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July 15, 2016

Mr. Brent Fields
Secretary
U.S. Securities & Exchange Commission
100 F Street N.E.
Washington, DC 20549

File Reference No. S7-06-16
Re: SEC Release No. 33-10064, *Business and Financial Disclosure Required by Regulation S-K*

Dear Mr. Fields:

Deloitte & Touche LLP is pleased to respond to the request for public comment from the Securities and Exchange Commission (the "SEC or the "Commission") on the concept release *Business and Financial Disclosure Required by Regulation S-K* (the "concept release") as well as the Commission's broader efforts to improve the disclosure regime for the benefit of companies and investors.

We support the Commission's consideration of ways it might update the current disclosure regime to facilitate timely, material disclosure by companies as well as investor access to that information. We believe that the most effective disclosures are clear, concise, and focused on matters that are both material to investors and specific to the company. We also believe that the current SEC disclosure regime largely supports effective disclosure and have encouraged our clients to heed the SEC's call to improve disclosures under the existing rules. Many companies have done so, and we believe that some of these voluntary improvements serve as examples of the strengths and limitations of the current disclosure regime that the Commission should consider as it modernizes the regime.

The body of this letter contains some general thoughts and observations on the potential future of public company disclosures that we believe the Commission should keep in mind as it moves forward with its disclosure effectiveness initiative. We have also attached an appendix that provides input on some of the more specific questions raised in the concept release on ways the SEC could improve its current disclosure requirements. In formulating our response to this concept release, we have drawn on our direct experiences with a large number of companies that file with the SEC. We also have drawn on our more general observation of public company disclosure trends, both inside and outside the SEC reporting regime.

We hope that our input, combined with that from other stakeholders in the capital markets, especially companies and investors, will assist the Commission as it continues to consider how to modernize the SEC disclosure regime.

THE HISTORY AND FUTURE OF FINANCIAL REPORTING

The concept release contains a wealth of useful history on the development of Regulation S-K as the central repository of business and financial disclosure requirements for public companies. A review of that history makes it clear that, although there have been expansions and refinements over time, in many ways the basic model of public company annual reporting has not changed in more than a half-century. But while the changes to the reporting model have been relatively modest, changes in the capital markets have been significant.

Over the past several decades, there have been dramatic increases in the size, complexity, and geographical span of many companies. The investor base has also greatly expanded, as have the available types of investments and means of investing. Underlying these changes are substantial advances in technology, which have supported the growth of companies and investing by providing ever-increasing volumes of data in varying formats and at faster speeds. Technological developments also have fundamentally changed the method of delivery of information, from primarily hard copy until the mid-1990s to predominantly electronic delivery today.

Given these changes, it is remarkable how well the fundamental components of the SEC disclosure regime have adapted and remained relevant. The continuing pace of change in the capital markets does, however, call for consideration of whether more fundamental changes in the public company reporting regime are necessary for it to continue to keep pace. While the current regime has served the markets well for the last half century, it seems unlikely that it will do so a half-century into the future.

This is in part due to a shift in investor expectations. In the past decade especially, periodic historical financial reporting has ceded its place as investors' sole point of focus. Increasingly, investors seem to expect more current and forward-looking financial information as well as different ways to measure company performance. Therefore, regarding the future of the reporting model, it is important to ask, if historical financial reporting diminishes in significance to investors in the future, what information will become more valuable to investors, and how the SEC disclosure regime can adapt.

As investors have called for new types of information, the means by which companies communicate with those investors have also expanded. Some companies have improved the way they present information within the current SEC disclosure regime by, for example, providing graphic depictions of data previously only included in narrative form, and using hyperlinks and other tools to help investors navigate disclosures more efficiently. As technology develops, investors are likely to expect further innovations that will allow them to better process and analyze information in company disclosures. Thus, in an evaluation of the future of the reporting model, it is important to ask how the SEC can complete the transition from a regime rooted in paper filing to one that fully realizes the possibilities presented by the digital world.

