LUSE GORMAN
attorneys

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LEGAL UPDATES AND NEWS

SEC Updates Guide 3 Statistical Disclosure Requirements for Banking Registrants

The Securities and Exchange Commission (the "SEC") recently adopted new rules to update its statistical disclosure requirements for banking registrants, including domestic and foreign bank holding companies, banks, savings and loan holding companies, and savings and loan associations. The rules are contained in a new Item 1400 of Regulation S-K and will replace Industry Guide 3, Statistical Disclosure by Bank Holding Companies. These changes represent the first updates to Guide 3 in more than 30 years.

A summary of the new Item 1400 of Regulation S-K, including the codification, expansion and elimination of various Guide 3 requirements, is as follows:

- *Location of Disclosure Requirements* – Consistent with Guide 3, the new rules do not require registrants to include Item 1400 of Regulation S-K disclosures in any particular section of a periodic report or registration statement (i.e., the disclosure may be presented in the Management's Discussion and Analysis, Business or Notes to Financial Statements section). So long as disclosure is provided outside the Financial Statements, the new Item 1400 banking disclosures will not be subject to audit or XBRL requirements.

- *Reporting Periods* – Whereas Guide 3 generally required three or five years of information to be disclosed, the new Item 1400 generally aligns the reporting period for banking disclosures with the reporting period for financial statements. Disclosures are required for each annual period for which SEC rules require a registrant to provide financial statements, plus any additional interim period if a material change or trend has occurred. For smaller reporting companies and initial public offering filers that qualify as emerging growth companies, the amount of disclosure that will be required has been significantly reduced.

- *Average Balance Sheets and Rate/Volume Analysis* – Item 1402 of Regulation S-K includes the average balance sheet, interest and yield/rate analysis, and rate/volume analysis disclosure requirements currently contained in Guide 3. The new rules provide for additional disaggregated categories of interest-earning assets and interest-bearing liabilities to be disclosed, if material (i.e., separating federal funds sold from securities purchased with agreements to resell; separating federal purchased from securities sold under agreement to repurchase; and disaggregating commercial paper).

- *Investment Portfolio* – Item 1403 of Regulation S-K includes the Guide 3 weighted average yield disclosure requirements for each range of maturities by category of debt securities, but revises the categories of debt securities to conform with U.S. GAAP presentation. Item 1403 eliminates Guide 3 disclosure requirements regarding book value and investments exceeding 10% of stockholders' equity, since those requirements overlap with U.S. GAAP disclosure requirements. Additionally, Item 1403 disclosure requirements will apply only to debt securities that are not carried at fair value through earnings.

- *Loan Portfolio* – Item 1404 of Regulation S-K includes Guide 3 disclosure requirements regarding maturity by loan category, but expands the maturity categories required to be presented (the "after 5 years" category is expanded into two categories: "5 through 15 years" and "after 15 years") and requires that loans be presented based on the categories required to be presented in the financial statements in accordance with U.S. GAAP. Item 1404 also includes Guide 3 disclosure requirements regarding the total amount of loans due after one year that have predetermined interest rates or floating or adjustable interest rates. The new rules eliminate Guide 3 disclosure requirements regarding types of loans, loan portfolio risk elements (which required disclosure of nonaccrual loans, accruing loans more than 90 days contractually past due, and troubled debt restructurings), and other interest-bearing assets, because of their overlap with U.S. GAAP disclosure requirements.

- *Allowance for Loan Losses* – Item 1405 of Regulation S-K includes Guide 3 requirements regarding tabular disclosure of the allocation of allowance for loan losses. However, the allocation is to be presented based on the loan categories required to be disclosed in the financial statements pursuant to U.S. GAAP. Item 1405 also requires disclosure of the ratio of net charge-offs to average loans outstanding based on U.S. GAAP loan categories. The new rules do not include the tabular summary of loan loss experience currently required under Guide 3, due to overlap with U.S. GAAP requirements.

  Item 1405 also provides for new disclosure of the following credit ratios, along with each of the components used in their calculation: (i) allowance for loan losses to total loans, (ii) nonaccrual loans to total loans, and (iii) allowance for loan losses to nonaccrual loans. The new rules also require a discussion of the factors that drove material changes in the ratios, or related components, during the periods presented.

- *Deposits* – Item 1406 of Regulation S-K includes the majority of Guide 3 disclosure requirements regarding deposits. However, instead of requiring disclosure of time deposits in excess of $100,000, Item 1406 requires registrants to disclose (a) as of the end of each reported period, the amount of uninsured deposits (uninsured deposits are the portion of deposit accounts that exceed the FDIC insurance limit or similar state deposit insurance regime), and (b) as of the end of the latest reported period, (x) U.S. time deposits, by account, that are uninsured and (y) time deposits that are otherwise uninsured, by time remaining until maturity of (i) three months or less (ii) over three through six months, (iii) over six through 12 months, and (iv) over 12 months.

- *Performance Ratios* – The new rules do not include the Guide 3 requirement to disclose return on assets, return on equity, a dividend payout ratio, and an equity to assets ratio, as registrants are already required to identify and discuss key performance measures in the Management's Discussion and Analysis section of reports and registration statements, pursuant to other SEC rules and guidance.

- *Short-Term Borrowings* – The new rules do not include Guide 3 disclosure requirements regarding short-term borrowings, as the Guide 3 requirements are substantially covered by other SEC rules and financial statement requirements.

The SEC's discussion of the new rules and the full text of Item 1400 of Regulation S-K are available here. The rules will be effective 30 days after publication in the Federal Register and will apply to fiscal years ending on or after December 15, 2021. Companies may choose to comply with the new rules in advance of the mandatory compliance date, provided that the final rules are applied in their entirety. Guide 3 will be rescinded effective January 1, 2023. Additionally, companies may elect to retain certain previously required disclosures if they determine that the information is material.

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Please contact any of our attorneys below if you have any questions regarding the information contained in this newsletter.

John Gorman	■	(202) 274-2001	jgorman@luselaw.com
Lawrence Spaccasi	■	(202) 274-2037	lspaccasi@luselaw.com
Kip Weissman	■	(202) 274-2029	kweissman@luselaw.com
Marc Levy	■	(202) 274-2009	mlevy@luselaw.com
Ned Quint	■	(202) 274-2007	nquint@luselaw.com
Benjamin Azoff	■	(202) 274-2010	bazoff@luselaw.com
Michael Brown	■	(202) 274-2003	mbrown@luselaw.com
Scott Brown	■	(202) 274-2013	sbrown@luselaw.com
Victor Cangelosi	■	(202) 274-2028	vcangelosi@luselaw.com
Jeffrey Cardone	■	(202) 274-2033	jcardone@luselaw.com
Thomas Hutton	■	(202) 274-2027	thutton@luselaw.com
Steven Lanter	■	(202) 274-2004	slanter@luselaw.com
Gary Lax	■	(202) 274-2031	glax@luselaw.com