



MARCH 2020

SEC Issues Guidance on Use of Key Metrics and Data in Management's Discussion and Analysis, Proposes MD&A Overhaul

In connection with proposed amendments to Management's Discussion and Analysis—a principal financial reporting requirement—the Securities and Exchange Commission issued guidance relating to disclosure of key performance indicators and metrics that present “the pulse” of a company's business. A reporting company must include in the MD&A information the company believes is necessary to an understanding by investors of its financial condition, changes in financial condition, and results of operations, and must “consider whether disclosure of all key variables and other factors that management uses” is necessary to such an understanding. Such data may not be included, expressly, in a company's financial statements.

The guidance reminds companies to not present such “non-GAAP measures” in a way that could be misleading. Use of such measures should be accompanied by:

- A clear definition of the metric and how it is calculated;
- A statement regarding how the metric is useful to investors; and
- A statement regarding how management uses the metric in managing the company's business.

In addition, the company should consider whether assumptions underlying or methods of calculation of the metrics, or any change that the company makes in them, are material and should be disclosed.

Companies should also maintain disclosure controls and procedures necessary to ensure reliability of the measures.

Concurrently with the guidance, the SEC proposed amendments to MD&A that would replace prescriptive rules with principles-based disclosure requirements. Reporting companies would be encouraged to address their particular circumstances from management's perspective and focus on material events and uncertainties that could cause historical financial information not to be necessarily predictive of future results. For example, requirements specifically to disclose off-balance sheet arrangements and for a contractual obligations table would be removed. Likewise, the separate Regulation S-K items requiring presentation of five years of selected financial data and quarterly supplementary financial information would be eliminated.

Related Professionals

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6237 REV1 03-05-2020

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