

November 25, 2019

By email: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Update of Statistical Disclosures for Bank and Savings and Loan Registrants*; File Number S7-02-17

Dear Office of the Secretary:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors; convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention; and advocates policies and standards that promote public company auditors' objectivity, effectiveness, and responsiveness to dynamic market conditions. Based in Washington, D.C., the CAQ is affiliated with the American Institute of CPAs.

The CAQ appreciates the opportunity to share our views and provide input on the Securities and Exchange Commission's ("Commission" or "SEC") Proposed Rule, *Update of Statistical Disclosures for Bank and Savings and Loan Registrants* (the "Proposal" or the "Proposed Rule").¹ This letter represents the observations of the CAQ SEC Regulations Committee but not necessarily the views of any specific firm, individual, or CAQ Governing Board member.

Since auditors play an important role in enhancing the quality, rigor, and reliability of financial information disclosed in Commission filings, the profession has a strong interest in the success of the Commission's Disclosure Effectiveness Initiative. Additionally, we have a requirement under our professional standards to read the other information presented in a document with the financial statements and consider whether such information, or the manner of its presentation, is materially inconsistent with information, or the manner of its presentation, appearing in the financial statements.² Therefore, we provide our comments through the lens of the public company audit profession.

We are generally supportive of the Commission's effort to streamline and modernize Guide 3 for bank holding company (BHC) registrants, which includes eliminating many of the outdated or duplicative disclosures and codifying Guide 3 into new Subpart 1400 of Regulation S-K. We offer the following

¹ Proposed Rule; *Update of Statistical Disclosures for Bank and Savings and Loan Registrants Request for Comment*; Release No. 33-10688; 34-86984; File No. S7-02-17.

² PCAOB Auditing Standard 2710, *Other Information in Documents Containing Audited Financial Statements*, paragraph 4.

suggestions that may help the SEC achieve its objective more effectively and enable registrants and auditors to avoid unnecessary challenges when applying the proposed disclosure requirements while still providing useful information for investors.

Location of Statistical Disclosures

Both current Guide 3 and proposed Subpart 1400 allow flexibility in whether statistical disclosures are included in the audited financial statement footnotes or presented elsewhere in the filing. Given this flexibility, most registrants currently choose to present such information in their Management's Discussion and Analysis or Description of Business, both of which are outside the audited financial statements. The Proposal requests feedback on whether the statistical disclosures required by proposed Subpart 1400 should be located in the footnotes. Footnote disclosures are subject to XBRL tagging requirements and are likely to be more uniform in content and location than information outside the financial statements, thereby reducing search costs for users. Footnote disclosures, however, are subject to audit procedures and therefore may result in higher audit costs.

We recommend the Commission consider feedback from investors and other users to determine whether auditor involvement would be beneficial. If, based on feedback from investors and other stakeholders, the Commission determines that auditor involvement would be beneficial, the audit profession stands ready to perform assurance procedures on this information in the context of opining on the fair presentation of the financial statements taken as a whole. We also encourage dialogue with the Financial Accounting Standards Board (FASB) to understand their views on whether current U.S. Generally Accepted Accounting Principles (GAAP) disclosure requirements should be expanded to include the new subpart 1400 disclosures, or how such disclosures already may have been considered in recent standard setting activities.

New Disclosures Proposed under Subpart 1400

Proposed Item 1405

Proposed Subpart 1400 of Regulation S-K would retain some of the existing Guide 3 disclosure requirements and require certain new disclosures, most notably Item 1405, Allowance for Credit Losses. Proposed Item 1405 would require disclosure of the following credit ratios, disaggregated by loan category, that are not required under GAAP, either under Accounting Standards Codification (ASC) 310, *Receivables*, or ASC 326, *Financial Instruments – Credit Losses*:

1. Allowance for Credit Losses to Total Loans
2. Nonaccrual Loans to Total Loans
3. Allowance for Credit Losses to Nonaccrual Loans
4. Net Charge-offs to Average Loans

The first three ratios are readily calculable from GAAP disclosures already provided in the financial statements and we encourage the Commission to consider feedback from users to determine whether separate disclosure of these amounts is necessary.

The last ratio (Net Charge-offs to Average Loans) would not be computable from disclosures in the financial statements. Although net charge-offs by loan category are required to be disclosed under GAAP (ASC 310 or ASC 326), average balances are not. There may be operational challenges associated with calculating these amounts and, as Table 12 of the Proposal illustrates, the Staff estimates that there will be increases in internal burden hours as well as costs for outside professionals relating to these disclosures. We recommend the Commission consider feedback from investors and other users to determine whether these costs would outweigh the benefits.

