SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229 and 249

[Release No. 33-10688; 34-86984; 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: Proposed rule.

SUMMARY: We are proposing rules to update our statistical disclosures 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 proposed rules would update the disclosures that investors receive, codify certain Guide 3 disclosures and eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), or International Financial Reporting Standards (“IFRS”). In addition, we propose to relocate the codified disclosures to a new subpart of Regulation S-K and to rescind Guide 3.

DATES: Comments should be received on or before [insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-02-17 on the subject line.

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-02-17. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (http://www.sec.gov/rules/proposed.shtml). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notification by email.

FOR FURTHER INFORMATION CONTACT: Stephanie Sullivan, Associate Chief Accountant, or Dana Hartz, 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 proposing to amend 17 CFR 229.404 ("Item 404 of Regulation S-K") under the Securities Act of 1933 ("Securities Act")[1]

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

and the Securities Exchange Act of 1934 ("Exchange Act");[2] 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 proposing to add a new subpart, 17 CFR 229.1400 ("Item 1400 of Regulation S-K"), which would include 17 CFR 229.1401 through 17 CFR 229.1406, and is proposing to rescind 17 CFR 229.801(c) and 229.802(c) Guide 3 Securities Act Industry Guide and Guide 3 Exchange Act Industry Guide ("Guide 3") under the Securities Act and Exchange Act.

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

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I. Introduction and Backgrounds

A. Background

Guide 3 was first published in 1976 as "a convenient reference to the statistical disclosures sought by the staff of the Division of Corporation Finance in registration statements and other disclosure documents filed by bank holding companies ("BHCs")."[3] 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. Guide 3 applies to BHCs,[4] although other registrants, including savings and loan holding companies, provide Guide 3 disclosures to the extent applicable. The Guide 3 Release noted that "as the operations of bank holding companies have diversified, it has become increasingly difficult for investors to identify the sources of income of such companies."[5] The Division believed that disclosure of the same statistical information about BHCs on a regular, periodic basis would assist in assessing their future earning potential and enable investors to compare BHCs more easily.[6] Guide 3 has been amended over time to provide more consistency with Article 9 of Regulation S-X ("Article

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3 *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].

4 Rule 1-02(e) of Regulation S-X [17 CFR 210.1-02(e)] defines a BHC as "a person who is engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control."

5 *See supra* note 3.

6 *Id*.

9")[7] and to elicit additional information about various risk elements involved in lending and deposit activities.[8]

Since the last substantive revision to Guide 3 in 1986,[9] the Commission has adopted disclosure requirements[10] and the Financial Accounting Standards Board ("FASB")[11] and International Accounting Standards Board ("IASB")[12] have issued accounting standards that have changed the financial reporting obligations for registrants engaged in financial services. Consequently, some of the disclosures called for by Guide 3 overlap with subsequently adopted Commission rules, U.S. GAAP, or IFRS.[13]

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7 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.

8 *Amendments to Guides for Statistical Disclosure by Bank Holding Companies*, Release No. 33-6221 (July 8, 1980) [45 FR 47138] ("1980 Guide 3 Release"); *Revision of Financial Statement Requirements and Industry Guide Disclosure for Bank Holding Companies*, Release No. 33-6458 (Mar. 7, 1983) [48 FR 11104]; R*evision of Industry Guide Disclosures for Bank Holding Companies*, Release No. 33-6478 (Aug. 11, 1983) 48 FR 37609 (together with Release 33-6458 the "1983 Guide 3 Releases"); *Notification of Technical Amendments to Securities Act Industry Guides*, Release No. 33-9337 (Jul. 13, 2012) [77 FR 42175] ("2012 Guide 3 Release").

9 This revision added disclosures regarding loans and extensions of credit to borrowers in countries experiencing liquidity problems. *See Amendments to Industry Guide Disclosures by Bank Holding Companies*, Release No. 33-6677 (Nov. 25, 1986) [51 FR 43594].

10 For example, the Commission adopted Item 305 of Regulation S-K [17 CFR 229.305] in 1997. *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments*, Release No. 33-7386 (Jan. 31, 1997) [62 FR 6044] ("Disclosure of Market Risk Sensitive Instruments Release").

11 The Commission has broad authority and responsibility under the federal securities laws to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws. *See, e.g.*, Sections 7 [15 U.S.C. 77g], 19(a) [15 U.S.C. 77s(a)] and Schedule A, Items (25) and (26) [15 U.S.C. 77aa(25) and (26)] of the Securities Act and Sections 3(b) [15 U.S.C. 78c(b)], 12(b) [17 CFR 781(b)] and 13(b) [17 CFR 78m(b)] of the Exchange Act. To assist it in meeting this responsibility, the Commission historically has looked to private sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards. In 2003, in accordance with criteria established by the Sarbanes-Oxley Act, the Commission designated the FASB as the private sector accounting standard setter for U.S. financial reporting. *See Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, Release No. 33-8221 (Apr. 25, 2003) [68 FR 23333].

12 The IASB, which is subject to oversight by the IFRS Foundation, is responsible for IFRS. For further information, *see* http://www.ifrs.org/About-us/Pages/IFRS-Foundation-and-IASB.aspx.

13 References to IFRS throughout are to IFRS as issued by the IASB.

B. Issuance of the Request for Comment

On March 1, 2017, the Commission published a request for comment on possible changes to Industry Guide 3 (the "Request for Comment").[14] The Request for Comment sought feedback on a number of areas, including:

- Whether, and in which respects, the specific quantitative and qualitative disclosures called for by Guide 3 should be modified, including elimination due to overlapping disclosure requirements in U.S. GAAP, IFRS, or other regulatory disclosure regimes;
- The types of information about registrants in the financial services industry that investors find important and the degree to which other disclosure regimes, such as those instituted by U.S. banking agencies, may be used by investors;
- Whether Guide 3 disclosures should be applicable to registrants other than BHCs; and
- Whether the reporting periods for Guide 3 disclosures should be modified.

In response to the Request for Comment, commenters expressed a range of views. Most commenters expressed support for an update to Guide 3.[15] Many of these commenters

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14 *See Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosures by Bank Holding Companies);* Release No. 33-10321 (Mar. 1, 2017) [82 FR 12757].

15 *See* letters from American Bankers Association ("ABA") (June 28, 2017); American Express Company ("AmEx") (July 7, 2017); BDO USA LLP ("BDO") (May 4, 2017); Berry Dunn McNeil & Parker LLC ("BerryDunn") (July 6, 2017); Center for American Progress ("CAP") (July 7, 2017); Center for Audit Quality ("CAQ") (May 8, 2017); Canadian Bankers Association ("CBA") (June 2, 2017); Clearing House Association L.L.C., Securities Industry and Financial Markets Association ("CH/SIFMA") (June 29, 2017); Crowe Horwath LLP ("Crowe") (July 6, 2017); Deloitte & Touche ("Deloitte") (June 1, 2017); Ernst & Young LLP ("EY") (May 24, 2017); International Bancshares Corporation ("IBC") (July 7, 2017); Independent Community Bankers of America ("ICBA") (May 8, 2017); KPMG LLP ("KPMG") (July 7, 2017); PNC Financial Services Group Inc. ("PNC") (July 6, 2017); Public Citizen (July 7, 2017); RSM US LLP ("RSM") (April 25, 2017); PricewaterhouseCoopers LLP ("PwC") (June 28, 2017); Sumitomo Mitsui Financial Group, Inc. (submitted by Davis Polk & Wardwell LLP) ("SMFG") (June 30, 2017); and XBRL US ("XBRL US") (July 7, 2017).

stated that Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, and IFRS should be eliminated.[16] Some commenters stated there are overlapping disclosures contained in the U.S. banking agencies public regulatory reports.[17] However, one commenter noted the U.S. banking agencies information may be of limited use to investors given the volume and level of detail of it.[18] Furthermore, several commenters noted that the primary purpose of U.S. banking agencies reporting is different from the Commission's disclosure objectives.[19] Several commenters called for the Guide 3 disclosures to be less prescriptive and more principles-based.[20]

A few commenters recommended that we consider addressing items such as (1) market risk and derivatives disclosures, (2) regulatory capital and other information currently required to be reported to U.S. banking agencies, (3) implementation and compliance with the Volcker Rule,[21] and (4) merchant banking and commercial assets information.[22] Some of these items affect a broader population of registrants than those addressed in this release and are activities for which Commission rules, U.S. GAAP, or IFRS already require detailed disclosures, such as derivatives. In addition, some of the recommended disclosures would

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16 *See* letters from ABA; AmEx; BDO; BerryDunn; CAQ; CBA; CH/SIFMA; Crowe; Deloitte; EY; IBC; ICBA; KPMG; Mizuho Financial Group Inc. ("MFG") (submitted by Simpson Thacher & Bartlett) (July 7, 2017); Mitsubishi UFJ Financial Group ("MUFG") (submitted by Paul Weiss) (July 7, 2017); PNC; PwC; and RSM.

17 *See* letters from ABA; Amex; CH/SIFMA; Deloitte; IBC; KPMG; and PNC.

18 *See* letter from CH/SIFMA.

19 *See* letters from ABA; Amex; CAQ; CH/SIFMA; Crowe; Deloitte; EY; PwC; and RSM.

20 *See* letters from ABA; AmEx; BDO; CAQ; Crowe; Deloitte; EY; KPMG; and PNC.

21 *See Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds*; Release No. BHCA-1 (Dec. 10, 2013) [79 FR 5535], which is commonly referred to as the Volcker Rule. The Volcker Rule is intended to prohibit banks from engaging in proprietary trading, which involves the bank using its funds to make short term trades in securities, derivatives, or commodity futures.

22 *See* letters from CAP; Public Citizen; Ethics Metrics, LLC ("EM") (May 8, 2017); and RSM.

likely give rise to confidentiality concerns related to confidential supervisory information[23] under the federal banking regulations.[24]

In developing our proposal, we considered the above recommendations, as well as the other comments received in response to the Request for Comment. Although the Request for Comment asked for feedback on a number of areas, in this release we focus on commenter feedback relevant to our proposals. We welcome additional feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed New Subpart 1400 of Regulation S-K

A. Codification

In the Request for Comment, the Commission sought input on whether any of the Guide 3 disclosures should be codified as Commission rules.[25] Some commenters recommended codifying these disclosures,[26] while others recommended that they not be codified.[27] Most of the latter commenters cited the ease of updating as the reason for not

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23 *See* 12 CFR 261.20.

24 The U.S. banking agencies have rules that address the disclosure of confidential supervisory information. Except in very limited circumstances, financial institutions are prohibited by law from disclosing nonpublic supervisory information to nonrelated third parties without written permission from the appropriate U.S. banking agency.

25 In 1996, the Commission's *Task Force on Disclosure Simplification* recommended relocating the industry guides, including Guide 3, into Regulation S-K. *See Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996), available at http://www.sec.gov/news/studies/smpl.htm. Currently, Instruction 13 to Regulation S-K Item 303(a) [17 CFR 229.303(a)] directs the attention of bank holding companies to the information called for by Guide 3. Additionally, an Instruction to Item 4 of Form 20-F indicates that the information specified in any industry guide that applies to the registrant should be furnished, and Item 7(c) of Form 1-A states that the disclosure guidelines in all Securities Act Industry Guides must be followed, and to the extent the industry guides are codified into Regulation S-K, the Regulation S-K industry disclosure items must be followed. We propose to amend Item 4 of Form 20-F to refer to proposed Items 1400 through 1406 of Regulation S-K.

26 *See* letters from Crowe; Deloitte; and EY.

27 *See* letters from ABA; AmEx; CBA; and CH/SIFMA.

codifying the disclosures.[28] One commenter further stated that codification would not enhance adherence by registrants and that retaining Guide 3 as guidance would continue to allow registrants flexibility in their approach to disclosure.[29]

We propose updating and codifying certain Guide 3 disclosures in a new Subpart 1400 of Regulation S-K.[30] This is consistent with the approach taken by the Commission when it has modernized other Industry Guides.[31] This proposed approach would mitigate uncertainty about when these disclosures must be included in Commission filings and enhance comparability across banking registrants, both foreign and domestic. Furthermore, the process to update an Industry Guide is the same as amendments to disclosure requirements. While there may be a decrease in flexibility driven by codification of the proposed rules into Regulation S-K, we believe this reduced flexibility is outweighed by the benefits of certainty about whether the disclosures are required. We also believe codification would streamline compliance by including these disclosures in Regulation S-K along with other non-financial statement disclosure requirements.

Request for Comment:

1. Should we codify the Guide 3 disclosures in new subpart 1400 of Regulation S-K, generally as proposed? Should some disclosures remain in Guide 3? If so, which ones?

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28 *See* letters from ABA; AmEx; and CH/SIFMA.

29 *See* letter from CH/SIFMA.

30 The Industry Guides, or Guide 3 specifically, are referenced in instructions to Forms 20-F and 1-A, as well as in instructions to Items 303 and 404 of Regulation S-K. We have proposed to replace these references, as applicable, with a reference to the proposed Subpart 1400 of Regulation S-K. We also propose to delete the reference to potential problem loans in Item III.C.1 and 2 of Guide 3 and Instruction 4(c) of Item 404 of Regulation S-K because we are not proposing to codify these disclosures. See Section II.G for further discussion.

31 For example, Industry Guide 2 was revised and codified in Subpart 1200 of Regulation S-K (17 CFR 229.1201 through 1208), *Modernization of Oil and Gas Reporting*, Release No. 33-8995 [74 FR 2157]. The Commission also recently consolidated the property disclosure requirements for mining registrants in a new Subpart 1300 of Regulation S-K, *Modernization of Property Disclosures for Mining Registrants*, Release No. 33-10570 (October 31, 2018) [83 FR 66344].

B. Proposed Scope

i. Background

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.[32] In the Request for Comment, the Commission acknowledged that BHCs today conduct a wider array of activities than at the time of Guide's publication.[33] Moreover, a wider range of companies, such as insurance companies, online marketplace lenders,[34] and other financial technology companies[35] engage in some of the activities addressed by the Guide 3 disclosure areas. However, these companies normally do not engage in deposit-taking activities and therefore do not provide Guide 3 disclosures. Based on these observations, the Commission asked whether Guide 3 should employ an activity-based scope, rather than a scope based on the type of registrant. For example, the Commission asked whether the Guide 3 investment disclosures should be extended to other registrants, such as those engaged in the financial services industry, regardless of whether the registrant is a BHC or has material lending and deposit-taking activities. The Commission also asked whether Guide 3 should employ a principles-based approach, instead of using bright-line percentages or dollar amount thresholds to trigger disclosure.

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32 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. If the proposed rule is adopted, the staff intends to rescind SAB 11:K.

33 For example, some BHCs engage in activities involving asset management, investment management, physical commodities, insurance, and broker-dealer activities.

34 Online marketplace lending is a method of debt financing, generally through loans, that does not use a traditional financial institution as an intermediary.

35 Financial technology companies develop or provide technological innovation in financial services. For example, a financial technology company may use computer programs and other technology to support or enable banking and financial services activities.

ii. Comments on Scope

Several commenters stated that the applicability of Guide 3 disclosures to non-BHC registrants should be clarified.[36] For example, a registrant with material lending *or* deposit-taking activities, but not both, may be uncertain about whether, and if so which, Guide 3 disclosures it should provide. Furthermore, uncertainty may exist about when investment, short-term borrowings, or return on equity and asset disclosures should be provided because those disclosures do not necessarily correspond to a "material lending *and* deposit activity" threshold. One commenter noted that this uncertainty could impede capital formation, because a registrant may incur costs to prepare Guide 3 disclosures that are not required.[37] One commenter stated that Guide 3 should continue to apply to BHCs and other registrants with material lending and deposit activities as this provides useful information to investors.[38] Another commenter stated that Guide 3 disclosures should apply to non-BHC registrants that have significant operations in which credit is provided.[39] Several commenters recommended an activity-based approach for Guide 3 disclosures,[40] and some of them recommended that it be specific to the material operations of the registrant.[41] Another commenter stated that an activity-based approach could be based on numerical thresholds, such as the percentage of a registrant's revenues derived from interest or dividends.[42]

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36 *See* letters from CAQ; Crowe; Deloitte; EY; KPMG; and PwC.

37 *See* letter from Crowe.

38 *See* letter from CH/SIFMA.

39 *See* letter from ABA.

40 *See* letters from BDO; CAQ; CH/SIFMA; Deloitte; EY; KPMG; and RSM.

41 *See* letters from CAQ; EY; and KPMG.

42 *See* letter from RSM.

iii. Proposed Scope

We are proposing that the proposed disclosure requirements continue to apply to BHCs, as well as include most of the registrants that under existing practice provide the disclosures called for by Guide 3.[43] Proposed Item 1401 of Regulation S-K would apply to banks, BHCs, savings and loan associations, and savings and loan holding companies (together, "bank and savings and loan registrants"). Most commenters focused on the need to clarify the existing practice of providing Guide 3 disclosures when there are material lending *and* deposit-taking activities. We believe identifying and codifying the types of registrants within the scope of the proposed rules would provide this clarification. We also believe this 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.[44] We do not believe there is a large population of non-banking registrants that are providing Guide 3 disclosure today that only engage in one or a few of the activities addressed by its disclosure areas, e.g., lending and deposit-taking. Furthermore, we believe registrants should be able to easily ascertain whether they are a bank or savings and loan registrant, reducing confusion regarding the applicability of the disclosures to non-BHCs.

We are not proposing to expand the scope to include other registrants, such as insurance companies, online marketplace lenders or other financial technology companies. While the proposed disclosures may be relevant to other registrants in the financial services industry, commenters provided limited feedback on the types of registrants, other than BHCs, that the Guide 3 disclosures would be applicable to and whether it would be material under

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[43] *See supra* note 32.

[44] There are only four registrants that have loans and bank deposits on their balance sheet, but are not within the proposed scope. *See* Table 1: Registrants Currently Applying Guide 3 in the Economic Analysis.

an activities-based approach. We believe additional feedback on how investors of registrants outside of the proposed scope would use the proposed disclosures would be valuable. Further, we would like to understand whether these other registrants are providing similar information in a different format. We encourage interested parties, including those outside of the banking industry, to provide feedback on the proposed disclosures as they relate to registrants outside of the proposed scope.

Request for Comment:

2. Is the proposed scope of the proposed rules sufficiently clear? If not, how should we revise the scope to make it clearer? Should the proposed rules specifically include banks, savings and loan associations, and savings and loan holding companies, as proposed? If not, why not?
3. Are there other types of registrants that should be included? For example, should we expand the scope of the proposed rules to include credit unions or all financial services registrants with material operations in any of the activities covered by the proposed rules? What are the other types of registrants that have material operations in any of the activities covered by the proposed rules? Would expanding the scope in this way elicit information material to an investment decision or are these registrants providing similar information in a different format? Would it enhance comparability? Are there particular burdens that financial services registrants, including domestic and foreign registrants, other than those within the proposed scope, would face in providing the disclosures? If so, what are the burdens and would these burdens outweigh the benefits of the disclosures? Are there ways to modify the proposal to help alleviate the burdens of providing the disclosures for these registrants?
4. If we expand the scope to include all financial services registrants, how should we define

a financial services registrant for this purpose? For example, should we define a financial services registrant to include entities that fall within the scope of ASC 942 Financial Services – Depository and Lending under U.S. GAAP?[45] Or should we define a financial services registrant as one that directly, or indirectly through its subsidiaries, engages primarily in providing financial services, including banking, investment, asset management, or other financial services? If so, would any of the following types of financial registrants be included in the definition: banks and bank holding companies, savings associations and savings and loan association holding companies, insurance companies, broker dealers, finance companies, foreign financial institutions, mortgage companies, online marketplace lenders, real estate investment trusts ("REITs"), asset managers, investment advisers, or government-sponsored enterprises? If the scope was expanded to include all financial services registrants, are there types of registrants, such as business development companies, that should be excluded?

5. If the scope included all financial services registrants, should we require disclosure only for the activities that are material to the business or financial statements of a registrant, or should disclosure be required for each of the areas covered by the proposed rules? Would a bright-line threshold work better for determining when these disclosures should be provided? If so, what bright-line threshold would be appropriate?

6. Should we consider an activity-based standard, such as one that captures material lending

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[45] ASC 942 provides incremental industry-specific guidance to the entities within its scope. The guidance in the Financial Services – Depositary and Lending topic applies to the following entities: (a) finance companies, including finance company subsidiaries, (b) depositary institutions insured by either (1) the FDIC's Deposit Insurance Fund, or (2) the National Credit Union Administration's National Credit Union Share Insurance Fund, (c) bank holding companies, (d) savings and loan association holding companies, (e) branches and agencies of foreign banks regulated by U.S. federal banking regulatory agencies, (f) state-chartered banks, credit unions, and savings institutions that are not federally insured, (g) foreign financial institutions whose financial statements are purported to be prepared in conformity with accounting principles generally accepted in the United States, (h) mortgage companies, and (i) corporate credit unions.

and deposit-taking activity, irrespective of registrant type? Should we consider a broader standard that would capture material lending *or* deposit-taking activity? What other activities could serve as the basis for such a standard? What additional types of registrants would be captured by an activity-based standard?

7. Are there registrants currently providing the Guide 3 disclosures that would not provide disclosures based on the proposed scope? If so, what types of registrants and which of the disclosures would they no longer provide? Would this change result in the loss of information material to an investment decision related to those registrants?

C. Proposed Applicability to Domestic Registrants and Foreign Registrants

i. Background

General Instruction 1 to Guide 3 states that the disclosures apply to the description of business portions of those registration statements and other specified filings for which financial statements are required. General Instruction 6 to Guide 3 indicates that the disclosures also apply to foreign registrants to the extent the information is available or can be compiled without unwarranted or undue burden and expense. Instructions to Item 4 of Form 20-F also indicate that the information specified in any industry guide that applies to the registrant should be furnished.[46] The staff has observed that bank and savings and loan registrants that are foreign registrants, including foreign private issuers, typically provide the Guide 3 disclosures.

[46] Form 40-F [17 CFR 249.240f] does not have a similar requirement, but the staff has observed that Canadian foreign private issuers that are financial institutions typically provide Guide 3 disclosures in their Form 40-F filings.

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)].

In the Request for Comment, the Commission asked whether these foreign registrants should provide the Guide 3 disclosures, whether IFRS disclosures provide the same or similar information as those called for by Guide 3, whether there are concepts or disclosures in Guide 3 that are not recognized under or contradict IFRS, and whether the unwarranted or undue burden or expense accommodation for foreign registrants was still necessary.

ii. Comments on Applicability to Domestic Registrants and Foreign Registrants

One commenter stated that Guide 3 should not apply to foreign banking registrants.[47] This commenter, along with several other commenters,[48] stated that foreign registrants face challenges in providing certain Guide 3 disclosures because they are based on U.S. GAAP or U.S. banking concepts that do not exist under IFRS.[49] Some commenters stated that the disclosures called for by Guide 3 should be aligned with the measurement and disclosure principles in IFRS, or provide more flexibility in accommodating accounting differences between U.S. GAAP and IFRS.[50] These commenters recommended, at a minimum, that foreign private issuers that apply IFRS be permitted to provide disclosures that address the objectives of the Guide 3 disclosure in a manner consistent with IFRS principles.[51]

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47 *See* letter from CH/SIFMA.

48 *See* letters from CAQ; CBA; Deloitte; EY; KPMG; SMFG; and PwC.

49 In 2008 the Commission began accepting financial statements of foreign private issuers prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP. *See* Item 17(c) of Form 20-F and *Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, Release No. 33-8879 (Dec. 21, 2007) [73 FR 985].

50 *See* letters from CAQ; CBA; EY; and KPMG.

51 The commenters that opposed applying Guide 3 to foreign registrants also recommended this approach if foreign private issuers continue to be scoped into the disclosures. *See* letter from CH/SIFMA.

Two commenters addressed circumstances where information called for by Guide 3 is unavailable and cannot be compiled without unwarranted or undue burden or expense[52] and recommended the staff continue to evaluate requests for disclosure accommodations.[53] For example, one of these commenters stated that, in some situations, the staff has not objected to a foreign private issuer providing information that is different from what a domestic registrant would provide under Guide 3 as long as it achieves the same objective as the information called for by Guide 3.[54] Another commenter stated that corresponding home country standards provide adequate protection to investors, and noted that the act of converting existing financial reporting systems into systems that would generate the information to provide the exact disclosures called for by Guide 3 would result in significant costs.[55]

iii. Proposed Rule – Applicability to Domestic Registrants and Foreign Registrants

Our proposed rules would apply to both domestic registrants and foreign registrants. We recognize that there are significant 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.[56] As a result, the proposed rules would provide

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52 General Instruction 6 to Guide 3 states that it should be brought to the staff's attention if Guide 3 information is unavailable to foreign registrants and cannot be compiled without undue burden or expense. The instruction further states that in evaluating the reasonableness of assertions by registrants that the compilation of requested information, such as historical data or daily averages, would involve an unwarranted or undue burden or expense, the staff takes into consideration, among other factors, the size of the registrant, the estimated costs of compiling the data, the electronic data processing capacity of the registrant, and efforts in process to obtain the information in future periods.

