

# SEC Updates Statistical Disclosures for Banks

September 21, 2020

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## Background

On September 11, 2020, the Securities & Exchange Commission (the “SEC”) adopted final rules to update required statistical disclosures for banking registrants. The final rules are substantially consistent with the amended rules as proposed by the SEC and, among other things, codify certain disclosures already required under Industry Guide 3, Statistical Disclosure by Bank Holding Companies (“Guide 3”), and eliminate other Guide 3 disclosures that are duplicative of requirements under SEC rules, U.S. generally accepted accounting principles (“U.S. GAAP”) and International Financial Reporting Standards (“IFRS”). The final rules are codified in new Item 1400 of Regulation S-K and rescind Guide 3.

The final rules identify and codify the types of registrants that fall within the scope of new Item 1400 of Regulation S-K. to be: banks, bank holding companies, savings and loan holding companies, and savings and loan associations (“bank and savings and loan registrants”). The SEC declined to expand the scope of the final rules to include other non-bank registrants that operate within the financial services industry such as insurance companies, online marketplace lenders or other financial technology companies. The final rules apply to both domestic and foreign registrants but, in recognition of certain significant differences between U.S. GAAP and IFRS: (i) allow for flexibility in identifying the categories and classes of instruments to be disclosed, (ii) in several instances, specifically link the disclosure requirements to the categories or classes of instruments otherwise disclosed in the registrant’s U.S. GAAP or IFRS financial statements and (iii) explicitly exempt foreign private issuers applying IFRS from certain disclosure requirements that are not applicable under IFRS. The final rules reduce the reporting period previously required by Guide 3 by aligning them with the relevant annual periods required by the SEC’s rules for a registrant’s financial statements and require interim period disclosures only if there is a material change in the information or the trend evidenced thereby. Finally, the final rules do not require registrants to include Item 1400 disclosure in a specific location. To the extent that such disclosure is located in the notes to the financial statements, the data would be subject

to audit requirements, and would be required to be presented in a machine-readable format using XBRL.

The SEC's press release announcing the final rules can be found at [this link](#), and the final rules can be found at [this link](#).

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## Highlights of the Final Rules

- Distributions of Assets, Liabilities and Stockholders' Equity; Interest Rate and Interest Differential (Item 1402)
  - Item 1402 of Regulation S-K generally codifies all disclosures currently required under Item I of Guide 3, which include:
    - Item I.A of Guide 3: Balance sheets that show the average daily balances of significant categories of assets and liabilities.
    - Item I.B of Guide 3: Interest earned or paid on the average amount of each major category of interest-earning asset and interest-bearing liability; average yield for each major category of interest-earning asset; average rate paid for each major category of interest-bearing liability; average yield on all interest-earning assets; average effective rate paid on all interest-bearing liabilities; and net yield on interest-earning assets.
    - Item I.C of Guide 3: A rate and volume analysis of interest income and interest expense for the last two fiscal years.
    - Instruction 5 to Item I: If disclosure regarding foreign activities is required pursuant to General Instruction 7 of Guide 3, further segregation of the information required in paragraphs A, B, and C of Item I between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to Item I.A., as well as disclosure of the percentage of total assets and total liabilities attributable to foreign activities.
  - Item 1402 also requires disaggregated disclosure of the following major categories of assets and liabilities, if material:
    - Interest-earning assets: federal funds sold and securities purchased with agreements to resell.
    - Interest-bearing liabilities: federal funds purchased and securities sold with agreements to repurchase and the disclosure of commercial paper.
- Investment Portfolio (Item II of Guide 3 - Item 1403)

- The final rules eliminate most of the existing Guide 3 investment portfolio disclosures, including book value information, the maturity analysis of book value information and disclosures related to investments exceeding 10% of stockholders' equity, as these requirements overlap with U.S. GAAP and IFRS.
- Item 1403 of Regulation S-K codifies the weighted average yield disclosure for each range of maturities by category of debt securities currently required under Item II.B of Guide 3. The rule applies only to debt securities that are not carried at fair value through earnings.
- Loan Portfolio (Item III of Guide 3 - Item 1404)
  - The final rules eliminate the loan category disclosure required under Item III.A of Guide 3, the loan portfolio risk elements disclosure required under Item III.C of Guide 3 and the other interest-earning assets disclosure required under Item III.D of Guide 3.
  - Item 1404 of Regulation S-K codifies the requirements of Guide 3 set forth below (with a further segregation by maturity):
    - The maturity by loan category disclosure (now required to be segregated into loans due: (i) in one year or less, (ii) after one year through five years, (iii) after five years through 15 years and (iv) after 15 years), but with respect to the loan categories required to be disclosed in the registrant's U.S. GAAP or IFRS financial statements.
    - The existing Guide 3 instruction stating that the determination of maturity should be based on contractual terms and the loan "rollover policy" for these disclosures such that, to the extent non-contractual rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS, such non-contractual rollovers or extensions should be considered for purposes of the maturities classification, and the policy should be discussed briefly.
    - The disclosure of the total amount of loans due after one year that have (i) predetermined interest rates and (ii) floating or adjustable interest rates, in each case: (a) separated by the loan categories disclosed in the registrant's U.S. GAAP or IFRS financial statements and (b) with no provision for the exclusion of loan categories or aggregation of any loan categories.
- Allowance for Credit Losses (Item IV of Guide 3 - Item 1405)
  - Item 1405 of Regulation S-K codifies the requirements of Guide 3 set forth below (as modified):

