

Legal Update

SEC Proposes Update of Statistical Disclosures for Bank and Savings and Loan Registrants, Replacing Industry Guide 3

On September 17, 2019, the Securities and Exchange Commission (SEC) proposed rules to update the statistical disclosures that bank and savings and loan registrants provide to investors.¹ The proposed rules would rescind Industry Guide 3, *Statistical Disclosure by Bank Holding Companies* (Guide 3)², codify certain Guide 3 disclosures into a new Subpart 1400 of Regulation S-K, eliminate other Guide 3 disclosures that overlap with other SEC disclosure requirements, U.S. Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS), and add certain credit ratio disclosure requirements.

According to the SEC, the proposed rules aim to streamline compliance efforts and decrease reporting burdens for registrants, and enhance comparability among issuers. The proposed changes also form part of the SEC's Division of Corporation Finance's (CorpFin) disclosure effectiveness initiative. Comments on the SEC proposals are due 60 days after the proposing release (Release) is published in the *Federal Register*.

Background

Guide 3 was first published in 1976 as a "convenient reference" to the statistical disclosures sought by CorpFin in registration

statements and other disclosure documents filed by bank holding companies (BHCs).³ In essence, Guide 3 calls for statistical disclosures related to interest-earning assets and interest-bearing liabilities of BHCs. These disclosures were designed to assist investors to evaluate loan portfolio risk characteristics, among other risks, to BHCs. Guide 3 disclosures are commonly found in tabular form in the Description of Business or Management's Discussion and Analysis (MD&A) sections of a registrant's SEC filings.

While Guide 3 has been amended on a few occasions, its last substantive revision was more than 30 years ago, in 1986. Since then, a number of significant financial reporting changes have occurred, including the issuance of new accounting standards by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB). In addition, especially since the financial crisis, the banking agencies have adopted a number of disclosure requirements for BHCs. Hence, in March 2017, the SEC published a request for comment seeking public input on possible changes to Guide 3.⁴ It noted that the financial services industry has dramatically changed since Guide 3 was published and consequently, existing guidance may not always reflect recent industry developments or changes in accounting standards related to

financial and reporting requirements. The present Release echoes that same sentiment, considers feedback received from the March 2017 request for comment and sets out the SEC's proposals, which we now summarize and discuss below.

Codification, Elimination and Addition

The SEC's proposals in the Release can be grouped into three main categories or action items: codification, elimination and addition.

First, certain Guide 3 disclosures would be updated and codified into a new Subpart 1400 of Regulation S-K. At present, Guide 3 and other industry guides do not constitute SEC rules, nor do they bear official SEC approval. Rather, they represent disclosure policies and practices followed by CorpFin to administer the federal securities laws, and are intended to assist registrants and their counsel in preparing disclosures. The SEC's proposal would elevate the required disclosures from CorpFin guidance to SEC rule. The SEC believes that codifying a new subpart under Regulation S-K would avoid uncertainty about whether or when the proposed disclosures are required, promote comparability of issuer disclosures, and increase the quality and availability of information.

Second, the proposed rules would *not* codify a number of Guide 3 disclosure items that currently overlap with existing SEC rules, GAAP or IFRS, in effect eliminating such Guide 3 disclosure requirements. For instance, some Guide 3 disclosure items are already required under Article 9 of Regulation S-X, which sets out the form and content of the consolidated financial statements to be filed by BHCs with the SEC.

Third, the SEC proposes to add three new credit ratios related to allowances for credit losses, which would be presented on a consolidated basis. The SEC would also adopt the existing ratio of net charge-offs to average loans outstanding disclosure requirement, but require it to be presented on a disaggregated basis, based on loan categories disclosed by registrants in their

financial statements. The SEC observes that these credit ratios are already commonly disclosed by bank and savings and loan registrants with material lending portfolios. Moreover, such information is generally available to them without undue cost or burden as the ratio components are either provided in their Consolidated Reports of Condition and Income (Call Reports) filed with U.S. banking agencies or are required to be disclosed under U.S. GAAP.⁵

We take a closer look at each of the above categories, beginning with a discussion of the proposed to be codified, new Subpart 1400 of Regulation S-K (Subpart 1400).

