including the loan portfolio risk elements disclosure, and the nature and amount of other interest-bearing assets disclosure.
Allowance for credit loss	Guide 3 – IV. Summary of loan loss experience
	<p>Requires disclosure of:</p> <ul style="list-style-type: none"> — Rollforward of the allowance for loan losses, including beginning balance, charge-offs, recoveries, net charge-offs, additions charged to operations, and ending balance. — Ratio of net charge-offs during the period to average loans outstanding during the period. — Tabular breakdown of allowance at end of period – by loan category (dollar and percentage amount of total allowance).
Deposits	Regulation S-K - Item 1405 Allowance for credit losses
	<p>Requires disclosure of:</p> <ul style="list-style-type: none"> — net charge-offs during the period to average loans outstanding during the period; — credit ratios on a consolidated basis, as follows, along with each of the components used in their calculation: <ul style="list-style-type: none"> – allowance for credit losses to total loans; – nonaccrual loans to total loans; and – allowance for credit losses to nonaccrual loans; — tabular disclosure of breakdown of allowance at end of period – by loan category (dollar and % amount of total allowance); and — discussion of the factors that drove material changes in the ratios, or related components, during the periods presented.
Deposits	Guide 3 - V. Deposits
	<p>Requires disclosure of:</p> <ul style="list-style-type: none"> — Each reported period, present separately the average amount of and the average rate paid on deposits in domestic and foreign banking offices, by specified categories and the aggregate amount of deposits by foreign depositors in domestic offices (if material). — The amount outstanding, as of the end of the latest reported period, of time certificates of deposit and other deposits in amounts of \$100,000 or more by time remaining until maturity for both domestic and foreign offices.
Deposits	Regulation S-K – Item 1406 Deposits
	<p>Requires disclosure of:</p> <ul style="list-style-type: none"> — each reported period, present separately the average amount of and the average rate paid on certain deposit categories that are in

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	<p>excess of 10% of average total deposits and, if material, present separately domestic and foreign deposits for the same categories and the aggregate amount of deposits by foreign depositors in domestic offices;</p> <ul style="list-style-type: none"> — as of the end of the latest reported period, state the amount outstanding of time certificates in uninsured amounts by maturity; — amount outstanding of the portion of US time deposits, by account, that are in excess of the Federal Deposit Insurance Corporation insurance limit or similar state deposit insurance regime; and — amount of time deposits that are otherwise uninsured (including for example, US time deposits in uninsured accounts, non-US time deposits in uninsured accounts, or non-US time deposits in excess of any country-specific insurance fund limit), by time remaining until maturity. Registrants should consider the methodologies and assumptions used for regulatory reporting of uninsured deposits, to the extent applicable, for disclosure of uninsured deposits.
Return on equity and assets	Guide 3 – VI. Return on equity and assets
	Requires disclosure of return on assets, return on equity, dividend payout, and equity to assets ratios.
	Regulation S-K – Subpart 1400 Disclosure requirements from Guide 3 – VI. Return on Equity and Assets were not codified as a requirement in Subpart 1400.
Short-term borrowings	Guide 3 – VII. Short-term borrowings
	Requires disclosure of certain information on the categories of short-term borrowings included in the financial statements, including the: <ul style="list-style-type: none"> — amount outstanding at period end, — weighted average interest, — approximate amount of borrowing in each category outstanding at month end during the given period, — average weighted amount outstanding during the period, and — weighted average interest rate.
	Regulation S-K – Subpart 1400 Disclosure requirements from Guide 3 – VII. Short-Term Borrowings were not codified in Subpart 1400; however, certain disclosure requirements related to interest-bearing liabilities, which would include short-term borrowings, were codified in subpart 1402 .

Summary of Guide 3 disclosure requirements that were not codified in Subpart 1400 of Regulation S-K

The final rule did not codify the following Guide 3 disclosure requirements and instructions that overlap with Commission rules, US GAAP, or IFRS.

- Disclosure requirements for foreign registrants to the extent requested information is available without unwarranted or undue burden or expense (General Instruction 6).
- Book value information, the maturity analysis of book value information, and the disclosures related to investments exceeding 10% of stockholders' equity called for in the Investment Portfolio section.
- Loan category disclosure, the loan portfolio risk elements disclosure, and the other interest-bearing assets disclosure called for by certain items in the Loan Portfolio section.
- The allowance roll-forward in the Summary of Loan Loss Experience section.
- The breakdown of the allowance disclosures called for in the Summary of Loan Loss Experience section for IFRS registrants.
- Short-term borrowing disclosures, including the amounts outstanding and weighted average interest rate and maximum amounts outstanding of borrowings in certain categories, in the Short-term Borrowings section.
- Disclosure of ratios in Return on Equity and Assets section.

Because the SEC is rescinding Guide 3, on adoption of the final rule registrants are not expected to provide any Guide 3 disclosures not required by new Subpart 1400, unless required by other Commission rules, US GAAP, or IFRS. However, registrants may voluntarily continue to provide these disclosures.



When will the final rule be effective?

Compliance Date: Fiscal years ending on or after December 15, 2021 (the 'mandatory compliance date'). Registrants filing initial registration statements are not required to apply the final rules until an initial registration statement is first filed containing financial statements for a period on or after the mandatory compliance date. Subsequent disclosures are required in Form 10-Q's when material changes exist per Item 1401 in Regulation S-K.

Until the mandatory compliance date, bank and savings and loan registrants should continue to refer to Guide 3 for guidance in meeting the disclosure obligations.

Voluntary early compliance is permitted, provided that the final rules are applied in their entirety from the date of early compliance.

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