The U.S. Securities and Exchange Commission recently adopted amendments to certain financial data and management's discussion of financial information disclosure requirements in Regulation S-K. These amendments affect the selected financial data (Item 301), supplementary financial data (Item 302), and management's discussion and analysis of financial condition and results of operations, or MD&A (Item 303), requirements.

The amendments generally reduce duplicative disclosure and align these rules with the SEC's focus on principles-based disclosure requirements. These amendments affect operating company disclosures required for Forms 10-K, 10-Q, 10, 1-A, S-1, and S-4, as well as Schedule 14A. The Reg S-K amendments also affect certain business development company and real estate investment trust company filings, and parallel amendments were made to financial disclosure requirements to foreign private issuers.

The amendments will become effective on February 10, 2021, which is 30 days after the publication date in the Federal Register. Companies will be required to apply the amended rules starting with their fiscal year ending on or after August 9, 2021, which is 210 days after the publication date in the Federal Register (the mandatory compliance date). For calendar year companies, that means that the amended rules will apply to annual reports on Form 10-K for the year ending December 31, 2021, and thereafter in quarterly reports on Form 10-Q. Companies filing Form S-1 or S-4 will be required to apply the amendments if, on the initial filing date, the registration statement and prospectus is required to include financial statements for a period on or after the mandatory compliance date. Prior to the mandatory compliance date and at any time after the effective date, companies may voluntarily elect to provide disclosure consistent with an amended item, so long as they provide disclosure that follows the amended item in its entirety and in any applicable filings going forward.

Key Takeaways

- Eliminates the requirement to provide five years of selected financial data, in light of the ease with which investors can access prior years of financial data and the challenges companies face in addressing periods included in the selected data, but prior to those included in the financial statements when recasting prior years due to a new accounting standard or change in business
- Streamlines the requirement to provide summarized tabular disclosure of two years of quarterly operating data to require disclosure only when there have been one or more retrospective changes that are material, individually or in the aggregate, together with an explanation of the reasons for the changes
- Modernizes, simplifies, and enhances MD&A disclosure requirements, including replacing the item requiring disclosure of off-balance sheet arrangements with an instruction to discuss such obligations in the broader context of MD&A, eliminating the tabular disclosure of contractual obligations, and permitting comparisons of sequential quarters, rather than year-over-year periods, for interim period discussions

Summary of Amendments

The table below summarizes the primary rule amendments to the disclosure requirements for U.S. public companies, along with the current applicable rules. The SEC also approved parallel amendments to foreign private issuer requirements.

New Regulation S-K Item	Current Rule	Amendments
Financial Data		

Item 301 (Selected Financial Data)	**Last Five Years of Financial Data.** Requires that the company disclose selected financial data in comparative tabular form for each of company's last five fiscal years (along with any additional fiscal years necessary to prevent the information from being misleading).	**Eliminated.** This item was eliminated, as prior period financial disclosures are easily accessible through prior EDGAR filings.
Item 302(a) (Selected Quarterly Financial Data)	**Two Years of Quarterly Financial Data.** Requires that the company provide disclosure of two fiscal years and subsequent interim periods of selected quarterly financial data of specified operating results, along with disclosure of variances in those results from amounts previously reported in a Form 10-Q.	**Quarterly Financial Data Required Only if There Are Retrospective Material Changes.** Companies are required to disclose quarterly financial data only when there are one or more retrospective changes that pertain to the statements of comprehensive income for any of the quarters within the two most recent fiscal years and any subsequent interim period and that, individually or in the aggregate, are material. **Explanation of Reasons for Material Changes.** When the disclosure requirement applies, companies will be required to provide an explanation of the reasons for such material changes and to disclose, for each affected quarterly period and the fourth quarter in the affected year, summarized financial information related to the statements of comprehensive income and earnings per share reflecting such changes. The amended rule points to Rule 1-02(bb) of Regulation S-X to specify the summarized financial information required. Rule 1-02(bb) of Reg S-X was amended to clarify that the disclosure of summary financial information may vary, as appropriate, to conform to the nature of the company's business. **When Applicable.** Item 302(a) will apply beginning with the first filing of Form 10-K after the company's IPO. If a newly public company has a material retrospective change to its year-to-date interim period information in its most recent registration statement and has not yet disclosed that interim period information in quarterly increments, the adopting release states that the SEC will not object if Item 302(a) disclosures are presented for the affected year-to-date interim period and fourth quarter in the affected year.