Scope and Applicability

Entities Covered

Subpart 1400 would apply to a bank, bank holding company, savings and loan association, or savings and loan holding company (collectively, bank and savings and loan registrants). The SEC believes this scope would capture a majority of registrants who currently provide Guide 3 disclosures. While Guide 3 technically applies only to BHCs, in practice, other registrants engaged in material lending *and* deposit activities, such as savings and loan holding companies, also provide Guide 3 disclosures. The SEC believes that its proposed scope, which is based on the type of registrant (as opposed to an activity-based standard or one involving numerical or dollar thresholds to trigger required disclosures), is easily ascertainable, provides greater clarity and reduces confusion regarding the applicability of required disclosures to non-BHCs. The SEC also said it is not proposing to expand the scope to include other registrants such as insurance companies, online marketplace lenders or financial technology companies.

Domestic and Foreign Registrants

General Instruction 6 to Guide 3 provides that Guide 3 disclosures are applicable to foreign

registrants “to the extent the requested information is available.” If such information is unavailable and cannot be compiled without “unwarranted or undue burden or expense,” then the foreign registrant should discuss this with CorpFin.

In contrast, the proposed Subpart 1400 would apply to both domestic registrants and foreign registrants, and does not adopt the language in General Instruction 6 described above. Instead, the proposed rules explicitly provide a carve-out for foreign private issuers applying IFRS (IFRS registrants) from certain of the new disclosure requirements, since such requirements are not applicable under IFRS. In particular, Instruction No. 1 to the proposed new Item 1405, under Subpart 1400 of Regulation S-K states that IFRS registrants are not required to provide the required ratio of nonaccrual loans to total loans outstanding or the ratio of allowance for credit losses to nonaccrual loans. This is because there is no concept of nonaccrual loans under IFRS.

Moreover, the SEC pointed out that Securities Act Rule 409 and Exchange Act Rule 12b-21 already allows all registrants, not just foreign registrants, to seek relief from providing information that is “unknown and not reasonably available to the registrant” or would involve “unreasonable effort or expense.” The SEC recognizes there are significant differences between GAAP and IFRS, but observed that, in practice, bank and savings and loan registrants that are foreign registrants, including foreign private issuers, typically provide Guide 3 disclosures.

Reporting Period

The proposed Subpart 1400 would generally reduce the reporting periods previously required under Guide 3 and align them with the relevant annual periods required by SEC rules for a registrant’s financial statements.

Guide 3 requires BHCs to provide statistical disclosures for each “reported period.” Guide 3 defines “reported period” as (i) *five years* of loan portfolio and summary of loan loss experience data, (ii) *three years* for all other information,

except that (iii) for all types of information (including under items (i) and (ii) above), registrants with less than \$200 million of assets or \$10 million or less of net worth may choose to present only *two years* of the required information. “Reported period” includes any additional interim period “necessary to keep the information from being misleading” and such additional interim period should be included “if a material change in the information presented or the trend evidenced thereby has occurred.”

In contrast, the proposed rules under Subpart 1400 define “reported period” as (x) for all disclosures, *each annual period* required by SEC rules for a registrant’s financial statements, (y) for credit ratio disclosures, each of the *last five fiscal years* in initial registration statements by *new* bank and savings and loan registrants and in offering statements by *new* bank and savings and loan issuers under Regulation A, and (z) any additional interim period subsequent to the most recent fiscal year end if a material change in the information presented or the trend evidenced thereby has occurred.

With respect to item (x) above, Subpart 1400 would generally reduce the reporting periods and align them with the number of years required by SEC rules to be presented in a registrant’s financial statements. In particular, Article 3 of Regulation S-X generally requires two years of balance sheets and three years of income statements, while Article 8 thereof allows smaller reporting companies (SRCs) to present only two years of income statements, and emerging growth companies (EGCs) to present only two years of financial statements in initial public offerings (IPOs) of common equity securities. The SEC believes the proposal would reduce repetitive disclosures of historical information (which would remain generally accessible through the registrant’s EDGAR filings anyway) and reduce compliance costs for registrants.

Disclosure Areas Covered

Guide 3 covers seven disclosure areas: (1) distribution of assets, liabilities and stockholders' equity; interest rates and interest differential, (2) investment portfolio, (3) loan portfolio, (4) summary of loan loss experience, (5) deposits, (6) return on equity and assets, and (7) short-term borrowings.

