SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, and 249

[Release No. 33-10835; 34-89835; File No. S7-02-17]

RIN 3235-AL79

Update of Statistical Disclosures for Bank and Savings and Loan Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rules to update our statistical disclosure requirements for banking registrants. These registrants currently provide many disclosures in response to the items set forth in Industry Guide 3 ("Guide 3"), *Statistical Disclosure by Bank Holding Companies,* which are not Commission rules. The amendments update and expand the disclosures that registrants are required to provide, codify certain Guide 3 disclosure items and eliminate other Guide 3 disclosure items that overlap with Commission rules, U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), or International Financial Reporting Standards ("IFRS"). In addition, we are relocating the codified disclosure requirements to a new subpart of Regulation S-K and rescinding Guide 3.

DATES: *Effective date***:** These final rules are effective [insert date 30 days after publication in Federal Register], except for the rescission to 17 CFR 229.801(c) and 229.802(c), which will be effective on January 1, 2023.

*Compliance date***:** See Section V for further information on transitioning to the final rules.

FOR FURTHER INFORMATION CONTACT: Stephanie Sullivan, Associate Chief Accountant, Division of Corporation Finance, at (202) 551-3400, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending 17 CFR 229.404 ("Item 404 of Regulation S-K") under the Securities Act of 1933 ("Securities Act")[1] and the Securities Exchange Act of 1934 ("Exchange Act");[2] 17 CFR 210.9-01 ("Rule 9-01 of Regulation S-X") and 17 CFR 210.9-03 ("Rule 9-03 of Regulation S-X") under the Securities Act and the Exchange Act; and 17 CFR 249.220f ("Form 20-F") under the Exchange Act. In addition, the Commission is adding a new subpart, 17 CFR 229.1400 ("Item 1400 of Regulation S-K"), which will include 17 CFR 229.1401 through 17 CFR 229.1406, and rescinding 17 CFR 229.801(c) and 229.802(c) under the Securities Act and Exchange Act.

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1 15 U.S.C. 77a *et seq*.

2 15 U.S.C. 78a *et seq*.

I. Introduction

On September 17, 2019, we proposed rules[3] to update the disclosure of information that banks, bank holding companies ("BHCs"), savings and loan associations, and savings and loan holding companies (together, "bank and savings and loan registrants") provide in response to the items set forth in Guide 3.[4] By its terms, Guide 3 applies to BHCs. However, the disclosures called for by Guide 3 are also provided by other registrants with material lending and deposit activities, including savings and loan holding companies.[5] Guide 3 calls for disclosure in seven areas: (1) distribution of assets, liabilities and stockholders' equity; interest rates and interest differential, (2) investment portfolios, (3) loan portfolios, (4) summary of loan loss experience, (5) deposits, (6) return on equity and assets, and (7) short-term borrowings. We proposed to include within the rules' scope the registrants that under existing practice provide the disclosures called for by Guide 3: banks, savings and loan associations, and savings and loan holding companies. We also proposed to update the disclosures that bank and savings and loan registrants must provide to investors,

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3 *Update of Statistical Disclosures for Bank and Savings and Loan Registrants*, Release No. 33-10688 (Sept. 17, 2019) [84 FR 52936 (Oct. 3, 2019)] ("Proposing Release").

4 *Guides for Statistical Disclosure by Bank Holding Companies*, Release No. 33-5735 (Aug. 31, 1976) [41 FR 39007] ("Guide 3 Release"). When it published the Guide 3 Release, the Commission stated that "[t]he Guides are not Commission rules nor do they bear the Commission's official approval; they represent policies and practices followed by the Commission's Division of Corporation Finance in administering the disclosure requirements of the federal securities laws." Guide 3 was originally published as Securities Act Guide 61 and Exchange Act Guide 3. In 1982, Securities Act Guide 61 and Exchange Act Guide 3 were redesignated as Securities Act Industry Guide 3 and Exchange Act Industry Guide 3. *See Rescission of Guides and Redesignation of Industry Guides,* Release No. 33-6384 (Mar. 16, 1982) [47 FR 11476].

5 Many registrants refer to Staff Accounting Bulletin Topic 11:K – Application of Article 9 and Guide 3 ("SAB 11:K"), which states that "[t]he SEC staff believes [Guide 3 information] would be material to a description of business of [non-BHC] registrants with material lending and deposit activities . . ." The Industry Guides and SAB 11:K are not rules, regulations or statements of the Commission. In light of the adoption of these amendments, the staff intends to rescind SAB 11:K.

including the elimination of disclosure items that overlap with Commission rules, U.S. GAAP, or IFRS.[6] Finally, we proposed to codify the updated disclosure requirements in a new Subpart 1400 of Regulation S-K and to rescind Guide 3.

We received a number of comment letters in response to the Proposing Release.[7] Many of the commenters generally supported the Commission's efforts to revise existing Guide 3 disclosure items.[8] Several of the commenters who supported the proposed rules also suggested certain revisions to the proposed disclosure requirements.[9] We have reviewed and considered all of the comments that we received on the proposed rules. After taking into consideration the public comments, we are adopting rules substantially as proposed.

II. New Subpart 1400 of Regulation S-K

A. Codification

We proposed to update and codify certain Guide 3 disclosure items in a new Subpart 1400 of Regulation S-K, consistent with the approach the Commission has taken when it modernized other Industry Guides. A number of commenters agreed with this proposal,[10]

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6 References to IFRS throughout are to IFRS as issued by the International Accounting Standards Board ("IASB").

7 *See, e.g.,* letters from Aimee Heilig (Nov. 9, 2019) ("A. Heilig"); American Bankers Association (Dec. 23, 2019) ("ABA"); Bank of America Corporation (Dec. 2, 2019) ("BAC"); Bank Policy Institute and Securities Industry and Financial Markets Association (Dec. 2, 2019) ("BPI/SIFMA"); Center for Audit Quality (Nov. 25, 2019) ("CAQ"); CFA Institute (Jan. 9, 2020) ("CFA"); Crowe LLP (Nov. 25, 2019) ("Crowe"); Deloitte & Touche LLP (Nov. 25, 2019) ("Deloitte"); Ernst & Young LLP (Nov. 27, 2019) ("EY"); KPMG LLP (Dec. 2, 2019) ("KPMG"); Maria Deering (Nov. 10, 2019) ("M. Deering"); PricewaterhouseCoopers LLP (Nov. 21, 2019) ("PwC"); Qing Burke, Assistant Professor of Accounting, et al., Miami University (Oct. 3, 2019) ("Prof. Burke"); XBRL US, Inc. (Dec. 2, 2019) ("XBRL"). The comments on the Proposing Release are available at: https://www.sec.gov/comments/s7-02-17/s70217.htm.

8 *See, e.g.,* letters from A. Heilig; ABA; BAC; BPI/SIFMA; CAQ; Crowe; Deloitte; EY; KPMG; and PwC.

9 *See, e.g.,* letters from ABA; BAC; BPI/SIFMA; CAQ; Crowe; Deloitte; EY; KPMG; and PwC.

10 *See, e.g.,* letters from BAC; BPI/SIFMA; CAQ; Crowe; Deloitte; EY; and KPMG.

and no commenters opposed codification. Accordingly, the final rules codify the updated disclosure requirements in a new Subpart 1400 of Regulation S-K.

B. Location of Disclosure Requirements and XBRL

Consistent with existing Guide 3, we did not propose to require the disclosures required by new Subpart 1400 of Regulation S-K to be presented in the notes to the financial statements. Therefore, if disclosures are provided outside the financial statements, the disclosures would not be required to be audited, nor would they be subject to the Commission's requirement to file financial statements in a machine-readable format using XBRL. The Proposing Release requested comment as to whether we should require the proposed disclosures to be included in the notes to the financial statements, as well as whether we should require the proposed disclosures to be provided in a structured format.[11]

A number of commenters observed that the existing Guide 3 disclosures are typically included within Management's Discussion & Analysis ("MD&A"), the Business section, or the notes to the financial statements.[12] Several of these commenters agreed that the proposed disclosure items should not be required to be presented in the notes to the financial statements, thus retaining the existing flexibility for registrants to determine where the disclosures are provided.[13] One commenter stated that allowing registrants to decide where

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11 Registrants subject to the financial disclosure requirements of Regulation S-K are either currently required or will be required to file their financial statements and filing cover page disclosures in the Inline XBRL format. *See* [17 CFR 229.601(b)(101)]; [17 CFR 229.601(b)(104)]. *See* also Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018), at 40851] ("Inline XBRL Adopting Release").

12 *See e.g.,* letters from BAC; BPI/SIFMA; CAQ; Crowe; and EY.

13 *See* letters from ABA; BAC; BPI/SIFMA; and EY.

best to present each disclosure will result in "superior disclosures," with related disclosures being grouped together.[14] A few commenters encouraged the Commission to consider input from investors and others as to whether the disclosures should be included in the audited financial statements before mandating such an approach.[15] Several commenters observed that if we were to require the disclosures in the notes to the financial statements, the note disclosures would be subject to audit procedures, and registrants would need to file them in an XBRL format.[16] Two of these commenters specifically noted that mandating footnote disclosure of specified data would likely increase audit costs.[17] However, these commenters also noted that footnote disclosures are subject to XBRL tagging and are more likely to be uniform in their content and location compared to information outside the financial statements, which would reduce search costs for users.

Several commenters stated that the proposed disclosures should not be subject to the Commission's requirements to file financial statements in a machine-readable format using XBRL.[18] Two of these commenters noted that requiring a structured format could be difficult for registrants or confusing for investors because registrants may provide the disclosures in MD&A, which would result in some MD&A disclosures being provided in an XBRL format while other MD&A disclosures would not be.[19] For example, one of these commenters stated

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14 *See* letter from BPI/SIFMA.

15 *See* letters from CAQ; EY and PWC.

16 *See* letters from CAQ; Deloitte; and EY.

17 *See* letters from CAQ and EY.

18 *See* letters from ABA; BAC; and BPI/SIFMA.

19 *See* letters from BAC and BPI/SIFMA.

that the cost of selectively providing these disclosures in XBRL format in MD&A could be significant to registrants.[20]

A few commenters supported the use of a machine-readable format for the disclosure items that would be codified in Subpart 1400 of Regulation S-K.[21] These commenters recommended requiring registrants to tag all Subpart 1400 data in XBRL, regardless of location, to ensure that a machine-readable format of these disclosures is consistently available across all registrants providing them. Furthermore, these commenters recommended that Inline XBRL be used for Subpart 1400 data because it is already supported in the marketplace for other required disclosures, specifically the financial statements and data on the cover page of certain filings.[22] These commenters stated that data provided in a machine-readable format improves the productivity of the data collection process, which reduces the cost of analysis and encourages more robust and in-depth analysis. These commenters also stated that the costs for XBRL preparation have declined and that they do not believe that the additional tags required for Subpart 1400 data would pose a significant burden.[23]

The final rules do not require bank and savings and loan registrants to include Item 1400 of Regulation S-K disclosures in a specified location. We agree with commenters that retaining flexibility as to where to provide the disclosures is important and will allow

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20 *See* letter from BPI/SIFMA.

21 *See* letters from CFA and XBRL.

22 *See* letters from CFA and XBRL.

23 *See* id (citing the pricing study for small reporting companies conducted by the AICPA and XBRL available at: *https://www.aicpa.org/InterestAreas/FRC/AccountingFinancialReporting/XBRL/DownloadableDocuments/XBRL%20Costs%20for%20Small%20Companies.pdf).*

registrants to use their judgment to determine where the disclosures can best be included to maximize the readability and usefulness of the disclosure. We are cognizant of the additional costs that would be incurred if the disclosures were required to be included in the notes to the financial statements, and we believe investors are accustomed to locating this information in different locations within SEC filings given the current flexibility as to where to include the disclosures.

As discussed above, we received mixed comments regarding the benefits, costs and practical challenges of requiring the proposed disclosures in a machine readable format. Therefore, like the proposed rules, the final rules do not require a registrant to present new Subpart 1400 of Regulation S-K in a machine-readable format unless the registrant elects to include the disclosures within the financial statements.

C. Scope

i. Proposal

We proposed that Subpart 1400 of Regulation S-K would apply to bank and savings and loan registrants. In the Proposing Release, we expressed the view that identifying and codifying the types of registrants within the scope of the proposed rules would clarify the existing practice of providing Guide 3 disclosures when registrants have material lending and deposit-taking activities.[24] We also indicated that the proposed scope would capture the majority of registrants that predominantly engage in the activities covered by existing Guide 3 and for which these activities are material.[25]

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24 *See* supra note 5.

25 *See* note 44 of the Proposing Release observing that there were only four registrants with loans and bank deposits on their balance sheets that would not have been within the scope of the proposed rules.

ii. Comments on Proposal

One commenter stated that the scope of the proposed rules would largely capture the majority of registrants who currently provide the disclosures called for by Guide 3.[26] Another commenter recommended expanding the scope of the proposed rules to cover any institution that performs the services under the scope of the proposed rules, even if it is not their primary role or sole function, provided it does not place undue burden on the institution.[27] One commenter encouraged the Commission to consider input from investors and others regarding the scope of registrant applicability.[28]

iii. Final Rules

After considering the comments, we are adopting rules related to the scope as proposed. Subpart 1400 of Regulation S-K applies to bank and savings and loan registrants. We received limited feedback suggesting that the scope should be expanded to include other registrants in the financial services industry, and we did not receive any feedback from investors or others explaining how the proposed disclosures would be valuable for assessing registrants outside of the proposed scope. We continue to believe there is not a large population of non-bank and savings and loan registrants that are providing Guide 3 disclosures today that will be outside the scope of Subpart 1400 of Regulation S-K. This is because those registrants likely engage in only one or a few of the activities addressed by

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However, as discussed in note 169, we estimate that the final rules will capture all of the registrants that we have identified in Section VII.B.ii as currently being covered by existing Guide 3. *See infra* note 169 for a description of methodology used to determine this set of registrants.

26 *See* letter from BAC.

27 *See* letter from M. Deering.

28 *See* letter from PwC.

Guide 3 (e.g., lending and deposit-taking). We also continue to believe that registrants should be able to ascertain easily whether they are a bank or savings and loan registrant for purposes of these rules, reducing any potential confusion regarding the applicability of the disclosure requirements to non-bank and savings and loan registrants.

D. Applicability to Domestic Registrants and Foreign Registrants

i. Proposal

Consistent with existing Guide 3, we proposed that the rules would apply to both domestic registrants, including Regulation A issuers, and foreign registrants, notwithstanding the 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, among other areas.[29] The proposed rules would explicitly exempt foreign private issuers applying IFRS ("IFRS registrants") from certain of the disclosure requirements that are not applicable under IFRS in order to address certain challenges foreign private issuers may face in providing the proposed disclosures.[30]

We also proposed not to codify the undue burden or expense accommodation for foreign registrants in Guide 3's General Instruction 6, which states that the disclosure items also apply to foreign registrants to the extent the information is available or can be compiled without unwarranted or undue burden and expense. In doing so, we noted that all registrants,

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29 *See* note 56 in the Proposing Release.

30 Foreign private issuers are a subset of foreign registrants, and include any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers or directors are citizens or residents of the United States; more than 50% of its assets are located in the United States; or its business is principally administered in the United States. *See* Rule 405 of Regulation C [17 CFR 230.405] and Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)].

not just foreign registrants, can avail themselves of relief from providing information that is "unknown and not reasonably available to the registrant" under 17 CFR 230.409 ("Securities Act Rule 409") and 17 CFR 240.12b-21 ("Exchange Act Rule 12b-21").[31]

ii. Comments on Proposal

One commenter stated that the proposed rules should apply to both domestic and foreign registrants, but asked the Commission to consider carve-outs and add other exceptions that align with the registrant's applicable accounting standards in their domicile countries.[32] This commenter did not provide any examples of exceptions in accounting standards that were not addressed in the proposed rules.

Another commenter stated that the proposed rules would modify certain of the requirements for foreign registrants filing Form 20-F using IFRS and supported those changes.[33] However, this commenter also noted that many foreign registrants currently report Guide 3 information on a modified basis as a result of prior consultations with Commission staff and asked the Commission to confirm in the adopting release that the proposed amendments are not intended to change existing interpretations of hardship or prior

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31 Securities Act Rule 409 and Exchange Act Rule 12b-21 state that information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted. The rule provides two additional conditions. The first is that the registrant must give such information on the subject that it possesses or can acquire without unreasonable effort or expense, together with the sources of that information. The second is that the registrant must include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

32 *See* letter from BAC.

33 *See* letter from BPI/SIFMA.

staff guidance to foreign registrants with respect to the disclosure requirements. This commenter also stated the Commission should codify the undue burden or expense accommodation in General Instruction 6.[34] Other commenters noted that they had seen limited use of the accommodation in Rules 409 and 12b-21 and therefore surmised that it may be rare for a registrant to be able to demonstrate that the required information is not reasonably available or that obtaining it may require unreasonable effort or expense.[35] These commenters asked the Commission to provide guidance on factors the registrant should consider when evaluating whether the requested information is unknown or that obtaining it would require unreasonable effort or expense. Several commenters stated it is unclear whether registrants would be required to discuss an accommodation or alternative presentation with the staff if they relied on the guidance in Rules 409 and 12b-21 and suggested clarifying any expectations.[36] One commenter recommended using language based on Item 3.A.1 of Form 20-F,[37] which they stated provides a similar hardship accommodation for foreign private issuers.[38]

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34 *See* id.

35 *See, e.g.,* letters from CAQ; Crowe; Deloitte; and KPMG.

36 *See* letters from CAQ; Crowe; and Deloitte.

37 Item 3.A.1 of Form 20-F states, in part, that selected financial data for either or both of the earliest two years of the five-year period may be omitted if the company represents that such information cannot be provided, or cannot be provided on a restated basis, without unreasonable effort or expense. The Commission recently proposed to delete this Item and the related instructions. *See* Management's Discussion & Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33-10750 (Jan. 30, 2020) (the "2020 MD&A Proposing Release").

38 *See* letter from CAQ.

iii. Final Rules

After considering the comments, we are adopting the rules as proposed. The rules apply to domestic registrants, including Regulation A issuers,[39] and to foreign registrants.[40] In considering whether to codify the undue burden or expense accommodation for foreign registrants in General Instruction 6, we note that no commenters provided examples of disclosures that would involve an undue hardship to provide. We also note that the staff has not received any requests for accommodation during the past ten years and that prior accommodation requests tended to request relief with respect to reporting periods or categories or classes of financial instruments that were different from those called for by Guide 3. We believe the final rules address these matters by linking the disclosure requirements to categories or classes of financial instruments disclosed in the registrant's U.S. GAAP or IFRS financial statements, aligning the reporting period requirements with those required to be presented in the financial statements, and explicitly exempting IFRS registrants from certain of the disclosure requirements. We also acknowledge commenter feedback that requested that we consider carve-outs and add other exceptions that align with the foreign registrants' applicable accounting standards in their domicile countries.

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39 Item 7(c) of Form 1-A [17 CFR 239.90] states that the disclosure guidelines in all Securities Act Industry Guides must be followed, and to the extent that the industry guides are codified into Regulation S-K, the Regulation S-K industry disclosure items must be followed. Therefore, issuers in Tier 1 and Tier 2 offerings are required to comply with the final rules in Regulation A offering statements. Additionally, issuers in Tier 2 offerings are required to file annual reports on Form 1-K [17 CFR 239.91]. Item 1 of Form 1-K requires the information required by Item 7 of Form 1-A to be included in annual reports.

40 We have added an Instruction to Item 4 of Form 20-F to state that if a registrant is a bank, BHC, savings and loan association, or savings and loan holding company, it must provide the information specified in Subpart 1400 of Regulation S-K.

However, a foreign registrant that presents financial statements prepared in accordance with its home-country accounting standards is required to reconcile the financial statements to U.S. GAAP and to provide all other information required by U.S. GAAP and Regulation S-X, unless the requirements specifically do not apply to the foreign registrant.[41] Therefore, the information required to be disclosed under Item 1400 of Regulation S-K would always be in accordance with U.S. GAAP or IFRS, which eliminates the need for an exception for the accounting standards in the registrant's domicile country for the purpose of these disclosures. For the reasons discussed above, we do not believe codifying the accommodation in General Instruction 6 is necessary.

Securities Act Rule 409 and Exchange Act Rule 12b-21, however, remain applicable to all registrants, including foreign registrants. Although several commenters requested guidance related to the application of Securities Act Rule 409 and Exchange Act Rule 12b-21 by foreign registrants, we do not believe it is necessary to do so because registrants have applied these rules for many years in a variety of other contexts without the need for additional guidance. Additionally, we believe the application of Rule 409 or Rule 12b-21 is dependent on the registrant's specific facts and circumstances. To the extent that a registrant believes Rule 409 or Rule 12b-21 applies to its facts and circumstances for any of the disclosures required by Item 1400 of Regulation S-K, there is no requirement to discuss such application or analysis in advance with the staff.

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[41] *See* Item 18 of Form 20-F.

E. Reporting Periods

i. Proposal

We proposed defining the term "reported period" for purposes of Subpart 1400 of Regulation S-K to mean each annual period for which Commission rules require a registrant to provide financial statements. Commission rules generally require two years of balance sheets and three years of income statements,[42] except that smaller reporting companies ("SRCs")[43] may present only two years of income statements,[44] and emerging growth companies ("EGCs")[45] may present only two years of financial statements in initial public offerings of common equity securities.[46] Lastly, Commission rules for Regulation A issuers generally require two years of annual financial statements for Tier 1 and Tier 2 offerings.[47]

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42 17 CFR 210.3 ("Article 3 of Regulation S-X").

43 An SRC is an issuer (other than an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not an SRC) that had a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter; or had annual revenues of less than $100 million during its most recently completed fiscal year, and no public float or a public float of less than $700 million as of the last business day of its most recently completed second fiscal quarter. *See* Rule 405 of Regulation C, Rule 12b-2 of the Exchange Act [17 CFR 240.12b-2], and Item 10(f) of Regulation S-K [17 CFR 229.10(f)].

44 17 CFR 210.8 ("Article 8 of Regulation S-X").

