Client Alert

March 7, 2017

The SEC Issues a Request for Comment on Possible Changes to Industry Guide 3

On March 1st, 2017, the Securities and Exchange Commission ("Commission") issued a request for comment ("RFC") seeking comment on Industry Guide 3, "Statistical Disclosure by Bank Holding Companies" ("Guide 3").[1] Guide 3, which applies to the description of business portions included or incorporated by reference in bank holding company (BHC) registration statements, was originally published in 1976, and was last updated in 1986.

The RFC seeks public input on a variety of issues, including how and to what extent Guide 3 can be improved, whether new or revised disclosure is needed, the elimination of duplicative or overlapping disclosure in Guide 3 and whether the Guide 3 disclosures, which are not Commission rules or requirements, should be codified as Commission rules.[2] The RFC is also considering new disclosures that could be included in Guide 3 in order to address changes in the financial services industry. Last, the RFC asks whether registrants in the financial industry other than BHCs should be subject to the Guide 3 disclosures. The RFC is part of the Commission's disclosure effectiveness initiative undertaken during former Chair White's leadership.

Parallel Disclosure Regimes

One of the key questions in the RFC is whether any of the Guide 3 disclosures are currently provided by BHCs under other regulatory requirements, such as Commission rules, generally accepted accounting principles in the United States ("U.S. GAAP") or other regulatory regimes. If so, commenters are asked to consider whether those disclosures should stay in Guide 3, or be removed from Guide 3 and moved into the overlapping requirement. Commenters are also asked whether, in some situations, disclosures required under Commission or other regulatory requirements should instead be included in Guide 3. In this regard, the RFC demonstrates a sensitivity to the fact that today's financial institutions may be somewhat burdened by overlapping disclosure requirements, which potentially imposes unnecessary costs on the industry.

The other regulatory requirements affecting BHC disclosures in filings with the Commission are:

- Article 9 of Regulation S-X, which sets forth the Commission's rules for the form and content of consolidated BHC financial statements, and financial statements for banks included in filings with the Commission ("Article 9");
- Article 4 of Regulation S-X, which requires financial statements for domestic registrants to comply with U.S. GAAP, which in turn contain disclosure requirements that apply specifically to the financial industry;[3]

[1] The RFC can be found at: https://www.sec.gov/rules/other/2017/33-10321.pdf.
[2] Although the Guide 3 disclosures are not Commission rules, bank holding companies include Guide 3 disclosures in their filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"), and banks also typically include Guide 3 disclosures in their offering documents for exempt offerings.
[3] Unless otherwise noted, references to U.S. GAAP are to the standards in effect as of the date of this alert.

- Item 303 of Regulation S-K: management's discussion and analysis of financial conditions and results of operations ("MD&A");
- Item 305 of Regulation S-K: quantitative and qualitative disclosures about market risk, including interest rate risk; and
- Item 2.02 of Form 8-K, which requires the filing of earnings releases and investor presentations, among other items.

BHCs and certain other banking entities publicly disclose certain statistical, financial and regulatory capital-related information pursuant to the following requirements:

- Federal Financial Institutions Examinations Council Consolidated Reports of Condition and Income ("Call Reports") and Board of Governors of the Federal Reserve System ("FRB") bank holding company reports, which are prepared based on bank regulatory reporting requirements, and thus may include disclosure that differs from that included in a BHC's Commission filings;
- U.S. GAAP, which requires annual filings describing the Basel III regulatory capital requirements and compliance therewith;
- Large, internationally active banking organizations and certain other financial entities are subject to a liquidity capital ratio ("LCR") requirement and must publicly disclose LCR calculations;[4]
- Banking organizations with $50 billion or more in total assets are required, under Basel III, to disclose sufficient information to allow market participants to assess the organization's capital adequacy ("Pillar 3"); and
- Large BHCs are subject to the FRB's annual comprehensive capital analysis and review ("CCAR") as well as Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") stress testing ("DFAST"). The FRB generally publishes the CCAR results, and the banking organization's primary bank regulatory agency generally publishes the DFAST results.

In addition to the requests relating to specific parts of Guide 3, the RFC asks commenters to respond to some general questions, including:

- How valuable to investors are the current Guide 3 disclosures?
- Do the Guide 3 disclosures assist investors with comparing financial condition and results of operations across BHC registrants?
- Should any of the Guide 3 disclosures be codified as Commission rules?
- On which disclosures, other than Commission filings, do investors rely when making investment decisions?
- Should non-Commission disclosures be incorporated into the Commission's disclosure requirements?
- Should the Guide 3 disclosures be extended to other registrants, such as those engaged in the financial services industry?

In Appendix A to this Client Alert, we summarize, for each section of Guide 3, the discussion of potentially overlapping disclosure raised by the Commission and the various requests for comment relating to that section.

[4] In December 2016, the FRB adopted quarterly disclosure requirements related to the LCR requirement, including the disclosure of inputs into the LCR calculation. Covered organizations with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody must comply in 2017.

Potential New Disclosures to be Included in Guide 3

Recognizing the changes in BHC activities since adoption of Guide 3, the RFC asks commenters to consider whether and to what extent the refinement of Guide 3 to account for today's financial industry would assist investors in investment and voting decisions with respect to BHC registrants.