53 *See* letters from SMFG and PwC.

54 *See* letter from PwC.

55 *See* letter from SMFG.

56 For example, currently under U.S. GAAP (ASC 310-10-35-4), impairment on a loan is recognized when it is probable that a loss has been incurred, while IFRS 9, effective January 1, 2018 for calendar year companies, 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.

flexibility in identifying specific categories and classes of instruments that should be disclosed. In several instances, the proposed rules specifically link the disclosure requirements to the categories or classes of financial instruments disclosed in the registrant's U.S. GAAP or IFRS financial statements. Furthermore, the proposed rules explicitly exempt foreign private issuers applying IFRS ("IFRS registrants") from certain of the disclosure requirements that are not applicable under IFRS.[57] We believe these elements of the proposed rules substantially address the challenges foreign registrants may face in providing the required disclosures. We do not believe this flexibility for IFRS registrants will significantly change the level of information disclosed by these registrants because Guide 3 currently provides latitude in the categories used for certain of its disclosures and IFRS registrants generally do not provide Guide 3 disclosures that are not applicable under IFRS.

All registrants, 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").[58] These rules also consider whether obtaining the information would involve

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Differences will continue to exist for credit loss measurement between U.S. GAAP and IFRS subsequent to the adoption of Accounting Standards Update ("ASU") 2016-13- *Financial Instruments – Credit Losses (Topic 326)* ("New Credit Loss Standard"). When effective, the New Credit Loss Standard will replace 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. This differs from the 12-month expected credit loss measurement methodology that may be applicable in IFRS 9. Additionally, U.S. GAAP has recognition and disclosure requirements related to troubled debt restructurings (TDRs) (ASC 310-40) and nonaccrual loans (ASC 310-10-50-6), but neither of these concepts exists in IFRS.

57 For example, there is not a concept of nonaccrual loans in IFRS.

58 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," which we believe is similar to the "unwarranted or undue burden or expense" threshold described in General Instruction 6 to Guide 3. Given that the proposed rules do not change the availability of Securities Act Rule 409 and Exchange Act Rule 12b-21 to foreign registrants, and because we believe the purpose of the thresholds overlap, we propose not to codify the Guide 3 accommodation for undue burden or expense.[59]

Request for Comment:

8. Should foreign registrants be subject to the proposed rules?
9. Should we, as proposed, not codify the Guide 3 accommodation for undue burden or expense? For which aspects of the proposed rules would foreign registrants need to rely on this accommodation that would not be covered by Securities Act Rule 409 and Exchange Act Rule 12b-21? Would foreign registrants still seek to discuss an accommodation or alternative presentation with the staff if this provision is not codified?
10. Are there particular challenges or costs that foreign registrants would face in complying with the proposed rules as compared to domestic registrants? If so, what are those challenges or costs and are there ways the proposed rules could be modified to help alleviate those challenges and costs?
11. Would IFRS registrants face any different or additional challenges in complying with the proposed rules relative to other foreign private issuers applying a different comprehensive basis of accounting along with an U.S. GAAP reconciliation? If so, what

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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.

[59] *See supra* note 52.

challenges would they face and why? Are there other proposed disclosure requirements that we should explicitly state do not apply to IFRS registrants? If so, which ones?

12. Would there be a reduction in material information being disclosed due to the proposed flexibility for IFRS registrants, that is, reference to IFRS categories and exemption from disclosures that are not applicable under IFRS? Would the proposed flexibility for IFRS registrants impact the material information needed to make investment decisions and comparability of that information?

D. Reporting Periods

i. Background

Guide 3 currently calls for five years of Loan Portfolio and Summary of Loan Loss Experience data and three years of all other information. However, Guide 3 states that registrants with less than $200 million of assets or $10 million of net worth[60] may present only two years of the information. In addition, Guide 3 calls for interim period disclosures when there is a material change in the information presented or when a new trend has become evident.[61] At the time Guide 3 was issued, only two years of financial statements were required as the current three year requirement was adopted in 1980.[62] Commenters of the Guide 3 Release stated that five years of historical information would be "extremely difficult to obtain in some cases, especially where detailed breakdowns of certain assets or reserves are requested."[63] Therefore, the Guide 3 Release also stated that historical

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60 Net worth is the amount by which assets exceeds liabilities and thus represents the total stockholders' equity of a registrant.

61 In practice, registrants that provide Guide 3 disclosures generally provide interim disclosures.

62 *Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides; Integration of Securities Act Disclosure Systems,* Release No. 33-6231 (Sept. 25, 1980) [45 FR 63630].

63 *See supra* note 3.

information need not be provided if it's not presently available and cannot be compiled without unwarranted or undue burden or expense.

In the Request for Comment, the Commission asked whether the reporting periods called for by Guide 3 should be modified, and if so, how; whether the reporting periods should match Regulation S-X requirements for financial statements and scaled disclosure requirements for smaller reporting companies ("SRCs")[64] and emerging growth companies ("EGCs");[65] and whether the reporting periods should explicitly include interim periods.

ii. Comments on Reporting Periods

Many commenters recommended reducing the Guide 3 reporting periods.[66] Most of these commenters recommended using the reporting periods for which financial statements are required.[67] A number of these commenters recommended reducing the reporting periods for certain types of registrants,[68] including those that provide scaled disclosures under

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64 An SRC is a registrant 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. *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)].

65 An EGC is a registrant with less than $1.07 billion in total annual gross revenues during its most recently completed fiscal year. If a registrant qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of: (1) the last day of the fiscal year of the registrant 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 registrant has, during the previous 3-year period, issued more than $1.07 billion in non-convertible debt; or (4) the date on which the registrant 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.

66 *See* letters from ABA; AmEx; CBA; CH/SIFMA; Crowe; EY; ICBA; KPMG; and RSM.

67 *See* letters from ABA; AmEx; CBA; CH/SIFMA; Crowe; EY; and KPMG.

68 Commenters recommended reduced reporting periods for SRCs, EGCs, foreign private issuers and non-issuer targets in Form S-4 [17 CFR 239.25] registration statements.

Commission rules.[69] Several other commenters recommended the Commission evaluate the relevance of reporting periods that go beyond the financial statement periods.[70]

One commenter suggested that interim period disclosures should only be called for when such disclosures are necessary to reflect material changes since the issuance of the annual financial statements,[71] while several others[72] called for no interim period disclosures.

69 *See* letters from ABA; AmEx; Crowe; EY; and RSM.

70 *See* letters from BDO; CAQ; Deloitte; and PwC.

71 *See* letter from CH/SIFMA.

72 *See* letters from ABA; AmEx; CAQ; and CBA.

iii. Proposed Rule – Reporting Periods

We propose defining the term "reported period" for purposes of new Subpart 1400 of Regulation S-K to mean each annual period required by Commission rules for a registrant's financial statements. Our rules generally require two years of balance sheets and three years of income statements,[73] except that SRCs may present only two years of income statements[74] and EGCs may present only two years of financial statements in initial public offerings of common equity securities.[75] However, with respect to the disclosure of credit ratios, the disclosure would be required for each of the last five fiscal years in initial registration statements by new bank and savings and loan registrants and in offering statements by new bank and savings and loan issuers under Regulation A ("Regulation A offering statements"). But, as discussed further in Section II.H.iv, pursuant to Securities Act Rule 409 and Exchange Act Rule 12b-21 the information would only be required insofar as it is known or reasonably available to the registrant.[76]

We are proposing to reduce the required reporting periods to align them with the relevant annual periods required by Commission rules for a registrant's financial statements because we believe the proposed disclosures are integrally related to the financial statements. We also believe this change is consistent with other Commission rulemakings over the years.[77] There have been changes in technology since Guide 3 was issued, in particular the availability of past financial statements and other disclosure made in filings on the

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[73] 17 CFR 210.3 ("Article 3 of Regulation S-X").

[74] 17 CFR 210.8 ("Article 8 of Regulation S-X").

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

[76] *See* discussion of proposed credit ratios disclosure in Section II.H.iv.

[77] For example, the Commission in 1980 eliminated the five-year Summary of Operations disclosure and adopted the Management's Discussion and Analysis ("MD&A") disclosure requirement for the periods covered by the financial statements. *See supra* note 62.

Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). As such, the historical information that would be omitted from the proposed disclosures will generally be accessible through registrant's prior filings on EDGAR. Furthermore, the reduction of repetitive disclosures, reduction in costs and burdens to registrants and leveraging the use of technology is in line with the 2015 Fixing America's Surface Transportation Act (the "FAST Act") mandate[78] and the related rulemaking.[79]

In addition, we propose to slightly 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, which is consistent with the existing wording in General Instruction 3 and with the discussion of the interim period disclosure threshold added to Guide 3 in the 1980 Guide 3 Release.[80] The proposed rules would not codify the existing language in General Instruction 3(d) which states that any additional interim period should be included if necessary to keep the information from being misleading because we believe this standard is encompassed within the general disclosure requirement in 17 CFR 230.408 ("Securities Act Rule 408") and 17 CFR 240.12b-20 ("Exchange Act Rule 12b-20").[81]

<u>Request for Comment:</u>

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

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

80 The 1980 Guide 3 Release reduced the frequency of interim period Guide 3 disclosures by amending the reported period definition to only call for information for a subsequent interim period "if a material change in the information presented or the trend evidenced thereby has occurred." *See* 1980 Guide 3 Release, *supra* note 8.

81 Securities Act Rule 408 and Exchange Act Rule 12b-20 require disclosure of material information that may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

13. Would the proposed reporting periods provide the number of years of information an investor needs to analyze and comprehend changes in trends? If not, what additional information would be material for purposes of this analysis?
14. Would the proposed change in reporting periods result in a loss of information material to an investment decision? If so, please explain how.
15. Should the proposed rules require interim period disclosures even if there is not a material change in the information or a trend that has become evident? If so, why?
16. Should we, as proposed, require five years of Credit Ratio disclosures in initial registration statements or initial Regulation A offering statements of bank and savings and loan registrants or should we align the number of required years to those in other Commission rules? Would a requirement to provide five years of Credit Ratio disclosure impose undue burdens on registrants considering an initial registration statement or initial Regulation A offering statement? Should initial registration statements and initial Regulation A offering statements include additional reporting period information for any of the other proposed disclosures? If so, which ones, and for which reporting periods?

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

i. Background

For registrants with material net interest earnings, like bank and savings and loan registrants, future earnings depend significantly on present and future economic conditions, as changes in interest rates can have a significant impact on these registrants' performance. As such, investors and other users of registrant disclosures would benefit from understanding the components of net interest earnings in order to evaluate the impact of potential changes in interest rates on future income of these registrants.

Average balance sheets provide investors with an indication of the balance sheet items that have been, and have the potential to be, most affected by changes in interest rates as well as an indication of a registrant's ability to move into or out of positions with favorable or unfavorable risk/return characteristics.[82] For example, an average balance sheet may provide an indication of whether a registrant is asset-sensitive or liability-sensitive.[83] Liability-sensitive registrants that rely heavily on short-term and other rate-sensitive funding sources may experience significant increases in future funding costs in a rising interest rate environment. Such registrants may be unable to offset an increase in funding costs with a higher yield on assets, which could result in an adverse impact on net interest earnings.

Item I.A of Guide 3 calls for balance sheets that show the average daily balances[84] of significant categories of assets and liabilities, including all major categories of interest-earning assets and interest-bearing liabilities.[85] Item I.B of Guide 3 calls for the disclosure of:

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[82] *See* Guide 3 Release, *supra* note 3.

[83] A registrant is asset sensitive when the impact of the change in its assets is larger than the impact of the change in its liabilities after a change in prevailing interest rates. An asset-sensitive registrant's earnings or net income increases when prevailing rates rise and declines when prevailing rates fall. A liability-sensitive registrant has a long-term asset maturity and repricing structure, relative to a shorter-term liability structure. For example, liability-sensitive registrants may have significant exposure to longer-term mortgage-related assets that reprice slowly while relying heavily on rate-sensitive funding sources that reprice more quickly.

[84] Guide 3 indicates that if the collection of data on a daily average basis would involve unwarranted or undue burden or expense, weekly or month end averages may be used, provided they are representative of the operations of the registrant. The basis used for presenting averages should be disclosed when not presented on a daily average basis.

[85] Item I.A of Guide 3 indicates that major categories of interest-earning assets should include loans, taxable investment securities, non-taxable investment securities, interest-bearing deposits in other banks, federal funds sold and securities purchased with agreements to resell, other short-term investments and other assets. Major categories of interest-bearing liabilities should include savings deposits, other time deposits, short-term debt, long-term debt and other liabilities.

- Interest earned or paid[86] on the average amount of each major category of interest-earning asset and interest-bearing liability;
- Average yield for each major category of interest-earning asset;
- Average rate paid for each major category of interest-bearing liability;
- Average yield on all interest-earning assets;
- Average effective rate paid on all interest-bearing liabilities; and
- Net yield on interest-earning assets.[87]

Item I.C of Guide 3 calls for a rate and volume analysis of interest income and interest expense for the last two fiscal years. This analysis is segregated by each major category of interest-earning asset and interest-bearing liability into amounts attributable to:

- Changes in volume (changes in volume multiplied by the old rate);
- Changes in rates (changes in rates multiplied by the old volume); and
- Changes in rates and volume (changes in rates multiplied by changes in volume).

Lastly, Instruction 5 to Item I states that if disclosure regarding foreign activities is required pursuant to General Instruction 7 of Guide 3,[88] 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,

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86 The interest earned and interest paid reported on the average balance sheet is based on the amounts reported in the audited financial statements. Under U.S. GAAP and IFRS, reported interest expense may differ from the cash paid for interest during the period.

87 Net yield is net interest earnings divided by total interest-earning assets, with net interest earnings equaling the difference between total interest earned and total interest paid.

88 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).

as well as disclosure of the percentage of total assets and total liabilities attributable to foreign activities.

In the Request for Comment, the Commission asked whether the existing disclosures called for by Guide 3 provide investors with information material to an investment decision and whether the disclosures would otherwise overlap with information required by Commission rules, U.S. GAAP or IFRS.

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

Many commenters stated that the existing distribution of "assets, liabilities and stockholders' equity; interest rate and interest differential" disclosures called for by Item I of Guide 3 may be of value to investors and others.[89] Most of these commenters indicated that Item I does not overlap in its entirety with Commission rules or U.S. GAAP.[90] However, one commenter stated that the presentation of the change in interest income and expense called for by Item I.C is duplicative of disclosures in MD&A and that the rate/volume analysis is not representative of how financial institutions currently manage interest rate risk and, thus, should be eliminated.[91] Several commenters stated that the disclosures called for by Items I.A and I.B of Guide 3 are not specifically required by IFRS unless the period-end balances are not representative of activity during the period,[92] and indicated that the disclosures called for by Item I.C are unique to Guide 3.[93]

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89 *See* letters from ABA; AmEx; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; PNC; PwC; and RSM.

90 *See* letters from ABA; AmEx; CAQ; Crowe; Deloitte; EY; KPMG; PNC; PwC; and RSM.

91 *See* letter from CH/SIFMA.

92 IFRS 7.35, IFRS 7.BC48 and IFRS 7.IG20 require this additional disclosure if period-end information is unrepresentative of a registrant's exposure during the period.

93 *See* letters CAQ; EY; KPMG; and PwC.

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

Proposed Item 1402 of Regulation S-K would codify all of the disclosures currently called for by Item I of Guide 3 and further disaggregate the categories of interest-earning assets and interest-bearing liabilities required for disclosure. The new categories of interest-earning assets represent the separation of federal funds[94] sold and securities purchased with agreements to resell. The new categories of interest-bearing liabilities represent the separation of federal funds purchased and securities sold under agreements to repurchase,[95] and the disclosure of commercial paper.[96] We believe these more disaggregated categories would provide investors with further detail of the drivers of the changes in net interest earnings and the sources of funding.[97] Furthermore, the proposed rules would also codify the instructions related to foreign activities contained in General Instruction 7 and Instruction 5 of Item I of Guide 3. We believe the distinction between foreign and domestic activities continues to provide relevant information regarding registrants' activities and can provide

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94 The federal funds rate is the interest rate that banks charge one another for borrowing funds overnight. Federal funds are excess funds that banks deposit with the Federal Reserve Bank for lending to other banks.

95 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.

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

97 Item VII of Guide 3 currently call for disclosures related to short-term borrowings and requires disclosure for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper; and (3) other short-term borrowings, to the extent the average balance of those categories meet or exceed 30 percent of stockholders' equity at the end of the period. As discussed in Section III.B below, we are proposing not to codify all of those disclosures. However, given that the proposed Item 1402 of Regulation S-K would require disaggregated disclosure for federal funds purchased, securities sold under agreements to repurchase, and commercial paper, including the average amount outstanding and the average effective rate paid on these liabilities, the proposed rule effectively would codify the disclosure currently called for by Item VII.3. We believe the average outstanding balance and yield of these short-term borrowing categories could be material for investors.

insight into drivers of changes in business focus as well as factors driving material changes in interest-earning assets and interest-bearing liabilities, and the related interest rates.

While some bank and savings and loan registrants manage interest rate risk using more complex models or systems than a rates and volume analysis, we believe this disclosure nevertheless provides material and comparable information to investors about the drivers of the changes in net interest earnings across registrants in a simple format. Furthermore, we do not believe that all bank and savings and loan registrants would provide these disclosures, in the same format and level of detail, under the existing principles-based MD&A[98] requirements to discuss whether material increases in net sales[99] are due to increases in prices,[100] or increases in volume,[101] or due to the introduction of new products or services. We believe the proposed level of detail for these disclosures strikes a balance between providing sufficient information to help investors understand the changes in interest earning income and expense from period to period, and excessive amount of information that could make it difficult to understand the material drivers. We are therefore proposing to codify these disclosures.

<u>Request for Comment:</u>

17. Should we codify, as proposed, all of the disclosures currently called for by Item I of Guide 3? If not, which disclosures should not be codified?

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98 *See* Item 303(a)(3)(iii) of Regulation S-K.

99 For registrants preparing their income statement in accordance with Rule 9-04 of Regulation S-X, the closest equivalent to net sales is net interest income. Net interest income represents interest revenue less interest expense. Net interest income is typically the primary component of sales revenue for financial institutions.

100 For registrants preparing their income statement in accordance with Rule 9-04 of Regulation S-X, the closest equivalent to increases in prices is increases in interest rates.

101 For registrants preparing their income statement in accordance with Rule 9-04 of Regulation S-X, the closest equivalent to increases in volume is increases in net interest earning assets such as securities or loans.

18. Should we codify, as proposed, the rate and volume analysis called for by Item I.C?

19. Are the additional categories of interest-earning assets and interest-bearing liabilities proposed for disclosure appropriate? Are there other categories for which disclosure should be required?

20. Should we codify, as proposed, General Instruction 7 of Guide 3 and General Instruction 5 of Item I regarding disclosure of foreign activities? Is the threshold for disclosure of foreign activities appropriate? If not, how should it be revised?

F. Investment Portfolio

i. Background

The investment portfolio disclosures currently called for by Item II of Guide 3 provide investors with information about the types of investments a registrant holds, the earnings potential of those investments, and their risk characteristics. Item II.A of Guide 3 calls for disclosure of the book value[102] of investments by specified categories[103] as of the end of each reported period. Item II.B calls for a maturity analysis for each category of investment as of the end of the latest reported period, as well as the weighted average yield for each range of maturities.[104] When the aggregate book value of securities from a single issuer exceeds 10% of stockholders' equity as of the end of the latest reported period, Item II.C calls for disclosure of the name of the issuer and the aggregate book value and aggregate

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[102] At the time Guide 3 was issued, most securities were accounted for at cost with the exception of certain marketable securities, which were carried at the lower of aggregate cost or market value. The FASB issued FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities,* an accounting standard creating three types of investment securities categories and the related accounting for each, in 1993.

[103] The specified categories are obligations of: (1) U.S. Treasury and other U.S. Government agencies and corporations; (2) States of the U.S and political subdivisions; and (3) other securities including bonds, notes, debentures and stock of business corporations, foreign governments and political subdivisions, intergovernmental agencies and the Federal Reserve Bank.

[104] The ranges of maturities are securities due (1) in one year or less, (2) between one and five years, (3) between five and ten years, and (4) after ten years.

market value of those securities.

Subsequent to the last substantive revisions to Guide 3, the FASB and IASB have issued accounting standards that require disclosures that are similar to many of the investment portfolio disclosures called for by Guide 3. For example, U.S. GAAP requires disclosure, by major security type,[105] of the amortized cost basis, aggregate fair value and information about the contractual maturities[106] as of the date of the most recent balance sheet presented, among other disclosures, for both held-to-maturity ("HTM") and available-for-sale ("AFS") debt securities, which overlaps with the disclosures called for by Items II.A and II.B.[107] IFRS requires disclosure of the fair value and carrying value of each class[108] of a registrant's financial instruments, but only requires a maturity analysis of financial instruments held for managing liquidity risk if necessary for users to evaluate the nature and extent of liquidity risk.[109] Additionally, both U.S. GAAP[110] and IFRS[111] require disclosure of

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105 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.

106 ASC 320-10-50-3 and ASC 320-10-50-5(f) both indicate that maturity information may be combined in appropriate groupings. Those paragraphs also both state that in complying with these requirements, financial institutions (*see* paragraph ASC 942-320-50-1) shall disclose the fair value and net carrying amount (if different from fair value) of debt securities on the basis of at least the following four maturity groupings: (a) within one year, (b) after one year through five years, (c) after five years through ten years, and (d) after ten years.

107 ASC 320-10-50-2 and ASC 320-10-50-5.

108 IFRS 7.6 requires disclosures by classes of financing 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."

109 IFRS 7.25 and IFRS 7.B11E.

significant concentrations of credit risk, which we believe substantially overlaps with the disclosure called for by Item II.C related to the issuer name and aggregate book value and market value of securities exceeding 10% of stockholders equity. Neither U.S. GAAP nor IFRS requires disclosure of the weighted average yield information for each maturity category called for by Item II.B.

In the Request for Comment, the Commission asked whether the investment portfolio disclosures called for by Guide 3 provide information material to an investment decision and whether Commission rules, U.S. GAAP, or IFRS require the same or similar information.

ii. Comments on the Investment Portfolio

Many commenters indicated that a substantial portion of the investment portfolio disclosures called for by Guide 3 overlap with Commission rules and U.S. GAAP.[112] Most of these commenters stated that the overlap should be eliminated,[113] while one indicated, given the substantial overlap, that Guide 3 should be eliminated in its entirety.[114]

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110 ASC 825-10-50-20 and 21 requires disclosure of significant concentrations of credit risk arising from all financial instruments, including information about the (shared) activity, region, or economic characteristic that identifies the concentration, the maximum amount of loss due to credit risk, that, based on the gross fair value of the financial instrument, the registrant would incur if the parties to the financial instruments that make up the concentration failed completely to perform according to the terms of the contracts and the collateral or other security, information related to any collateral and policies regarding master netting arrangements

111 IFRS 7.34(a) requires disclosure of risks based on information provided internally to management and IFRS 7.34(c) requires disclosure of concentrations of risk if not apparent from the other disclosure requirements. IFRS 7.B8 states that disclosure of concentration of credit risk should include: (a) a description of how management determines concentrations, (b) a description of the shared characteristic that identifies each concentration (*e.g.* counterparty, geographical area, currency or market), and, (c) the amount of the risk exposure associated with all financial instruments sharing that characteristic.

112 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

113 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; MUFG; and PwC.

114 *See* letter from PNC.

Many commenters noted that the book value of investments disclosures called for by Item II.A of Guide 3 overlap with U.S. GAAP.[115] Most of these commenters also stated that the maturity disclosure called for by Item II.B overlaps with U.S. GAAP.[116] By contrast, most of these commenters indicated that the weighted average yield disclosure called for by Item II.B is not redundant with U.S. GAAP requirements.[117] Two of these commenters further stated that the weighted average yield disclosure may be of value to investors and others.[118] Regarding the disclosures called for by Item III.C relating to investments exceeding 10% of stockholders' equity, several commenters characterized this disclosure as unique to Guide 3.[119] However, one commenter[120] said the disclosure is largely duplicative of the U.S. GAAP significant concentrations of credit risk arising from financial instruments disclosures.[121] Lastly, a few commenters noted that there is some overlap between the investment portfolio disclosures called for by Guide 3 and IFRS disclosure requirements, and stated that the overlap should be eliminated.[122]

iii. Proposed Rule – Investment Portfolio

The proposed rules would not codify the following disclosures in Item II: (a) book value information; (b) the maturity analysis of book value information; and (c) the disclosures related to investments exceeding 10% of stockholders' equity. We are proposing not to codify these disclosures because they substantially overlap with U.S. GAAP and IFRS

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115 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; EY; KPMG; MFG; MUFG; PNC; and PwC.