Management's Discussion and Analysis (MD&A)

Item 303(a) (Objective)	**No Corresponding Current Paragraph.**	**Focus MD&A on Material Disclosure.** New Item 303(a) is intended to encourage companies to tailor the disclosure in the MD&A to their specific business and focus on disclosing trends and information that are material. New Item 303(a) incorporates a portion of the substance of current Instruction 1 and much of the substance of current Instructions 2 and 3 to current Item 303(a), and codifies SEC guidance that a company should provide a narrative explanation of its financial statements that enables investors to see a company "through the eyes of management." Per new Item 303(a), companies are required to discuss and analyze: • Material information relevant to an assessment of the financial conditions and results of operations of the company, including an evaluation of the amounts and certainty of cash flows; • Material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial conditions; and • Material financial and statistical data that the company believes will enhance a reader's understanding of the company's financial condition, cash flows, and results of operations.

Item 303(b) (Full Fiscal Years)	**Discussion of Financial Condition and Results of Operations for Full Fiscal Years.** Current Item 303(a) provides that companies must discuss their financial condition, changes in financial condition, and results of operations for full fiscal years. This should include discussion on the topics identified by the subsections of Item 303(a) (liquidity, capital resources, results of operations, off-balance sheet arrangements, and contractual obligations) and such other information that the company believes would be necessary to understand its financial condition, changes in financial condition, and results of operations. **Segments and Subdivisions.** Where a company believes that a discussion of segment information and/or other subdivisions (e.g., geographic areas) of the company's business would be appropriate to an understanding of its business, the discussion should focus on each relevant reportable segment, and/or other subdivision.	**Reasons Underlying Material Changes.** The amendments revise the language to underscore that a company should not only discuss the "cause" for material changes, but also the reasons underlying material changes in quantitative and qualitative terms. The intent of these amendments is to encourage more meaningful discussion in MD&A and avoid simple recitation of amounts of changes. The amendments recaption Item 303(a) as new Item 303(b), and incorporate in Item 303(b) the portion of Instruction 4 to current Item 303(a) that provides that the causes for material changes from year-to-year in one or more line items of the financial statements must be described. They also codify prior SEC guidance that discussion of material changes in a line item includes where material changes within a line item offset one another. The adopting release specifically acknowledged that isolating reasons for specific material changes and quantifying such isolated reasons can be challenging because they can be highly interrelated. In such circumstances, the SEC encourages companies to acknowledge this fact and to explain the interrelated circumstances to the extent it is possible. **Product Lines Are a Type of Subdivision.** In addition, the SEC clarified that product lines are a type of "other subdivisions" of a company's business that should be discussed where, based on management's judgment, such a discussion would be necessary to an understanding of company's business. This addition is intended as a reminder of the type of disclosure that may be required, and not to necessarily require product line disclosure.

Item 303(b)(1) (Liquidity and Capital Resources)	**Liquidity.** Current Item 303(a)(1) requires that companies identify any known trends or any known demands, commitments, events, or uncertainties that will result in or that are reasonably likely to result in the company's liquidity increasing or decreasing in any material way. **Capital Resources.** Current Item 303(a)(2) requires that companies discuss their material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of and the anticipated sources of funds needed to fulfill such commitments. Companies must also discuss, among other things, any known material trends, favorable or unfavorable, in their capital resources, and indicate any expected material changes in the mix and relative cost of such resources. **Contractual Obligations Table.** Current Item 303(a)(5) requires that companies (other than smaller reporting companies) disclose in tabular format their known contractual obligations by type of obligation, overall payments due, and time period.	**Streamline Liquidity and Capital Resources Disclosure.** The SEC added new Item 303(b)(1), which provides the overarching requirement for liquidity and capital resources disclosures to analyze a company's ability to generate and obtain adequate cash to meet its requirements and its plans for cash in the short term (i.e., the next 12 months from the most recent fiscal period end presented) and separately in the long term (i.e., beyond the next 12 months). This language was incorporated into new Item 303(b)(1) from the definition of liquidity in Instruction 5 to current Item 303(a), as well as prior SEC guidance. New Instruction 3 to Item 303(b) provides that the Item 303(b) analysis should be in a format that facilitates easy understanding and that supplements, but does not duplicate, disclosure already provided in the filling. **Disclose Material Cash Requirements (Contractual Obligations Table No Longer Required).** New Item 303(b)(1) also provides that companies should analyze *material cash requirements* from known contractual and other obligations, rather than only material commitments for capital expenditures. Such disclosures must specify the type of obligation and the relevant time period for the related cash requirements. New Instruction 4 to Item 303(b) states that the discussion of material cash requirements from known contractual obligations may include, for example, lease obligations, purchase obligations, or other liabilities reflected on the company's balance sheet. This expanded disclosure requirement complements the SEC's decision to remove the Item 303(a)(5) contractual obligations table requirement. The reference to discussion and analysis of *material cash requirements* has been incorporated into both new Item 303(b)(1) and 303(b)(1)(ii) (Capital Resources). This updated requirement to describe material cash requirements, including but not limited to capital expenditures, recognizes that certain expenditures and cash commitments that are not necessarily capital investments in property, plant, and equipment may be increasingly important to companies in many industries, especially those for which human capital and intellectual property are key resources. The adopting releases specifies that this requirement is a codification of current SEC guidance and should not cause companies to deviate substantially from current practices with respect to assessments of material cash requirements.