The requests for comment relating to Guide 3 modernization include:

- Are there activities in which BHC registrants engage that are not covered by Guide 3 and about which the Commission should require disclosure, such as commodities, asset management or broker-dealer activities?
- Are there additional disclosures — either potentially new or disclosures required by other regimes — not already discussed in the RFC that the Commission should consider for BHC registrants that would be important for investors?
- Should the Commission require disclosures about non-interest income and/or non-interest expense for BHC registrants?
- Should the Commission require disclosure of information related to the resolution plans required by Dodd-Frank for BHCs with total consolidated assets of $50 billion or more?
- Should the Commission require disclosure that summarizes the inputs and results of the various stress testing scenarios that BHCs perform, such as disclosures related to DFAST and its results?
- Should the Commission expand the scope of its XBRL requirements to apply to the Guide 3 statistical tabular disclosures to facilitate investor comparison of data across BHC registrants?
- Should the Commission require disclosure of any of the information provided in Call Reports or other regulatory filings? How should the information be presented or included in a Commission filing? Should the Commission require hyperlinks directly to the Call Reports or other regulatory filings that are available on third-party government websites? Should any of this information be incorporated by reference?

Expanding the Coverage of Guide 3 to Registrants Other than BHCs

The Commission is considering whether to expand the scope of Guide 3 disclosures to registrants other than BHCs. Marketplace lenders that generally have material amounts of lending activity may be subject to many of the same risks as BHCs. The RFC asks for comment on whether the Guide 3 disclosures should be expanded to cover registrants in the financial services industry other than BHCs, and whether it should take an activity-based, rather than an industry-based, approach.

Applicability of Guide 3 to Foreign Registrants

Foreign registrants that meet the foreign private issuer requirements[5] and file their annual reports on Form 20-F or 40-F may present their financial statements in accordance with the International Financial Reporting Standard ("IFRS") rather than U.S. GAAP, without a reconciliation footnote. Although the Commission has observed that foreign registrants that are banking organizations typically provide the Guide 3 disclosures, there are some Guide 3 disclosure requirements that are not recognized concepts under IFRS. Guide 3, due to its 1970s vintage, does not address the differences between U.S. GAAP and IFRS.

The RFC asks commenters to respond to the following, including:

- Should foreign registrants that are banking organizations provide the disclosures discussed in the RFC?

[5] The term "foreign private issuer" is defined in Rule 405 under the Securities Act and Rule 3b-4(c) under the Exchange Act.

- Does IFRS require the same or similar information as that called for by Guide 3? If so, how is the information similar or dissimilar? What concepts or disclosures called for by Guide 3 are not recognized by, or contradict, IFRS?
- Would investors in foreign registrants that are banking organizations and that prepare their financial statements in accordance with IFRS lose any important information if the Commission were to eliminate all Guide 3 disclosures that are duplicative of or overlap with current U.S. GAAP?

Scaled Disclosure – Continued Applicability

General Instruction 3 to Guide 3 allows BHC registrants with less than $200 million in total assets or less than $10 million of equity to provide disclosures for each of the past two fiscal years, instead of the past three to five fiscal years. Scaled disclosures are also available under Commission rules relating to registrants that meet the definition of smaller reporting company and emerging growth company. Because the latter group is larger than the number of BHC registrants eligible for scaled Guide 3 disclosures, the RFC asks whether the Guide 3 reporting periods should be modified.

The requests for comment relating to scaled disclosure requirements are summarized here:

- Should the reporting periods called for by Guide 3 be modified, and if so, how? Should the Guide 3 reporting periods be reduced to match the Regulation S-X requirements and the scaled disclosure requirements for smaller reporting companies and emerging growth companies?
- Should the reporting period size threshold in Guide 3 be eliminated?
- What is the minimum number of periods an investor needs in order to analyze and comprehend changes in trends?
- If the reporting periods are reduced, should BHC registrants without reporting histories or publicly available financial information provide additional years of disclosures?

Comment Period

The RFC will be subject to a 60-day comment period. We anticipate that a wide range of U.S. and non-U.S. financial institutions and their accounting and legal advisers, as well as industry organizations and investors, will express views as to a variety of issues raised by the RFC. To the extent that Guide 3 or the relevant SEC rules are revised, the issues raised by the RFC have the potential to result in significant changes that will affect a large number of SEC registrants. Those changes could substantially increase or decrease the costs that those registrants face as reporting companies, and alter the mix of information that investors use to evaluate their performance and prospects. Accordingly, we expect a significant amount of careful deliberation will occur before material changes are made.

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APPENDIX A

STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES GENERAL INSTRUCTIONS

Guide 3.

1. This Guide applies to the description of business portions of those bank holding company registration statements for which financial statements are required.

2. Information furnished in accordance with this Guide should generally be presented in tabular form in the order appearing below. However, an alternative presentation, such as inclusion of the information in Management's Discussion and Analysis, may be used if in management's opinion such presentation would be more meaningful to investors.

3. When the term "reported period" is used in the Guide, it refers to each of the periods described below:

   (a) each of the last three fiscal years of the registrant, except as is provided in paragraphs (b) and (c) below;

   (b) each of the last five fiscal years of the registrant with respect to Items III and IV, except as is provided in paragraph (c) below;

   (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

   (d) any additional interim period necessary to keep the information from being misleading.

   The reported period shall not include an additional interim period under paragraph (d) above merely because an income statement is presented for such additional interim period, but the report period shall include such an additional period if a material change in the information presented or the trend evidenced thereby has occurred.

4. Unless otherwise indicated, averages called for by the Guide are daily averages. Where the collection of data on a daily average basis would involve unwarranted or undue burden or expense, weekly or month-end averages may be used, provided such averages are representative of the operations of the registrant. The basis used for presenting averages need be stated only if not presented on a daily average basis.

5. Some of the information called for by the Guide which is prospective in nature may not be available on a historical basis. The staff should be advised of such situations prior to filing and if the requested information is unavailable and cannot be compiled without unwarranted or undue burden or expense, the requirement that such information be furnished may be waived. If possible, reasonably comparable data should be furnished instead. If certain requested information will not be available with respect to period s to be covered in future filings subject to the Guide, this should also be brought to the staff's attention.

