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Memorandum

SEC Revises Rules for Certain Registered Debt Offerings

April 8, 2020

Executive Summary

On March 2, 2020, the SEC 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.[1, 2] The SEC also revised the rules relating to the presentation of financial information of affiliates whose securities are pledged as collateral in connection with offerings of registered debt securities.

When Do the New Rules Take Effect?

The amendments to Rules 3-10 and 3-16 of Regulation S-X will take effect on January 4, 2021 but will be applicable only to registration statements or post-effective amendments filed on or after January 4, 2021 and subsequently filed Exchange Act reports.[3] Voluntary compliance will be permitted in advance of the effective date.

Guaranteed Securities

Why Did the SEC Adopt the Revisions to Rule 3-10 of Regulation S-X?

The SEC proposed these revisions as part of its broader initiative to streamline SEC disclosure requirements that place a burden on reporting companies with little perceived benefit to investors. The adopting release notes that the SEC believes that the revised rules may make it more likely that companies will include guarantees in their offerings of SEC-registered debt securities, which could enhance investor protection and reduce the cost of capital for issuers. The SEC believes that the revisions to Rule 3-10 are consistent with the principle that investors in guaranteed debt securities rely primarily on the consolidated financial statements of the parent company and supplemental details about subsidiary issuers or subsidiary guarantors when making investment decisions.

Under existing U.S. securities laws and regulations, a guarantee of a debt security is a separate security under the Securities Act of 1933, and accordingly offers and sales of these guarantees must be registered or exempt from

[1] *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).

[2] In addition to revising Rules 3-10 and 3-16 of Regulation S-X, the SEC also added new Rules 13-01 and 13-02 to Regulation S-X to set forth the disclosure requirements contemplated by the revisions to Rules 3-10 and 3-16. For the ease of convenience, this memo refers solely to the revisions to Rules 3-10 and 3-16 in this memo, but each of these rules should be read in connection with the newly adopted Rules 13-01 (in the case of Rule 3-10) and 13-02 (in the case of Rule 3-16) to understand the new disclosure requirements in context.

[3] This will include a Form 10-K filed after January 4, 2021 for an issuer that has an existing shelf registration statement on Form S-3 that covers guaranteed securities.

registration. Consequently, each issuer and guarantor of a registered debt security would, in the absence of relief, be required to include in the applicable 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 Exchange Act. The existing Rule 3-10 of Regulation S-X provides relief from these rules under specified circumstances to allow subsidiary issuers or subsidiary guarantors, as applicable, 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 registrant. Certain types of issuers, however, were not able to qualify for the existing relief under Rule 3-10 relief and therefore typically either conducted registered offerings of debt securities without guarantees or conducted private placements of debt securities and guarantees under Rule 144A and Regulation S.

What Are the Most Significant Changes to Rule 3-10 as a Result of These Revisions?

The revisions to Rule 3-10 will:

- replace the condition that a subsidiary issuer or guarantor be 100%-owned by the parent company with a condition that it be consolidated in the parent company's consolidated financial statements;
- replace the requirement to present stand-alone financial information, or consolidating information for guarantors and non-guarantors, with a requirement to present summarized financial information for subsidiary issuers and subsidiary guarantors, which may be presented on a combined basis;
- reduce the number of financial periods presented from the three prior fiscal years plus any required interim periods under the previous rules to the most recent fiscal year and year-to-date interim period for obligor information presented in reliance on the revised rules;
- eliminate quantitative thresholds for the availability of relief under Rule 3-10;
- expand the qualitative disclosures about guarantees and guarantors, including the disclosure of additional narrative information about each guarantor that would be material for investors to evaluate the sufficiency of the guarantee;
- permit financial and non-financial information about subsidiary issuers and guarantors to be provided outside the footnotes to the parent company's audited annual and unaudited interim consolidated financial statements included in any registration statement or Exchange Act report;
- require that pre-acquisition summarized financial information for recently acquired subsidiary issuers and guarantors be provided in Securities Act registration statements filed in connection with the offer and sale of a guaranteed security only where the recently acquired issuers and guarantors are part of a business that is "significant" (as defined in Regulation S-X); and
- in the case of debt securities that are not listed on a national securities exchange, terminate the requirement to present the alternative disclosures when the corresponding Section 15(d) obligation of a subsidiary issuer

or subsidiary is suspended (as opposed to when the applicable registered debt securities are no longer outstanding).

For further detail, see the table set forth in the Annex A below.

Must the Parent Guarantee of a Subsidiary Issuer Be Full and Unconditional to Rely on Amended Rule 3-10?

Yes, the ability to provide the alternative disclosures in lieu of separate financial statements for subsidiary issuers and subsidiary guarantors will only be available when a parent company's guarantee obligation is full and unconditional.

Can a Parent Company With One or More Subsidiaries That Are Not Wholly Owned Rely on Amended Rule 3-10 if Such Subsidiaries Guarantee the Parent Company's Registered Debt Securities?

Yes, a parent company whose subsidiary guarantors are consolidated into its financial results will be permitted to rely on amended Rule 3-10 even if those subsidiary guarantors are less than wholly owned. In such circumstances, issuers will need to describe any material factors that may affect payments to holders of the guaranteed securities, such as the rights of a non-controlling interest holder. The SEC believes that this type of qualitative disclosure will provide more insight into any competing common equity interest in the assets or revenues of a subsidiary, in contrast to the indirect disclosure in the form of separate financial statements of the consolidated subsidiary issuer or guarantor that an investor would receive under the existing rule.

What Types of Non-Financial Disclosure About Issuers and Guarantors Will Be Required for Companies to Rely on Amended Rule 3-10?

