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SEC Update

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SEC updates MD&A and other financial disclosure requirements

On November 19 the SEC issued significant amendments to the disclosure requirements governing Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A). The amendments to Item 303 of Regulation S-K and related guidance continue the SEC's decades-long effort to elicit improved MD&A disclosure. The changes build on major interpretive guidance issued by the SEC in 1989 and 2003 and feature major themes of the SEC's current disclosure effectiveness initiative.

Although the amendments do not impose any major new disclosure requirements, the amended rules and new guidance will require registrants to augment, revise, or restructure their MD&A. The SEC has updated its rules and guidance on a variety of MD&A topics – including capital resources disclosure and analysis of the impact of known trends or uncertainties on operations – that will warrant a critical review of current presentations. Consistent with its emphasis on principles-based disclosure, the SEC has eliminated some line-item disclosures and directed registrants to discuss the affected matters in a materiality-focused disclosure tailored to their particular businesses and circumstances. The amendments also modify corresponding disclosure requirements that apply to foreign private issuers.

In related amendments the SEC has eliminated Item 301 of Regulation S-K, which requires disclosure of five years of selected financial data. The SEC also has significantly curtailed the scope of Item 302, which requires disclosure of selected quarterly financial data, replacing the current requirement for quarterly tabular disclosure with a principles-based requirement for disclosure of material retrospective changes.

The amendments will become effective 30 days after publication in the Federal Register, but registrants will not be required to comply with the amended rules until their first fiscal year ending on or after 210 days following publication. Registrants may elect to comply with any amended item between the effective date and the mandatory compliance date. A registrant choosing to provide disclosure consistent with an amended item during this period must comply with the amended item in its entirety.

The discussion of the amendments in the SEC's adopting release (No. 33-10890) can be viewed here.

MD&A amendments (Item 303)

The SEC has amended Item 303 of Regulation S-K to update MD&A requirements for domestic registrants. It has adopted corresponding amendments to disclosure required by Form 40-F for Canadian registrants and Form 20-F for other foreign private issuers.

Overview

The amendments and SEC guidance address the following disclosure requirements, among others:

- *"Objective" of MD&A*: A new provision of Item 303 identifies the principal objectives of MD&A to focus registrants on the information they should discuss and analyze.
- *Management's discussion and analysis of results of operations*:
  - *Comparison of quarterly results*: Registrants will have flexibility to structure quarterly period-to-period comparisons based on results for the immediately preceding quarter instead of results for the corresponding quarter of the prior year.
  - *Explanation of period-to-period changes*: Consistent with current guidance, registrants will be required to discuss material line-item changes from period to period in quantitative and qualitative terms, but now will be required to discuss the "reasons underlying" period-to-period changes rather than the "causes" of the changes.
  - *Discussion of operating information for subdivisions*: The amendments clarify that

disclosure of operating information for material "subdivisions" of the business can include subdivisions in addition to geographic areas, such as product lines.

— *Elimination of inflation and price changes line item*: The amendments eliminate the specific requirement to disclose the impact of inflation and price changes on the registrant's net sales, revenue, and income from continuing operations, which the SEC indicates registrants should instead consider disclosing as part of their analysis of known trends or uncertainties or pursuant to the general requirement to discuss material period-to-period changes in line items.

— *Discussion of known trends, uncertainties, or events*: The amendments and guidance clarify the standard registrants should apply to identify and discuss the impact of known trends, uncertainties, or events on results of operations, which focuses disclosure on known trends or uncertainties "reasonably likely" to have a material impact on net sales, revenues, or income from continuing operations, and on known events "reasonably likely" to cause a material change in the relationship between costs and revenues.

- *Management's discussion and analysis of liquidity and capital resources*:

— *Disclosure of material cash requirements*: The amendments clarify that capital resources disclosure extends beyond a description of commitments for capital expenditures and other capital investments to encompass a description of all "material cash requirements."

— *Liquidity and capital resources disclosure*: The SEC underscores that registrants should address both short- and long-term cash needs.

— *Elimination of contractual obligations table*: The amendments eliminate the contractual obligations table as a line-item disclosure and instruct registrants to include disclosure of material short- and long-term cash requirements from known contractual and other obligations as part of an enhanced discussion of liquidity and capital resources.

— *Elimination of off-balance sheet arrangements line item*: The amendments eliminate specific disclosure requirements for material off-balance sheet arrangements and direct registrants to incorporate their discussion of those arrangements into the broader discussion of liquidity and capital resources.