6. The disclosure requirements of the Guide are also applicable to foreign registrants to the extent the requested information is available. If the information is unavailable and cannot be compiled without unwarranted or undue burden or expense, this should be brought to the staff's attention.

   [NOTE: In evaluating the reasonableness of assertions by registrants that the compilation of requested information, such as historical data or daily averages, would involve an unwarranted or undue burden or expense, the staff takes into consideration, among other factors, the size of the registrant, the estimated costs of compiling the data, the electronic data processing capacity of the registrant, and efforts in process to obtain the information in future periods.]

7. In various places throughout this Guide, disclosure is called for regarding certain "foreign" data. For purposes of this Guide, this information need not be presented unless the registrant is required to make separate disclosures concerning its foreign activities in its consolidated financial statements pursuant to the test set forth in §210.905 of Regulation S-X.

I. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential

A. For each reported period, present average balance sheets. The format of the average balance sheets may be condensed from the detail required by the financial statements provided that the condensed average balance sheets indicate the significant categories of assets and liabilities, including all major categories of interest-earning assets and interest-bearing liabilities. Major categories of interest-earning assets should include loans, taxable investment securities, non-taxable investment securities, interest bearing deposits in other banks. Federal funds sold and securities purchased with agreements to resell, other short-term investments, and other (specify if significant). Major categories of interest-bearing liabilities should include savings deposits, other time deposits, short-term debt, long-term debt and other (specify if significant).

B. For each reported period, present an analysis of net interest earnings as follows:

   1. For each major category of interest-earning asset and each major category of interest-bearing liability, the average amount outstanding during the period and the interest earned or paid on such amount.

   2. The average yield for each major category of interest-bearing asset.

   3. The average rate paid for each major, category of interest-bearing liability.

   4. The average yield on all interest-earning assets and the average effective rate paid on all interest-bearing liabilities.

   5. The net yield on interest-earning assets (net interest-earnings divided by total interest-earning assets, with net interest earning equaling the difference between total interest earned and total interest paid).

   6. This analysis may, at the option of the registrant, be presented in connection with the average balance sheet required by paragraph A.

C. 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. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability into amounts attributable to (a) changes in volume (change in volume times old rate), (b) changes in rates (change in rate times old volume), and (c) changes in rate/volume (change in rate times the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variances and the basis of allocation disclosed in a note to the table.

Instructions.

(1) Explain how non-accruing loans have been treated for purposes of the analyses required by paragraph B.

(2) In the calculation of the changes in the interest income and interest expense, any out-of-period items and adjustments should be excluded and the types and amounts of items excluded disclosed in a note to the table.

(3) If loan fees are included in the interest income computation, the amount of such fees should be disclosed, if material.

(4) Tax exempt income may be calculated on a tax equivalent basis. A brief note should describe the extent of recognition exemption from Federal, state and local taxation and the combined marginal or incremental rate used.

(5) If disclosure regarding foreign activities is required pursuant to General Instruction 7 of this Guide, the information required by paragraphs A, B and C of Item I should be further segregated between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to paragraph A. In addition, for each reported period, present separately, on the basis of averages, the percentage of total assets and total liabilities attributable to foreign activities.

Potentially overlapping information provided by BHCs as required by Commission rules, accounting standards and other disclosure requirements:

- *Article 9 requires presentations of interest income and expense separately by type and subtotals of interest income, interest expense and net interest income on the income statement or in the footnotes to the financial statements.*
- *MD&A requires a narrative disclosure of the extent to which any material increases are attributable to increases in price or volume. In their MD&A, some BHCs provide an analysis of fluctuations of interest income and expense. BHCs may also discuss non-interest income in their MD&A, which is not required by Guide 3.*
- *Item 305 requires quantitative and qualitative disclosures about market risk sensitive instruments, both t rading and other than trading, that affect their financial condition. BHCs disclose forward-looking information about interest rate risk exposure in response to this requirement. In contrast, Guide 3 disclosures focus on the historical effect.*
- *Item 305 requires a description of the quantitative impact of market risk, allowing registrants to use one or more disclosure alternatives (tabular presentation of fair value information and contract terms relevant to determining future cash flows and organized by expected maturity dates; sensitivity analysis expressing potential future loss in future earnings, fair values or cash flow from selected hypothetical changes in market rates and prices; or value at risk disclosures expressing potential future loss in future earnings, fair values or cash flow from market movements over a selected period of time with a selected likelihood of occurrence). These qualitative and*

quantitative disclosures of market risk address changes in interest rates, among other items. The ability to use alternative approaches may result in BHCs using alternatives that differ from the methods that they use to actually manage, evaluate and monitor risk.

- *Call Reports require banking organizations to report information about interest income, interest expense and quarterly averages of certain balance sheet items in categories that are more disaggregated than what is required by Guide 3.*

Summary of requests for comment on Section 1.A – C of Guide 3:

- *Is the disclosure required by this section of Guide 3 sufficient to provide investors with information to make investment or voting decisions? Is this information duplicative of that required under Regulation S-K or U.S. GAAP?*
- *How can the Guide 3 disclosures be improved?*
- *Are there additional interest income and expense disclosures that should be included in Guide 3?*
- *Should these disclosures be more standardized, which would allow for comparability across issuers, or more principles-based, which would allow disclosures more closely aligned with how the issuer's business is managed?*
- *Should the distribution of (i) assets, liabilities and stockholders' equity; (ii) interest rates and (iii) interest differential disclosures be presented in a structured data format, such as XBRL? (This request was made for almost every section of Guide 3.)*
- *Should the disclosure of interest income and expense information provided in Call Reports or other regulatory filings be included in Guide 3?*
- *Should these disclosures be extended to other registrants in the financial industry?*

II. *Investment Portfolio*

A. As of the end of each reported period, present the book value of investments in obligations of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) States of the U.S. and political subdivisions; and (3) other securities including bonds, notes, debentures and stock of business corporations, foreign governments and political subdivisions, inter-governmental agencies and the Federal Reserve bank.