Companies will need to disclose the terms and conditions of the guarantees, as well as how the issuer and guarantor structure or other factors may affect payments to holders of the guaranteed securities. They must also disclose any limitations and conditions of a subsidiary's guarantee, whether the guarantee is joint and several with other guarantees, and any guarantee release provisions.

What Types of Financial Disclosure About Guarantors Will Be Required for Companies to Rely on Amended Rule 3-10?

Companies will generally be required to present summarized financial information covering certain balance sheet and income statement line items reflecting the combined financial position and results of the issuer and guarantors as a group (after eliminating any intercompany balances and transactions among the obligor group). The summarized financial information of the obligor group would exclude the results of, and any investment in, non-obligated entities. To the extent material, the obligor group's balance sheet and income statement amounts related to non-obligated subsidiaries would be separately disclosed. This new summarized financial disclosure will replace the existing requirement to provide consolidating information about the parent, guarantor subsidiaries and non-guarantor subsidiaries in a company's financial statements. The new rule will also not require the disclosure of cash flow information of the obligor group, unlike the existing rules which require cash flow information as part of the consolidating information for guarantors. Certain additional information may also be required if other factors would affect payments to holders of the guaranteed securities.

What Periods Must Be Presented for Parent Companies That Provide Summarized Financial Information About Their Obligor Group Under the Revisions to Rule 3-10?

The new financial disclosures must only cover the most recently ended fiscal year and year-to-date interim period included in the parent company's consolidated financial statements, as opposed to every period in the parent company financial statements (as much as three full years and prior year interim period information) as has been the case under the existing Rule 3-10.

Must Summarized Financial Information About an Obligor Group Be Included in a Company's Financial Statements?

The revised rules permit companies to choose whether to include summarized financial information about their respective obligor groups in their financial statements or elsewhere in their registration statement or Exchange Act report. Moreover, the SEC does not require that these disclosures be audited or reviewed if they are located outside the company's financial statements. Companies that choose to locate this information outside their financial statements may do so in their MD&A or in a stand-alone section immediately following "Risk Factors."

For How Long Must Issuers Present the Summarized Financial Information About Guarantors of Registered Debt Securities?

The obligation to provide the disclosures described below ends once the parent company no longer has an Exchange Act reporting obligation with respect to the guaranteed securities. For debt securities that are not listed on a stock exchange, the parent company's reporting obligation with respect to the SEC-registered debt securities will generally be suspended once the parent company has filed all required Exchange Act reports for the fiscal year in which the applicable registration statement becomes effective and filed a Form 15. The disclosure obligations described in the revised rules relate only to registration statements for debt offerings involving guarantees or pledges of securities of affiliates and subsequent Exchange Act reports, but do not apply to private placements conducted in reliance on Rule 144A and Regulation S.

Will the Revisions to Rule 3-10 Affect Registered Debt Offerings by UP-C and UPREIT Structures?

The amendments to Rule 3-10 will enhance the ability of businesses organized as publicly-traded umbrella partnership structures, such as UP-Cs and UPREITs, to issue SEC-registered debt securities. In these structures, a business is typically owned by an operating partnership, which, in turn, is owned by both limited partners and a publicly listed parent entity. Depending on the structure, the listed parent company might be treated for federal income tax purposes as a C corporation or real estate investment trust. In each case, the listed parent company controls the operating partnership as its general partner or managing member and consolidates the results of the operating partnership in its financial statements, but generally does not own 100% of the operating partnership's equity securities as these are also owned by the limited partners of the operating partnership. The operating partnership, 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 operating partnership, however, has historically been ineligible for Rule 3-10 relief because it is not 100% owned by the SEC-registrant parent company. Consequently, companies with umbrella partnership structures have generally avoided issuing debt securities in SEC-registered

offerings or, alternatively, have been required to cause the operating partnership itself to become a separate SEC-reporting company in addition to the listed parent company, thereby incurring additional cost and expense. As a result of these amendments, the operating partnership in an umbrella partnership structure—as a consolidated subsidiary of the SEC-registrant parent company—will now be eligible for Rule 3-10 relief, thereby enabling the operating partnership to provide credit support as issuer or guarantor for SEC-registered debt issued or guaranteed by its listed parent company without requiring the operating partnership to present separate financial statements or subjecting itself to onerous SEC periodic reporting requirements.

Do the Revised Rules Apply to Canadian Issuers Subject to the Multijurisdictional Disclosure System ("MJDS")?

When a Canadian parent company and one or more subsidiaries register the offer and sale of guaranteed securities with the SEC under MJDS, the parent company and the subsidiaries incur reporting obligations under Section 15(d). When a subsidiary issuer or subsidiary guarantor is also eligible to register the offer and sale of its security under the MJDS, the financial statements that would appear in the registration statement and in any annual report on Form 40-F filed by the Canadian parent company would not be affected by the new rules described in this note. Instead, the disclosure would be prepared in accordance with Canadian disclosure standards. If a subsidiary issuer or subsidiary guarantor is not eligible to register the offer and sale of its security under the MJDS, however, the requirements of amended Rule 3-10 will be applicable to financial statements of that subsidiary.

Do the Revised Rules Apply to Foreign Private Issuers?

Yes, foreign private issuers are generally subject to the requirements of Rule 3-10. Foreign private issuers which elect to present summary financial information about subsidiary guarantors will not be obligated to have such information reconciled to U.S. GAAP even if their financial statements are prepared on a basis other than U.S. GAAP or IFRS. Foreign private issuers will be obligated to present summary financial information for any obligor group as of and for the most recently ended fiscal year and, if applicable, year-to-date interim period, included in the parent company's consolidated financial statements. In addition, a parent company must disclose additional financial information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee, as well as sufficient information so as to make the financial and non-financial information presented not misleading.