Item 303(b)(2) (Results of Operations)	**Trends or Uncertainties Impacting Continuing Operations.** Current Item 303(a)(3)(ii) requires a company to describe any known trends or uncertainties that have had or that the company reasonably expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations. **Events That *Will* Cause Material Changes in the Relationship Between Costs and Revenue.** In addition, if the company knows of events that will cause a material change in the relationship between costs and revenues, the change in the relationship must be disclosed.	**Change to Events That Are *Reasonably Likely* to Cause Material Changes in the Relationship Between Costs and Revenue.** New Item 303(b)(2)(ii) (Known trends or uncertainties), which is recaptioned current Item 303(a)(3)(ii), provides that when a company knows of events that are "reasonably likely" to cause (as opposed to "will" cause) a material change in the relationship between costs and revenues, such as future increases in costs of labor or materials or price increases or inventory adjustments that are known or reasonably likely, these changes must be disclosed. Whether a change is reasonably likely is based on management's assessment. The change to the "reasonably likely" threshold in this item aligns this requirement with those throughout Item 303, establishing a consistent threshold for forward-looking disclosure. In adopting the "reasonably likely" threshold, the SEC acknowledged that some commenters noted that this standard is not well understood in practice. The adopting release reiterates prior SEC guidance that the analysis should be based on objective reasonableness, and provides that "[w]hen considering whether disclosure of a known event or uncertainty is required, the analysis is based on materiality and what would be considered important by a reasonable investor in making a voting or investment decision." The release calls on companies to make thoughtful analysis in considering these forward-looking disclosures.
Item 303(b)(2)(ii) (Net Sales and Revenues)	***Increases* in Net Sales or Revenues.** Current Item 303(a)(3)(iii) specifies that, to the extent the financial statements disclose material increases in net sales or revenues, a company must provide a narrative discussion of the extent to which such increases are attributable to increases in prices, or to increases in the volume or amount of goods or services being sold, or to the introduction of new products or services.	**Also Discuss *Decreases* in Net Sales and Revenues.** New Item 303(b)(2)(ii), which is a recaptioned Item 303(a)(3)(iii), has been amended to clarify that a results of operations discussion should describe not only increases but also decreases in net sales or revenues.

Elimination of Current Item 303(a)(3)(iv)	**Impact of Inflation and Price Changes.** Current Item 303(a)(3)(iv) required discussion of the impact of inflation and prices changes on net sales, revenue, and income from continuing operations, to the extent material.	**Reference to Inflation and Price Changes Removed.** In practice, the SEC indicated that the existing rule may have given undue attention to the topic, leading to boilerplate disclosures. While acknowledging that the amended rule will continue to require discussion of the impact of inflation of price changes if they are part of a known trend or uncertainty that had had or is reasonably likely to have a material impact on the company's financial results, the specific reference has been removed.
Instruction 8 to Item 303(b)	**Separately Captioned Section for Off-Balance Sheet Arrangements.** Current Item 303(a)(4) provides that, in a separately captioned section, the company should discuss its off-balance sheet arrangements that have or are reasonably likely to have a material current or future effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources.	**Integrate Discussion of Off-Balance Sheet Arrangements in Broader MD&A.** Instead of requiring that off-balance sheet arrangements be discussed in a separately captioned section, the SEC eliminated Item 303(a)(4) and introduced new Instruction 8 to Item 303(b), which requires companies to discuss off-balance sheet arrangements in the broader MD&A, even when the arrangement does not result in any obligation being reported in the consolidated balance sheets. In part this change was made because U.S. GAAP accounting rules have been updated since Item 303(a)(4) was adopted, such that disclosure requirements for off-balance sheet arrangements in financial statement notes largely overlap with this item. In addition, the instruction is in line with the SEC's aim to move the MD&A requirements away from prescriptive requirements and toward principles-based instructions.