116 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; EY; KPMG; MFG; PNC; and PwC.

117 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

118 *See* letters from ABA and AmEx.

119 *See* letters from CAQ; EY; KPMG; PNC; and PwC.

120 *See* letter from CH/SIFMA.

121 *See supra* note 110.

122 *See* letters from CAQ; EY; KPMG; and PwC.

disclosure requirements. Therefore, the proposed rules should not result in the loss of information material to an investment decision. We also note that this proposal is generally consistent with the Commission's recent efforts to streamline its disclosure requirements when they overlap with reasonably similar U.S. GAAP or IFRS disclosure requirements.[123]

Proposed Item 1403 of Regulation S-K would codify the weighted average yield disclosure for each range of maturities by category of debt securities currently called for by Item II.B, with a change to the categories presented. Specifically, the categories of debt securities in the proposed rules would be the categories required to be disclosed in the registrant's U.S. GAAP[124] or IFRS[125] financial statements. The proposed rules would only apply to debt securities that are not carried at fair value through earnings. Guide 3 calls for disclosures about both debt and equity securities and does not specifically exclude debt securities that are carried at fair value through earnings.[126] We believe this change is appropriate given that maturity and yield disclosures are not applicable to equity securities. Furthermore, we believe the weighted average yield disclosure is most relevant for debt securities that are not carried at fair value through earnings because these debt securities are

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[123] *See Disclosure Update and Simplification*, Release No. 33-10532 (Aug. 17, 2018) [83 FR 50148].

[124] *See supra* note 105.

[125] *See supra* note 108.

[126] Guide 3 was last amended in 1986 and at that time, most investment securities were accounted for at cost, except for certain marketable securities. As such, the Guide 3 investment disclosures were applicable to most investment securities and thus it was unnecessary to limit the disclosure by type or accounting model of investment. SFAS 115 "*Accounting for Certain Investments and Debt and Equity Securities*" was issued 1993 and created three categories of investment securities: HTM, AFS, and trading securities. These same categories exist in U.S. GAAP today (ASC 320-10-25-1). Of these categories, only trading securities are carried at fair value through earnings and thus would not be subject to the proposed rule. However, debt securities classified as HTM and AFS would be subject to the proposed rule. Additionally, U.S. GAAP (ASC 825-10-15-4) allows registrants to elect to measure certain eligible items, e.g., investment securities, at fair value, with changes in fair value recognized through earnings. Thus, where a registrant made this election to measure debt securities at fair value through earnings, those debt securities would also not be subject to the proposed rule. For IFRS registrants, only debt securities that are subsequently measured at amortized cost, or fair value through other comprehensive income, would be subject to the proposed rule.

often held longer than debt securities carried at fair value through the income statement (such as trading securities),[127] and thus the weighted average yield and maturity information would appear to be more meaningful for these securities.[128] We believe the proposed weighted average yield disclosure does not overlap with U.S. GAAP or IFRS requirements and provides investors with information to better evaluate the performance of the portfolio. Furthermore, revising the categories of debt securities to conform to the categories presented in accordance with U.S. GAAP or IFRS would enhance the consistency of the investment disclosures in a registrant's filing and increase their usefulness to investors. This also would ease the preparation burden on registrants because they would no longer have to present separate or additional categories between the Guide 3 disclosures and the financial statements.

Request for Comment:

21. The proposed rules would not codify the investment portfolio book value disclosures currently called for by Item II.A. Would this result in the loss of information material to an investment decision not readily available elsewhere in Commission filings? If so, what material information would be lost and how should we codify it?

22. The proposed rules would not codify the maturity analysis of book value disclosures called for by Item II.B, but would codify the weighted average yield for each range of maturities. Would this result in the loss of information material to an investment decision not readily available elsewhere in Commission filings? Would the more principles-based

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[127] ASC 320-10-25-1(a) states that if a security is acquired with the intent of selling it within hours or days, the security shall be classified as trading. However, at acquisition, an entity is not precluded from classifying as trading a security it plans to hold for a longer period.

[128] ASC 320-10-50 only requires information about the contractual maturities of securities that are classified as either HTM or AFS, and does not require similar disclosure for securities classified as trading.

IFRS maturity disclosure[129] result in the loss of material information about IFRS registrants, or would IFRS registrants within the scope of the proposed rules continue to provide the maturity analysis for debt securities absent a specific requirement? Are there additional disclosures related to a maturity analysis that we should codify to avoid the potential loss of information material to an investment decision?

23. Should we codify, as proposed, the weighted average yield disclosure for each range of maturities in Item II.B of Guide 3 for debt securities not carried at fair value through earnings? Should the proposed rules also require this disclosure for debt securities carried at fair value through earnings, including trading securities or debt securities where the fair value option is elected? If so, how would this information be used by investors?

24. The proposed weighted average yield disclosure would only apply to debt securities. Should this proposed rule require disclosures related to equity securities? If so, what additional disclosures should be required? Would this information be available without undue cost or burden?

25. Should the categories for the weighted average yield disclosure in the proposed rules be conformed to those presented in the U.S. GAAP or IFRS financial statements as proposed? Given that U.S. GAAP and IFRS do not require the same categories to be disclosed,[130] would the lack of standardization of the categories disclosed among registrants result in confusion for investors? If so, how should we revise the proposed

[129] IFRS 7.B11E requires a maturity analysis of financial instruments that registrants hold for managing liquidity risk *if necessary* for users to evaluate the nature and extent of liquidity risk; whereas U.S. GAAP requires contractual maturities disclosure for HTM and AFS debt securities without an "if necessary" concept.

[130] U.S. GAAP and IFRS have a principles-based approach for determining the categories of investments to be disclosed. *See supra* notes 105 and 108. Thus, both U.S. GAAP and IFRS registrants will make judgments about the categories to be disclosed and there likely will not be consistency amongst all registrants.

rules to avoid such confusion? For example, should we codify the Guide 3 investment categories?

26. The proposed rules would not codify disclosure of the name of any issuer and aggregate book value and market value of the securities of such issuer that exceeds 10% of stockholders' equity as called for in Item II.C of Guide 3. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP[131] and IFRS[132] require reasonably similar disclosure about significant concentrations of credit risk? Would the "significant" threshold in U.S. GAAP and IFRS likely result in the same or nearly the same population of securities being disclosed as the current 10% bright-line threshold in Item II.C. of Guide 3?
27. Is there additional information material to an investment decision related to investment securities that should be disclosed? If so, what information should be disclosed and how would this information be used by investors? Would there be a significant cost or burden to registrants in providing this additional information?

G. Loan Portfolio

i. Background

A registrant's loan portfolio may consist of various categories of loans, including consumer loans, such as residential real estate, credit card and auto loans, as well as commercial loans, such as commercial real estate, lease financings, and wholesale loans. Loan portfolio compositions differ considerably among registrants because lending activities are influenced by many factors, including the type of organization, management's objectives and philosophies about diversification and credit risk management, the availability of funds,

[131] *See supra* note 110.

[132] *See supra* note 111.

credit demands, interest rate margins and regulations, among others. Different types of loans have different characteristics. For example, commercial loans tend to have shorter maturities than residential real estate loans and are more likely to have balloon payments at maturity. Further, the composition of a registrant's loan portfolio may vary substantially over time due to factors such as changes in regulation or management strategy. For example, if management expects interest rates to rise, it may seek to increase the registrant's holdings of variable-rate mortgages.

The loan portfolio disclosures in Item III of Guide 3 provide investors with information about the registrant's loan investment policies and lending practices, including: (1) the types of lending in which a registrant engages; (2) the nature of credit risk inherent in the loan portfolio, including types of loans and portfolio maturity; (3) indications of loan collectibility risks; and (4) portfolio concentrations.

Item III.A of Guide 3 calls for disclosure of the amount of loans in specified categories[133] as of the end of each period. Item III.B calls for a maturity analysis[134] for each category of loans as of the end of the latest reported period, along with a separate presentation of all loans due after one year with fixed interest rates versus those with floating

133 The specified categories are, *for domestic loans*: (1) commercial, financial and agricultural, (2) real estate – construction, (3) real estate – mortgage, (4) installment loans to individuals, and (5) lease financing, and *for foreign loans*: (6) governments and official institutions, (7) banks and other financial institutions, (8) commercial and industrial, and (9) other. The instructions to Item III.A indicate that registrants may present a series of loan categories other than those specified if considered a more appropriate presentation.

134 The range of maturities are loans due (1) in one year or less, (2) between one and five years, (3) between five and ten years, and (4) after ten years. This information need not be presented for mortgage real estate loans, installment loans to individuals and lease financing. Foreign loan categories may be aggregated.

or adjustable interest rates.[135] Item III.C.1 calls for disclosure of the aggregate amount of domestic and foreign[136] loans in each of the following categories:

- loans accounted for on a nonaccrual basis;[137]
- loans accruing but contractually past due 90 days or more as to principal or interest payments; and
- loans classified as troubled debt restructurings ("TDRs")[138] that are not otherwise disclosed as being on nonaccrual status or past due 90 days or more.[139]

Item III.C.2 calls for descriptions of the nature and extent of any potential problem loans[140] at the end of the most recent reported period and the policy for placing loans on

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135 Instruction 3 to Item III.B states that determinations should be based upon contract terms. However, such terms may vary due to the registrant's "rollover policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

136 *See supra* note 88.

137 The term "nonaccrual" is not defined in U.S. GAAP or Commission rules. U.S. banking agencies require their regulated financial institutions to file publicly available Consolidated Reports of Condition and Income (Call Reports). Call Report instructions generally require an asset to be reported as nonaccrual if: (1) it is maintained on a cash basis because of deterioration in the financial condition of the borrower, (2) payment in full of principal or interest is not expected, or (3) principal or interest has been in default for a period of 90 days or more unless the asset is both well secured and in the process of collection. Certain loans, such as consumer loans and purchased credit-impaired loans, are not placed on nonaccrual status as discussed in the nonaccrual definitions section of Call Report Schedule RC-N-2. Guide 3 also currently calls for and U.S. GAAP also requires disclosure of the registrant's nonaccrual policy.

138 Under U.S. GAAP, a restructuring of a debt is a TDR if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. *See* ASC 310-40-15-5.

139 Guide 3 originally called for disclosure of nonperforming loans and a discussion of the risk elements associated with those loans for which there were serious doubts as to the ability of the borrowers to comply with the present loan payment terms. The current Item III.C.1 disclosures reflect amendments made in 1980 and 1983 to promote consistency with bank regulatory disclosure requirements and comparability among registrants. *See* 1980 Guide 3 Release, *supra* note 8; and 1983 Guide 3 Releases, *supra* note 8.

140 Potential problem loans are loans not disclosed pursuant to Item III.C.1, except where known information about possible credit problems of borrowers (which are not related to transfer risk inherent in cross-border lending activities) causes management to have serious doubts as to the ability of the borrowers to comply with the present loan repayment terms and which may result in disclosure of the loans pursuant to Item III.C.1.

nonaccrual status. The instructions to Item III.C.2 call for disclosure of the foregone interest income and recognized interest income for nonaccrual loans and TDRs during the period.

If material amounts of the loans described above are outstanding to borrowers in any foreign country, Guide 3 states that each country should be identified and that the amounts outstanding should be quantified.[141] Item III.C.3 calls for disclosure of the aggregate amount of cross-border outstandings[142] to borrowers in each foreign country where they exceed 1% of total assets.[143] These disclosures should be provided by category of foreign borrower specified by Item III.A. Where current conditions in a foreign country give rise to liquidity problems that are expected to have a material impact on the timely repayment of principal or interest on the country's private or public sector debt, Guide 3 calls for:

- A description of the nature and impact of the developments;
- An analysis of the changes in aggregate outstandings to borrowers in each country for the most recent reported period;
- Quantitative information about interest income and interest collected during the most recent period; and
- Quantitative information about any outstandings that may be subject to a restructuring.

Item III.C.4 calls for disclosure as of the end of the most recent reported period of any

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141 For purposes of determining the amount of outstandings to be reported, loans made to or deposits placed with a branch of a foreign bank located outside the foreign bank's home country should be considered as loans to or deposits with the foreign bank.

142 Cross-border outstandings are defined as loans (including accrued interest), acceptances, interest-bearing deposits with other banks, other interest-bearing investments and any other monetary assets which are denominated in dollars or other nonlocal currency. The foreign outstandings disclosure was added in 1983 to consolidate all risk-related disclosure guidelines in one section of Guide 3 and to emphasize the risks present in cross-border lending activities. *See* 1983 Guide 3 Releases, *supra* note 8.

143 For countries whose outstandings are between 0.75% and 1% of total assets, the names of the countries and the aggregate amount of outstandings attributable to them should be disclosed.

concentration of loans exceeding 10% of total loans not otherwise disclosed as a category of loans pursuant to Item III.A.[144] Item III.D calls for disclosure as of the end of the most recent reported period of the nature and amounts of any other interest-bearing assets that would be disclosed under Item III.C.1 or III.C.2 if those assets were loans.

Subsequent to the last substantive revisions to Guide 3, the FASB and IASB have issued accounting standards that have resulted in similar, and sometimes overlapping, loan disclosure. For example, U.S. GAAP requires major categories of loans to be presented separately either on the balance sheet or in the financial statement footnotes,[145] similar to the disclosure called for by Item III.A of Guide 3. U.S. GAAP also requires disclosure, by class of financing receivable,[146] of nearly all of the same information related to loans accounted for as nonaccrual and accruing loans contractually past due 90 days or more, as specified by Item III.C.1(a) and (b) and Item III.C.3 of Guide 3.[147] There are two main differences between the disclosures called for by the Instructions to Item III.C.1 and U.S. GAAP. The first is that U.S. GAAP does not require disclosure of the amount of gross interest income that would have been recorded during the period for the loans classified as nonaccrual or TDRs if they

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[144] Loan concentrations are considered to exist when there are amounts loaned to multiple borrowers engaged in similar activities which would cause them to be similarly affected by economic or other conditions. For example, loans may be concentrated in a specific industry, such as the energy sector, and exceed the 10% threshold.

[145] ASC 310-10-45-2 and ASC 310-10-50-3.

[146] U.S. GAAP uses the term "financing receivable," and a loan is considered a type of financing receivable. A class of financing receivable is defined as a group of financing receivables determined on the basis of all of the following: (a) initial measurement attribute (for example, amortized cost), (b) risk characteristics of the financing receivable, and (c) a registrant's method for monitoring and assessing credit risk.

[147] ASC 310-10-50-6 requires disclosure of the policy for placing financing receivables on nonaccrual, as well as the policy for resuming accrual of interest. ASC 310-10-50-7 requires disclosure of nonaccrual loans and loans 90 days or more past due and still accruing by class of financing receivable. ASC 310-10-50-7A requires disclosure of an analysis of the age of the recorded investment in financing receivables at the end of the reporting period that are past due, as determined by the entity's policy. ASC 310-10-50-15 requires disclosure of impaired loans and of the related amount of interest income that was recognized during the time the loans were impaired.

had been current in accordance with their original terms and had been outstanding throughout the period or since origination. The second difference is that U.S. GAAP does not explicitly require disclosure separately between domestic and foreign nonaccrual loans, accruing loans contractually past due 90 days or more and TDRs. Furthermore, U.S. GAAP requires information about TDRs, although there is a difference between the U.S. GAAP disclosures and those called for by Item III.C.1(c).[148] Specifically, U.S. GAAP only requires disclosure of TDRs occurring during each period that an income statement is presented and does not provide a cumulative level of TDRs existing on the balance sheet, similar to the disclosure called for by Item III.C.1(c). However, U.S. GAAP requires additional TDR disclosures beyond those called for by Guide 3.[149]

In addition, while certain of the disclosures currently called for by Guide 3 are not completely duplicative of U.S. GAAP requirements, we believe that in certain cases U.S. GAAP requires reasonably similar disclosures. For example, while there is not a specific disclosure requirement in U.S. GAAP analogous to the potential problem loans disclosure called for by Item III.C.2, U.S. GAAP requires disclosure of credit quality indicators[150] by

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148 ASC 310-10-50-33 requires disclosure, by class of financing receivable, of quantitative and qualitative information about TDRs occurring during the period.

149 ASC 310-10-50-33 requires disclosure, by class of financing receivable, of qualitative and quantitative information about how the financing receivables were modified, the financial effects of the modifications, and by portfolio segment, qualitative information about how such modifications were factored into the determination of the allowance for credit losses. ASC 310-10-50-34 requires, by class of financing receivable, qualitative and quantitative information about TDRs that were modified within the previous 12 months and for which there was a payment default occurring during the period, including the types of financing receivables that defaulted, the amount of financing receivables that defaulted, and by portfolio segment, qualitative information about how such defaults are factored into the determination of the allowance for credit losses.

150 A credit quality indicator is defined as a statistic about the credit quality of financing receivables. ASC 310-10-55-19 provides the following examples of credit quality indicators: consumer credit risk scores, credit-rating-agency ratings, a registrant’s internal credit risk grades, loan-to-value ratios, collateral, collection experience, or other internal metrics.

class of financing receivable.[151] Additionally, Item 303 of Regulation S-K[152] requires a discussion of known trends and uncertainties in MD&A that may help supplement the U.S. GAAP disclosures. When considered together, we believe these U.S. GAAP and MD&A disclosures allow an investor to evaluate loans where management has doubts about the borrowers' ability to comply with loan repayment terms. Additionally, while U.S. GAAP does not require the exact disclosures called for by Item III.C.3 regarding cross-border outstanding loans to countries where conditions give rise to liquidity problems expected to have a material impact on repayment of principal or interest, or by Item III.C.4 regarding other concentrations of loans, we believe the combination of certain U.S. GAAP[153] and Regulation S-X[154] disclosure requirements call for reasonably similar information.

Lastly, while U.S. GAAP does not require specific disclosure related to other interest bearing assets that would be required to be disclosed by Item III.C.1 or Item C.2 if they were

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151 ASC 310-10-50-29 and 30 requires a description of the credit quality indicator, the recorded investment in financing receivables by credit quality indicator, the date or range of dates in which the information was updated for each credit quality indicator, and qualitative information on how internal risk ratings, if disclosed, relate to the likelihood of loss.

152 Item 303(a) of Regulation S-K 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 should 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 it would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon 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.

153 *See supra* note 110.

154 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).

loans, it does require disclosure of nonaccrual and past due financing receivables, including items such as credit cards, notes receivables and trade receivables with maturities of more than one year, consistent with the disclosures currently called for by Item III.D of Guide 3.[155] When it takes effect, the New Credit Loss Standard[156] will increase the credit quality-related disclosures for loans. For example, it will require registrants to present credit quality indicator disclosures by year of origination and require additional disclosures about loans on nonaccrual status.[157]

IFRS often requires similar loan disclosure to that called for by Item III of Guide 3, as follows:

- IFRS requires the disclosure of the carrying value (and fair value) of each class of financial instruments, similar to the disclosure called for by Item III.A.[158]
- IFRS requires disclosure of the credit risk management process, credit exposure, and how changes in the gross carrying amount of financial instruments contributed to the changes in the loss allowance, which is similar to the types of

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155 ASC 310-10-50-5B.

156 The FASB has an ongoing project to reconsider the effective dates for major standards, including the New Credit Loss Standard. As currently issued, the New Credit Loss Standard is effective for public business entities that meet the definition of an SEC filer for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Entities that are not public business entities are provided a delayed effective date of two years. Thus, an EGC that chooses to elect the private company timeline for adopting new or revised accounting standards may defer adopting the New Credit Loss Standard until their fiscal year beginning after December 15, 2021. As part of its ongoing project, available at: https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdateExpandPage&cid=1176173010144, the FASB has proposed to amend the New Credit Loss Standard effective dates so that SEC filers that are eligible to be a SRC, as defined by the SEC, and entities that are not SEC filers would be provided a delayed effective date of three years. Thus, SRCs, EGCs and non-SEC filers would be able to elect to defer adopting the New Credit Loss Standard until their fiscal year beginning after December 15, 2022.

157 ASC 326-20-50-6 and ASC 326-20-50-16 and 17.

158 *See supra* note 108.

information called for by Items III.C.1 and 2.[159] Additionally, Item 5.D of Form 20-F[160] requires a discussion of known trends and uncertainties that may supplement the IFRS disclosures. When considered together, we believe these disclosures allow an investor to evaluate loans where management has doubts about the borrowers' ability to comply with repayment terms. The nonaccrual and TDR disclosures called for by Items III.C.1 and 2 are not applicable under IFRS because, unlike in U.S. GAAP, there is no concept of TDRs or nonaccrual loans in IFRS. However, IFRS does require disclosure related to the nature and effect of modifications of contractual cash flows on financial instruments that have not resulted in derecognition from the balance sheet.[161]

- IFRS requires disclosure about significant concentrations of credit risk, which is similar to the types of disclosures called for by Item III.C.3 related to cross-border outstanding loans or to countries where conditions give rise to liquidity problems expected to have a material impact on repayment of principal or interest, the Item III.C.4 disclosure regarding other concentrations of loans, and the Item III.D disclosure related to other interest bearing assets.[162]

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP or IFRS require the same or similar information as called for by Guide 3 and whether the disclosures provide investors with information material to an investment decision.

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159 IFRS 7.35I, IFRS 7.IG20B, and IFRS 7.35M.

160 *See supra* note 152.

161 IFRS 7.35J.

162 *See supra* note 111.

ii. Comments on the Loan Portfolio

Many commenters indicated that substantial portions of the Item III disclosures overlap with U.S. GAAP or Commission rules.[163] For example, a number of commenters stated that the disclosures called for by Item III.A – Types of Loans – overlap with U.S. GAAP[164] and that the disclosures called for by Item III.C.1 related to nonaccrual, past due and restructured loans overlap with U.S. GAAP.[165] One commenter noted that, while U.S. GAAP requires similar, but not identical, information, its requirements are more extensive than the Guide 3 disclosures.[166]

Several commenters indicated that U.S. GAAP addresses the objective of the potential problem loans disclosure called for by Item III.C.2.[167] Additionally, a few commenters indicated that while U.S. GAAP may not require the same information about potential problem loans, this disclosure would appear to be more appropriate for MD&A.[168] These commenters also noted that the relevance of problem loans could change significantly upon the effectiveness of the New Credit Loss Standard. Several commenters stated that the disclosure related to foreign outstandings called for by Item III.C.3 Risk Elements and the loan concentrations disclosure called for by Item III.C.4 are similar to disclosures required by U.S. GAAP.[169]

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163 *See* letters from ABA; AmEx; BerryDunn; CAQ; CBA; CH/SIFMA; Crowe; Deloitte; EY; KPMG; ICBA; MFG; MUFG; PNC; PwC; and RSM.

164 *See* letters from BerryDunn; CAQ; CH/SIFMA; EY; KPMG; MFG; MUFG; PNC; and PwC.

165 *See* letters from BerryDunn; CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

166 *See* letter from Deloitte.

167 *See* letters from CAQ; CH/SIFMA; EY; KPMG; MFG; PNC; and PwC.

168 *See* letters from ABA and AMEX.

169 *See* letters from CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; PNC; and PwC.

A few commenters stated that the disclosures called for by Item III.D relating to other (i.e., non-loan) interest bearing assets, while not explicitly required by U.S. GAAP, likely overlap with areas of U.S. GAAP that address credit risk disclosures for financial instruments.[170] However, two other commenters thought that this disclosure is only called for by Item III.D of Guide 3 and is not required by U.S. GAAP and "may be useful" to some investors.[171] While commenter feedback on this point was mixed, no commenter pointed to specific material information that would be lost if Item III.D disclosures were not codified.

Several commenters did not view the maturity and sensitivities to changes in interest rate disclosures called for by Item III.B as redundant with Commission rules or U.S. GAAP,[172] and a few of these commenters said the information "may be useful" to some investors.[173] However, a number of these commenters noted that Item 305 of Regulation S-K - Quantitative and Qualitative Disclosures about Market Risk, requires similar disclosure to that called for by Guide 3.[174]

Several commenters indicated that there is some overlap between the disclosures called for by Item III of Guide 3 and IFRS.[175] For example, several commenters noted that IFRS[176] calls for disclosure of financial instruments by class, but acknowledged that the classes disclosed would require judgment by management versus the prescriptive categories in Guide 3.[177] Commenters also highlighted certain areas where there are potential

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170 *See* letters from CAQ; EY; KPMG; PNC; and PwC.

