Please note that the comments expressed herein are solely my personal views

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
United States
www.sec.gov

Chris Barnard

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- 17 CFR Parts 210, 229, 230, 232, 239, 240 and 249
- Release Nos. 33-10064; 34-77599; File No. S7-06-16
- Business and Financial Disclosure Required by Regulation S-K

Dear Sir.

Thank you for giving us the opportunity to comment on your concept release on: Business and Financial Disclosure Required by Regulation S-K.

You are seeking public comment on modernizing certain business and financial disclosure requirements in Regulation S-K. These disclosure requirements serve as the foundation for the business and financial disclosure in registrants' periodic reports. This concept release is part of an initiative by the Division of Corporation Finance to fully review the disclosure requirements applicable to registrants to consider ways to improve the requirements for the benefit of investors and registrants.

I would like to make three main comments: firstly about the nature of materiality, determining materiality thresholds and whether more guidance is needed in this regard; secondly about the importance of managing the expectations of users regarding financial statements that incorporate subjective elements or judgments about future events; and finally on how we should analyse and present measurement uncertainty in order to better and more appropriately manage the expectations of investors, potential investors and other users of financial statements.

What is the nature of materiality?

Materiality is related to relevance in the sense that material information is relevant to the fair presentation of the financial position of the reporting entity. Materiality can be considered a subset of relevance, or rather, a threshold which determines whether information is relevant. It is both an entity-specific consideration, and a user-specific consideration, and therefore depends on the particular reporting entity's situation and the perceived (or stated) tolerances of users. This dual dependence does not easily permit a rules-based or uniform quantitative materiality threshold, rather a principles-based, entity- and user-specific materiality threshold.

Who should define the threshold of materiality?

Given the nature of materiality, which depends on the nature and magnitude of a particular item in relation to a particular reporting entity's situation, it demands a principles-based, entity- and user-specific consideration in order to determine its threshold. This should only reasonably be determined by the particular individual reporting entity before the event.[1] It cannot be reasonably determined by standard-setters uniformly or in isolation. Should a question of materiality arise after the event, its implications and consequences will certainly depend on the process and due consideration given to materiality by the reporting entity and its auditors before the event.

Is there a need for more guidance in this regard?

The accompanying S-K Study identified four issues for further study, including that: any review of disclosure requirements should consider ways to present information to improve the readability and navigability of disclosure and explore methods for discouraging repetition and disclosure of immaterial information.[2] Here the S-K Study suggested reevaluating quantitative thresholds and other materiality standards in Regulation S-K. I accept that this is necessary, and would therefore welcome further guidance here.

Managing the expectations of users

Users should clearly understand and expect that any financial statement measurement which contains subjective elements, or judgments about future events, will almost certainly turn out to be "wrong". In fact, the only thing that you can usually predict with any certainty is that the actual outcome will be different from that originally measured, estimated or predicted. Whilst

[1] Individual users will have their own views after the event, which the reporting entity must pre-consider in its determination of the threshold.

[2] See S-K Study, pages 92-104, available at: https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf

most experienced users understand this concept, for some, including the general public, the increasing burdens on financial statement preparers, and greater input of skilled resources required thereon, coupled with increasing auditing requirements and oversight, may imply that the financial statements should be “correct” and that any judgments about future events that are incorporated into financial statement measurements should be “right”. When such judgments actually turn out to have been “wrong”, some users may believe that the financial statements themselves were “wrong”, or had been prepared incorrectly or incompetently, and that there was a failure of process either at source, or during the auditing and oversight stage. This is mostly not the case. Therefore it is important that we manage the expectations of users in this regard, and provide enough guidance and disclosure in order to illustrate the potential measurement uncertainty that exists in financial statement measurements that incorporate judgments about future events.

Measurement uncertainty analysis

It is important that registrants should present a range of reasonable outcomes, rather than a point estimate, when incorporating judgments about future events in financial statement measurements. Such a range of reasonable outcomes should at least consider the following:

1) the change in the measurement to changing individual judgments and/or assumptions (sensitivity analysis);
2) the change in the measurement to changing several judgments and/or assumptions at the same time, where the judgments and/or assumptions could reasonably be expected to change together (scenario analysis);
3) changes in the dependencies assumed between the judgments and/or assumptions.

This measurement uncertainty analysis should consider materiality, and allow for those judgments or assumptions which have a significant impact on the measurement.[3] In my opinion, such measurement uncertainty analysis will help to manage the expectations of users regarding financial statement measurements that incorporate judgments about future events. This is both a reasonable and proportionate approach.

[3] This is being considered to some extent in US GAAP and IFRS; for example the 2010 requirement for entities to disclose a quantitative measurement uncertainty analysis for fair value measurements using significant unobservable inputs (Level 3 of the fair value hierarchy), of the effect of the measurements on profit or loss or other comprehensive income for the period. The IASB and FASB are incorporating the requirement for a narrative description, by class of asset or liability, of the sensitivity of a recurring fair value measurement categorized within Level 3 to changes in the unobservable inputs used in the measurement if a change in those inputs to a different amount would result in a significantly higher or lower fair value measurement. This is a good start, but more needs to be done here.

Answers to specific questions raised by the SEC

In response to your specific requests for comment I would add the following:

Question 103: Yes, we should revise Item 303 to include a principles-based requirement for all registrants to disclose performance metrics and other key variables important to their business. This will provide more meaningful information to investors and potential investors and allow them to more fully understand the sources of, and trends in entities' performance.

Question 104: Yes, we should require disclosure of any commentary, analysis, performance indicators or business drivers related to a registrant's key indicators. This will provide more meaningful information by aiding understandability. Registrants should explain why these metrics are relevant, and the methodologies used, and changes thereon, should be explained in order to aid trend analysis and comparability.

Question 142: Yes, we should require the disclosure of management's judgments and estimates that form the basis for MD&A disclosure. This will help to manage investors' and potential investors' expectations concerning the relevance and reliability of the resulting disclosure.

Question 146: We should require registrants to discuss the probability of occurrence and the effect on performance for each main risk factor. Such a measurement uncertainty analysis will aid understanding around the sensitivity of performance, and potential future performance to likely changes in, and the occurrence of; the main risk factors.

Question 151 I would recommend that we should eliminate the examples provided in Item 503(c). I strongly support a more principles-based approach that would require registrants to focus on their own risk identification process.

Yours faithfully

C.R.B.

Chris Barnard