

information.<sup>109</sup> Common or similar effects that may result from a number of different off-balance sheet arrangements must be analyzed in the aggregate to the extent that the aggregation increases understanding. For example, if particular triggering events or circumstances would either require a registrant to become directly obligated, or accelerate its obligations, under a number of off-balance sheet arrangements, and the overall obligations would be material, then the amendments will require an analysis of the circumstances and their aggregate effect to the extent it increases understanding. Registrants should discuss distinctions among aggregated off-balance sheet arrangements if such distinctions are material, but the discussion should avoid repetition and disclosure of immaterial information.

In light of the fact that the off-balance sheet arrangements covered under the amendments are contractual, it is appropriate to apply the Commission's policy regarding MD&A disclosure of preliminary negotiations. Therefore, the amendments include an instruction that no obligation to make disclosure of an

off-balance sheet arrangement will arise until an unconditionally binding definitive agreement, subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.<sup>110</sup> That instruction is consistent with the Commission policy set forth in its 1989 Interpretive Release on disclosure of preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business.<sup>111</sup> In the 1989 Interpretive Release, the Commission stated that, "where disclosure is not otherwise required, and has not otherwise been made, the MD&A need not contain a discussion of the impact of [preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business] where, in the registrant's view, inclusion of such information would jeopardize completion of the transaction."<sup>112</sup>

#### *D. Tabular Disclosure of Contractual Obligations*

Some accounting standards require disclosure concerning a registrant's obligations and commitments to make

future payments under contracts, such as debt and lease agreements.<sup>113</sup> Information about other obligations, such as purchase contracts, may or may not be disclosed, but if disclosed, it is usually dispersed throughout a filing and may not be presented in a consistent manner among registrants. Aggregated information about a registrant's contractual obligations in a single location will provide useful context for investors to assess a registrant's short- and long-term liquidity and capital resource needs and demands. In addition, it will improve an investor's ability to compare registrants. Therefore, we are requiring registrants to disclose in a tabular format the amounts of payments due under specified contractual obligations, aggregated by category of contractual obligation, for specified time periods.<sup>114</sup> We are not adopting this requirement for small business issuers that file small business reporting forms.<sup>115</sup> The registrant must provide the information as of the latest fiscal year end balance sheet date,<sup>116</sup> and the table should be in substantially the same form as follows:

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
[Long-Term Debt] .....	.....	.....	.....	.....	.....
[Capital Lease Obligations] .....	.....	.....	.....	.....	.....
[Operating Leases] .....	.....	.....	.....	.....	.....
[Purchase Obligations] .....	.....	.....	.....	.....	.....
[Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under GAAP] .....	.....	.....	.....	.....	.....
Total .....	.....	.....	.....	.....	.....

To provide flexibility for company-specific disclosure, the amendments allow a registrant to disaggregate the specified categories by using other categories suitable to its business, but the table must include all of the obligations that fall within specified categories.<sup>117</sup> In addition, the table should be accompanied by footnotes necessary to describe material contractual provisions or other material information to the extent necessary for

an understanding of the timing and amount of the contractual obligations in the table.

U.S. GAAP already requires registrants to aggregate and assess all of the specified categories, except for purchase obligations. Accordingly, the first three categories of contractual obligations are defined by reference to the relevant U.S. GAAP accounting pronouncements.<sup>118</sup> A registrant that prepares financial statements in

accordance with a non-U.S. GAAP should include contractual obligations in the table that are consistent with the classifications used in the GAAP under which its primary financial statements are prepared.<sup>119</sup>

Some purchase obligations are executory contracts, and therefore are not recognized as liabilities in

<sup>109</sup> See, e.g., Instruction 2 to paragraph 303(a)(4) of Regulation S-K [17 CFR 229.303].

<sup>110</sup> See, e.g., Instruction 1 to paragraph 303(a)(4) of Regulation S-K [17 CFR 229.303].

<sup>111</sup> See Release No. 33-6835 (May 18, 1989) [54 FR 22427].

<sup>112</sup> *Id.* at 22436.

<sup>113</sup> See, e.g., FASB SFAS No. 13, *Accounting for Leases* (Nov. 1976); SFAS No. 47, *Disclosure of Long-Term Obligations* (March 1981); and SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997).

<sup>114</sup> See, e.g., Item 303(a)(5)(i) of Regulation S-K [17 CFR 229.303(a)(5)(i)].

<sup>115</sup> "Small business issuer" is defined to mean any entity that (1) Has revenues of less than \$25,000,000; (2) is a U.S. or Canadian issuer; (3) is not an investment company; and (4) if a majority-owned subsidiary, has a parent corporation that also is a small business issuer. An entity is not a small business issuer, however, if it has a public float (the aggregate market value of the outstanding equity securities held by non-affiliates) of \$25,000,000 or more. See 17 CFR 228.10.

<sup>116</sup> Registrants are not required to include the table for interim periods. Instead, a registrant should update the table from its annual report by disclosing only material changes outside of the ordinary course of business. See, e.g., Instruction 7 to paragraph 303(b) of Regulation S-K [17 CFR 229.303].

<sup>117</sup> See, e.g., Item 303(a)(5)(i) of Regulation S-K [17 CFR 229.303(a)(5)(i)].

<sup>118</sup> See, e.g., Item 303(a)(5)(ii) of Regulation S-K [17 CFR 229.303(a)(5)(ii)].

<sup>119</sup> See, e.g., Instruction 2 to Item 5.F of Form 20-F [17 CFR 249.220f].