B. As of the end of the latest reported period, present the amount of each investment category listed above which is due (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. In addition, state the weighted average yield for each range of maturities.

Instruction. State whether yields on tax exempt obligations have been computed on a tax equivalent basis. (See Instruction (4) to Item I.) Any major changes in the tax-exempt portfolio should be discussed hereunder.

C. As of the end of the latest reported period, state the name of any issuer, and the aggregate book value and aggregate market value of the securities of such issuer, when the aggregate book value of such securities exceeds ten percent of stock-holders' equity.

Instruction. The term "issuer" has the meaning given in Section 2(4) of the Securities Act of 1933, except that debt securities issued by a state of the United States and its political subdivisions and agencies which are payable from and secured by the same source of revenue or taxing authority shall be considered to be securities of a single issuer. This information does not have to be provided for securities of the U.S. Government and U.S. Government agencies and corporations. Consideration should be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics of different issues of securities of an issuer as may be appropriate.

Potentially overlapping information provided by BHCs as required by Commission rules, accounting standards and other disclosure requirements:

- *Article 9 requires disclosure of investment securities either on the balance sheet or in the footnotes to the financial statements, and requires footnote disclosure of the carrying value and market value of securities by specified category. Guide 3 calls for disclosure of book value.*
- *U.S. GAAP requires disclosure about available-for-sale (AFS) securities by six major security types, and similar disclosure about held-to-maturity (HTM) securities, except that gross unrecognized holdings gains and losses for HTM securities must also be disclosed. U.S. GAAP also requires a maturity analysis of both AFS and HTM securities, but it does not require disclosure of weighted average yields. U.S. GAAP requires disclosures related to asset quality and impairment of investment securities, and fair value measurements for securities measured at or written-down to fair value.*
- *Some BHC registrants discuss the composition of and fluctuation in their investment portfolios in their MD&A disclosure. A BHC's MD&A disclosure of critical accounting estimates may also include fair value measurements in the determination of total other-than-temporary impairment.*
- *Large BHC registrants often publish and furnish in a current report on Form 8-K supplements to their earnings releases that provide detailed information about the investment portfolio not required by U.S. GAAP, including information about the duration of the portfolio, management's investment strategy or how new regulations may affect the portfolio. Some BHC registrants also provide detailed information about credit ratings, or the valuation of specific investments that may be at risk of impairment or were impaired during the period.*
- *Call Reports require disclosure of amortized cost and fair value of both HTM and AFS securities, and maturity and repricing data for debt securities and the amounts of income and loss recognized during the period. Banking organizations must also report regulatory capital components and ratios, including the categorization of investment securities by risk weights.*
- *Pillar 3 disclosures require information about how banking organizations measure credit and market risks in their investment portfolios, along with the associated risk weights of investment portfolio assets.*

Summary of requests for comment on Section II.A – C of Guide 3:

- *Is the disclosure required by this section of Guide 3 sufficient to provide investors with information to make investment or voting decisions? Is this information duplicative of that required under Regulation S-K or U.S. GAAP?*
- *What improvements should be considered to existing investment portfolio disclosure that would help investors make informed investment and voting decisions?*
- *Should the categories used for disaggregation of these Guide 3 disclosures be closely aligned with those called for in Call Reports and other U.S. banking agency regulatory filings?*
- *Should any of the investment information provided in Call Reports or other regulatory filings be required for BHC registrants?*
- *Should the investment portfolio disclosures called for by Guide 3 be extended to other registrants in the financial industry?*

III. Loan Portfolio

A. *Types of Loans*

As of the end of each reported period, present separately the amount of loan in each category listed below. Also show the total amount of all loans for each reported period which amounts should be the same as those shown on the balance sheets.

Domestic:

1. Commercial, financial and agricultural;
2. Real estate-construction;
3. Real estate-mortgage;
4. Installment loans to individuals;
5. Lease financing

Foreign:

6. Governments and official institutions;
7. Banks and other financial institutions;
8. Commercial and industrial;
9. Other loans.

Instruction. A series of categories other than those specified above may be used to present details of loans if considered a more appropriate presentation.

B. *Maturities and Sensitivities of Loans to Changes in Interest Rates*

As of the end of the latest fiscal year reported on, present separately the amount of loans in each category listed in paragraph A (except that this information need not be presented for categories 3, 4 and 5, and categories 6 through 9 may be aggregated) which are: (1) due in one year or less, (2) due after one year through five years and (3) due after five years. In addition, present separately the total amount of all such loans due after one year which (a) have predetermined interest rates and (b) have floating or adjustable interest rates.

Instructions.

(1) Scheduled repayments should be reported in the maturity category in which the payment is due.

(2) Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

(3) Determinations of maturities should be based upon contract terms. However, such terms may vary due to the registrant's "rollover policy" in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

C. *Risk Elements*

1. Nonaccrual, Past Due and Restructured Loans. As of the end of each reported period, state separately the aggregate of loans in each of the following categories:

   (a) Loans accounted for on a nonaccrual basis;

   (b) Accruing loans which are contractually past due 90 days or more as to principal or interest payments; and

   (c) Loans not included above which are "troubled debt restructurings" as defined in Statement of Financial Accounting Standards No. 15 ("FAS 15"), Accounting by Debtors and Creditors for Troubled Debt Restructurings."

   Instructions.

   (1) The information required by this Item should be provided separately for domestic and for foreign loans for each reported period.