- *Disclosure of critical accounting estimates*: The amendments add an express requirement to disclose critical accounting estimates in a presentation based on prior SEC guidance.

Objective of MD&A

The amendments add a new Item 303(a) captioned "Objective" which identifies the principal objectives of MD&A. The SEC explains that this statement of objectives, which largely incorporates instructions to current Item 303(a), is "intended to provide clarity and focus to registrants as they consider what information to discuss and analyze." In the SEC's view, the item does not change the current scope of management's discussion, although it expressly integrates references to "cash flows" into the description of aspects of financial condition management should address.

New Item 303(a) calls for registrants to disclose in MD&A:

- material information relevant to an assessment of the registrant's financial condition and results of operations, including an evaluation of the amounts and certainty of cash flows from operations and outside sources;
- material events and uncertainties known to management that are "reasonably likely" to cause reported financial information not to be indicative of future operating results or of future financial condition, including (1) descriptions and amounts of matters that have had a material impact on reported operations and (2) matters that are reasonably likely, based on "management's assessment," to have a material impact on future operations; and
- material financial and other statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, cash flows and other changes in financial condition, and results of operations.

The SEC underlines that these objectives:

- "provide the overarching requirements of MD&A and apply throughout amended Item 303";
- "emphasize a registrant's future prospects," which should be addressed as well as the registrant's short-term results, and "the importance of materiality and trend disclosures to a thoughtful MD&A"; and
- expressly incorporate the SEC's current guidance that MD&A is intended to provide disclosures from "management's perspective."

The SEC states that MD&A's "materiality-focused and principles-based approach" provides a surer basis for sound financial disclosure than a list of prescriptive requirements that may not be applicable to particular registrants or may become outdated. For this reason, the SEC did not accept the suggestion of some commenters on the proposed amendments that it add to the statement examples of the types of matters to be discussed in MD&A.

Management's discussion and analysis of results of operations

The amendments re-caption current Item 303(a) as Item 303(b), which, as amended, continues to apply to all MD&A disclosures. Items 303(b) and 303(c) have been amended to address specific elements of management's discussion and analysis of results of operations for full fiscal years and interim periods.

Quarterly period discussion. The SEC has amended Item 303 to provide registrants with additional flexibility in presenting *quarterly* period-to-period comparisons of their results of operations. The amendments leave in place the current requirement that a registrant also provide *year-to-date* comparative information on operating results, which covers the first six months of the current and prior fiscal years in the second quarter Form 10-Q and the nine-month periods of the two years in the third quarter Form 10-Q.

Amended Item 303(c)(2)(ii) permits registrants to compare their operating results for their most recent quarter to either (1) the results for the corresponding quarter of the prior year (as currently required) *or* (2) the results for the immediately preceding quarter. The SEC believes that, because not all businesses are seasonal, a comparison of operating results with the corresponding quarter of the prior year may not be as meaningful as a comparison of results to the preceding quarter.

If a registrant chooses to discuss changes from results for the immediately preceding quarter, it must provide in the filing the summary financial information that is the subject of the discussion for the immediately preceding quarter, or identify the prior EDGAR filing that presents this information, so that a reader may have ready access to the prior-quarter financial information being discussed.

If in a subsequent Form 10-Q the registrant changes the comparison from the comparison presented in the immediately preceding Form 10-Q, it will be required to explain the reason for the change and present both comparisons in the filing where it discloses the change. The SEC expects that this disclosure will afford investors greater insight into a registrant's decision-making and provide a basis for them to understand any period-over-period change in presentation.

Discussion of period-to-period changes. Amended Item 303(b) states that, in providing a narrative discussion of material period-to-period changes in one or more financial statement line items, the registrant should discuss the "reasons underlying" the changes rather than only the "causes" for the changes. The SEC intends by this change to encourage registrants to provide a "more meaningful" discussion of the factors contributing to the line-item changes.

The SEC emphasizes that, consistent with current guidance, the discussion of the reasons for material changes should be presented in qualitative as well as quantitative terms. The SEC refers to an existing instruction, carried over to amended Item 303(b), to remind registrants that they will not provide sufficient *analysis* of material changes in line items if they simply "recite the amounts of changes from period to period" based on numerical data contained in or computable from the financial statements.

The amended item also provides that disclosure is required where material period-to-period changes within a line item offset each other.

