

Registered Debt Offerings Simplified: SEC Amends Disclosure Rules Regarding Guarantors

MARCH 5, 2020

On March 2, 2020, the SEC adopted amendments to the financial disclosure requirements applicable to registered debt offerings under Rules 3-10 and 3-16 of Regulation S-X. This blog post discusses the changes to Rule 3-10 and Rule 3-16, as well as their effects on issuers. Note that, while the amendments become effective on January 4, 2021, issuers can begin voluntary compliance with the final amendments immediately, which will be accepted in advance of the effective date.

Amendments to Rule 3-10 of Regulation S-X

Under the final amendments, Rule 3-10 will continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met and the parent company provides supplemental financial and non-financial disclosure about the subsidiary issuers and/or guarantors and guarantees. The SEC argues that the amendments address the challenges posed by the current rules while adhering to the overarching principle upon which existing Rule 3-10 is based: “that investors in guaranteed debt securities rely primarily on the consolidated financial statements of the parent company and supplemental details about the subsidiary issuers and guarantors when making investment decisions.”

The amendments to Rule 3-10 make the following changes:

- Replace the condition that a subsidiary issuer or guarantor be 100%-owned by the parent company with a condition that it be consolidated in the parent company’s consolidated financial statements;
- Replace condensed consolidating financial information, as specified in existing Rule 3-10, with certain new financial and non-financial disclosures. The amended financial disclosures will consist of summarized financial information, as defined in Rule 1-02(bb)(1) of Regulation S-X, of the issuers and guarantors, which may be presented on a combined basis, and reduce the number of periods presented. The amended non-financial disclosures, among other matters, will expand the qualitative disclosures about the guarantees and the issuers and guarantors. Consistent with the existing rule, disclosure of additional information about each guarantor will be required if it would be material for investors to evaluate the sufficiency of the guarantee;
- Permit the amended disclosures to be provided outside the footnotes to the parent company’s audited annual and unaudited interim consolidated financial statements in all filings; and

- Require the amended financial and non-financial disclosures for as long as an issuer or guarantor has an Exchange Act reporting obligation with respect to the guaranteed securities rather than for as long as the guaranteed securities are outstanding.

Amendments to Rule 3-16 of Regulation S-X

The final amendments will replace Rule 3-16 with new Rule 13-02, and the amendments make the following changes:

- Replace the existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with amended financial and non-financial disclosures about the affiliate(s) and the collateral arrangement as a supplement to the consolidated financial statements of the registrant that issues the collateralized security. The registrant will be permitted to provide the amended financial and non-financial disclosures outside the footnotes to its audited annual and unaudited interim consolidated financial statements in all filings; and
- Replace the requirement to provide disclosure only when the pledged securities meet or exceed a numerical threshold relative to the securities registered or being registered with a requirement to provide the proposed financial and non-financial disclosures in all cases, unless they are immaterial.

2 Min Read

Authors

[J. Eric Johnson](#)

[Michael J. Blankenship](#)

[Ben D. Smolij](#)

[John P. Niedzwiecki](#)

Related Locations

Houston

Related Topics

Financial Disclosure

Securities and Exchange Commission (SEC)

Debt offerings

Related Capabilities

Capital Markets

Transactions

Financial Services

Related Regions

North America

Related Professionals



J. Eric Johnson



Michael J. Blankenship



Ben D. Smolij



John P. Niedzwiecki

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.