171 *See* letters from ABA and AmEx.

172 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; KPMG; PNC; and PwC.

173 *See* letters from ABA; AmEx; and CH/SIFMA.

174 *See* letters from CAQ; EY; KPMG; PNC; and PwC.

175 *See* letters from CAQ; EY; KPMG; and PwC

176 *See supra* note 108.

177 *See* letters from CAQ; EY; KPMG; and PwC.

differences. For example, several commenters said that IFRS does not align with the maturities and sensitivities to changes in interest rate disclosures called for by Item III.B because IFRS includes a threshold that must be met before disclosure is required.[178] Specifically, IFRS requires disclosure of a maturity analysis of financial instruments a registrant holds for managing liquidity risk if that information is necessary to enable users of the financial statements to evaluate the nature and extent of liquidity risk.[179] Additionally, many commenters stated that IFRS and Guide 3 differ in the treatment and presentation of past due and nonaccrual/impaired loans, given that there is no concept of nonaccrual or TDRs under IFRS.[180] Lastly, several commenters stated that there is no specific disclosure requirement under IFRS similar to that called for by Items III.C.2 – C.4 and III.D. [181] However, these commenters also indicated that the disclosure framework under IFRS is consistent with the Guide 3 instructions and that any significant concentration risk (by class of financial instrument) should be disclosed under IFRS.

iii. Proposed Rule – Loan Portfolio

The proposed rules would not include the loan category disclosure currently called for by Item III.A of Guide 3, the loan portfolio risk elements disclosure called for by Item III.C and the other interest bearing assets disclosure called for by Item III.D,[182] as we believe reasonably similar disclosures are required by Commission rules, U.S. GAAP, or IFRS as discussed in more detail above. Proposed Item 1404 of Regulation S-K would codify the maturity by loan category disclosure currently called for by Item III.B, but the loan

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178 *Id*.

179 *See supra* note 129.

180 *See* letters from CAQ; CBA; CH/SIFMA; Deloitte; EY; KPMG; and PwC.

181 *See* letters from CAQ; EY; KPMG; and PwC.

182 The proposed rule also deletes the loan presentation disclosure required under Rule 9-03(7)(a)–(c) of Regulation S-X. See Section IV below.

categories may increase as it would be the categories required to be disclosed in the registrant's U.S. GAAP[183] or IFRS[184] financial statements. Existing Guide 3 provided latitude to registrants to use loan categories outside of those identified in Guide 3 "if considered a more appropriate presentation." Therefore, we believe some registrants may already be using the U.S. GAAP or IFRS loan categories for the Guide 3 disclosures. Additionally, the proposed rules would codify the existing Guide 3 instruction stating that the determination of maturities should be based on contractual terms. We also propose 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 U.S. GAAP or IFRS, such non-contractual rollovers or extensions should be considered for purposes of the maturities classification and that the policy should be briefly disclosed. This clarification may represent a change from existing Guide 3 application, which provides that the determination of maturities should be revised as appropriate to comply with the registrant's "rollover policy" and makes no reference to U.S. GAAP or IFRS.[185] The proposed rules also would codify the disclosure currently called for by Item III.B of the total amount of loans due after one year that have (a) predetermined interest rates and (b) floating or adjustable interest rates and would specify that this disclosure should also be segregated by the loan categories disclosed in the registrant's U.S. GAAP or IFRS financial statements. Item III.B currently permits the exclusion of certain loan categories (real estate-mortgage, installment loans to individuals and lease financing) and the aggregation of other loan categories (foreign loans to governments and official institutions, banks and other financial

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183 *See supra* notes 145 and 146.

184 *See supra* note 108.

185 *See supra* note 135.

institutions, commercial and industrial and other loans) from the maturity and sensitivity to changes in interest rates disclosure. The proposed rule would not provide any exclusion of loan categories, or permit the aggregation of any loan categories, for purposes of this disclosure. We are not aware of any reason why the proposed disclosure would be less relevant or useful for these specific loan categories, nor do we think the information would be any more burdensome for registrants to produce, or for investors to evaluate, for these categories.

The proposed rules would codify the Guide 3 loan disclosures that we believe elicit information material to an investment decision and do not overlap with other existing disclosure requirements or principles. Furthermore, we believe revising the current loan categories to conform to the loan categories required by U.S. GAAP or IFRS would promote consistency of loan portfolio disclosures throughout a registrant's filing. Lastly, we believe that specifically linking the maturities guidance to whether the rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS promotes comparability and consistency amongst U.S. GAAP or IFRS registrants and provides a more objective basis to make the maturities determination. The proposed changes would thereby assist investors in evaluating the disclosures while also reducing the burdens on registrants to prepare such disclosures because registrants should be able to derive this information from their existing books and records.

<u>Request for Comment:</u>

28. The proposed rules would not codify the loan portfolio disclosures currently called for by Item III.A of Guide 3. Would this result in the loss of information material to an investment decision not readily available from other publicly available disclosures? If so,

what material information would be lost and how should we modify the proposed rules to preserve this information?

29. Should we codify, as proposed, the disclosures currently called for by Item III.B related to maturities and sensitivities to changes in interest rates? Are the maturity categories in the proposed rules appropriate? If not, what maturity categories should be required?
30. Should we, as proposed, require that maturity category determinations take into account non-contractual rollovers or extensions that are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS? If not, what approach should be required?
31. Should the loan categories for the maturities and sensitivities to changes in interest rate disclosures in the proposed rules be conformed to those presented in the registrant's U.S. GAAP or IFRS financial statements as proposed? Given that U.S. GAAP and IFRS do not require the same categories to be disclosed,[186] would the lack of standardization of the categories disclosed between registrants applying U.S. GAAP ("U.S. GAAP registrants") and IFRS registrants result in confusion for investors? If so, how should we revise the proposed rules to avoid such confusion? For example, should we codify the Guide 3 loan categories?
32. Unlike current Guide 3, the proposed rules would require disclosure for loans due after one year with predetermined interest rates and floating or adjustable interest rate for all loan categories, and not exclude or aggregate certain loan categories.[187] Would this

[186] U.S. GAAP and IFRS have a principles-based approach for determining the categories of loans to be disclosed. *See supra* notes 108 and 145. Thus, both U.S. GAAP and IFRS registrants will make judgments about the loan categories to be disclosed and there likely will not be consistency amongst all registrants.

[187] Item III.B currently permits the exclusion of certain loan categories (real estate-mortgage, installment loans to individuals and lease financing) and the aggregation of other loan categories (foreign loans to

information be material to an investment decision? Should we permit certain categories of loans to be excluded or aggregated? If so, which categories?

33. The proposed rules would not codify disclosure of the period end amount of TDRs as called for by Item III.C.1 even though the U.S. GAAP disclosure requirement is not substantially the same.[188] Is the disclosure of the TDR balance at period-end material to an investment decision and should it be codified?

34. Under the proposed rules, IFRS registrants would not be required to provide disclosure of nonaccrual loans or TDRs because IFRS does not recognize the concept of nonaccrual or TDRs. Should the proposed rules require IFRS registrants to disclose these amounts, calculated on a U.S. GAAP basis, in order to aid in comparability with U.S. GAAP registrants?

35. The proposed rules would not codify the potential problem loans disclosure called for by Item III.C.2 even though the U.S. GAAP and IFRS disclosure requirements are not substantially the same. Is the disclosure of potential problem loans material to an investment decision and should it be codified? How would investors use this disclosure? Can the information provided by the potential problem loan disclosure be obtained from other disclosures required by U.S. GAAP[189] or IFRS,[190] or from the trends and uncertainties disclosures called for by Item 303 of Regulation S-K?[191]

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governments and official institutions, banks and other financial institutions, commercial and industrial and other loans) from the maturity and sensitivity to changes in interest rates disclosure.

188 U.S. GAAP only requires disclosure of TDRs occurring during each period that an income statement is presented, and does not provide a cumulative level of TDRs existing on the balance sheet, similar to the disclosure called for by Item III.C.1(c).

189 *See supra* note 151.

190 IFRS 7.35M.

191 *See supra* note 152.

36. The proposed rules would not codify the disclosures in Item III.C.3 of Guide 3 related to foreign outstandings, which currently calls for disclosure of the name of the country and aggregate amount of cross-border outstandings to borrowers in each foreign country where such outstandings exceed one percent of total assets. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP[192] and IFRS[193] require disclosure about significant concentrations of credit risk? Would the "significant" threshold in U.S. GAAP and IFRS likely result in substantially the same population of countries being disclosed as the one percent bright-line threshold currently called for by Guide 3? Should we instead codify the one-percent bright-line threshold? If so, why? Are there additional disclosures related to foreign outstandings that we should codify to avoid potential loss of information material to an investment decision? If so, what are those disclosures?

37. The proposed rules would not codify the Item III.C.4 of Guide 3 disclosure of loan concentrations that exceed 10% of total loans. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP[194] and IFRS[195] require disclosure about significant concentrations of credit risk? Would the "significant" threshold in U.S. GAAP and IFRS likely result in substantially the same categories of loans being disclosed as the 10% bright-line threshold currently called for by Guide 3? Should we instead codify the 10% bright-line threshold? If so, why? Are there additional disclosures related to loan concentrations that we should codify or

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[192] *See supra* note 110.

[193] *See supra* note 111.

[194] *See supra* note 110.

[195] *See supra* note 111.

propose to avoid potential loss of information material to an investment decision? If so, what are those disclosures?

38. The proposed rules would not codify the disclosure in Item III.D of Guide 3 disclosure related to other interest bearing assets. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP[196] and IFRS[197] require disclosure of reasonably similar information for assets likely to have been disclosed under this item? Should we instead codify the current interest-bearing assets disclosure?

39. Is there additional information related to loans that should be disclosed? If so, what information and how would this information be used by investors? Would there be a significant cost or burden to bank and savings and loan registrants in providing this additional information?

H. Allowance for Credit Losses

i. Background

Item IV.A of Guide 3 calls for a five-year analysis of loan loss experience,[198] including the beginning and ending balances of the allowance for loan losses, charge-offs and recoveries by loan category[199] and additions charged to operations. Item IV.A also calls for disclosure of the ratio of net charge-offs to average loans outstanding during the period, as well as a brief discussion of the factors that influenced management's judgment in determining the amount of the additions to the allowance charged to operating expense.

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196 *See supra* note 155.

197 IFRS 7.35B and M.

198 This analysis of activity in the allowance for loan losses is known as a "rollforward" of the allowance for loan losses.

199 The loan categories presented in Item IV.A are the same as in Item III of Guide 3.

Item IV.B calls for a breakdown of the allowance for loan losses by category[200] along with the percentage of loans in each category. Registrants may, however, furnish a narrative discussion of the loan portfolio's risk elements and the factors considered in determining the amount of the allowance in lieu of providing a breakdown. The staff has observed that BHC registrants generally elect to use a tabular format to present the allocation of allowance for loan losses instead of a narrative discussion.

Since Guide 3 was last amended, a number of new disclosures related to credit losses of financial instruments have been added to U.S. GAAP and IFRS. For example, U.S. GAAP[201] requires a rollforward of the activity in the allowance for loan losses for each period by portfolio segment,[202] as well as a description of the factors that influenced management's judgment, which overlaps with the disclosure called for by Item IV.A of Guide 3.[203] Similarly, IFRS requires reconciliation, by class of financial instrument, of the opening balance to the closing balance of the allowance, as well a discussion of the inputs, assumptions, and estimation techniques used to determine the allowance.[204] The staff has observed that, since the IFRS reconciliation of the allowance is by class[205] of financial instrument, the disclosure of this information is typically more disaggregated than the reconciliation by portfolio segment under U.S. GAAP. Furthermore, this more detailed

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200 The specified categories *for domestic loans* are: (1) commercial, financial and agricultural, (2) real estate construction, (3) real estate-mortgage, (4) installment loans to individual, and (5) lease financing. The other categories for the breakdown are foreign and unallocated.

201 ASC 310-10-50-11B (and ASC 326-20-50-11 and ASC 326-20-50-13 upon the adoption of the New Credit Loss Standard).

202 ASC 310-20 defines a portfolio segment as the level at which an entity develops and documents a systematic methodology to determine its allowance for credit losses.

203 The staff has observed that some BHC registrants present their Guide 3 rollforward using their U.S. GAAP portfolio segments instead of the loan categories specified in Guide 3 or Article 9 because Guide 3 provides latitude in determining loan categories.

204 IFRS 7.35G and H.

205 *See supra* note 108.

allowance reconciliation provides information consistent with the breakdown of the allowance for loan losses by loan category called for by Item IV.B.

There are differences in the credit loss impairment standards under U.S. GAAP[206] and IFRS.[207] Such differences will continue to exist subsequent to the adoption of the New Credit Loss Standard. Currently under U.S. GAAP, an impairment is recognized for certain financial instruments when it is probable that a loss has been incurred.[208] When effective, the New Credit Loss Standard will replace the current incurred loss methodology with a methodology that reflects expected credit losses over the entire contractual term of the financial instruments.[209] By contrast, IFRS[210] requires a 12-month expected credit loss measurement for certain financial instruments unless there has been a significant increase in credit risk, in which case a lifetime expected credit loss measurement is required.

The New Credit Loss Standard will require consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The new methodology will require registrants to use forecasted information, in addition to past events and current conditions, when developing their estimates. Similar to current U.S. GAAP, it will not specify a method for measuring expected credit losses and will allow registrants to apply methods that reasonably reflect their expectations of the credit loss estimate. The New Credit Loss Standard and IFRS both require disclosure about how the registrant measures

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206 ASC 310-10 (and ASC 326 upon the adoption of the New Credit Loss Standard).

207 IFRS 9.

208 ASC 310-10-35-4.

209 As discussed in paragraph BC46 of the New Credit Loss Standard, the FASB decided not to characterize expected credit losses as "lifetime" expected credit losses, even though a registrant must estimate credit losses over the entire contractual term of the financial instruments (recognizing that expected prepayments affect the estimated life). The FASB observed that the use of the term "lifetime" could be interpreted in many ways and could lead some to believe the standard was defining the model a registrant must use to estimate.

210 *See supra* note 207.

expected credit losses, as well as how it incorporates forward-looking information into the measurement.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP, or IFRS require the same or similar loan loss information as that called for by Guide 3 as well as whether additional disclosures would be material to an investment decision upon the change from an accrual method to an expected loss method for credit losses.

ii. Comments on Allowance for Credit Losses

Many commenters stated that all or a portion of the disclosures called for by Item IV relating to loan losses overlap with Commission rules or U.S. GAAP.[211] Several of these commenters stated that the disclosures called for by Item IV overlap in their entirety with U.S GAAP requirements and should be eliminated.[212] However, one commenter stated that the disclosure of the ratio of net charge-offs to average loans outstanding during the period is not a U.S. GAAP requirement.[213] Several commenters stated that the disclosures called for by Item IV.B relating to the allocation of the allowance for loan losses overlap with U.S. GAAP.[214] However, a few of those commenters observed that the disclosure breakdowns called for by Item IV.B are more prescriptive than the U.S. GAAP requirements.[215] Several commenters also stated that IFRS addresses the objective of the disclosures called for by Item IV.[216]

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211 *See* letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; MFG; MUFG; PNC; PwC; and RSM.

212 *See* letters from ABA; AmEx; Crowe; Deloitte; MFG; and MUFG.

213 *See* letter from BerryDunn.

214 *See* letters from CAQ; CH/SIFMA; EY; KPMG; MFG; MUFG; PNC; PwC; and RSM.

215 *See* letters from CAQ; EY; KPMG; PNC; and PwC.

216 *See* letters from CAQ; EY; KPMG; and PwC.

One commenter called for additional disclosure under U.S. GAAP regarding the allowance for credit losses under the New Credit Loss Standard.[217] In contrast, two commenters stated that it would be premature for the Commission to add disclosure that relates to future accounting standards.[218] These commenters generally noted that at a later time, after implementation has been reviewed, the Commission, FASB, registrants and investors can assess and determine whether additional disclosures may be necessary or useful.[219] Lastly, one commenter observed that the financial asset disclosures under IFRS are qualitative in nature and a registrant has more discretion to disaggregate and provide information on investments and loan portfolios compared to the current disclosures called for by Guide 3.[220]

iii. Proposed Rule – Allowance for Credit Losses

The proposed rules would not require the analysis of loss experience disclosure currently called for by Item IV.A of Guide 3, but would codify in Item 1405 of Regulation S-K the ratio of net charge-offs during the period to average loans outstanding as this disclosure does not overlap with existing Commission, U.S. GAAP, or IFRS requirements. The proposed rules would require the disclosure of the net charge-off ratio on a more disaggregated basis than the current Guide 3 disclosure, based on the loan categories required

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217 *See* letter from Capital Group. In this letter, the Capital Group requested that the FASB require more detailed disclosure about the assumptions being made in the accounting and how those judgments and actual experience occur and change over time. More specifically, the Capital Group viewed the following disclosures as crucial elements in making the new standard operational: (1) transparency around loan loss reserves at origination, (2) change in estimate of the loan loss reserve disaggregated by year of loan origination and type of loan, (3) gross and net chargeoffs and recoveries each period by vintage, and (4) disaggregation of credit quality indicators by vintage, including loan-to-value, internal risk rating, and geography.

218 *See* letters from CAQ and CH/SIFMA.

219 Since the Request for Comment, IFRS 9 has become effective.

220 *See* letter from Deloitte.

to be disclosed in the registrant's U.S. GAAP[221] or IFRS[222] financial statements. We believe this ratio, as well as the disaggregation of information that will be based on the loan categories disclosed in the financial statements would provide further insight into the performance of specific loan categories. The proposed rules would also codify the breakdown of the allowance disclosures called for by Item IV.B with some revisions, as we concur with commenter feedback that this disclosure provides more detailed information than that required by U.S. GAAP. Specifically, a tabular breakdown of the allowance would be required for registrants applying or reconciling to U.S. GAAP, rather than permitting an alternative option to provide a narrative discussion. We believe the tabular breakdown would provide for easier analysis by investors when reviewing these disclosures and note that the alternative narrative discussion is not widely used by registrants. The breakdown would be based on the loan categories presented in the U.S. GAAP financial statements, instead of the specified loan categories currently listed by Item IV.B.[223] We are not proposing to apply this requirement to IFRS registrants because IFRS already requires this information at a similar level of disaggregation in the financial statements.[224]

The proposed rules would not codify the existing overlap between the Item IV disclosures in Guide 3, U.S. GAAP and IFRS. At the same time, our proposal to link the proposed disclosures to the specific loan categories required by U.S. GAAP or IFRS would provide investors with consistent categories of disclosures throughout the filing without imposing undue cost or burden on registrants to prepare the disclosure, because registrants should be able to derive this information from their existing books and records.

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221 *See supra* note 145.

222 *See supra* note 108.

223 *See supra* note 145.

224 IFRS 7.35H.

We are not proposing any disclosures related to the New Credit Loss Standard at this time. Consistent with the recommendation of several commenters, the staff will wait until after the effective date of the new standards before we assess the disclosures provided under the new standards and whether additional material information is necessary. Additionally, the FASB has a codification improvement project[225] related to disclosures to be provided as part of the New Credit Loss Standard. In light of these ongoing efforts, we are requesting comment on whether there are allowance disclosures under an expected credit loss model that would be material to an to an investment decision that are not already required by Commission rules, the proposed rules, U.S. GAAP, or IFRS. This request for comment will help inform future Commission consideration of the information available regarding the New Credit Loss Standard and any changes that may arise from the FASB activities described above.

<u>Request for Comment:</u>

40. Would the proposed rules result in the loss of information material to an investment decision? If so, what additional disclosures should be codified to avoid such loss?
41. Should we, as proposed, require a U.S. GAAP registrant to provide the tabular breakdown of the allowance for credit losses, and not codify the existing option of providing an alternative narrative discussion?
42. Should we, as proposed, revise the allowance breakdown to be based on the U.S. GAAP loan categories? If not, what alternative breakdown would be more appropriate? Should

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225 *See Financial Instruments – Credit Losses (Vintage Disclosures: Gross Writeoffs and Gross Recoveries)* available at: https://www.fasb.org/jsp/FASB/Page/TechnicalAgendaPage&cid=1175805470156.

the proposed rules also require a breakdown of the liability for credit losses on unfunded commitments?[226]

43. The proposed rules would not require IFRS registrants to provide the tabular breakdown of the allowance because IFRS already requires similar information. Would any information material to an investment decision be lost by not requiring this disclosure for IFRS registrants? If so, how should we revise the proposed rules to avoid such loss?

44. The proposed rules would require the net charge off ratio to be disclosed on a more disaggregated basis than the level of charge off disclosure that currently exists in U.S. GAAP. Specifically, the proposed rules would require the ratio for each of the U.S. GAAP loan categories or IFRS loan classes disclosed in the registrant's financial statements. Is this level of disaggregation appropriate for this ratio?

45. Should the proposed rules also require additional expected credit loss information by U.S. GAAP loan category, such as the provision for credit losses for each loan category? Would information at the U.S. GAAP loan category level be available to preparers without significant undue cost or burden?

46. Are there additional disclosures that registrants with material portfolios of financial instruments with an allowance based on an expected credit loss model (e.g., the New Credit Loss Standard) should provide? If so, what additional disclosures should be required and why? Should these disclosures allow for scalability among registrants, and if so, how?

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[226] Unfunded commitments, such as revolving lines of credit or other unfunded loan commitments, represent off-balance sheet credit exposures. Because they are often legally binding agreements to extend credit under certain terms and conditions, loan commitments can expose an entity to credit losses.

47. Would disclosure of the key inputs and assumptions used in an expected credit loss model (e.g., the New Credit Loss Standard) provide information material to an investment decision? If so, what key inputs and assumptions would be material?

48. Are there other disclosures about allowance for credit losses we should consider requiring? For example, should we require registrants to disclose the material qualitative adjustments used in the estimation of the allowance for credit losses and how those adjustments were determined? Should we require registrants to provide a description of any material changes in the key inputs/assumptions disclosed from period-to-period, including quantitative and/or directional information as to how the inputs and assumptions changed, and the factors driving the changes? If so, how would these disclosures be used? At what disaggregation level, for example, at a loan category level or portfolio segment level, should they be presented?

iv. Proposed New Disclosure – Credit Ratios

a. Background

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. As discussed in Section 2.H.iii above, we propose to codify this disclosure. Guide 3 currently calls for this disclosure on a consolidated basis. However, we are proposing to require it by the loan categories disclosed in the U.S. GAAP or IFRS financial statements. There is no requirement in Commission rules, U.S. GAAP, or IFRS to disclose other commonly used credit ratios by bank and savings and loan registrants, such as the allowance for credit losses to total loans, nonaccrual loans to total loans, or the allowance for credit losses to nonaccrual loans. Nevertheless, bank and savings and loan registrants commonly disclose other credit ratios and such information is generally readily available to them without undue cost or burden as the components are provided in Call Reports filed with the U.S. banking agencies. Furthermore, U.S. GAAP 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, including separate line items showing writeoffs charged against the allowance and recoveries of amounts previously charged off (which together can be used to calculate net charge-offs).[227] IFRS includes a similar requirement to provide disclosure of the rollforward of the allowance for credit losses[228] at a more disaggregated class level compared to U.S. GAAP, but there is no requirement to disclose nonaccrual loans because nonaccrual loans are not a concept recognized in IFRS.

In the Request for Comment, the Commission asked whether it should require disclosure of financial services industry-specific ratios, such as nonaccrual loans to total loans. We did not, however, receive commenter feedback on this point.

b. Proposed Rule – Credit Ratios

Proposed Item 1405 of Regulation S-K would require disclosure of the following credit ratios, along with each of the components used in their calculation: (1) Allowance for Credit Losses to Total Loans; (2) Nonaccrual Loans to Total Loans; (3) Allowance for Credit Losses to Nonaccrual Loans; and (4) Net Charge-offs[229] to Average Loans,[230] by loan category disclosed in the financial statements. The first three ratios would be disclosed on a consolidated basis, while the fourth ratio of Net Charge-Offs to Average Loans would be at

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227 ASC 310-10-50-7 (and ASC 326-20-50-16 after 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.

228 *See supra* note 224.