   (2) As of the most recent reported period, state separately as to foreign and domestic loans included in (a) and (c) above the following information: (i) the gross interest income that would have been recorded in the period that ended if the loans had been current in accordance with their original terms and had been outstanding throughout the period or since origination, if held for part of the period, and (ii) the amount of interest income on those loans that was included in net income for the period.

   (3) A discussion of the registrant's policy for placing loans on nonaccrual status should be provided.

   (4) No loans shall be excluded from the amounts presented, except that loans to foreign borrowers which are restructured for reasons other than concerns as to ultimate collectability and which are included in amounts disclosed pursuant to Instruction (6)(d) to Item III.C.3. need not be included in amounts reported pursuant to Item III.C.1.(c). Supplemental disclosures may be made to facilitate understanding of the aggregate amounts reported. These disclosures may include, for example, information as to the nature of the loans, any guarantees, the extent of collateral, or amounts in process of collection.

2. *Potential Problem Loans.* As of the end of the most recent reported period, describe the nature and extent of any loans which are not now disclosed pursuant to Item III.C.1. above, but where known information about possible credit problems of borrowers (which are not related to transfer risk inherent in cross-border lending activities) causes management to have serious doubts as to the ability of such borrowers to comply with the present loan repayment terms and which may result in disclosure of such loans pursuant to Item III.C.1.

3. *Foreign Outstandings.* As of the end of the last three reported periods, state the name of the country and aggregate amount of cross-border outstandings to borrowers in each foreign country where such outstandings exceed 1% of total assets.

Instructions.

(1) Cross-border outstandings are defined as loans (including accrued interest), acceptances, interest-bearing deposits with other banks, other interest-bearing investments and any other monetary assets which are denominated in dollars or other non-local currency. To the extent that material local currency outstandings are not hedged or are not funded by local borrowings, such amounts should be included in cross-border outstandings. Commitments such as irrevocable letters of credit should not be included in outstandings; however, where such items are material, the amounts should be separately disclosed.

(2) Disclose separately the amounts of cross-border outstandings by type of foreign borrower as set forth in Item III.A. above.

(3) If a material amount of the outstandings to any foreign country disclosed herein is included in the amounts disclosed pursuant to Item III.C.1. or 2. identify each such country and the related amounts disclosed pursuant to those Items.

(4) Amounts of any legally enforceable, written guarantees of principal or interest by domestic or other non-local third parties may be netted against cross-border outstandings of a country. If such a guarantee is made by a foreign guarantor, he guarantee amount shall be reflected as an outstanding of such guarantor. The value of any tangible, liquid collateral may also be netted against cross-border outstandings of a country if it is held and realizable by the lender outside of the borrower's country.

(5) For purposes of determining the amount of outstandings to be reported, loans made to, or deposits placed with, a branch of a foreign bank located outside the foreign bank's home country should be considered as loans to, or deposits with, the foreign bank.

(6) Where current conditions in a foreign country give rise to liquidity problems which are expected to have a material impact on the timely payment of principal or interest on the country's private or public sector debt, furnish:

(a) a description of the nature and impact of such developments.

(b) an analysis of the changes in aggregate outstandings to borrowers in each such country (except that a country need not be included if aggregate outstandings to all borrowers in the country at the end of the most recent reported period do not exceed 1% of total assets), for the most recent reported period, in the following format:

	Country A	*Country B*
Aggregate outstandings at (beginning of period)	x	x
Net change in short-term outstandings:	x	x
Changes in other outstandings:		
Additional outstandings	x	x
Interest income accrued	x	x
Collections of: Principal	x	x
Accrued interest	x	x
Other changes	x	x
Aggregate outstandings at (end of period)	$ x	x

For purposes of the above table, short-term outstandings are trade credits and interbank deposits (and similar items) which, at the time they were extended, had maturities of one year or less. This table should be supplemented with the amounts of (short-term outstandings that are included in the end-of-period aggregate amounts reported for each country.

(c) the total amounts recognized as interest income and the total amounts of interest collected during the most recent reported period on all outstandings to each country disclosed pursuant to subpart (b) of this Instruction, if such totals are significantly different from the amounts disclosed pursuant to subpart (b) on the lines entitled "Interest income accrued" and "Collections of accrued interest," respectively. (The amounts might be different if, for example, all or a portion of the outstandings were on a nonaccrual basis.)

(d) the following information, if a material portion of the outstandings to any country that is identified pursuant to subpart (b) of this Instruction is restructured during or subsequent to the most recent reported period, or if a material portion may be subject to restructuring pursuant to an agreement in principal (or its equivalent) which has been reached between the debtor and the registrant (or a committee organized by creditor banks to negotiate such an agreement in principal or its equivalent):

(i) information describing the pre- and post-restructuring repayment terms of the affected outstandings, including at a minimum the following (in tabular format such as the following):

	Country A	*Country B*
Amount restructured (or subject to restructuring)	$x	x
Weighted average year of maturity (including any grace periods): Pre-restructuring	19XX	19XX
Post-restructuring	19YY	19YY
Weighted average interest rate: Pre-restructuring	X%	X%
Post-restructuring	Y%	Y%

Alternative tabular formats are not precluded, provided that the minimum data presented above (or their equivalent) is presented. Supplementing weighted average maturities and interest rates with ranges of maturities and interest rates is not precluded; however, ranges should not be presented without also presenting weight averages (unless the ranges are very narrow). Alternatively, individual years of maturities could be disclosed with respect to discernable portions of restructured outstandings, along with the interest rates on those portions. if interest rates are variable, the applicable index and the weighted average spread from the index should be disclosed in lieu of the actual rates as of any particular date.

(ii) a description of commitments (e.g., new money provisions; agreements to relend, or to maintain on deposit, repayment of principal or interest within the country) arising or expected to arise in connection with the restructuring(s).

