Ernst & Young LLP
5 Times Square
New York, NY 10036

Tel: +1 212 773 3000
ey.com

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

20 November 2015

Disclosure Effectiveness — Regulation S-X

Dear Mr. Fields:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or the Commission) for consideration in its review of disclosure requirements in Regulation S-X.

In this letter, we provide recommendations on the Regulation S-X requirements for the registrant's financial statements and supplement our recommendations in our comment letter on 20 November 2015, which responds to the SEC's *Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant* and recommends changes to the financial statement requirements for other entities such as acquired businesses, equity method investees and subsidiary guarantors and issuers. In addition, in our 11 September 2012 comment letter on *Section 108 of the JOBS Act,* we addressed certain disclosure requirements in Regulation S-K.

We believe there are opportunities to reduce the costs of regulatory compliance while still providing investors and markets the information they need. In our view, the framework we recommend below is a transparent approach that strikes a better balance than the current requirements in satisfying the objectives of protecting investors, promoting capital formation and maintaining competitive US financial markets. The appendix to this letter contains a table summarizing our recommendations on Regulation S-X presented in this letter.

Registrant's annual financial statement requirements

Financial statement disclosures

US GAAP financial statements are the cornerstone of financial disclosure by US public companies. We recognize that, in its disclosure framework project, the Financial Accounting Standards Board (FASB) is working on how to make US GAAP disclosures more effective and how it can make more consistent decisions about disclosure requirements. We believe the primary purpose of the notes to the financial statements should be to provide explanatory information about amounts reported in the financial statements or that may be reported in future periods based on events that have already transpired (e.g., contingencies). We also believe the SEC should encourage the FASB to articulate overarching disclosure objectives that recognize the inherent limits to the amount of effective disclosure that can be made in the notes to the financial statements. We are concerned that the FASB's proposed disclosure framework and recent decisions on the review of disclosures in existing standards would not make disclosures more effective but would instead perpetuate the significant expansion in disclosure that has occurred over the past few decades.[1]

Similarly, we recommend that the SEC continue to encourage issuers to make US GAAP financial statements more useful and informative by, for example:

- Providing disclosure that is as focused and concise as possible to communicate material information
- Applying materiality by considering whether additional disclosure would change the total mix of available information in a way that would change the decisions of a reasonable investor[2]
- Using plain English and avoiding jargon, repetition and unnecessarily complicated or legalistic language
- Basing the order, prominence and extent of disclosures on the materiality of the matters

We believe that the SEC should continue to address disclosure redundancies that exist. We support the recommendation in the *Final Report of the Advisory Committee on Improvements to Financial Reporting* (1 August 2008) to "integrate existing SEC and FASB disclosure requirements into a cohesive whole to ensure meaningful communication and logical presentation of disclosures, based on consistent objectives and principles." For instance, the SEC and FASB should coordinate their efforts and eliminate SEC-specific footnote disclosure requirements (e.g., Rules 4-08 and 5-02 of Regulation S-X) and incorporate them, to the extent appropriate, in the Accounting Standards Codification (Codification). Similarly, SEC financial statement schedules should be eliminated and the related disclosures incorporated, to the extent appropriate, in the Codification.

Number of financial statement periods

We believe that two years of financial statements (i.e., one comparative year instead of two) should be sufficient for annual reports on Form 10-K. When the Commission adopted uniform financial statement requirements in 1980, the Commission concluded that comparative data was necessary for users to evaluate a company's operations in any given year and that three years was the minimum data necessary to understand changes in performance for two years.3 Thirty-five years later, however, investors can access prior-year annual reports quickly and easily. In addition, the five-year selected financial data table still would provide multiyear trend information to help investors identify significant changes in a company's operations. Reducing the primary financial statements to two years would have the additional benefit of reducing the scope and length of Management's Discussion & Analysis (MD&A). We believe that eliminating clutter in MD&A would allow users to focus on new, material information about the latest fiscal year.

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1 See our comment letters to the FASB on 30 November 2012 on *Disclosure Framework* and 14 July 2014, on the Proposed Statement of Accounting Concepts, *Chapter 8: Notes to Financial Statements*.