We believe that these future-oriented questions are important because we have observed that some companies, when faced with the limitation of the current SEC reporting regime and to keep pace with increasing investor demands, have divided their communications with

investors into two different channels: (1) required periodic SEC disclosures, and (2) communications outside the SEC disclosure regime that are often more frequent and innovative. In some cases, these different channels of investor communications are driven by different groups within the company. For example, legal and finance staff may be primarily responsible for SEC disclosures, while investor relations professionals focus on other information, such as earnings announcements, investor calls, and publication of key performance indicators, as well as materials shared directly with investors at events like "investor days."

The SEC has considered over the years ways to bring more discipline to, and connection between, these two channels of information. For example, it has addressed some of the risks of selective disclosure through the adoption of Regulation FD and some of the risks of misleading disclosures through its rules and guidance on non-GAAP disclosures. The Commission's efforts, including its recent focus on the risks that come with the proliferation of non-GAAP disclosures, have appropriately stopped short of preventing companies from disclosing information outside their SEC filings.

The SEC disclosure regime is the bedrock on which our capital markets are built. Given that markets often react to disclosures made outside the SEC reporting regime, however, it is clear that some investors find such disclosures relevant to their investment decisions. In some cases, this may be because that information is either not required, or not allowed, by the SEC disclosure regime; in other cases, it may be because the investor finds that information easier to understand (e.g., because it is provided in a more interactive format, or the company's SEC reports are compliance-oriented and dense, making it difficult for investors to identify the most relevant information).

It is not clear, however, whether all investors understand that these outside disclosures are not subject to the safeguards of the SEC disclosure regime that are critical to the integrity of, and therefore investor confidence in, company disclosures. These safeguards include the discipline of the requirements themselves (including SEC staff review), the context of the accompanying disclosures, the discipline imposed by companies' disclosure controls and procedures and internal control over financial reporting (collectively "company controls"), and the involvement of the independent auditor.

Because of the value of these safeguards, the Commission should consider how it can modernize its disclosure regime to bridge the gap between the two channels of communication. In other words, the SEC should consider whether its disclosure regime over time has developed in such a way that it may be encouraging the two channels and, if so, whether there are ways it could modernize the regime to encourage companies to view their SEC disclosures as the primary communication with their investors, thus applying the safeguards of that regime to important market-moving information.

As members of the auditing profession, we are committed to adapting and changing our role to meet the evolving needs of investors. There are various types and levels of auditor involvement that may be appropriate for different types of disclosure, ranging from a review to an examination of disclosures outside the audited financial statements. As the SEC considers the modernization of its disclosure regime, we stand ready to provide our expertise and perspectives on the appropriate degree of auditor involvement with particular disclosures and to provide additional assurance should the SEC determine that is needed.

CONSIDERATIONS FOR AN EFFECTIVE DISCLOSURE REGIME

The history of the public company disclosure regime outlined in the concept release conveys well both the challenge and the possibility of making significant improvements to the regime. The incremental development of the integrated disclosure regime that is embodied in Regulation S-K is an apt example, as is the creation and expansion of electronic filing requirements. These and other developments in the SEC reporting regime demonstrate that, while it may take time, the regime can be effectively modernized.

Therefore, we encourage the Commission, as it moves forward with the disclosure effectiveness initiative, to look not only at targeted changes to the current disclosure regime (although these can also be important, and we have included some considerations in the appendix) but also at changes that will help build the foundation for more comprehensive modernization of the regime that can carry it through the next half-century or beyond.

In general, we believe that a regime that rests on a principles-based framework that encourages disclosures that help investors understand a company's current circumstances and future prospects will be more adaptable over time than one that addresses changing market demands by adopting prescriptive requirements that risk becoming irrelevant or obsolete. Accordingly, we identified five disclosure characteristics for the SEC to consider as it develops principles to underlie a modernized disclosure regime — context, comparability, focus, flexibility, and credibility.