Discussion of operating information for subdivisions. Current Item 303(a) requires the registrant to discuss operating information for each reportable segment or other "subdivision" of the business (such as geographic areas) if in the registrant's judgment the information would be appropriate to an understanding of its business. In moving this requirement to amended Item 303(b), the SEC has identified "product lines" as an example of a subdivision of a registrant's business the registrant may discuss in accordance with this direction. The SEC cautions that the addition of this reference is not intended to require product-line disclosure if, in the registrant's judgment, such a disclosure is not necessary to understand its business.

Inflation and price changes. Amendments to current Item 303(a)(3)(iv) and current instructions to Item 303(a) eliminate the requirement to describe the impact of inflation and price changes on the registrant's net sales, revenue, and income from continuing operations to the extent material. The SEC points out that registrants should discuss the impact of inflation and price changes if they are part of a known trend or uncertainty that had, or is reasonably likely to have, a material impact on any of these line items, and also may have to address the effect of the factors as part of the general requirement in amended Item 303(b) to discuss material period-to-period changes in quantitative and qualitative terms.

Disclosure of known trends or uncertainties and known events. The amendments build on existing SEC guidance to define the approach a registrant should take in

identifying and discussing the impact of known trends or uncertainties and known events on its results of operations.

Amended Item 303(b)(2)(ii) provides that a registrant must disclose known trends or uncertainties that are "reasonably likely" to have a material impact on net income, revenues, or income from continuing operations, rather than, as under the current rule, known trends or uncertainties which the registrant "reasonably expects" will have such an impact. Similarly, the amended item states that a registrant must disclose known events which are "reasonably likely to cause" a material change in the relationship between costs and revenues, rather than, as under the current rule, known events that "will cause" such a change.

The SEC has adopted the following approach to determining the need for and scope of this disclosure:

"Reasonably likely" disclosure threshold. The "reasonably likely" standard will serve, in the SEC's formulation, as "a consistent threshold for forward-looking disclosure throughout MD&A." The MD&A objectives identified in new Item 303(a) indicate that whether a material trend, uncertainty, or event known to management is reasonably likely to have a material impact on future operations is based on "management's assessment."

Test for disclosure of known trends, demands, commitments, events, or uncertainties. The SEC articulates in its release a test for applying the "reasonably likely" standard for analysis and disclosure of a known trend, demand, commitment, event, or uncertainty (trend or uncertainty). The test is based on guidance presented in the SEC's 1989 interpretive release on MD&A.

The test has two steps:

- *Step 1*: the registrant should consider whether a known trend or uncertainty is "likely to come to fruition"; and
- *Step 2*: if the registrant determines that the trend or uncertainty is likely to come to fruition, it should provide appropriate disclosure if the known trend or uncertainty would "reasonably be likely to have a material effect" on the registrant's future results or financial condition.

The registrant must continue with its analysis even if it determines that the known trend or uncertainty is not likely to come to fruition. In that case, disclosure still would be required with respect to the impact of a known trend or uncertainty:

- if the trend or uncertainty is "not remote" *or* if management cannot make an assessment as to the likelihood that it will come to fruition; *and*
- the trend or uncertainty would "reasonably be likely to have a material effect" on the registrant's future results or financial condition if it came to fruition *and* a "reasonable investor would consider the information as significantly altering the mix of information made available in the registrant's disclosures."

The SEC discusses in the release some features of the two-part test in response to comments on the proposed amendments suggesting that the test "is unclear, not well understood, or difficult to apply."

Likelihood of occurrence: The determination of whether a future trend or uncertainty is likely to come to fruition should be made "objectively," in accordance with the SEC's position that the test generally "should be based on objective reasonableness." The focus of Step 1 of the test, therefore, is "on an objective determination of the likelihood of an event occurring, rather than on whether management's expectation of such event occurring would be objectively reasonable."

Materiality determination: The analysis does not call for disclosure of immaterial events. Instead, it should focus on material information based on concepts of materiality articulated by the U.S. Supreme Court and echoed in the SEC's rules. Applying those materiality principles:

- disclosure of a known trend or uncertainty must be guided by a consideration of what "would be considered important by a reasonable investor in making a voting or investment decision";
- the "reasonably likely" threshold does not require disclosure of a known trend or uncertainty for which fruition may be "remote";
- the "reasonably likely" threshold does not set a "bright-line percentage threshold" by which disclosure would be triggered; and
- the analysis does not require registrants "to affirm the non-existence or non-occurrence of a material future event."