2 This suggestion is consistent with the FASB's recently proposed modification of the definition of materiality in FASB Concepts Statement No. 8, *Conceptual Framework for Financial Reporting*. This modification would align the FASB's definition of materiality with that of the US Supreme Court. The intent of this alignment is to improve the effectiveness of disclosure by reducing immaterial information and increasing focus on material and relevant information. In our comment letter to the FASB dated 30 November 2012 on *Disclosure Framework*, we recommended that the FASB amend its definition to be consistent with the Supreme Court's opinion.

3 SEC Accounting Series Release No. 281, *Uniform Instructions as to Financial Statements — Regulation S-X*, 2 September 1980.

Financial statements covering three years are more voluminous and costly to prepare. For example, when applying retroactive accounting changes (e.g., discontinued operations, segment changes, adoption of retrospective accounting principles), the cost is higher when two comparative years of financial statements need to be recast and reaudited.

Most foreign jurisdictions require only two years of financial statements.[4] In addition, we observe that the SEC has provided accommodations allowing foreign private issuers (FPIs) adopting IFRS for the first time or using US GAAP in an initial registration statement to provide two years of financial statements. The Jumpstart Our Business Startups (JOBS) Act also allows an emerging growth company (EGC) conducting an initial public offering (IPO) to provide two years of financial statements. Since the JOBS Act was enacted in 2012 approximately 59% of EGCs conducting IPOs have chosen to present only two years of audited financial statements.[5]

Requirements of the 1933 Act and the 1934 Act

In principle, we do not believe that a primary offering under the Securities Act of 1933 (1933 Act) should require financial information beyond that reported to the financial markets on an ongoing basis in filings under the Exchange Act of 1934 (1934 Act) because the dollar volume of aftermarket trading is much greater than that of primary offerings. In our comments below, we provide two examples of areas where the requirements of the 1933 and 1934 Acts could be aligned. We encourage the Commission to conduct a more comprehensive review to identify other opportunities for better alignment and integration.

Currently, when there has been a retrospective change in accounting principle reported in interim financial statements, a registrant is required to recast its historical annual financial statements in certain registration statements (e.g., Form S-3) before they become effective. However, for purposes of its 1934 Act reporting, a registrant would not be required to recast that information until it presents the annual period in its next periodic report (e.g., Form 10-K). We believe the requirements under the 1933 and 1934 Acts for communicating the effects of retrospective accounting changes should be consistent. While many investors would find information about material retrospective accounting changes meaningful regardless of whether a company is raising capital, recasting annual financial statements for retrospective changes before the next annual report is more costly (e.g., accelerated recasting requires an additional year to be recast) and filing pro forma financial information may provide investors the information they need. In addition, recasting to reflect a material retrospective accounting change to be able to file a new registration statement can delay, or even deter, capital-raising transactions. Therefore, we recommend:

- Allowing registrants to wait until their next Form 10-K to update the annual financial statements (and selected data tables) to reflect a material retrospective accounting change even if they are filing a new registration statement
- Requiring pro forma financial information covering at least one annual period in a Form 8-K or Form 10-Q upon the filing of financial statements reflecting a material retrospective accounting change

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[4] Major jurisdictions that require two years of financial statements in annual reports include the UK, Japan, China, Ireland, Hong Kong, Australia and Singapore.

[5] The percentage of EGCs presenting only two years of audited financial statements has been increasing. During the first 12 months after the JOBS Act was enacted, only 34% of EGCs presented two years. For further discussion, see the EY publication, *The JOBS Act: 2015 mid-year update*, September 2015.

As a second example, we generally do not believe that there should be differences in the timeliness of financial statements between 1933 Act registration statements and 1934 Act periodic reports. That is, we believe the SEC should reconsider the requirements to update the financial statement periods under S-X Rule 3-01. For example, S-X Rules 3-01(b) and 3-01(c) require a registrant to update its annual financial statements in a registration statement 45 days after its fiscal year end, and before the due date of its annual report, unless certain criteria are met. We believe that the accelerated filer status of the registrant should consistently determine the age of its financial statements in either a registration statement or periodic report. The exception would be IPOs where we believe it is appropriate to require audited financial statements in all cases when the effective date falls 45 days or more after the fiscal year end. This existing requirement appears to serve investors and the capital markets well.

