Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
919.781.4000
www.wyrick.com

SEC Proposes Update to Guide 3

October 3, 2019

Introduction

The Securities and Exchange Commission (the "Commission") originally released its *Industry Guide 3, Statistical Disclosure by Bank Holding Companies* ("Guide 3") in 1976, and it has not been substantively revised since 1986. In 2017, the Commission issued a request for comment on the disclosures required by Guide 3. On September 17 of this year, the Commission released a proposed rule that would update and codify certain elements of Guide 3 in the Commission's regulations.

Guide 3

Guide 3, in its current form and as it is proposed to be amended, applies to registered bank holding companies filing periodic reports under the Securities Exchange Act of 1934, as amended, and registration statements under the Securities Act of 1933, as amended, and also to banks filing periodic reports with the Accounting and Securities Disclosure Section of the Federal Deposit Insurance Corporation. The Commission is not proposing to expand the scope of Guide 3 to cover online marketplace lenders or fintech companies.

As most bank holding company registrants are already aware, the disclosures required by Guide 3 are not required to be presented in the notes to the financial statements, and therefore are not required to be audited or submitted in XBRL format. Rather, Guide 3 contains tabular disclosures that are required to be presented in conjunction with management's discussion and analysis of financial condition and results of operations ("MD&A"). It is therefore critical that Guide 3 be read holistically and in conjunction with the MD&A requirements of Item 303 of Commission Regulation S-K.[1]

In many cases, it is proposed that disclosure requirements be eliminated from Guide 3, though this is unlikely to result in any practical change to the disclosure requirements of reporting

Related Attorneys

Todd H. Eveson
teveson@wyrick.com

companies, because the requirements are contained in U.S. GAAP disclosure requirements and the Commission has taken the position that it would be duplicative to include them in Guide 3.

The Proposed Rule

Following is a summary of the more prominent changes to Guide 3 that are contained in the Commission's proposed rule. This summary is not exhaustive. Among other topics, it does not address reporting requirements for foreign registrants, Basel Pillar 3 requirements for standardized approach banking organizations with total consolidated assets of $50 billion or more, or disclosure requirements for advanced approaches banking organizations.[2]

Average Balance Sheets. Under new Item 1402, registrants would be required to break out certain asset and liability categories as separate line items in the average balance sheet tables. These categories include federal funds sold, federal funds purchased, securities repurchase agreements and commercial paper.

Rate/Volume Analysis. While no material changes are proposed for the rate/volume analysis table, changes in required reporting periods may result in minor changes to the data disclosed in this table under the new proposed rules.

Investment portfolio. New Item 1403, as proposed, would not include the following disclosures in Item II of existing Guide 3:

- book value information;
- the maturity analysis of book value information; and
- the disclosures related to investments exceeding 10% of stockholders' equity.

These disclosures have substantial overlap with U.S. GAAP requirements. Proposed Item 1403 would, however, codify disclosure requirements on weighted average yield for each range of maturities for securities in the portfolio, though it would apply only to debt securities that are held to maturity.

Credit Ratios. Under the proposed rules, Item 1405 of Guide 3 would require the following credit ratios, along with disclosure of each of the components used in their calculation:

- allowance for credit losses to total loans;
- nonaccrual loans to total loans;
- allowance for credit losses to nonaccrual loans; and
- net charge-offs to average loans.

The first three ratios would be disclosed on a consolidated basis, while the fourth ratio would be disclosed by loan category presented in the registrant's financial statements. In many cases, reporting companies may already be including similar asset quality ratios in their periodic reports and registration statements.

On the topic of asset quality, it should be noted that the Commission has not attempted to propose required disclosures related to the current expected credit losses ("CECL") credit loss standard in the proposed Guide 3 rule, opting instead to take a wait-and-see approach until after the effective date of the new CECL standards before assessing whether additional disclosure is warranted.

Sources and Nature of Funding. Item 1406 of the new rules would require additional disclosure of sources and nature of funding, specifically:

- the amount of U.S. time deposits that exceed the FDIC insurance limit and time deposits that are otherwise uninsured, segregated by maturity (instead of the amount of certain time deposits of $100,000 or more); and
- separate presentation of the total amount of uninsured deposits.

The proposed rules would also require disclosure of the average balance and related average rate paid for each major category of interest-bearing liability currently required to be disclosed, and (as noted above) disaggregation of certain categories of interest-bearing liabilities.

Conclusion and Parting Thoughts

The proposed rule on Guide 3 is subject to public comment for a period of 60 days following publication in the Federal Register. It is probably unlikely that a final rule will become effective in time to impact the disclosure required for Annual Reports on Form 10-K for the 2019 fiscal year. While the effective date and precise content of the final rule remain uncertain at this time, promulgation of a final rule sometime prior to December 31, 2020 seems likely. Once it becomes effective, reporting companies will not simply be able to update the prior year's tabular Guide 3 disclosure. In order to stay ahead of the curve, bank holding company registrants should plan on building out the new tables and reporting systems well in advance of the final rule's effective date.

The Commission took the opportunity, within the proposed rule release, to remind registrants that the general MD&A disclosure guidelines[3] for Item 303 of Regulation S-K continue to require all registrants to "identify and discuss key performance indicators when they are used to manage the business and would be material to investors," and to "continue to make disclosures otherwise eliminated from the specific prescriptions of the proposed new rule when such disclosures are necessary to an understanding of the bank or savings and loan registrant's financial condition and results of operations." As an example of how this guidance might play out in practice, return on average equity and return on average assets measures are not included in the proposed Guide 3 rules, but may well be deemed to be appropriate disclosure items for all companies, including banks and bank holding companies.

To the extent that you have questions about the proposed amendment and codification of certain elements of Guide 3 or other requirements that apply to publicly traded banks or bank holding companies under applicable banking and securities laws, please do not hesitate to contact Todd H. Eveson, Jonathan A. Greene, Stuart M. Rigot, Alexander M. Donaldson, Lorna A. Knick or your preferred contact within the Banking & Financial Institutions and Capital Markets practice groups at Wyrick Robbins.

---

[1] 17 CFR 229-303.

[2] Advanced approaches banking organizations are, generally speaking, those with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance sheet foreign exposure.

[3] *See* Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation, Release No. 33-8350 (Dec. 19, 2003) [68 FR 75056].