45 An EGC is an issuer with less than $1.07 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an EGC as of the first day of its most recently completed fiscal year it maintains that status until the earliest of: (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of $1.07 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous 3-year period, issued more than $1 billion in non-convertible debt; or (4) the date on which the issuer is deemed to be a "large accelerated filer" (as defined in Exchange Act Rule 12b-2). *See* Rule 405 of Regulation C under the Securities Act and Rule 12b-2 of the Exchange Act.

46 Securities Act § 7(a)(2)(A), 15 U.S.C. 77g(a)(2)(A).

47 Part F/S(b) of Form 1-A requires two years of annual financial statements for Tier 1 offerings, which need not be on an audited basis, and Part F/S(c)(ii) of Form 1-A requires two years of audited annual financial statements for Tier 2 offerings. Issuers in Tier 2 offerings are required to file an annual report on Form 1-K containing two years of audited financial statements.

We also proposed requiring interim period disclosures if there is a material change in the information or the trend evidenced thereby. Lastly, we proposed to require new bank and savings and loan registrants to disclose certain credit ratios for each of their last five fiscal years in initial registration statements and Regulation A offering statements.[48] Consistent with Securities Act Rule 409 and Exchange Act Rule 12b-21, the information would be required only insofar as it is known or reasonably available to the registrant.

ii. Comments on Proposal

One commenter agreed with each of the proposed changes to reporting periods.[49] A number of commenters agreed with the proposal to reduce the number of reporting periods and align them with the annual periods for which Commission rules require financial statements to be presented.[50] One of these commenters supported the proposal to modify the current interim period instruction to clarify that the threshold to include an additional interim period is based on whether there is a material change in the information or the trend evidenced thereby, stating that this is consistent with other Commission guidance and FASB guidance.[51] However, another commenter stated that the Commission should align the threshold for interim reporting to the threshold in Rule 10-01(a)(5) of Regulation S-X,[52]

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48 See discussion of credit ratios disclosure in Section II.I.iv of the Proposing Release.

49 *See* letter from M. Deering.

50 *See* letters from ABA; BAC; BPI/SIFMA; and EY.

51 *See* letter from BPI/SIFMA.

52 *See* 17 CFR 210.10-01(a)(5).

which only requires disclosure of information to the extent sufficient to keep the interim disclosures from being misleading.[53]

A few commenters were supportive of the proposed credit ratio disclosures for each of the last five fiscal years in initial registration statements and initial Regulation A offering statements.[54] One of these commenters cited the lack of publicly available prior period information for these reporting periods as reason for its support.[55] Another commenter stated it was supportive only if the information is known or reasonably available to the registrant.[56] This commenter indicated that the use of Rules 409 and 12b-21 is very limited, and observed that registrants generally have omitted information that could not be produced without unreasonable effort or expense only when the exception is codified in the specific disclosure requirement (e.g., Item 3 of Form 20-F[57] as it relates to Selected Financial Data for the earliest two years).

Several other commenters encouraged the Commission to consider requiring the credit ratio disclosure for only the number of years presented in the financial statements in the initial registration statement.[58] One of these commenters questioned whether the five-year requirement was consistent with disclosure effectiveness and investor protection.[59] All of these commenters requested that the Commission, at a minimum, align the reporting

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53 *See* letter from BAC.

54 *See* letters from BAC and EY.

55 *See* letter from BAC.

56 *See* letter from EY.

57 *See supra* note 37.

58 *See* letters from CAQ; Crowe; and Deloitte.

59 *See* letter from Crowe.

periods to the financial statement periods for EGCs in order for the requirement to be consistent with the underlying principles and objectives of the Jumpstart Our Business Startups Act[60] ("JOBS Act").[61] Two of these commenters also recommended that the Commission consider this revised approach for Regulation A issuers that would otherwise qualify as EGCs.[62]

iii. Final Rules

After considering the comments, we are adopting the rules as proposed for the annual and interim reporting period definitions. We continue to believe it is appropriate to align the required reporting periods with the relevant annual periods for which Commission rules require a registrant to provide financial statements because the Subpart 1400 of Regulation S-K disclosures are integrally related to the financial statements. There have been changes in technology since Guide 3 was originally issued, particularly the availability of past financial statements and other disclosure made in filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). As such, the historical information provided pursuant to Guide 3 that is not required by Subpart 1400 of Regulation S-K will generally be accessible through the registrant's prior filings on EDGAR. Furthermore, the elimination of repetitive disclosures, reduction in costs and burdens to registrants, and availability of technology reflected in the final rules is in line with the 2015 Fixing America's Surface Transportation Act ("FAST Act") mandate[63] and the related Commission

60 Pub. L. No. 112-106, Sec. 102, 126 Stat. 309 (2012).

61 *See* letters from CAQ; Crowe; and Deloitte.

62 *See* letters from CAQ and Crowe.

63 Pub. L. No. 114-94, Sec. 72003, 129 Stat. 1312 (2015).

rulemaking.[64] Finally, we do not believe it is necessary to align the threshold for interim reporting with the threshold in Rule 10-01(a)(5) of Regulation S-X. Investors and bank and savings and loan registrants are familiar with the interim period threshold we are codifying, and we believe that threshold strikes the appropriate balance for when additional information would be material to an investment decision.

After considering commenter feedback, we are not adopting the proposed rules that would have required certain credit ratio disclosures for each of the registrant's last five fiscal years in initial registration statements and in initial Regulation A offering statements of bank and savings and loan registrants. Instead, the final rules limit the required credit ratio disclosures to the periods for which financial statements are required, consistent with the requirements for periodic reports and other registration statements. As commenters indicated, the JOBS Act provided scaled disclosure requirements for EGCs, including reducing the maximum number of years for which financial statements are required from three to two. As raised by a commenter, the proposed five-year requirement is inconsistent with the staff practice to accept only two years of summary financial data[65] in an EGC's initial registration statement instead of the five years required in non-EGCs' registration statements.[66] We agree that EGCs and Regulation A issuers should be able to align the credit ratio reporting periods with the periods for which they provide financial statements, similar

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64 *FAST Act Modernization and Simplification of Regulation S-K.* Release No. 33-10618 (Mar. 20, 2019) [84 FR 12674].

65 Item 301 of Regulation S-K [17 CFR 229.301]. The Commission recently proposed to eliminate Item 301 of Regulation S-K. *See* 2020 MD&A Proposing Release at *supra note* 37.

66 *See* the JOBS Act Frequently Asked Questions document issued by the Division of Corporation Finance addressing generally applicable questions on Title 1 of the JOBS Act available at: https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.

to other financial reporting requirements. Additionally, after consideration of commenter feedback and additional staff analysis as to the frequency of initial registration statements filed by EGCs and Regulation A bank and savings and loan registrants relative to all initial registration statements filed by bank and savings and loan registrants, we do not believe it is necessary to require a different reporting requirement for the limited non-EGC bank and savings and loan registrants filing initial registration statements. There was only one initial registration statement in the last two years that was filed by a non-EGC bank and savings and loan registrant.[67] Therefore, all registrants and Regulation A issuers will be required to provide the ratios for the same periods for which they provide financial statements. After further consideration and analysis, we believe this approach is appropriate because it is unclear how useful the limited credit ratio information would be without the additional context of other financial statement information for those additional periods. Additionally, we note that our existing rules already require a discussion of known trends,[68] and the

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67 Based on staff analysis, the total number of bank and savings and loan registrants' initial registration statements that went effective from May 1, 2018 to May 1, 2020 was 32. Based on XBRL data, 31 were EGCs. No bank and savings and loan registrants' offering statements were qualified during this period.

68 Item 303 of Regulation S-K [17 CFR 229.303] requires a registrant to discuss its financial condition, changes in financial condition, and results of operations. Instruction 3 to paragraph 303(a) states that the discussion shall focus on the material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. The instruction further states that this would include descriptions and amounts of matters that: (A) would have an impact on future operations and have not had an impact in the past, and (B) have had an impact on reported operations and are not expected to have an impact on future operations.

Similarly, for foreign private issuers, Item 5.D. of Form 20-F requires a foreign private issuer to discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues income from continuing operations, profitability, liquidity, or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

Commission has issued guidance emphasizing the requirement to provide trend disclosure in MD&A.[69] Therefore to the extent that additional historical information is necessary to discuss those trends, such as information outside the financial statement periods included in the filing, registrants will continue to be required to provide that information.

F. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rate and Interest Differential (Average Balance, Interest and Yield/Rate Analysis and Rate/Volume Analysis)

i. Proposal

We proposed to codify in proposed Item 1402 of Regulation S-K all of the average balance sheet, interest and yield/rate analysis, and rate/volume analysis disclosure items currently in Item I of Guide 3. We also proposed to further disaggregate the categories of interest-earning assets and interest-bearing liabilities required to be disclosed. Specifically, we proposed to require registrants to separate (1) federal funds sold[70] from securities purchased with agreements to resell and (2) federal funds purchased from securities sold under agreements to repurchase[71] and to disaggregate commercial paper.[72] Finally, we

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69 *See, e.g.,* Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33-6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)] and 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 (Dec. 29, 2003)] (the "2003 MD&A Interpretive Release").

70 Federal funds sold are reserves of a banking institution that are lent to other institutions overnight.

71 ASC 860-10 defines a repurchase agreement as an arrangement under which a transferor (repo party) transfers a security to a transferee (repo counterparty or reverse party) in exchange for cash and concurrently agrees to reacquire the security at a future date for an amount equal to the cash exchanged plus a stipulated interest factor.

72 Commercial paper consists of short-term promissory notes issued primarily by corporations. Maturities of commercial paper range up to 270 days but average about 30 days.

proposed to codify the instructions related to foreign activities contained in General Instruction 7[73] and Instruction 5 of Item I[74] of Guide 3.

ii. Comments on Proposal

One commenter supported the proposal to codify the average balance and rate section of Guide 3, stating that the disclosures are unique to Guide 3 and that users of its financial statements find the information useful.[75] In contrast, another commenter stated that the additional disaggregation that would be required by the proposal appears to remove any element of professional judgment based on quantitative or qualitative materiality assessments, and therefore may result in disaggregation that will be of little value to users.[76] A different commenter stated that the required disaggregation is more granular than current practice and financial statement requirements.[77] This commenter noted that, for example, federal funds sold and securities purchased with agreements to resell are typically aggregated on a single line item on the balance sheet. This commenter also stated that separating these items and requiring them to be disclosed on an average balance basis may not be relevant or may be confusing to investors. Several commenters recommended either retaining Guide 3's

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73 General Instruction 7 of Guide 3 clarifies that foreign data need not be presented if the registrant is not required to make separate disclosures concerning its foreign activities pursuant to the test set forth in Rule 9-05 of Regulation S-X [17 CFR 210.9-05]. Rule 9-05 requires disclosure when foreign activities, which include loans and other revenue producing assets, exceed 10% of (1) assets, (2) revenue, (3) income (loss) before income tax expense, or (4) net income (loss).

74 Instruction 5 to Item I of Guide 3 states that if disclosure regarding foreign activities is required pursuant to General Instruction 7 of Guide 3, the information required by paragraphs A, B and C of Item I should be further segregated between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to Item I.A, as well as disclosure of the percentage of total assets and total liabilities attributable to foreign activities.

75 *See* letter from BAC.

76 *See* letter from BPI/SIFMA.

77 *See* letter from ABA.

existing language of "should include," or revising the language in proposed Item 1402 to state "must include, if material" when referring to the disaggregation requirement, in order to give registrants the flexibility to present this information in a way that they believe is most relevant to users.[78]

iii. Final Rules

After considering the comments, we are adopting the rules substantially as proposed. Item 1402 of Regulation S-K codifies all of the average balance sheet, interest and yield/rate analysis and rate/volume analysis disclosure items currently in Item I of Guide 3, along with General Instruction 7 and Instruction 5 of Item 1 of Guide 3. We also are adopting the requirement to disaggregate the categories of interest-earning assets and interest-bearing liabilities required to be disclosed, as proposed.

In a change from the proposal, as suggested by commenters, Item 1402(a) of Regulation S-K states that the categories enumerated in Item 1402(a) "must be included, if material," rather than the proposed language, which stated that disclosure "must include, at a minimum." While we continue to believe this disclosure can elicit useful information about the drivers of the changes in net interest earnings across registrants in a simple and comparable format, we acknowledge commenters' concerns about requiring disaggregated information when it is not material to investors. We believe the adopted approach strikes an appropriate balance between providing sufficient information to help investors understand material changes in interest income and interest expense from period to period, and permitting the omission of immaterial information that could make it more difficult to

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78 *See* letters from ABA and BPI/SIFMA.

understand the material drivers of business results. Furthermore, we believe that in practice registrants have applied a materiality qualifier in providing the existing disclosures called for by Guide 3, and therefore we believe that this change aligns the language in the final rules with how registrants apply the existing descriptions of "major categories of interest-earning assets and interest-bearing liabilities." In addition, while we acknowledge one commenter's statement that federal funds sold and securities purchased with agreements to resell are typically aggregated in a single line item on the balance sheet, the type of collateral could vary under the two categories, which could drive differences in weighted average interest rates and related changes in the rate/volume analysis. As a result, we continue to believe it is appropriate to list these two categories separately but note that the final rules only require disaggregation if material.

G. Investment Portfolio

i. Proposal

We proposed to codify in Item 1403 of Regulation S-K the requirement to disclose weighted average yield for each range of maturities by category of debt securities and

proposed to use the categories required by U.S. GAAP[79] or IFRS,[80] rather than those categories currently called for by Item II.B of Guide 3. In the Proposing Release, we stated our belief that the proposed weighted average yield disclosure would provide investors with information to evaluate more effectively the performance of the portfolio and that revising the categories of debt securities to conform to the categories presented in accordance with U.S. GAAP or IFRS would enhance the consistency and usefulness of the registrant's investment portfolio disclosures.[81] As proposed, this disclosure requirement would apply only to debt securities that are not carried at fair value through earnings. Due to the substantial overlap with U.S. GAAP and IFRS disclosure requirements, we proposed not to codify in Item 1403 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.

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79 ASC 320-10 addresses the accounting and reporting for debt securities. ASC 320-10-50-1B states that major security types should be based on the nature and risks of the security and that an entity should consider all of the following when considering whether disclosure for a particular security type is necessary: (a) shared activity or business sector, (b) vintage, (c) geographic concentration, (d) credit quality, and (e) economic characteristics. Financial institutions, including banks, savings and loan associations, savings banks, credit unions, finance companies and insurance entities are required to include the nine securities categories listed in ASC 942-320-50-2, although additional types may also be necessary: (a) equity securities, segregated by either (1) industry type or (2) registrant size, or (3) investment objective; (b) debt securities issued by U.S. Treasury and other U.S. government corporations and agencies; (c) debt securities issued by states of the United States and political subdivisions of the states; (d) debt securities issued by foreign governments; (e) corporate debt securities; (f) residential mortgage-backed securities; (g) commercial mortgage-backed securities; (h) collateralized debt obligations; and (i) other debt obligations.

80 IFRS 7 addresses disclosures for financial instruments. IFRS 7.6 requires disclosures by classes of financial instruments, which are defined as "…classes that are appropriate to the nature of the information disclosed and that take into account the characteristics of those financial instruments."

81 *See* Section II.F.iii of the Proposing Release.

ii. Comments on Proposal

One commenter supported the proposal to eliminate the investment portfolio disclosure items that overlap with U.S. GAAP.[82] This commenter also supported moving away from the bright-line thresholds in Guide 3.[83] Furthermore, this commenter also supported the proposal to require disclosure of weighted average yields of each category of debt securities not carried at fair value through earnings by specified range of maturities because it would provide decision-useful information to investors. While not commenting specifically on the investment portfolio disclosure requirements, many commenters generally supported the elimination of disclosure items that overlap with those in Commission rules, U.S. GAAP, or IFRS.[84]

iii. Final Rules

After considering the comments, we are adopting Item 1403 of Regulation S-K as proposed. 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 U.S. GAAP or IFRS financial statements. As proposed, 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

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82 *See* letter from BAC.

83 For example, the disclosures related to investments exceeding 10% of stockholders' equity. See further discussion in Section II.F of the Proposing Release.

84 *See, e.g.,* letters from ABA; BPI/SIFMA; CAQ; Crowe; Deloitte; EY; KPMG; M. Deering; and PwC.

related to investments exceeding 10% of stockholders' equity, because these items substantially overlap with U.S. GAAP and IFRS disclosure requirements.

H. Loan Portfolio

i. Proposal

We proposed to codify in Item 1404 of Regulation S-K the requirement to disclose the maturity by loan category and the total amount of loans due after one year that have (a) predetermined interest rates and (b) floating or adjustable interest rates disclosure currently called for by Item III.B, by the loan categories disclosed in the registrant's U.S. GAAP[85] or IFRS[86] financial statements. Currently Item III.B of Guide 3 provides for the exclusion of certain loan categories (real estate-mortgage, installment loans to individuals and lease financing) from these disclosures and the aggregation of other loan categories (foreign loans to governments and official institutions, banks and other financial institutions, commercial and industrial and other loans). The proposed rules would not provide for any exclusion of loan categories, or permit the aggregation of loan categories for purposes of this disclosure. Additionally, we proposed to codify the existing Guide 3 instruction stating that the determination of maturities should be based on contractual terms. We proposed to clarify the "rollover policy" for these disclosures by stating that, to the extent non-contractual rollovers or extensions are included for purposes of measuring the allowance for credit losses under

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85 ASC 310-10-45-2 and ASC 310-10-50-3 require that major categories of loans or trade receivables be presented separately either in the balance sheet or in the notes to the financial statements.

86 *See supra* note 80.

U.S. GAAP or IFRS, such non-contractual rollovers or extensions should be included for purposes of the maturities classification and the policy should be briefly disclosed.

We proposed not to codify the following Guide 3 disclosure items because they call for disclosures that are reasonably similar to disclosures already required by Commission rules, U.S. GAAP, or IFRS:[87]

- the loan category disclosures called for by Item III.A of Guide 3;
- the loan portfolio risk elements disclosure called for by Item III.C, which among other disclosures, included disclosure of loan concentrations exceeding 10% of loans that are not otherwise disclosed in the loan category disclosure in Item III.A and disclosure of cross border outstandings to borrowers in each foreign country where such outstandings exceed 1% of total assets; and
- the other interest bearing assets disclosure called for by Item III.D.[88]

ii. Comments on Proposal

One commenter supported aligning the requirements with the loan categories under existing U.S. GAAP and IFRS requirements but asked the Commission to allow registrants to exclude any loan categories from the maturity and sensitivity to interest rate changes disclosure that are not material to the registrant.[89] This commenter stated that, similar to disclosure requirements for U.S. GAAP, registrants should have the ability to aggregate certain loan categories for purposes of the disclosure on the basis of relevance, materiality,

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87 *See* Section II.G of the Proposing Release.

88 We also proposed to delete the loan presentation disclosure required under 17 CFR 210.9-03(7)(a)-(c) ("Rule 9-03(7)(a)–(c) of Regulation S-X"). *See* Section IV below.

89 *See* letter from BAC.

and other considerations. This commenter also supported moving away from the bright-line thresholds in Guide 3 and instead relying on existing U.S. GAAP and IFRS requirements that call for the disclosure of significant concentrations of credit risk. Finally, this commenter stated that the use of the "significant" threshold in U.S. GAAP and IFRS would not result in the loss of material information.

Another commenter recommended the Commission continue to allow registrants to exclude or aggregate certain loan categories if they determine an alternative presentation is more appropriate.[90] This commenter stated that mirroring the loan categories and classes presented in the financial statements, without the flexibility to exclude certain loan categories, would not result in more meaningful disclosures. For example, this commenter stated it is likely that large portfolios of consumer loans, such as credit cards, would be classified in the "within 1 year" category, whereas residential real estate loans would generally be in the "over 10 year" category.

iii. Final Rules

After considering the comments, we are adopting final rules substantially as proposed. Consistent with the proposal, Item 1404(a) 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 U.S. GAAP[91] or IFRS[92] in the financial statements, but in response to comments received, the final rules also require additional maturity categories to provide investors with sufficient information on

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90 *See* letter from BPI/SIFMA.

91 *See supra* note 85.

92 *See supra* note 80.

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, as proposed, regarding the "rollover policy" for these disclosures.

Item 1404(b) 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 U.S. GAAP or IFRS financial statements.

While we acknowledge commenter feedback suggesting that the final rules should allow registrants to exclude certain loan categories from the Item 1404 of Regulation S-K disclosure, we do not believe any exceptions are necessary as the disclosure is driven by the loan categories required by U.S. GAAP or IFRS. U.S. GAAP[93] considers materiality, so such immaterial loan categories generally would not be presented in the financial statements, and therefore would not be required by these disclosure requirements. The staff has observed that registrants typically aggregate immaterial loan categories into an "other" loan category, or will combine these immaterial loan categories with the most comparable material loan category. We would not expect this "other" loan category to be disaggregated further for purposes of this disclosure. Rather, this "other" loan category would be disclosed as a single additional category, consistent with the presentation in the U.S. GAAP or IFRS financial statements. We continue to believe conforming the loan categories required in this disclosure

[93] *See supra* note 85.

to those required by U.S. GAAP or IFRS promotes consistency of loan portfolio disclosures throughout a registrant's filing, and elicits trend information about interest income and potential interest rate risk.

In response to commenter feedback about large portfolios being concentrated in a single maturity category, the final rules require additional maturity categories. Specifically, we have separated the proposed "after five years" maturity category into two categories: (1) after five years through 15 years, and (2) after 15 years. We believe these additional maturity categories will elicit more decision-relevant information for investors by capturing the maturity periods of commonly offered residential mortgage loan products, such as 15-year and 30-year residential mortgages. For example, we expect that under the final rules, residential mortgage loans would no longer be classified in a single maturity category, as noted by a commenter, thus providing investors additional information about the risk profile of those loans. Furthermore, for as long as the loans remain outstanding, the loans would move through the maturity categories until they are paid off or sold, such that over time, even 30-year residential mortgage loans would migrate into different maturity categories.