See the section "Financial statements of acquired or to-be-acquired businesses" in our 20 November 2015 comment letter on the effectiveness of financial disclosures about entities other than the registrant for other recommendations to align the 1933 Act and 1934 Act requirements.

Selected financial data tables

We encourage the Commission to provide a practicability exception to allow registrants to omit the earliest years in the selected financial data table (prior to those presented in the US GAAP financial statements) if such information cannot be provided without unreasonable effort or expense. Item 3.A of Form 20-F provides this accommodation for FPIs. In addition, the SEC also permits EGCs to exclude those periods from the table in their IPO registration statements and build on the selected financial data table in future annual reports.

Domestic registrants also face challenges in recasting annual periods prior to those presented in the US GAAP financial statements to reflect a retrospective accounting change. The cost of recasting these years can be substantial and can outweigh the benefits to investors. In addition, the SEC staff has provided relief in connection with the adoption of certain new standards (e.g., registrants that adopt the new revenue recognition standard using the full retrospective method are not required to recast the annual periods prior to those presented in the US GAAP financial statements). We believe that the SEC should permit registrants to present the retrospective accounting change only for the periods presented in the US GAAP financial statements if the earlier periods could not be recast without unreasonable effort and cost. To inform investors about why this information is not available, in these cases, we believe there should be clear disclosure about the unreasonable effort that would be required to recast the earliest periods and the resulting lack of comparability.

Interim financial statement requirements

The SEC should encourage the FASB to reconsider the significant increase in interim financial statement disclosure requirements in recent years. We found that, in the two decades through March 2012, the average number of pages of notes to the interim financial statements increased more than 750%.[6] We believe that the SEC and the FASB should re-embrace the concept that interim financial statements should be read in conjunction with the annual financial statements and that interim disclosures should focus only on matters that have arisen or changed materially during the interim

[6] See EY's To the Point, *Now is the time to address disclosure overload*, where we described our study comparing the length of interim financial statements of 20 large, well-known companies from 31 March 1994 to 31 March 2012.

period. Although the FASB proposed adding a chapter to its conceptual framework on how it would evaluate disclosure requirements,[7] we pointed out in our comment letter that several aspects of the proposed framework do not align with the SEC's interim reporting framework.[8] We also recommend that the SEC encourage issuers to make GAAP interim financial statements more useful and informative for investors by applying best disclosure practices (see suggestions above with respect to annual financial statements).

In addition, we believe that semiannual financial reporting may be sufficient for smaller reporting companies that are not listed on a national exchange. This approach would significantly reduce compliance costs by eliminating two mandatory reports. This recommendation would scale the interim requirements for non-listed smaller reporting companies and align them with comparable companies who are now able to utilize the Regulation A exemptions, thus providing a level playing field for small public companies that were required to register under the 1934 Act before the relief provided under the JOBS Act. The recent amendments to Regulation A require only semiannual reports for Tier 2 issuers that offer the public up to $50 million in unregistered securities each year. Also, many FPIs are required to report only semiannually in their home markets and in SEC registration statements.[9] Of course, non-listed smaller reporting companies could elect to report quarterly on a voluntary basis.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Yours sincerely,

Ernst + Young LLP

Copy to: James Schnurr, Chief Accountant, Office of Chief Accountant
Keith Higgins, Director, Division of Corporation Finance
Mark Kronforst, Chief Accountant, Division of Corporation Finance
Russell Golden, Chair, Financial Accounting Standards Board

[7] Proposed Statement of Financial Accounting Concepts, *Conceptual Framework for Financial Reporting, Chapter 8: Notes to Financial Statements*, 4 March 2014.

[8] EY comment letter on the Proposed Statement of Accounting Concepts, *Chapter 8: Notes to Financial Statements*, 14 July 2014.

[9] Item 8.A of Form 20-F requires FPIs to include interim financial statements covering at least six months of the fiscal year if the effective date of its registration statement is more than nine months after the last audited fiscal year end.