We believe that while interrelated, each of these five characteristics merits individual consideration as an important component of the quality of the information on which our capital markets thrive. Appropriately balancing them will increase the relevance of the SEC reporting regime, thus helping to merge the two channels of communication that currently exist and consequently ensure that investors benefit from the safeguards of the SEC regime, without reducing their ability to receive timely and relevant information from the companies in which they invest.

1. ***Context —*** An effective disclosure regime prompts companies to give investors sufficient context to understand the importance of the disclosure provided — context that can be lacking when similar disclosures are made in isolation. Giving investors the appropriate context for disclosures will become more important as the volume and accessibility of data increases because more data is not likely to aid in investment decisions if investors do not understand its relevance. Developments in technology can help provide context by allowing direct links between the data and the company's contextual disclosure as well as to other information relevant to an understanding of what is driving the disclosure, including, for example, SEC disclosure requirements themselves. Disclosures made within a regime that has clear underlying principles are more likely to contain meaningful context; even within a comprehensive disclosure document, information can lack context if excessively specific disclosure requirements unintentionally result in a compliance-minded approach.

2. ***Comparability —*** An important aspect of context is the ability of investors to compare company-specific information to that of its peer companies or the market as a whole. Disclosures provided outside of the SEC regime often lack structure that would allow such comparisons. Too much focus on comparability, however, can result in prescriptive disclosure requirements that promote a compliance-minded approach or even result in scenarios in which companies manage to disclosure requirements rather than revealing how they manage the company. One way to mitigate this risk is by developing a

common disclosure framework that also allows each company to provide information relevant to its own performance.

3. ***Focus —*** As noted, the goal of comparability must be balanced with the need for transparency into a company's individual performance. A reporting regime that encourages tailored, company-specific disclosures will help encourage SEC disclosures to be viewed as communication, rather than compliance, documents. Conversely, excessively specific disclosure requirements may result in unnecessary volume that obscures important information. To encourage focused disclosure, the SEC should continue to consider eliminating redundant and obsolete requirements (e.g., overlapping SEC and GAAP requirements) but also view any potential new disclosure through a wide lens that allows it to assess how that requirement will fit into the whole of the disclosure regime and how it will encourage focused company-specific disclosures.

4. ***Flexibility —*** Effective disclosure is not static. Therefore, a successful disclosure regime will encourage companies to provide timely disclosure that reflects developments in their business and the markets as well as the needs of their investors. This can be achieved in part by adopting a disclosure regime based on disclosure principles rather prescriptive rules, as discussed above. It can also be achieved by providing a disclosure platform that can adapt to new technologies, and thus allow for more flexibility and innovation in disclosure, while still providing the comparability of a common disclosure platform. Analyzing how companies have been experimenting under the current regime, and seeking their input on what barriers they have faced, may give the Commission important information about how the SEC disclosure regime currently supports, or could better support, such flexibility.

5. ***Credibility —*** No matter how clear and focused disclosure may be, if it is not credible, it does not serve its purpose. Among the primary benefits of the SEC disclosure regime are the safeguards that bolster credibility. These are numerous and varied, ranging from the general discipline that a required reporting process brings to a company, to more specific safeguards like company controls and auditor involvement. Over time, various safeguards have been added to the SEC regime, perhaps most notably through the Sarbanes-Oxley Act of 2002, which requires management certifications, disclosure controls and procedures, and management and auditor assessments of companies' internal control over financial reporting (ICFR). As the Commission considers the next generation of disclosures, it should also assess how the safeguards in the current regime may need to adapt, including, for example, whether new types or formats of disclosure may require reconsideration of the role and scope of company controls and auditor involvement, or the nature and scope of SEC staff review. As noted above, we welcome the opportunity to work with the Commission to consider the most appropriate level of auditor involvement as the SEC disclosure regime develops.