Consistent with the proposal, the final rules do not codify the loan category disclosure items in Item III.A of Guide 3, the loan portfolio risk element disclosure items in Item III.C, or the other interest bearing asset disclosure items in Item III.D. The rules codify the Guide 3 loan disclosure items that we believe elicit information material to an investment decision and do not overlap with other existing disclosure requirements or principles. The final rules will thereby elicit disclosure that assists investors in evaluating the registrant's loan portfolio

while also limiting the burdens on registrants to prepare such disclosures as registrants should be able to derive this information from their existing books and records.

I. Allowance for Credit Losses

i. Proposal

We proposed to require in Item 1405 of Regulation S-K the disclosure of the ratio of net charge-offs during the period to average loans outstanding based on the loan categories required to be disclosed in the registrant's U.S. GAAP or IFRS financial statements, instead of on a consolidated basis as called for by Guide 3. We also proposed to require registrants to provide the tabular allocation of the allowance disclosure called for by Item IV.B of Guide 3, except that the allocation would be based on the loan categories presented in the U.S. GAAP financial statements, instead of the loan categories specified in Item IV.B of Guide 3, which we believe is not a substantive change from existing practice given the existing instruction[94] in Item IV of Guide 3 which permits other loan categories to be used if considered a more appropriate presentation.[95] We did not propose to codify the rollforward of the allowance for loan loss disclosures called for by Item IV.A of Guide 3, given the overlap of this requirement with U.S. GAAP and IFRS.

The proposed rules did not require any incremental disclosures related to the New Credit Loss Standard or IFRS 9 because, as explained in the Proposing Release, we first wanted to assess the disclosures provided under the new U.S. GAAP and IFRS standards and

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94 *See* Instruction 3 to Item IV of Guide 3.

95 As explained in the Proposing Release, we did not propose to apply this requirement to IFRS registrants because IFRS 7.35H already requires this information at a similar level of disaggregation in the financial statements. See Section II.H.iii of the Proposing Release.

evaluate whether additional information is necessary.[96] However, the Proposing Release contained a number of requests for comments seeking feedback on the types of disclosures that may be material upon the adoption of the New Credit Loss Standard.

ii. Comments on Proposal

Several commenters supported eliminating the allowance for credit losses disclosure items, such as the five-year analysis of loan loss experience called for by Item IV.A of Guide 3, that are duplicative of U.S. GAAP or IFRS.[97] One commenter was supportive of the proposed allocation of the allowance for credit losses disclosure requirement.[98] Another commenter stated that the tabular allocation of the allowance for credit losses would not be burdensome to prepare and that it provides a convenient location for such information to be

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96 *See* Section II.H of the Proposing Release. Accounting Standards Update ("ASU") 2016-13- *Financial Instruments – Credit Losses (Topic 326)* ("New Credit Loss Standard") replaces the current U.S. GAAP incurred loss methodology with a methodology that reflects expected credit losses over the entire contractual terms of the financial instruments. Absent an election to suspend adoption under Section 4014 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), as discussed further below, the New Credit Loss Standard became effective for public business entities that meet the definition of an SEC filer for their fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). However, SEC filers that are eligible to be SRCs, as defined by the SEC, and entities that are not SEC filers, are provided a delayed effective date of three years. Thus, SRCs, certain EGCs, and non-SEC filers are able to elect to defer adopting the New Credit Loss Standard until their fiscal year beginning after December 15, 2022.

The CARES Act provides an insured depository institution, a bank holding company, or any affiliate thereof with the option to temporarily suspend application of the New Credit Loss Standard until the earlier of the date on which the national emergency concerning COVID-19 terminates or December 31, 2020.

IFRS 9 – *Financial Instruments* was effective January 1, 2018 for calendar year companies and requires a 12-month expected credit loss measurement unless there has been a significant increase in credit risk, in which case it is a lifetime expected credit loss measurement.

97 *See* letters from ABA and BAC.

98 *See* letter from A. Heilig.

obtained by investors.[99] However, this commenter and another commenter indicated that the disclosures should be at the same level as the allowance disclosures under U.S. GAAP, which is at the portfolio segment level, and that further disaggregation is not warranted.[100] One of these commenters stated that there will be significant operational difficulties in allocating the allowance in ways that would not conform to U.S. GAAP reporting.[101] The other commenter recommended retaining the instruction to Item III.A of Guide 3, which provides latitude to registrants to use loan categories outside of those identified in Guide 3 "if considered a more appropriate presentation."[102]

One commenter asserted that the proposed requirement to disclose disaggregated net charge-offs to average loans ratios by loan category may not provide meaningful information to the extent the disaggregated ratios are not significant drivers of business results.[103] Another commenter stated that the charge-off ratios will have little, if any, relation to credit loss provisions or the allowance for credit losses upon the adoption of the New Credit Loss Standard, especially for loans with longer terms, such as many consumer loan products, and therefore appears not to support the requirement to provide this ratio.[104] This commenter further stated that charge-off ratios on these product lines might confuse investors and others who are trying to assess credit performance, as allowances will be recorded at origination or

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99 *See* letter from ABA.

100 *See* letters from ABA and BPI/SIFMA.

101 *See* letter from ABA.

102 *See* letter from BPI/SIFMA.

103 *See* letter from BPI/SIFMA.

104 *See* letter from ABA.

commitment and can significantly change based on economic forecasts. One commenter stated that the charge-off ratios should not be more disaggregated than at the portfolio segment level, which is the level U.S. GAAP requires for allowance disclosures.[105] Several commenters stated there may be operational challenges or systems limitations associated with calculating the ratio of net charge-offs to average loans on a disaggregated basis versus on a consolidated basis as provided today.[106] These commenters highlighted the estimated increase in burden hours as well as professional costs related to these disclosure requirements from the Paperwork Reduction Act analysis in the Proposing Release and recommended the Commission consider feedback from investors and others to determine whether the benefits justify these costs.[107]

In response to request for comments on disclosure requirements related to the New Credit Loss Standard or IFRS 9, no commenters indicated that we should require disclosures incremental to the New Credit Loss Standard or IFRS 9 at this time. A few commenters stated that it was premature to determine which incremental disclosures may be useful to investors given that the standard-setting processes for the New Credit Loss Standard and IFRS 9 were only recently completed and have resulted in major changes to previous accounting standards.[108] These commenters recommended that the Commission provide registrants the opportunity to determine the most appropriate way to communicate to their

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105 *See* letter from ABA.

106 *See* letters from CAQ (stating that the ratio would not be computable from disclosures in the financial statements) and Crowe.

107 *See* Table 12: *Estimated Change in Internal Burden Hours and Costs for Outside Professionals from the Aggregated Portions of the Proposed Rules* in Section VII of the Proposing Release.

108 *See* letters from ABA and KPMG.

investors about the new standard, including how best to explain period-to-period changes in expected credit losses, consideration of loan mix and volume, credit performance related to expectations, changes in key inputs and assumptions, or other factors over the next few years before proposing any additional disclosure requirements.

One of these commenters cautioned that, while the inputs and assumptions made to the New Credit Loss Standard models will be critical to credit loss estimates and thus will be important to investment decisions, and disclosure of such inputs initially appears helpful to investors, the complexity of credit loss modeling (for example, non-linear relationships of changes in certain economic conditions to loss given default) will likely frustrate many investors who wish to use inputs in their own modeling.[109] This commenter stated that any future required disclosure related to the New Credit Loss Standard methodology should not be required in a formulaic manner or template. This commenter also noted that due to the broad range of credit loss modeling methods that will be performed by banks, it expects there to be a wide diversity in how qualitative adjustments are defined and applied in the credit loss modeling, not only between registrants, but also between periods within a registrant.

iii. Final Rules

After considering the comments, we are adopting the rules as proposed. Item 1405(c) of Regulation S-K codifies the requirement to provide a tabular allocation of the allowance disclosures based on the loan categories presented in the U.S. GAAP financial statements for registrants applying or reconciling to U.S. GAAP. Item 1405(c) of Regulation S-K does not

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109 *See* letter from ABA.

apply to IFRS registrants because IFRS already requires this information at a similar level of disaggregation in the financial statements.[110] While one commenter recommended retaining the instruction to Item III.A of Guide 3, which provides latitude to registrants to use loan categories outside of those identified in Guide 3, we do not believe this is necessary as we have tied the loan categories for this disclosure to the loan categories presented in the U.S. GAAP financial statements. We continue to believe the tabular allocation required by this Item will provide for easier analysis by investors when reviewing these disclosures. The final rules also codify the requirement to disclose disaggregated net charge-off ratios. We continue to believe that, in many circumstances, disclosure of disaggregated net charge-off ratios may provide material information to investors in terms of transparency and comparability. For example, the staff has observed that credit cards and other unsecured loans often have higher net charge-off ratios relative to secured loans, such as residential mortgage loans or commercial loans. Therefore, to the extent a bank and savings and loan registrant has a material loan category with higher net charge-offs relative to other loan categories in its loan portfolio, a single disclosure of the consolidated net charge-off ratio may not reveal trends present in the loan portfolio because the portfolio performance can be skewed by a specific loan category or by the number and type of loan products. Furthermore, disaggregated net charge-off ratio disclosures can facilitate comparison of loan performance by specific loan category among banks of varying sizes and operations.

While one commenter noted that the meaningfulness of the disaggregation of the net charge-off ratio may be contingent on whether the ratios are significant drivers of business

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110 IFRS 7.35H.

results, and another stated that the charge-off ratio will have little, if any, relation to the provisions or the allowance for credit losses upon the adoption of the New Credit Loss Standard, we believe disaggregated net charge-off ratios generally are key performance measures for bank and savings and loan registrants. This is evident from the disclosure that bank and savings and loan registrants provide in SEC filings, including earnings releases, which often includes information about charge-offs by loan category, and in some cases, the net charge-off ratio at the loan category level. The staff has observed that some bank and savings and loan registrants have continued to provide this information in their quarterly reports after their recent adoption of the New Credit Loss Standard. Additionally, the staff has observed that some bank and savings and loan registrants have disclosed expectations of future charge-off amounts as part of their disclosure of projections or earnings guidance for the forecasted period upon their adoption of the New Credit Loss Standard. We also note that the Federal Deposit Insurance Corporation ("FDIC") publishes a quarterly banking profile ("FDIC Quarterly") that provides a comprehensive summary of the financial results for all FDIC-insured institutions.[111] Both prior to, and after, the adoption of the New Credit Loss Standard, the FDIC Quarterly reports, among other things, the net charge-off amounts and the net charge-off ratio on an industry-wide basis, including the charge-off ratio at the loan category level. We therefore continue to believe this information may be material for investors to understand a registrant's financial results. Furthermore, we did not receive any comments from registrants indicating that the disaggregated net charge-off ratios would be costly or burdensome to provide. We acknowledge that adoption of the New Credit Loss

[111] Federal Deposit Insurance Corporation, *Quarterly Banking Profile* (Second Quarter 2020), *available at https://www.fdic.gov/bank/analytical/quarterly/2020-vol14-3/fdic-v14n3-2q2020.pdf*.

Standard affects the relationship between the net charge-off ratio to the provision for loan losses and the allowance for credit losses, but we continue to believe this information is used by investors, as evidenced by the fact that the information is still disclosed by a number of registrants. Additionally, despite the change in the allowance for credit loss methodology upon the adoption of the New Credit Loss Standard, we note that both components of the disaggregated net charge-off ratios (net charge-offs during the period and average loans outstanding during the period), and therefore the ratio itself, are generally not materially affected by the New Credit Loss Standard. The New Credit Loss Standard did not directly change the applicable U.S. GAAP guidance for charge-offs and total loans. Therefore, we believe that changes in these ratios over time, including prior to and after adoption of the New Credit Loss Standard, may provide material trend information to investors about how the portfolio is performing.

Consistent with the proposal, and the suggestions of several commenters, the final rules do not codify the disclosure items in Item IV of Guide 3 that overlap with U.S. GAAP and IFRS and do not require any disclosures related to the New Credit Loss Standard or IFRS 9.

iv. Proposal - New Credit Ratios Disclosure

Guide 3 currently calls for the disclosure of one credit ratio, net charge-offs during the period to average loans outstanding, as outlined in Item IV.A of Guide 3. As discussed in Section II.I.i above, we proposed to codify the requirement to disclose this ratio by the loan categories disclosed in the U.S. GAAP or IFRS financial statements. In addition, we also proposed to require in Item 1405(a) of Regulation S-K disclosure of the following new credit ratios on a consolidated basis, along with each of the components used in their calculation:

(1) Allowance for Credit Losses[112] to Total Loans; (2) Nonaccrual Loans to Total Loans; and (3) Allowance for Credit Losses[113] to Nonaccrual Loans. The proposed rules would also require a discussion of the factors that drove material changes in the ratios, or related components, during the periods presented. As discussed in Section II.E.iii above, the credit ratios would be required for each annual period for which Commission rules require financial statements, and any additional interim period if there was a material change in the information or the trends evidenced thereby. The proposed rules would not require disclosure of the ratio of nonaccrual loans to total loans or the allowance for credit losses to nonaccrual loans for IFRS registrants, as there is no concept of nonaccrual loans in IFRS.

v. Comments on Proposal

We received limited feedback on our proposal to require credit ratios disclosure. The primary feedback we received was that these credit ratios may no longer be as relevant to investors upon the adoption of the New Credit Loss Standard.[114]

One commenter stated that each of the ratios, excluding the net charge-off to average loans ratio, is readily calculable from U.S. GAAP disclosures already provided in the

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112 Allowance for Credit Losses refers to the allowance for loan losses recorded on the registrant's loan portfolio calculated in accordance with U.S. GAAP or IFRS. To the extent that net investments in leases by a lessor are included in the total loans denominator, the allowance for credit losses also includes the related allowance for credit losses for the net investment in leases. The allowance for credit losses excludes any allowance for credit losses recorded related to the securities portfolio or unfunded commitments, which are not considered as part of the total loan portfolio in the denominator of this ratio.

113 To the extent that net investments in leases by a lessor are included in the nonaccrual loans denominator, the allowance for credit losses also includes the related allowance for credit losses for the net investment in leases. The allowance for credit losses excludes any allowance for credit losses recorded related to the securities portfolio or unfunded commitments, which are not considered within nonaccrual loans in the denominator of this ratio.

114 *See* letter from ABA.

financial statements and encouraged the Commission to consider feedback from users to determine whether separate disclosure of the amounts is necessary.[115] Another commenter stated that many analysts and investors already calculate and monitor these ratios and that disclosing them would not be substantially burdensome to banks.[116] However, this commenter recommended not codifying the requirement to disclose the ratios due to the potential changes resulting from the adoption of the New Credit Loss Standard.[117] This commenter noted that under the incurred loss accounting methodology, increases in nonaccrual loans will typically coincide with higher allowance levels and higher credit loss provisions, but this relationship is significantly diminished under the New Credit Loss Standard as credit performance should effectively be anticipated at origination.[118] This commenter further cautioned that, due to the significant changes in the measurement basis of the allowance for credit losses from the New Credit Loss Standard, the ratio disclosures may be confusing to analysts, not only in comparing the ratios based on the incurred loss methodology prior to the adoption of the New Credit Loss Standard, but also in comparing registrants that are adopting the New Credit Loss Standard in 2020 to those that will adopt in 2023.[119]

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115 *See* letter from CAQ.

116 *See* letter from ABA.

117 The New Credit Loss Standard replaces the current incurred loss methodology with a methodology that reflects expected credit losses over the entire contractual term of the financial instruments. *See* ASC Topic 326.

118 This comment relates only to the allowance for credit losses to nonaccrual loans and not the other three credit ratios proposed.

119 *See supra* note 96.

One commenter noted the proposed credit ratios are not required by U.S. GAAP and IFRS.[120] This commenter recommended that we not require disclosures beyond those required by U.S. GAAP or IFRS until such time as it is clear that incremental disclosures are necessary given that the standard-setting processes for the New Credit Loss Standard and IFRS 9 were only recently completed by the FASB and IASB and have resulted in major changes to the previous accounting standards.

A few commenters stated the Commission should not require a discussion of the factors that drove material changes in credit ratios.[121] One of these commenters said the proposed disclosure requirement overlaps with Item 303(a) of Regulation S-K's requirement to provide such other information that the registrant believes is necessary to an understanding of its financial condition, changes in financial condition, and results of operations.[122] Another commenter cited the complexity of what can drive the New Credit Loss Standard estimate.[123] For example, this commenter observed that nonaccrual loans and charge-offs result from credit deterioration events, which are not necessarily direct drivers of the New Credit Loss Standard allowance estimate, and therefore would not necessarily drive changes in ratios to the extent they have been accurately forecast. As a result, according to this commenter, a discussion of these metrics may be confusing to analysts or investors. Finally, although the proposed rules would not have required disclosure of the ratio of nonaccrual

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120 *See* letter from KPMG.

121 *See e.g.,* letters from ABA and BPI/SIFMA.

122 *See* letter from BPI/SIFMA.

123 *See* letter from ABA.

loans to total loans or the allowance for credit losses to nonaccrual loans for IFRS registrants as there is no concept of nonaccrual loans in IFRS, this commenter asked the Commission to explore how "Stage 3"[124] assets under IFRS 9 may be considered comparable to nonaccrual loans within U.S. GAAP.

vi. Final Rules

Having considered the comments, we are adopting the rules as proposed. We continue to believe that investors evaluate these ratios when making investment decisions and that disclosure of the components used in the calculation of the ratios, along with the proposed narrative disclosure of the factors driving material changes in the ratio or related components, would further aid investors' understanding of the reasons for the material changes in ratios. The staff has observed that these credit ratios are already commonly disclosed by most bank and savings and loan registrants with material lending portfolios, and the staff has observed that many bank and savings and loan registrants have continued to provide these credit ratios in their earnings releases and periodic reports after the adoption of the New Credit Loss Standard. Therefore, we believe these registrants may continue to find that this information may be material for an investor's understanding of their financial results.[125]

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124 The term "Stage 3 assets" is not formally defined in IFRS 9 but has become part of the common description of the IFRS 9 methodology. In this context, Stage 3 assets are considered to be non-performing or credit-impaired loans.

125 *See supra* note 96. As illustrated by Table 2 in Section VII, around 44% of bank and savings and loan registrants are either SRCs or EGCs and are not required to adopt the New Credit Loss Standard until fiscal years beginning after December 15, 2022. Therefore, over the next few years, there will continue to be a significant population of bank and savings and loan registrants that apply the incurred loss approach and not the New Credit Loss Standard.

We also note that the FDIC Quarterly,[126] both prior to and after the adoption of the New Credit Loss Standard, continues to collect and report industry-wide data on the components, or similar components, of these ratios, and the related ratios or similar ratios. For example, the FDIC Quarterly reports industry-wide data on the allowance for credit losses and total loans, and the related allowance for credit losses to total loans outstanding ratio. Additionally, the FDIC Quarterly reports noncurrent loans and leases,[127] the noncurrent loans to total loans ratio, and the ratio of the allowance for credit losses to noncurrent loans and leases, which is similar to, but not the same as, the two nonaccrual[128] ratios (nonaccrual loans to total loans outstanding at each period end and allowance for credit losses to nonaccrual loans at each period end) that we are codifying in Item 1405 of Regulation S-K. Furthermore, while we acknowledge commenter feedback that the ratios are affected by the adoption of the New Credit Loss Standard, the staff has observed that registrants that continue to disclose them have provided disclosure to explain the impact of the change in the accounting for credit losses on the ratios from period to period. Additionally, despite the change in the allowance for credit loss methodology upon the adoption of the New Credit Loss Standard, we note that both components of the nonaccrual loans to total loans ratio (nonaccrual loans and total loans outstanding at period end), and therefore the ratio itself, are generally not materially affected by the New Credit Loss Standard. The New Credit Loss Standard did not directly change the applicable U.S. GAAP guidance for nonaccrual loans or

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126 *See* supra note 111.

127 The FDIC Quarterly defines noncurrent loans as loans that are past due 90 days or more or that are in nonaccrual status.

128 Nonaccrual loans represent loans that are in nonaccrual status. *See* ASC 326-20-50-16.

total loans outstanding. Therefore, we believe that changes in this ratio over time, including prior to and after adoption of the New Credit Loss Standard, can provide material trend information to investors about how the portfolio is performing.

We recognize that, under the incurred loss approach, changes in the allowance for credit losses are based on changes in losses incurred to date, whereas under the New Credit Loss Standard, changes in the allowance for credit losses are based on changes in estimates of expected credit losses over the life of the loan portfolio. As such, the allowance for credit losses to total loans ratio and allowance for credit losses to nonaccrual loans ratio convey different information to investors under the two approaches. We believe that, despite this important difference in the information contained in these ratios under alternative credit loss approaches, the disclosure of these two ratios along with the discussion of the factors that led to material changes in these ratios or their components could be material to investors, regardless of the approach used (incurred loss approach or New Credit Loss Standard). This is because investors are familiar with these ratios and are accustomed to analyzing them, and while the drivers of the changes in the ratios are affected by the New Credit Loss Standard, we believe the ratios continue to convey information that is relevant to evaluating a registrant's credit risk and lending policy decisions. For example, the ratio of nonaccrual loans to total loans conveys information about the registrant's lending decisions and how their portfolio has performed since origination. Similarly, the allowance for credit losses to total loans provides information about the level of credit losses estimated relative to the loan portfolio, with a higher ratio reflecting a higher estimate of credit losses in the portfolio. Over time, investors can evaluate changes in trends in these ratios, which may give material

quantitative information about how changes in the registrant's underwriting policies or servicing decisions can affect the credit quality of their portfolio, or how the loan portfolio is affected by macroeconomic and other factors. Furthermore, having this information disclosed on a ratio basis allows for comparability of credit trends across bank and savings and loan registrants of all sizes. For example, the ratios take into account the size of the loan portfolio, and thus a small community bank's ratio could be compared against a large bank's ratio, in addition to peers of a similar size. This could allow investors to assess credit trends more broadly. While we acknowledge commenter feedback that with the adoption of the New Credit Loss Standard, credit deterioration events, including those that result in nonaccrual loans and charge-offs, may not necessarily directly drive changes in the ratios, another commenter stated that analysts and investors calculate and monitor these ratios.[129] The final rules ensure these ratios are calculated on a consistent and comparable basis among all bank and savings and loan registrants. The benefit to investors of having these consistent and comparable ratio disclosures along with their components and discussion of the material changes to the ratios already disclosed in the filing, without investors having to perform their own calculations and analysis, justifies the limited burden on a registrant to disclose this information.

