

October 6, 2011

Ms. Elizabeth M. Murphy  
Secretary, Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

***Re: Retrospective Review of Existing Regulations (Release No. 33-9257, File No. S7-36-11, September 6, 2011)***

Dear Ms. Murphy:

Deloitte & Touche LLP is pleased to respond to the request for information by the Securities and Exchange Commission (SEC or the "Commission"), *Retrospective Review of Existing Regulations* (the "Request"), issued on September 6, 2011 in response to Executive Order 13579, *Regulation and Independent Regulatory Agencies* (the "Executive Order"). The Executive Order calls for independent agencies to develop and publicly release, within 120 days of the signing of the Executive Order, a plan "to determine whether any existing significant regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

The Request seeks feedback on the development of the Commission's plan, including:

- Factors that should be considered in prioritizing reviews.
- Frequency of reviews.
- Ways to increase public participation in the rulemaking process.

We support the Commission's continuing efforts to update its rules to reflect market developments and changes in laws and regulatory priorities. Consistent with the instructions in the Request, we do not list specific rules and regulations (collectively "rules") for consideration.

Our comments address two broad topics:

- I. Establishing a framework for reviews.
- II. Public participation in the rulemaking process.

**I. Establishing a Framework for Reviews**

We recommend that the Commission, as part of its efforts to develop a plan for retrospective reviews of existing rules, create a framework that establishes criteria for (1) identifying

categories of rules that require retrospective review; (2) prioritizing such reviews; and (3) determining the frequency of those reviews. We think that this framework should be closely aligned with the Commission's mandate to "protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation." In addition, we believe that the Commission, in applying that framework, should group rules for review in a manner that would allow the Commission to consider their effects collectively instead of reviewing such rules in isolation. For instance, rules may be grouped together if they address similar subject matter or are otherwise interrelated, or to avoid redundancies in their review.

The Commission's review process also should consider the needs of investors and the related impact of rules on the various types of issuers. In developing its framework, the Commission should consider the following characteristics, among others, in determining the categories of rules warranting retrospective review:

- Rules that could be more closely aligned with the requirements of other securities regulators.
- Rules for which the Commission wants to assess whether planned results or original objectives have been achieved (e.g., post implementation review of recent rules).
- Rules for which concern has been expressed that implementation and compliance costs may exceed benefits to investors or otherwise do not meet investors' needs. Such rules include those that have resulted in highly standardized and lengthy issuer disclosures (i.e., "boilerplate" disclosures) but for which there is not a commensurate increase in the quality or nature of issuer-specific information disclosed.
- Rules that require additional clarification to ensure uniform adoption.
- Rules that are overly complex and whose objective may be substantially achieved with simplified or less complex rules.
- Rules that appear to require disproportionate staff resources to administer.

Using these characteristics may help the Commission prioritize which rules are most appropriate (e.g., most in need) for review.

The following indicators or data sources could help the Commission identify those rules that have the characteristics noted above:

- Formal and informal feedback received from investor, issuer, or auditor outreach.
- Rules whose proposals generated significant mixed responses to requests for comment.
- Rules identified as a result of the Commission's compliance inspection and examination functions, and enforcement investigations.

- The number of SEC staff comments on periodic filings (i.e., those comments relating to certain rules) or the number of amended filings resulting from non-compliance with certain rules.
- Time studies showing staff resources needed to administer certain rules.
- The extent of authoritative or interpretive guidance related to rules and may include: (1) the number of staff accounting bulletins or staff legal bulletins issued, (2) the number of telephone interpretations issued, (3) the number of Compliance and Disclosure Interpretations (C&DIs) issued, (4) the number of waiver/no action requests received, and (5) the number of requests for clarification received through the CAQ SEC Regulations Committee or other sources. For example, the staff's extensive interpretive guidance (e.g., C&DIs) on a rule may indicate that the rule belongs in the category "rules requiring additional clarification to ensure uniform adoption."

To identify rules in need of review, the Commission should also consider whether modifying its data systems to enhance its tracking of metrics (such as those listed above) would be desirable and cost-effective.

When assigning priorities both for retrospective reviews and for future rulemaking efforts triggered by those reviews (i.e., identifying the need to modify/amend or repeal a rule as a result of the retrospective reviews), the Commission also may want to consider the pervasiveness of the rules' applicability. For example, in assessing review priorities, the Commission might consider whether the set of issuers that are impacted by the rule is broad or narrow (e.g., limited to certain industries versus multiple industries; limited to domestic issuers or includes global issuers; limited to issuers of a certain size).

For future rules, we suggest the Commission staff perform a mandatory post-implementation review after the rule has been effective for a certain period of time (e.g., five years). For existing rules, we suggest an initial review of all rules over a defined period of time (i.e., between five and ten years based on the priority assigned to each rule). Thereafter, we recommend that all existing rules be subject to a continual review process whereby a rule's subsequent review would be triggered based on applicable characteristics, such as those discussed above.

Also, if practicable, we believe it would be beneficial if the Commission's reviews of rules could be coordinated with those of other standard setters, agencies, or foreign regulators which have themselves issued rules, or have regulatory responsibilities, in areas related to the SEC rules that are under review. Doing so may allow the Commission to harmonize rule updates.

We believe that retrospective reviews can yield significant benefits. Accordingly, we encourage the Commission to ensure that sufficient staff resources can be deployed for such reviews. For example, the Commission may want to consider dedicating specific resources to such reviews.

Once a formal framework is approved, we encourage the Commission to release the details of the framework to the public. Doing so will allow the Commission's rulemaking and review processes to be more transparent to investors, issuers and other capital market participants.

## **II. Public Participation in the Rulemaking Process**

We support the Commission's goal of increasing public participation in the rulemaking process and urge the Commission to continue to solicit feedback via roundtables and direct outreach to its constituents (e.g., investors, issuers, analysts, bankers and auditors). Public feedback also would provide a perspective that the Commission might find useful in prioritizing retrospective reviews. In addition, the Commission may want to consider creating an outside advisory committee composed of representatives from various constituent groups (e.g., investors, issuers, auditors) to provide feedback to the Commission on rulemaking and retrospective reviews.

The Commission also might explore alternative ways of soliciting public views. For example, once a rule has been scheduled for review, the Commission may want to consider a transparent process that allows for public comment and feedback on those rules prior to the Commission completing its review of the rules. The Commission could post a link on the SEC's Web site that would allow the public to provide input, similar to how the Commission allows public comment on SEC regulatory initiatives under the Dodd-Frank Act.

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We appreciate the opportunity to comment on the Request. If you have any questions concerning our comments, please contact Christine Davine at 202-879-4905, Robert Kueppers at 212-492-4241 or William Platt at 203-761-3755.

Yours truly,

/s/ Deloitte & Touche LLP

Cc: Chairman Mary L. Schapiro  
Commissioner Luis A. Aguilar  
Commissioner Troy A. Paredes  
Commissioner Elisse B. Walter  
James L. Kroeker, Chief Accountant