229 Net charge-offs should be based on current period net charge-offs.

230 See discussion in Section II.H.iii above.

the more disaggregated loan category level. The disaggregated loan category level is more detailed than the components to the ratios, net charge-offs and average loans outstanding, are required to be disclosed under U.S. GAAP. 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. In our experience, these credit ratios are commonly disclosed by bank and savings and loan registrants with material lending portfolios. Consequently, investors may already be evaluating these ratios in making investment decisions. We believe disclosure of the components used in the calculation of these ratios, along with the proposed narrative disclosure would further aid investors' understanding of the drivers of the changes in the ratios, particularly if both the numerator and denominator of the ratio have changed significantly during a period. If the related components are separately disclosed with the ratios, investors would be able to get a better sense of the magnitude of changes in each component. As discussed in Section II.D.ii, these ratios would be required for each of the last five years in initial registration statements under the Securities or Exchange Act and in initial Regulation A offering statements. For all other filings, the ratios and related disclosure of the components used in the calculation would be included for the same periods that financial statements are required by Commission rules.[231]

We believe it is appropriate to require five years of this credit ratio information in initial registration and initial Regulation A offering statements given that investors would be seeing the loan portfolio and related credit history for the first time, and absent this requirement, investors would not have insight into the registrant's loan portfolio credit

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231 Article 3 of Regulation S-X generally requires two years of balance sheets and three years of income statements, except that SRCs may present only two years of income statements under Article 8 of Regulation S-X. EGCs may also present only two years of financial statements in initial public offerings of common equity securities. Issuers in Regulation A offerings will not be required to update the ratio disclosures in reports filed subsequent to the qualification of the initial registration statement since the ongoing reporting requirements under Regulation A do not require this information.

history beyond, at most, the last two years based on our proposed changes to the reporting period discussed in Section II.D.[232] We believe the proposed disclosure could elicit information material to an investment decision regarding registrant-specific credit trends as credit trends often take several years to develop in the disclosed components. Additionally, if after reasonable effort, the registrant is unable to obtain the five years of credit ratio information, it would be able to rely on Securities Act Rule 409 and Exchange Act Rule 12b-21 to omit the information that is unknown and not reasonably available.

The proposed rules seek to balance the need for additional credit trend information when investors make an initial investment decision absent prior reporting about the registrant, with the added cost to the registrant of producing such information by requiring only information that is not available from prior period filings. The proposed rules would also include an instruction stating that IFRS registrants do not have to provide either of the nonaccrual ratios as there is no concept of nonaccrual in IFRS.

Request for Comment:

49. Are the proposed new disclosures appropriate? Would the proposed ratio disclosures help investors better understand how the credit trends in the loan portfolio change over time? Should different or additional credit ratios be included?

50. Would there be a significant cost or burden to registrants in providing the proposed ratio disclosures, including for 5 years in initial registration and initial Regulation A offering statements? Would registrants have the information readily available from the information they report to the U.S. banking agencies?

51. The proposed rules would require the ratio of Net Charge-offs to Average Loans to be provided on a disaggregated basis, with the other ratios provided on a consolidated basis.

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232 *Id.*

Should we require further disaggregation for the other credit ratios? If so, at what disaggregation level? Is there a significant cost or burden to registrants in providing this information?

52. Should we require, as proposed, the disclosure of each of the components used in the calculation of the ratios for each period, along with a discussion of the drivers of the material changes in the ratios? If not, why not?

53. Is the proposed five years of disclosure in initial registration and initial Regulation A offering statements a sufficient time period for evaluation of the loan portfolio credit trends? Would a shorter time period capture the same credit trends? Are there other registration statements, Regulation A filings, or periodic filings that should include the five years of credit ratios?

54. Should we require, as proposed, five years of credit ratios for initial registration or initial Regulation A offering statements filed by EGCs and SRCs or should we limit the requirement to the periods presented in the financial statements provided by those types of registrants?

55. 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 since there is no concept of nonaccrual loans in IFRS. Should the proposed rules require disclosure of these ratios, calculated on a U.S. GAAP basis, to aid in comparability? Are there different ratios that should be required for IFRS registrants that would provide similar information?

56. Would the ratio of the allowance for credit losses to total nonaccrual loans continue to be necessary upon the adoption of the New Credit Loss Standard by U.S. GAAP registrants?

I. Deposits

i. Background

Deposit disclosures, together with the level of other disclosed funding sources,[233] may provide transparency with respect to a registrant's sources of funding and liquidity risk profile. Insured retail deposits can be a reliable funding source and may play an integral role in mitigating liquidity risk. Disclosures about significant amounts of deposits from a small number of depositors or certain types of deposits, such as uninsured deposits, could provide investors with insight as to the registrant's reliance on particular sources of funding and risks related to those sources of funding.

Items V.A and V.B of Guide 3 call for the presentation of the average amounts of and the average rates paid for specified deposit categories that exceed 10% of average total deposits.[234] Most registrants that currently provide Guide 3 disclosures present this disclosure by disaggregating the deposit categories in the average balance sheet called for by Item I of Guide 3. Item V.C calls for disclosure of the aggregate amount of deposits by foreign depositors in U.S. offices, if material. Items V.D and V.E of Guide 3 focus on the disclosure of time certificates of deposits and other time deposits in amounts of $100,000 or more.[235] Item V.D calls for a maturity analysis of time deposits,[236] and Item V.E calls for disclosure of time deposits in excess of $100,000 issued by foreign offices.[237]

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233 ASC 942-470-50-3 requires disclosures related to debt agreements. ASC 942 and Rule 9-03 of Regulation S-X call for disclosures about short-term borrowings as described below in Section III.B.

234 The specified deposit categories are: (1) noninterest-bearing demand deposits, (2) interest-bearing demand deposits, (3) savings deposits, (4) time deposits, (5) deposits of banks located in foreign countries including foreign branches of other U.S. banks, (6) deposits of foreign governments and official institutions, (7) other foreign demand deposits, and (8) other foreign time and savings deposits. Categories (1) to (4) are deposits in U.S. bank offices and categories (5) to (8) are deposits in foreign bank offices. Other categories may be used for U.S. bank offices if they more appropriately describe the nature of the deposits.

235 The $100,000 thresholds were established in 1976 when the FDIC insurance limit was $40,000 and has never changed.

U.S. GAAP and Commission rules require similar, but not the same, deposit disclosures as those called for by Guide 3. For example, U.S. GAAP[238] requires disclosure of the aggregate amount of time deposits (including certificates of deposit) in denominations that meet or exceed the FDIC insurance limit at the balance sheet date.[239] This disclosure is similar to that called for by Item V.D, but differs in that it is not broken out by different maturity categories. Moreover, Item V.D calls for disclosure based on a $100,000 threshold rather than linking to the FDIC insurance limit. In addition, Article 9 requires separate presentation on the balance sheet of noninterest-bearing deposits and interest-bearing deposits.[240] IFRS does not specifically require deposit disclosures that overlap with those called for by Guide 3.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP or IFRS require the same or similar information as called for by Guide 3, whether the disclosures provide investors with information material to an investment decision, and requested recommendations for how the disclosures could be improved.

ii. Comments on Deposits

Many commenters stated that a portion of the disclosures called for by Item V of Guide 3 overlap with Commission rules or U.S. GAAP.[241] For example, one of these

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236 The ranges of maturities are by time remaining until maturity: (1) 3 months or less, (2) over 3 through 6 months, (3) over 6 through 12 months, and (4) over 12 months.

237 If the aggregate of certificates of deposit and time deposits over $100,000 issued by foreign offices represents a majority of total foreign deposit liabilities, this disclosure need not be provided if a statement to that effect is provided.

238 ASC 942-405-50-1.

239 *See supra* note 45.

240 17 CFR 201.9-03. If the disclosures about foreign activities in Rule 9-05 apply, the amount of noninterest-bearing deposits and interest-bearing deposits in foreign banking offices also must be presented separately.

241 *See* letters from ABA; AmEx; BDO; BerryDunn; CAQ; Crowe; Deloitte; EY; KPMG; ICBA; MFG; MUFG; PNC; PwC; and RSM.

commenters stated that the disclosures called for by Item V.A relating to the average amount and average rate paid on interest-bearing deposits are duplicative of the disclosures called for by Item I.A.[242] Many commenters stated that the disclosures called for by Item V.D relating to the amount of outstanding domestic time certificates of deposit and other time deposits equal to or in excess of $100,000 by maturity overlap with U.S. GAAP.[243] However, these commenters generally noted the difference in disclosure thresholds.[244] A few of these commenters stated that the disclosures called for by Item V.E relating to the amount of outstanding foreign office time certificates of deposit and other time deposits equal to or in excess of $100,000 overlap with U.S. GAAP.[245]

Several commenters stated that a portion of the disclosures called for by Item V of Guide 3 elicit information that may be of value to investors.[246] A few of these commenters[247] indicated that the disclosure of the average rate paid on deposits is only called for by Item V.A of Guide 3, and some of these commenters[248] asserted that the disclosure of other categories of deposits is only called for by Item V.B of Guide 3. All of these commenters expressed the view that the disclosure of the aggregate amount of deposits by foreign depositors in domestic offices is only called for by Item V.C of Guide 3 and is not required by other disclosure requirements.[249] One commenter stated that the disclosures called for by

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[242] *See* letter from MFG.

[243] *See* letters from ABA; AmEx; BDO; BerryDunn; CAQ; Crowe; Deloitte; EY; KPMG; ICBA; MFG; MUFG; PNC; PwC; and RSM.

[244] ASC 942-405-50-1 requires disclosure of the amount of time deposits equal to or in excess of the FDIC insurance limit, which is currently $250,000, whereas Guide 3 has a $100,000 threshold.

[245] *See* letters from BerryDunn; MFG; and MUFG.

[246] *See* letters from ABA; AmEx; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

[247] *See* letters from ABA; AmEx; and CH/SIFMA.

[248] *See* letters from CAQ; EY; KPMG; PNC; and PwC.

[249] *See* letters from ABA; AmEx; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

Item V.D relating to the amount of domestic time deposits equal to or in excess of $100,000 by maturity elicit "meaningful additional information" for investors.[250] Several commenters stated that the disclosure of the amount of foreign office time deposits equal to or in excess of $100,000 is only called for by Item V.E of Guide 3 and is not required by other rules.[251] One commenter also recommended that Guide 3 should be updated to align with the U.S. GAAP requirement to disclose information regarding time deposits in excess of the FDIC insurance limit.[252]

Several commenters stated that the disclosures called for by Items V.A, V.B, V.C and V.E of Guide 3 are not specifically required by IFRS.[253] However, these commenters also noted that IFRS requires disclosure of more information about financial instruments if period-end information is not representative of a registrant's exposure to risk (e.g., credit, liquidity and market) during the period.[254] Further, these commenters noted that IFRS requires disclosure of risks based on information provided internally to management.[255] Several commenters noted that the disclosures called for by Item V.D are not required by IFRS.[256] However, these commenters also indicated that the IFRS disclosures generally address the objective of the disclosures called for by Item V.D.[257]

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250 *See* letter from CH/SIFMA.

251 *See* letters from ABA; AmEx; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

252 *See* letter from CH/SIFMA.

253 *See* letters from CAQ; EY; KPMG; and PwC.

254 *See*, *e.g.*, IFRS 7.35; IFRS 7.BC48; IFRS 7.IG20

255 IFRS 7.34(a).

256 *See* letters from CAQ; EY; KPMG; and PwC.

257 For example, one commenter referenced the maturity analysis of financial liabilities and concentration of risk from financial instruments disclosures in IFRS 7.39, IFRS 7.34(c), IFRS 7.B8 and B11, and IFRS 7.IG18 as disclosures with the same objective as Guide 3. *See* letter from CAQ.

iii. Proposed Rule – Deposits

Proposed Item 1406 of Regulation S-K would codify the majority of the disclosures currently called for by Item V of Guide 3, with some revisions. Specifically, the proposed rules would 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 in Item V.D with a requirement to disclose the "amount of time deposits in uninsured accounts" by maturity. The proposed rules would 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 (1) 3 months or less; (2) over 3 through 6 months; (3) over 6 through 12 months; and (4) over 12 months. By not having a defined dollar threshold for the disclosure, the disclosure requirement would accommodate changes in the FDIC limit, making it easier for registrants to apply the rule when there is a change in the FDIC Insurance limit.

Additionally, the proposed rules would require bank and savings and loan registrants to quantify the amount of uninsured deposits as of the end of each reported period. Because uninsured deposits may have a different funding and interest rate risk profile than other deposits, we believe separate disclosure of these deposits would provide decision-relevant information about the registrant's sources of funds. For example, disclosure of uninsured deposits would provide enhanced information about deposits that are more prone to withdrawals if a registrant experiences financial difficulty,[258] which could help investors

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[258] Stavros Peristiani and João Santos., Liberty Street Economics, *Depositor Discipline of Risk-Taking by U.S. Banks* (April 2014), available at:

better evaluate potential risks related to the registrant's funding sources. The proposed rules define uninsured deposits for bank and savings and loan registrants that are U.S. federally insured deposit institutions and require foreign bank and savings and loan registrants to disclose how they have defined uninsured deposits for purposes of this disclosure.[259] The proposed rules do not provide a definition of uninsured deposits for foreign bank and savings and loan registrants given that the definition varies from jurisdiction to jurisdiction.

Given that U.S. GAAP and IFRS do not require disclosure at the same level of detail that is currently called for by Item V of Guide 3, we believe the disclosures currently called for by Item V, including the proposed revision to the disclosure called for by Item V.D, should be codified in Item 1406 of Regulation S-K. We believe codifying these disclosures would provide transparency with respect to a registrant's sources of funding, which could be information material to an investment decision.

Request for Comment:

57. Should we codify the disclosures currently called for by Item V of Guide 3 with the proposed revisions?
58. Should we, as proposed, require disclosure related to uninsured deposits? Would the proposed disclosures provide investors with information about amounts that are at a higher risk of being withdrawn on short notice and not replaced? Are there additional disclosures an investor needs to understand potential risks related to uninsured deposits? If so, what are those disclosures? Are there other types of deposits that may be considered at higher risk of being withdrawn? If so, which ones, and what type of disclosure would be material for these deposits?

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https://libertystreeteconomics.newyorkfed.org/2014/04/depositor-discipline-of-risk-taking-by-us-banks.html.

259 *See* Item 1406(e).

59. Is the proposed definition of uninsured deposits for U.S. federally insured depositary institutions appropriate? If not, how should it be revised? Should we, as proposed, allow foreign bank and savings and loan registrants to apply their own definition of uninsured deposits for the purposes of this disclosure? If not, how should we define uninsured deposits for these registrants? Would the lack of a definition for uninsured deposits result in a lack of comparability among foreign bank and savings and loan registrants?
60. Are the deposit types specified in the proposed rules the appropriate categories? If not, which deposit types should be added or excluded? Should we, as proposed, codify the Guide 3 disclosure for deposit categories that are in excess of 10 percent of average total deposits? Should we specify a different threshold for disclosure of specific deposit categories? If so, what should the threshold be?
61. Should we, as proposed, revise the time certificate of deposit disclosure to be based on all uninsured deposits rather than the current threshold of amounts of $100,000 or more? Would the proposed revision result in the disclosure of information that may be material to an investment decision? Would any information material to an investment decision be lost by the change in threshold?

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

A. Return on Equity and Assets

i. Background

Financial ratios aid investors in comparing registrants across different industries and time periods. Guide 3 (Item VI.) calls for disclosure of four specific ratios for each reported period, including return on asset (“ROA”), return on equity (“ROE”), a dividend payout ratio, and an equity to assets ratio. Guide 3 also includes an instruction that directs registrants to supply any other ratios that they deem necessary to explain their operations.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP, or IFRS require the same or similar information as called for by Guide 3, whether the disclosures provide investors with information material to an investment decision, and how the disclosures could be improved.

ii. Comments on Return on Equity and Assets

Many commenters stated that the existing return on equity and assets disclosures called for by Item VI. of Guide 3 "may be of value" to investors and others.[260] Most of these commenters stated that these disclosures are unique disclosures called for by Guide 3.[261] Despite believing that this information may be valuable to investors, a few of these commenters[262] also indicated that these ratios or their components are easily derived from information otherwise disclosed in financial statements and are largely duplicative of data filed within Federal Reserve Form FY Y-9C.[263]

iii. Proposed Rule – Return on Equity and Assets

The proposed rules would not codify the ratios called for by Item VI. While these ratios may provide useful information to investors for comparing registrants and making investment decisions, these ratios are not unique to bank and savings and loan registrants. Instead these ratios may be key performance measures for any and all registrant types and our proposed rules focus on disclosures related to traditional "banking" activities. In this

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260 *See* letters from ABA; AmEx; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; PNC; and PwC.

261 *See* letters from CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; PNC; and PwC.

262 *See* letters from ABA and AmEx.

263 The Federal Reserve Board collects basic financial data on a consolidated basis from domestic bank holding companies, savings and loan holding companies and securities holding companies on Form FR Y-9C.

regard, we note that the Commission's guidance on MD&A[264] states companies should identify and discuss key performance indicators when they are used to manage the business and would be material to investors. We therefore believe investors would continue to receive return on equity and asset ratio disclosures when necessary to an understanding of the bank and savings and loan registrant's financial condition and results of operations.

To the extent registrants stop disclosing these ratios and investors still want the return on equity and asset ratios, the information to calculate these ratios can be derived from amounts reported on the income statement and the average balance sheet called for by Item I.A of Guide 3, which we propose to codify.[265] Similarly, the dividend payout ratio can be calculated based on the disclosures required by Article 3 of Regulation S-X.[266] We do not believe the burden to calculate the ratios justifies the cost to provide them when the disclosure threshold in the Commission MD&A guidance is not met.

<u>Request for Comment:</u>

62. The proposed rules would not codify the ratios currently called for by Item VI of Guide 3 (ROA, ROE, a dividend payout ratio, and an equity to assets ratio). Would this result in the loss of information material to an investment decision not readily available from other disclosures or publicly available information? If so, which ratios should be codified? How would investors use these ratios?

63. Are investors able to calculate the ratios using existing financial information? If so, does

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[264] *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] ("2003 MD&A Interpretive Release").

[265] In the case of average amounts, current and prior year amounts presented on the balance sheet can also be used to calculate the average.

[266] 17 CFR 210.3-01 through 3-20. Rule 3-04 of Regulation S-X requires disclosure of dividends per common share in the changes in stockholders' equity and noncontrolling interests' statement or footnote.

the benefit of having the ratios readily available to an investor without calculation outweigh the cost of providing the ratio disclosures in circumstances when a bank and savings and loan registrant would otherwise not provide these ratios in MD&A?[267]

64. Would registrants no longer disclose these ratios in their filings if not codified in the proposed rules? Are there registrants currently disclosing these ratios under Guide 3 but who do not consider these ratios material to an investment decision? If so, would these registrants not disclose such ratios in MD&A?
65. Should we require other specific ratios for bank and savings and loan registrants? If so, what types of ratios should we require? Are these ratios able to be calculated based on existing information available in the filings? How would investors use these ratios?
66. If we were to expand the scope of the proposed rules to include all financial services registrants with material operations in any of the activities covered by the proposed rules, are there specific ratios we should require? If so, which ones, and how would investors use these ratios? Are financial services registrants currently providing these ratios? Would they be material to all financial services registrants or just certain types?

B. Short-Term Borrowings

i. Background

Bank and savings and loan registrants often use short-term borrowings to supplement their deposits and diversify their funding sources. Short-term borrowings may include federal funds transactions, repurchase agreements, commercial paper, inter-bank loans, and any other short-term borrowings reflected on the registrant's balance sheet.[268] Federal funds transactions can be an important tool for managing liquidity, while repurchase agreements

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[267] *Id.*

[268] 17 CFR 210.9-03.13(3).

can provide a cost-effective source of funds and may allow a registrant to leverage its securities portfolio for liquidity and funding needs.

A registrant's use of short-term borrowings can fluctuate significantly during a reporting period. As a result, the presentation of period-end amounts alone may not accurately reflect a registrant's funding needs or use of short-term borrowings during the period.

Item VII of Guide 3 currently calls for the following short-term borrowings disclosures by category:

- The period-end amount outstanding;
- The average amount outstanding during the period; and
- The maximum month-end amount outstanding.[269]

Item VII also calls for disclosure, by category of borrowing, of the weighted average interest rates at period-end and during the period, and the general terms of the borrowing. The disclosures called for by Item VII need not be provided for categories of short-term borrowings for which the average balance outstanding during the period was less than 30% of stockholders' equity at the end of the period.

Since Guide 3 was last amended, a number of disclosures have been added to U.S. GAAP and IFRS, and the Commission has issued guidance related to borrowings and liquidity disclosures, as discussed below. For example, U.S. GAAP requires certain financial services registrants to disclose significant categories of borrowings,[270] as well as disclosures

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269 Item VII. refers to Rule 9-04.11 for categories of short-term borrowings. The correct reference, however, is Rule 9-03.13. Registrants often provide the average short-term borrowings disclosures as part of their average balance sheet disclosures.

270 ASC 942-470-45-1 requires that significant categories of borrowings be presented as separate line items in the liability section of the balance sheet, or as a single line item with appropriate note disclosures of the components. Financial institutions may alternatively present debt based on the

for repurchase agreements, securities lending transactions and repurchase-to-maturity transactions for all registrants for which the disclosures are material.[271] Article 9 of Regulation S-X requires disclosure of certain specified short-term borrowing categories, including (1) federal funds purchased and securities sold under agreements to repurchase, (2) commercial paper, and (3) other short-term borrowings.[272]

IFRS requires disclosure of the carrying amount and fair value of each class of financial liabilities.[273] Additionally, IFRS requires a discussion of risk arising from financial instruments, and if the quantitative data disclosed for the risk is unrepresentative of the registrant's exposure to risk during the period, IFRS requires further disclosure, such as exposure at various times during the period, or the highest, lowest and average exposures.[274]

In addition to the specific U.S. GAAP and IFRS requirements noted above, the Commission issued guidance in 2010 regarding appropriate disclosure when the registrant's financial statements do not adequately convey the registrant's financing arrangements, such as if borrowing arrangements during the period are materially different than the period-end amounts.[275] Registrants typically discuss their sources of funding and outstanding borrowings in their liquidity section of MD&A. The 2010 MD&A Interpretive Release

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debt's priority (that is, senior or subordinated) if they also provide separate disclosure of significant categories of borrowings. *See supra* note 45.

271 ASC 860-30-50-7 requires a registrant to provide an understanding of the nature and risks of short-term collateralized financing obtained through repurchase agreements, securities lending transactions, and repurchase-to-maturity transactions that are accounted for as secured borrowings, including a disaggregation of the gross obligation by class of collateral, the remaining contractual maturity, and a discussion of the potential risks associated with the agreements and related collateral pledged, including obligations arising from a decline in the fair value of the collateral pledged and how those risks are managed.

272 Rule 9-03 of Regulation S-X.

273 IFRS 7.25.

274 IFRS 7.34-35 and IFRS 7.IG20.

275 *Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis*, Release No. 33-9144 (Sept. 17, 2010) ("2010 MD&A Interpretive Release") [75 FR 59894].

highlights important trends and uncertainties related to liquidity for registrants to consider in their MD&A disclosures. The guidance notes as examples of trends and uncertainties the reliance on commercial paper or other short-term financing arrangements for liquidity, and intra-period variations in borrowings in circumstances where borrowings during the period are materially different than the period-end amounts. Therefore, when material, Item 303 of Regulation S-K elicits similar disclosure to that called for by Item VII.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP, or IFRS require the same or similar information as called for by Guide 3, whether the disclosures provide investors with information material to an investment decision, and requested recommendations for how the disclosures could be improved.

ii. Comments on Short-Term Borrowings

Many commenters said that a portion of the short-term borrowings disclosures called for by Item VII of Guide 3 overlaps with Commission rules, U.S. GAAP, or other disclosures called for by Guide 3.[276] One commenter suggested that Item VII should be eliminated in its entirety due to overlap with existing Item I of Guide 3 disclosures relating to weighted average amounts outstanding and otherwise sufficient disclosures in the financial statements of period end amounts.[277]

A few commenters stated that all or a portion of the disclosures called for by Item VII are not required by Commission rules or U.S. GAAP.[278] Two of these commenters expressed the view that the disclosures called for by Item VII relating to average and maximum month-end amounts of short-term borrowings outstanding, as well as weighted average interest rate

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276 *See* letters from ABA; AmEx; BerryDunn; CAQ; Crowe; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

277 *See* letter from MFG. Items I.B.1 and I.B.3 of Guide 3 call for disclosure of the average balance and related average rate paid for each major category of interest-bearing liabilities.

278 *See* letters from ABA; AmEx; CH/SIFMA; and Crowe.

