

We have eliminated one aspect of the proposed disclosure requirements after considering the public commentary. The amendments do not require a registrant to disclose the nature and amount of the total assets and total obligations of an unconsolidated entity that conducts off-balance sheet activities on behalf of the registrant. Commenters indicated that it might be impracticable to obtain, monitor or evaluate information about unconsolidated entities that are unaffiliated with the registrant.<sup>59</sup> We believe that information regarding the nature and amount of assets transferred to an unconsolidated entity is more pertinent than a listing of the total assets and liabilities of that entity. We also believe that it may be necessary for a registrant to disclose the nature and amount of assets transferred to an unconsolidated entity in fulfilling its requirement to explain the nature and business purpose of an off-balance sheet arrangement.

#### 4. Proposed Tabular and Textual Disclosure

Six commenters generally supported the proposed disclosure of contractual obligations and contingent liabilities and commitments,<sup>60</sup> while four commenters opposed it.<sup>61</sup> Two commenters expressed support for the proposed table of contractual obligations, but not for contingent liabilities and commitments.<sup>62</sup> Four commenters believed that the disclosure would not improve transparency,<sup>63</sup> and at least 13 commenters requested guidance or clarification on how to implement the disclosure requirements.<sup>64</sup>

Many of the commenters urged us to further limit and define the types of contractual obligations and contingent liabilities and commitments that would be subject to the new disclosure requirements.<sup>65</sup> For example, some commenters believed that the disclosure should exclude purchase orders and contracts for goods and services in the ordinary course of business, as well as items for which GAAP would not require any disclosure in the financial

statements and footnotes.<sup>66</sup> In addition, some commenters suggested that we limit the disclosure of contractual obligations and commitments to contracts requiring cash payment.<sup>67</sup> Some commenters suggested that the disclosure of contingent liabilities should cover only "commercial commitments," to be defined by the rule<sup>68</sup> and should exclude loss contingencies from litigation, arbitration or regulatory proceedings.<sup>69</sup>

In addition, many commenters believed that the disclosure would impose a large, new compliance burden on registrants by requiring them to aggregate and assess multiple contracts and commitments.<sup>70</sup> Three commenters suggested that the disclosure should include a materiality threshold to help a registrant avoid the burden of identifying and evaluating insignificant contracts, contingencies or commitments.<sup>71</sup> Finally, five commenters believed that the rule should exclude notes, drafts, acceptances, bills of exchange or other commercial instruments with a maturity of one year or less issued in the ordinary course of business.<sup>72</sup>

After evaluating the comments received, we have modified the required table of contractual obligations. Contrary to the proposed rules, which only suggested the categories of contractual obligations to be included, the amendments specify that the following categories of contractual obligations must be included within the table:

- Long-term debt obligations;
- Capital lease obligations;
- Operating lease obligations;
- Purchase obligations; and
- Other long-term liabilities reflected on the registrant's balance sheet under GAAP.

The preparation of financial statements in accordance with GAAP already requires registrants to assess payments under all of the above categories of contractual obligations, except for purchase obligations. To aid registrants in preparing the table, the amendments define the first four categories of

contractual obligations.<sup>73</sup> For issuers that present their primary financial statements in accordance with U.S. GAAP, we have defined the first three categories by referencing the relevant U.S. GAAP accounting pronouncements that require disclosure of these obligations in a registrant's financial statements or footnotes. The definition of "purchase obligations" is designed to capture the registrant's capital expenditures for purchases of goods or services over a five-year period. The fifth category captures all other long-term liabilities that are reflected on the registrant's balance sheet under the registrant's applicable GAAP.

The amendments require disclosure of the amounts of a registrant's purchase obligations without regard to whether notes, drafts, acceptances, bills of exchange or other commercial instruments will be used to satisfy such obligations because those instruments could have a significant effect on the registrant's liquidity. The purpose of this new disclosure requirement is to obtain enhanced disclosure concerning a registrant's contractual payment obligations, and the exclusion of commercial instruments would be inconsistent with that objective. Adoption of certain other suggestions of commenters, such as an exclusion of ordinary course items, a limitation to items reflected in financial statements or notes under GAAP or a materiality threshold would also be inconsistent with the objective.

We are not adopting a disclosure requirement for contingent liabilities and commitments. We believe that meaningful disclosure of contingent liabilities and commitments is not necessarily best accomplished by an aggregated disclosure format (either tabular or textual) because such a format would inevitably omit important information about the operative facts and circumstances of contingent liabilities and commitments (e.g., triggering events, probability of occurrence or recourse provisions). In addition, we note that a number of new accounting<sup>74</sup> and disclosure

<sup>59</sup> See, e.g., the letters of ABA, ACB, AICPA, Boeing, CSC, IMC, KPMG and Pfizer.

<sup>60</sup> See, e.g., the letters of ACB, Compass, CSC, ICAA, IMC and Pfizer.

<sup>61</sup> See, e.g., the letters of ABA, Eaton, Emerson and NY City Bar.

<sup>62</sup> See, e.g., the letters of AICPA and E & Y.

<sup>63</sup> See, e.g., the letters of Eaton, Emerson, NY City Bar and Troutman.

<sup>64</sup> See, e.g., the letters of ABA, ACB, BDO, Centex, D & T, Eaton, Emerson, ICAA, Kellogg, NYBA, NY City Bar, Rose and Troutman.

<sup>65</sup> See, e.g., the letters of Centex, D & T, Eaton, Ford, FTNC, ICAA, IMC, Intel, Kellogg, NY City Bar and Pfizer.

<sup>66</sup> See, e.g., the letters of BDO, Centex, D & T, Emerson, Kellogg and NY City Bar.

<sup>67</sup> See, e.g., the letters of Centex and D & T.

<sup>68</sup> See, e.g., the letters of AICPA, E & Y, D & T, NYBA and PwC.

<sup>69</sup> See, e.g., the letters of AICPA, Eaton, E & Y, D & T, Intel, Troutman and PwC.

<sup>70</sup> See, e.g., the letters of ABA, Centex, Eaton, Ford and NY City Bar.

<sup>71</sup> See, e.g., the letters of Centex, IMC and NY City Bar.

<sup>72</sup> See, e.g., the letters of Beard, CSC, IMC, NYBA and Pfizer.

<sup>73</sup> See, e.g., Item 303(a)(5)(ii) of Regulation S-K [17 CFR 229.303(a)(5)(ii)]. We are unable to follow a similar approach for registrants whose financial statements are prepared in accordance with a non-U.S. GAAP. An instruction, however, makes clear that such a registrant should base the categories of contractual obligations (except "purchase obligations") on the classifications used in the GAAP under which its primary financial statements are prepared. See, e.g., Instruction 2 to Item 5.F of Form 20-F [17 CFR 249.220f].

<sup>74</sup> See, e.g., Financial Accounting Standards Board ("FASB") Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of*