Existing requirements	EY recommendations	Basis for recommendations
Registrant's annual and interim financial statement requirements		
Number of annual financial statement periods		
▸ Two years of balance sheets and three years of statements of comprehensive income, stockholders' equity and cash flows	▸ Require comparative (two-year) financial statements for annual reports on Form 10-K.	▸ Financial statements covering three years are longer and more costly to provide and update for retroactive accounting changes. ▸ Most foreign jurisdictions only require two years of audited financial statements. ▸ Selected financial data tables cover five years and allow investors to evaluate trend information. ▸ Requiring only two years of financial statements would reduce the length of MD&A.
Integration of requirements of the 1933 and 1934 Acts		
▸ Differences between timeliness and disclosure requirements for 1933 Act registration statements and those for 1934 Act periodic filings	▸ Conform requirements for retrospective accounting changes by (1) allowing companies to wait until their next Form 10-K to update annual financial statements (and selected financial data tables) even if they are filing a new registration statement and (2) requiring unaudited pro forma financial information covering at least one year in a Form 8-K or Form 10-Q after the filing of interim financial statements to reflect the retrospective change. ▸ Align the 1933 Act's financial statement age requirements with the 1934 Act's reporting deadlines (except for initial filers) by removing the requirements in S-X 3-01(b) - (d) that require updating for the most recent fiscal year after 45 days, unless certain criteria are met.	▸ The financial information required for a primary offering (under the 1933 Act) should not be significantly different from information that a market participant should expect in ongoing filings (under the 1934 Act) because the dollar volume of aftermarket trading is much greater than that of primary offerings. ▸ The requirements under the 1933 and 1934 Acts should be consistent to provide recast annual financial statements following a retrospective accounting change. ▸ Recasting annual financial statements for a retrospective accounting change in connection with a registration statement is costly and can delay or deter capital-raising transactions ▸ Pro forma financial information can provide sufficient information about the retrospective accounting change.
Selected financial data		
▸ Five years (but not required for smaller reporting companies and exceptions for EGCs) ▸ All periods presented on a basis consistent with the annual financial statements	▸ Include practicability exception to omit from the selected data table the earliest years not included in the audited financial statements provided in the filing if such information cannot be provided without unreasonable effort or expense. ▸ Permit registrants that make a retrospective accounting change to (1) wait until their next Form 10-K to update annual periods and (2) recast only the periods presented in the US GAAP financial statements, provided that the earlier periods could not be recast without unreasonable effort and there is clear disclosure about the effort required and the resulting lack of comparability.	▸ The requirements to prepare the selected data table should be aligned with Form 20-F instructions and existing relief for FPIs. ▸ The costs of recasting years prior to those presented in the US GAAP financial statements may outweigh the benefits to investors, and the SEC staff has provided equivalent relief for certain new standards (e.g., revenue recognition) that should be available for all retrospective accounting changes.
Financial statement footnote disclosures		
▸ Compliance with disclosure requirements in FASB accounting standards and SEC-specific requirements in Regulation S-X	▸ Coordinate with and encourage the FASB to complete a disclosure project that would eliminate the need for SEC-specific footnote disclosure requirements (e.g., S-X 4-08 and 5-02) and financial statement schedules and incorporate them within the US GAAP required disclosures if necessary.	▸ US GAAP and SEC disclosure requirements often overlap. Slight differences in requirements cause confusion about whether there are different disclosure objectives and often result in redundancies.

Existing requirements	EY recommendations	Basis for recommendations
Frequency and content of interim reporting		
▸ Quarterly	▸ Permit semiannual financial reporting by smaller reporting companies that are not listed on an exchange. ▸ Have the SEC and FASB re-embrace the concept that interim financial statements should be read in conjunction with the annual financial statements and that interim disclosures should focus only on matters that have arisen or materially changed during the interim period presented.	▸ The frequency of interim reporting should be reduced for small reporting companies without an active trading market (e.g., companies not registered under Section 12(b), voluntary filers). ▸ Semiannual reporting is consistent with (1) the requirements applied to FPIs in many other jurisdictions and in SEC registration statements and (2) the requirements for Regulation A+ issuers.