On March 2, the Securities and Exchange Commission adopted amendments to the financial disclosure requirements for registered debt offerings involving subsidiary guarantees and other credit enhancements. In announcing the new rules, the SEC noted the amendments are intended to improve the quality of disclosures made in the context of registered debt offerings and increase the likelihood that issuers will conduct debt offerings on a registered basis, in part by reducing the compliance burden on issuers.

As a general matter, Rule 3-10 of Regulation S-X required financial statements to be filed for all issuers and guarantors of debt securities registered or being registered, subject to important exceptions. Existing Rule 3-10 generally provided that, where a subsidiary guaranteed its parent’s debt securities or the parent guaranteed its subsidiary’s debt securities, separate subsidiary financial statements may have been omitted if each such subsidiary issuer or guarantor was 100 percent owned by the parent company, if each guarantee was full and unconditional and if each required additional subsidiary financial disclosure was included in the parent’s periodic reports or filings, typically in the form of condensed consolidating financial information. The parent company was required to continue to provide the additional subsidiary disclosure, for so long as the guaranteed registered debt securities remained outstanding.
Any subsidiary that may omit separate financial statements pursuant to Rule 3-10 is also automatically exempt from the ongoing reporting requirements of the Securities Exchange Act of 1934 (Exchange Act).

Under the newly adopted rules, the requirement that the subsidiary issuer or guarantor be 100 percent owned by the parent company has been replaced by a requirement that such subsidiary be consolidated in the parent company’s consolidated financial statements. The new rules also streamline the level of detailed additional disclosure that the parent must include with respect to the subsidiary issuer or guarantor of the registered debt securities, requiring summarized financial information with respect to the subsidiaries, reducing the number of periods that must be presented to the most recently ended fiscal year and year-to-date interim period included in the parent company’s financial statements and permitting the required disclosure to be included outside the footnotes to the parent’s financial statements. In addition, under the new rules, the additional disclosure must only be included for so long as the issuer or the guarantors have an Exchange Act reporting obligation with respect to the registered debt securities, rather than as long as the registered debt securities remain outstanding.

Similarly, existing Rule 3-16 of Regulation S-X required that a registrant provide separate financial statements for each affiliate of the registrant whose securities are pledged as collateral for any class of securities registered or being registered, where such securities constituted a substantial portion of the collateral. The new rules replace the requirement to provide separate financial statements with a requirement to provide summary financial and non-financial disclosure about the affiliate and the collateral arrangements. Such summary information may be included outside the footnotes to the registrant’s financial statements. The existing rule that disclosure was only required when the assets pledged as collateral exceeded a specific threshold has been replaced with a requirement to provide disclosure in all cases but only to the extent such disclosure would be material.

The new rules will become effective on January 4, 2021, although voluntary compliance with the new rules will be permitted in advance of the effective date.

The full text of the SEC’s adopting release is available here.

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