We acknowledge commenter feedback that the ratio disclosures may be confusing to analysts, not only in comparing a registrant's prior ratios based on the incurred loss methodology to the ratios after the adoption of the New Credit Loss Standard, but also in comparing registrants that are adopting the New Credit Loss Standard in 2020 to those that

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[129] *See* letter from ABA.

will adopt in 2023. However, it is common for any new accounting standard to have different adoption dates based on the size or type of entity, so this is not unique to the New Credit Loss Standard, and we believe investors and analysts are accustomed to making adjustments to their analysis as a result. Furthermore, since the final rules require registrants to disclose material changes in the credit ratios, we believe investors should have the information available to understand the factors driving the changes in the ratios, which may include how they are affected upon the adoption of the New Credit Loss Standard, or material changes in the credit quality of the loan portfolio.

We also acknowledge that a few commenters stated that we should not require a discussion of the factors that drove material changes in the credit ratios. However, we continue to believe that this narrative disclosure is necessary for an investor's understanding of the material changes in the ratios and credit quality of the loan portfolio, and we believe management has the information readily available to them to discuss the drivers of the material changes in the ratios because the individual components are already required by U.S. GAAP and IFRS. We believe this information could be provided within MD&A if management believes it is the most appropriate place to discuss the information. To the extent that there were no material changes in the credit ratios or the related components, there would be no requirement to provide this narrative discussion.

We also note that U.S. GAAP, both before and after the adoption of the New Credit Loss Standard, requires disclosure of many of the components of these ratios, such as nonaccrual loans, and the rollforward of the allowance for credit losses by portfolio segment, which includes separate line items showing charge-offs against the allowance and recoveries

of amounts previously charged off (that together can be used to calculate net charge-offs, which is the numerator to the disaggregated net charge-off ratio). We believe this indicates that these components, and potentially the related ratios, continue to have relevance upon the adoption of the New Credit Loss Standard.[130] As noted by a commenter, we believe this will limit the burden a registrant will have in providing these disclosures.[131]

J. Deposits

i. Proposal

We proposed to codify in Item 1406 of Regulation S-K the majority of the deposit disclosure items in Item V of Guide 3, with some revisions. Specifically, we proposed to replace the "amount of outstanding domestic time certificates of deposit and other time deposits equal to or in excess of $100,000" by maturity disclosure called for by Item V.D with a requirement to disclose the "amount of time deposits in uninsured accounts" by maturity. We proposed to 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: (A) three months or less; (B) over three through six months; (C) over six through 12 months; and (D) over 12 months. The proposed rules did

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130 ASC 310-10-50-7 (and ASC 326-20-50-16 upon the adoption of the New Credit Loss Standard) requires disclosure of nonaccrual loans by class of financing receivable. ASC 310-10-50-11B (and ASC 326-20-50-13 upon the adoption of the New Credit Loss Standard) requires disclosure of a rollforward of the allowance for credit losses, by portfolio segment, showing the beginning and ending balance, the current period provision, writeoffs charged against the allowance, and recoveries of amounts previously charged off.

131 *See* letter from ABA.

not have a defined dollar threshold for the disclosure, which we indicated would make the rules easier to apply when there is a change in the FDIC insurance limit.[132]

Additionally, we proposed that bank and savings and loan registrants quantify the amount of uninsured deposits as of the end of each reported period. The proposed rules defined uninsured deposits for bank and savings and loan registrants that are U.S. federally insured deposit institutions as individual deposits in U.S. offices of amounts exceeding the FDIC insurance limit and investment products such as mutual funds, annuities, or life insurance policies. The proposed rules would require foreign bank and savings and loan registrants to disclose how they define uninsured deposits for purposes of this disclosure given that the definition varies from jurisdiction to jurisdiction.

ii. Comments on Proposal

One commenter stated that the proposed deposit disclosures would provide transparency with respect to a registrant's source of funding and liquidity risk profile.[133] Another commenter was supportive of the proposed disclosures related to bank deposits, including the amounts that are uninsured.[134]

One commenter stated the Commission should emphasize that the rules would change existing practice regarding the disclosure of uninsured deposits as existing Guide 3 disclosures do not call for the separate disclosure of the uninsured portion of time deposits or any other deposits.[135] Several commenters highlighted that there may be potential complexity

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132 *See* Section II.I.iii of the Proposing Release.

133 *See* letter from BAC.

134 *See* letter from A. Heilig.

135 *See* letter from CAQ.

and costs or operational challenges involved in calculating a precise amount for uninsured deposits.[136] Most of these commenters attributed these challenges to complex deposit insurance rules[137] that apply across accounts.[138] A few of these commenters also noted that depository institutions report estimated uninsured amounts in their call reports.[139]

Several commenters mentioned the FDIC's new rule, *Recordkeeping for Timely Deposit Insurance Determination (FDIC Part 370 Rule)*,[140] which became effective on April 1, 2020, and is limited to insured depository institutions with greater than two million deposit accounts.[141] This rule requires such institutions to configure information systems to accurately calculate insured and uninsured deposits. One of these commenters encouraged the Commission to consider further outreach to the FDIC and registrants about the potential difficulty and cost of preparing the proposed disclosure and whether the disclosure objective could be achieved in another way.[142] This commenter also asked the Commission to consider whether certain information provided in investor and analyst presentations with respect to registrant's sources of deposits might achieve the same objective as the proposed rule.

One commenter suggested that given the complexities and the FDIC's new standard of accuracy in reporting that will differ between the largest and other depository institutions,

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136 *See e.g.,* letters from ABA; BPI/SIFMA; CAQ; Crowe; EY; and PwC.

137 12 CFR 1821(a).

138 *See* letters from ABA; BPI/SIFMA; CAQ; Crowe; and PwC.

139 *See* letters from CAQ; Crowe; and PwC.

140 12 CFR Part 370. *See also* Federal Deposit Insurance Corporation, *12 CFR Part 370 Recordkeeping for Timely Deposit Insurance Determination* (Jul. 17, 2020), *available at* (https://www.fdic.gov/regulations/resources/recordkeeping/.

141 *See e.g.*, letters from ABA; BPI/SIFMA; and PwC.

142 *See* letter from Crowe.

the Commission should consider aligning its proposed disclosures with other regulatory requirements and standards, or otherwise simplify the proposed disclosure requirements.[143] Another commenter stated that providing total uninsured deposits would not address the purpose of the proposed disclosure to allow users of the financial statements to assess a firm's potential liquidity risk, because disclosing only total uninsured deposits provides an incomplete picture of a firm's liquidity risk and, on its own, could result in an investor making an uninformed judgment.[144] This commenter further stated that the disclosure of uninsured deposits would present significant challenges and costs for registrants, and the lack of comparability among different deposit schemes may prove misleading to investors and therefore should not be adopted.

Several commenters stated that, if adopted, the Commission should clarify the definition of uninsured deposits.[145] For example:

- A few commenters sought clarity on whether the amount to be disclosed would be the portion of the individual deposit account balance that is greater than the FDIC limit, or the total deposit account balance.[146]
- One commenter sought clarification on whether the amount of uninsured deposits should be measured for each individual account or should include all accounts or persons to whom the insurance limits apply.[147]

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143 *See* letter from PwC.

144 *See* letter from BPI/SIFMA.

145 *See e.g.*, letters from ABA; BPI/SIFMA; CAQ; and EY.

146 *See* letters from ABA; BPI/SIFMA; CAQ and EY.

147 *See* letter from EY.

- Another commenter noted that certain states such as Massachusetts have their own deposit insurance funds and recommended that deposits covered by these and other similar regimes be considered insured for purposes of the proposed disclosure.[148]
- A few commenters stated that the final rule should explain how the term "uninsured deposits" would be applied to investment products such as mutual funds, annuities, or life insurance policies.[149]

One commenter commended the Commission for proposing to remove the $100,000 threshold for uninsured deposits and replace it with a more principles-based requirement and to provide foreign registrants with the flexibility to disclose the definition of uninsured deposits appropriate for their country of domicile.[150] However, this commenter stated that U.S. GAAP disclosure requirements largely address the proposed disclosure of outstanding time deposits in uninsured accounts by maturity and recommended not adopting this disclosure requirement.[151]

iii. Final Rules

After considering the comments, we are adopting the rules substantially as proposed. Item 1406 of Regulation S-K codifies the majority of the disclosure items in Item V of Guide 3, with some revisions.

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148 *See* letter from BPI/SIFMA.

149 *See* letters from ABA and BPI/SIFMA.

150 *See* letter from BAC.

151 *See* letter from BAC (stating that ASC-942-405-50-1 requires disclosure of the aggregate amount of time deposit accounts (including certificates of deposits) in denominations that meet or exceed the FDIC insurance limit and ASC 470-10-50-1 requires disclosure of time deposits having a remaining term of more than one year and the aggregate amount of maturities for each of the five years following the balance sheet date).

The final rules define uninsured deposits for bank and savings and loan registrants that are U.S. federally insured depository institutions as the portion of deposit accounts in U.S. offices that exceed the FDIC insurance limit or similar state deposit insurance regimes and amounts in any other uninsured investment or deposit accounts that are classified as deposits and not subject to any federal or state deposit insurance regimes. This definition varies slightly from the proposal based on commenter feedback. Specifically, we have clarified that the amount to be disclosed for uninsured deposits is based on the portion of the account balance greater than the FDIC insurance limit and that registrants may consider other similar state deposit insurance regimes in evaluating whether a deposit is insured. We also eliminated the reference to "individual" deposits in the revised definition to address commenter feedback seeking clarity on whether uninsured deposits are measured based on each individual account, or include all accounts or persons to whom the insurance limits apply. Consistent with the proposal, the final rules require foreign bank and savings and loan registrants to disclose the definition of uninsured deposits appropriate for their country of domicile. However, in response to commenter concerns about how the proposed disclosure requirements would interact with overlapping regulatory regimes, the final rules specify that all registrants should determine the amount of uninsured deposits for purposes of Item 1406 based on the same methodologies and assumptions used for regulatory reporting requirements, to the extent applicable. This clarification better aligns the final rules with U.S. bank regulatory reporting requirements and provides some additional parameters for foreign registrants that may operate in several different jurisdictions and therefore may be subject to different insurance regimes. We believe this change should reduce the cost of

providing this disclosure and reduce some of the comparability concerns for registrants operating in different jurisdictions. Unlike the proposed rules, however, the final rules do not expressly reference other investment products such as mutual funds, annuities or life insurance policies or otherwise address whether such products would be considered uninsured deposits as some commenters requested. We believe bank and savings and loan registrants already evaluate whether any particular product is subject to an FDIC insurance regime, or similar state deposit insurance regimes, and therefore additional guidance is unnecessary.

In another change from the proposal, and consistent with commenter feedback, we have revised the final rules to permit a registrant to disclose uninsured deposits at the reported date based on an estimate of uninsured deposits if it is not reasonably practicable to provide a precise measure of uninsured deposits. To avail itself of this accommodation, a registrant must disclose that the amounts are based on estimated amounts of uninsured deposits, and the estimates must be based on the same methodologies and assumptions used for the bank or savings and loan registrant's regulatory reporting requirements, such as the FDIC rules. We believe this change will reduce complexity and better align the requirements with U.S. bank regulatory reporting requirements, which should reduce the cost of providing this disclosure.

Consistent with the proposal, the rules require disclosure of (1) U.S. time deposits in excess of the FDIC insurance limit, and (2) time deposits that are otherwise uninsured by time remaining until maturity of: (A) three months or less; (B) over three through six

months; (C) over six through 12 months; and (D) over 12 months. While U.S. GAAP[152] requires disclosure of time deposits that meet or exceed the insured limit, it does not require this information to be disaggregated into the same maturity categories. Furthermore, U.S. GAAP does not require disclosure of time deposits that are otherwise uninsured by time remaining until maturity. IFRS does not specifically require any of the deposit disclosures in Item 1406 of Regulation S-K.[153] While we acknowledge commenter feedback that U.S. GAAP disclosure requirements are similar to the uninsured deposit disclosures, we continue to believe the disaggregated maturity categories provide material information about deposits that are more prone to withdrawals if a registrant experiences financial difficulty, which may help investors better evaluate potential risks to the registrant's short-term liquidity position. While we acknowledge commenters' concerns that disclosing only total uninsured deposits may present an incomplete picture of a firm's liquidity risk, we believe the disclosure of uninsured deposits, along with the other deposit disclosures required by the final rules, as well as the liquidity disclosures required within MD&A, would significantly mitigate these concerns.

Overall, in light of the revisions and clarifications we have made, we believe the final rules provide transparency regarding a material source of funding for bank and savings loan registrants, while balancing any operational costs and burdens a registrant may incur in providing this disclosure.[154]

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152 ASC 942-405-50-1(a).

153 *See* Section II.I of the Proposing Release.

154 *See* Section VII.C.i below.

III. Certain Existing Guide 3 Disclosures That Would Not Be Codified in Subpart 1400 of Regulation S-K

A. Return on Equity and Assets

Item VI of Guide 3 calls for disclosure of four specific ratios for each reported period, including return on assets, return on equity, a dividend payout ratio, and an equity to assets ratio. We proposed not to codify the requirement to disclose these ratios in Subpart 1400 of Regulation S-K because these ratios are not unique to bank and savings and loan registrants, and the Commission's guidance on MD&A already requires registrants to identify and discuss key performance measures when they are used to manage the business and would be material to investors.[155] Furthermore, the Commission recently issued additional guidance on the disclosure of key performance indicators and metrics in MD&A that highlights the requirement to provide disclosure that a registrant believes is necessary to an understanding of its financial condition, changes in financial condition, and results of operations.[156] We did not receive any commenter feedback on this aspect of the proposal. For the reasons noted in the Proposing Release, and in light of this recent guidance, we are adopting the rules as proposed and are not codifying the requirement to disclose any of the ratios currently called for by Item VI of Guide 3.

B. Short-Term Borrowings

We proposed not to codify the short-term borrowing disclosure items in Item VII of Guide 3 in their current form. Instead, we proposed to codify as part of proposed Item 1402

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155 *See* Section III.A of the Proposing Release.

156 *See* Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-10751 (Jan. 30, 2020) (the "2020 MD&A Interpretive Release").

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[157] of Regulation S-X. We did not propose to codify any of the other existing disclosure items in Item VII because we believed these are substantially covered by existing Commission rules[158] and the financial statement requirements.[159] We did not receive any commenter feedback on this aspect of the proposal, and are adopting the rules as proposed for the reasons noted in the Proposing Release.

IV. Changes to Article 9 of Regulation S-X

Rule 9-01 of Regulation S-X states that Article 9 is applicable to the consolidated financial statements filed for BHCs and to any financial statements of banks that are included in filings with the Commission, although other registrants with material lending and deposit activities also apply the rules in Article 9 of Regulation S-X.[160] In light of our proposal to codify the scope of Subpart 1400 of Regulation S-K to include savings and loan

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157 17 CFR 210.9-01 through 9-07. Article 9 sets forth the form and content of the consolidated financial statements filed for bank holding companies and for any financial statements of banks that are included in filings with the Commission.

158 In the Proposing Release, the Commission referred to the Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis, Release No. 33-9144 (Sept. 17, 2010) [75 FR 59894], as support for the idea that Item 303 of Regulation S-K elicits disclosure of any trends or uncertainties that may arise related to the maximum month-end amounts of short-term borrowings called for by Item VII.2. *See* Section III.B.i of the Proposing Release.

159 *See* Section II.F.i discussing the proposed codification of the requirement to disclose the average amount outstanding during the period and the interest paid on such amount, and the average rate paid, for each major category of interest-bearing liability. Article 9 of Regulation S-X requires disclosure of the period-end amount outstanding by the short-term borrowing categories.

160 *See supra* note 5.

associations and savings and loan holding companies, we proposed to amend Rule 9-01 of Regulation S-X to include these registrants within the scope of Article 9 of Regulation S-X as well. However, we also noted that, if registrants other than bank and savings and loan registrants believe the Article 9 presentation would be material to an understanding of their business, the proposed rules would not preclude that presentation for those registrants. Additionally, we proposed deleting Rule 9-03(7)(a)-(c) of Regulation S-X due to overlapping requirements with both U.S. GAAP[161] and IFRS.[162] We did not receive any commenter feedback on this aspect of the proposal, and are adopting the amendments as proposed for the reasons noted in the Proposing Release.

V. Compliance Date

After considering feedback from commenters,[163] registrants will be required to apply the final rules for the first fiscal year ending on or after December 15, 2021 (the "mandatory compliance date"). Registrants filing initial registration statements are not required to apply the final rules until an initial registration statement is first filed containing financial statements for a period on or after the mandatory compliance date. Until the mandatory compliance date, bank and savings and loan registrants should continue to refer to Guide 3 for assistance in meeting their disclosure obligations.

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161 *See supra* note 85.

162 *See supra* note 80.

163 *See* letters from BPI/SIFMA and KPMG. BPI/SIFMA recommended that the Commission not require the rules to be effective until at least the December 31, 2021 Form 10-K to allow registrants sufficient time to source and test the information and ensure the information produced is accurate and reliable. KPMG encouraged the Commission to provide detailed transition guidance that includes consideration of the timing of the rule's effective date and approaching relevant filing deadlines.

Voluntary early compliance with the final rules is permitted[164] in advance of the registrant's mandatory compliance date, provided that the final rules are applied in their entirety from the date of early compliance.

VI. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provisions or application.

Pursuant to the Congressional Review Act,[165] the Office of Information and Regulatory Affairs has designated these rules as not a "major rule," as defined by 5 U.S.C. 804(2).

VII. Economic Analysis

A. Introduction

The Commission is adopting rules to rescind Guide 3 and to update and codify into a new Subpart 1400 of Regulation S-K certain Guide 3 disclosure items that do not overlap with existing disclosure requirements in Commission rules, U.S. GAAP, or IFRS, while adding to that Subpart certain credit ratio disclosure requirements. New Subpart 1400 applies to bank and savings and loan registrants. The final rules are expected to streamline bank and savings and loan registrants' compliance efforts and may enhance comparability across issuers, to the benefit of both registrants and investors.

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164 To the extent that registrants have questions about application of the rules in connection with early compliance, they should reach out to Commission staff for additional transition guidance.

165 5 U.S.C. 801 *et seq.*

We are mindful of the costs imposed by, and the benefits obtained from, our rules. In this section, we analyze potential economic effects stemming from the final rules and alternatives considered by the Commission, including those posed by commenters.[166] We analyze these effects against a baseline that consists of the current regulatory framework and current market practices.

Where possible, we have attempted to quantify the expected economic effects of the final rules. In many cases, however, we are unable to quantify these economic effects. Some of the primary economic effects, such as the effect on investors' search costs, are inherently difficult to quantify. In many instances, we lack the information or data necessary to provide reasonable estimates for the economic effects of the final rules. Furthermore, we did not receive any information from commenters that would allow us to further quantify the economic effects. Where we cannot quantify the relevant economic effects, we discuss them in qualitative terms. In addition, the broader economic effects of the final rules, such as those related to efficiency, competition, and capital formation, are difficult to quantify with any degree of certainty because the final rules simultaneously codify certain disclosure requirements, add new credit ratio disclosure requirements, and rescind disclosure items that overlap with Commission rules, U.S. GAAP, or IFRS. Therefore, it is difficult to quantitatively attribute the overall effects on efficiency, competition, and capital formation to

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166 Securities Act Section 2(a) and Exchange Act Section 3(f) require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Exchange Act Section 23(a)(2) requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

specific aspects of the final rules.

B. Baseline

Our baseline consists of the disclosures currently called for by Guide 3, as well as those provided under current market practices.

i. Regulation

In general, Guide 3 calls for disclosures related to interest-earning assets and interest-bearing liabilities of both domestic and foreign BHC registrants and registrants that have material lending and deposit-taking activities.[167] Since the last substantive revision of Guide 3 in 1986, certain U.S. GAAP and IFRS disclosure requirements have changed for registrants engaged in the activities addressed in Guide 3, resulting in some overlap between the Guide 3 disclosure items and other disclosure requirements, which may impose compliance costs on registrants without providing additional material information to investors.

Guide 3 calls for five years of loan portfolio and loan loss experience data and three years of all other data. This timeframe goes beyond the financial statement periods specified in Commission rules,[168] which generally require two years of balance sheets and three years of income statements for registrants other than EGCs and SRCs. Guide 3 provides that registrants with less than $200 million of assets or less than $10 million of net worth may present only two years of information. In contrast, the scaled disclosure regimes in

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167 *See supra* Section I for a description of Guide 3 disclosure categories. *See also* instructions to Item 4 of Form 20-F, which indicate that the information specified in any industry guide that applies to the registrant should be furnished. In addition, the staff has observed that, although not required, Form 40-F filers that are banking institutions typically provide the disclosures called for by Guide 3.

168 *See* Articles 3 and 8 of Regulation S-X.

Commission rules for SRCs and EGCs are based on other thresholds, such as public float, total annual revenues, or a combination of both. As such, some SRCs and EGCs may not qualify for scaled disclosure under Guide 3.

ii. Affected Registrants

We define the scope of Guide 3 as the population of registrants that currently may be providing Guide 3 disclosures. Table 1 below shows the estimated number of registrants within the Guide 3 scope,[169] along with their cumulative assets by type and domestic/foreign

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[169] To estimate the scope, we first identify registrants that meet the definition of a BHC in Rule 1-02(e) of Regulation S-X or that are BHCs under the Bank Holding Company Act. To estimate the number of BHC registrants, staff reviewed Commission filings by registrants in the following Standard Industrial Classification ("SIC") codes to determine if the registrant met the definition of a BHC under Rule 1-02(e) of Regulation S-X: 6021, 6022, 6029, 6035, and 6036. For purposes of this economic analysis, we only considered BHCs that are within the following SIC codes: 6021, 6022, 6029, 6035, 6036, 6099, 6111, 6141, 6153, 6159, 6162, 6163, 6172, 6199, 6200, 6211, 6221, 6282, 6311, 6321, 6324, 6331, 6351, 6361, 6399, 6411, 6500, 6510, 6519, 6798, and 7389. We note that registrants with SIC codes other than these may be BHCs. As such, the population of BHCs may be underestimated.

