

On June 23, 2020, the SEC's Division of Corporation Finance published additional guidance ("Topic 9A")¹ on the types of considerations that public companies should take into account when drafting disclosures related to operations, liquidity and capital resources in light of COVID-19. Management and disclosure committees should review draft MD&A in process for June 30, 2020 reporting with a fresh eye in light of Topic 9A and prior SEC guidance.

Topic 9A encourages companies to proactively revise and update disclosures as facts and circumstances change, to enable investors to understand how management and the board of directors are analyzing the current and expected impact of COVID-19 from an operational, financial and capital and liquidity perspective. In particular, the guidance notes that it is important to provide robust and transparent disclosures within MD&A (not just in earnings releases) about how companies are dealing with short- and long-term liquidity and funding risks in light of materiality. The guidance also sets forth a broad range of questions to consider with regard to disclosures around operations, capital and liquidity, suggesting that companies consider material operating challenges, access to capital, reductions in capital expenditures, ability to alter customer terms, debt service obligations, and a host of other questions that should be considered when drafting disclosures. While many of the concepts referenced in Topic 9A are more generalized (i.e., not tailored to financial institutions), financial institutions should still take note. This includes providing clear disclosures in MD&A that are not just boilerplate, but that take into account the current impact of COVID-19. Disclosures around net income (both interest and non-interest income), operating performance, loans and credit quality, capital and liquidity positions and related drivers should be carefully evaluated in light of changing business dynamics.

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¹ <https://www.sec.gov/corpfin/covid-19-disclosure-considerations>