Must a Parent Company Disclose Summarized Financial Information About a Recently Acquired Subsidiary?

A parent company would need to present the summarized financial information of the newly acquired subsidiary only if the recently acquired subsidiary is part of an acquired business that is "significant" (as defined in Regulation S-X). In this case, the summarized financial information would be as of and for the most recent fiscal year and any year-to-date interim period of the acquired subsidiary. This information could be separate from the summarized financial information that the parent reports about its existing obligor group.

SEC-Registered Secured Bonds

Why Did the SEC Adopt the Revisions to Rule 3-16 of Regulation S-X?

As with the revisions to Rule 3-10 described above, the SEC revised Rule 3-16 as part of its initiative to streamline disclosure requirements where existing disclosure requirements are burdensome to issuers without providing material information to investors. The SEC also noted in its adopting release that investors may benefit from access to a greater number of registered offerings of notes secured by pledges of affiliate securities if the revisions reduce the burden of preparing financial information related to such pledges. According to the SEC, such a development could, in turn, help lower the cost of capital for companies. The SEC states in the adopting release that the proposed revisions are based on the principle that investors in debt securities that are collateralized by securities of the issuer's affiliates rely primarily on the consolidated financial statements of the parent company and supplemental details about the subsidiary issuers and guarantors when making investment decisions.

What Are the Most Significant Changes to Rule 3-16 as a Result of These Revisions?

The revisions to Rule 3-16 will:

- replace the requirement to present stand-alone financial information of pledged affiliates whose securities collateralize a "substantial portion" of the collateral for the registered securities with a requirement to present summarized financial information of the issuers and affiliates whose securities are pledged, to the extent material;
- permit summarized financial information to be presented on a combined basis for all affiliates whose securities collateralize registered securities, and to reduce the number of financial periods presented for such information;
- expand the qualitative disclosures about the securities being collateralized, including disclosure of additional information about each affiliate that would be material for investors to evaluate the pledge of the affiliate's securities as collateral;
- permit financial and non-financial information about issuers and affiliates to be provided either in a registrant's financial statements or elsewhere in the applicable registration statement or Exchange Act report; and
- require that pre-acquisition summarized financial information for recently acquired affiliates whose securities are pledged as collateral only if the recently acquired affiliate is part of a business that is "significant" at or above the 20% level (as defined in Regulation S-X).

For further detail see the table set forth in Annex B below.

When Will Amended Rule 3-16 Disclosures Be Required?

Under the existing Rule 3-16, reporting companies must include separate financial statements for any pledged affiliate whose securities represent a "substantial portion" of the collateral for a registered security. This is deemed

to be the case whenever the aggregate principal amount, par, book or market value of the pledged securities equals 20% or more of the aggregate principal amount of the registered securities.

Under the revisions, summarized financial information for all pledged affiliates (on a combined and consolidated basis, as discussed below) will be required, to the extent material, in connection with any registered offering of collateralized securities regardless of the relative materiality or significance of a particular pledged affiliate.

What Types of Non-Financial Disclosure About Issuers and Affiliates Will Be Required for Companies to Comply With Amended Rule 3-16?

Companies will need to disclose a description of the securities pledged as collateral and the affiliates whose securities are pledged as collateral, a description of the terms and conditions of the collateral arrangement and a description of the trading market for the affiliate's securities pledged as collateral or a statement that there is no such market. Companies will also need to list each affiliate whose securities are pledged as collateral as well as the securities pledged in a new Exhibit 22.[4] A pledge of an affiliate's securities as collateral typically includes all of the outstanding ownership interests in that affiliate, which are held directly or indirectly by the issuer of the debt securities. If the pledge of collateral does not include all of the outstanding ownership interests in the affiliate held by the issuer, or certain ownership interests in the affiliate are held by a third party and therefore are unpledged, these facts and circumstances would need to be disclosed by the revised rules if material for investors to evaluate the pledge of the affiliate's securities as collateral, or so as to make the financial and non-financial information presented not misleading. Similarly, when a non-financial disclosure is applicable to one or more, but not all, affiliates, separate summarized financial information for the affiliates to which the non-financial disclosure applies must be disclosed, to the extent it is material. Under the existing rule, a reporting company is not required to provide non-financial disclosures about the affiliates and the collateral arrangements unless they would be included as part of Rule 3-16 financial statements.

What Periods Must Be Presented for Companies to Provide Summarized Financial Information About Their Affiliate Group Under the Revisions to Rule 3-16?

Consistent with the requirements under amended Rule 3-10, under the revisions to Rule 3-16, a parent company would present the financial disclosures related to its affiliates whose securities are pledged as of and for the most recently ended fiscal year and year-to-date interim periods included in the parent company's consolidated financial statements.

Must Summarized Financial Information About Affiliates Whose Securities Are Pledged to Secure Registered Notes Be Included in a Company's Financial Statements?

Consistent with the requirements under amended Rule 3-10, the revisions to Rule 3-16 permit companies to choose whether to include the summarized financial information about their affiliates whose securities collateralize registered debt securities in their financial statements or elsewhere in their registration statement or

[4] Per Item 601(b)(22) of Regulation S-K.

Exchange Act report. Moreover, the SEC does not require that these disclosures be audited if such disclosures are located outside of a company's financial statements. Companies that choose to locate this information outside their financial statements may do so in their MD&A or in a stand-alone section immediately following "Risk Factors."

When Do the Revisions to Rule 3-16 Become Effective?