We also identify certain other financial services registrants that have both lending and deposit-taking activities but are not BHCs, as these registrants may be providing Guide 3 disclosures as a result of their activities. For purposes of this economic analysis, we assume that a registrant is a financial services registrant if its type of business is identified by one of the following SIC codes: 6021, 6022, 6029, 6035, 6036, 6099, 6111, 6141, 6153, 6159, 6162, 6163, 6172, 6199, 6200, 6211, 6221, 6282, 6311, 6321, 6324, 6331, 6351, 6361, 6399, 6411, 6500, 6510, 6519, 6798, and 7389. We note that registrants with SIC codes other than these may be providing financial services and some registrants with the specified above SIC codes may not be providing financial services. As such, the population of financial services registrants may be under- or overestimated.

For the purposes of this analysis, we define the subset of financial services registrants that have both lending and deposit-taking activities as those financial services registrants that have any amounts of loans and deposits reported in Commission filings. We note that amounts of loans and deposits may not be material for some registrants in the subset. Therefore, the number of registrants that currently may be providing Guide 3 disclosures due to their activities may be overestimated.

This analysis is based on data from XBRL filings and staff review of filings for financial services registrants that did not submit XBRL filings. To identify financial services registrants that have both lending and deposit-taking activities, we used XBRL tags commonly used for loans and deposits. Staff reviewed the financial statements of identified registrants to determine whether the tags were related to the type of activities described in Guide 3 and excluded those with unrelated activities. We note that some registrants may use non-standard or custom XBRL tags to identify their lending or deposit-taking activities. As such, the number of financial services registrants with lending and deposit-taking activities may be underestimated.

status.[170]

Table 1. Registrants within the Guide 3 Scope[1]

Type	Domestic		Foreign		Total	
	#	Assets,[2] $bln	#	Assets, $bln	#	Assets, $bln
BHCs[3]	391	18,251	26	23,246	417	41,497
Financial services registrants with lending and deposit-taking activities:[4]	60	1,737	16	3,104	76	4,840
SLHCs[5]	49	637	0	0	49	637
Banks	11	1,099	16	3,104	27	4,203
Total	451	19,988	42	26,350	493	46,337

[1] The estimates are based on the data as of May 1, 2020. We define active registrants as those that have filed an annual, periodic, or current report or registration statement with the Commission during the period beginning May 1, 2019 and ending May 1, 2020.

In the Proposing Release, we identified 487 registrants within the Guide 3 scope. Upon further review of filings, we identified four registrants included in Table 1 of the Proposing Release that were either inactive or no longer met the definition of a BHC or a bank; and 17 registrants that were inadvertently excluded from the scope of registrants providing Guide 3 disclosures. Therefore, we are updating the scope estimate for May 1, 2019 reported in the Proposing Release from 487 to 500.

Our estimate of the scope as of May 1, 2020 excludes 30 BHC, SLHC, and bank registrants that became inactive during the period between May 1, 2019 and May 1, 2020 (based on the definition of active registrants for the period ending May 1, 2020) and includes 23 new financial service registrants that became active during the period between May 1, 2019 and May 1, 2020. As a result, the estimated number of registrants within the Guide 3 scope decreased from 500 to 493 during the period between May 1, 2019 and May 1, 2020.

[2] The estimates for total assets of registrants are based on these registrants' most recent Form 10-K or Form 20-F filed as of May 1, 2020. The analysis is based on data from XBRL filings and staff review of filings for financial services registrants that did not submit XBRL filings. For foreign registrants that report total assets in local currency, we used exchange rates as of December 31, 2019 to convert their reported value to U.S. dollars.

[3] Data on holding companies subject to the Bank Holding Company Act was obtained from Reporting Form FR Y-9C for holding companies as of Q4 2019.

[4] In Table 1 of the Proposing Release, we identified four registrants in the "other" category. We defined other registrants as those that did not meet the definition of a bank, savings and loan holding company ("SLHC"), or savings and loan association ("SLA"). Upon further stuff review, we reclassified these

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We also note that registrants with SIC codes other than those specified above may have lending and deposit-taking activities. For example, based on data from XBRL filings, staff identified 22 registrants that report both holdings of loans and deposit-taking activities and that may provide some Guide 3 disclosures.

[170] For purposes of this economic analysis, we define domestic registrants as those that file Forms 10-K and foreign registrants as those that file Forms 20-F.

four registrants as BHCs because they met the definition of a BHC under Rule 1-02(e) of Regulation S-X, as of May 1, 2020.

[5] We identified only SLHCs and did not identify any SLAs within the population of financial services registrants with lending and deposit-taking activities.

We estimate that, among registrants identified as being within the scope of Guide 3, approximately 84.6% are BHCs that in aggregate hold approximately 89.6% of total Guide 3 registrants' total assets. We also estimate that, among the registrants within the scope of Guide 3, 91.4% are domestic registrants that in aggregate hold 43.1% of total Guide 3 registrants' total assets. Although the number of foreign registrants is much smaller than the number of domestic registrants, foreign registrants in aggregate hold approximately 56.9% of total assets, as shown by the total assets in Table 1.

Table 2 below shows the estimated number of registrants within the scope of Guide 3 that qualify for scaled Guide 3 disclosures, as well as the number of registrants that qualify for SRC and/or EGC status.

Table 2. Scaled Disclosure Thresholds for Registrants within the Guide 3 Scope[1]

Scaled Disclosure Threshold	Qualifying Registrants	
	#	Total Assets, $bln
Guide 3 scaled threshold registrants	7	7
SRC registrants	204	257
EGC registrants	73	143

[1] To estimate the number of registrants that meet the Guide 3 scaled disclosure threshold, the staff analyzed the most recent Form 10-K or Form 20-F filed as of May 1, 2020. The analysis was based on data from XBRL filings and staff review of filings for those registrants that did not submit their filings in XBRL format. The estimates for the number of affected registrants that are SRCs are based on

information from their most recent annual filing, as of May 1, 2020. The estimates for the number of affected registrants that are EGCs are based on their most recent periodic filings, as of May 1, 2020.

Among the 493 registrants within the Guide 3 scope, 44% are either SRCs or EGCs.[171] However, only 1% of registrants within the Guide 3 scope qualify for scaled disclosure in Guide 3. We also estimate that among the seven registrants that qualify for scaled Guide 3 disclosure, six are either an SRC, an EGC, or both.

C. Economic Effects

The economic effects of the final rules primarily stem from changes to the substance and reporting periods of the Guide 3 disclosure items, including, among other things, the addition of certain new credit ratio disclosure requirements. As a result, the affected bank and savings and loan registrants would experience changes in their compliance costs. In particular, affected registrants would experience a decrease in compliance costs stemming from a removal of overlapping disclosure items and reduced reporting periods. However, this reduction may be fully or partially offset by an increase in costs stemming from the proposed new credit ratio disclosure requirements and more disaggregated disclosure requirements. As discussed in Section VIII.B.v below, we estimate that the final rules will on aggregate increase paperwork and reporting burdens for the affected registrants.[172] As a result, these costs may flow through to customers in the form of higher costs for financial services, and to shareholders in the form of lower earnings. On the other hand, the final rules are expected to decrease investors' search costs and reduce information asymmetries between

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171 We note that 54 affected registrants are both SRCs and EGCs.

172 *See infra* Section VIII for a discussion of our estimates—for PRA purposes—of the burdens and costs associated with the final rules.

investors and affected registrants, which may lead to increased allocative efficiency and lower cost of capital. Below, we first discuss the economic effects of changes to the substance and reporting periods of the disclosure requirements, followed by a discussion of economic effects related the scope and applicability of the disclosure requirements and the location and format of the required disclosures.

i. Codified Disclosures

The final rules codify in a new Subpart 1400 of Regulation S-K Guide 3 disclosure items that do not significantly overlap with disclosure requirements in other Commission rules, U.S. GAAP, and IFRS.

a. Costs and Benefits

Codifying Guide 3 disclosure items that do not significantly overlap with disclosure requirements in Commission rules, U.S. GAAP, and IFRS provides a single source of disclosure requirements about the specified financial activities, which will facilitate compliance and may make it easier for registrants to understand their disclosure obligations. Codifying disclosure requirements in Regulation S-K may cause affected registrants to expend additional resources to produce the disclosures, as the status of the disclosure items would be elevated from staff guidance to a rule, which could result in additional costs. However, this effect may be fully or partially offset, due to the elimination of uncertainty around the existing disclosure structure for BHCs and registrants with material lending and deposit-taking activities under Guide 3, as well as any uncertainty on the part of registrants as to whether specific disclosures are required, given the staff guidance status of Guide 3.

The final rules modify some of the disclosure requirements that are being codified to better align them with other existing reporting practices. Specifically, the final rules align the

investment categories in Item II.B and loan categories in Items III.B, IV.A, and IV.B of Guide 3 with the respective debt securities and loan categories required to be disclosed in the registrant's U.S. GAAP or IFRS financial statements. One commenter generally supported aligning the loan categories to the existing U.S. GAAP and IFRS requirements.[173] We believe that revising loan and debt securities categories to conform to financial statement categories will promote comparability and consistency of disclosures within a registrant's filing and reduce the preparation burdens and other related costs imposed on affected registrants. However, we recognize that, to the extent that Guide 3 loan and investment categories provide information incremental to financial statement categories, and bank and savings and loan registrants currently provide these disclosures based on the Guide 3 categories, investors may lose this information.

In the Proposing Release, we proposed to codify Guide 3 maturity categories for loan disclosures without a change: due in one year or less, due in one to five years, and due after five years. However, two commenters indicated that some loan categories may be predominantly classified into a single maturity bucket due to their nature, and, therefore, requiring disaggregation by maturity for such loan categories would not provide more meaningful information to investors.[174] Another commenter submitted a study concluding that disaggregated information may be value-relevant to investors because such information may have predictive and confirmatory value.[175] In response to commenters' feedback, the

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173 *See* letter from BAC.

174 *See* letters from BAC and BPI/SIFMA.

175 *See* letter from Prof. Burke (citing Qing L. Burke, Terry D. Warfield, & Matthew M. Wieland, *Value Relevance of Disaggregated Information: An Examination of the Volume and Rate Analysis of Bank Net Interest Income*, ACCT. HORIZONS (forthcoming, 2020)).

final rules further disaggregate the categories of interest-earning assets and interest-bearing liabilities in Item I disclosures and further disaggregate the "after 5 year" maturity category for loan disclosures in Item III into "5 years through 15 years" and "after 15 years." We expect that, under the final rules, some loan categories, such as real estate loans, will no longer be classified within a single "after five years" maturity bucket. Therefore, the final rules should provide more decision-relevant information to investors by better accommodating maturity periods on commonly offered loan products. We recognize that additional disaggregation may increase compliance costs for the affected registrants, which could be passed onto customers and investors. However, this increase in compliance costs may be offset by a potential reduction in cost of capital that could arise as a result of increased transparency and decreased information asymmetries between investors and affected registrants. To the extent that investors view loans with maturities of 5 to 15 years and loans with maturities of 15 years or longer differently in terms of their risk profile, investors may be able to make more efficient portfolio allocation decisions.

The final rules do not exclude certain loan categories from the sensitivities of loans to changes in interest rates disclosure requirement.[176] One commenter noted that the maturity and sensitivities to changes in interest rates disclosures should allow for exclusion of loan categories that are not material to the registrant.[177] Another commenter stated that mirroring loan categories and classes presented in the financial statements without the flexibility to

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176 Currently, Guide 3 excludes the following domestic loan categories from the maturity by loan category disclosure: real estate mortgage loans, installment loans to individuals, and lease financing.

177 *See* letter from BAC.

exclude certain loan categories from the maturity disclosure would not result in more meaningful disclosures.[178] However, as discussed in section II.H.iii above, we believe that immaterial loan categories generally would not be presented in the financial statements.[179] Therefore, we expect the maturity disclosures for each reported loan category to be relevant to investors. Specifically, the maturity table may help investors and other users of Commission filings to better understand the liquidity profile of registrants' assets, and the interest rate disclosures may help them understand the interest rate risk associated with specific loan categories. As a result, investors' search costs, as well as information asymmetries between investors and affected registrants may decrease. In addition, while we agree with commenters that some loan categories historically have been predominantly classified into a single maturity bucket, we do not expect this always to be the case. For example, in an environment with decreasing interest rates, it can be beneficial for individuals and businesses to refinance their loans. In this case, the maturity of such loans may be extended, provided that borrowers refinanced loans with the same original maturity across institutions. As a result, multiple loans within a specific loan category presented by a registrant may have similar maturities. However, we do not expect the same effect to be present in an environment with rising interest rates.

We proposed to require separate presentation of federal funds sold and securities purchased with agreements to resell. One commenter indicated that the required

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178 *See* letter from BPI/SIFMA.

179 Because U.S. GAAP considers materiality, we believe that immaterial loan categories would not be presented as a response to the adopted disclosure requirements. Under the current baseline, Part III.A of Guide 3 calls for disclosure for each specified loan category, regardless of materiality.

disaggregation of federal funds sold and securities purchased with agreements to resell may not be relevant for certain institutions and may be confusing to investors.[180] Another commenter stated that the additional disaggregation in Item I appears to remove any element of professional judgment based on quantitative or qualitative materiality assessments, and therefore may result in disaggregation that will be of little value to users.[181] While we continue to believe that more disaggregated categories of assets and liabilities may provide investors with insight into the drivers of changes in the affected registrants' net interest earnings, we recognize that only material categories would be relevant to investors. The final rules clarify that only major categories that are material must be disaggregated in the disclosure. We do not expect this clarification to substantially reduce the amount of information about interest-earning assets and interest-bearing liabilities available to investors, relative to the baseline. At the same time, this clarification should help registrants avoid the burden associated with providing such information when it is not material.

The final rules also modify the categories of deposits in Item V of Guide 3 and require separate presentation of uninsured deposits. The final rules link the definition of uninsured deposits to federal or state deposit insurance regimes for U.S. registrants and provides foreign registrants the flexibility to use and disclose a definition of uninsured deposits appropriate for their country of domicile. Additionally, the final rules permit a registrant to disclose an estimate of uninsured deposits based on the same methodologies and assumptions used for the registrant's regulatory reporting requirements if it is not practicable

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180 *See* letter from ABA.

181 *See* letter from BPI/SIFMA.

to provide a precise measure of uninsured deposits at the reported period. Two commenters supported replacing the $100,000 bright-line threshold in Guide 3 with a threshold that aligns with federal or state deposit insurance limits.[182] We believe that by avoiding specific reference to existing dollar limits, the final rules better accommodate future changes in the deposit insurance regimes that are applicable to registrants, as it would allow registrants to avoid calculating two different amounts for uninsured deposits if the FDIC limit changes. This aspect of the final rules will also provide investors with more clarity as to which deposits should be classified as insured and which should not, potentially reducing the associated compliance burden and providing greater transparency for investors with respect to the affected registrants' sources of funding and risks related to these particular types of funding.

The final rules require disclosure of uninsured deposits. One commenter suggested that due to the lack of comparability among different deposit schemes, the disclosure of uninsured deposits may be misleading to investors and, therefore, should not be required.[183] However, other commenters indicated that disclosure of uninsured deposits would provide transparency with respect to a registrant's sources of funding and liquidity risk profile.[184] While recognizing that comparability of uninsured deposits among affected registrants may be limited due to different insurance regimes and differences in methodologies used to calculate amounts of uninsured deposits, we believe that the final rules provide transparency with respect to affected registrants' sources of funding and risks related to these particular

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182 *See* letters from BAC and A. Heilig.

183 *See* letter from BPI/SIFMA.

184 *See* letters from BAC and A. Heilig.

types of funding. As a result, requiring disclosure of uninsured deposits may reduce information asymmetries between investors and registrants and may increase allocative efficiency.

The final rules also require disclosure of net charge-offs on a disaggregated basis, as proposed. Two commenters stated that there may be operational challenges or systems limitations associated with calculating the ratio of net charge-offs to average loans on a disaggregated basis.[185] We recognize that, to the extent that some bank and savings and loan registrants currently may not be compiling data that is sufficiently granular to compute these ratios on such a basis, providing the disaggregated information would increase costs for these registrants. Another commenter indicated that this disclosure might not provide meaningful information to investors to the extent the disaggregated ratios are not significant drivers of business results.[186] However, we believe that more disaggregated data for the net charge-off ratio may provide material information, as it could help investors better understand drivers of the changes in a bank and savings and loan registrant's charge-offs and the related provision for loan losses. This may result in decreased information asymmetries between registrants and investors and increased allocative efficiency.

b. Alternatives

As an alternative, we could have defined uninsured deposits of FDIC-insured registrants based solely on whether the amount of deposits exceeds the FDIC insurance limit, as proposed. This alternative definition would count deposits that are insured by states or

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185 *See* letters from CAQ and Crowe.

186 *See* letter from BPI/SIFMA.

other similar deposit insurance regimes as uninsured deposits, as also pointed out by a commenter,[187] despite similar risk profile between FDIC-insured deposits and deposits insured by states or other similar deposit insurance regimes. In addition, this alternative would include state or other regulator-insured deposits within the definition of uninsured deposits for FDIC-insured registrants while excluding deposits insured by similar deposit regimes for foreign registrants, which could make uninsured deposits of domestic and foreign registrants less comparable relative to the final rules. Therefore, we have revised the final definition of uninsured deposits to exclude deposits covered by state deposit insurance regimes.

As another alternative, we could have defined uninsured deposits to expressly include investment products such as mutual funds, annuities, or life insurance policies, as proposed. This alternative would have helped to ensure that such products are considered by registrants when disclosing their uninsured deposits. In response to the proposal, two commenters called for the final rules to explain how the term "uninsured deposits" would be applied to investment products such as mutual funds, annuities, or life insurance policies.[188] To avoid regulatory complexity, the final rules do not specify what products are considered uninsured deposits; rather, they allow the affected registrants to apply the methodology used for regulatory bank reporting to make such determinations. Relative to the proposal, this aspect of the final rules may increase comparability in the disclosure of uninsured deposits among registrants that share similar regulatory reporting requirements (as they would apply the same

187 *See id.*

188 *See* letters from ABA and BPI/SIFMA.

methodology used for regulatory reporting purposes) while decreasing the operational complexity associated with providing such disclosures.

Finally, we could have required all affected registrants to disclose precise amounts of uninsured deposits, as proposed. Under this alternative, comparability among registrants would increase relative to the final rules. However, several commenters urged the Commission to consider operational complexities and costs of calculating the precise amounts of uninsured deposits rather than providing an estimate, which is more consistent with industry practices.[189] We recognize that, in some instances, due to complex deposit insurance rules that apply across accounts, it may be operationally challenging and costly for registrants to report precise amounts of uninsured deposits. Therefore, the final rules allow disclosure of an estimate of uninsured deposits if it is not practicable to provide a precise measure. To mitigate potential loss of comparability due to disclosure of estimated rather than the precise amount of uninsured deposits, the final rules require that the methodologies and assumptions used for the estimate be the same as those used for the registrant's regulatory reporting.

ii. New Credit Ratios

The final rules require disclosure of three additional credit ratios for bank and savings and loan registrants, along with each of the components used in the ratios' calculation and a discussion of the factors that led to material changes in the ratios or related components.[190] In the Proposing Release, we indicated that the additional compliance burden for the proposed

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189 *See e.g.*, letters from ABA; BPI/SIFMA; CAQ; Crowe; and PWC.

190 The final rules also include an instruction stating that affected IFRS registrants do not have to provide either of the nonaccrual ratios as there is no concept of nonaccrual in IFRS.

credit ratio disclosure requirements would not be significant for existing bank and savings and loan registrants, as the components of each proposed ratio are already required disclosures in bank and savings and loan registrants' financial statements. One commenter agreed with this assessment.[191]

For similar reasons, we also stated in the Proposing Release that the benefit to investors of requiring these additional credit ratios may be modest. One commenter agreed that the ratios are easily calculable from the information already required in the financial statements, and on that basis, questioned whether the separate disclosure of the ratios is necessary.[192] We note that, although the ratios can be calculated from the financial statements under the final rules, disclosure of these ratios will be accompanied by a discussion of the factors that led to material changes in the ratios or their components. This discussion may be material information to investors and can potentially reduce information asymmetries between registrants and investors, resulting in more efficient investment decisions and potentially lowering cost of capital for the affected registrants. While we recognize that the ratios themselves can be calculated from the financial statements, we believe that the required discussion of changes to ratios or their components would be more complete and likely more informative with disclosure of the ratios themselves.

Two commenters indicated that, under the New Credit Loss Standard,[193] some of the new ratios may not be as relevant to investors.[194] We recognize that, under the current

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191 *See* letter from ABA.

192 *See* letter from CAQ.

193 *See supra* note 96.

194 *See* letters from ABA and KPMG.

approach, changes in the allowance for credit losses are based on changes in losses incurred to date, whereas under the New Credit Loss Standard, changes in the allowance for credit losses are based on changes in estimates of expected losses over the life of the loan portfolio. As such, the allowance for credit losses to total loans ratio and allowance for credit losses to nonaccrual loans ratio convey different information to investors under the two approaches. We believe that, despite this important difference in the information contained in these ratios under alternative credit loss approaches, the disclosure of these two ratios along with the discussion of the factors that led to material changes in these ratios or their components could be material to investors, regardless of the approach used (New Credit Loss Standard or incurred loss approach). To the extent that the ratios are material to investors, the final rules may result in increased information efficiency, allowing investors to better allocate their investment portfolios and potentially reducing cost of capital for the affected registrants.

