

April 28, 2020

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

**Re: SEC File Number S7-01-20
Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial
Information**

Submitted via rule-comments@sec.gov

Dear Ms. Countryman:

This letter is being submitted by Financial Executives International’s (FEI) Committee on Corporate Reporting (CCR) in response to the Securities and Exchange Commission’s (SEC or “the Commission”) Proposed Rule *Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information* (“the amendments” or “the Proposal” or “the Proposed Rule”).

FEI is a leading international organization of more than 10,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives, and other senior-level financial executives. CCR is a technical committee of FEI comprised of approximately 50 Chief Accounting Officers and Corporate Controllers from Fortune 100 and other large public companies, representing approximately \$10.8 trillion in market capitalization. CCR reviews and responds to pronouncements, proposed rules and regulations, pending legislation, and other documents issued by domestic and international regulators and organizations such as the SEC, PCAOB, and FASB.

This letter represents the views of CCR and not necessarily the views of FEI or its members individually.

Executive Summary

As preparers of financial information, we commend and support the Commission for its efforts to modernize Regulation S-K Items 301, 302, and 303 in response to public feedback and comment letters. We recognize the importance of providing relevant, decision-useful information to investors to enable informed investment, credit, and voting decisions and the key role financial executives play in that process as controllers and principal accounting officers. We also agree with the Commission that the many changes in our capital markets and the domestic and global economy since the adoption of Regulation S-K necessitate the amendments. We agree that the proposed amendments will eliminate duplication within the disclosures and highlight pertinent information for investor decision making while decreasing the burden on preparers. Below we have included for your consideration, certain recommendations related to the proposed amendments.

Item 301 – Selected Financial Data

We support the elimination of the five-year data tables in Item 301. We agree with the Commission that the relevant trend information is provided in Item 303, including qualitative and quantitative analysis and forward-looking information. If needed, historical information can be readily accessed through prior filings. Additionally, we agree that the incremental utility of having a full five years of selected financial information is not justified by the cost to prepare such disclosures. The cost of providing data for years four and five can be significant including both (a) internal costs to prepare any restatement and disclosures, (b) implementation of internal controls, and (c) external costs such as legal and audit fees. We note that the original intent of the five-year data was to provide selected financial data that highlights significant trends for the investors. However, whenever acquisitions or divestitures occur, trend comparisons are not as meaningful. In addition, multiple adoption approaches for new accounting standards (e.g., retrospective or modified retrospective approach) can cause five-year data to be less comparable period over period. Item 303 already requires disclosure of material trends and such other information necessary to the understanding of a company’s financial conditions and results of operations. As such, relevant, meaningful, and material information for users will not be lost with the elimination of Item 301.

Item 302(a) – Supplementary Financial Information

We also support the elimination of Item 302(a) quarterly information. The requirements in Item 302(a) generally duplicate information from prior quarterly reports. We understand that this amendment may result in the loss of separately presented fourth quarter information. However, material fourth quarter information will be required to be presented under existing requirements in financial statements or Item 303. Additionally, once the Form 10-Ks are filed, fourth quarter information can be easily derived in conjunction with referencing prior Form 10-Q filings, without requiring fourth quarter information specifically.

Item 303 – Management’s Discussion and Analysis

Restructuring and Streamlining Item 303(a)

We support the addition of a new Item 303(a) to emphasize the purpose of MD&A. We believe that these changes will help companies and investors better understand the objectives of MD&A, specifically by emphasizing that MD&A enables investors to see a company “through the eyes of management.” We agree with the Commission that it is important to underscore materiality as the overarching principle in MD&A and that the general purpose of MD&A is to provide both a historical and prospective analysis of a company’s financial condition and results of operations – with emphasis on the company’s prospects for the future.

We note that the revised language in the new Item 303(b) no longer includes the word “reportable” when referring to segments as the focus of the discussion of a registrant’s financial condition, changes in financial

condition and results of operation for full fiscal years within the MD&A. We believe that the current focus on reportable segments in the MD&A provides disclosure at the level of disaggregation that management views the business, which is consistent with the objective of the MD&A. We recommend that the Commission retain the current language to include the reference to reportable segments.

Item 303(a)(2) – Capital Resources

We support the proposed amendments to align Item 303(a)(2) with the Commission’s 2003 MD&A Interpretive Release by specifying that companies should disclose all material cash commitments, not only cash commitments related to capital expenditures. We believe that it is important for investors to understand a company’s material cash commitments, the anticipated sources of those funds, and the general purpose of the commitment. We appreciate the Commission continuing to allow a principles-based, materiality-focused approach to the capital resources requirement, which we believe enables companies to be flexible and provide investors with a company-specific discussion related to this topic. We believe that these amendments are particularly important in the context of the proposed deletion of the contractual obligations table, which we will discuss later in this letter.

While we do broadly support this amendment and the expansion beyond disclosures related to capital expenditures, we suggest that the Commission update the wording to require disclosure of “material cash commitments, including commitments for capital expenditures” and not use the word “requirements.” Item 303(a)(2) currently requires the registrant to discuss “material commitments for capital expenditures” but the new proposed change requires registrants to disclose “material cash requirements, including commitments for capital expenditures.” The word “requirements” is too broad; companies have numerous cash requirements including the payment of operating expenses like salaries and wages, raw materials, utilities, taxes, etc. As such, we believe the change from “commitments” to “requirements” will lead to inconsistent application and an interpretive debate between companies as each company determines what it believes are material cash requirements.