(i.e., Items VII.2 and VII.3 and the portion of Item VII.1 related to weighted- average interest rates), "may be useful" to some investors because they provide further context to the period-end amounts.[279] One commenter stated that they believe all of the information regarding short-term borrowings required by Item VII of Guide 3 provides "meaningful information" but did not elaborate on how the information is used.[280]

A few commenters stated that the disclosures called for by Item VII.1 are not required by IFRS, while the disclosures called for by Items VII.2 and VII.3 are not specifically required by IFRS.[281] However, these commenters also noted that IFRS requires disclosure of more information about financial instruments if period-end information is unrepresentative of a registrant's exposure to risk (e.g., credit, liquidity, or market risk) during the period.[282]

iii. Proposed Rule – Short-Term Borrowings

The proposed rules would not codify the Item VII short-term borrowing disclosures currently called for by Guide 3 in their current form. Instead, we propose to codify 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 disaggregate the major categories of interest-bearing liabilities to include those referenced in Item VII and Article 9 of Regulation S-X. We believe the disclosures currently called for by VII.1 and VII.3 would be substantially covered by these proposed requirements and the financial statements.[283] These proposed requirements do not codify the bright-line disclosure

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279 *See* letters from ABA and AmEx.

280 See letter from CH/SIFMA.

281 *See* letters from CAQ; EY; KPMG; and PwC.

282 *See, e.g.,* letter from CAQ (referring to disclosures in IFRS 7.35, IFRS 7.BC48, and IFRS 7.IG20).

283 See Section II.E discussing the proposed codification of 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.

threshold of 30% of stockholders' equity at the end of the period because Regulation S-X already includes thresholds for disclosure of short-term borrowing categories. Furthermore, in light of the guidance set forth in the 2010 Interpretive Release, we believe Item 303 of Regulation S-K will elicit 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. Given this overlap, we do not believe it is necessary to codify the current Item VII disclosures in proposed subpart 1400.

<u>Request for Comment:</u>

67. The proposed rules would effectively codify the disclosures currently called for by Items VII.1 and VII.3 that are not already addressed in Regulation S-X as part of the codification and further disaggregation of the Item I average balance sheet and the interest and yield/rate analysis disclosures. Would the proposal to codify only these disclosures as part of that section of the proposed rules result in a loss of information material to an investment decision? If so, what other disclosures should be retained? The proposed rules would not codify the disclosure currently called for by Item VII.2. Would the proposal not to codify this disclosure result in a loss of information material to an investment decision? If so, what disclosure should be retained?
68. Are there other types of short-term borrowing disclosures that are material to an investment decision and that are not already available from publicly available information? If so, what types of disclosures should be required?
69. If we were to expand the scope of the proposed rules to include all financial services registrants that have material operations in any of the activities covered by the proposed rules, are there short-term borrowing disclosures that would be material to investors and that are not already available from publicly available information? If so, what types of

disclosures should be required? Are any financial services registrants currently providing these disclosures? Would they be material to all financial services registrants or just certain types?

IV. Proposed Changes to Article 9 of Regulation S-X

As noted in Section II.G of this Release, in the Request for Comment the Commission asked whether Commission rules require the same or similar loan information as called for by Guide 3. Many commenters indicated that the Item III.A loan disclosures overlap with U.S. GAAP.[284] Most of these commenters also indicated that the Item III.A loan disclosures overlap with Article 9 of Regulation S-K.[285] Additionally, several commenters indicated that IFRS calls for disclosure of financial instruments by class, although they acknowledged that determination of the classes will require judgement by management.[286]

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.[287] In light of our proposal to revise the scope of the proposed rules to include savings and loan associations and savings and loan holding companies, we propose to amend Rule 9-01 of Regulation S-X to include these registrants within the scope of Article 9 of Regulation S-X. However, if registrants outside one of the defined types of applicable registrants believe the Article 9 presentation is material to an understanding of its business, our rules would not preclude that presentation for those registrants. Additionally, Rule 9-03 of Regulation S-X provides

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284 See letters from BerryDunn; CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

285 See letters from CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

286 See letters from CAQ; EY; KPMG; PNC; and PwC.

287 *See supra* note 32.

guidance on the various items, which if applicable, should appear on the face of the balance sheets or in the notes thereto. Rule 9-03(7)(a)-(c) of Regulation S-X and U.S. GAAP[288] both require disclosure of loans by category. Similarly, IFRS[289] requires disclosure of financial instruments by class, which is consistent with the requirement in Rule 9-03(7)(a)-(c) of Regulation S-X. Based on the foregoing, we propose to delete Rule 9-03(7)(a)-(c).

Request for Comment:

70. Should we, as proposed, revise the scope of Rule 9-01 of Regulation S-X to include savings and loan associations and savings and loan holding companies? Should we include other types of companies in the scope of Rule 9-01 of Regulation S-X? If so, which types?
71. Would the proposal to delete Rule 9-03(7)(a)-(c) result in a loss of information material to an investment decision? If so, should all or part of Rule 9-03(7)(a)-(c) be retained?
72. Are there other parts of Article 9 of Regulation S-X that are duplicative of, or substantially overlap with, U.S. GAAP and IFRS? If so, which ones? Would the deletion of them result in the loss of information material to an investment decision?
73. Are there other types of registrants that should be included in the scope of Rule 9-01 of Regulation S-X? For example, should we expand the scope to include all financial services registrants? Do registrants, other than those within the proposed scope, currently apply the requirements in Article 9 of Regulation S-X? If so, what types of registrants? Are there particular burdens that registrants, other than those within the proposed scope, would face in providing this information? If so, what are the burdens and would these burdens outweigh the benefits of this disclosure?

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[288] *See* supra note 145.

[289] *See supra* note 108.

V. General Request for Comments

The proposed rules address three financial activities: (1) holding debt securities, (2) holding loans and the related allowance for credit losses, and (3) deposit-taking, as well as the related interest income and interest expense generated from these activities. Guide 3 also calls for disclosure of short-term borrowings and return on equity and assets. We did not codify these disclosures except for the categories of short-term borrowings in the average balance sheet. We seek feedback on whether the financial activities for which we are proposing disclosure requirements are the material activities for bank and savings and loan registrants and whether we should propose any other disclosures.

Consistent with existing Guide 3, we are not proposing to require the disclosures in new Subpart 1400 of Regulation S-K to be presented in the notes to the financial statements. Therefore, the proposed disclosures would not be required to be audited,[290] nor would they be subject to the Commission's requirements to file financial statements in a machine-readable format using eXtensible Business Reporting Language ("XBRL").[291] In the Request for Comment, the Commission asked whether it should require the Guide 3 tabular disclosures to be submitted in XBRL. We received limited feedback on this point[292] and thus believe that

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290 Article 3 of Regulation S-X generally requires two years of audited balance sheets and three years of audited income statements, except that SRCs may present only two years of audited income statements under Article 8 of Regulation S-X. EGCs may also present only two years of financial statements in initial public offerings of common equity securities. Additionally, Part F/S(c)(ii) of Form 1-A requires audited financial statements for Tier 2 offerings, and issuers in Tier 2 offerings are required to file an annual report on Form 1-K containing two years of audited financial statements.

291 For domestic disclosure forms, the XBRL data-tagging requirements are imposed through Item 601(b)(101) of Regulation S-K and Rule 405(b) of Regulation S-T. *See* Item 601(b)(101) of Regulation S-K [17 CFR 229.601(b)(101)] and Rule 405(b) of Regulation S-T [17 CFR 232.405(b)]. For foreign disclosure forms, analogous XBRL tagging requirements are included in the instructions to the relevant forms. *See, e.g.*, paragraphs 100 and 101 of the Instructions to Exhibits to Form 20-F. The Commission recently adopted rules requiring the use of Inline XBRL format, where XBRL data is embedded into the HTML document, instead of the traditional XBRL format. *See Inline XBRL Filing of Tagged Data,* Release No. 33-10514 (June 28, 2018) [83 FR 40846 (July 10, 2018)].

292 *See* letters from ABA, AmEx, CAP, CH/SIFMA, Deloitte, and XBRL US.

additional feedback based on the proposed disclosure requirements set forth in this release would be useful.

74. Are the activities listed in the proposed rules the appropriate ones for disclosure? If not, how should we revise the proposed rules?
75. Are there additional areas of disclosure, such as information related to non-interest income revenue streams or capital that also should be included in the proposed rules? If so, what are those other areas and what additional disclosures are appropriate and why?
76. Are there disclosures about derivatives not already addressed by Commission rules, U.S. GAAP, or IFRS that also should be included in the proposed rules? If so, what disclosures would be material for investors and in what manner should they be provided? Would providing this information result in a significant undue cost or burden?
77. Should we require the proposed disclosures to be included in the notes to the financial statements? What would be the benefits and costs of requiring the proposed disclosure in the financial statements? For example, how would such a requirement affect search costs for investors or compliance burdens for registrants?
78. Should we require the proposed disclosures to be provided in a structured format, such as XBRL or Inline XBRL to facilitate investor discovery, access reuse, analysis, and comparison across registrants? Should all or a subset of the proposed disclosures be structured? If a subset, which disclosure elements and why? Is XBRL or Inline XBRL preferable and why? What would be the costs, burdens, and benefits associated with structuring this information? Would the costs and burdens be disproportionately high for any group of issuers?

We request and encourage any interested person to submit comments on any aspect of the proposals, other matters that might have an impact on the amendments and any suggestions for additional changes. Comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis, particularly quantitative information as to the costs and benefits, and by alternatives to the proposals where appropriate. Where alternatives to the proposals are suggested, please include information as to the costs and benefits of those alternatives.

VI. Economic Analysis

A. Introduction

The Commission is proposing to rescind Guide 3 and to update and codify into a new Subpart 1400 of Regulation S-K certain Guide 3 disclosures that do not overlap with disclosures required by Commission rules, U.S. GAAP, or IFRS, while adding to that Subpart certain credit ratio disclosure requirements. New Subpart 1400 would apply to banks, bank holding companies, savings and loan associations, and savings and loan holding companies. Disclosure within the banking industry may be valuable for investors;[293] however, it could be costly for registrants. The proposed rules aim to streamline bank and savings and loan registrants' compliance efforts and may decrease their costs. At the same time, the proposed rules may enhance comparability across issuers—both foreign and domestic—which may benefit investors.

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 proposed rules relative to the economic baseline, as well as reasonable alternatives to the proposed rules. The baseline consists of the current regulatory framework and current market practices. In this economic analysis, we consider the potential economic impact on affected registrants,

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[293] For a discussion of the benefits of bank disclosure to investors, *see, e.g.*, Ursel Baumann & Erland Nier, *Disclosure, Volatility, and Transparency: An Empirical Investigation into the Value of Bank Disclosure*, ECON. POL'Y REV., Sept. 2004, at 31; Anne Beatty & Scott Liao, *Financial Accounting in the Banking Industry: A Review of the Empirical Literature*, 58 J. ACCT. & ECON. 339 (2014).

investors, and other users of Commission filings, as well as potential effects on efficiency, competition, and capital formation.[294] We also analyze the potential costs and benefits of reasonable alternatives to the proposed rules.

Where possible, we have attempted to quantify the economic effects expected to result from the proposed 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 proposed rules. Where we cannot quantify the relevant economic effects, we discuss them in qualitative terms. In addition, the broader economic effects of the proposed rules, such as those related to efficiency, competition, and capital formation, are difficult to quantify with any degree of certainty. The proposed rules simultaneously codify certain disclosures, add new credit ratio disclosures, and rescind disclosures that overlap with Commission rules, U.S. GAAP, or IFRS. As such, it is difficult to quantitatively attribute the overall effects on efficiency, competition, and capital formation to specific aspects of the proposed 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

Guide 3 applies to registration statements and annual reports filed by BHC

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294 Securities Act Section 2(a) and Exchange Act Section 3(f) require us, when engaging in rulemaking that requires us 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 us, when proposing rules under the Exchange Act, to consider the impact that any new rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

registrants.[295] In addition, other registrants that have material amounts of lending and deposit-taking activities provide Guide 3 disclosures to the extent applicable.[296] In general, Guide 3 calls for disclosures related to interest-earning assets and interest-bearing liabilities. More specifically, Item I calls for disclosure of average balance sheets and analyses of net interest earnings. Item II calls for disclosures related to a registrant's investment portfolio. Items III and IV call for disclosures related to the registrant's loan portfolio and loan loss experience, respectively. Item V calls for disclosures related to deposits. Item VI calls for registrants to report measures of return on equity and assets. Finally, Item VII calls for disclosures related to short-term borrowings.

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, which has resulted in some overlap between the Guide 3 disclosures and other disclosures. For example, Item II.A calls for disaggregated disclosure of book value of investments as of the end of each reported period. U.S. GAAP and IFRS require similar disclosure about both the amortized cost basis and fair value of investments as of the balance sheet date. Such overlapping disclosures may impose compliance costs on registrants without providing additional material information to investors.

Guide 3 applies to both domestic and foreign registrants, including most foreign private issuers,[297] but does not apply to Form 40-F filers.[298] As discussed above in Section II.B, the staff has observed that foreign bank and savings and loan registrants typically

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295 *See supra* note 4.

296 *See supra* note 32.

297 Instructions to Item 4 of Form 20-F indicate that the information specified in any industry guide that applies to the registrant should be furnished.

298 The staff has observed that Form 40-F filers that are banking institutions typically provide the disclosures called for by Guide 3.

provide Guide 3 disclosures.

Guide 3 currently calls for five years of loan portfolio and loan loss experience data and for three years of all other data. This timeframe goes beyond the financial statement periods specified in Commission rules,[299] which generally require two years of balance sheets and three years of income statements for registrants other than EGCs and SRCs. Guide 3 currently 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. However, the scaled disclosure regimes in 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, 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 may be currently following Guide 3. To estimate this population, we first identify registrants that meet the definition of a BHC in Rule 1-02(e) of Regulation S-X[300] or that are BHCs under the Bank Holding Company Act.[301] We also identify certain other financial services registrants[302] that

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

300 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.

301 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 2018. For purposes of this economic analysis, we only considered holding companies 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 those specified may be holding companies subject to the Bank Holding Company Act. As such, the population of BHCs may be underestimated.

302 For purposes of this economic analysis, we assume that a registrant is a financial services registrant if its type of business is identified as 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 those specified may be providing financial services and some registrants with these SIC codes may not be providing financial services. As such, the population of financial services registrants may be under- or overestimated.

have both lending and deposit-taking activities and are not BHCs, as these registrants may be following Guide 3 as a result of their activities.[303] Table 1 below shows the estimated number of registrants within the Guide 3 scope, along with their cumulative assets by type and domestic/foreign status.[304]

Table 1. Registrants within the Guide 3 Scope

Type	Domestic		Foreign		Total	
	#	Assets, $bln	#	Assets, $bln	#	Assets, $bln
BHCs	387	17,371	22	18,830	409	36,201
Financial services registrants with lending and deposit-taking activities:	66	1,842	12	3,649	78	5,491
Savings and Loan Holding Companies[305]	51	606	0	0	51	606

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

To estimate the number of registrants with lending and deposit-taking activities, the staff analyzed the most recent Form 10-K and Form 20-F filed as of May 1, 2019. 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.

We also note that registrants with SIC codes other than those specified in *supra* note 302 may have lending and deposit-taking activities. For example, based on data from XBRL filings, staff identified 11 registrants that report both holdings of loans and deposit-taking activities and may be affected by Guide 3.

304 For purposes of this economic analysis, we define domestic registrants as those that file Form 10-K and foreign registrants as those that file Form 20-F.

The estimate for total assets of registrants is based on these registrants' most recent filings of Form 10-K or Form 20-F during the 12 month period ended May 1, 2019. The analysis was 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, 2018 to convert their reported value to U.S. dollars.

305 We only identified savings and loan holding companies and did not identify any savings and loan associations within the population of financial services registrants with lending and deposit-taking activities.

Banks	13	1,199	10	3,177	23	4,377
Other[306]	2	37	2	472	4	509
Total	453	19,213	34	22,479	487	41,692

We estimate that, among registrants identified as being within the scope of Guide 3, 84% are BHCs that in aggregate hold 87% of total Guide 3 registrants' assets. We also estimate that, among the registrants within the scope of Guide 3, 93% are domestic registrants that in aggregate hold 46% of total assets. Although the number of foreign registrants is much smaller than the number of domestic registrants, foreign registrants in aggregate hold approximately 54% 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.[307]

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

Scaled Disclosure Threshold	Qualifying Registrants	
	#	Total Assets, $bln
Guide 3 scaled threshold registrants	12	1
SRC registrants	165	176
EGC registrants	61	120

Among the 487 registrants that may be following Guide 3, 36% are either SRCs or EGCs.[308] However, only 2% currently qualify for the scaled disclosure in Guide 3. All of the registrants that qualify for scaled Guide 3 disclosures are either an SRC or an EGC, or both.

306 These are financial services registrants that do not fit under a definition of SLHC, bank, or SLA.

307 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, 2019. 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 April 29, 2019. The estimates for the number of affected registrants that are EGCs are based on their most recent periodic filings as of April 29, 2019.

308 We note that 37 affected registrants are both SRCs and EGCs.

C. Economic Effects

The economic effects of the proposed rules primarily stem from changes to the substance and reporting periods of the Guide 3 disclosures, including, among other things, the addition of certain new credit ratio disclosures. 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 disclosures and reduced reporting periods. However, this reduction may be partially offset by an increase in costs stemming from the proposed new credit ratio disclosures and more disaggregated disclosures. We first discuss the economic effects stemming from the proposed changes to the substance and reporting periods of the disclosures, followed by a discussion of the proposed scope, applicability, location, and format of the disclosures.

i. Not Codified Disclosures

The proposed rule would not codify Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or IFRS. As such, the following disclosures in Items II, III, IV, and VII would not be codified:

- 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 proposed rule also would not codify the disclosure called for by Item VI related to ROA, ROE, dividend payout, and equity to assets ratios, as these ratios are not specific to bank and savings and loan registrants. Because we are proposing to rescind Guide 3, we do not anticipate affected registrants would provide any Guide 3 disclosures not codified in new subpart 1400, unless required by other Commission rules,[309] U.S. GAAP, or IFRS. Additionally, registrants may continue to voluntarily provide these disclosures.

a. Costs and Benefits

To the extent that the disclosures we propose not to codify are reasonably similar to disclosures required under Commission rules, U.S. GAAP, or IFRS, not codifying these disclosures would facilitate bank and savings and loan registrants' compliance efforts by reducing the need to replicate disclosures or reconcile overlapping disclosures, and decrease the reporting burdens for the 487 registrants that may be currently following Guide 3. To the extent that these costs are currently passed along to customers and shareholders, the cost reductions associated with the proposed rule may flow through to customers in the form of more advantageous interest rates, and to shareholders in the form of higher earnings.

Investors should not be adversely affected by the proposal not to codify the aforementioned disclosures, given that the overlapping disclosures required by Commission rules, U.S. GAAP, or IFRS elicit reasonably similar information. For example, U.S. GAAP and Article 9 of Regulation S-X require certain registrants to disclose certain categories of

[309] For example, a registrant may be required to provide certain of these disclosures pursuant to Exchange Act Rule 12b-20 in order to make any required statements, in light of the circumstances under which they were made, not misleading. *See supra* note 81.

borrowings. As such, we believe the proposal not to codify the short-term borrowing disclosures called for by Item VII of Guide 3 would not result in a loss of information material to an investment decision.

To the extent that the Guide 3 disclosures provide incremental information to investors, not codifying these disclosures could marginally increase information asymmetries and investor search costs. For example, unlike U.S. GAAP, which requires maturity analysis of investment securities, IFRS requires the maturity analysis of financial instruments like debt securities only if the information is necessary for evaluating the nature and extent of liquidity risk. However, a maturity analysis of debt securities could be useful for other things, such as measurement of interest rate risk. Therefore, not codifying the maturity analysis disclosure may result in a loss of information with respect to affected IFRS registrants if they were to determine that a maturity analysis of a portfolio of debt securities was not necessary for an investor to evaluate the nature and extent of liquidity risk. To the extent that some affected IFRS registrants come to this determination and the maturity analysis is considered material to an investment decision with respect to these registrants, investors may perceive them as more opaque or risky compared to other registrants, resulting in a higher cost of capital for these registrants. In addition, potential loss of material information to investors could hypothetically arise if the disclosures that overlap with U.S. GAAP or IFRS are not codified and at some point in the future are no longer required by U.S. GAAP or IFRS.

Item VI ratios are not specific to the financial activities specified in the proposed rules and would not provide additional information about those activities or the risks associated with them. In addition, codification of these ratios could be viewed as duplicative because key performance measures, when used to manage the business and are material to investors, are required to be disclosed under Item 303 of Regulation S-K.[310] Finally, the ratios can be calculated using financial information already disclosed in Commission filings. Therefore, not codifying these ratios should not result in the loss of information material to an investment decision.

The Commission believes that the proposal not to codify General Instruction 6 to Guide 3—the undue burden accommodation for foreign registrants—would not result in an increase in compliance costs, as the purpose of the instruction overlaps with the general accommodation in Securities Act Rule 409 and Exchange Act Rule 12b-21. In addition, the proposed rules would link the specific categories of debt securities and loans that should be disclosed with those required by U.S. GAAP and IFRS and would explicitly exclude certain disclosures that are inapplicable to IFRS. This linkage to the categories used in the financial statements rather than U.S. banking categories should further reduce the need for foreign registrants to seek regulatory accommodations with respect to the proposed disclosure requirements.[311]

b. Alternatives

As an alternative, we could codify all of the Guide 3 disclosures. Codifying these disclosures would help ensure that relevant information about material financial activities is provided in a consistent and comparable format for investors, even though that format may be different from the presentation in the financial statements. Given the overlapping nature of certain Guide 3 disclosures and other disclosures required by Commission rules, U.S. GAAP, or IFRS, we believe that codifying all of the Guide 3 disclosures would result in

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[310] *See supra* note 264.

[311] *See supra* note 52.

inefficiencies for affected registrants and would not provide additional information material to an investment decision.

ii. Codified Disclosures

We propose to codify certain Guide 3 disclosures that do not significantly overlap with disclosures required by Commission rules, U.S. GAAP, and IFRS. In addition, we propose to modify some of these disclosures to better align them with other existing reporting practices or to provide additional information that may be material to an investment decision.

a. Costs and Benefits

We propose to codify all of the disclosures called for by Item I and the majority of disclosures called for by Item V, with some revisions. We also propose to codify the weighted average yield disclosure called for by Item II.B, the loan maturity and sensitivity to interest rate disclosures called for by Item III.B, and the allocation of the allowance for loan loss disclosure called for by Item IV.B for U.S. GAAP registrants. In addition, the proposed rules would codify the ratio of net charge-offs disclosure called for by Item IV.A, although on a disaggregated basis for each of the U.S. GAAP or IFRS loan categories presented in the registrant's financial statements.

Codifying these items under new Subpart 1400 of Regulation S-K would provide a single source of disclosure requirements about the specified financial activities, which may facilitate compliance and lead to better comparability among bank and savings and loan registrants to the extent that centralization makes it easier for registrants to understand their disclosure obligations. In addition, this proposal would eliminate the uncertainty resulting from the existing disclosure structure for BHCs and registrants with material lending and deposit-taking activities under Guide 3.[312] It also may decrease uncertainty on the part of registrants as to whether specific disclosures are required given Guide 3's status as staff guidance. However, codifying these disclosures in Regulation S-K may cause affected registrants to expend additional resources to produce the disclosures, as the status of the disclosures would be elevated from guidance to a rule, and could result in additional costs. To the extent that such effect is present, the resulting cost increase may be passed on to shareholders and customers.

We also propose to 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 security and loan categories required to be disclosed in the registrant's U.S. GAAP or IFRS financial statements. Currently Guide 3 indicates that registrants may present loan categories other than the ones outlined in Item III.B and IV.A if they consider them to be a more appropriate presentation. Therefore, we expect the proposed alignment of the loan categories to have minimal impact on those registrants that already use U.S. GAAP or IFRS loan categories. However, the registrants that currently apply Guide 3 loan categories may incur switching costs. Revising the debt security categories to conform to the financial statement categories would promote comparability and consistency of disclosures for investors and reduce the preparation burden and related costs imposed on affected registrants. However, 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, which could impact their investment decisions.

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[312] *See* letters from CAQ; Crowe; Deloitte; EY; KPMG; and PWC.

In addition, the proposed rules would disaggregate the categories of interest-earning assets and interest-bearing liabilities in the Item I disclosures that we propose to codify. For example, it would codify the short-term borrowing categories specified in Item VI. More disaggregated categories of assets and liabilities may provide investors with insight into the drivers of changes in the affected registrant's net interest income. As another example, the majority of the Item V deposits disclosures would be codified and additional categories of deposits would be required to be disclosed. The proposed disclosure, by avoiding specific reference to existing dollar limits, would better accommodate future changes in the FDIC insurance limit and provide more information on uninsured deposits. As such, these revised categories of deposits could provide greater transparency with respect to the affected registrant's sources of funding and risks related to these particular types of funding.