Commenters also stated that because the timeline for the implementation of the New Credit Loss Standard differs among the types of affected registrants (*e.g.,* a regional bank that is not an SRC versus a community bank that is an SRC), it may be difficult or confusing to compare these credit ratios across all bank and savings and loan registrants. We recognize that comparability of ratios across registrants may be reduced until all affected registrants adopt the New Credit Loss Standard. However, we believe that the discussion of the factors that led to material changes in the ratios or their components may mitigate this concern, as investors will be able to understand how the ratios and their components differ across registrants. In addition, as discussed in Section II.I above, we believe that the majority of

affected registrants will adopt New Credit Loss Standard by the mandatory compliance date of the final rules.

iii. Not Codified Disclosures and Instructions

The final rules do not codify the following Guide 3 disclosure items and instructions that overlap with Commission rules, U.S. GAAP, or IFRS:

- Short-term borrowing disclosures called for by Item VII.1 and 2;
- Book value information, the maturity analysis of book value information, and the disclosures related to investments exceeding 10% of stockholders' equity called for by Item II;
- Loan category disclosure, the loan portfolio risk elements disclosure, and the other interest-bearing assets disclosure called for by Item III;
- The analysis of loss experience disclosure called for by Item IV.A;
- The breakdown of the allowance disclosures called for by Item IV.B for IFRS registrants; and
- General Instruction 6 to Guide 3.

The final rules also do not codify the disclosure items in Item VI of Guide 3 related to return on assets, return on equity, dividend payout, and equity to assets ratios. Because we are rescinding Guide 3, we do not anticipate affected registrants would provide any Guide 3 disclosures not required by new subpart 1400, unless required by other Commission rules, U.S. GAAP, or IFRS. However, registrants may voluntarily continue to provide these disclosures.

a. Costs and Benefits

To the extent that the disclosure items not codified are reasonably similar to disclosure requirements in Commission rules, U.S. GAAP, or IFRS, not including these disclosure requirements in Regulation S-K should facilitate bank and savings and loan registrants' compliance efforts by reducing the need to replicate disclosures or reconcile overlapping disclosure requirements, and decrease the reporting burdens for the registrants that currently may be following Guide 3. This is consistent with feedback received from some commenters, who stated that the removal of overlapping disclosure requirements will streamline compliance efforts and decrease registrants' reporting burdens.[195]

Investors should not be adversely affected by the decision not to codify the aforementioned disclosure items, given that the overlapping disclosure requirements in Commission rules, U.S. GAAP, or IFRS elicit reasonably similar information. Moreover, some commenters pointed out that duplication of information and/or presentation of information that is almost, but not quite, the same, can prove confusing to investors.[196] To the extent that this effect is present, the more streamlined presentation of information may reduce search costs for investors and decrease information asymmetries between registrants and investors. On the other hand, to the extent that the Guide 3 disclosure items elicit incremental information to investors, not codifying these disclosure items could marginally increase information asymmetries and investor search costs.

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195 *See, e.g.*, letter from BAC.

196 *See, e.g.*, letter from BPI/SIFMA.

The final rules do not codify the ratios in Item VI of Guide 3. Because these ratios are not specific to the activities of bank and savings and loan registrants, we believe that in most cases the Item VI ratios do not provide additional information about the risks that are particular to the affected registrants. In addition, to the extent the Item VI ratios may be relevant to some affected registrants, codification of these ratios could be viewed as duplicative because Commission guidance on Item 303 of Regulation S-K states that companies should identify and discuss key performance indicators when they are used to manage the business and would be material to investors.[197] Moreover, users of financial disclosures can calculate the ratios based on information already disclosed in Commission filings. Therefore, eliminating the disclosure of these ratios should not result in the loss of material information.

The final rules also do not codify the undue burden or expense accommodation for foreign registrants in General Instruction 6 of Guide 3. One commenter indicated that this accommodation should be codified,[198] and several commenters[199] noted that they had seen limited use of the accommodation in Rules 409 and 12b-21 and therefore surmised that it may be rare for a registrant to be able to demonstrate that the required information is not reasonably available or that obtaining it may require unreasonable effort or expense.[200] However, these commenters did not provide any specific examples of when reliance on the accommodation in General Instruction 6 of Guide 3 would be necessary, notwithstanding the

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197 *See* Proposing Release at note 264 (citing the 2003 MD&A Interpretive Release, *supra* note 69). *See also* the 2020 MD&A Interpretive Release, *supra* note 156.

198 *See* letter from BPI/SIFMA.

199 *See* letters from CAQ; Crowe; Deloitte; and KPMG.

200 *See supra* note 31.

flexibility in disclosure provided to IFRS registrants under the final rules and the ability of all registrants to rely on Securities Act Rule 409 and Exchange Act Rule 12b-21. To the extent that some registrants currently rely on the undue burden accommodation in General Instruction 6 and would be unable to rely on Securities Act Rule 409 or Exchange Act Rule 12b-21, these registrants may experience an increase in compliance costs. However, the final rules' linkage of categories of debt securities and loans with those required by U.S. GAAP and IFRS should reduce the need for foreign registrants to seek regulatory accommodations with respect to the final disclosure requirements. In addition, as noted in Section II.D above, the staff has not received any requests from foreign registrants seeking relief under General Instruction 6 during the past 10 years. Thus, we do not expect any such increase in compliance costs to be substantial.

iv. Reporting Periods

The final rules align the reporting periods for the required disclosures with the periods required by Commission rules for financial statements, rather than the longer periods called for by Guide 3.

a. Costs and Benefits

Consistent with commenters' feedback,[201] we believe that alignment of reporting periods with the periods required by Commission rules for financial statements will reduce compliance costs for registrants currently following Guide 3 and will make it easier for both investors and bank and savings and loan registrants to determine which periods should be disclosed and why they are disclosed. We believe that the cost reduction associated with this

[201] *See, e.g.*, letters from ABA; BAC; BPI/SIFMA; and EY.

alignment will be more pronounced for affected registrants that are EGCs or SRCs. As indicated in Table 2 above, only seven registrants within the Guide 3 scope qualify for scaled disclosure under Guide 3. However, we estimate that 223 registrants within the Guide 3 scope are either EGCs, SRCs, or both; and among these, only six qualify for the scaled disclosure under Guide 3. In contrast, under Commission rules, all EGCs and SRCs qualify for scaled disclosure. As such, the final rules will provide the same relief to these registrants as they have under other Commission rules, reducing their compliance costs.

Because prior period information for existing registrants is publicly available on EDGAR, scaling the number of reporting periods required to be presented in a particular filing should not have a significant adverse impact on investors of existing registrants. We acknowledge, however, that, to the extent that investors of new bank and savings and loan registrants rely on Guide 3 information that covers a longer period of time than the required reporting periods under the final rules, information asymmetries between investors and new bank and savings registrants may increase.

b. Alternatives

As an alternative, we considered codifying the current Guide 3 reporting periods. Under this alternative, all bank and savings and loan registrants with total assets over $200 million or net worth over $10 million, including SRCs and EGCs, would provide the loan and allowance for credit losses disclosures for five years and the rest of the disclosures for three years. As such, the data would be required for a longer period of time than Commission rules require for financial statements. On the one hand, additional historical periods may benefit investors in new bank and savings and loan registrants, as historical

information is not publicly available for these registrants.[202] On the other hand, under this alternative, the majority of SRCs and EGCs would not realize the benefits of scaled disclosure, which would impose higher compliance costs for these registrants. On balance, we believe benefits of scaled disclosure justify the reduction in historical information.

v. Scope

a. Costs and Benefits

The final rules will apply to bank and savings and loan registrants. One commenter agreed that the final rules' scope captures the majority of registrants who currently provide Guide 3 disclosures.[203] We agree with the commenter and expect that this approach will not subject any additional registrants to requirements to disclose information currently called for by Guide 3 and will not exclude any registrants that are within the Guide 3 scope from the final rules' disclosure requirements, as our analysis indicates that the population identified above in Table 1 includes all bank and savings and loan registrants within the financial services industry. At the same time, the final rules' scope will provide more certainty to registrants with lending and deposit-taking activities because they no longer will need to assess the applicability of Guide 3 based on the materiality of their activities and, instead, will be explicitly required to provide disclosure based on whether they are a bank and savings and loan registrant.

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202 *See* letters from BAC and EY.

203 *See* letter from BAC.

b. Alternatives

As an alternative to the final scope, we considered a scope that would not be limited to bank and savings and loan registrants, but instead would encompass all financial services registrants that conduct the activities addressed in the final rules. Such an approach was supported by one commenter.[204] Tables 3 below shows the estimated number of financial services registrants[205] that conduct activities addressed in the final rules and Table 4 lists these financial services registrants by their type of business. Both tables display the applicability of the final rules to these registrants.

Table 3. Activities of Financial Services Registrants

Financial Services Registrants	Holding Debt Securities[1]		Holding Loans		Deposit-Taking	
	#	Assets, $bln	#	Assets, $bln	#	Assets, $bln
Within final rules' scope	493	46,337	493	46,337	493	46,337
Not within final rules' scope	527	19,759	296	16,979	0	0
Total	1,020	66,096	789	63,316	493	46,337

[1] For purposes of this economic analysis, we define financial services registrants holding debt securities as those that have any investment securities reported in their financial statements. The analysis was based on data from XBRL filings and staff review of filings for financial services registrants that did not submit XBRL filings. To the extent that the estimate includes financial services registrants that hold equity and not debt securities or that hold debt securities that are not material, the number of financial services registrants with holdings of debt securities may be overestimated. To the extent that some financial services registrants may use non-standard or custom XBRL tags to identify their investment activities or that there are financial services registrants outside of the SIC codes specified in note 169, *supra*, the number of financial services registrants with holdings of debt securities may be underestimated. To estimate the number of registrants holding debt securities, the staff analyzed the most recent Form 10-K or Form 20-F filed as of May 1, 2020 for financial services registrants.

Table 4. Financial Services Registrants by Type[1]

Type of Financial Services	Within Final Rules' Scope	Not Within Final Rules' Scope	Total

[204] *See* letter from M. Deering.

[205] *See supra* note 169.

	#	Assets, $bln	#	Assets, $bln	#	Assets, $bln
Banking and saving[2]	461	40,995	2	0	463	40,995
Credit and finance	20	1,706	62	6,552	82	8,258
Brokers, dealers, and exchanges	7	3,436	93	832	100	4,268
Investment advice	1	152	43	263	44	415
Insurance	1	12	142	10,460	143	10,471
Real estate	0	0	213	1,658	213	1,658
Other financial services	3	37	65	510	68	547
Total	493	46,337	620	20,274	1113	66,612

[1] We used SIC codes 6021, 6022, 6029, 6035, and 6036 to identify banks and saving institutions; SIC codes 6111, 6141, 6153, 6159, 6162, 6172, and 6199 to identify credit and finance services registrants; SIC codes 6163, 6200, 6211, and 6221 to identify brokers, dealers, and exchanges; SIC code 6282 to identify investment advisers; SIC codes 6311, 6321, 6324, 6331, 6351, 6361, 6399, and 6411 to identify insurance services companies; SIC codes 6500, 6510, 6519, and 6798 to identify real estate registrants; and SIC codes 6099 and 7389 to identify registrants that provide other financial services.

[2] We note that there are 30 registrants outside of the SIC codes 6021, 6022, 6029, 6035, and 6036 (and thus not included in the 463 banking and savings registrants) that are either identified as BHCs under the BHC Act or Rule 1-02(e) of Regulation S-X, or identified as SLHCs.

We estimate that, out of 1,113 financial services registrants that report at least one of the activities addressed in the final rules in their filings, 620 registrants that in aggregate hold 30.4% of financial services registrants' assets are not within the scope of the final rules. Under the alternative approach discussed above, these 620 financial services registrants would be subject to the final rules and would experience an increase in compliance costs as a result of new disclosure obligations. Among these 620 registrants, 203 report holdings of debt securities and loans, 93 report holdings of loans only, and 324 report holdings of debt securities only. We also estimate that all of 493 financial services registrants that report deposit-taking activities will be within the final rules' scope; however, out of 1,020 financial services registrants that hold debt securities, 527 registrants that in aggregate hold approximately 29.9% of assets among financial services registrants with debt securities

would not be within the final rules' scope; out of 789 financial services registrants that hold loans, 296 registrants that in aggregate hold approximately 26.8% of assets among financial services registrants with holdings of loans would not be within the final rules' scope. Under the alternative approach discussed above, the disclosure of these activities would be required for the financial services registrants that do not fall under the definition of a banking and savings registrant.

To the extent that certain types of registrants outside the final rules' scope conduct activities similar to bank and savings and loan registrants, this alternative approach could lead to more consistent and comparable disclosure among registrants that provide similar financial services and help investors better compare registrants that conduct similar activities, which in turn could increase allocative efficiency. In addition, to the extent registrants that conduct one of the activities addressed by the final rules are not within the final rules' scope, and to the extent that these registrants currently have a competitive advantage over registrants providing Guide 3 disclosures due to lower costs, the alternative may decrease this disparity. However, given that many of the 620 registrants that do not fall within the final rules' scope may not currently provide the disclosures we are codifying, the increased costs due to this alternative approach may be significant. However, we note that even for a registrant that will not be subject to disclosure requirements under the final rules, other Commission disclosure requirements, such as MD&A, or investor demand may elicit certain disclosure about financial activities of these registrants to the extent they are material.

vi. Applicability of Disclosure

a. Costs and Benefits

Guide 3 calls for disclosure related to lending, deposit-taking, and investment activities, regardless of materiality of these activities; and specifies a few bright-line thresholds for disclosure of specific items related to these activities. The final rules codify the 10% bright-line disclosure threshold for deposit categories disclosure, clarify that disaggregation of Item I disclosures is required only for material items,[206] and do not specify disclosure thresholds, similar to Guide 3, for any of the other disclosure requirements that are being codified. As such, we believe that this aspect of the final rules will not result in meaningful economic effects for registrants and investors as compared to the baseline.

b. Alternatives

As an alternative, we considered requiring disclosures based on the materiality of the relevant financial activities to the registrant's business or financial statements. While a materiality-based approach may result in a more tailored compliance regime and elicit disclosure that is more relevant to a registrant's operations, such an approach could increase uncertainty about whether bank and savings and loan registrants need to provide disclosures, as these registrants would have to make a judgment about which of their activities are material. This alternative approach may also lead to a decreased comparability between registrants that conduct activities specified in the final rules. In addition, if certain investors

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206 The existing language in Item I of Guide 3 indicates that registrants "should" rather than "must" include specific disaggregated categories. We believe that clarifying the final rules to add a materiality qualifier should bring the required disclosures more in line with existing disclosure practices under Guide 3. *See supra* Section VII.C.i.a for a discussion of economic effects related to disaggregation of Item I.

have a different perception than registrants about what activities are material, these investors may have less information on which to base their investment decisions.

As another alternative, we considered using a bright-line threshold for all proposed disclosure requirements. Such an approach may be easier to apply as it would not require judgment and would reduce bank and savings and loan registrants' uncertainty about whether they need to provide disclosures. However, a bright-line threshold may be under- or over-inclusive, especially for bank and savings and loan registrants with a level of activities just below or over the specified threshold. As a result, disclosures by registrants that fall just below the threshold would be less comparable to those of registrants above the threshold, despite conducting similar activities. In addition, under this alternative, some bank and savings and loan registrants may be incentivized to actively manage their activity to the level just below the threshold such that they would not have to provide the disclosures for specified activities, even though those activities could be material to their business. In this instance, the bright-line approach would be under-inclusive.

vii. Location of Disclosures

a. Costs and Benefits

Investors and other users of Commission filings may process information located in different places within a registrant's filing differently. The final rules provide bank and savings and loan registrants with flexibility to determine where in the filing to present the required information, just as they do under the current Guide 3 instructions.[207] As such, we

[207] Based on the staff's review of financial services registrants' annual reports that contain Guide 3 disclosures, there currently is diversity in location of the disclosures, with some registrants providing the disclosures in the Business section and others providing it in MD&A. Several commenters also

expect that this aspect of the final rules will not result in meaningful economic effects for registrants and investors as compared to the baseline.

b. Alternatives

As an alternative, we could have required disclosures to be placed in the footnotes to the financial statements. Several commenters noted that under this alternative approach, the footnote disclosures would be subjected to audit procedures, and registrants would need to file the disclosures in an XBRL format.[208] One of these commenters stated that requiring the disclosures to be included in the footnotes would likely increase audit costs.[209] As such, we expect that affected registrants' compliance costs would be higher under this alternative, relative to the final rules.

In the Proposing Release, we noted that requiring the disclosure to be located in the footnotes to financial statements could increase reliability of disclosures and decrease search costs for users of financial statements and information asymmetries between investors and bank and savings and loan registrants. One commenter, however, indicated that allowing registrants to decide where best to present the disclosure will result in a superior presentation, with related disclosures being grouped together.[210] We agree that prescribing a specific location for the disclosures could diminish bank and savings and loan registrants' ability to

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noted that the disclosures currently called for by Guide 3 are typically included in the Business section or in MD&A. *See* letters from CAQ; Crowe; and EY. Two other commenters noted that many preparers include existing Guide 3 disclosures in MD&A in conjunction with other required MD&A disclosures, while others include the information within their financial statements. *See* letters from BAC and BPI/SIFMA.

208 *See e.g.*, letters from CAQ; Deloitte; and EY.

209 *See* letter from EY.

210 *See* letter from BPI/SIFMA. Several other commenters supported retaining the existing flexibility to determine where the disclosures are provided. *See* letters from ABA; BAC; BPI/SIFMA; and EY.

present the information in the context in which it is most relevant and understandable for investors reading the report. In addition, this alternative would increase compliance costs for those bank and savings and loan registrants that currently provide the aforementioned disclosures within the MD&A section.

viii. Format of Disclosures

In the Proposing Release, we requested comment on whether the disclosures addressed in the final rules should be provided in a structured machine-readable format. A few commenters supported the use of the structured machine-readable Inline XBRL format for disclosures addressed in the final rules, regardless of their location.[211] According to these commenters, this requirement would ensure consistency of data across all affected registrants.[212] In addition, these commenters stated that data provided in a structured format encourages more robust and in-depth analysis due to reduced costs of analysis.[213]

On the other hand, two commenters stated that the cost to registrants of providing the information in XBRL format could be significant.[214] One commenter indicated that such an approach would be confusing for users of financial statements and would reduce comparability among registrants.[215] In addition, some commenters indicated that it may be difficult for registrants that provide disclosures addressed in the final rules within their

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211 *See* letters from CFA and XBRL.

212 *Id.* *See* also letter from EY.

213 *See* letters from CFA and XBRL.

214 *See* letters from ABA and BPI/SIFMA.

215 *See* letter from BAC.

MD&A section to selectively provide such disclosures in a structured data format while providing other MD&A disclosures in a non-structured data format.[216]

While we recognize that having the data provided in a structured machine-readable format could increase financial statement comparability and enable investors and other users of Commission filings to access and use disclosures more easily, thus reducing information asymmetries between investors and affected registrants, we also recognize the challenges of providing data in structured format.[217]

Specifically, requiring final rules' disclosures to be submitted in a structured machine-readable format regardless of their location may impose additional compliance costs on those affected registrants that currently provide the disclosures within their MD&A section in a non-structured format. Even though the costs of providing disclosures in XBRL format may have declined in the recent years,[218] requiring registrants that provide the final rules' disclosures within their MD&A section to provide these disclosures in a structured data format may initially increase their compliance costs, relative to unaffected registrants, for which MD&A disclosures are not required to be in a structured data format. Ultimately, for the reasons discussed in Section II.B above, we decided not to adopt this alternative.

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216 *See* letters from BPI/SIFMA and BAC.

217 *See* Section VI.C.vii of the Proposing Release for a discussion of academic research on the benefits and costs of XBRL.

218 Two commenters referenced a study that estimates that XBRL preparation costs for small companies declined by 45% from 2014 to 2017, and that the average cost of a full-year of fully outsourced XBRL preparation for such companies in 2017 was less than $5,500. *See* letters from CFA and XBRL. *See also* Press Release, AICPA, XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study (Aug. 18, 2018), https://www.aicpa.org/press/pressreleases/2018/xbrl-costs-have-declined-according-to-aicpa-study.

As a baseline matter, all affected registrants currently are subject to Inline XBRL tagging requirements for the financial statements and cover pages in their periodic reports and for the financial statements in certain registration statements.

D. Effects on Efficiency, Competition, and Capital Formation

Consistent with commenters' feedback, we believe that the codification of certain Guide 3 disclosure items may promote comparability among filings, increase the quality and availability of information about bank and savings and loan registrants' activities, and help avoid uncertainty about when the disclosures are required. As a result, the final rules may reduce information asymmetries, allowing investors to achieve better allocative efficiency which, in turn, may increase the demand for securities offerings, reduce costs of capital, and enhance capital formation.

The outcome of not codifying the disclosure requirements that overlap with Commission rules, U.S. GAAP, and IFRS on informational efficiency depends on the balance of two effects. On the one hand, the clarity of information presented in Commission filings may increase, which would reduce search costs for investors who do not use computerized search tools for locating data and lead to more efficient information processing. Given that some investors may have limited attention and limited information processing capabilities[219] and may invest more in firms with more concise disclosures,[220] we believe that eliminating overlapping or duplicative information should facilitate more efficient investment decision-making, enhancing the informational and allocative efficiency of the market and facilitating capital formation. On the other hand, not codifying certain Guide 3 disclosure items could lead to increased information asymmetries between investors

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219 *See, e.g.*, David Hirshleifer & Siew Hong Teoh, *Limited Attention, Information Disclosure, and Financial Reporting*, 36 J. ACCT. & ECON. 337 (2003).

220 *See, e.g.*, Alastair Lawrence, *Individual Investors and Financial Disclosure*, 56 J. ACCT. & ECON. 130 (2013); Michael S. Drake, Jeffrey Hales, & Lynn Rees, *Disclosure Overload? A Professional User Perspective on the Usefulness of General Purpose Financial Statements*, 36 CONTEMP. ACCT. RES. 1935 (2019).

and bank and savings and loan registrants to the extent that some of the Guide 3 disclosure items that overlap with, but are not entirely duplicative of, U.S. GAAP or IFRS disclosures would no longer be called for by an industry guide. This impact may be heightened for smaller registrants and first time entrants, as these types of registrants may exhibit more information asymmetries due to less historical information being available for investors. We did not receive any comments that quantify the size of either of these two effects. As such, we acknowledge that both effects may be present.