Item 303(c) (Interim Periods)	**Interim Disclosure of Material Changes in Financial Condition.** Current Item 303(b) requires companies to provide MD&A disclosure for interim periods that enables market participants to assess material changes in financial condition and results of operations between certain specified periods. Item 303(b)(1) requires companies to discuss any material change in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet. **Interim Disclosure of Material Changes in Results of Operations.** Current Item 303(b)(2) requires companies to discuss any material changes in their results of operations for the most recent fiscal year-to-date period presented in their income statement, along with a similar discussion of the corresponding year-to-date period of the preceding fiscal year. If a company is required or elects to provide an income statement for the most recent fiscal quarter, the discussion must also cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. Item 303(b)(2) also states that certain companies that are required to provide statements of comprehensive income for the 12-month period ended as of the date of the most recent interim balance sheet, which are generally companies in certain utility sectors subject to Rule 3-03(b) of Regulation S-X, must discuss material changes of that 12-month period as compared to the preceding fiscal year rather than the preceding period.	**Allows Comparison of Results of Operations to Corresponding Quarter of Prior Year *or Immediately Preceding Quarter*.** New Item 303(c), which is recaptioned current Item 303(b), has been amended to permit companies to compare their most recently completed quarter's results of operations to either the corresponding quarter of the prior year (as is currently required) or the immediately preceding quarter. This change provides a company with flexibility to provide a more tailored and meaningful analysis relevant to its business cycles, as not all businesses are seasonal. If a company elects to discuss changes from the immediately preceding quarter, it must provide summary financial information that is the subject of the discussion for that quarter or identify the prior EDGAR filing that presents such information so that a reader may have ready access to the prior quarter financial information being discussed. If in a subsequent Form 10-Q, a company changes the comparison from the comparison presented in the immediately prior Form 10-Q, the company would be required to explain the reason for the change and present both comparisons in the filing where the change is announced. **Eliminated Requirement to Compare to Preceding Fiscal Year if Providing 12-Month Statement of Comprehensive Income.** In order to give registrants subject to Rule 3-03(b) of Regulation S-X the same flexibility as other registrants to make the most meaningful comparisons in their interim period MD&A, the SEC also deleted the language requiring Rule 3-03(b) registrants that elect to provide a statement of comprehensive income for the 12-month period ended as of the date of the most recent interim balance sheet to discuss material changes in that 12-month period with respect to the preceding fiscal year, rather than the corresponding preceding period.

Item 303(b)(3) (Critical Accounting Estimates)	**No Corresponding Current Paragraph**. The SEC has stated in prior guidance that, in preparing MD&A, companies should consider whether accounting estimates and judgments could materially affect the financial information reported. Although not required or recommended by the SEC, many companies repeat in MD&A information about significant accounting policies from financial statement footnotes.	**Disclose Critical Accounting Estimates.** Codifies and clarifies previous SEC guidance and its 2003 MD&A Interpretive Release requiring disclosure of critical accounting estimates, which are defined as estimates made in accordance with GAAP that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the company's financial condition or results of operations. A company must provide qualitative and quantitative information necessary to understand the estimation uncertainty and the impact each critical accounting estimate has had or is reasonably likely to have on financial condition or results of operations, to the extent the information is material and reasonably available. This disclosure would include why each critical accounting estimate is subject to uncertainty and how much each estimate and/or assumption has changed over a relevant period, and the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation. In an attempt to eliminate duplicative disclosure, the new rule also specifies that any disclosure should supplement, not duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements.

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