

## HAVE YOU UPDATED YOUR APPROACH TO MD&A?

COMPLIANCE WITH REVISED REQUIREMENTS NOW MANDATORY

Oct 01, 2021

The next Form 10-K filing for most companies will be their first filing required to comply with the revised Management's Discussion and Analysis (Item 303 of Regulation S-K) requirements adopted by the SEC in November 2020. While voluntary early compliance with the 2020 amendments was permitted, companies are not required to comply with the amended requirements until their first filing for a fiscal year ending on or after August 9, 2021. Accordingly, Form 10-K filings for fiscal years ending in September 2021 or later must comply with the amended requirements.

The 2020 amendments are designed to streamline the disclosure system and move to a more principles-based approach focused on material information tailored to the facts and circumstances of each reporting company. In many respects, the 2020 amendments simplify mandatory disclosure requirements but require companies to make principles-based materiality judgments. In some respects, however, the 2020 amendments may require more disclosure than some companies have previously provided. For example, the 2020 amendments expressly require companies to discuss the "underlying reasons" for material changes rather than merely the "causes."

The 2020 amendments:

- Update, enhance and clarify disclosure requirements for *liquidity and capital resources*;
- Clarify and streamline disclosure requirements for *results of operations*;
- Clarify and codify SEC guidance on *critical accounting estimates*;
- Replace the prescriptive *Off-balance sheet arrangements* disclosure requirements with an instruction to discuss such obligations in the broader context of MD&A;
- Eliminate the requirement for a specified form of *Tabular disclosure of contractual obligations*, which has been replaced by a principles-based requirement to discuss material cash requirements from known contractual and other obligations;

- Eliminate the requirement to provide five years of *selected financial data* and simplify the disclosure of *selected quarterly financial data*; and
- Provide flexibility in the comparison of quarterly *interim periods* to help companies provide a more tailored analysis relevant to business cycles.

See our prior [Client Alert](#) for more information on the 2020 amendments.

The 2020 amendments were adopted by the SEC in a 3-2 vote along party lines. Since that time, the composition of the SEC has changed, reflecting President Biden's appointment of Gary Gensler as Chair of the SEC. The pendulum may be swinging back, at least somewhat, from principles-based disclosure to rules-based disclosure. Accordingly, while companies must comply with the current MD&A requirements of Item 303 of Regulation S-K, those requirements should be read in conjunction with other recent guidance, such as the SEC's recently published [sample comment letter on climate change](#) discussed in our [September 23, 2021 post](#). In addition, the SEC is widely expected to propose additional disclosure requirements related to climate change and potentially other Environmental, Social and Governance issues in the coming months. While any newly proposed rules are not likely to be effective for the upcoming reporting season, they may nevertheless impact investor expectations and potential comments by the SEC staff on filings.

## RELATED PRACTICE AREAS

- Securities & Corporate Governance

## MEET THE TEAM



### **Eliot W. Robinson**

Atlanta

[eliot.robinson@bclplaw.com](mailto:eliot.robinson@bclplaw.com)

[+1 404 572 6785](tel:+14045726785)

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.