The final rules also may have several effects on competition.[221] First, to the extent that compliance costs increase for bank and savings and loan registrants under the final rules, private banking companies may gain additional competitive advantage from not incurring such increased costs. Second, to the extent that certain costs related to required disclosures are fixed, these burdens may have a larger impact on smaller bank and savings and loan registrants, potentially reducing their ability to offer banking products and terms that would enable them to better compete with their larger peers. Third, the cost savings from not codifying all of the Guide 3 disclosure items may be larger for IFRS bank and savings and loan registrants, as they often face particular challenges in presenting the Guide 3 disclosures that presume a U.S. GAAP presentation; however; we do not anticipate this effect to be substantial.[222] Although we requested comment on the extent of the aforementioned effects on competition, we did not receive any feedback from commenters. As such, we acknowledge that all three effects may be present.

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221 *See* Section VI.D of the Proposing Release for a more detailed discussion.

222 *See id.*

VIII. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules that would be affected by the final rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[223] The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted the proposed rules to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[224] While some commenters provided comments on the possible costs of the proposed rules,[225] no commenters specifically addressed our PRA analysis. Where appropriate, we have revised our burden estimates after considering other relevant comments as well as differences between the proposed and final rules.

The hours and costs associated with preparing and filing the forms and reports constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

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223 44 U.S.C. 3501 *et seq.*

224 44 U.S.C. 3507(d) and 5 CFR 1320.11.

225 *See, e.g.*, letters from ABA; BPI/SIFMA; CAQ; Crowe; EY; and PWC.

- Regulation S-K (OMB Control No. 3235-007);[226]
- Form S-1[227] (OMB Control No. 3235-0065);
- Form S-3[228] (OMB Control No. 3235-0073);[229]
- Form S-4[230] (OMB Control No. 3235-0324);
- Form F-1[231] (OMB Control No. 3235-0258);
- Form F-3[232] (OMB Control No. 3235-0256);
- Form F-4[233] (OMB Control No. 3235-0325);
- Form 10[234] (OMB Control No. 3235-0064);
- Form 10-K[235] (OMB Control No. 3235-0064);
- Form 10-Q[236] (OMB Control No. 3235-0070);
- Form 20-F (OMB Control No. 3235-0063); and

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226 The paperwork burden from Regulation S-K is imposed through the forms that are subject to the requirements in that regulation and is reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we do not assign paperwork burdens to Regulation S-K.

227 17 CFR 239.11.

228 17 CFR 239.13.

229 The paperwork burdens for Form S-3 and Form F-3 that would result from the final rules are imposed through the forms from which they are incorporated by reference and reflected in the analysis of those forms.

230 17 CFR 239.25.

231 17 CFR 239.31.

232 17 CFR 239.33.

233 17 CFR 239.34.

234 17 CFR 249.210.

235 17 CFR 249.310.

236 17 CFR 249.308a.

- Regulation A (Form 1-A)[237] (OMB Control No. 3235-0286).

The regulations and forms listed above were adopted under the Securities Act or the Exchange Act. The regulations and forms set forth the disclosure requirements for registration statements, offering statements, and periodic reports filed by registrants and issuers to help investors make informed investment decisions. A description of the final rules, including the need for the information and its use, as well as a description of the likely respondents, can be found in Sections II through V above, and a discussion of the economic effects of the proposed rules can be found in Section VII above.

B. Burden and Cost Estimates Related to the Proposed Rules

i. Affected Registrants and Forms

We estimate that, currently, approximately 493 bank and savings and loan registrants provide the disclosures set forth in Guide 3. These registrants have to provide the disclosures required by the final rules in Securities Act registration statements filed on Forms S-1, S-3, S-4, F-1, F-3, and F-4, Exchange Act registration statements on Forms 10 and 20-F, Exchange Act annual reports on Forms 10-K and 20-F, Exchange Act quarterly reports on Form 10-Q, and Regulation A offering statements on Form 1-A. We refer to these registrants in this PRA analysis as "affected registrants."

The final rules codify certain disclosure items in Guide 3 and eliminate other Guide 3 disclosure items that overlap with Commission rules, U.S. GAAP, or IFRS. Although the disclosure Items in Guide 3 are not Commission rules, under existing practice, affected registrants currently provide many of these disclosures in response to Guide 3. Therefore,

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[237] 17 CFR 239.90.

the burdens associated with these disclosure requirements are already included in the current burden hours and costs for the affected forms. As such, for PRA purposes, we are only revising the burdens and costs of the affected forms to reflect changes to the existing Guide 3 disclosure items in the final rules.

For example, as discussed in greater detail below,[238] the final rules do not codify in Item 1403 the disclosure items in Item II of Guide 3 that substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those disclosure requirements that the final rules do codify in Item 1403 are consistent with the current disclosure items in Item II. Therefore, we estimate that there would be no change to the burdens and costs of affected registrants as a result of Item 1403 because the Item would include disclosure items that are already included in Guide 3. In contrast, as discussed below,[239] Item 1404, in addition to codifying the loan disclosure items in Item III of Guide 3 that do not overlap with Commission rules, U.S. GAAP, or IFRS, requires certain interest rate disclosures that are not currently called for by Guide 3. Therefore, we estimate that Item 1404 would increase the burden and costs to affected registrants.

Additionally, for PRA purposes, we have allocated the burden and costs estimates related to the final rules to annual reports on Forms 10-K and 20-F. We have not adjusted the burdens and costs of a registrant filing its quarterly reports on Form 10-Q, as the registrant would be required to collect and disclose almost the same information related to the final rules cumulatively in its annual report as in each of its prior quarterly reports.

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238 *See* Section VIII.B.iii.b below.

239 *See* Section VIII.B.iii.c below.

Therefore, including the burden and cost estimates in both annual and quarterly reports would result in a PRA inventory reflecting duplicative burdens.

Further, as with quarterly reports on Form 10-Q, a registrant would be required to collect and disclose almost the same information related to the final rules in a registration or offering statement as it would in an annual report. However, we recognize that there could be some additional burdens and costs associated with a registration or offering statement that may not apply to an annual report. Therefore, we assign a small incremental increase in burdens and costs to all affected registration and offering statements, including Forms 20-F, S-1, S-4, F-1, F-4, 10, and 1-A.

ii. Standard Estimated Burden Allocation for Specified Forms

For purposes of the PRA, total burden is to be allocated between internal burden hours and outside professional costs. A registrant's internal burden is estimated in internal burden hours and its outside professional costs are estimated at $400 per hour.[240] Table 5 below sets forth the percentage estimates we typically use for the burden allocation for each form.

Table 5. Standard Estimated Burden Allocation for Specified Forms.

Form Type	Internal	Outside Professionals
Form 10-K	75%	25%
Form 20-F	25%	75%
Form S-1	25%	75%
Form S-4	25%	75%

[240] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs will be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms, and other persons who regularly assist registrants in preparing and filing reports with the Commission.

Form F-1	25%	75%
Form F-4	25%	75%
Form 10	25%	75%
Form 1-A	75%	25%

iii. Burden Change for Specific Portions of the Final Rules

a. Disclosure Related to Distribution of Assets, Liabilities, and Stockholders' Equity; and Interest Rate and Interest Differential (Item I of Guide 3 / Item 1402)

The final rules in Item 1402 require additional disaggregation to include the categories under Item VII of Guide 3 and certain other categories in Article 9 of Regulation S-X. We are adopting the rules substantially as proposed. In a change from the proposed rules, the final rules clarify that the categories enumerated in the final rules "must be included, if material," rather than the disclosure "must include, at a minimum." We do not believe this change affects our burdens and costs estimate from the Proposing Release as in many cases we believe the additional disaggregation will provide material information. Therefore, we estimate that the burdens and costs of an affected annual report will increase by two hours per year and the burdens and costs of an affected registration or offering statement will increase by one hour per year. Table 6 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the disclosure related to the distribution of assets, liabilities, and stockholders' equity and interest rate and interest differential.

Table 6. Estimated Increase in Internal Burden Hours and Costs for Professionals from the Disclosure Related to Distribution of Assets, Liabilities, and Stockholders' Equity; and Interest Rate and Interest Differential (Item I of Guide 3 / Item 1402).

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +2 hours					
Form 10-K	450	1.5[1]	675	$200[2]	$90,000
Form 20-F	43	0.5[3]	21.5	$600[4]	$25,800
Registration and Offering Statements = +1 hour					
Form 20-F	1	0.25[5]	0.25	$300[6]	$300
Form S-1	15	0.25[7]	3.75	$300[8]	$4,500
Form S-4	87	0.25[9]	21.75	$300[10]	$26,100
Form F-1	1	0.25[11]	0.25	$300[12]	$300
Form F-4	2	0.25[13]	0.5	$300[14]	$600
Form 10	2	0.25[15]	0.5	$300[16]	$600
Form 1-A	1	0.75[17]	0.75	$100[18]	$75

[1] Two hours x 0.75 = 1.5 hours.

[2] (Two hours x 0.25) x $400 = $200.

[3] Two hours x 0.25 = 0.5 hours.

[4] (Two hours x 0.75) x $400 = $600.

[5] One hour x 0.25 = 0.25 hours.

[6] (One hour x 0.75) x $400 = $300.

[7] One hour x 0.25 = 0.25 hours.

[8] (One hour x 0.75) x $400 = $300.

[9] One hour x 0.25 = 0.25 hours.

[10] (One hour x 0.75) x $400 = $300.

[11] One hour x 0.25 = 0.25 hours.

[12] (One hour x 0.75) x $400 = $300.

[13] One hour x 0.25 = 0.25 hours.

[14] (One hour x 0.75) x $400 = $300.

[15] One hour x 0.25 = 0.25 hours.

[16] (One hour x 0.75) x $400 = $300.

[17] One hour x 0.75 = 0.75 hours.

[18] (One hour x 0.25) x $400 = $100.

b. Disclosure Related to Investment Portfolios (Item II of Guide 3 / Item 1403)

We are adopting final rules as proposed. The disclosure items in Item II of Guide 3 that the final rules do not codify in Item 1403 substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those that the final rules codify in Item 1403 are consistent with the current disclosure items in Item II of Guide 3. Therefore, we estimate that there will be no change to the burdens and costs of an affected annual report or registration or offering statement as a result of this aspect of the final rules.

c. Disclosure Related to Loan Portfolios (Item III of Guide 3 / Item 1404)

In Item 1404, the final rules codify the loan disclosure items in Item III of Guide 3 that do not overlap with Commission rules, U.S. GAAP, or IFRS. We are adopting final rules substantially as proposed. In a change from the proposed rules, the final rules separate the "after five years" maturity category is into two separate categories. We do not believe this change affects our burdens and costs estimate from the Proposing Release because the change requires only a slightly different calculation. The final rules in Item 1404 require additional disclosure regarding interest rates for all loan categories, so we estimate that the burdens and costs of an affected annual report will increase by three hours per year and the burdens and costs of an affected registration or offering statement will increase by one hour per year. Table 7 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the final disclosure requirements related to loan portfolios.

Table 7. Estimated Change in Internal Burden Hours and Costs for Outside Professionals from the Disclosure Related to Loan Portfolios (Item III of Guide 3 / Item 1404).

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +3 hours					
Form 10-K	450	2.25[1]	1,012.5	$300[2]	$135,000
Form 20-F	43	0.75[3]	32.25	$900[4]	$38,700
Registration and Offering Statements = +1					
Form 20-F	1	0.25[5]	0.25	$300[6]	$300
Form S-1	15	0.25[7]	3.75	$300[8]	$4,500
Form S-4	87	0.25[9]	21.75	$300[10]	$26,100
Form F-1	1	0.25[11]	0.25	$300[12]	$300
Form F-4	2	0.25[13]	0.5	$300[14]	$600
Form 10	2	0.25[15]	0.5	$300[16]	$600
Form 1-A	1	0.75[17]	0.75	$100[18]	$75

[1] Three hours x 0.75 = 2.25 hours.

[2] (Three hours x 0.25) x $400 = $300.

[3] Three hours x 0.25 = .75 hours.

[4] (Three hours x 0.75) x $400 = $900.

[5] One hour x 0.25 = 0.25 hours.

[6] (One hour x 0.75) x $400 = $300.

[7] One hour x 0.25 = 0.25 hours.

[8] (One hour x 0.75) x $400 = $300.

[9] One hour x 0.25 = 0.25 hours.

[10] (One hour x 0.75) x $400 = $300.

[11] One hour x 0.25 = 0.25 hours.

[12] (One hour x 0.75) x $400 = $300.

[13] One hour x 0.25 = 0.25 hours.

[14] (One hour x 0.75) x $400 = $300.

[15] One hour x 0.25 = 0.25 hours.

[16] (One hour x 0.75) x $400 = $300.

[17] One hour x 0.75 = 0.75 hours.

[18] (One hour x 0.25) x $400 = $100.

d. Disclosure Related to Allowance for Credit Losses (Item IV of Guide 3 / Item 1405(c))

We are adopting final rules as proposed. The disclosure items in Item IV of Guide 3 that the final rules do not codify in proposed Item 1405(c) substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those disclosure items that the final rules do codify in Item 1405(c) are consistent with the current disclosure items in Item IV of Guide 3. Therefore, we estimate that there will be no change to the burdens and costs of an affected annual report or registration or offering statement as a result of this aspect of the final rules.

e. Disclosure Related to Deposits (Item V of Guide 3 / Item 1406)

The final rules in Item 1406 codify the majority of the disclosure items in Item V of Guide 3, with some revisions. We are adopting final rules substantially as proposed. In a change from the proposed rules, the final rules state that uninsured deposits may be based on estimated amounts of uninsured deposits as of the reporting period end, to the extent it is not practicable to provide a precise measure of uninsured deposits. The final rules also differ from the proposed rules by requiring that such estimates of uninsured deposits be based on the same methodologies and assumptions used for the applicable bank or savings and loan registrant's regulatory reporting requirements. We do not believe these changes affect our burdens and costs estimate from the Proposing Release as they represent modest accommodations that do not fundamentally alter the registrant's disclosure obligations. We estimate that burdens and costs of an affected annual report will increase by three burden hours per year and the burdens and costs of an affected registration or offering statement will

increase by one hour per year. Table 8 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the final disclosure related to deposits.

Table 8. Estimated Change in Internal Burden Hours and Costs for Outside Professionals from the Disclosure Related to Deposits (Item V of Guide 3 / Item 1406).

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +3 hours					
Form 10-K	450	2.25[1]	1,012.5	$300[2]	$135,000
Form 20-F	43	0.75[3]	32.25	$900[4]	$38,700
Registration and Offering Statements = +1					
Form 20-F	1	0.25[5]	0.25	$300[6]	$300
Form S-1	15	0.25[7]	3.75	$300[8]	$4,500
Form S-4	87	0.25[9]	21.75	$300[10]	$26,100
Form F-1	1	0.25[11]	0.25	$300[12]	$300
Form F-4	2	0.25[13]	0.5	$300[14]	$600
Form 10	2	0.25[15]	0.5	$300[16]	$600
Form 1-A	1	0.75[17]	0.75	$100[18]	$75

[1] Three hours x 0.75 = 2.25 hours.

[2] (Three hours x 0.25) x $400 = $300.

[3] Three hours x 0.25 = 0.75 hours.

[4] (Three hours x 0.75) x $400 = $900.

[5] One hour x 0.25 = 0.25 hours.

[6] (One hour x 0.75) x $400 = $300.

[7] One hour x 0.25 = 0.25 hours.

[8] (One hour x 0.75) x $400 = $300.

[9] One hour x 0.25 = 0.25 hours.

[10] (One hour x 0.75) x $400 = $300.

[11] One hour x 0.25 = 0.25 hours.

[12] (One hour x 0.75) x $400 = $300.

[13] One hour x 0.25 = 0.25 hours.

[14] (One hour x 0.75) x $400 = $300.

[15] One hour x 0.25 = 0.25 hours.

[16] (One hour x 0.75) x $400 = $300.

[17] One hour x 0.75 = 0.75 hours.

[18] (One hour x 0.25) x $400 = $100.

f. Disclosure Related to Return on Equity and Assets (Item VI of Guide 3)

As proposed, the final rules do not codify the disclosure items in Item VI of Guide 3. Therefore, we estimate that the burdens and costs of an affected annual report will decrease by two burden hours per year and the burdens and costs of an affected registration or offering statement will decrease by one hour per year. Table 9 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to this aspect of the final rules.

Table 9. Estimated Decrease in Internal Burden Hours and Costs for Outside Professionals from the Disclosure Related to Return on Equity and Assets (Item VI of Guide 3).

Form (A)	**Number of Affected Filings** (B)	**Decrease in Internal Burden Hours Per Registrant** (C)	**Total Decrease in Internal Burden Hours** (D) [(B * (C)]	**Decrease in Outside Professional Cost Per Registrant** (E)	**Total Decrease in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = -2 hours					
Form 10-K	450	(1.5)[1]	(675)	($200)[2]	($90,000)

Form 20-F	43	(0.5)[3]	(21.5)	($600)[4]	($25,800)
Registration and Offering Statements = -1 hour					
Form 20-F	1	(0.25)[5]	(0.25)	($300)[6]	($300)
Form S-1	15	(0.25)[7]	(3.75)	($300)[8]	($4,500)
Form S-4	87	(0.25)[9]	(21.75)	($300)[10]	($26,100)
Form F-1	1	(0.25)[11]	(0.25)	($300)[12]	($300)
Form F-4	2	(0.25)[13]	(0.5)	($300)[14]	($600)
Form 10	2	(0.25)[15]	(0.5)	($300)[16]	($600)
Form 1-A	1	(0.75)[17]	(0.75)	($100)[18]	($75)

[1] Two hours x 0.75 = 1.5 hours.

[2] (Two hours x 0.25) x $400 = $200.

[3] Two hours x 0.25 = 0.5 hours.

[4] (Two hours x 0.75) x $400 = $600.

[5] One hour x 0.25 = 0.25 hours.

[6] (One hour x 0.75) x $400 = $300.

[7] One hour x 0.25 = 0.25 hours.

[8] (One hour x 0.75) x $400 = $300.

[9] One hour x 0.25 = 0.25 hours.

[10] (One hour x 0.75) x $400 = $300.

[11] One hour x 0.25 = 0.25 hours.

[12] (One hour x 0.75) x $400 = $300.

[13] One hour x 0.25 = 0.25 hours.

[14] (One hour x 0.75) x $400 = $300.

[15] One hour x 0.25 = 0.25 hours.

[16] (One hour x 0.75) x $400 = $300.

[17] One hour x 0.75 = 0.75 hours.

[18] (One hour x 0.25) x $400 = $100.

g. Disclosure Related to Short-Term Borrowings (Item VII of Guide 3 / Item 1402)

We are adopting final rules as proposed. The final rules codify the average amount outstanding and interest paid disclosure items in Item VII of Guide 3 as part of Rule 1402, but do not codify the remaining disclosure items in Item VII. Therefore, we estimate that the burdens and costs of an affected annual report will decrease by four burden hours per year

and the burdens and costs of an affected registration or offering statement will decrease by one hour per year. Table 10 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the disclosure related to short-term borrowings.

Table 10. Estimated Decrease in Internal Burden Hours and Costs for Outside Professionals from the Final Rules Related to Short-Term Borrowings (Item VII of Guide 3 / Item 1402).

Form (A)	**Number of Affected Filings** (B)	**Decrease in Internal Burden Hours Per Registrant** (C)	**Total Decrease in Internal Burden Hours** (D) [(B) * (C)]	**Decrease in Outside Professional Cost Per Registrant** (E)	**Total Decrease in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = -4 hours					
Form 10-K	450	(3)[1]	(1,350)	($400)[2]	($180,000)
Form 20-F	43	(1)[3]	(43)	($1,200)[4]	($51,600)
Registration and Offering Statements = -1					
Form 20-F	1	(0.25)[5]	(0.25)	($300)[6]	($300)
Form S-1	15	(0.25)[7]	(3.75)	($300)[8]	($4,500)
Form S-4	87	(0.25)[9]	(21.75)	($300)[10]	($26,100)
Form F-1	1	(0.25)[11]	(0.25)	($300)[12]	($300)
Form F-4	2	(0.25)[13]	(0.5)	($300)[14]	($600)
Form 10	2	(0.25)[15]	(0.5)	($300)[16]	($600)
Form 1-A	1	(0.75)[17]	(0.75)	($100)[18]	($75)

1 Four hours x 0.75 = 3 hours.

2 (Four hours x 0.25) x $400 = $400.

3 Four hours x 0.25 = 1 hours.

4 (Four hours x 0.75) x $400 = $1,200.

5 One hour x 0.25 = 0.25 hours.

6 (One hour x 0.75) x $400 = $300.

7 One hour x 0.25 = 0.25 hours.

8 (One hour x 0.75) x $400 = $300.

9 One hour x 0.25 = 0.25 hours.

10 (One hour x 0.75) x $400 = $300.

[11] One hour x 0.25 = 0.25 hours.

[12] (One hour x 0.75) x $400 = $300.

[13] One hour x 0.25 = 0.25 hours.

[14] (One hour x 0.75) x $400 = $300.

[15] One hour x 0.25 = 0.25 hours.

[16] (One hour x 0.75) x $400 = $300.

[17] One hour x 0.75 = 0.75 hours.

[18] (One hour x 0.25) x $400 = $100.

h. Disclosure Related to Credit Ratios (Items 1405(a) and (b))

Under the final rules, credit ratios and related disclosures are required for the same periods for which our rules require financial statements for those filings. We proposed this same period requirement for all filings other than initial registration and offering statements, such that the proposed credit ratios and related disclosures for annual reports and registration or offering statements that are not initial registration or offering statements would be required for the same periods for which our rules require financial statements for those filings, which would be less than five years. Additionally, we proposed a period requirement of five years for initial registration and offering statements, such that an affected registrant filing its initial registration or offering statement would be required to provide its credit ratios and related disclosures for each of the last five years. The final rules eliminate this bifurcation and require credit ratios and related disclosures for the same periods for which our rules require financial statements for those filings.

In the Proposing Release, we estimated that the burdens and costs of an annual report would increase by six burden hours per year and the burdens and costs of a registration or offering statement that is not an initial registration or offering statement would increase by one hour per year. Additionally, we estimated that providing the additional years of credit

ratios and related disclosures that go beyond what would be required in an annual report or a registration or offering statement that is not an initial registration or offering statement would increase the burdens and costs for an initial registration or offering statement by six burden hours per year. Because the final rules do not include a five-year period requirement for credit ratio disclosures in initial registration statements, we estimate that the burdens and costs of an annual report will increase by six burden hours per year and the burdens and costs of a registration or offering statement, initial or otherwise, will increase by one hour per year.