In contrast, the proposed Subpart 1400 is organized as follows and covers five disclosure areas identified by Items 1402 to 1406 below.

Subpart 1400 — Disclosure by Bank and Savings and Loan Registrants

Item 1401. General Instructions

Item 1402. Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential.

Item 1403. Investments in debt securities.

Item 1404. Loan portfolio.

Item 1405. Allowance for Credit Losses.

Item 1406. Deposits.

The proposed Subpart 1400 largely retains the content of disclosure areas found under items 1 and 5 of Guide 3, streamlines items 2, 3 and 4, and eliminates items 6 and 7 of Guide 3 above.

Item 1402: Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential

Proposed Item 1402 would codify all of the requirements currently required by disclosure area item 1 of Guide 3. Guide 3 calls for balance sheets that show the average daily balances of significant categories of assets and liabilities, including major categories of interest-earning assets (such as loans, taxable investment securities, non-taxable investment securities, and interest-bearing deposits in other banks) and interest-bearing liabilities (such as savings deposits, other time deposits, short-term debt, and long-term debt). Guide 3 also calls for an analysis of net interest earnings (including disclosures on interest earned

or paid on major categories of interest-earning assets and interest-bearing liabilities, average yield and net yield on interest-earning assets, etc.), and a rate and volume analysis of interest income and interest expense for the the last two fiscal years. According to the SEC, investors benefit from understanding the components of net interest earnings by enabling them to evaluate the impact of potential changes in interest rates on the registrant's future income.

Proposed Item 1402 also adds new categories to the interest-earning assets and interest-bearing liabilities required for disclosure. The new categories of interest-earning assets represent the separation of federal funds sold and securities purchased with agreements to resell. The new categories of interest-bearing liabilities represent the separation of federal funds purchased and securities sold under repurchase agreements, and the disclosure of commercial paper. The SEC believes these more disaggregated categories would provide investors further detail of the drivers of the changes in net interest earnings and sources of funding.

Item 1403: Investments in Debt Securities

Proposed Item 1403 streamlines a number of the investment portfolio disclosures currently required by item 2 of Guide 3, so that the relevant disclosure item required would now just be the "weighted average yield of each category of debt securities not carried at fair value through earnings for which disclosure is required in the financial statements," presented for a specified range of maturities (*e.g.*, due one year or less, within five years, within five to ten years, and after ten years). This represents a change from item 2 of Guide 3—which applies to both debt and equity securities, does not specifically exclude debt securities carried at fair value through earnings, and are required based on a specified set of investment categories listed in Guide 3 (rather than categories required under GAAP or IFRS). The SEC believes that the weighted average

yield and maturity information under the Proposed Item 1403 are more meaningful since these are not applicable to equity securities, and that the covered debt securities under the proposal tend to be held longer by registrants and hence, would provide useful information to investors.

Proposed Item 1403 would *not* codify a number of the investment portfolio disclosures currently required by item 2 of Guide 3, such as book value information, maturity analysis of book value information, and disclosures related to investments exceeding 10% of stockholders' equity (*e.g.*, issuer name, aggregate book value and aggregate market value of issuer's securities). The SEC pointed out that these disclosures substantially overlap with GAAP and IFRS requirements. For instance, GAAP requires disclosure, by majority security type, of the amortized cost basis, aggregate fair value and contractual maturities of certain debt securities. In turn, IFRS requires disclosure of the fair value and carrying value of each class of a registrant's financial instruments. Both GAAP and IFRS also require disclosure of significant concentrations of credit risk.

Item 1404: Loan Portfolio

Proposed Item 1404 streamlines a number of the loan portfolio disclosures currently required by item 3 of Guide 3. The following disclosure sub-items are currently called for under item 3 of Guide 3: (a) types of loans (*e.g.*, domestic or foreign; commercial, real estate-construction, real estate-mortgage; governments and official institutions, banks and other financial institutions, other loans, etc.), (b) maturities and sensitivities of loans to changes in interest rates, (c) risk elements and (d) other interest bearing assets.

Proposed Item 1404 would *not* codify item 3(a) re loan category disclosures, item 3(c) re loan portfolio risk elements, and item 3(d) re other interest bearing assets, all required by Guide 3. The SEC reasoned that similar disclosures are already required under SEC rules, GAAP and IFRS.