- The ratio of disaggregated net charge-offs during the period to average loans outstanding (now based on the tabular allocation within loan categories required to be disclosed in the registrant's U.S. GAAP financial statements).
- For registrants reporting in or reconciling to U.S. GAAP, the breakdown of the allowance disclosures required under Item IV.B in tabular format, based on the loan categories presented in the registrant's U.S. GAAP financial statements.
- The final rules eliminate the analysis of loss experience disclosure required under Item IV.A of Guide 3 that overlap with U.S. GAAP and IFRS and do not require any disclosures related to the New Credit Loss Standard or IFRS 9.
- Credit Ratios (Item 1405)
  - Item 1405 of Regulation S-K requires disclosure of the following four additional credit ratios, (many of which registrants already voluntarily disclose), along with the components used in each calculation:
    - Allowance for credit losses to total loans (on a consolidated basis).
    - Nonaccrual loans to total loans (on a consolidated basis).
    - Allowance for credit losses to nonaccrual loans (on a consolidated basis).
    - Net charge-offs to average loans (by loan category disclosed in the financial statements).
  - The first three ratios above should be disclosed on a consolidated basis, while the ratio of net charge-offs to average loans should be disclosed by loan category presented in the financial statements.
  - The final rules require a discussion of the factors that drove material changes in the ratios and related components.
- Deposits (Item V of Guide 3 - Item 1406)
  - Item 1406 of Regulation S-K codifies the majority of the disclosures currently required under Item V of Guide 3, with certain revisions. The final rules:
    - Replace the disclosure in Item V.D of Guide 3 requiring the "amount of outstanding domestic time certificates of deposit and other time deposits equal to or in excess of "\$100,000" by maturity with a requirement to disclose the "amount in any other uninsured investment or deposit accounts that are classified as deposits and not subject to any federal or state deposit insurance regimes" by maturity.

- Require separate presentation of (i) U.S. time deposits in amounts in excess of the FDIC insurance limit and (ii) time deposits that are otherwise uninsured, by time remaining until maturity of: (i) three months, (ii) over three months through six months, (iii) over six months through 12 months and (iv) over 12 months.
  - Require bank and savings and loan registrants to quantify the amount of uninsured deposits at the end of each reporting period. The final rules define uninsured deposits as bank and savings and loan registrants that are U.S. federally insured deposit institutions and require foreign bank and savings and loan registrants to disclose how they have defined uninsured deposits for purposes of the disclosure, based on the same methodologies and assumptions used for regulatory reporting requirements, to the extent applicable. Registrants are permitted to disclose an estimate of uninsured deposits at the reported date if it is not reasonably practicable to provide a precise measure of uninsured deposits, so long as a registrant discloses that the estimates are based on estimated amounts of uninsured deposits and the registrant uses the same methodologies and assumptions used for the bank or savings and loan registrant's regulatory reporting requirements, such as the FDIC rules.
- Return on Equity and Assets: The final rules eliminate the required disclosure of key performance indicators such as return on equity and assets and related ratios.
  - Short-Term Borrowings: The final rules codify the required disclosure of the average balance and related average rate paid for each major category of interest-bearing liability currently required to be disclosed under Guide III, and require further disaggregation of major categories of interest-bearing liabilities.
  - Other
    - As is the case under existing market practice, all registrants, including foreign registrants, may avail themselves of relief under Securities Act Rule 409 and Exchange Act Rule 12b-21 from providing information that is "unknown and not reasonably available to the registrant." The final rules eliminate the overlapping Guide 3 accommodation for undue burden or expense.
    - The final rules amend Item 4 of Form 20-F to refer to Items 1400 through 1406 of Regulation S-K.

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## Effective Date

Registrants are required to apply the final rules for the first fiscal year ending on or after December 15, 2021. Voluntary early compliance is permitted prior to December 15, 2021,

and registrants filing initial registration statements are not required to comply with the final rules until “an initial registration statement is first filed containing financial statements for a period on or after December 15, 2021.

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Please do not hesitate to contact us with any questions.

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