



On the Radar

SEC Reporting Considerations for Guarantees and Collateralizations

SEC registrants may issue a variety of securities to finance their operations. In certain cases, a registrant may offer credit enhancement arrangements under which (1) subsidiaries of the registrant guarantee or co-issue debt or debt-like securities or (2) the registrant pledges the stock of its affiliates as collateral. In addition, for various reasons, a subsidiary of the registrant (rather than the registrant) may issue debt or debt-like securities. While these structures or credit enhancement arrangements may be beneficial from a cost-of-capital perspective, registrants should consider the SEC reporting implications under SEC Regulation S-X, Rules 3-10, 3-16, 13-01, and 13-02,¹ and related complexities.

Guarantees of debt or debt-like securities that are registered under the Securities Act of 1933 are considered securities themselves under that legislation. Therefore, such guarantees, in addition to offerings of the guaranteed debt or debt-like securities, must be registered with the SEC unless they are exempt from registration. Once a company registers them, an SEC reporting obligation is established for each subsidiary issuer or guarantor under which the following (not all-inclusive) must be provided separately:

- Annual financial statements prepared in accordance with applicable accounting standards and audited in accordance with PCAOB standards.
- An annual assessment of internal control over financial reporting.
- Quarterly reporting of condensed financial information.
- MD&A.

¹ On March 2, 2020, the SEC issued a [final rule](#) that revised the disclosure requirements for certain registered securities under Regulation S-X, Rules 3-10 and 3-16, and introduced Regulation S-X, Rules 13-01 and 13-02. The requirements are based on the premise that investors in guaranteed debt or collateralized securities rely on the consolidated financial statements of the registrant as their primary source of financial information.

Given how burdensome these requirements can be, the SEC typically permits registrants to provide alternative nonfinancial and financial disclosures as follows in their financial statements or MD&A as a form of relief in certain circumstances:

Nonfinancial Disclosures

- A description of the issuers and guarantors.
- The terms and conditions of the guarantees, including whether a subsidiary guarantee is not full and unconditional or joint and several.
- Factors that may affect payments to holders of the guaranteed securities, including, but not limited to:
 - The structure of and relationship between issuers, guarantors, and nonguarantors.
 - Restrictions on dividends.
 - Limitations on enforceability of the guarantees.
 - The rights of noncontrolling interests.

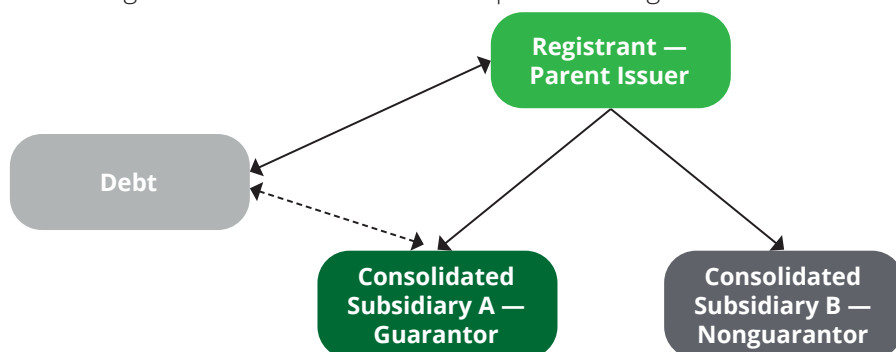
Financial Disclosures

Summarized financial information of the issuer(s) and guarantor(s) consisting of the following line items, together with a brief description of the basis of presentation:

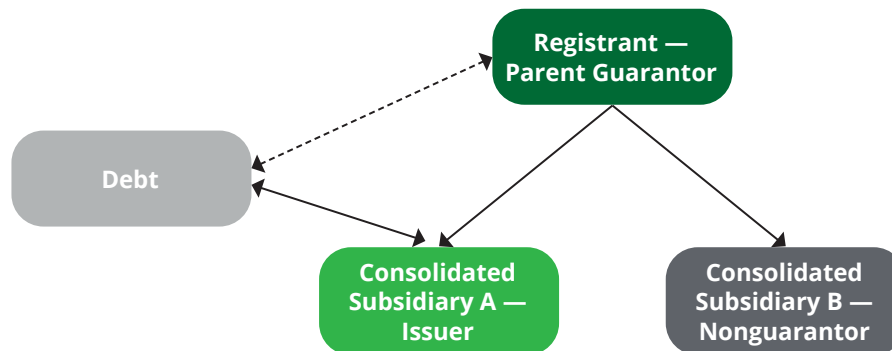
- Current and noncurrent assets.
- Current and noncurrent liabilities.
- Redeemable preferred stock (if applicable).
- Noncontrolling interests (if applicable).
- Net sales or gross revenues.
- Gross profit (or costs and expenses related to net sales or gross revenues).
- Income (loss) from continuing operations.
- Net income (loss).
- Net income (loss) attributable to the entity.

It is significantly less costly and burdensome for a registrant to provide these alternative disclosures than comply with separate SEC reporting obligations for each subsidiary issuer and guarantor. Thus, before issuing securities, a registrant should determine whether it qualifies for such relief on the basis of the contemplated legal structure and consult with SEC legal counsel as appropriate. A registrant is eligible to provide alternative disclosures if its securities are issued or fully and unconditionally guaranteed by a parent company registrant, all issuers and guarantors are consolidated subsidiaries of the parent company, the securities are debt or debt-like, and one of the following issuer and guarantor structures is used:

1. The parent company registrant issues (or co-issues on a joint-and-several basis with one or more of its consolidated subsidiaries) securities, and any guarantees are provided by one or more consolidated subsidiaries. The diagram below illustrates an example of this eligible structure.



2. A consolidated subsidiary issues (or co-issues with one or more other consolidated subsidiaries of the parent company registrant) the securities, and the securities are fully and unconditionally guaranteed by the registrant/parent company. The diagram below illustrates an example of this eligible structure.



A registrant whose debt or debt-like securities meet these requirements may provide alternative disclosures in lieu of separate financial statements for the subsidiary issuer(s) or guarantor(s). Note that while such alternative disclosure requirements apply only to debt or debt-like securities that have these features and are registered under the Securities Act of 1933, investors in private placement debt securities with similar guarantee structures may expect companies to disclose similar information.

A registrant that issues securities that are collateralized by the securities of an affiliate (generally, the affiliate's equity securities) must also provide certain financial and nonfinancial disclosures about the affiliates whose securities collateralize the registrant's securities. This includes summarized financial information about such affiliates and certain other nonfinancial disclosures.

For a comprehensive discussion of the disclosure requirements for both guaranteed and collateralized securities, see Deloitte's Roadmap [*SEC Reporting Considerations for Guarantees and Collateralizations*](#).

Contacts



John Wilde
Audit & Assurance
Partner
Deloitte & Touche LLP
+1 415 783 6613
johnwilde@deloitte.com

For information about Deloitte's SEC service offerings related to guarantees and collateralizations, please contact:



Matt Burley
Audit & Assurance
Partner
Deloitte & Touche LLP
+1 720 264 4866
mburley@deloitte.com

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