

SEC Provides Guidance on the Use of Metrics in MD&A; Also Proposes Amendments to Simplify and Modernize MD&A and Related Financial Disclosures

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On January 30, 2020, the SEC issued new guidance to companies that use key performance indicators and metrics in their MD&A. Concurrently, the SEC also proposed amendments that would significantly simplify and modernize the requirements for a company's MD&A and related financial disclosures.

New MD&A Guidance

The SEC's new guidance is effective immediately, and applies to all key performance indicators and metrics used in a company's MD&A. In the guidance, the SEC notes that the metrics used in MD&A vary significantly from company to company. Some relate to external or macro-economic factors, while others are industry or company specific, such as same store sales or revenue per customer. The Guidance reminds companies that, in addition to complying with any more specific requirements, such as the requirements applicable to non-GAAP measures, they must ensure that when presenting a given metric they include such further material information, if any, as may be necessary in order to make the presentation of the metric, in light of the circumstances under which it is presented, not misleading.

The guidance states the SEC's expectation that a metric will be accompanied by:

- A clear definition of the metric and how it is calculated;
- A statement indicating the reasons why the metric provides useful information to investors; and
- A statement indicating how management uses the metric in managing or monitoring the performance of the business.

Companies are cautioned to also consider whether there are estimates or assumptions underlying the metric or its calculation, and whether disclosure of such items is necessary for the metric not to be materially misleading.

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The guidance advises a company changing the method by which it calculates or presents a metric from one period to another or otherwise, to consider the need to disclose, to the extent material:

- The differences in the way the metric is calculated or presented compared to prior periods;
- The reasons for such changes;
- The effects of any such change on the amounts or other information being disclosed and on amounts or other information previously reported (potentially including a recalculation of metrics disclosed in prior periods, if necessary to place the current disclosure in an appropriate context); and
- Such other differences in methodology and results as would reasonably be expected to be relevant to an understanding of the company's performance or prospects.

Finally, the guidance reminds companies of the requirement to maintain effective disclosure controls and procedures. Where key performance indicators and metrics are material to an investment or voting decision, the company should consider whether it has effective controls and procedures in place to process information related to the disclosure of such items to ensure consistency as well as accuracy.

The full text of the guidance is available [here](#).

Proposed Amendments to MD&A and Related Disclosures

The SEC's proposed amendments to MD&A and related disclosures are subject to a comment period ending 60 days after the publication of the proposed rules in the Federal Register, and final rulemaking action.

If adopted, the amendments would eliminate certain of the requirements of MD&A and related financial disclosures for SEC reporting companies, including:

- Elimination of the 5-year table of selected financial data;
- Elimination of the 2-year table of quarterly financial data, and related information;
- Elimination of the table of contractual obligations; and
- Elimination of the discussion of inflation and changing prices, except where material.

The amendments would also modernize a number of other aspects of MD&A. If adopted, the amendments would require a company to disclose:

- The objective of the MD&A;
- The reasons for material changes in line items;
- Critical accounting estimates;
- Material cash requirements, their general purpose and anticipated source of funds; and
- Known events that are reasonably likely to cause a material change in the relationship between costs and revenues (e.g., higher labor costs).

Finally, the amendments would reword and reorder certain other portions of the MD&A instructions, and would expressly permit MD&A for interim (i.e., quarterly) periods to

include a comparison of the current period against either the comparable period of the preceding year, or alternatively, the most recent preceding interim period.

To the extent that foreign issuers are currently subject to these requirements, the proposed amendments would also apply to the forms filed by such issuers with the SEC.

The full text of the proposed amendments is available at [here](#).