



## LEGAL ALERT

January 7, 2021

### SEC Modernizes Statistical Disclosures for Banking Registrants

#### Executive Summary

On September 11, 2020, the SEC adopted final rule amendments to the statistical disclosure required by registrants that are bank holding companies, banks, savings and loan holding companies, and savings and loan associations. The rule amendments became effective on November 16, 2020. The rule amendments:

- Replace Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*;
- Relocate the codified disclosure requirements to a new subpart 1400 of Regulation S-K; and
- Eliminate certain Guide 3 disclosures that overlap with existing SEC rules, GAAP or IFRS.

The Commission's rules require disclosure of:

- Distribution of assets, liabilities and stockholders' equity, the related interest income and expense, and interest rates and interest differential;
- Weighted average yield of investments in debt securities by maturity;
- Maturity analysis of the loan portfolio including the amounts that have predetermined interest rates and floating or adjustable interest rates;
- Certain credit ratios and the factors that explain material changes in the ratios, or the related components during the periods presented;
- The allowance for credit losses by loan category; and
- Bank deposits including average amounts and rate paid and amounts that are uninsured.

#### Compliance Date

Compliance with these amendments is required for the fiscal year ending on or after December 15, 2021. However, voluntary early compliance with the final rules is permitted, *provided that the final rules are applied in their entirety from the date of early compliance*. Guide 3 will be rescinded effective January 1, 2023.

#### Summary of Final Rules

##### *Reporting Period*

New subpart 1400 reduces the reporting periods required by Guide 3 and aligns them to the annual period for which SEC rules require a registrant to provide financial statements. Subpart 1400 defines the term "reported period" to mean (1) each annual period for which a registrant is required to provide financial statements pursuant to SEC rules and (2) any additional interim period if a material change has occurred to the information or the trends during the interim period.

##### ***Item 1402. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential***

Item 1402 codifies all of the average balance sheet, interest and yield/rate analysis and rate/volume analysis disclosure items currently in Item 1 of Guide 3, along with General Instruction 7 and Instruction 5 if Item 1 of Guide 3. The SEC also adopted requirements to disaggregate the categories of interest-earning assets and interest-bearing liabilities required to be disclosed.

### **Item 1403. Investments in Debt Securities**

Item 1403 of Regulation S-K codifies the requirement to disclose weighted average yield for each range of maturities by category of debt securities required to be disclosed in the registrant's GAAP or IFRS financial statements. The final rules only apply to debt securities that are not carried at fair value through earnings. The final rules do not codify the following disclosure items in Item II of Guide 3: (a) book value information; (b) the maturity analysis of book value information; and (c) the disclosures related to investments exceeding 10% of stockholders' equity, because these items substantially overlap with U.S. GAAP and IFRS disclosure requirements.

### **Item 1404. Loan Portfolio**

Item 1404 of Regulation S-K codifies the requirement to disclose the maturity by loan category disclosure currently called for by Item III.B of Guide 3, with the loan categories based on the categories required by GAAP or IFRS in the financial statements. The final rules also require additional maturity categories to provide investors with sufficient information on the potential interest rate risk associated with the loans in the portfolio. The final rules also codify the existing Guide 3 instruction stating the determination of maturities should be based on contractual terms, and also codifies the language regarding the "rollover policy" for these disclosures.

Item 1404 of Regulation S-K codifies the disclosure items in Item III.B of Guide 3 regarding the total amount of loans due after one year that have (a) predetermined interest rates or (b) floating or adjustable interest rates and specifies that this disclosure should also be disaggregated by the loan categories disclosed in the registrant's GAAP or IFRS financial statements.

The final rules do not codify the loan category disclosure items in Item III.A, the loan portfolio risk element disclosure items in Item III.C, or the other interest-bearing asset disclosure items in Item III.D of Guide 3.

### **Item 1405. Allowance For Credit Losses**

Item 1405 of Regulation S-K codifies the requirement to provide a tabular allocation of the allowance disclosures based on the loan categories presented in the GAAP financial statements for registrants applying or reconciling to GAAP. It does not apply to IFRS registrants because IFRS already requires this information at a similar level of disaggregation in the financial statements. The final rules also codify the requirement to disclose disaggregated net charge-off ratios.

For each reported period, registrants must disclose the following credit ratios, along with each component of the ratio's calculation: (1) allowance for credit losses to total loans outstanding at each period end; (2) nonaccrual loans to total loans outstanding at each period end; (3) allowance for credit losses to nonaccrual loans at each period end; and (4) net charge-offs during the period to average loans outstanding during the period. Further, registrants must provide a discussion of the factors that drove material changes in the ratios, or the related components, during the periods presented.

### **Item 1406. Deposits**

Item 1406 of Regulation S-K codifies the majority of the disclosure items in Item V of Guide 3, with some revisions.

For each reported period, registrants must present separately the average amount of, and the average rate paid on, each of the following deposit categories that are in excess of 10% of average total deposits: (1) noninterest bearing demand deposits; (2) interest-bearing demand deposits; (3) savings deposits; (4) time deposits; and (5) other deposits. If the registrant believes other categories more appropriately describe the nature of the deposits, those categories may be used.

If material, registrants should separately present domestic deposits and foreign deposits for all amounts reported under the above-described categories. If material, the registrant must disclose separately the aggregate amount of deposits by foreign depositors in domestic offices. As of the end of each reported period, registrants present separately the amount of uninsured deposits. As of the end of the latest reported period, the registrant must state the amount outstanding of the portion of U.S. time deposits, by account, that are in excess of the FDIC insurance limit or similar state deposit insurance regime and time deposits that are otherwise uninsured, 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.

### ***Certain Existing Guide 3 Disclosures Not Codified in Subpart 1400 of Regulation S-K***

The new rules do not codify four specific ratios for each reported period, including return on assets, return on equity, a dividend payout ratio, and an equity to assets ratio. Further, the new rules do not codify the short-term borrowing disclosure items in Item VII of Guide 3 in their current form.

Instead, the rules codify as part of proposed Item 1402 of Regulation S-K the average balance and related average rate paid for each major category of interest-bearing liability disclosures currently called for by Item I.B.1 and I.B.3 of Guide 3, and to further require disaggregation of the major categories of interest-bearing liabilities to include those referenced in Item VII of Guide 3 and Article 9 of Regulation S-X.

### **Need More Information?**

For additional information or assistance, please contact any of the attorneys listed below at 717.731.1700 or by Email at the addresses listed below.

Nicholas Bybel, Jr.	<a href="mailto:bybel@bybelrutledge.com">bybel@bybelrutledge.com</a>
G. Philip Rutledge	<a href="mailto:rutledge@bybelrutledge.com">rutledge@bybelrutledge.com</a>
Erik Gerhard	<a href="mailto:gerhard@bybelrutledge.com">gerhard@bybelrutledge.com</a>
Carter D. Frantz	<a href="mailto:frantz@bybelrutledge.com">frantz@bybelrutledge.com</a>



1017 Mumma Road, Suite 302  
Lemoyne, PA 17043  
Phone: 717-731.1700  
Fax: 717.731.8205  
Website: [www.bybelrutledge.com](http://www.bybelrutledge.com)  
*Trusted Advisors to Companies*  
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