The revisions to Rule 3-16 take effect with regard to Securities Act registration statements and post-effective amendments as well as Exchange Act registration statements and reports filed on or after January 4, 2021, but voluntary compliance with the final amendments in advance of January 4, 2021 will be permitted.

How Will the Revisions to Rule 3-16 Impact Existing Securities Featuring Pledges of Affiliate Securities as Collateral?

So as not to change the amount of collateral available to investors in previously issued debt securities that include collateral release provisions, the revisions to Rule 3-16 will generally not apply to collateralized debt securities that have been issued prior to January 4, 2021. The SEC adopted this transition period to avoid unintended consequences from existing collateral release provisions that had been drafted to address the existing rule and which, depending on the drafting, might have been triggered by the obligation to provide the new (albeit less onerous) financial disclosures required by the revisions.

How Likely is Market Practice to Be Affected by the Revisions to Rule 3-16?

Secured bond offerings are more common in certain industry sectors, such as energy or natural resources, and among more leveraged or financially distressed companies where investors are more likely to require collateral. Investors are more likely to require that issuers provide collateral as a credit enhancement for bond offerings when they believe there is greater risk of default due to an issuer's circumstances or broader industry challenges. Recent financial and economic disruptions resulting from the COVID-19 pandemic may increase investor demand for security in connection with bond offerings.

Currently, many secured notes offerings are not SEC registered and are conducted on a so-called "private-for-life" basis in reliance on Rule 144A and Regulation S without registration rights. A principal driver for this market development has been a concern by issuers that registering secured notes offerings could subject these issuers to existing Rule 3-16 and would be unduly burdensome. In these private-for-life secured notes offerings, investors normally do not require stand-alone financial statements of subsidiaries whose securities are pledged in connection with unregistered secured bonds. While the revisions to Rule 3-16 will make it less burdensome for an issuer to offer secured notes on an SEC-registered basis, it seems unlikely at this time that issuers and investors will move away from existing market practices which have become well established over the past decade. Many issuers have developed a preference for private placements under Rule 144A given that these offerings have slightly lower litigation risk, incur no SEC registration fees and can often be executed faster than SEC-registered offerings. In addition, secured notes offerings conducted on a registered basis also require the indenture governing the secured notes be qualified under the Trust Indenture Act of 1939, which requires issuers to deliver

various opinions and certificates to the trustee and collateral agent before any collateral securing the notes can be released, adding to an issuer's cost and administrative burden. Accordingly, absent a major change in investor preferences or underwriter practices, we do not anticipate significant changes to market practice for secured notes offerings as a result of the revisions to Rule 3-16 in the foreseeable future.

Are the Changes to Rule 3-16 Likely to Affect "Cut-Back" Provisions for Registered Secured Bonds?

The collateral documents for SEC-registered secured bonds normally contain so-called "cut-back" language that provides that the securities of affiliates that are pledged will automatically cease to constitute collateral if such pledges would constitute a "substantial portion" of the collateral and thereby trigger a reporting obligation under Rule 3-16. Since the revised version of Rule 3-16 would not normally require an issuer to present stand-alone financial information of its affiliates whose stock has been pledged to secure its registered debt securities, it is unlikely that a typical Rule 3-16 cut-back provision in a customary collateral document would be triggered once the revisions to Rule 3-16 become effective. As noted above, the revisions to Rule 3-16 will only be applicable to collateralized securities that are issued after January 4, 2021.

Are There any Differences in the Summarized Financial Information That Must Be Provided in Connection With Rule 3-16 Versus Rule 3-10?

The summarized financial information to be provided in connection with amended Rule 3-16 similarly includes select balance sheet and income statement line items and accompanying narrative disclosure, but in a combined presentation of the consolidated results of each pledged affiliate (regardless of whether the consolidated subsidiaries of a pledged affiliate were themselves pledged). Under amended Rule 3-10, a parent company would disclose only the summarized financial information about the issuer and guarantors against whom investors have a direct claim and the presentation would eliminate the financial position and results of any non-obligated subsidiaries (even in cases where the obligor group consolidates or holds equity method investments in the non-obligated subsidiaries).

If a Parent Company Issuer Pledges Only the Stock of an Intermediate Holding Company Subsidiary Which Owns a Number of Other Subsidiaries, Would It Include the Financial Results of the Subsidiaries of the Intermediate Holding Company Subsidiary in Its Summarized Financial Information in Connection With a Registered Offering of Debt Securities?

Yes, the financial information of all subsidiaries that would be consolidated by the intermediate holding company subsidiary whose shares are pledged will be included in the summarized financial information presented under Rule 3-16 even if the securities of those lower-level subsidiaries are not pledged as collateral for the registered debt securities.

Must a Company Disclose Summarized Financial Information About a Recently Acquired Subsidiary Whose Shares Will Be Collateral for Registered Bonds?

A parent company would need to present summarized financial information of the recently acquired subsidiary only if the recently acquired subsidiary is part of an acquired business that is "significant" (as defined in

Regulation S-X) at or above the 20% level, unless that information would not be material to an investment decision in the collateralized bonds. Existing Rule 3-16 normally does not apply to a recently acquired subsidiary unless it represents a "substantial portion" of the collateral.