Proposed Item 1404 would codify the maturity by loan category disclosure required by item 3(b) of Guide 3, but the loan categories would now be based on the loan categories required to be disclosed in the registrant's GAAP or IFRS financial statements, rather than the specified category list in item 3 of Guide 3. Also, the ability of registrants under Guide 3 to exclude certain loan categories (*e.g.*, real-estate mortgage, installment loans to individuals and lease financing) from the maturity and sensitivity to interest rate changes disclosure required by item 3(b) would be eliminated. The SEC stated there was no reason why such disclosure would be less relevant or less useful for such loan categories or would be more burdensome for registrants to produce.

Proposed Item 4 would also codify the requirement to present the total amount of loans due after one year that have (a) predetermined interest rates and (b) floating or adjustable interest rates, and will now specify that this disclosure should be segregated by loan categories disclosed in the registrant's GAAP or IFRS financial statements.

Item 1405: Allowance for Credit Losses

Proposed Item 1405 streamlines a number of the summary of loan loss experience disclosures currently required by item 4 of Guide 3, retains but updates the existing ratio of net charge-offs to average loans outstanding under Guide 3, and adds three additional credit ratios related to allowances for credit losses.

Proposed Item 1405 would *not* codify the required five-year analysis of loan loss experience which presents the beginning and ending balances of the allowance for loan losses, charge-offs, recoveries by loan category and additions charged to operations, under item 4 of Guide 3. The SEC explained that subsequent to Guide 3's last amendment in 1986, new disclosures related to credit losses of financial instruments have been required by GAAP and IFRS, which substantially overlap with these items.

Proposed Item 1405 would codify the existing credit ratio prescribed by Guide 3, namely, the ratio of net charge-offs to average loans outstanding. But rather than presenting this ratio on a consolidated basis as required by Guide 3, registrants would be required to provide more disaggregated data in connection with this ratio, based on loan categories disclosed in their GAAP or IFRS financial statements.

The SEC also proposes to add three new credit ratios related to allowances for credit losses under proposed Item 1405, namely, the ratio of: (1) allowance for credit losses to total loans outstanding at each period end, (2) nonaccrual loans to total loans outstanding at each period end, and (3) allowance for credit losses to nonaccrual loans at each period end. However, IFRS registrants need not provide the nonaccrual ratios in items (2) and (3) above since the concept of nonaccrual loans is not recognized under IFRS.

Registrants would be required to disclose each of the ratios, on a consolidated basis (disaggregated basis for the net charge-offs ratio), along with each component of the ratio's calculation, and a discussion of factors that drove material changes in the ratios or related components during the periods presented. As mentioned above, the ratios under Proposed Item 1405 are required for each of the *last five fiscal years* in initial registration statements by *new* bank and savings and loan registrants and in offering statements by such new issuers under Regulation A. For all other SEC filings, the ratios and related component disclosure used in the calculation would be included for the same periods that financial statements are required by SEC rules. The SEC reasoned that five years of credit ratio information in initial registration and initial Regulation A offering statements are appropriate given that investors would be seeing the loan portfolio and related credit history of the new registrants for the first time. In case the required information is unknown and not reasonably available, registrants may seek SEC relief under Securities Act Rule 409

and Exchange Act Rule 12b-21 as described above.

Item 1406: Deposits

Proposed Item 1406 would codify a majority of the deposit disclosures currently required by item 5 of Guide 3, along with some revisions.

Proposed Item 1406 would codify the requirement under item 5(a) of Guide 3 that calls for the presentation of the average amounts of, and the average rates paid for, specified deposit categories that exceed 10% of average total deposits. It would similarly allow registrants to use other deposit categories if it believes such categories would more appropriately describe the nature of its deposits. It would also codify item 5(c) of Guide 3, which states that, if material, registrants should disclose separately the aggregate amount of deposits by foreign depositors in domestic offices.

Proposed Item 1406(e) would require registrants to quantify the amount of uninsured deposits as of the end of each reported period. For registrants that are U.S. federally insured depository institutions, "uninsured deposits" mean individual deposits in U.S. offices of amounts exceeding the Federal Deposit Insurance Corporation (FDIC) insurance limit, and investment products such as mutual funds, annuities, or life insurance policies. In turn, foreign banking or savings and loan institutions must disclose the definition of uninsured deposits appropriate for their country of domicile.