These five characteristics are equally applicable whether the SEC is considering longer-term issues in modernizing the regime or whether it is considering more incremental changes to the existing requirements. We believe that the appropriate balance of these five characteristics will encourage companies to develop SEC disclosures that effectively combine the separate disclosure channels that currently exist.

KEY AREAS OF CURRENT AND FUTURE DISCLOSURE

The concept release requests comment on a number of specific requirements of Regulation S-K, and we have provided our views on some of these in the appendix. As the Commission considers the long-term goals of its disclosure effectiveness project, we encourage it to focus not only on the aspects of the current regime that may need improvement but also on how it might replicate or improve disclosures that have stood the test of time or appear to be increasingly important to investors. We have identified the following examples, both within and outside of the current SEC reporting regime, that we believe the Commission should consider.

- ***Non-GAAP financial measures and performance metrics —*** As investors increasingly express that historical financial measures are not the only input they use in their investment decisions, companies have disclosed various non-GAAP financial measures and operating metrics to provide additional insights into business trends, changes from prior periods, and comparison to peers. In light of the increasing prominence of these disclosures in investor decisions, the SEC should consider what safeguards of the current SEC disclosure regime might enhance the measures' credibility. It could also consider a framework that encourages consistent use from period to period, more rigorous application of company controls over the generation and presentation of these measures, or increased auditor involvement.
- ***Management's Discussion & Analysis (MD&A) and forward-looking information —*** For many companies, MD&A is currently the portion of their periodic SEC filings that best bridges the gap between required disclosures and proactive communication to investors because it provides "a discussion and analysis of a company's business as seen through the eyes of those who manage that business."[1] The SEC should consider how it might replicate the most successful aspects of MD&A in other disclosure requirements, even as it considers changes to aspects of MD&A that may have strayed from its core principles.[2] For example, it might consider whether one reason for the effectiveness of MD&A is that it encourages companies to provide management's insight into future performance and, if so, how the SEC can continue to encourage the appropriate use of forward-looking information in MD&A — and perhaps even expand its use. At the same time, the Commission might consider whether, as the type of information in MD&A becomes more important to investors, there are ways to strengthen the safeguards to which it is subject — for example, by making changes to the scope of company controls, expanding data tagging to facilitate investor analysis, or increasing auditor involvement.
- ***Company controls —*** When engaging with investors, we consistently hear of the importance they place on a company's controls — including disclosure controls and procedures and ICFR— at least in part because effective company controls provide comfort about the company's ability to prepare accurate and complete disclosures on a going-forward basis. Some of the same investors, however, have expressed that current reporting on company controls, including the auditor's assurance on ICFR, is too focused on the conclusion (*e.g.*, controls are designed and operating effectively, or they are not). We suspect that as disclosure evolves, the importance investors place on controls will grow in parallel with their desire for more information about those controls. For example, if in the future the model evolves away from periodic historical reports and instead toward more frequent — or even custom — reports that are available on a more

[1] SEC Interpretation No. 33-8350, *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*.
[2] See, for example, the discussion in the appendix on potential improvements to the requirements in MD&A related to the Table of Contractual Obligations and Critical Accounting Estimates.

real-time basis, might investors call for more information from the company on the scope and integrity of the processes and controls that produced that information as well as more information from the auditor on its assessment of the quality of those controls? And as new areas of disclosure develop and gain importance, might the approach to and scope of company controls also need to evolve?