The proposed rules also would require disclosure of the net charge-off ratio on a disaggregated basis, based on the U.S. GAAP or IFRS loan categories. More disaggregated net charge-off ratio data may be information material to an investment decision 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. It also would supplement the financial statement disclosures with credit information, which could help investors interpret the various credit disclosures. As a result of increased transparency from these proposed disclosures, investors may be able to make more informed investment decisions and bank and savings and loan registrants' cost of capital may decrease.[313] However, the need to provide disaggregated information would increase costs for affected registrants to the extent that some bank and savings and loan registrants may not be currently compiling such

[313] For a discussion of the benefits of loan loss disclosure for public banks, *see, e.g.*, D. Craig Nichols, James M. Wahlen, & Matthew M. Wieland, *Publicly Traded versus Privately Held: Implications for Conditional Conservatism in Bank Accounting*, 14 REV. ACCT. STUD. 88 (2009).

disaggregated data, which could ultimately affect shareholders and customers if the cost increases are passed on to them in the form of reduced earnings or increased prices.

iii. New Credit Ratios Disclosures

The proposed rules would 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. The ratios would be required for the last five years in initial registration statements and initial Regulation A offering statements, after which the reporting period for the ratios would be aligned with the reporting periods for financial statements. The proposed rules would 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.

a. Costs and Benefits

Generally, the components of each proposed ratio are already required disclosures in bank and savings and loan registrants' financial statements. As such, the benefit to investors of requiring these additional credit ratios may be modest, mostly in the form of decreased search costs stemming from reduced time and effort to calculate the relevant credit ratios from other information. At the same time, since many registrants with holdings of loans already provide some of these ratios in their filings, we believe that the additional compliance burden for the proposed credit ratio disclosures would not be significant for such bank and savings and loan registrants.

New bank and savings and loan registrants may experience higher costs due to the proposed requirement to provide five years instead of two years of credit ratios in initial registration statements and initial Regulation A offering statements. However, this effect would be somewhat mitigated by Securities Act Rule 409 and Exchange Act Rule 12b-21, which, if certain conditions are met, allow a registrant to omit required information if it is unknown and not reasonably available to the registrant. In addition, the added transparency of an extended history of credit ratios may provide beneficial information to investors, increasing information efficiency and lowering the cost of capital for new bank and savings and loan registrants.[314]

iv. Reporting Periods

Guide 3 currently calls for five years of loan portfolio and summary of loan loss experience data and three years for all other information. However, under Guide 3, registrants with less than $200 million of assets or $10 million of net worth may present only two years of the information. The proposed rule would align the reporting periods for the proposed disclosures with the periods required by Commission rules for financial statements rather than the longer periods called for by Guide 3, except for the proposed credit ratios disclosure.[315]

a. Costs and Benefits

The proposal would reduce compliance costs for registrants currently following Guide 3, other than the small number of registrants eligible for scaled disclosure under Guide 3, as shown in Table 2 above. In addition, alignment of the proposed rules' reporting periods with those required for financial statements would 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. Since prior period information for existing registrants is publicly available on EDGAR, scaling the number of reporting periods presented in a particular filing

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314 *See infra* Section VII for a discussion of our estimates—for PRA purposes—of the burdens and costs associated with providing the proposed credit ratio disclosures.

315 The reporting period for the proposed credit ratios disclosure would be the last five years for initial registration statements and initial Regulation A offering statements.

should not have a significant adverse impact on investors. However, outside of the proposed credit ratio disclosures, historical information for new bank and savings and loan registrants may not be available beyond the required disclosure period. As such, to the extent that investors and other users of Commission filings rely on Guide 3 information that covers a longer period of time than the proposed reporting periods, the loss of this information may result in higher search costs and more uncertainty about certain activities of new bank and savings and loan registrants. We do not have data to quantify the magnitude of the expected cost reductions for affected registrants or search cost increases for investors and other users of Commission filings as a result of the proposed reporting periods.

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 proposed 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. The additional historical periods would benefit investors in new bank and savings and loan registrants, as historical information is not publicly available for them. However, 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.

v. Proposed Scope

a. Costs and Benefits

The proposed rules would apply to bank and savings and loan registrants. We estimate that this approach would not subject any additional registrants to the proposed rules, as our analysis preliminarily indicates that the population identified in Table 1 includes all bank and savings and loan registrants within the financial services industry. At the same time, the proposed scope would provide more certainty to registrants with lending and deposit-taking activities because they would no longer need to assess the applicability of Guide 3 based on materiality of their activities and, instead, would be explicitly required to provide disclosure based on the type of their business.

However, as shown in Table 1, this approach may result in four registrants not being included in the population of registrants that would have to provide the proposed disclosures because these registrants do not fall under a definition of a BHC, bank, savings and loan holding company, or savings and loan association, even though these registrants conduct deposit-taking and lending activities. To the extent that the lending and deposit-taking activities of these registrants are material, investors may lose information about these activities and comparability among registrants with lending and deposit-taking activities may decrease. However, if the primary business of registrants that do not fall under the definition of a BHC, bank, savings and loan holding company, or savings and loan association is considerably different from that of bank and savings and loan registrants, the information provided in response to Guide 3 may not be as relevant for investors. In addition, we note that, even if a registrant would not be subject to the proposed rules, other Commission disclosure requirements, such as MD&A, may elicit certain disclosure about financial activities of these registrants to the extent they are material, or registrants may voluntarily provide disclosures not being codified.

b. Alternatives

As an alternative to the proposed scope, the Commission considered a scope that would not be limited to bank and savings and loan registrants, but would encompass all financial services registrants that conduct the activities addressed in the proposed rules. Given that the financial services industry has evolved significantly since the last substantive revision of Guide 3 in 1986, a wider range of registrants now engage in the activities addressed in Guide 3. Under the proposal, other registrants that provide similar financial services, such as lending, would not be required to provide the same disclosure because they do not fit the definition of a BHC, bank, savings and loan holding company, or savings and loan association, thereby making it more difficult to compare those registrants' disclosures to those provided by bank and savings and loan registrants. In addition, to the extent that registrants that conduct one of the activities addressed by the proposed rules would not be within the proposed scope, and to the extent that these registrants currently have a competitive advantage over registrants providing the Guide 3 disclosures due to lower costs, the alternative may decrease this disparity.

Table 3 below shows the estimated number of financial services registrants[316] that conduct the activities addressed in the proposed rules: (1) holding debt securities, (2) holding loans, and (3) deposit-taking. It also provides a breakdown of those registrants that are within the scope of Guide 3 and those that are not.

Table 3. Activities of Financial Services Registrants

Financial Services Registrants	Holding Debt Securities[317]	Holding Loans	Deposit-Taking

316 *See supra* note 303.

317 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. To estimate the number of these registrants, the staff analyzed the most recent Form 10-K or Form 20-F filed as of May 1, 2019 for financial services registrants. 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 the holdings in debt securities 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 301, *supra*, the number of financial services registrants with holdings of debt securities may be underestimated.

	#	Assets, $bln	#	Assets, $bln	#	Assets, $bln
Within Guide 3 scope	485	41,691	487	41,692	486	41,692
Not within Guide 3 scope	468	18,278	264	15,860	0	0
Total	953	59,969	751	57,552	486	41,692

We estimate that, out of 953 financial services registrants that hold debt securities, 485 registrants that in aggregate hold approximately 69.5% of assets among financial services registrants with debt securities may be currently following Guide 3. Similarly, out of 751 financial services registrants that hold loans, 487 registrants that in aggregate hold approximately 72.4% of assets among all financial services registrants with holdings of loans may be currently following Guide 3. In contrast, all financial services registrants with deposit-taking activities may be currently applying Guide 3. We estimate that there are 566 additional financial services registrants that in aggregate hold approximately 31.1% of assets, conduct at least one of the three activities, and are not within the Guide 3 population identified in Table 1. Among these registrants, 166 have holdings of both debt securities and loans, 98 have holdings of loans only, and 302 have holdings of debt securities only.

To the extent that certain types of registrants outside the Guide 3 population identified in Table 1 provide financial services and conduct activities similar to bank and savings and loan registrants, such as lending, this alternative approach could help investors to better compare registrants that conduct similar activities, which in turn could help investors make more efficient investment decisions. Further, this approach could facilitate investors' analysis of securities, potentially resulting in improved earnings estimates. Table 4 below lists financial services registrants that engage in at least one of the activities addressed by the proposed disclosures (holding loans, deposit-taking, or holding debt securities) by type of business.[318]

Table 4. Financial Services Registrants By Type

Type of Financial Services	Within Guide 3 Scope		Not Within Guide 3 Scope		Total	
	#	Assets, $bln	#	Assets, $bln	#	Assets, $bln
Banking and saving	456	36,569	1	0	457	36,569
Credit and finance	19	1,643	60	6,357	79	8,000
Brokers, dealers, and exchanges	7	3,293	89	763	96	4,056
Investment advice	1	137	37	214	38	352
Insurance	1	11	138	9,716	139	9,727
Real estate	0	0	192	1,386	192	1,386
Other financial services	3	39	49	426	52	465
Total	487	41,692	566	18,862	1053	60,554

Under the alternative to the proposed scope, these registrants would be newly subject to the proposed rules and would experience an increase in compliance costs as a result of new disclosure obligations. Given that many of these registrants may not currently provide the disclosures we propose to codify, these increased costs may be significant. Moreover, even if a registrant would not be subject to disclosure under the proposed rules, other Commission disclosure requirements, such as MD&A, or investors' demand may elicit certain disclosure about financial activities of these registrants to the extent they are material.

318 We use 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. We note that there are 27 registrants outside of the SIC codes 6021, 6022, 6029, 6035, and 6036 (and thus not included in the 456 banking and savings registrants) that are either identified as BHCs under the BHC Act or under Rule 1-02(e) of Regulation S-X, or identified as banks or savings and loan holding companies.

vi. Applicability of Disclosures

a. Costs and Benefits

Guide 3 calls for disclosure about each of its specified activities, regardless of the materiality of these activities, except for the few disclosures that include bright-line disclosure thresholds. The proposed rules would codify the bright-line disclosure threshold for deposit disclosures and would not specify disclosure thresholds, similar to current Guide 3, for any of the other proposed disclosures. As such, we do not expect this aspect of the proposal to result in meaningful economic effects for registrants and investors as compared to the baseline.

b. Alternatives

As an alternative, the Commission considered requiring disclosures based on the materiality of the relevant financial activities to the registrant's business or financial statements. On the one hand, a materiality-based approach may result in a more tailored compliance regime and allow these registrants to use firm-specific information to determine whether certain activities are material. However, if registrants and investors have different perceptions about what activities are material, investors may have less information than they desire in making investment decisions. In addition, under this alternative approach, a banking registrant could make an incorrect judgment about the materiality of a certain activity, potentially subjecting the registrant to increased litigation risk. As such, bank and savings and loan registrants may respond by expending more resources on materiality determinations. In addition, under this alternative, comparability across registrants may decrease.

As another alternative, the Commission could have proposed using a bright-line threshold for all proposed disclosures. 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, registrants that fall just below the threshold would not be comparable to 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 and Format of Disclosures

The proposed rules would continue to provide bank and savings and loan registrants with flexibility to determine where in the filing the required information should be presented.[319] As such, we do not expect this aspect of the proposal to result in meaningful economic effects for registrants and investors as compared to the baseline.

a. Alternatives

Investors and other users of Commission filings may process information located in different places within a registrant's filing differently. As an alternative, we could have proposed to require the disclosure to be located in the footnotes to the financial statements. The annual financial statements are required to be audited and tagged in a structured data format (i.e., Inline XBRL),[320] which could enable investors and other users of Commission

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[319] 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.

[320] For academic research on the benefits and costs of XBRL, *see, e.g.*, Yi Dong, Oliver Zhen Li, Yupeng Lin, & Chenkai Ni, *Does Information-Processing Cost Affect Firm-Specific Information Acquisition?*

filings to locate specific proposed disclosures more easily and make comparisons across registrants faster, thereby decreasing investors' search costs. In addition, to the extent that investors may rely more on audited information, requiring the disclosure to be located in the footnotes to financial statements could decrease information asymmetries between investors and bank and savings and loan registrants, consequently decreasing cost of capital for these registrants. On the other hand, a requirement to include the proposed disclosures in the financial statements would increase bank and savings and loan registrants' compliance costs. Moreover, prescribing a specific location for the disclosures could diminish bank and savings and loan registrants' ability to present the information in the context in which it is most relevant and understandable for investors.

D. **Effects on Efficiency, Competition, and Capital Formation**

The proposed codification of certain Guide 3 disclosures and new credit ratio disclosures may increase the quality and availability of information about bank and savings and loan registrants' activities, which could promote efficiency, competition, and capital formation. In addition, the new credit ratio disclosures may reduce information asymmetries between bank and savings and loan registrants and their investors and promote transparency, which may reduce the cost of capital for these registrants. Codification may also promote comparability and avoid uncertainty about when the proposed disclosures are required, further reducing information asymmetries and allowing investors to achieve better allocation

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Evidence from XBRL Adoption, 51 J. FIN. & QUANTITATIVE ANALYSIS 435 (2016); Elizabeth Blankespoor, *The Impact of Investor Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate*, 57 J. ACCT. RES. 919 (2019); Chunhui Liu, Tawei Wang, & Lee J. Yao, *XBRL's Impact on Analyst Forecast Behavior: an Empirical Study*, 33 J. ACCT. & PUB. POL'Y 69 (2014); Yu Cong, Jia Hao, & Lin Zou, *The Impact of XBRL Reporting on Market Efficiency*, J. INFO. SYS., Fall 2014, at 181; Elizabeth Blankespoor, Brian P. Miller, & Hal D. White, *Initial Evidence on the Market Impact of the XBRL Mandate*, 19 REV. ACCT. STUD. 1468 (2014).

efficiency. This, in turn, may increase the demand for securities offerings, reduce costs of capital, and enhance capital formation.

The effect of proposing not to codify the disclosures 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 investors may have limited attention and limited information processing capabilities,[321] elimination of such information should facilitate more efficient investment decision-making. Not codifying the Guide 3 disclosures that overlap with U.S. GAAP and IFRS would reduce the number of disclosures that bank and savings and loan registrants need to consider and prepare, and consequently simplify their compliance regime. To the extent that the overlapping disclosures are substantially the same as those provided in response to Guide 3, not codifying certain Guide 3 disclosures would not adversely affect investors and other users of Commission filings. Some academic research suggests that individuals may invest more in firms with more concise disclosures.[322] Thus, to the extent that the proposed rescission of Guide 3 does not affect the completeness of disclosures, it could enhance the informational and allocative efficiency of the market and facilitate capital formation. The potential adverse effects of the proposed rules are likely to be limited as investors would

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

322 *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 Statement*, CONTEMP. ACCT. RES. (forthcoming 2019).

continue to receive substantially similar information from bank and savings and loan registrants under U.S. GAAP and IFRS disclosure requirements.

On the other hand, not codifying certain Guide 3 disclosures could lead to increased information asymmetries between investors and bank and savings and loan registrants. To the extent that some of the Guide 3 disclosures (e.g., those 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, bank and savings and loan registrants may be less likely to voluntarily disclose such information, when applicable. For example, the Guide 3 disclosure of maturity analysis of investment categories that we propose not to codify applies only in certain instances under IFRS. Moreover, even if some IFRS bank and savings and loan registrants disclose this information, it may be difficult for investors to assess the relative quality of those registrants without the same disclosure for every IFRS bank and savings and loan registrant. 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. However, elimination of overlapping disclosures may reduce bank and savings and loan registrants' compliance costs, particularly for smaller registrants for which fixed costs are a higher portion of revenue.

The proposed rules may have effects on competition. First, to the extent that compliance costs may increase for bank and savings and loan registrants under the proposed rules, these costs may be passed on to their customers, in contrast to private banking companies not subject to the proposed disclosures or current Guide 3. Therefore, private banking companies may gain additional competitive advantage from not incurring such increased costs. Further, to the extent that certain costs related to 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.

Second, the cost savings from proposing not to codify all of the Guide 3 disclosures 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.[323] For example, the TDR and nonaccrual concepts do not exist under IFRS. To the extent that IFRS bank and savings and loan registrants experience greater cost savings compared to U.S. GAAP bank and savings and loan registrants and the costs are currently passed through to their customers and shareholders, shareholders and customers may experience larger increases in earnings or larger decreases in service costs, respectively, which may allow IFRS registrants to better compete for investors as compared to U.S. GAAP registrants.[324] Although we request comment on the extent of any such competitive advantage, we preliminarily do not anticipate this effect to be substantial.

E. **Request for Comment**

We request comment on the economic analysis set forth in this release. To the extent possible, we request that market participants and other commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed rules or any reasonable alternatives. We also are interested in comments on the alternatives presented in this release as well as any additional alternatives to the proposed amendments that should be considered. In addition, we are

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[323] *See* letters from CAQ; EY; Deloitte; and PWC.

[324] Based on the staff's review of IFRS registrants' annual reports that include Guide 3 disclosures, most do not provide the TDR and nonaccrual loan disclosures called for by Guide 3.

interested in views regarding the costs and benefits for particular types of covered registrants, such as SRCs and EGCs.

In addition, we ask commenters to consider the following questions:

79. What additional qualitative or quantitative information should we consider as part of the baseline for the economic analysis of the proposed rules?
80. What additional data or methodologies can we use to estimate the costs and benefits of implementing the proposed rules?
81. Have we considered all relevant costs of the proposed rules? Are the estimated costs of the proposed rules reasonable? If not, please explain in detail why the cost estimates should be higher or lower than those provided. Please identify any costs associated with the proposed rules that we have not identified.
82. Have we considered all relevant benefits of the proposed rules? Have we accurately described the benefits of the proposed rules? Why or why not? Please identify any other benefits associated with the proposed rules in detail.
83. What are the current compliance costs related to Guide 3 disclosure for U.S. GAAP and IFRS registrants, including SRCs and EGCs? Are the costs different for U.S. GAAP and IFRS registrants? Are these costs significantly higher/lower than the compliance costs of registrants that are not currently within the Guide 3 scope identified in Table 1? How will the proposed rules change the compliance costs for U.S. GAAP and IFRS registrants? Would there be any differences in costs for U.S. GAAP and IFRS registrants?
84. Would the proposed new credit ratio disclosures impose significant costs for bank and savings and loan registrants? Do registrants currently provide these disclosures? If so, can the costs of providing these disclosures be quantified?

85. We invite comment on the nature of any resulting compliance costs. In particular, to what extent are the compliance costs fixed versus variable? Are there scale advantages or disadvantages in the compliance costs, both in terms of activity size or registrant size? To what extent are the compliance costs one-time set-up costs versus recurring variable costs?

86. We are interested in comments and data related to any potential competitive effects from the proposed rules. In particular, we are interested in evidence and views on the current competitive situation of U.S. bank and savings and loan registrants as well as the attractiveness of U.S. securities markets for foreign banking companies. To what extent does the current Guide 3 disclosure regime affect this competitive situation, if at all? To what extent would the proposed rules change competition between U.S. and foreign bank and savings and loan registrants? To what extent would the proposed rules change competition between U.S. GAAP and IFRS registrants?

87. Would expanding the scope of the proposed rules to all financial services registrants impose significant costs on registrants that do not currently provide Guide 3 disclosures? If so, can these costs be quantified? How would expanding the proposed scope to all financial services registrants affect the competitive situation among registrants that conduct activities addressed in this proposal?

88. Would expanding the scope to all financial services registrants provide significant benefits to investors and other users of Commission filings? How would expanding the scope to all financial services registrants affect the efficiency of capital markets?

VII. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[325] The Commission is submitting the proposed rules to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[326] The hours and costs associated with preparing and filing forms and reports that include the disclosure called for by the proposed rules 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:

- Regulation S-K (OMB Control No. 3235-007);[327]
- Form S-1[328] (OMB Control No. 3235-0065);
- Form S-3[329] (OMB Control No. 3235-0073);[330]
- Form S-4[331] (OMB Control No. 3235-0324);

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325 44 U.S.C. 3501 *et seq*.

326 44 U.S.C. 3507(d) and 5 CFR 1320.11.

327 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 assign a one-hour burden to Regulation S-K.

328 17 CFR 239.11.

329 17 CFR 239.13.

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

- Form F-1[332] (OMB Control No. 3235-0258);
- Form F-3[333] (OMB Control No. 3235-0256);
- Form F-4[334] (OMB Control No. 3235-0325);
- Form 10[335] (OMB Control No. 3235-0064);
- Form 10-K (OMB Control No. 3235-0064);
- Form 10-Q[336] (OMB Control No. 3235-0070);
- Form 20-F (OMB Control No. 3235-0063); and
- Regulation A[337] (Form 1-A)[338] (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 proposed rules, including the need for the information and its proposed 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 VI above.

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331 17 CFR 239.25.

332 17 CFR 239.31.

333 17 CFR 239.33.

334 17 CFR 239.34.

335 17 CFR 249.210.

336 17 CFR 249.308a.

337 17 CFR 230.251 through 17 CFR 230.263.

338 17 CFR 239.90.

B. Burden and Cost Estimates Related to the Proposed Rules

i. Affected Registrants and Forms

We estimate that, currently, approximately 487 bank and savings and loan registrants provide the disclosures set forth in Guide 3. These registrants would have to provide the disclosures required by the proposed 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 proposed rules would codify certain disclosures called for by Guide 3 and eliminate other Guide 3 disclosures 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 the Guide 3 items. Therefore, the burdens associated with these disclosures 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 disclosures in the proposed rules.

For example, as discussed in greater detail below,[339] we do not propose to codify in proposed Item 1403 the disclosures under existing Item II of Guide 3 that substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those we propose to codify in proposed Item 1403 are consistent with the current disclosures in Item II. Therefore, we estimate that there would be no change to the burdens and costs of an affected registrant as a result of proposed Item 1403 because the Item would include disclosures that are already

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339 *See* Section VII.B.iii.b below.

included in Guide 3. In contrast, as discussed below,[340] proposed Item 1404 would, in addition to codifying the loan disclosures in Item III of Guide 3 that do not overlap with Commission rules, U.S. GAAP, or IFRS, also require certain interest rate disclosure that is not currently a Guide 3 disclosure. Therefore, we estimate that the proposed Item 1404 would increase the burden to an affected registrant.

Additionally, for PRA purposes, the burden and costs estimates related to the proposed rules should primarily affect annual reports on Forms 10-K and 20-F. We do not believe the proposed rules should affect 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 proposed rules cumulatively in its annual report as in each of its prior quarterly reports. 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 proposed 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 are assigning 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.

Also, as discussed below,[341] a new affected registrant would be required to provide more years of credit ratio and related disclosures in its initial registration or offering

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340 *See* Section VII.B.iii.c below.

341 *See* Section VII.B.iii.h.

statement than it would be required to provide in any subsequent registration or offering statement. Therefore, we are assigning additional burdens and costs to a registration or offering statement that can be filed as an initial registration or offering statement, including Forms 20-F, S-1, F-1, 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.[342] 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%
Form F-1	25%	75%
Form F-4	25%	75%
Form 10	25%	75%
Form 1-A	75%	25%

342 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.

iii. Burden Change for Specific Portions of the Proposed Rules

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

Proposed Item 1402 would require additional disaggregation to include the categories under Item VII of Guide 3 and certain other categories in Article 9 of Regulation S-X. Therefore, we estimate that the burdens and costs of an affected annual report would increase by two hours per year and the burdens and costs of an affected registration or offering statement would 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 proposed 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 Proposed Disclosure Related to Distribution of Assets, Liabilities, and Stockholders' Equity; and Interest Rate and Interest Differential (Item I of Guide 3 / Proposed Item 1402).

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Proposed Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Proposed Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +2 hours					
Form 10-K	453	1.5[343]	679.5	$200[344]	$90,600
Form 20-F	34	0.5[345]	17	$600[346]	$20,400
Registration and Offering Statements = +1 hour					
Form 20-F	1	0.25[347]	0.25	$300[348]	$300

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343 Two hours x 0.75 = 1.5 hours.

344 (Two hours x 0.25) x $400 = $200.

345 Two hours x 0.25 = 0.5 hours.

346 (Two hours x 0.75) x $400 = $600.

Form S-1	24	0.25[349]	6	$300[350]	$7,200
Form S-4	93	0.25[351]	23.25	$300[352]	$27,900
Form F-1	1	0.25[353]	0.25	$300[354]	$300
Form F-4	2	0.25[355]	0.5	$300[356]	$600
Form 10	2	0.25[357]	0.5	$300[358]	$600
Form 1-A	5	0.75[359]	3.75	$100[360]	$500

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

The disclosures under existing Item II of Guide 3 that we do not propose to codify in proposed Item 1403 substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those we propose to codify in proposed Item 1403 are consistent with the current disclosures in Item II of Guide 3. Therefore, we estimate that there would 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 proposed rules.

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

Proposed Item 1404 would codify the loan disclosures in Item III of Guide 3 that do not overlap with Commission rules, U.S. GAAP, or IFRS. However, because proposed Item

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347 One hour x 0.25 = 0.25 hours.