Proposed Item 1405 also would require credit ratio disclosures for each of the last five fiscal years in initial registration statements and initial Regulation A (Reg A) offering statements. Consistent with the JOBS Act, we encourage the SEC to consider whether it would be appropriate to provide an accommodation for Emerging Growth Companies (EGCs) and Reg A issuers that would otherwise qualify as EGCs, to provide the disclosures for only the number of years presented in the financial statements in the initial registration or offering statement.

Proposed Item 1406(e)

Proposed Item 1406(e) would require the separate disclosure of uninsured deposits as of the end of each reporting period. Currently, Item V of Guide 3 requires disclosure of time deposits in amounts of \$100,000 or more; it does not require separate disclosure of the uninsured portion of time deposits or any other deposits. We believe the SEC should emphasize this proposed change in practice and clarify whether new Item 1406(e) is requiring disclosure of the *portion* of an individual deposit account balance that is greater than the Federal Deposit Insurance Corporation (FDIC) limit, or if it is requiring disclosure of the *total* deposit account balance. Assuming the intended disclosure is *only the portion that is greater than the FDIC limit*, we encourage the SEC to consider feedback from preparers to determine if there are any significant operational challenges in providing this disclosure. Further outreach to the FDIC and the preparer community might also be beneficial in understanding operational complexities.³ The fact that call reports currently allow banks to provide *estimates* of uninsured deposits illustrates the complexity involved in arriving at these amounts. Alternatively, if the intended disclosure is the *total account balance*, this may not provide investors with a true picture of the risk of withdrawal of uninsured amounts. For example, an institution with one depositor with an account balance of \$30 million would have an uninsured balance of \$29.75 million under current FDIC limits, while an institution with 100 depositors, each with an account balance of \$300,000, would have an uninsured balance of \$5 million. In both cases

³ The FDIC has a [new requirement](#), effective on April 1, 2020, for insured depository institutions with two million or more deposit accounts to calculate and maintain complete and accurate information needed for the FDIC to determine insurance coverage with respect to each deposit account.

each institution would disclose a balance under this disclosure of \$30 million but have a significant difference in the actual uninsured deposit amount that is subject to a higher risk of withdrawal.

Securities Act Rule 409 and Exchange Act Rule 12b-21

Securities Act Rule 409 and Exchange Act Rule 12b-21 (Rules 409 and 12b-21) state that information required needs to be disclosed only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted.⁴

The Proposed Rule states that it will not codify the Guide 3 accommodation for undue burden or expense for foreign registrants because all registrants can avail themselves of relief from information that is “unknown and not reasonably available to the registrant” under Rules 409 and 12b-21. The Proposed Rule further indicates that a registrant would be able to rely on Rules 409 and 12b-21 to omit the five years of credit ratio information if, after reasonable effort, it is unable to obtain that information. In our experience as auditors, we have seen limited use of the accommodation in Rules 409 and 12b-21 and instances where a registrant could demonstrate the required information is not reasonably available or would require unreasonable effort or expense would appear to be rare. If, following the adoption of new Subpart 1400 of Regulation S-K, the Commission believes such instances would **not** be rare, the Commission may wish to provide interpretive guidance for *all* registrants (foreign and domestic) regarding factors they should consider when evaluating the assertion that the requested information is unknown and not reasonably available without unreasonable effort or expense.

Additionally, while the undue burden and expense accommodation in Guide 3 currently requires a Foreign Private Issuer (FPI) to discuss an accommodation or alternative presentation with the Staff, it is unclear whether *any* registrant would similarly be required to do so under Rules 409 and 12b-21. If the Commission desires a registrant to discuss such an accommodation or alternative presentation with the Staff, we recommend the Commission clarify their views in the adopting release or codify such provision in new Subpart 1400 of Regulation S-K. Alternatively, the Commission could use language based on Item 3.A.1 of Form 20-F, which provides a similar hardship accommodation for FPIs.

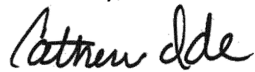
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We appreciate the opportunity to comment on the questions raised in the Proposal. As the Staff and Commission gather feedback from preparers, users and other interested parties, we would be pleased to

⁴ See Footnote 58 of the Proposal. The rule provides two additional conditions. The first is that the registrant must give such information on the subject that it possesses or can acquire without unreasonable effort or expense, together with the sources of that information. The second is that the registrant must include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

discuss our comments or answer any questions that the Staff or Commissioners may have regarding the views expressed in this letter. Please address questions to Annette Schumacher [REDACTED]).

Sincerely,



Catherine Ide
Senior Managing Director Professional Practice and Member Services
Center for Audit Quality

cc:

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