- ***Format and presentation —*** The move from paper SEC filings to electronic delivery has transformed the format and presentation of SEC disclosures in many ways and has allowed companies to experiment with more user-friendly formats. The SEC has shown leadership in adopting new technologies to aid investor analysis, such as XBRL, and in allowing additional uses of these technologies as they develop. We encourage the Commission to continue to monitor and incorporate into its disclosure regime advancing technologies to help ensure that it does not inadvertently discourage companies from making their SEC disclosures communications-oriented. The changes the SEC has already undertaken, including adopting limited data tagging, are a first step; the SEC also should consider more comprehensive modernization of the system, including the use of rapidly advancing technologies to allow information to be better organized and structured as well as smarter tools to support investor analysis. The SEC also should consider whether there are changes in technology that would encourage focus on the most pertinent disclosures. For example, the Commission might adopt formats that would allow investors to see more clearly what information is new and what has not changed from the prior period. It is important that new technologies be integrated into the SEC disclosure regime so that they are consistent across all company filings and possess the disclosure characteristics discussed above. If format and presentation changes are not integrated with other changes to the system, there is a risk that they may widen, not narrow, the divided disclosure regime. The SEC should also consider that, as the format and presentation of SEC disclosures change, other parts of the regime, including its safeguards, may need to adapt to remain effective.
- ***Sustainability disclosure —*** The demands for company transparency have accelerated in recent years regarding sustainability matters — or environmental, social, and governance (ESG) disclosure. The ESG disclosure discussion has accelerated at least in part because of an increasing focus by investors and other stakeholders on the potential importance of sustainability matters to a holistic understanding of company performance. Given the largely voluntary nature of ESG disclosure to date, public discussion has often centered on measures to promote its standardization and relevance. Developments such as the European Union's Directive 2014/95/EU on disclosure of non-financial and diversity information, and the ESG disclosure guidance developed by the World Federation of Exchanges, highlight the role that policy and market guidance can play in responding to increasing expectations related to the disclosure of relevant, comparable, and reliable ESG information. Given the increasing importance of this type of information, we encourage the SEC to remain active in these discussions and ensure that it considers how ESG information might be included in SEC disclosure documents as well as how the safeguards of the system could apply to such information, including potentially assurance on the reliability of such disclosures.

COORDINATION WITH STANDARD SETTERS

In addition to considering aspects of its own disclosure regime that can be modernized, we encourage the SEC, as it moves forward, to view the dialogue it has started as part of a broader discussion on the modernization of the public company reporting regime. Specifically, we believe that the SEC should closely coordinate with U.S. standard setters to ensure that changes to the various components of the public company disclosure regime are

harmonized in ways that ensure that the regime as a whole provides information to investors that is consistent with the disclosure considerations discussed above.

- ***The Financial Accounting Standards Board (FASB) —*** We note in the appendix several areas in which there may be overlap between U.S. GAAP and SEC requirements,[3] and we suggest that the SEC coordinate with the FASB to eliminate duplicative disclosures or rationalize those disclosures that may have a similar objective but require different presentation of information within the same filing.[4] More generally, we encourage the SEC staff to coordinate with the FASB going forward to ensure that duplicative or overlapping disclosure is avoided as new accounting standards are developed and the SEC disclosure regime is modernized.
- ***The Public Company Accounting Oversight Board (PCAOB) —*** If the Commission considers additional auditor involvement related to the disclosures discussed above and in the appendix, we encourage the Commission to coordinate with the PCAOB. While we believe that auditor involvement is an important component of the safeguards of the SEC's disclosure regime, in some cases additional preparer standards and auditor performance requirements may be needed to ensure consistency and understanding of the scope of that involvement. In addition, the Commission should remain involved in the following two PCAOB projects to ensure appropriate harmonization with SEC disclosures:
  - ***Auditor's reporting model —*** The PCAOB in May issued a reproposal of its standards related to the auditor's reporting model.[5] The proposed changes are intended to increase the informational value, usefulness, and relevance of the auditor's report that accompanies a company's financial statements filed with the SEC. We support the PCAOB's efforts and believe that the auditor's crafting of a tailored communication to external constituencies reinforces the auditor's public interest responsibility and fosters the healthy exercise of independence, objectivity, and skepticism — attributes that are the foundation of a high-quality independent audit. We urge the Commission to work closely with the PCAOB to ensure that the resulting standards give investors insight into and context about the audit process, while management remains the primary voice of a company's financial performance.
  - ***Auditor responsibility with respect to other information —*** The PCAOB released with its original 2013 proposal on the auditor's reporting model a discussion of whether "to enhance the auditor's responsibility with respect to information outside the financial statements that is contained in documents that include the audited financial statements and the related auditor's report."[6] The PCAOB has said that it is continuing to evaluate that part of the proposal, even as it moves forward with the auditor's reporting model. As it does so, we urge the Commission to provide input to the PCAOB, both on any disclosure requirements the PCAOB might consider about the auditor's involvement with information outside the financial statements and on any consideration by the SEC of the potential value of additional assurance on such information.

