

# The SEC's Final Rule on Guide 3 Disclosures: Eight Things To Know

On September 11, 2020, the U.S. Securities and Exchange Commission ("SEC") issued a [final rule](#) amending its statistical disclosure requirements for bank holding companies, banks, savings and loan holding companies, and savings and loan associations ("banking registrants") in registration statements and other disclosure documents. The final rule replaces Guide 3, the SEC's industry guide for banking registrants, with regulations to be codified in a new subpart of Regulation S-K. The final rule removes requirements that are duplicative of other SEC and accounting rules, simplifies certain of the requirements that have not been removed, and introduces limited new disclosure requirements. The final rule takes effect on November 16, 2020, and compliance dates are discussed in #8 below.

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## The final rule is the first significant update to SEC statistical disclosure guidance for banking registrants in more than 30 years and comes now as part of an SEC regulation.

Guide 3 was first published in 1976 as non-binding SEC Staff policies and practices, and the last substantive revision of Guide 3 took place in 1986. Since that time, changes to SEC regulations and guidance, accounting principles generally accepted in the United States ("U.S. GAAP"), and International Financial Reporting Standards ("IFRS") have introduced requirements that overlap with the requirements of Guide 3. In light of these developments, as well as changes to the financial services industry since 1986, the SEC issued a request for comment on possible changes to Guide 3 in March 2017 and a proposed rule updating disclosure requirements for banking registrants in September 2019. The final rule adopts the 2019 proposed rule substantially as proposed. The outcome is that, consistent with the balance of the SEC's disclosure regime, the statistical disclosure requirements for banking registrants are now formally adopted, mandatory SEC regulations.

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## The final rule preserves the scope of covered banking registrants.

While Guide 3 nominally applies only to U.S. and foreign bank holding companies, the final rule applies to each category of banking registrant. The final rule nonetheless does not represent a new requirement for these entities, because existing SEC guidance and FDIC and OCC regulations have effectively already extended the scope of Guide 3 to the full set of banking registrants.

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## The final rule aligns required disclosures with existing SEC reporting periods.

Guide 3 requires five years of disclosure for certain loan data and, except for certain smaller registrants, three years of disclosure for all other information. The final rule reduces these requirements by tying the reporting periods for disclosures to the annual reporting period for the corresponding financial statement, which is generally two years for balance sheets and three years for income statements. The final rule also adopts the requirement that banking registrants must provide disclosure during an interim period if there is a material change in the information or trend evidenced thereby.

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### The final rule removes Guide 3 requirements that overlap with other disclosure requirements.

As a general matter, the final rule aligns more closely with financial statement requirements (whether U.S. GAAP or IFRS) and regulatory reporting requirements such that, for many banking registrants, a significant amount of the data required by the final rule will already be contained in the existing books and records. The final rule is therefore a helpful change that may reduce the sets of data that banking registrants must maintain. Specifically, the final rule removes the following disclosures that are required by Guide 3:

- Investments in debt securities (to be codified as Item 1403 in Regulation S-K).<sup>1</sup> The final rule removes the requirement to provide the book value of most categories of securities held for each of the last three years, the book value for each investment category according to maturity ranges, and certain disclosures related to investments exceeding 10% of stockholders' equity.
- Loan portfolio (Item 1404). The final rule removes the requirement to disclose loans by category of customer, risk elements associated with the loan portfolio, and the nature and amounts of interest-bearing assets that otherwise would need to be disclosed under Guide 3 if they were loans.
- Allowance for credit losses (Item 1405). The final rule removes the requirement to present loan losses experienced for each category of loan, including by analyzing charge-offs and recoveries.
- Return on equity and assets. The final rule entirely removes the requirement to disclose four specific ratios – (i) return on assets, (ii) return on equity, (iii) dividend payout ratio, and (iv) equity to assets ratio – for each reported period.
- Short-term borrowings. The final rule entirely removes this item, which contains the requirement to provide, for certain short-term borrowings, (i) outstanding amounts and weighted average interest rate, (ii) maximum amounts borrowed by category, and (iii) average amounts outstanding and approximate weighted average interest rate. As noted below, however, Item 1402 of the final rule does require additional disclosure for certain interest-bearing liabilities.