The SEC decided not to import into this analysis the probability/magnitude test for materiality announced by the U.S. Supreme Court in its *Basic Inc. v. Levinson* decision. Under that test, the Court said that the materiality of forward-looking disclosure depends on a balancing of both "the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity." The SEC concluded that this test, which was focused on the materiality of a potential merger transaction, is ill-suited for MD&A since it could result in the disclosure of a known trend or uncertainty that is large in magnitude but low in probability.

Management's discussion and analysis of liquidity and capital resources

Disclosure of material cash requirements. The amendments clarify that the capital resources disclosure extends beyond a description of commitments for capital expenditures and other capital investments and should encompass all "material cash requirements."

Current Item 303(a)(2) requires a registrant to discuss its material commitments for capital expenditures as of the end of the latest fiscal period, and to indicate the general purpose of and anticipated sources of funds needed to fulfill the commitments. The registrant also must discuss, among other factors, any known favorable or unfavorable trends in its capital resources, and indicate any expected changes in the mix and relative cost of such resources.

Amended Item 303(b)(1)(ii) modifies this disclosure to require the registrant to describe (1) its "material cash requirements," including commitments for capital expenditures, as of the end of the latest fiscal period, (2) the anticipated source of funds needed to satisfy such cash requirements, and (3) the general purpose of the requirements. The SEC notes that, for some registrants, investments in property, plant, and equipment do not constitute a material demand on capital resources. Those registrants instead may deploy their capital resources to meet cash needs that do not involve capital investments, such as investments in intellectual property or human resources.

In its release the SEC makes the following observations about this disclosure to address comments on the proposed amendments:

- the reference to "requirements" rather than "capital commitments" is consistent with existing SEC guidance and market practice with respect to the scope of this disclosure, and therefore is not intended to require registrants "to deviate substantially from current practices with respect to an assessment of material cash requirements";
- the focus of this disclosure is on cash requirements that are material to the registrant and accordingly "do not reflect a new threshold for these disclosures and should not require extensive or new procedures or controls"; and
- the disclosure requirement is intended to capture material cash requirements related to the normal course of operations as well as cash requirements outside of normal operations.

The cash requirements disclosure is part of the SEC's effort, discussed below, to enhance the discussion of liquidity and capital resources.

Liquidity and capital resources disclosures. Amended Item 303(b)(1) clarifies essential elements of the required principles-based discussion by each registrant of its liquidity and capital resources needs.

Disclosure framework. The framework for disclosure of liquidity and capital resources under amended Item 303(b)(1) requires the registrant to:

- address its "liquidity," which the item defines as a "registrant's ability to generate and obtain adequate amounts of cash to meet its requirements" for cash;
- discuss both (1) its short-term liquidity and capital resources needs for the period up to 12 months from the most recent fiscal period presented and (2) its long-term liquidity and capital resources for the period beyond 12 months; and
- analyze its material cash requirements from known contractual and other obligations and specify the type of obligations and the relevant time period for the related cash requirements.

The SEC confirms that registrants have the flexibility either to combine their discussion of liquidity with their discussion of capital resources, or to present the two topics separately.

Disclosure of known contractual and other obligations. The amendments eliminate the requirement under current Item 303(a)(5) for registrants (other than smaller reporting companies) to disclose in a tabular format their known contractual obligations. The amended item instead specifically requires registrants to disclose in the liquidity and capital resources discussion their material cash requirements from known contractual and other obligations, some of which currently appear in the contractual obligations table.

The SEC provides the following guidance on the discussion of material cash requirements from known contractual and other obligations that will replace the tabular presentation:

- unlike the contractual obligations table, which does not have a materiality threshold, the focus of discussion under the revised item will be on disclosure of those obligations and time periods (1) that involve material cash requirements or (2) where the reasonably likely effect of the obligations on liquidity or capital resources is material; and
- although the item provides examples of known contractual obligations – including lease obligations, purchase obligations, and other liabilities reflected on the registrant's balance sheet – that may be subject to disclosure, it does not prescribe specific categories of contractual obligations, or specify or provide

examples of "other obligations," thereby affording the registrant flexibility in each case to determine which obligations may be material and required to be disclosed.