Table 11 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the disclosure related to credit ratios.

Table 11. Estimated Increase in Internal Burden Hours and Costs for Outside Professionals from the Disclosure Related to Credit Ratios (Items 1405(a) and (b)).

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +6 hours					
Form 10-K	450	4.5[1]	2,025	$600[2]	$270,000
Form 20-F	43	1.5[3]	64.5	$1,800[4]	$77,400
Registration and Offering Statements = +1 hours					
Form 20-F	1	0.25[5]	0.25	$300[6]	$300
Form S-1	15	0.25[7]	3.75	$300[8]	$4,500
Form S-4	87	0.25[9]	21.75	$300[10]	$26,100
Form F-1	1	0.25[11]	0.25	$300[12]	$300
Form F-4	2	0.25[13]	0.5	$300[14]	$600
Form 10	2	0.25[15]	0.5	$300[16]	$600
Form 1-A	1	0.75[17]	0.75	$100[18]	$75

[1] Six hours x 0.75 = 4.5 hours.

(Six hours x 0.25) x $400 = $600.

Six hours x 0.25 = 1.5 hours.

(Six hours x 0.75) x $400 = $1,800.

One hour x 0.25 = 0.25 hours.

(One hour x 0.75) x $400 = $300.

One hour x 0.25 = 0.25 hours.

(One hour x 0.75) x $400 = $300.

One hour x 0.25 = 0.25 hours.

(One hour x 0.75) x $400 = $300.

One hour x 0.25 = 0.25 hours.

(One hour x 0.75) x $400 = $300.

One hour x 0.25 = 0.25 hours.

(One hour x 0.75) x $400 = $300.

One hour x 0.75 = 0.75 hours.

(One hour x 0.25) x $400 = $100.

iv. Total Change in Burden Per Form as a Result of the Final Rules

Table 12 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals per form as a result of the final rules.

Table 12. Estimated Total Increase in Internal Burden Hours and Costs for Outside Professional as a Result of the Final Rules.

Form	Total Number of Affected Forms	Burden Hour Change Per Form	Total Change in Internal Burden Hours	Outside Professional Costs Change Per Form	Total Change in Outside Professional Cost
Form 10-K			***2,700***		***$360,000***
Subsection a (Item 1402 of S-K)	450	1.5	675	$200	$90,000
Subsection b (Item	0	0	0	$0	0

1403 of S-K)					
Subsection c (Item 1404 of S-K)	450	2.25	1,012.5	$300	$135,000
Subsection d (Item 1405(c) of S-K)	0	0	0	$0	0
Subsection e (Item 1406 of S-K)	450	2.25	1,012.5	$300	$135,000
Subsection f (Item VI of Guide 3)	450	(1.5)	(675)	($200)	($90,000)
Subsection g (Item 1402 of S-K)	450	(3)	(1,350)	($400)	($180,000)
Subsection h (Items 1405(a) and (b) of S-K)	450	4.5	2,025	$600	270,000
Form 20-F			***86.5***		***$103,800***
Form 20-F (Annual Report)		*2*	*86*	*$2,400*	*$103,200*
Subsection a (Item 1402 of S-K)	43	0.5	21.5	$600	$25,800
Subsection b (Item 1403 of S-K)	0	0	0	$0	0
Subsection c (Item 1404 of S-K)	43	0.75	32.25	$900	$38,700
Subsection d (Item 1405(c) of S-K)	0	0	0	$0	0
Subsection e (Item 1406 of S-K)	43	0.75	32.25	$900	$38,700
Subsection f (Item VI of Guide 3)	43	(0.5)	(21.5)	($600)	($25,800)
Subsection g (Item 1402 of S-K)	43	(1)	(43)	($1,200)	($51,600)
Subsection h (Items 1405(a) and (b) of S-K)	43	1.5	64.5	$1,800	$77,400
Form 20-F (Registration Statement)		*0.5*	*0.5*	*$600*	*$600*
Subsection a (Item 1402 of S-K)	1	0.25	0.25	$300	$300
Subsection b (Item 1403 of S-K)	0	0	0	$0	$0
Subsection c (Item 1404 of S-K)	1	0.25	0.25	$300	$300
Subsection d (Item 1405(c) of S-K)	0	0	0	$0	$0
Subsection e (Item 1406 of S-K)	1	0.25	0.25	$300	$300
Subsection f (Item VI of Guide 3)	1	(0.25)	(0.25)	($300)	($300)
Subsection g (Item 1402 of S-K)	1	(0.25)	(0.25)	($300)	($300)

Subsection h (Items 1405(a) and (b) of S-K)	1	0.25	0.25	$300	$300
Form S-1			***7.5***		***$9,000***
Subsection a (Item 1402 of S-K)	15	0.25	3.75	$300	$4,500
Subsection b (Item 1403 of S-K)	0	0	0	0	0
Subsection c (Item 1404 of S-K)	15	0.25	3.75	$300	$4,500
Subsection d (Item 1405(c) of S-K)	0	0	0	0	0
Subsection e (Item 1406 of S-K)	15	0.25	3.75	$300	$4,500
Subsection f (Item VI of Guide 3)	15	(0.25)	(3.75)	($300)	($4,500)
Subsection g (Item 1402 of S-K)	15	(0.25)	(3.75)	($300)	($4,500)
Subsection h (Items 1405(a) and (b) of S-K)	15	0.25	3.75	$300	$4,500
Form S-4			***43.5***		***$52,200***
Subsection a (Item 1402 of S-K)	87	0.25	21.75	$300	$26,100
Subsection b (Item 1403 of S-K)	0	0	0	0	0
Subsection c (Item 1404 of S-K)	87	0.25	21.75	$300	$26,100
Subsection d (Item 1405(c) of S-K)	0	0	0	0	0
Subsection e (Item 1406 of S-K)	87	0.25	21.75	$300	$26,100
Subsection f (Item VI of Guide 3)	87	(0.25)	(21.75)	($300)	($26,100)
Subsection g (Item 1402 of S-K)	87	(0.25)	(21.75)	($300)	($26,100)
Subsection h (Items 1405(a) and (b) of S-K)	87	0.25	21.75	$300	$26,100
Form F-1			***0.5***		***$600***
Subsection a (Item 1402 of S-K)	1	0.25	0.25	$300	$300
Subsection b (Item 1403 of S-K)	0	0	0	0	$0
Subsection c (Item 1404 of S-K)	1	0.25	0.25	$300	$300
Subsection d (Item 1405(c) of S-K)	0	0	0	0	$0

Subsection e (Item 1406 of S-K)	1	0.25	0.25	$300	$300
Subsection f (Item VI of Guide 3)	1	(0.25)	(0.25)	($300)	($300)
Subsection g (Item 1402 of S-K)	1	(0.25)	(0.25)	($300)	($300)
Subsection h (Items 1405(a) and (b) of S-K)	1	0.25	0.25	$300	$300
Form F-4			***1.0***		***$1,200***
Subsection a (Item 1402 of S-K)	2	0.25	0.5	$300	$600
Subsection b (Item 1403 of S-K)	0	0	0	0	$0
Subsection c (Item 1404 of S-K)	2	0.25	0.5	$300	$600
Subsection d (Item 1405(c) of S-K)	0	0	0	0	$0
Subsection e (Item 1406 of S-K)	2	0.25	0.5	$300	$600
Subsection f (Item VI of Guide 3)	2	(0.25)	(0.5)	($300)	($600)
Subsection g (Item 1402 of S-K)	2	(0.25)	(0.5)	($300)	($600)
Subsection h (Items 1405(a) and (b) of S-K)	2	0.25	0.5	$300	$600
Form 10			***1.0***		***$1,200***
Subsection a (Item 1402 of S-K)	2	0.25	0.5	$300	$600
Subsection b (Item 1403 of S-K)	0	0	0	0	$0
Subsection c (Item 1404 of S-K)	2	0.25	0.5	$300	$600
Subsection d (Item 1405(c) of S-K)	0	0	0	0	$0
Subsection e (Item 1406 of S-K)	2	0.25	0.5	$300	$600
Subsection f (Item VI of Guide 3)	2	(0.25)	(0.5)	($300)	($600)
Subsection g (Item 1402 of S-K)	2	(0.25)	(0.5)	($300)	($600)
Subsection h (Items 1405(a) and (b) of S-K)	2	0.25	0.5	$300	$600
Form 1-A			***1.5***		***$1,200***
Subsection a (Item 1402 of S-K)	1	0.75	0.75	$600	$600

Subsection b (Item 1403 of S-K)	0	0	0	$0	$0
Subsection c (Item 1404 of S-K)	1	0.75	0.75	$600	$600
Subsection d (Item 1405(c) of S-K)	0	0	0	$0	$0
Subsection e (Item 1406 of S-K)	1	0.75	0.75	$600	$600
Subsection f (Item VI of Guide 3)	1	(0.75)	(0.75)	($600)	($600)
Subsection g (Item 1402 of S-K)	1	(0.75)	(0.75)	($600)	($600)
Subsection h (Items 1405(a) and (b) of S-K)	1	0.75	0.75	$600	$600
TOTAL			**2,842**		**$529,200**

v. Total Paperwork Burden Under the Final Rules

Table 13 below shows the total estimated internal burden hours and costs for outside professional under the final rules.[241]

Table 13: Total Paperwork Burden Under the Final Rules.

	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Change in Internal Registrant Burden Hours (D)	Change in Outside Professional Costs (E)	Burden Hours for Affected Responses (F) [(B) + (D)]	Costs for Affected Responses (G) [(C) + (E)]
10-K	8,137	14,198,780	$1,895,224,719	2,700	$360,000	14,201,480	$1,895,584,719
20-F	725	479,304	$576,875,025	87	$103,800	479,391	$576,978,825
S-1	901	147,208	$180,319,975	8	$9,000	147,216	$180,328,975
S-4	551	562,465	$677,378,579	44	$52,200	562,509	$677,430,779
F-1	63	26,692	$32,275,375	1	$600	26,693	$32,275,975
F-4	39	14,049	$17,073,825	1	$1,200	14,050	$17,075,025
10	216	11,855	$14,091,488	1	$1,200	11,856	$14,092,688
1-A	179	98,396	$13,111,912	2	$1,200	98,398	$13,113,112

[241] Figures in the table have been rounded to the nearest whole number.

IX. Regulatory Flexibility Act Certification

The Commission certified, under section 605(b) of the Regulatory Flexibility Act ("RFA"), that, when adopted, the proposed amendments to the rules would not have a significant economic impact on a substantial number of small entities. This certification, including our basis for the certification, was set forth in Section IX of the Proposing Release. The Commission solicited comments regarding this certification and received no comments. We continue to believe this certification is appropriate. As noted in the Proposing Release, the Commission identified only one issuer that potentially would be subject to the proposed amendments and that may be considered a small entity. In addition, the proposed rules would have resulted in only modest effects on registrants' compliance burdens, for example, by adding between six additional burden hours for annual reports and one additional burden hour for registration statements (initial or otherwise). We also do not believe the proposed rules would otherwise have a significant economic effect on any small entities.

We are adopting the final rules as proposed with one substantive change relating to the proposed new credit ratio disclosure requirements. We do not believe that this change, which as discussed above will further limit the registrant's compliance burdens, alters the basis upon which the certification in the Proposing Release was made. Accordingly, we certify that the final rules will not have a significant economic impact on a substantial number of small entities.

X. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 3(b), 7, 10, 19(a), and 28 of the Securities Act and Sections 3(b), 12, 13, 15(d), 23(a), and 36(a) of the Exchange Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Banks, Banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

TEXT OF THE AMENDMENTS

For the reasons stated in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

2. Revise §210.9-01 to read as follows:

§ 210.9-01 Application of §§210.9-01 to 210.9-07

The consolidated financial statements filed for bank holding companies, savings and loan holding companies, and the financial statements of banks and savings and loan associations, must apply the guidance in this article in filings with the Commission.

3. Amend §210.9-03 by:

a. removing and reserving paragraphs 7(a) through (c); and

b. revising paragraph 7(e)(2).

The revisions to read as follows:

§ 210.9-03 Balance sheets.

* * * * *

7. * * *

(e) * * *

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans that are disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, so state and disclose the aggregate amounts of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78 mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 et seq.; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

4. Amend §229.404 by revising Instruction 4.c under "Instructions to Item 404(a)" to read as follows:

§ 229.404 (Item 404) Transactions with Related Persons, Promoters and Certain Control Persons

* * * * *

Instructions to Item 404(a)

* * * * *

4. * * *

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

* * * * *

5. Amend §229.801 by reserving paragraph (c).

6. Amend §229.802 by reserving paragraph (c).

7. Amend Part 229 by adding Subpart 229.1400.

The additions to read as follows:

Subpart 229.1400 — Disclosure by Bank and Savings and Loan Registrants

§ 229.1401 (Item 1401) General instructions.

(a) A bank, bank holding company, savings and loan association, or savings and loan holding company ("bank and savings and loan registrants") must provide the disclosure required by this subpart.

(b) When the term "reported period" is used in this subpart, it refers to each of the periods described below:

(1) Each annual period required by 17 CFR part 210 ("Regulation S-X") or 17 CFR 239.90 ("Form 1-A"); and-

(2) Any additional interim period subsequent to the most recent fiscal year end if a material change in the information or the trend evidenced thereby has occurred.

(c) In this subpart, registrants are required to use daily averages unless otherwise indicated. Registrants may use weekly or month-end averages where the collection of data on a daily average basis would involve unwarranted or undue burden or expense; provided that such averages are representative of the registrant's operations. Registrants must disclose the basis used for presenting averages.

(d) In various provisions throughout this subpart, registrants are required to disclose information relating to certain foreign financial activities. For purposes of this subpart, a registrant only is required to present this information if the registrant meets the threshold to make separate disclosures concerning its foreign activities in its consolidated financial statements pursuant to the test set forth in §210.9-05 of Regulation S-X.

§ 229.1402 (Item 1402) Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential.

(a) For each reported period, present average balance sheets containing the information specified below. The format of the average balance sheets may be condensed from consolidated financial statements, provided that the condensed average balance sheets indicate the significant categories of assets and liabilities, including all major categories of

interest-earning assets and interest-bearing liabilities. Major categories of interest-earning assets must include, if material, loans, taxable investment securities, non-taxable investment securities, interest bearing deposits in other banks, federal funds sold, securities purchased with agreements to resell, and other short-term investments. Major categories of interest-bearing liabilities must include, if material, savings deposits, other time deposits, federal funds purchased, securities sold under agreements to repurchase, commercial paper, other short-term debt, and long-term debt.

(b) For each reported period, present an analysis of net interest earnings as follows:

(1) For each major category of interest-earning asset and each major category of interest-bearing liability, the average amount outstanding during the period and the interest earned or paid on such amount.

(2) The average yield for each major category of interest-earning asset.

(3) The average rate paid for each major category of interest-bearing liability.

(4) The average yield on all interest-earning assets and the average rate paid on all interest-bearing liabilities.

(5) The net yield on interest-earning assets (net interest earnings divided by total interest-earning assets, with net interest earnings equaling the difference between total interest earned and total interest paid).

(6) The registrant may, at its option, present its analysis in connection with the average balance sheet required by paragraph (a).

(c) For the interest rates and interest differential analysis,

(1) Present for each comparative reporting period

(i) The dollar amount of change in interest income, and

(ii) The dollar amount of change in interest expense.

(2) For each major category of interest-earning asset and interest-bearing liability, segregate the changes presented pursuant to paragraph (c)(1) into amounts attributable to:

(i) Changes in volume (change in volume times old rate),

(ii) Changes in rates (change in rate times old volume), and

(iii) Changes in rates and volume (change in rate times change in volume).

(3) The rates and volume variances presented pursuant to paragraph (c)(2) must be allocated on a consistent basis between rates and volume variances, and the basis of allocation disclosed in a note to the table.

Instructions to Item 1402:

1. If material, disclose how non-accruing loans have been treated for purposes of the analyses required by paragraph (b).

2. In the calculation of the changes in the interest income and interest expense required by paragraph (c), exclude any out-of-period items and adjustments and disclose the types and amounts of items excluded in a note to the table.

3. If material loan fees are included in the interest income computation, disclose the amount of such fees.

4. If tax-exempt income is calculated on a tax equivalent basis, describe the extent of recognition of exemption from Federal, state, and local taxation and the combined marginal or incremental rate used in a brief note to the table.

5. If disclosure regarding foreign activities is required pursuant to Item 1401(d) of this subpart, the information required by paragraphs (a), (b) and (c) of this section must be further segregated between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to paragraph (a). In addition, for each reported period, present separately, on the basis of averages, the percentage of total assets and total liabilities attributable to foreign activities.

§ 229.1403 (Item 1403) Investments in debt securities.

(a) As of the end of the latest reported period, state 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 and is due (1) in one year or less, (2) after one year through five years, (3) after five years through ten years, and (4) after ten years.

(b) Disclose how the weighted average yield has been calculated. Additionally, state whether yields on tax-exempt obligations have been computed on a tax-equivalent basis (see Instruction 4 to Item 1402 of this subpart). Discuss any major changes in the tax-exempt portfolio.

§ 229.1404 (Item 1404) Loan portfolio.

(a) As of the end of the latest reported period, present separately the amount of loans in each category for which disclosure is required in the financial statements that are due: (1) in one year or less, (2) after one year through five years, (3) after five years through 15 years, and (4) after 15 years.

(b) For each loan category for which disclosure is provided in response to paragraph (a), present separately the total amount of loans in such loan category that are due after one

year that (1) have predetermined interest rates and (2) have floating or adjustable interest rates.

Instructions to Item 1404:

1. Report scheduled repayments in the maturity category in which the payment is due.

2. Report demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts as due in one year or less.

3. Determinations of maturities shall be based upon contractual terms. However, to the extent that non-contractual rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS, include such non-contractual rollovers or extensions for purposes of the maturities classification and briefly discuss this methodology.

§ 229.1405 (Item 1405) Allowance for Credit Losses.

(a) For each reported period, 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.

(4) Net charge-offs during the period to average loans outstanding during the period.

Provide this ratio for each loan category for which disclosure is required in the financial statements.

(b) Provide a discussion of the factors that drove material changes in the ratios in (a) above, or the related components, during the periods presented.

(c) At the end of each reported period, provide a breakdown of the allowance for credit losses by each loan category for which disclosure is required by U.S. GAAP in the following format:

Allocation of the Allowance for Credit Losses

	Reported Period	
Balance at End of Period Applicable to:	*Amount*	*Percent of loans in each category to total loans*
Each loan category required by U.S. GAAP	$X	X%
		100%

Instructions to Item 1405:

1. A foreign private issuer that prepares its financial statements in accordance with IFRS as issued by the IASB does not need to provide disclosure responsive to Items 1405(a)(2), (a)(3) and Item 1405(c).

2. Net charge-offs must be based on current period net charge-offs for each loan category.

§ 229.1406 (Item 1406) Deposits.

(a) For each reported period, present separately the average amount of and the average rate paid on each of the following deposit categories that are in excess of 10 percent of average total deposits:

(1) Noninterest bearing demand deposits.

(2) Interest-bearing demand deposits.

(3) Savings deposits.

(4) Time deposits.

(5) Other.

(b) If the registrant believes other categories more appropriately describe the nature of the deposits, those categories may be used.

(c) If material, separately present domestic deposits and foreign deposits for all amounts reported under (a) above. Foreign deposits as used here means deposits from depositors who are not in the registrant's country of domicile.

(d) If material, the registrant must disclose separately the aggregate amount of deposits by foreign depositors in domestic offices. Registrants are not required to identify the nationality of the depositors.

(e) As of the end of each reported period, present separately the amount of uninsured deposits. For registrants that are U.S. federally insured depository institutions, uninsured deposits are the portion of deposit accounts in U.S. offices that exceed the Federal Deposit Insurance Corporation insurance limit or similar state deposit insurance regime, and amounts in any other uninsured investment or deposit accounts that are classified as deposits and not subject to any federal or state deposit insurance regime. Foreign banking or savings and loan registrants must disclose the definition of uninsured deposits appropriate for their country of domicile. All registrants should consider the methodologies and assumptions used for regulatory reporting of uninsured deposits, to the extent applicable, for disclosure of uninsured deposits. To the extent it is not reasonably practicable to provide a precise measure of uninsured deposits at the reported period, the registrant must disclose that the

amounts are based on estimated amounts of uninsured deposits as of the reported period. Such estimates must be based on the same methodologies and assumptions used for the applicable bank or savings and loan registrant's regulatory reporting requirements.

(f) As of the end of the latest reported period, state the amount outstanding of:

(1) The portion of U.S. time deposits, by account, that are in excess of the Federal Deposit Insurance Corporation insurance limit or similar state deposit insurance regime; 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-specific insurance fund limit), by time remaining until maturity of:

(i) 3 months or less;

(ii) over 3 through 6 months;

(iii) over 6 through 12 months; and

(iv) over 12 months.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

11. Amend Form 20-F (referenced in § 249.220f) by:

a. adding Instruction 4 to Item 4; and

b. revising Instruction 2 to Item 7.B.

The addition and revisions to read as follows:

Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 20-F

* * * * *

PART I

* * * * *

Instructions to Item 4: * * *

4. If you are bank, bank holding company, savings and loan association or savings and loan holding company, provide the information specified in Subpart 1400 of Regulation S-K (§229.1400 et seq. of this chapter).

* * * * *

Instructions to Item 7.B: * * *

2. In response to Item 7.B.2, if the lender is a bank, savings and loan association, or broker dealer extending credit under Federal Reserve Regulation T, and the loans are not disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, your response may consist of a statement, if true, that the loans in question (A) were made in the ordinary course of business, (B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for

comparable transactions with other persons, and (C) did not involve more than the normal risk of collectability or present other unfavorable features.

* * * * *

By the Commission.

Dated: September 11, 2020.

Vanessa A. Countryman
Secretary