Following changes to the FDIC limit since Guide 3's publication, proposed Item 1406 would also eliminate certain disclosures required by Guide 3 for amounts outstanding of "time certificates of deposits in amounts of \$100,000 or more" and "other time deposits of \$100,000 or more."

Proposed Item 1406(f) would also require separate presentation of (1) U.S. time deposits in amounts in excess of the FDIC insurance limit, and (2) time deposits that are otherwise uninsured (including for example, U.S. time deposits in uninsured

accounts, non-U.S. time deposits in uninsured accounts, or non-U.S. time deposits in excess of any country-specified insurance fund), by time remaining until maturity of (1) 3 months or less; (2) over 3 through 6 months; (3) over 6 through 12 months; and (4) over 12 months.

The SEC says that codifying these deposit disclosures would provide transparency with respect to a registrant's sources of funding and liquidity risk profile.

Elimination of Certain Guide 3 Disclosures regarding Return on Equity and Assets and Short-Term Borrowings

Return on Equity and Assets

The proposed rules would *not* codify item 6 of Guide 3, which calls for the the following ratios: return on assets, return on equity, dividend payout, and equity to assets ratios.

The SEC stated that these ratios, though useful to investors, are not unique to bank and savings and loan registrants, which are the subject of Subpart 1400. Moreover, these ratios may be considered key performance indicators for registrants in general, which, if material to investors and used by management, should be identified and discussed as key performance indicators in a company's MD&A. In any event, the SEC continues, the information to calculate these ratios could be derived from amounts reported on the income statement and the average balance sheet, which would be required under Proposed Item 1402 or are otherwise available through disclosures required by Article 3 of Regulation S-X.

Short-Term Borrowings

The proposed rules would *not* codify item 7 of Guide 3, except to the extent already provided in Proposed Item 1402 above with respect to the average balance and related average rate paid for each major category of interest-bearing liability disclosures.

Item 7 of Guide 3 calls for disclosure, by category of short-term borrowings, of period-end amounts outstanding, average amounts outstanding during the period, maximum month-end amounts outstanding, and the general terms of the borrowing, among others. The SEC explained that since Guide 3's last amendment, a number of disclosures have been added to GAAP and IFRS, or included in subsequent SEC rules, that now overlap with these Guide 3 items. For instance, Article 9 of Regulation S-X requires disclosure of certain specified short-term borrowing categories, including (1) federal funds purchased and securities sold under agreements to repurchase, (2) commercial paper, and (3) other short-term borrowings. GAAP requires certain financial services registrants to disclose significant categories of borrowings, as well as disclosures for repurchase agreements, securities lending transactions and repurchase-to-maturity transactions for all registrants where the disclosures are material. IFRS requires disclosure of the carrying amount and fair value of each class of financial liabilities. Moreover, the SEC continues, registrants typically discuss their sources of funding and outstanding borrowings in the liquidity section of their MD&A, and Item 303 of Regulation S-K would also require registrants to highlight important trends and uncertainties disclosure related to their liquidity.

Related Amendments

In light of the SEC's proposed rules above as codified by Subpart 1400, the SEC also proposed to make related changes to certain other SEC rules and form instructions.

Article 9 of Regulation S-X, which applies to the consolidated financial statements filed for BHCs and to financial statements of banks that are included in SEC filings, would now be amended to apply not only to BHCs and banks, but also to savings and loan associations, and savings and loan holding companies. This would align the scope of Article 9 of Regulation S-X with the

proposed scope of entities covered by Subpart 1400.

Item 903 of Article 9 of Regulation S-X, Item 404 of Regulation S-K, and certain instructions found in Form 20-F, would also be amended such that the references to Industry Guide 3 therein would now be changed to references to the proposed new Subpart 1400.

Practical Considerations

As of the date of this Legal Update, the proposed rules have not yet been published in the *Federal Register*, so it is not yet known when the comment period will close. There are also a number of other proposed amendments to Regulation S-K that have been recently put forward by the SEC, which however either still remain open for public comment or have not yet been finally adopted or declared effective by the SEC. For instance, the SEC's proposed amendments to modernize certain business, legal proceedings and risk factor disclosures that were released by the SEC on August 8, 2019 were only published in the Federal Register last August 23 and remain open for public comment until October 22 of this year.⁶ The proposed rules covered by the Release may not be finalized in time for the upcoming 2020 annual report season. Nonetheless, it is important for banks and savings and loan reporting companies to be aware of the Release and to consider how they would address the required Subpart 1400 disclosures if the proposed rules were adopted in time to impact their next annual report.

