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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

28 April 2020

Re: Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information (Release No. 33-10750; 34-88093; IC-33795; File No. S7-01-20)

Dear Ms. Countryman:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or Commission) on its proposed changes to Regulation S-K that would eliminate the requirements for companies to include selected financial data, selected quarterly financial data and a contractual obligations table in their filings, and change or clarify certain disclosure requirements for management's discussion and analysis (MD&A).

We are highly supportive of the Commission's initiative to improve the content of information provided by registrants and the manner in which it is provided, as we mentioned in our 2016 [comment letter](#) on the SEC's Concept Release on business and financial disclosures required by Regulation S-K. In particular, we support the principles-based approach to disclosure that the SEC has employed throughout its disclosure effectiveness initiative. We believe principles-based requirements allow registrants to effectively communicate information that is more relevant, organized and focused on their facts and circumstances than it would be under a rules-based approach.

Selected financial data (Item 301)

Consistent with our previous comment letter, we support the proposal to eliminate the requirement for registrants to furnish the selected financial data table given that identical information can be easily accessed from registrants' prior filings and most companies going public no longer have to provide any selected financial data for periods preceding the financial statements already included in their registration statement.

Selected quarterly financial data (Item 302(a))

The proposal would eliminate the requirement for registrants to disclose selected quarterly financial data based on a view that it results in largely duplicative disclosures. For the reasons discussed below, we recommend instead that the Commission retain this requirement and consider other amendments.

We believe eliminating the selected quarterly financial data would elicit less specific disclosures about fourth-quarter results in SEC filings than what the proposing release suggests might be provided under Item 303 of Regulation S-K¹ and Accounting Standards Codification (ASC) 270, *Interim Reporting*.² Accordingly, we question whether these other requirements alone would result in disclosures that are as useful in providing discrete information about fourth-quarter results as those provided in accordance with Item 302(a).

In addition, any fourth-quarter information provided in response to Item 303(b)(3)(i) would not require a review by the independent auditor and investors might have less confidence in it. As suggested in the proposing release, we also expect registrants will continue to report fourth-quarter results in earnings releases. We believe that investors benefit from auditors' review of fourth-quarter results as presented under Item 302(a), even when it follows the initial reporting of fourth-quarter results.

Item 302(a) also provides the primary means by which a company would disclose retrospective revisions to amounts disclosed in prior quarterly reports on Form 10-Q. These revisions are often due to changes in accounting principles, error corrections and discontinued operations. Absent the Item 302(a) disclosures, an investor may not see the adjusted quarterly information until the subsequent year's quarterly reports on Form 10-Q.

Although we believe that Item 302(a) should be retained, we also believe it can be improved. We recommend that new registrants be exempted from providing the disclosure until their second annual report, and in registration statements thereafter, to avoid requiring selected quarterly data to be presented for interim periods not previously presented in any periodic quarterly reports.

We also recommend revising the current line items required to be presented in the quarterly data to conform them to the key subtotals in the registrant's interim income statement. While this may include items not previously required by Item 302(a) (e.g., operating income if it is presented on the face of the income statement), it would allow the registrant to exclude items it does not otherwise present. For example, the line items currently required by Item 302(a)(1) can create an inconsistency between the quarterly data and a registrant's financial statements because all registrants are required to include gross profit in their quarterly data yet may not present that caption in their interim financial statements in accordance with SEC Staff Accounting Bulletin Topic 11.B, *Depreciation and Depletion Excluded from Cost of Sales*.

¹ Item 303(b)(3)(i) would require registrants to describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and indicate the extent to which income was so affected. In addition, it would require registrants to describe any other significant components of revenues or expenses that, in the registrant's judgment, should be described to understand the registrant's results of operations.

² ASC 270-10-50-2 requires the disclosure of certain information if interim data and disclosures are not separately reported for the fourth quarter. This information includes "disposals of components of an entity and unusual, or infrequently occurring items recognized in the fourth quarter, as well as the aggregate effect of year-end adjustments that are material to the results of that quarter."

Management's discussion and analysis of financial condition and results of operations (Item 303)

While we support the proposal to modernize the MD&A requirements, we believe that certain proposed changes should be clarified.

Disaggregated disclosure

With respect to MD&A for full fiscal years, the proposed amendments state, "Where in the registrant's judgment a discussion of segment information and/or of other subdivisions (e.g., geographic areas, product lines) of the registrant's business would be ~~appropriate~~ necessary to an understanding of such business, the discussion ~~shall~~ must focus on each relevant, ~~reportable~~ segment and/or other subdivision of the business and on the registrant as a whole." (Changes are marked from the existing Item 303 requirement.) However, the proposing release does not discuss these changes, which appear to be potentially substantive.

Currently, registrants typically focus their MD&A discussion on information disaggregated at the reportable segment level, which is consistent with their financial statement presentation. If the SEC intends for these changes to drive additional disaggregation within MD&A, we recommend that the final release explain how existing practice is expected to change and when additional disaggregation would be required.

Quantifying the underlying reasons for material changes

Proposed Item 303(b) would require registrants to describe, in quantitative and qualitative terms, the underlying reasons for material changes in line items from period to period, including where material changes within a line item offset one another. We have observed that companies sometimes encounter challenges when instructed by the SEC staff in a comment letter to isolate and quantify several factors identified as contributing to a material change in a line item, particularly if such factors are not otherwise quantified for internal communication and analysis. We have further observed that such disclosure often yields discussion of individual drivers of the change that are not material in the context of the overall mix of financial information presented. Finally, the reasons for material changes from period to period can be highly interrelated, making quantified disclosure on an individual basis potentially less meaningful, particularly when management does not use such individually quantified data to manage the business. Accordingly, we recommend that the Commission consider limiting this requirement in the same way it proposed to limit quantitative sensitivity disclosure about critical accounting estimates in proposed Item 303(b)(4). That is, quantitative disclosure should be required only if it is reasonably available and will provide material information to investors. This will give management the flexibility to provide a mix of qualitative and quantitative disclosures so investors can get a view of the registrant from management's perspective, consistent with the overall objective of MD&A.