Item 303(a)(3)(ii) – Results of Operations – Known Trends or Uncertainties

We do not support the amendment to require companies to disclose any known trend or uncertainties that are reasonably likely to cause (as opposed to will cause) a material change in the relationship between costs and revenues; we recommend that the Commission retain the current language. We understand that this amendment is meant to conform the language in Item 303(a)(3)(ii) to other Item 303 requirements, but we do not believe that there is currently an issue with lack of disclosure in this area. Furthermore, the change from “will cause” to “reasonably likely to cause” will require greater subjective judgment from companies, which will lead to additional costs related to new processes and controls to manage the relevant judgments. The term “reasonably likely” is not well understood terminology and could be interpreted with good judgment as changes with over 10% probability. As such, not only do we believe there would be added costs for preparers but likely no increased

benefit for the users of the financial statements. The proposed changes to the language could result in the disclosure of various alternative scenarios that would be confusing and misleading for users.

Item 303(a)(3)(iii) – Results of Operations – Net Sales and Revenues

We support the Commission amending the language in Item 303(a)(3)(iii) to clarify that companies are required to discuss material changes, meaning increases and decreases, in net sales or revenue rather than being required to discuss only material increases. We believe that most companies currently follow the Commission’s 1989 MD&A Interpretive Release which made this clarification.

Item 303(a)(3)(iv) – Results of operations – Inflation and Price Changes

We support the elimination of Item 303(a)(3)(iv) and the current Instructions 8 and 9 to Item 303(a) related to inflation and price changes. We agree with the Commission that these changes will not result in a loss of material information, as companies will still be required to discuss the impact of inflation or price changes within the discussion of trends or uncertainties if such changes will have a material impact on net sales, revenue, or income from continuing operations.

Item 303(a)(4) – Off-Balance Sheet Arrangements

We support the proposed amendments to Item 303(a)(4) to include a principles-based instruction instead of the current more prescriptive off-balance sheet arrangement definition and related disclosure requirement. The various updates to U.S. GAAP since the adoption of Item 303(a)(4) have led to a significant overlap between U.S. GAAP and Item 303(a)(4) which is resulting in the disclosure of duplicative information. We believe that the proposed principles-based approach to the disclosure requirements for off-balance sheet arrangements will lessen the duplication in filings without resulting in the loss of material information. We agree with the Commission that the discussion of off-balance sheet arrangements does not need to occur in a separately captioned section and that the amendment may result in greater integration of the material off-balance sheet arrangements within the context of other discussions in MD&A.

Item 303(a)(5) – Contractual Obligations Table

CCR supports the proposed elimination of the contractual obligations table. This table can be time consuming to prepare and review for many companies. We believe that any material commitments that would otherwise not be disclosed as a result of the deletion of this table, will be disclosed under the proposed capital resources requirements in Item 303(a)(2). We also believe that replacing the prescriptive contractual obligations table requirements with the principles-based capital resources disclosures will lessen the burden on companies while retaining valuable information for investors.

Item 303 (b)(4) – Critical Accounting Estimates

We support the Commission amending Item 303(a) to explicitly require the disclosure of critical accounting estimates, consistent with the guidance included in the 2003 MD&A Interpretive Release. However, we suggest the Commission update the proposed language in Item 303(a)(4) or the relevant Instruction to clarify that companies are not required to disclose a quantitative sensitivity analysis for all critical accounting estimates unless, based on management judgment, such analysis is meaningful and relevant to the user. We believe that there are some critical accounting estimates for which a sensitivity analysis is impractical or not relevant to users, and therefore, should not be required. Whether the critical accounting estimate disclosure requires a quantitative analysis should be left to management to determine based on whether the analysis would be meaningful to understanding the business and to understanding the relevant impacts of the estimates.

For example, many companies have revenue recognition as a critical accounting estimate. Companies with long-term contracts that recognize revenue over time must make estimates regarding the revenue and costs associated with their products and services. For these companies, it would be impractical to provide a sensitivity of reported revenue based on the assumptions used in determining the estimated costs to complete a contract over an entire portfolio of contracts, each of which has distinct assumptions and judgments used in those estimates. Rather than providing sensitivity analysis for a critical accounting estimate like this, we believe it is more practical and relevant if companies provide a discussion that addresses the quantitative impacts of the estimate, such as the impact of changes in the estimate in the current period.

Item 303(b) – Interim Period Discussion

We support the proposed amendments to permit companies to compare their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter. This change will allow additional flexibility for registrants to present the comparative information most relevant to investors, depending on the nature of the registrant's business. While we support this amendment, we suggest that the Commission also consider revising the requirement to compare current year-to-date information to prior year-to-date information. Many companies find that their investors are not using the year-to-date comparative information and it is provided simply for compliance. We believe this requirement should be optional and that registrants should have more explicit guidance to support the application of judgment in deciding whether to include year-to-date comparative information when there have not been meaningful changes.

Conclusion

Overall, we support the Commission's proposed amendments to modernize Regulation S-K Items 301, 302, and 303. We appreciate the effort to improve disclosures for both users and preparers. We have provided

recommendations that we believe will help the Commission to further improve the usefulness of the information provided while decreasing the effort to prepare the proposed disclosures.

Sincerely,

Prat Bhatt

Prat Bhatt
Chairman, Committee on Corporate Reporting
Financial Executives International