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	**Summary of Amended Rule 3-10**
Financial Statement Requirement & Omission of Subsidiary Issuer and Guarantor Financial Statements	Rule 3-10(a) states that every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S-X. Rules 3-10(b) – (f) set forth five exceptions to this general rule, which permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met, including that the parent company provides the alternative disclosures.	Each issuer of a registered security that is guaranteed and each guarantor of a registered security must file the financial statements required for a registrant by Regulation S-X; however, amended Rule 3-10(a) will no longer contain this express statement. Amended Rule 3-10(a) will continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met, including that the parent company provides the revised alternative disclosures.
Rule Structure & Eligible Issuer and Guarantor Structures	Rules 3-10(b) through (f) set forth the five exceptions. Each exception specifies the eligible structures to which it applies, and the conditions that must be met. In each case, the parent company must provide the alternative disclosures. Eligible issuer and guarantor structures: • A finance subsidiary issues securities that its parent company guarantees (Rule 3-10(b)); • An operating subsidiary issues securities that its parent company guarantees (Rule 3-10(c)); • A subsidiary issues securities that its parent company and one or more other subsidiaries of its parent company guarantee (Rule 3-10(d)); • A parent company issues securities that one of its subsidiaries guarantees (Rule 3-10(e)); or	The amended rules will replace the exceptions in existing Rule 3-10(b) through (f). Amended Rule 3-10(a) will permit the separate financial statements of a subsidiary issuer or guarantor to be omitted if the eligibility conditions in amended Rules 3-10(a) and 3-10(a)(1) are met and the revised alternative disclosures specified in new Rule 13-01 are provided in the filing, as required by amended Rule 3-10(a)(2). Amended Rule 3-10(a)(1) sets forth the eligible structures. Eligible issuer and guarantor structures: • The parent company issues the security or co-issues the security, jointly and severally, with one or more of its consolidated subsidiaries (Amended Rule 3-10(a)(1)(i)); or • A consolidated subsidiary issues the security, or co-issues it with one or more other consolidated subsidiaries of the parent company, and the security is guaranteed fully and unconditionally by the parent company (Amended Rule 3-10(a)(1)(ii)). The role of subsidiary guarantors will not be specified in the amended categories of structures; however, the amended rules are intended to cover the structures permitted in existing Rules 3-10(b) through (f).

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	Summary of Amended Rule 3-10
	• A parent company issues securities that more than one of its subsidiaries guarantees (Rule 3-10(f)).	
Conditions to Omit Separate Subsidiary Issuer and Guarantor Financial Statements	If an issuer and guarantor structure matches one of the exceptions in Rules 3-10(b) through (f), the conditions in the applicable exception paragraph must be met, including: • Consolidated financial statements of the parent company have been filed; • Each subsidiary issuer and guarantor is "100%-owned" by the parent company; • Each guarantee is "full and unconditional" and, where there are multiple guarantees, joint and several; and • The parent company provides the alternative disclosures in its financial statement footnotes. Additionally, the 2000 Release[5] states the guaranteed security must be debt or debt-like.	The applicable conditions, set forth in amended Rule 3-10, include: • Consolidated financial statements of the parent company have been filed (amended Rule 3-10(a)); • The subsidiary issuer or guarantor is a consolidated subsidiary of the parent company (amended Rule 3-10(a)); • The guaranteed security is debt or debt-like (amended Rule 3-10(a)(1)); • The issuer and guarantor structure must match one of the eligible issuer and guarantor structures (amended Rule 3-10(a)(1)(i) or (ii)); and • The parent company provides the revised alternative disclosures (amended Rule 3-10(a)(2)).
Parent Company Financial Statements Condition	The identity of the parent company will vary based on the particular corporate structure; however, the 2000 Release stated three conditions must be met before an entity can be considered a "parent company," including that the entity: • Is an issuer or guarantor of the subject securities; • Is an Exchange Act reporting company, or will be one as a result of the subject Securities Act registration statement; and • Owns 100%-of each subsidiary issuer or guarantor directly or indirectly.	"Parent company" will be defined in amended Rule 3-10(b)(1) and require that the entity: • Is an issuer or guarantor of the guaranteed security; • Is an Exchange Act reporting company, or will become one as a result of the subject Securities Act registration statement; and • Consolidates each subsidiary issuer and/or guarantor in its consolidated financial statements.

[5] Financial Statements and Periodic Reports for Related Issuers and Guarantors, Release No. 33-7878 (Aug. 4, 2000) 65 FR 51691 (Aug. 24, 2000).

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	Summary of Amended Rule 3-10
Ownership Condition	The exceptions in Rules 3-10(b) through (f) require that each subsidiary issuer or guarantor must be 100%-owned by the parent company to omit its separate financial statements.	Amended Rule 3-10(a) will require that the subsidiary issuer or guarantor be a consolidated subsidiary of the parent company pursuant to the relevant accounting standards already in use. New Rule 13-01(a)(3) will require a description of any factors that may affect payments to holders of the guaranteed security, such as the rights of a non-controlling interest holder. New Rule 13-01(a)(4)(iv) will require separate disclosure of Summarized Financial Information for subsidiary issuers and guarantors affected by those factors as described below.
Debt or Debt-Like Security Definition	Rule 3-10 does not define when a security is "debt or debt-like;" however, the 2000 Release described characteristics of a debt or debt-like security, including: • The issuer has a contractual obligation to pay a fixed sum at a fixed time; and • Where the obligation to make such payments is cumulative, a set amount of interest must be paid.	Amended Rule 3-10(a)(1) will state explicitly that the guaranteed security must be "debt or debt-like" and amended Rule 3-10(b)(2) will state that a guaranteed security will be considered "debt or debt-like" if: • The issuer has a contractual obligation to pay a fixed sum at a fixed time; and • Where the obligation to make such payments is cumulative, a set amount of interest must be paid.
Subsidiary Guarantee Eligibility Requirements	The exceptions in Rule 3-10(b) through (f) specify that a guarantee be full and unconditional and, when there are multiple guarantees, be joint and several. The requirements are imposed on the guarantee regardless of whether the guarantor is the parent company or a subsidiary.	The parent company's role with respect to the guaranteed security will determine whether the structure is eligible to provide the revised alternative disclosures. The parent company must be the issuer or full and unconditional guarantor of the guaranteed security (amended Rules 3-10(a)(1)(i) and (ii)).If a subsidiary guarantee is not full and unconditional, or where there are multiple guarantees, not joint and several, disclosure of such terms and conditions will be required new Rule 13-01(a)(2). New Rule 13-01(a)(4)(iv) will require separate disclosure of the Summarized Financial Information for subsidiary guarantor(s) to which such terms and conditions apply.
Alternative Disclosures & Revised Alternative Disclosures	To be eligible to omit the separate financial statements of a subsidiary issuer or guarantor, each exception in Rules 3-10(b) through (f) requires that the parent company must provide the alternative disclosures in the footnotes to its consolidated financial statements. The form	The amended rule will replace the brief narrative form and Consolidating Information form of Alternative Disclosure with the revised alternative disclosures specified in new Rule 13-01. Specific elements of the revised alternative disclosures are discussed below. The revised alternative disclosures will be required in all cases, to the extent material (amended Rule 13-01(a)). Additionally, new Rule 13-01(a)(6) will

