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CITY BAR

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July 29, 2019

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via email to rule-comments@sec.gov

**Re: File No. S7-05-19
Request for Comment on Amendments to Financial Disclosures about
Acquired and Disposed Businesses**

Ladies and Gentlemen:

This letter is submitted on behalf of the Securities Regulation Committee of the New York City Bar Association. Our Committee includes a wide range of practitioners whose areas of interest and expertise include securities laws and the regulation of the U.S. capital markets.

We are responding to the request of the Securities and Exchange Commission for comment on disclosure requirements for financial statements with regard to acquisitions and dispositions of businesses. We applaud the Commission's effort to undertake a review of the requirements related to acquired business financial statements and to consider how to better

tailor those requirements to the needs of investors. We have focused our comments on certain topics of particular importance to our Committee.

A. Significance Tests

Investment Test

The current investment test in Rule 1-02(w) of Regulation S-X compares the registrant's investment in and advances to the acquired business to the carrying value of the registrant's total assets. The Commission is proposing to revise the investment test to compare the registrant's investment in and advances to the acquired business to the aggregate worldwide market value of the registrant's voting and non-voting common equity, when available.

We agree that in many cases using the registrant's aggregate worldwide market value would be an appropriate measure of a particular investment's significance to the registrant. We are concerned, however, that the revised test may not work as intended in all cases. For example, a company with substantial assets that is highly leveraged may have a relatively small market capitalization, which could result in even immaterial acquisitions tripping the revised investment test. In such a case, the existing investment test, with reference to the company's total assets, would yield a more accurate picture of the economic significance of an acquisition to the company's business.

To address this concern, we would recommend that the Commission consider retaining the existing total assets investment test in addition to the proposed market value investment test and requiring that the threshold be met for both tests for an acquisition to be considered significant. The registrant would use the lower of the two tests to determine the number of periods for which Rule 3-05 financial statements are required.

Income Test

Our Committee is supportive of the Commission's proposed revisions to the income test. We have experience with the anomalies that can result from the current net income test, and we believe that including a revenue component and simplifying the calculation of the net income component will go a long way to reducing those anomalies.

B. Audited Financial Statements for Significant Acquisitions

We are strongly supportive of the Commission's proposal to reduce the maximum number of years of acquired company historical financial statements from three years to two years. Preparing Rule 3-05 financial statements is frequently costly and time consuming for registrants, particularly in instances where financial statements of an acquired business have not previously been audited or prepared in accordance with Regulation S-X. The financial statement requirements can delay the consummation of transactions and in some cases deter them entirely.

We are also supportive of the Commission's proposal to eliminate the comparative interim period when only one year of audited Rule 3-05 financial statements is required.

We are aware that some commenters would urge the Commission to go further and to limit the historical financial statement requirement to one year for all significant acquisitions, which would align with the pro forma financial statement requirements. We believe that the Commission's current proposal is an important step in reducing unnecessary burdens on registrants and that the Commission should give serious consideration to further steps that can be taken without compromising the need for investors to have all material financial information in connection with an acquisition.

As the Commission notes, registrants are already obligated, pursuant to Rule 4-01(a) of Regulation S-X, to provide any further material information necessary to make the required financial statements not misleading.

C. Pro Forma Financial Information

Our Committee endorses the views of the Committee on Mergers, Acquisitions and Corporate Control Contests of the New York City Bar Association expressed in its comment letter dated July 18, 2019. We share the concern that mandating disclosure of management's adjustments in the context of pro forma financial information could result in confusion on the part of investors and could have unintended consequences with respect to corporate behavior and shareholder litigation.

We believe a better approach would be for the Commission, through the Division of Corporation Finance, to encourage registrants that choose to provide synergy disclosures to do so in a clear, comprehensive and consistent manner.

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We thank you for the opportunity to comment on this important Commission initiative. Members of our Committee would be happy to discuss any aspect of this letter with the Commission staff.

Respectfully submitted,



David S. Huntington
Chair, Securities Regulation Committee