(iii) the amount of outstandings, separately as to each country, that has been removed or is expected to be removed from nonaccrual status as a result of the restructuring(s).

Disclosures pursuant to subpart (d) should be in reasonable proximity to disclosures pursuant to other subparts of this instruction and should be described as subject to change, if applicable.

(7) For countries whose outstandings are between .75% and 1% of total assets, disclose the names of the countries and the aggregate amount of outstandings attributable to all such countries.

(8) The disclosure threshold set forth in this Item is for disclosure guidance and is not intended as an indicator of a prudent level of lending to any one country by an individual bank.

4. *Loan Concentrations*. As of the end of the most recent reported period, describe any concentration of loans exceeding 10% of the total loans which are not otherwise disclosed as a category of loans pursuant to Item III.A. of this Guide. Loan concentrations are considered to exist when there are amounts loaned to a multiple number of borrowers engaged in

similar activities which would cause them to be similarly impacted by economic or other conditions.

Instructions.

(1) If a material amount of the loan concentrations disclosed herein or pursuant to Item III.3.A. is included the amounts disclosed pursuant to Item III.C.1. or 2., that fact should be discussed.

(2) The disclosure threshold in this Item is for disclosure guidance and is not intended as an indicator of a prudent level of lending.

D. *Other Interest Bearing Assets.* As of the end of the most recent reported period, disclose the nature and amounts of any other interest bearing assets that would be required to be disclosed under Item III.C.1. or 2. if such assets were loans.

Potentially overlapping information provided by BHCs as required by Commission rules, accounting standards and other disclosure requirements:

- *Article 9 requires separate disclosure of total loans and unearned income on the balance sheet or in the footnotes for the same loan categories specified in Guide 3, as well as disclosures about loans made to certain related parties and the aggregate amount of those loans that are disclosed as nonaccrual, past due, restructured or potential problem loans.*
- *U.S. GAAP and Guide 3 have some similar loan presentation and disclosure standards. U.S. GAAP requires additional disclosures, by class of financing receivable, for impaired loans. U.S. GAAP also requires qualitative and quantitative information, by class of financing receivable, about troubled debt restructurings for each period for which an income statement is presented as well as specific disclosures about loans acquired with deteriorated credit quality for each balance sheet presented.*
- *In their MD&A disclosures, BHCs discuss their loan portfolios and changes in portfolio composition, delinquencies and nonperforming or restructured loans. BHCs with material amounts of nonaccrual loans sometimes provide a reconciliation of the beginning and ending balances of these loans, although they are not required to do so by Item 303 of Regulation S-K. BHC registrants may also discuss higher-risk loans and declines in collateral value when they are reasonably expected to have a material effect on results of operations, liquidity or capital resources, and may disclose quantitative and qualitative information about loan portfolios and other significant balance sheet items with material country-specific risk.*
- *Form 8-K filings of earnings releases may include credit quality statistics that are adjusted or more disaggregated than those required by U.S. GAAP or Guide 3.*
- *Call Reports require banking organizations to report loan amounts categorized by type of security, borrower or purpose; past due loans and non-accrual loans; troubled debt restructurings (TDRs) (performing and on nonaccrual status); specific information about mortgage banking activities; and regulatory capital components and ratios, including categorization of loan by risk weights.*
- *Pillar 3 disclosures include a description of how banking organizations subject to the disclosure requirements measure credit risk in their loan portfolios, how they mitigate those risks and the associated regulatory risk weights of the assets.*

Summary of requests for comment on Section III.A – D of Guide 3:

- *Do the loan portfolio disclosures called for by Guide 3 provide investors with information upon which they base investment and voting decisions? Would that information otherwise be provided under Commission rules or U.S. GAAP?*

- *Do Commission rules or U.S. GAAP require the same or similar loan information as that called for by Guide 3?*
- *How do investors use the TDR disclosures called for by Guide 3 for investment decisions?*
- *Should the Commission require disclosures of all loan modifications by type of modification and/or credit quality of borrower? Would BHC registrants face any challenges in preparing and providing these disclosures?*
- *Should the Commission require disclosure of the loan information provided in Call Reports or other regulatory filings?*
- *Should the loan portfolio disclosures called for by Guide 3 be extended to other registrants, such as those engaged in the financial services industry?*

IV. *Summary of Loan Loss Experience*

A. An analysis of loss experience shall be furnished in the following format for each reported period.

Analysis of the Allowance for Loan Losses

	Reported Period
Balance at the beginning of period	$ X
Charge-offs:	
Domestic:	
Commercial, financial and agricultural	x
Real estate—construction	x
Real estate—mortgage	x
Installment loans to individuals	x
Lease financing	x
Foreign	x
Recoveries:	
Domestic:	
Commercial, financial and agricultural	x
Real estate—construction	x
Real estate—mortgage	x
Installment loans to individuals	x
Lease financing	x
Foreign	x
Net charge-offs	x
Additions charge to operations	x
Balance at end of period	x
Ratio of net charge-offs during the period to average loans outstanding during the period	x

Instructions.

(1) The above table is not intended to mandate a specific format for disclosure of this information. Registrants are encouraged to experiment with various disclosure formats in

the interest of effective communication of this data, however, all the required information must be given.

(2) For each period presented, describe briefly the factors which influenced management's judgment in determining the amount of the additions to the allowance charged to operating expense. A statement that the amount is based on management judgment will not be sufficient.

(3) If, in accordance with the instructions to paragraph III-A, information concerning loans has been presented in categories other than those specified in that paragraph, those other categories should be used to present the disclosures called for under this paragraph.