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	Summary of Amended Rule 3-10
	and content of the alternative disclosures are determined based on the facts and circumstances and are either a brief narrative or Consolidating Information. Specific elements of Consolidating Information are discussed below. Alternative disclosures may consist of a brief narrative instead of Consolidating Information when: • The subsidiary is a finance subsidiary, and the parent company is the only guarantor of the securities; • The parent company of the subsidiary issuer has no independent assets or operations, the parent company guarantees the securities, no subsidiary of the parent company guarantees the securities, and any subsidiaries of the parent company other than the issuer are minor; and • The parent company issuer has no independent assets or operations and all of the parent company's subsidiaries, other than minor subsidiaries, guarantee the securities.	require disclosure of any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee, and new Rule 13-01(a)(7) will require disclosure of sufficient information so as to make the financial and non-financial information presented not misleading.
Consolidating Information and Revised Alternative Disclosures – Combined Basis	The applicable exception in Rule 3-10(c) through (f) specifies the columns of information that must be presented, and Rule 3-10(i)(6) describes circumstances when additional columns are required. To distinguish the assets, liabilities, operations, and cash flows of the entities that are legally obligated to make payments under the guarantee from those that are not, the columnar presentation must show: • A parent company's investments in all consolidated subsidiaries based upon its proportionate share of their net	New Rule 13-01(a)(4)(i) will permit the Summarized Financial Information of each issuer and guarantor consolidated in the parent company's consolidated financial statements to be presented on a combined basis with the Summarized Financial Information of the parent company. In this regard: • New Rule 13-01(a)(4)(ii) requires intercompany balances and transactions between issuers and guarantors whose information is presented on a combined basis to be eliminated; • This Summarized Financial Information must exclude subsidiaries that are not issuers or guarantors (new Rule 13-01(a)(4)(iii)), even if an issuer or guarantor would otherwise consolidate such non-issuer and non-guarantor subsidiaries. An issuer's or guarantor's investment in a subsidiary that is not an issuer or guarantor must not be presented; and

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	Summary of Amended Rule 3-10
	assets (Rule 3-10(i)(3)); and • Subsidiary issuer and guarantor investments in certain consolidated subsidiaries using the equity method of accounting (Rule 3-10(i)(5).	• If information provided in response to disclosures specified in new Rule 13-01 is applicable to one or more, but not all, issuers and guarantors, new Rule 13-01(a)(4)(iv) will require separate disclosure of Summarized Financial Information for the issuers and guarantors to which the information applies. In limited circumstances (i.e., where the separate financial information applicable to those issuers and/or guarantors can be easily understood), narrative disclosure may be provided in lieu of such separate Summarized Financial Information. The amended rule will no longer require separate disclosure of the financial information of non-guarantor subsidiaries.
Consolidating Information and Revised Alternative Disclosures – Periods to Present	Consolidating Information must be provided as of, and for, the same periods as the parent company's consolidated financial statements (Rule 3-10(i)(2)).	New Rule 13-01(a)(4)(v) will require Summarized Financial Information to be provided as of, and for, the most recently ended fiscal year and year-to-date interim period, if applicable, included in the parent company's consolidated financial statements.
Consolidating Information and Revised Alternative Disclosures – Non-Financial Disclosures and Related Exhibit	Rule 3-10 requires certain non-financial disclosures, including: • Disclosure, if true, that each subsidiary issuer or subsidiary guarantor is 100%-owned by the parent company, that all guarantees are full and unconditional, and where there is more than one guarantor, that all guarantees are joint and several (Rules 3-10(i)(8)(i) – (iii); • Restricted net assets (Rule 3-10(i)(10); and • Certain types of restrictions on the ability of the parent company or any guarantor to obtain funds from their subsidiaries (Rule 3-10(i)(9). Rules 3-10(i)(11)(i) and (ii), respectively, require disclosure of any financial and narrative information about each guarantor if it would be material for investors to evaluate the sufficiency of the guarantee, and disclosure of sufficient information to make the	New Rules 13-01(a)(1) through (3) will require disclosures about the issuers and guarantors, the terms and conditions of the guarantees, and how the issuer and guarantor structure and other factors may affect payments to holder of the guaranteed securities. Additionally, disclosure of facts and circumstances specific to particular issuers and guarantors that are beyond what is specifically required in new Rules 13-01(a)(1) through (3) will be required if necessary to comply with new Rules 13-01(a)(6) and (7), which are described above. In new Exhibit 22 (Item 601(b)(22) of Regulation S-K), the parent company must list each of its subsidiaries that is a guarantor, issuer, or co-issuer of guaranteed securities registered or being registered that the parent company issues, co-issues, or guarantees.