Overall, and based on the SEC's observations of existing relevant practice and its cost-benefit analysis included in the Release, existing bank and savings and loan registrants would likely see the proposed rules as a welcome development. That is primarily because Subpart 1400 generally reduces the required number of reporting periods and aligns them with the relevant annual periods required by SEC rules in preparing registrant financial statements. Moreover, the SEC has observed that while Guide 3 only applies by its

terms to BHCs, practice has evolved such that non-BHCs that undertake material lending and deposit activities such as savings and loan associations, do in fact typically collect, prepare and disclose Guide 3 items. The SEC also reiterated in many instances in the Release that the required Subpart 1400 disclosures would be generally available to the covered entities as they are either presented in their Call Reports or other filings with U.S. banking agencies or are required under GAAP or IFRS.

Nonetheless, there will be some adjustment period, and incremental work that registrants will need to undertake to address the additional required disclosures under Subpart 1400. These would include the presentation of the new, additional credit ratios required by proposed Item 1405 and of more disaggregated data, such as the new categories of interest-earning assets and interest-bearing liabilities under proposed Item 1402, the ratio of net charge-offs to average loans outstanding under proposed Item 1405, and the measurement of uninsured deposits and presentation of additional deposit items under proposed Item 1406.

Foreign registrants should recognize that the proposed rules would apply to them and that the proposed Subpart 1400 would eliminate the proviso found in Guide 3 which states that Guide 3 disclosures are applicable to them "*to the extent the requested information is available.*" While there are specific carve-outs in Subpart 1400 that would exempt IFRS registrants from certain new disclosure requirements that are inconsistent with IFRs (such as the nonaccrual ratios under proposed Item 1405), foreign banking registrants should continue to monitor comments received in this area and analyze the questions raised by the SEC in the Release. This is particularly important since the SEC itself has recognized that there are significant differences between U.S. GAAP and IFRS in some of the items called for by Guide 3, such as the measurement of credit losses and disclosures of financial instruments.

Last, other financial services registrants that are not bank and savings and loan registrants should also be aware of the Release, monitor comments received by the SEC and consider responding to some of the “scope”-related questions raised by the SEC for public comment. It is interesting to note that the SEC chose not to include other registrants, such as insurance companies, online marketplace lenders or financial technology companies, in the proposed scope of covered entities. However, the SEC is still continuing to solicit feedback as to: whether Guide 3 disclosures should be extended to other registrants engaged in the financial services industry regardless of whether the registrant is a BHC or a savings and loan registrant; and how it would define a “financial services registrant.” The SEC also stated they are encouraging interested parties, “including those outside of the banking industry, to provide feedback on the proposed disclosures as they relate to registrants outside of the proposed scope.”⁷

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Endnotes

¹ Release No. 33-10688 (Sept. 17, 2019) (the “Release”), available at: <http://bit.ly/2mC6NoD>.

² The existing Securities Act Industry Guide 3 and Securities Exchange Act Industry Guide 3 are available at: <http://bit.ly/2kT1C3f>.

³ Release No. 33-5735 (Aug. 31, 1976), 41 FR 39007.

⁴ Release No. 33-10321 (Mar. 1, 2017), available at: <http://bit.ly/2l6nV5w> (“March 2017 RFP”). The March 2017 RFP follows a concept release issued by the SEC in April 2016 that sought public comment on modernizing certain business and financial disclosure requirements in Regulation S-K, including

whether the Industry Guides should be updated or codified into Regulation S-K. See Release No. 33-10064 (Apr. 13, 2016), available at: <http://bit.ly/2m7QEqI>.

⁵ See *infra* “—Item 1405: Allowance for Credit Losses” for a discussion of the additional credit ratios.

⁶ For further information, see our Legal Update “SEC Proposes to Modernize Business, Legal Proceedings and Risk Factor Disclosures” dated August 14, 2019 available at: <http://bit.ly/2kVBoNA>.

⁷ See also questions 3 to 6 in the Release, *supra* note 1.