(4) If the registrant is required to present separate data as to its foreign activities pursuant to General Instruction 7 to this Guide, disclosure must be provided as to the changes in the allowance for loan losses applicable to loans related to foreign activities, including the balances at the beginning and end of the periods, charge-offs, recoveries, and additions charged to operations.

B. At the end of each reported period, furnish a breakdown of the allowance for loan losses in the following format:

Allocation of the Allowance for Loan Losses

		Reported Period
Balance at End of Period Applicable to:	*Amount*	*Percent of loans in each category to total loans*
Domestic	$X	X%
Commercial, financial and agricultural	X	X%
Real estate—construction	X	X%
Real estate—mortgage	X	X%
Installment loans to individuals	X	X%
Lease financing	X	X%
Foreign	X	X%
Unallocated	X	N/A
		100%

Instructions.

(1) See instructions (1) and (3) to paragraph A above.

(2) In lieu of the breakdown of the allowance for loan losses by loan category called for above, the registrant may furnish a narrative discussion of the risk elements in the loan portfolio and the factors considered in determining the amount of the allowance for loan losses. The discussion may be extended to risk elements associated with particular loan categories or subcategories. Information should also be furnished as to the approximate anticipated amount of charge-offs by category during the next full year of operation

Potentially overlapping information provided by BHCs as required by Commission rules, accounting standards and other disclosure requirements:

- *Article 9 currently requires disclosure of the total allowance for loan losses on the balance sheet or in the footnotes to the financial statements as well as the changes in the allowance for loan losses for each period in which an income statement is presented in the footnotes. This required disclosure is identical to that called for by Guide 3.*
- *U.S. GAAP currently requires disclosure of loan loss information, including the related accounting policies, for each portfolio segment, except loans measured at fair value. Accounting Standards Update 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments will add new policy disclosures regarding the changes in the factors that influenced management's current estimate of expected credit losses and reasons for significant changes in the amount of write-offs, and will require disclosures related to the forecasted information management used in developing its allowance for credit losses. U.S. GAAP currently requires disclosure of the allowance for loan losses and the related investment in financing receivables to which the allowance pertains, disaggregated on the basis of a registrant's impairment methodology. U.S. GAAP requires a roll-forward of the activity in the allowance for loan losses for each period by portfolio segment. U.S. GAAP also requires qualitative information, by portfolio segment, about the impact of TDRs on the allowance for loan losses. U.S. GAAP currently also requires specific disclosures about the impact that loans acquired with deteriorated credit quality have on the allowance for loan losses in periods subsequent to acquisition.*
- *In their MD&A disclosures, BHCs consider their methodology for determining the allowance for loan losses, when it could have a material impact on the financial condition or operation performance, to be a critical accounting estimate and provide a discussion of the material implications of uncertainties associated with their allowance methodology and assumptions in MD&A. These BHCs also discuss material fluctuations in their provision and allowance for loan losses.*
- *Banking organizations must disclose in their Call Reports the amount of loans charged off against the allowance for loan losses during the period, as well as the amount of recoveries of loans previously charged off by specified loan category, a reconciliation of the allowance for loan losses on an aggregate basis, the amount of allowance for loan losses established due to decreases in cash flows expected to be collected on loans acquired with deteriorated credit quality and, for banking organizations with $1 billion or more in total assets, disaggregated data on the allowance for loan losses and the related recorded investment in loans.*
- *Pillar 3 disclosures provide qualitative and quantitative information about the allowance for loan losses that are more detailed than the disclosures called for by Guide 3 and U.S. GAAP.*

Summary of requests for comment on Section IV.A – B of Guide 3:

- *Does the summary of loan loss experience disclosure required by Guide 3 provide investors with information upon which they base investment and voting decisions? Would that information otherwise be provided under Commission rules or U.S. GAAP?*
- *Do Commission rules or U.S. GAAP require the same or similar loan loss experience information as that called for by Guide 3?*
- *To promote comparability and consistency, should the Commission prescribe the level of disaggregation that BHC registrants should employ for their summary of loan loss disclosures? Should the categories used for disaggregation of these Guide 3 disclosures be closely aligned with those called for in Call Reports and other U.S. banking agency regulatory filings?*
- *Should the Commission require disclosure of any loan information provided in Call Reports or other regulatory filings?*
- *Should the summary of loan loss experience disclosures called for by Guide 3 be extended to other registrants, such as those engaged in the financial services industry?*

V. Deposits

A. For each reported period, present separately the average amount of and the average rate paid on each of the following deposit categories which are in excess of 10 percent of average total deposits:

Deposits in domestic bank offices;

(1) Noninterest bearing demand deposits.

(2) Interest bearing demand deposits.

(3) Savings deposits.

(4) Time Deposits.

Deposits in foreign banking offices:

(5) Banks located in foreign countries (including foreign branches of other U.S. banks).

(6) Foreign governments and official institutions.

(7) Other foreign demand deposits.

(8) Other foreign time and savings deposits.

B. Categories other than those specified for deposits in domestic bank offices above may be used to present the types of domestic deposits if they more appropriately describe the nature of the deposits.

C. If material, the registrant should disclose separately the aggregate amount of deposits by foreign depositors in domestic offices Identification of the nationality of the depositors is not required.

D. As of the end of the latest reported period, state the amount outstanding of I) time certificates of deposit in amounts of $100,000 or more and 2) other time deposits of $100,000 or more issued by domestic offices by time remaining until maturity of 3 months or less; over 3 through 6 months; over 6 through 12 months; and over 12 months.

E. As of the end of the latest reported period, state the amount outstanding of time certificates of deposits and other time deposits in amounts of $100,000 or more issued by foreign offices. If the aggregate of such certificates of deposit and time deposits in amounts exceeding $100,000 represents a majority of total foreign deposit liabilities, the disclosure need not be given provided that there is a statement that a majority of deposits were in amounts in excess of $100,000.