Capital resources (Item 303(a)(2))

We generally support expanding the MD&A discussion of capital resources beyond a registrant's expected commitments for capital expenditures. However, we are concerned that registrants may struggle to identify which commitments must be disclosed. We recommend that the Commission provide more guidance on the expected content of these disclosures, including examples. We also recommend merging the Liquidity and Capital Resources sections to streamline and integrate the similar and sometimes overlapping objectives of these disclosure requirements.

Further, we believe that the Commission could more effectively modernize the Liquidity and Capital Resources section and MD&A as a whole by better leveraging the financial statements. In this regard, it may be helpful to consider that the existing MD&A rules largely pre-date the requirement in US GAAP to provide statements of cash flows.^{3,4} As a result, the statement of cash flows has not been integrated into the MD&A requirements like the balance sheet and income statement. For example, the terms “financial condition” and “results of operations” are easily relatable to the balance sheet and income statement, respectively, but the term “changes in financial condition” does not appear to be directly related to the statement of cash flows. For these reasons, we recommend replacing “changes in financial condition” with “cash flows” throughout Item 303 and adding “cash flows” to the proposed MD&A objective.

We recommend also including in the merged Liquidity and Capital Resources section disclosure requirements that borrow from those in the proposed Results of Operations section (i.e., discuss unusual or infrequent events or transactions, significant economic changes and known trends and uncertainties that have or are reasonably likely to materially affect cash flows from operating, investing and financing activities).

We believe that these changes would allow investors to develop a more comprehensive understanding of a company’s past and expected sources and uses of cash, and its contingent sources of liquidity if unplanned needs arise.

Off-balance sheet arrangements (Item 303(a)(4))

We support incorporating information about off-balance sheet arrangements that is currently presented in a separately captioned disclosure into the wider MD&A discussion and replacing today’s prescriptive disclosure requirements with a more principles-based approach. This is consistent with our previous comment letter, where we questioned whether the current rule is effective in eliciting useful information in many circumstances and noted that many of the related disclosure requirements under US GAAP have evolved to duplicate the current requirements of Item 303(a)(4).

Contractual obligations table (Item 303(a)(5))

We support eliminating the requirement for registrants to disclose a contractual obligations table. In our previous comment letter, we questioned whether the contractual obligations table provides a complete picture of a registrant’s obligations and liquidity concerns, and noted significant overlap between the contractual obligations table and US GAAP disclosure requirements, including disclosures about debt, leases and unconditional purchase obligations.

³ The statement of cash flows was first required for companies reporting under US GAAP by Financial Accounting Standards Board Statement No. 95 issued in 1987. It was subsequently incorporated into the Accounting Standards Codification as ASC 230.

⁴ Both the existing and proposed rules include brief mentions of cash flow information. The SEC has mentioned cash flow information more frequently in its MD&A guidance, but this has not led to any meaningful rule changes. For example, cash flows are mentioned numerous times in SEC Release No. 33-8350, *Commission Guidance Regarding Management’s Discussion and Analysis of Financial Condition and Results of Operations*.

Critical accounting estimates

We also support codifying the Commission's interpretive guidance to require the disclosure of critical accounting estimates.⁵ However, we recommend some minor changes.

The proposed rule states, "[T]he discussion should provide quantitative as well as qualitative information when quantitative information is reasonably available and will provide material information to investors." We have observed that practice has evolved, resulting in diversity in the amount of quantitative disclosures that registrants provide about the sensitivity of an estimate to its underlying methods of calculation, assumptions and estimates. This diversity may stem from concerns about disclosing potentially confidential assumptions or about the meaningfulness of isolating and disclosing sensitivity information when assumptions are interrelated. We recommend that the Commission confirm in the adopting release that its expectations for quantitative disclosure do not differ significantly from current practice or, if they do, explain how they differ and provide a transition period that allows registrants to prepare for the changes.

We also suggest rewording the quantitative sensitivity disclosure requirement in a manner consistent with the broader proposed MD&A requirements. The sensitivity disclosure requirement should focus only on the disclosure of reasonably likely changes that would have a material effect. Further, the requirement should also clarify that when providing sensitivity disclosure companies don't necessarily have to quantify individual assumptions underlying their critical accounting estimates as long as they quantify how reasonably likely changes would materially affect the critical accounting estimate.

SEC support for voluntary disclosures on long-term value creation

We observe that investors increasingly are seeking explanations from companies about how they are creating long-term value.⁶ As we have noted previously, many companies are demonstrating that management is taking a long-term view by disclosing additional information addressing sustainability and long-term value creation.⁷ We believe the SEC should monitor and encourage these efforts, which will help strengthen voluntary disclosure practices and address investor demand.

* * * * *

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

Very truly yours,



⁵ [Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations](#), Release No. 33-8350 (19 December 2003).

⁶ [EY Center for Board Matters 2020 proxy season preview: What investors expect from the 2020 proxy season](#) (January 2020).

⁷ [Embankment Project for Inclusive Capitalism releases report to drive sustainable and inclusive growth](#).



Copy to:

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