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	Summary of Amended Rule 3-10
	financial information presented not misleading.	
Location and Audit Requirement of Alternative Disclosures and Revised Alternative Disclosure	The exceptions in Rules 3-10(b) through (f) require the alternative disclosures to be included in the notes to the parent company's consolidated financial statements. Rule 3-10(i)(2) requires Consolidating Information to be audited for the same periods that the parent company financial statements are required to be audited.	New Rule 13-01(b) will allow the parent company to provide the revised alternative disclosures in a footnote to its consolidated financial statements or alternatively, in MD&A. If a parent company elects to provide the disclosures in its audited financial statements, the revised alternative disclosures will be required to be audited. If not otherwise included in the consolidated financial statements or in MD&A, the parent company will be required to include the revised alternative disclosures in its prospectus immediately following "Risk Factors," if any, or otherwise, immediately following pricing information described in Item 105 of Regulation S-K.
Recently Acquired Subsidiary Issuers and Guarantors	If a parent company acquires a new subsidiary issuer or guarantor, Rule 3-10(g) requires the parent company to provide one year of audited pre-acquisition financial statements of the newly acquired issuer or guarantor (and, if applicable, unaudited interim financial statements) when the: • Parent company acquires the new subsidiary during or subsequent to one of the periods for which financial statements are presented in a Securities Act registration statement filed in connection with the offer and sale of the debt securities; • Subsidiary is deemed "significant" (Rule 3-10(g)(1)(ii); and • Subsidiary is not reflected in the audited consolidated results of the parent company for at least nine months of the most recent fiscal year (Rule 3-10(g)(1)).	New Rule 13-01(a)(5) will require pre-acquisition Summarized Financial Information specified in new Rule 13-01(a)(4) for recently-acquired subsidiary issuers and guarantors to be provided in a Securities Act registration statement filed in connection with the offer and sale of the guaranteed security if the parent company has acquired a significant "business" after the date of its most recent balance sheet date included in its consolidated financial statements and that acquired business and/or one or more of its subsidiaries are obligated as issuers and/or guarantors. Whether a "business" has been acquired will be determined in accordance with the guidance set forth in Rule 11-01(d) of Regulation S-X. An acquired business will be deemed significant based on the same significant tests and thresholds used to determine whether pre-acquisition financial statements are required for an acquired business pursuant to Rule 3-05 of Regulation S-X).

Summary Chart Rule 3-10 – Annex A

	Summary of Existing Rule 3-10	Summary of Amended Rule 3-10
Exchange Act Reporting and Continuous Reporting Obligation	Subsidiary issuers and guarantors that avail themselves of an exception that allows for the alternative disclosures in lieu of separate financial statements are exempt from Exchange Act reporting by Rule 12h-5. The parent company, however, must continue to provide the alternative disclosures for as long as the guaranteed securities are outstanding. This obligation continues even if the subsidiary issuers and guarantors could have suspended their reporting obligations under Exchange Act Rule 12h-3 or Section 15(d) of the Exchange Act, had they chosen not to avail themselves of a Rule 3-10 exception and reported separately from the parent company.	Subsidiary issuers and guarantors that are permitted to omit their financial statements under amended Rule 3-10 will continue to be exempt from Exchange Act reporting under Rule 12h-5. The amended rule will permit a parent company to cease providing the revised alternative disclosures if the corresponding subsidiary issuer's or guarantor's Section 15(d) obligation is suspended automatically by operation of Section 15(d)(1) or through compliance with Rule 12h-3. As a continued condition of eligibility to omit the financial statements of a subsidiary issuer or guarantor, a parent company must continue providing the revised alternative disclosures for so long as the subsidiary issuer or guarantor has a Section 12(b) reporting obligation with respect to the guarantee or guaranteed security.

Summary Chart Rule 3-16 – Annex B

	Summary of Existing Rule 3-16	Summary of Amended Rule 3-16
Rule 3-16 Financial Statements and Amended Disclosures	Rule 3-16(a) requires a registrant to provide separate annual and interim financial statements for each affiliate whose securities constitute a "substantial portion" of the collateral for any class of securities registered or being registered as if the affiliate were a separate registrant.	Under the final amendments, Rule 3-16 financial statements will be replaced with a requirement that a registrant provide the financial and non-financial disclosures about the affiliate(s) and the collateral arrangement specified in new Rule 13-02(a). New Rule 13-02 applies to collateralized debt securities issued on or after January 4, 2021, and to each registered security issued and outstanding before January 4, 2021 for which the registrant has previously been required to provide Rule 3-16 financial statements.
When Disclosure is Required	Rule 3-16 financial statements are required when an affiliate's securities constitute a "substantial portion" of the collateral for the securities registered or being registered. An affiliate's securities shall be deemed to constitute a "substantial portion" if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20% or more of the principal amount of the secured class of securities (Rule 3-16(b)).	Under the final amendments, the disclosures specified in new Rule 13-02(a) will be required in all cases, to the extent material. Additionally, new Rule 13-02(a)(6) will require disclosure of any financial and narrative information about each such affiliate if the information would be material for investors to evaluate the pledge of the affiliate's securities as collateral, and new Rule 13-02(a)(7) will require sufficient information so as to make the financial and non-financial information presented not misleading.
Financial Disclosures, Non-Financial Disclosures, and Related Exhibit	Rule 3-16 financial statements are those that would be required if the affiliate were a separate registrant.	New Rule 13-02(a)(4) will require, for each affiliate whose securities are pledged as collateral, Summarized Financial Information, as specified in Rule 1-02(bb)(1) of Regulation S-X, which will include select balance sheet and income statement line items, as well as an accompanying note that briefly describes the basis of presentation. Additionally: • Disclosure of additional line items of financial information beyond what is specified in new Rule 13-02(a)(4) will be required if necessary to comply with new Rules 13-02(a)(6) and (7); • An affiliate's amounts due from, amounts due to, and transactions with the registrant, any of the registrant's subsidiaries not included in the Summarized Financial Information of the affiliate(s), and related parties will be required to be presented in separate line items by new Rule 13-02(a)(4)(iii); and • A registrant will be permitted to omit the required financial information if one of the two