Potentially overlapping information provided by BHCs as required by Commission rules, accounting standards and other disclosure requirements:

- *Article 9 requires separate presentation on the balance sheet of noninterest-bearing deposits and interest-bearing deposits.*
- *U.S. GAAP requires limited disclosures about deposits.*
- *In their MD&A disclosures, BHC registrants generally discuss material changes to or key metrics for deposits when deposits are a material source of liquidity, such as loan-to-deposit ratios. The liquidity section of the MD&A disclosure generally includes a discussion of deposits as a source of funding, including a description of deposit inflows and outflows during the period.*
- *Call Reports require banking organizations to separately report deposits held at U.S. bank offices and those held at foreign offices.*

Summary of requests for comment on Section V.A – E of Guide 3:

- *Do the deposit disclosures called for by Guide 3 provide investors with information upon which they base investment and voting decisions? Would that information otherwise be provided under Commission rules or U.S. GAAP?*
- *Do Commission rules or U.S. GAAP require the same or similar deposit information as that called for by Guide 3?*
- *What improvements to the existing deposits disclosures should the Commission consider that would be important for investors?*
- *How do investors use the time deposit disclosures? Should the Commission retain the $100,000 threshold for these disclosures, or should the Commission change it to another threshold, such as the FDIC insurance limit (currently $250,000)?*
- *Should the Commission require disclosure of any deposit information provided in Call Reports or other regulatory filings? Should the deposit disclosures called for by Guide 3 be extended to other registrants, such as those engaged in the financial services industry?*

VI. Return on Equity and Assets

For each reported period, present the following:

(1) Return on assets (net income divided by average total assets).

(2) Return on equity (net income divided by average equity).

(3) Dividend payout ratio (dividends declared per share divided by net income per share).

(4) Equity to assets ratio (average equity divided by average total assets).

Instructions.

(1) If mandatorily redeemable preferred stock is outstanding, furnish the ratios required under (2) and (4) above in a dual presentation including and excluding such stock in the calculations.

(2) Registrants should supply any other ratios which they deem necessary to explain their operations.

The return on assets ratio, return on equity ratio, dividend payout ratio and equity to assets ratio disclosures are unique to Guide 3. These ratios can, however, be calculated using financial information disclosed in Commission filings. BHCs generally disclose non-GAAP measures in Commission filings. Banking organizations are subject to a minimum "leverage ratio" requirement as part of their regulatory capital requirements. The leverage ratio and its inputs are reported in Call Reports.

Summary of requests for comment on Section VI of Guide 3:

- *Does the return on equity and assets disclosures called for by Guide 3 provide investors with information upon which they base investment and voting decisions? Would that information otherwise be provided under Commission rules or U.S. GAAP?*
- *What non-GAAP financial measures do BHC registrants disclose? Which of these measures are relied on to help make investment decisions and why? Should the Commission require disclosure of any of these measures to enhance the comparability of information for investors?*
- *Should the return on equity and assets disclosures called for by Guide 3 be extended to other registrants, such as those engaged in the financial services industry?*

VII. Short-Term Borrowings

For each reported period, present the following information for each category of short-term borrowings reported in the financial statements pursuant to §210.0-04.11:

(1) The amounts outstanding at the end of the reported period, the weighted average interest rate thereon, and the general terms thereof;

(2) The maximum amount of borrowings in each category outstanding at any month-end during each reported period;

(3) The approximate average amounts outstanding during each reported period and the approximate weighted average interest rate thereon.

Instruction. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders' equity at the end of the period.

Potentially overlapping information provided by BHCs as required by Commission rules, accounting standards and other disclosure requirements:

- *Article 9 requires separate disclosure of the period-end balances of federal funds purchased and securities sold under agreements to repurchase, commercial paper and other short-term borrowings on the face of the financial statements or in the footnotes.*
- *U.S. GAAP requires disclosure of period-end balances of significant categories of borrowings, and disclosure about repurchase agreements and securities lending transactions.*
- *BHCs generally discuss their sources of funding and outstanding borrowings in the liquidity section of their MD&A disclosures.*
- *Item 303(a)(4) of Regulation S-K requires a discussion of off-balance sheet arrangements when the arrangements have or are reasonably likely to have a current or future effect on the registrant's financial condition, results of operations, liquidity, capital expenditures or capital resources that is material to investors.*

- *Short-term borrowing levels and deposit levels factor into the LCR calculation, and banking organizations subject to the LCR requirement typically disclose whether or not they comply with that requirement in their Commission filings.*
- *Banking organizations must report the year-end balance, quarterly average balances and interest expense on federal funds purchased and securities sold under agreements to repurchase, and other borrowings in their Call Reports.*
- *Pillar 3 disclosures discuss risks related to borrowings and liquidity, and include borrowings as an input to certain disclosure requirements, including the LCR and global systemically important bank holding companies' risk-based capital surcharge.*

Summary of requests for comment on Section VII of Guide 3:

- *Do the short-term borrowings disclosures called for by Guide 3 provide investors with information upon which they base investment and voting decisions? Would that information otherwise be provided under Commission rules or U.S. GAAP?*
- *What improvements to the existing short-term borrowings disclosures should be considered?*
- *Are there disclosures about off-balance sheet arrangements in the financial services industry that investors find important?*
- *What non-GAAP financial measures do BHC registrants provide concerning short-term funding? Should BHC registrants be required to disclose any of these measures to enhance the comparability of information for investors?*
- *Should the categories used for disaggregation of these Guide 3 disclosures be closely aligned with those called for in Call Reports and other U.S. banking agency regulatory filings?*
- *Should the short-term borrowings disclosures called for by Guide 3 be extended to other registrants, such as those engaged in the financial services industry?*

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