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### The final rule expands upon certain disclosure requirements.

The final rule requires the following additional disclosures by banking registrants:

- Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential (Item 1402). While largely codifying this Guide 3 item as currently formulated, the final rule adds the requirement to provide more granular data with respect to certain interest-earning assets and interest-bearing liabilities, if this information would be material to investors.
- Investments in debt securities (Item 1403). The final rule codifies a requirement to disclose weighted average yield for each maturity range (e.g., one year or less, one to five years, etc.), but only for debt securities that are not carried at fair value through earnings.
- Loan portfolio (Item 1404). The final rule expands the set of covered loan categories to those required by U.S. GAAP and IFRS, in addition to those required by Guide 3. It also requires disclosure with respect to additional maturity ranges.
- Allowance for credit losses (Item 1405). The final rule requires additional credit ratio information, specifically (i) allowance for credit losses to total loans, (ii) nonaccrual loans to total loans, (iii) allowance for credit losses to nonaccrual loans, and (iv) net charge-offs to average loans. Banking registrants must disclose the components underlying each calculation, and may disclose the first three ratios on a consolidated basis.
- Deposits (Item 1406). The final rule codifies existing Guide 3 requirements and introduces various disclosure requirements with respect to uninsured deposits.

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<sup>1</sup> Subsequent references to "Item" likewise indicate where the requirement will be codified in Regulation S-K when the final rule takes effect.

**6****The final rule preserves flexibility for banking registrants to provide required disclosures where they deem appropriate.**

Importantly, the final rule does not mandate that disclosures be included as notes to the financial statements. The disclosures therefore do not need to be audited or submitted in machine-readable (XBRL) format if they are provided in another section, such as within Management's Discussion & Analysis.

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**7****The final rule provides new flexibility for certain foreign banking registrants and effectively retains an accommodation present in Guide 3.**

Under the final rule, foreign private issuers applying IFRS are exempted from certain disclosure requirements that are not applicable under IFRS. In addition, although the final rule removes an accommodation in Guide 3 that permits foreign banking registrants to not comply with disclosure requirements that impose undue burden or expense, the SEC notes that existing SEC rules provide a functionally equivalent accommodation for all registrants.<sup>2</sup>

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**8****The final rule applies to fiscal years ending on or after December 15, 2021, but voluntary compliance in advance of this date is permitted.**

The final rule takes effect on November 16, 2020, with compliance required for the first fiscal year ending on or after December 15, 2021 (i.e., for the 2021 fiscal year for banking registrants with calendar fiscal years). Banking registrants filing an initial registration statement are not required to comply with the final rule until an initial registration statement is first filed containing financial statements for a period ending on or after December 15, 2021. Subsequent registration statements (e.g., shelf registration statements filed by banking registrants that are eligible to so file) must comply with the final rule from the compliance date by virtue of the obligation to incorporate the banking registrant's SEC periodic reports into the registration statement.

A banking registrant must continue to comply with Guide 3 until it has switched over to disclosure under the final rule. If opting into voluntary compliance before the mandatory compliance date, a banking registrant must apply the final rule in its entirety from the date of early compliance. Guide 3 will be rescinded effective January 1, 2023.

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<sup>2</sup> Rule 409 under the Securities Act of 1933 and Rule 12b-21 under the Securities Exchange Act of 1934 both state that information is required to be provided only insofar as it is known or reasonably available to the registrant. There is no requirement for a banking registrant to discuss proposed reliance on these rules with the SEC Staff. We note that these rules historically have been construed narrowly by the SEC Staff and by the U.S. securities bar.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Services and Capital Markets and Securities practices:

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