Off-balance sheet arrangements. The amendments replace the current specific requirements to disclose all material off-balance sheet arrangements with a "principles-based instruction" addressing disclosure of these arrangements. The amendments:

- eliminate the specific disclosure requirements for material off-balance sheet arrangements in current Item 303(a)(4);
- eliminate the current requirement to present disclosure of such arrangements in a separately captioned section of management's discussion, although the SEC indicates that registrants have the discretion to retain a caption if they believe it will assist investor understanding;
- add an instruction to Item 303(b) requiring the registrant to discuss commitments or obligations – including contingent obligations – arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources; and
- replace the definition of "off-balance sheet arrangements" in the current item with what apparently is intended as a non-exclusive list of the types of arrangements that could be covered by the new instruction.

The SEC expects registrants to incorporate their discussion of material off-balance sheet arrangements into their broader discussion of liquidity and capital resources, which will require "a discussion of material matters of liquidity, capital resources, and financial condition as they relate to off-balance sheet arrangements." The SEC decided not to provide examples or guidance for this disclosure, since it believes that, consistent with a principles-based approach, the disclosure should be tailored to a registrant's particular circumstances. The SEC notes that, under this approach, registrants should consider whether to discuss certain types of balance-sheet arrangements that do not fall within the current definition of "off-balance sheet arrangements," such as certain types of contingent milestone payments.

Disclosure of critical accounting estimates

Amended Item 303(b)(3) requires disclosure of critical accounting estimates, which are accounting estimates and judgments that could materially affect reported financial information. Registrants have been presenting a discussion of critical accounting estimates in their MD&A on Form 10-K for many years pursuant to SEC guidance in its 2003 MD&A interpretive release. The SEC indicates that the principles of the new requirement are "not materially different" from those set forth in the 2003 guidance, but rather are designed to clarify and codify SEC guidance on this topic.

An instruction to Item 303(b)(3) states that the required MD&A disclosure should supplement, but not duplicate, the discussion of significant accounting policies or other disclosures in the notes to the registrant's financial statements. The disclosure under the item will focus on accounting estimates that involve "a significant level of estimation uncertainty" and that have had, or are reasonably likely to have, a material impact on the registrant's financial condition or results of operations.

For each critical accounting estimate, the new item requires the registrant to disclose, to the extent such information is material and "reasonably available":

- why the estimate is subject to uncertainty;
- how much each estimate and/or underlying assumption has changed over a relevant period;
- the sensitivity of the reported amounts to the methods, assumptions, and estimates underlying the estimate's calculation; and
- quantitative and qualitative information necessary to understand the estimation uncertainty and the estimate's impact.

The SEC intends this disclosure to provide investors with a greater understanding of the variability that is reasonably likely to affect the registrant's financial condition or results of operations, so that investors "can adequately evaluate the estimation uncertainty of a critical accounting estimate."

Elimination of selected financial data disclosure (Item 301)

The amendments eliminate Item 301, which currently requires registrants – other than smaller reporting companies and emerging growth companies – to furnish selected financial data in comparative form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading. Emerging growth companies are permitted

to present selected financial data for only a portion of the five-year period. The amendments also eliminate Item 3.A of Form 20 F, which requires foreign private issuers to disclose selected historical financial information similar to the information prescribed by Item 301.

The amendment's effect will be to remove from a filing the presentation of financial data for the two fiscal years preceding the three fiscal years covered in the audited financial statements, which is intended to illustrate material trends over the longer period. The SEC notes that investors will be able to access the omitted financial data from the registrant's prior filings through EDGAR and to look to the registrant's MD&A for a discussion of any material trends requiring a five-year analysis.

The SEC indicates that although the five-year table has been eliminated as a required disclosure, registrants should consider whether it would be appropriate to include the tabular disclosure as part of an introductory section or overview in MD&A, "including to demonstrate material trends."

Reduced disclosure of supplemental financial information (Item 302)

Amendments to Item 302 cut back substantially on the information required to be disclosed under that item and in the frequency with which a registrant must make disclosure under the item. Item 302 currently applies only to companies that have a class of securities registered under Exchange Act Section 12 at the time of filing, other than smaller reporting companies and foreign private issuers.

Current Item 302(a)(1) requires disclosure of selected quarterly financial data of specified operating results, while current Item 302(a)(2) requires disclosure of variances in these quarterly results from amounts previously reported on a Form 10-Q. For these disclosures, Item 302(a)(3) requires a description of the effect of any discontinued operations and unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results for the quarter.