Summary Chart Rule 3-16 – Annex B

	Summary of Existing Rule 3-16	Summary of Amended Rule 3-16
		non-exclusive scenarios in new Rule 13-01(a)(4)(vi) is applicable and disclosed. New Rules 13-02(a)(1) through (3) will require certain non-financial disclosures about the securities pledged as collateral, the affiliates whose securities are pledged, the terms and conditions of the collateral arrangement, and whether a trading market exists for the pledged securities. Additionally, disclosure of facts and circumstances specific to particular affiliates or the collateral arrangement that are beyond what is specifically required in new Rules 13-02(a)(1) through (3) will be required if necessary to comply with new Rules 13-02(a)(6) and (7). In new Exhibit 22 (Item 601(b)(22) of Regulation S-K), the registrant must list each of its affiliates whose securities are pledged as collateral for securities registered or being registered, and also identify the securities pledged as collateral.
Combined Basis	Separate Rule 3-16 financial statements are required for each affiliate whose securities constitute a "substantial portion" of the collateral for securities registered or being registered.	New Rule 13-02(a)(4)(i) will permit the Summarized Financial Information of each affiliate consolidated in the registrant's consolidated financial statements to be presented on a combined basis. In this regard: • New Rule 13-02(a)(4)(ii) requires intercompany balances and transactions between affiliates whose summarized financial information is presented on a combined basis to be eliminated; and • If information provided in response to disclosures specified in new Rule 13-02 is applicable to one or more, but not all, affiliates, new Rule 13-02(a)(4)(iv) will require separate disclosure of Summarized Financial Information for the affiliates to which the information applies. In limited circumstances (i.e., where the separate financial information applicable to those affiliates can be easily understood), narrative disclosure may be provided in lieu of such separate Summarized Financial Information.
Periods Presented	Rule 3-16 financial statements are required for the same annual and interim periods as if the affiliate were a separate registrant. As such, the financial statements are required to be provided for the periods required by Rules 3-01 and 3-02 of Regulation S-X. However, Rule 3-16 Financial Statements	New Rule 13-02(a)(4)(v) will require disclosure as of, and for, the most recently ended fiscal year and year-to-date interim period, if applicable, included in the registrant's consolidated financial statements. Disclosure will be required in quarterly reports, such as Form 10-Q (amended Rule 10-01(b)(10)).

Summary Chart Rule 3-16 – Annex B

	Summary of Existing Rule 3-16	Summary of Amended Rule 3-16
	are not required in quarterly reports, such as Form 10-Q.	
Location and Audit Requirement of the Disclosure	Rule 3-16 financial statements are required to be audited for the periods required by Rules 3-01 and 3-02 of Regulation S-X.	New Rule 13-02(b) will allow the registrant to provide the disclosures required by Rule 13-02 in a footnote to its consolidated financial statements or alternatively, in MD&A. If a registrant elects to provide the disclosures in its audited financial statements, the amended disclosures will be required to be audited. If not otherwise included in the consolidated financial statements or in MD&A, the registrant will be required to include the amended disclosures in its prospectus immediately following "Risk Factors," if any, or otherwise, immediately following pricing information described in Item 105 of Regulation S-K.
Recently-Acquired Affiliates Whose Securities are Pledged as Collateral	Existing Rule 3-16 does not contain a specific requirement to provide pre-acquisition financial information of recently-acquired affiliates whose securities are pledged as collateral. However, if a recently-acquired affiliate meets the substantial portion threshold in the existing rule, financial statements for periods prior to the date of acquisition by the registrant are required to be filed.	New Rule 13-02(a)(5) will require pre-acquisition Summarized Financial Information specified in new Rule 13-02(a)(4) for recently-acquired affiliates whose securities are pledged as collateral to be provided in a Securities Act registration statement filed in connection with the offer and sale of the collateralized security if the registrant has acquired a significant "business" after the date of its most recent balance sheet date included in its consolidated financial statements and that acquired business and/or one or more of its subsidiaries are affiliates whose securities are pledged as collateral. Whether a "business" has been acquired will be determined in accordance with the guidance set forth in Rule 11-01(d) of Regulation S-X. An acquired business will be deemed significant based on the same significant tests and thresholds used to determine whether pre-acquisition financial statements are required for an acquired business pursuant to Rule 3-05 of Regulation S-X.
Debt Agreements with Collateral Release Provisions	Under existing Rule 3-16, registrants often structure debt agreements to release affiliate securities pledged as collateral if the disclosure requirements of Rule 3-16 would be triggered.	As a transitional matter, so as not to change the amount of collateral available to investors in previously issued debt securities that include collateral release provisions, amended Rule 3-16, and not new Rule 13-02, applies to each registered security issued and outstanding before January 4, 2021 for which the registrant has not previously been required to provide Rule 3-16 financial statements.

For more information regarding this memorandum, please contact any member of the Firm's Capital Markets Group, including those listed below.

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