

# Memorandum

## SEC Adopts Amendments to Financial Disclosure Requirements That Enhance the Ability of Umbrella Partnerships to Offer SEC-Registered Debt

March 4, 2020

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On March 2, 2020, the Securities and Exchange Commission adopted significant amendments to its rules that will simplify and streamline the financial disclosure requirements applicable to registered offerings of debt securities that are guaranteed by related entities.<sup>1</sup> Among other significant changes, these amendments will enhance the ability of businesses organized as multiple-tier umbrella partnership structures, such as UP-Cs and UPREITs to issue SEC-registered debt securities.

As a general matter, each issuer and guarantor of a registered debt security is treated as registering the offer and sale of a separate security for purposes of the Securities Act of 1933. Consequently, each issuer and guarantor of a registered debt security would, in the absence of relief, be required to include in the applicable Securities Act registration statement its own audited annual and unaudited interim financial statements as required by Regulation S-X and become subject to ongoing SEC reporting requirements under Section 15(d) of the Securities Exchange Act of 1934. Rule 3-10 of Regulation S-X provides relief from these rules under specified circumstances to allow subsidiary issuers or guarantors to omit financial statements separate from the consolidated financial statements of an SEC-registrant parent company issuer or guarantor and to suspend ongoing Exchange Act reporting requirements for that subsidiary. Historically, however, availability of this Rule 3-10 relief has required, among other conditions, that the subsidiary issuer or guarantor be “100% owned” by the parent company. The adopted amendments replace this condition with a requirement that the subsidiary issuer or guarantor merely be *consolidated* in the parent company’s financial statements.

In publicly traded umbrella partnership structures, a business is owned by a tax partnership (the “operating partnership” or “OP”), which, in turn, is owned by limited partners, on the one hand, and a listed entity (referred to as a “PubCo”), on the other. Depending on the structure, the PubCo might be treated for federal income tax purposes as a real estate investment trust, a C corporation or a publicly traded partnership. In each case, the PubCo controls the OP as its general partner or managing member and consolidates the

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<sup>1</sup> See [\*Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant’s Securities\*](#), Release No. 33-10762; 34-88307; File No. S7-19-18 (March 2, 2020).

results of the OP in its financial statements, but generally does not own 100% of the OP's equity securities as these are also owned by the limited partners of the OP. The OP, as the owner of the business, typically serves as the primary credit support for debt issued by UP-Cs and UPREITs, potentially together with its subsidiaries. The OP, however, has historically been ineligible for the Rule 3-10 exception because it is not 100% owned by the SEC registrant PubCo. Consequently, companies with umbrella partnership structures have generally avoided issuing debt securities in SEC-registered offerings or, alternatively, have been required to cause the OP itself to become a separate SEC-reporting company in addition to the PubCo, thereby incurring additional cost and expense. As a result of these amendments, the OP in an umbrella partnership structure—as a consolidated subsidiary of the SEC registrant PubCo—will now be eligible for the Rule 3-10 exception, thereby enabling the OP to provide credit support as issuer or guarantor for SEC-registered debt issued or guaranteed by PubCo without requiring OP to present separate financial statements or subjecting it to onerous SEC periodic reporting requirements.

This memorandum has focused on the unique impact of the amendments on UP-C and UPREIT issuers. A separate memorandum will also be circulated that more comprehensively discusses the amendments, which replace the historical requirement to present condensed consolidating financial information of the issuer, guarantors and non-guarantors with certain new financial and non-financial disclosures that consist of summarized financial information of the issuer and guarantors, which may be presented outside of the financial statements on a combined basis and for a reduced number of periods, and expand qualitative disclosures about the guarantees and the issuers and guarantors.

Click [here](#) for additional information regarding the UP-C and other umbrella partnership structures.

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