The SEC proposed to eliminate the item in its entirety because most of the financial data required by Item 302(a) can be found in the registrant's prior Form 10-Q filings. After considering comments on the proposed amendments, however, it decided to retain elements of the item that would require presentation of information about material retrospective changes, which the registrant otherwise would not be required to disclose.

The amendments eliminate the requirement to disclose quarterly financial data when there have not been one or more retrospective changes that are material, either individually or in the aggregate, on the basis that those disclosures would duplicate disclosures provided elsewhere, such as in Form 10-Q or, in the case of fourth quarter results, can be derived from annual results disclosed in the Form 10-K. In addition, although current Item 302(a) requires disclosure in every annual report, amended Item 302(a) requires disclosure in more limited circumstances.

Amended Item 302 requires disclosure only where

- 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 or any subsequent interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X, and
- that, individually or in the aggregate, are material.

The SEC identifies as the types of retrospective changes that may trigger this disclosure:

- correction of an error;
- disposition of a business that is accounted for as discontinued operations;
- a reorganization of entities under common control; and
- certain changes in accounting principle.

The registrant 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 the changes. The purpose of this disclosure is to aid investors' understanding of the reasons for the material retrospective change and the related quantitative effect on the affected quarterly periods.

The SEC acknowledges that, absent currently required Item 302(a) disclosures, fourth quarter results may not always be available or readily derived from annual results. The SEC indicates, however, that it expects that some registrants voluntarily will provide fourth quarter disclosure or disclosure of selected quarterly information that will fill this gap where it exists.

Amended Item 302(a) provides some relief for new registrants compared to the current rule in terms of initial application. The amended item generally will apply beginning with the first filing on Form 10-K after the registrant's initial registration of securities under Section 12 of the Exchange Act, and no longer will have to be provided for interim periods before those presented in an IPO registration statement.

Looking ahead

The SEC's adopting release both describes the rule amendments and provides updated interpretive guidance on how to prepare MD&A. The release highlights many of the same themes that have appeared in the SEC's guidance on MD&A published in 1989 and 2003 and as part of the SEC's broader, continuing overhaul of Regulation S-K aimed at "modernizing" and enhancing disclosure effectiveness.

The release underscores the SEC's current views on the objectives of MD&A and on what it considers deficient disclosure practices. The release reinforces the SEC's call for MD&A to present a clear, well-organized discussion and analysis that focuses on material information and provides management's perspective on the registrant's business. In this latest pronouncement, the SEC also emphasizes the importance of presenting the different elements of MD&A within an integrated principles-based disclosure framework.

It will require a substantial effort for many registrants to revise their current MD&A to respond to the amendments and address the lessons of the SEC's guidance. Fortunately, although the amendments will become effective 30 days after publication in the Federal Register, they will not apply to calendar-year filers for the current reporting season. Under the transition to mandatory compliance, registrants will be required to apply the amended rules for their first fiscal year ending on or after 210 days following publication in the Federal Register. Registrants therefore will have ample time to revise their disclosure approach in compliance with the amendments.

The amendments permit early compliance during the period between the effective date and the mandatory compliance date. The release indicates that any registrant electing to engage in early compliance with any MD&A amendment "must provide disclosure pursuant to each provision of amended Item 303 in its entirety, and must begin providing such disclosure in any applicable filings going forward."

Even if a registrant does not choose to comply early with the amendments, it should review its current MD&A in light of the amendments and the SEC's updated guidance. In its review, each registrant should:

- *Take a fresh look at MD&A*: The registrant should revise its current presentation to reflect the SEC's latest guidance. Even if the overall presentation and focus of its MD&A are sound, the registrant should critically review the individual components of MD&A to identify potential areas for improvement.
- *Involve senior management in preparing MD&A*: MD&A must extend beyond a review of financial measures to encompass a discussion and analysis of all of the most important matters on which management focuses in evaluating the registrant's business. The SEC encourages early top-level involvement by a registrant's management in identifying the key disclosure themes and ideas. Management's participation is particularly important given the central role of materiality assessments in the principles-focused approach of MD&A.
- *Devote sufficient time to MD&A*: The registrant should begin the MD&A review and drafting process at an early enough date to provide the internal team and any outside advisers sufficient time to prepare an MD&A that complies with the new requirements – when the registrant addresses compliance – and that is responsive to the SEC's new guidance.

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