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

349 One hour x 0.25 = 0.25 hours.

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

351 One hour x 0.25 = 0.25 hours.

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

353 One hour x 0.25 = 0.25 hours.

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

355 One hour x 0.25 = 0.25 hours.

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

357 One hour x 0.25 = 0.25 hours.

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

359 One hour x 0.75 = 0.75 hours.

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

1404 would require additional disclosure regarding interest rates for all loan categories, we estimate that the burdens and costs of an affected annual report would increase by three hours per year and the burdens and costs of an affected registration or offering statement would 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 proposed disclosure related to loan portfolios.

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

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Proposed Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Proposed Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +3 hours					
Form 10-K	453	2.25[361]	1,019.25	$300[362]	$135,900
Form 20-F	34	0.75[363]	25.5	$900[364]	$30,600
Registration and Offering Statements = +1					
Form 20-F	1	0.25[365]	0.25	$300[366]	$300
Form S-1	24	0.25[367]	6	$300[368]	$7,200
Form S-4	93	0.25[369]	23.25	$300[370]	$27,900
Form F-1	1	0.25[371]	0.25	$300[372]	$300

361 Three hours x 0.75 = 2.25 hours.

362 (Three hours x 0.25) x $400 = $300.

363 Three hours x 0.25 = .75 hours.

364 (Three hours x 0.75) x $400 = $900.

365 One hour x 0.25 = 0.25 hours.

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

367 One hour x 0.25 = 0.25 hours.

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

369 One hour x 0.25 = 0.25 hours.

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

Form F-4	2	0.25[373]	0.5	$300[374]	$600
Form 10	2	0.25[375]	0.5	$300[376]	$600
Form 1-A	5	0.75[377]	3.75	$100[378]	$500

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

The disclosures under existing Item IV of Guide 3 that we do not propose to codify in proposed Item 1405(c) substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those we propose to codify in proposed Item 1405(c) are consistent with the current disclosures in Item IV of Guide 3. Therefore, we estimate that there would 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 proposed rules.

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

Proposed Item 1406 would codify the majority of the disclosures currently called for by Item V of Guide 3, with some revisions. Based on differences from the current Item V disclosures and the proposed requirements, we estimate that burdens and costs of an affected annual report would increase by three burden hours per year and the burdens and costs of an affected registration or offering statement would 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 proposed disclosure related to deposits.

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371 One hour x 0.25 = 0.25 hours.

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

373 One hour x 0.25 = 0.25 hours.

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

375 One hour x 0.25 = 0.25 hours.

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

377 One hour x 0.75 = 0.75 hours.

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

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

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Proposed Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Proposed Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +3 hours					
Form 10-K	453	2.25[379]	1,019.25	$300[380]	$135,900
Form 20-F	34	0.75[381]	25.5	$900[382]	$30,600
Registration and Offering Statements = +1					
Form 20-F	1	0.25[383]	0.25	$300[384]	$300
Form S-1	24	0.25[385]	6	$300[386]	$7,200
Form S-4	93	0.25[387]	23.25	$300[388]	$27,900
Form F-1	1	0.25[389]	0.25	$300[390]	$300
Form F-4	2	0.25[391]	0.5	$300[392]	$600
Form 10	2	0.25[393]	0.5	$300[394]	$600
Form 1-A	5	0.75[395]	3.75	$100[396]	$500

379 Three hours x 0.75 = 2.25 hours.

380 (Three hours x 0.25) x $400 = $300.

381 Three hours x 0.25 = 0.75 hours.

382 (Three hours x 0.75) x $400 = $900.

383 One hour x 0.25 = 0.25 hours.

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

385 One hour x 0.25 = 0.25 hours.

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

387 One hour x 0.25 = 0.25 hours.

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

389 One hour x 0.25 = 0.25 hours.

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

391 One hour x 0.25 = 0.25 hours.

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

393 One hour x 0.25 = 0.25 hours.

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

395 One hour x 0.75 = 0.75 hours.

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

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

The proposed rules would not codify the disclosures in Item VI of Guide 3. Therefore, we estimate that the burdens and costs of an affected annual report would decrease by two burden hours per year and the burdens and costs of an affected registration or offering statement would 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 proposed rules.

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

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Proposed Increase in Internal Burden Hours** (D) [(B * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Proposed Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = -2 hours					
Form 10-K	453	(1.5)[397]	(679.5)	($200)[398]	($90,600)
Form 20-F	34	(0.5)[399]	(17)	($600)[400]	($20,400)
Registration and Offering Statements = -1 hour					
Form 20-F	1	(0.25)[401]	(0.25)	($300)[402]	($300)
Form S-1	24	(0.25)[403]	(6)	($300)[404]	($7,200)
Form S-4	93	(0.25)[405]	(23.25)	($300)[406]	($27,900)

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397 Two hours x 0.75 = 1.5 hours.

398 (Two hours x 0.25) x $400 = $200.

399 Two hours x 0.25 = 0.5 hours.

400 (Two hours x 0.75) x $400 = $600.

401 One hour x 0.25 = 0.25 hours.

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

403 One hour x 0.25 = 0.25 hours.

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

Form F-1	1	(0.25)[407]	(0.25)	($300)[408]	($300)
Form F-4	2	(0.25)[409]	(0.5)	($300)[410]	($600)
Form 10	2	(0.25)[411]	(0.5)	($300)[412]	($600)
Form 1-A	5	(0.75)[413]	(3.75)	($100)[414]	($500)

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

The proposed rules would codify the average amount outstanding and interest paid disclosures in Item VII of Guide 3 as part of Proposed Rule 1402, and the remaining disclosures in Item VII would not be proposed for codification. Therefore, we estimate that the burdens and costs of an affected annual report would decrease by four burden hours per year and the burdens and costs of an affected registration or offering statement would 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 proposed disclosure related to short-term borrowings.

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

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant**	**Total Proposed Increase in Internal Burden**	**Increase in Outside Professional Cost Per Registrant**	**Total Proposed Increase in Outside Professional**

405 One hour x 0.25 = 0.25 hours.

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

407 One hour x 0.25 = 0.25 hours.

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

409 One hour x 0.25 = 0.25 hours.

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

411 One hour x 0.25 = 0.25 hours.

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

413 One hour x 0.75 = 0.75 hours.

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

		(C)	**Hours** (D) [(B) * (C)]	(E)	**Cost** (F) [(B) * (E)]
Annual Reports = -4 hours					
Form 10-K	453	(3)[415]	(1,359)	($400)[416]	($181,200)
Form 20-F	34	(1)[417]	(34)	($1,200)[418]	($40,800)
Registration and Offering Statements = -1					
Form 20-F	1	(0.25)[419]	(0.25)	($300)[420]	($300)
Form S-1	24	(0.25)[421]	(6)	($300)[422]	($7,200)
Form S-4	93	(0.25)[423]	(23.25)	($300)[424]	($27,900)
Form F-1	1	(0.25)[425]	(0.25)	($300)[426]	($300)
Form F-4	2	(0.25)[427]	(0.5)	($300)[428]	($600)
Form 10	2	(0.25)[429]	(0.5)	($300)[430]	($600)
Form 1-A	5	(0.75)[431]	(3.75)	($100)[432]	($500)

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

For all filings other than initial registration and offering statements, including annual reports and registration or offering statements that are not initial registration or offering

415 Four hours x 0.75 = 3 hours.

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

417 Four hours x 0.25 = 1 hours.

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

419 One hour x 0.25 = 0.25 hours.

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

421 One hour x 0.25 = 0.25 hours.

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

423 One hour x 0.25 = 0.25 hours.

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

425 One hour x 0.25 = 0.25 hours.

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

427 One hour x 0.25 = 0.25 hours.

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

429 One hour x 0.25 = 0.25 hours.

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

431 One hour x 0.75 = 0.75 hours.

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

statements, the proposed credit ratios and related disclosures would be required for the same periods that financial statements for those filings are required by our rules, which would be less than five years. For an affected registrant that would be required under the proposed rules to provide its credit ratios and related disclosures for less than five years, we estimate 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.

An affected registrant filing its initial registration or offering statement would be required under the proposed rules to provide its credit ratios and related disclosures for each of the last five years. We estimate 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.

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

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

Form (A)	**Number of Affected Filings** (B)	**Increase in Internal Burden Hours Per Registrant** (C)	**Total Proposed Increase in Internal Burden Hours** (D) [(B) * (C)]	**Increase in Outside Professional Cost Per Registrant** (E)	**Total Proposed Increase in Outside Professional Cost** (F) [(B) * (E)]
Annual Reports = +6 hours					

Form 10-K	453	4.5[433]	2,038.5	$600[434]	$271,800
Form 20-F	34	1.5[435]	51	$1,800[436]	$61,200
Not Initial Registration and Offering Statements = +1 hours					
Form 20-F	1	0.25[437]	0.25	$300[438]	$300
Form S-1	24	0.25[439]	6	$300[440]	$7,200
Form S-4	93	0.25[441]	23.25	$300[442]	$27,900
Form F-1	1	0.25[443]	0.25	$300[444]	$300
Form F-4	2	0.25[445]	0.5	$300[446]	$600
Form 10	2	0.25[447]	0.5	$300[448]	$600
Form 1-A	5	0.75[449]	3.75	$100[450]	$500
Initial Registration and Offering Statements = +6 hours					
Form 20-F	1	1.5[451]	1.5	$1,800[452]	$1,800
Form S-1	20	1.5[453]	30	$1,800[454]	$36,000
Form F-1	1	1.5[455]	1.5	$1,800[456]	$1,800
Form 10	1	1.5[457]	1.5	$1,800[458]	$1,800

433 Six hours x 0.75 = 4.5 hours.

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

435 Six hours x 0.25 = 1.5 hours.

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

437 One hour x 0.25 = 0.25 hours.

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

439 One hour x 0.25 = 0.25 hours.

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

441 One hour x 0.25 = 0.25 hours.

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

443 One hour x 0.25 = 0.25 hours.

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

445 One hour x 0.25 = 0.25 hours.

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

447 One hour x 0.25 = 0.25 hours.

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

449 One hour x 0.75 = 0.75 hours.

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

451 Six hours x 0.25 = 1.5 hours.

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

453 Six hours x 0.25 = 1.5 hours.

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

455 Six hours x 0.25 = 1.5 hours.

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

Form 1-A	4	4.5[459]	18	$600[460]	$2,400

iv. Aggregated Change in Burden for Specific Portions of the Proposed Rules

Table 12 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals aggregated for each portion of the proposed rules.

Table 12. Estimated Change in Internal Burden Hours and Costs for Outside Professionals from the Aggregated Portions of the Proposed Rules.

Form	Number of Affected Forms	Existing Guide 3 Item	Total Burden Hour Change Per Form	Internal Burden Hour Change Per Form	Total Proposed Change in Internal Burden Hours	Outside Professional Costs Change Per Form	Total Proposed Change in Outside Professional Cost
Annual Reports							
Form 10-K	453	Item I	2	1.5	679.5	$200	$90,600
		Item II	0	0	0	$0	$0
		Item III	3	2.25	1,019.25	$300	$135,900
		Item IV	0	0	0	$0	$0
		Item V	3	2.25	1,019.25	$300	$135,900
		Item VI	(2)	(1.5)	(679.5)	($200)	($90,600)
		Item VII	(4)	(3)	(1,359)	($400)	($181,200)
		Credit Ratios	6	4.5	2,038.5	600	$271,800
Subtotals			*8*	*6*	*2,718*	*$800*	*$362,400*
Form 20-F	34	Item I	2	0.5	17	$600	$20,400
		Item II	0	0	0	$0	$0
		Item III	3	0.75	25.5	$900	$30,600
		Item IV	0	0	0	$0	$0
		Item V	3	0.75	25.5	$900	$30,600
		Item VI	(2)	(0.5)	(17)	($600)	($20,400)
		Item VII	(4)	(1)	(34)	($1,200)	($40,800)
		Credit Ratios	6	1.5	51	$1,800	$61,200
Subtotals			*8*	*2*	*68*	*$2,400*	*$81,600*
Not Initial Registration and Offering Statements							
Form 20-F	1	Item I	1	0.25	0.25	$300	$300

457 Six hours x 0.25 = 1.5 hours.

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

459 Six hours x 0.75 = 4.5 hours.

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

		Item II	0	0	0	$0	$0
		Item III	1	0.25	0.25	$300	$300
		Item IV	0	0	0	$0	$0
		Item V	1	0.25	0.25	$300	$300
		Item VI	(1)	(0.25)	(0.25)	($300)	($300)
		Item VII	(1)	(0.25)	(0.25)	($300)	($300)
		Credit Ratios	1	0.25	0.25	$300	$300
Subtotals			*2*	*0.5*	*0.5*	*$600*	*$600*
Form S-1	24	Item I	1	0.25	6	$300	$7,200
		Item II	0	0	0	$0	$0
		Item III	1	0.25	6	$300	$7,200
		Item IV	0	0	0	$0	$0
		Item V	1	0.25	6	$300	$7,200
		Item VI	(1)	(0.25)	(6)	($300)	($7,200)
		Item VII	(1)	(0.25)	(6)	($300)	($7,200)
		Credit Ratios	1	0.25	6	$300	$7,200
Subtotals			*2*	*0.5*	*12*	*$600*	*$14,400*
Form S-4	93	Item I	1	0.25	23.25	$300	$27,900
		Item II	0	0	0	$0	$0
		Item III	1	0.25	23.25	$300	$27,900
		Item IV	0	0	0	$0	$0
		Item V	1	0.25	23.25	$300	$27,900
		Item VI	(1)	(0.25)	(23.25)	($300)	($27,900)
		Item VII	(1)	(0.25)	(23.25)	($300)	($27,900)
		Credit Ratios	1	0.25	23.25	$300	$27,900
Subtotals			*2*	*0.5*	*46.5*	*$600*	*$55,800*
Form F-1	1	Item I	1	0.25	0.25	$300	$300
		Item II	0	0	0	$0	$0
		Item III	1	0.25	0.25	$300	$300
		Item IV	0	0	0	$0	$0
		Item V	1	0.25	0.25	$300	$300
		Item VI	(1)	(0.25)	(0.25)	($300)	($300)
		Item VII	(1)	(0.25)	(0.25)	($300)	($300)
		Credit Ratios	1	0.25	0.25	$300	$300
Subtotals			*2*	*0.5*	*0.5*	*$600*	*$600*
Form F-4	2	Item I	1	0.25	0.5	$300	$600
		Item II	0	0	0	$0	$0
		Item III	1	0.25	0.5	$300	$600
		Item IV	0	0	0	$0	$0
		Item V	1	0.25	0.5	$300	$600
		Item VI	(1)	(0.25)	(0.5)	($300)	($600)
		Item VII	(1)	(0.25)	(0.5)	($300)	($600)
		Credit Ratios	1	0.25	0.5	$300	$600
Subtotals			*2*	*0.5*	*1*	*$600*	*$1,200*
Form 10	2	Item I	1	0.25	0.5	$300	$600
		Item II	0	0	0	$0	$0

		Item III	1	0.25	0.5	$300	$600
		Item IV	0	0	0	$0	$0
		Item V	1	0.25	0.5	$300	$600
		Item VI	(1)	(0.25)	(0.5)	($300)	($600)
		Item VII	(1)	(0.25)	(0.5)	($300)	($600)
		Credit Ratios	1	0.25	0.5	$300	$600
Subtotals			*2*	*0.5*	*1*	*$600*	*$1,200*
Form 1-A	5	Item I	1	0.75	3.75	$100	$500
		Item II	0	0	0	$0	$0
		Item III	1	0.75	3.75	$100	$500
		Item IV	0	0	0	$0	$0
		Item V	1	0.75	3.75	$100	$500
		Item VI	(1)	(0.75)	(3.75)	($100)	($500)
		Item VII	(1)	(0.75)	(3.75)	($100)	($500)
		Credit Ratios	1	0.75	3.75	$100	$500
Subtotals			*2*	*1.5*	*7.5*	*$200*	*$1,000*
Initial Registration or Offering Statements							
Form 20-F	1	Credit Ratios	6	1.5	1.5	$1,800	$1,800
Form S-1	20	Credit Ratios	6	1.5	30	$1,800	$36,000
Form F-1	1	Credit Ratios	6	1.5	1.5	$1,800	$1,800
Form 10	1	Credit Ratios	6	1.5	1.5	$1,800	$1,800
Form 1-A	4	Credit Ratios	6	4.5	18	$600	$2,400

v. Total Change in Burden Per Form as a Result of the Proposed Rules

Table 13 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 proposed rules regardless of the purpose for which the form is used.

Table 13. Estimated Total Increase in Internal Burden Hours and Costs for Outside Professional as a Result of the Proposed Rules.

Form	Total Number of Affected Forms	Internal Burden Hour Change Per Form	Total Proposed Change in Internal Burden Hours	Outside Professional Costs Change Per Form	Total Proposed Change in Outside Professional Cost
Form 10-K	***453***	***6***	***2,718***	***$800***	***$362,400***

Form 20-F					
Form 20-F	34	2	68	$2,400	$81,600
Form 20-F	1	0.5	0.5	$600	$600
Form 20-F	1	1.5	1.5	$1,800	$1,800
	36	***4***	***70***	***$4,800***	***$84,000***
Form S-1					
Form S-1	24	0.5	12	$600	$14,400
Form S-1	20	1.5	30	$1,800	$36,000
	44	***2***	***42***	***$2,400***	***$50,400***
Form S-4	***93***	***0.5***	***46.5***	***$600***	***$55,800***
Form F-1					
Form F-1	1	0.5	0.5	$600	$600
Form F-1	1	1.5	1.5	$1,800	$1,800
	2	***2***	***2***	***$2,400***	***$2,400***
Form F-4	***2***	***0.5***	***1***	***$600***	***$1,200***
Form 10					
Form 10	2	0.5	1	$600	$1,200
Form 10	1	1.5	1.5	$1,800	$1,800
	3	***2***	***2.5***	***$2,400***	***$3,000***
Form 1-A					
Form 1-A	5	1.5	7.5	$200	$1,000
Form 1-A	4	4.5	18	$600	$2,400
	9	***6***	***25.5***	***$800***	***$3,400***
TOTAL	642	23	2,908	$14,800	$562,600

vi. Total Paperwork Burden under the Proposed Rules

Table 14 below shows the total estimated internal burden hours and costs for outside professional under the proposed rules.

Table 14: Total Paperwork Burden under the Proposed Rules.

	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Proposed Change in Internal Registrant Burden Hours (D)	Proposed Change in Outside Professional Costs (E)	Proposed Burden Hours for Affected Responses (F) [(B) + (D)]	Proposed Costs for Affected Responses (G) [(C) + (E)]
10-K	8,137	14,220,652	$1,898,891,869	2,718	$362,400	14,223,370	$1,899,254,269
20-F	725	479,784	$577,479,600	70	$84,000	479,854	$577,563,600
S-1	901	148,556	$182,048,700	42	$50,400	148,598	$182,099,100

S-4	551	563,216	$678,291,204	47[461]	$55,800	563,263	$678,347,004
F-1	63	26,815	$32,445,300	2	$2,400	26,817	$32,447,700
F-4	39	14,076	$17,106,000	1	$1,200	14,077	$17,107,200
10	216	12,072	$14,356,888	3[462]	$3,000	12,075	$14,359,888
1-A	179	98,396	$13,111,912	26[463]	$3,400	98,422	$13,115,312

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed rules would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and

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461 Rounded to 47.

462 Rounded to three.

463 Rounded to 26.

Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, with reference to File No. S7-02-17. Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7-02-17 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[464] the Commission must advise OMB as to whether the proposed rules constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed rule would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and

[464] Pub. L. 104-121, tit. II, 110 Stat. 857 (1996).

- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Regulatory Flexibility Act Certification

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act ("RFA")[465] requires the Commission to prepare and make available for public comment an Initial Regulatory Flexibility Analysis ("IRFA") that will describe the impact of the proposed rule on small entities.[466] Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.[467]

The proposed amendments would update and streamline our disclosure requirements for banks, bank holding companies, savings and loan associations, and savings and loan holding companies. These registrants currently provide many disclosures in response to the items set forth in Guide 3, which are not Commission rules. The proposed rules would rescind Guide 3; update and codify certain Guide 3 disclosures into new Subpart 1400 of Regulation S-K; eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or IFRS; and add certain credit ratio disclosure requirements. The reasons for, and objectives of, the proposed rules are discussed in more detail in Sections II through IV above.

The RFA defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."[468] For purposes of the RFA, under our rules, a registrant,

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465 5 U.S.C. 601 *et seq.*

466 5 U.S.C. 603(a).

467 5 U.S.C. 605(b).

468 5 U.S.C. 601(6).

other than an investment company, is a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[469] We estimate the proposed amendments would affect one issuer that files with the Commission, other than investment companies, which may be considered a small entity and is potentially subject to the proposed rule.[470] Accordingly, the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

Request for Comment

We request comment on this certification. In particular, we solicit comment on the following: Do commenters agree with the certification? If not, please describe the nature of any impact of the proposed amendments on small entities and provide empirical data to illustrate the extent of the impact. Such comments will be considered in the preparation of the final rules (and in a Final Regulatory Flexibility Analysis if one is needed) and, if the proposed amendments are adopted, will be placed in the same public file as comments on the proposed rules themselves.

X. Statutory Authority and Text of Proposed Rules

We are proposing the rules contained in this document pursuant to 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

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469 *See* 17 CFR 230.157 under the Securities Act and 17 CFR 240.0-10(a) under the Exchange Act.

470 This estimate is based on staff analysis. *See supra* notes 300 to 303 above.

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 Parts 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 proposed to be amended as follows:

For the reasons stated in the preamble, the Commission is proposing to amend 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) of this section 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.

* * * * *

§229.801 [Amended]

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

§229.802 [Amended]

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

7. Add Subpart 229.1400, consisting of §§229.1401 through 229.1406, to read as follows:

Subpart 229.1400 — Disclosure by Bank and Savings and Loan Registrants

Sec.
229.1401 (Item 1401) General instructions.

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

229.1403 (Item 1403) Investments in debt securities.

229.1404 (Item 1404) Loan portfolio.

229.1405 (Item 1405) Allowance for Credit Losses.

229.1406 (Item 1406) Deposits.

§ 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") for bank and savings and loan registrants, except as is provided in paragraph (2) below;

(2) With respect to the disclosures required by §229.1405(a), each of the last five fiscal years for initial public offering registration statements under the Securities Act, registration statements for an initial registration of a class of securities under Section 12(b) or 12(g) of the Exchange Act, and initial offering statements under Regulation A, and

(3) 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, registrants are only 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, at a minimum, 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, at a minimum, 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 effective 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) of this section.

(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) of this section 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 the change in volume).

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

Instruction 1 to § 229.1402. If material, disclose how non-accruing loans have been treated for purposes of the analyses required by paragraph (b) of this section.

Instruction 2 to § 229.1402. In the calculation of the changes in the interest income and interest expense required by paragraph (c) of this section, exclude any out-of-period items and adjustments and disclose the types and amounts of items excluded in a note to the table.

Instruction 3 to § 229.1402. If material loan fees are included in the interest income computation, disclose the amount of such fees.

Instruction 4 to § 229.1402. 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.

Instruction 5 to § 229.1402. If disclosure regarding foreign activities is required pursuant to § 229.1401(d), 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) of this section. 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 § 229.1402). 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; and

(3) After five years.

(b) For each loan category for which disclosure is provided in response to paragraph (a), present separately the total amount of all 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.

Instruction 1 to § 229.1404. Report scheduled repayments in the maturity category in which the payment is due.

Instruction 2 to § 229.1404. Report demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts as due in one year or less.

Instruction 3 to § 229.1404. 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, consider 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. For initial public offering registration statements under the Securities Act, registration statements for an initial registration of a class of securities under Section 12(b) or 12(g) of the Exchange Act, and initial offering statements under Regulation A, provide the following ratios for the last five fiscal years:

(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 as set forth in the following template:

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%

Instruction 1 to § 229.1405. 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 § 229.1405(a)(2), (a)(3) and paragraph (c) of this section.

Instruction 2 to § 229.1405. 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 in bank office 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 paragraph (a) of this section. 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 depositary institutions, uninsured deposits are individual deposits in U.S. offices of amounts exceeding the Federal Deposit Insurance Corporation insurance limit, and investment products such as mutual funds, annuities, or life insurance policies. Foreign banking or savings and loan institutions must disclose the definition of uninsured deposits appropriate for their country of domicile.

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

1) U.S. time deposits in excess of the Federal Deposit Insurance Corporation 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-specific insurance fund), 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 collectibility or present other unfavorable features.*

* * * * *

By the Commission.

September 17, 2019

Vanessa A. Countryman
Secretary