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[3] See, for example, discussion in the appendix about the Table of Contractual Obligations and Market Risk disclosures.
[4] We acknowledge that on July 13th the Commission voted to propose amendments to eliminate redundant, overlapping, outdated, or superseded provisions, as well as to solicit comment on certain disclosure requirements that overlap with U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the FASB. We look forward to reviewing this release.
[5] For more information, see the reproposed rule on the PCAOB's Web site.
[6] See discussion in the PCAOB's most recent standard-setting agenda.

Overview of the Appendix

As noted above, attached to this letter is an appendix that provides input and recommendations on ways the SEC could improve its current disclosure requirements in light of certain questions raised in the concept release. The appendix (1) briefly summarizes our recommendations, and (2) expands on them by providing additional details and background information. The recommendations in the appendix address a variety of topics, including selected financial data, supplementary financial information, MD&A, auditor involvement, preferability letters, risk factor disclosures, and industry guides.

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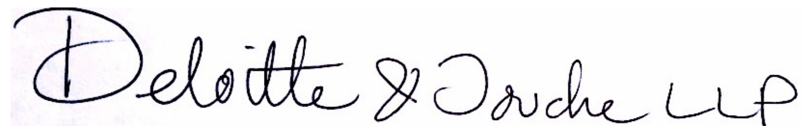
We appreciate the opportunity to provide our perspectives on the concept release and the modernization of the SEC disclosure regime. If you have any questions or would like to discuss our views further, please contact Dave Sullivan at (714) 436-7788.

Sincerely,



Deloitte & Touche LLP

cc: Mary Jo White, Chair
Michael Piwowar, Commissioner
Kara Stein, Commissioner
Keith Higgins, Director, Division of Corporation Finance
James Schnurr, Chief Accountant

Appendix — Recommendations

The table below provides our recommendations for improvements to the SEC's current disclosure requirements in response to select questions raised in the concept release. The appendix (1) briefly summarizes our recommendations, and (2) expands on them by providing additional details and background information.

Topic	Recommendation
Disclosure Framework	
Company Profile Page	**Summary: Consider establishing a separate "company profile" page for disclosures of information that may not change materially from period to period.** **Details**: Various disclosures in Regulation S-K require registrants to provide information that may not change materially from period to period. Examples include (1) general information required by Item 101, such as the description of business, segments, industry, principal products and services, intellectual property and regulation, and (2) risk factors required by Item 503(c). For many registrants, these disclosures may not change materially over the course of several periods in the absence of a specific event or transaction. We suggest that the Commission consider establishing a separate "company profile" page on EDGAR for disclosure of this type of information. Such a repository could be created for each registrant in the EDGAR filing system and updated by the registrant when material changes occur. Investors could be alerted of any such changes in a Form 8-K filing. This approach may permit registrants to remove repetitive information from a company's annual report and allow investors to focus on the information that changes materially from period to period.
Information for Investment and Voting Decisions	
Selected Financial Data (Item 301)	**Summary: Consider whether presenting selected financial data for years 4 and 5 continues to benefit investors and other users.** **Details**: Item 301 requires a registrant to disclose specific items for each of the registrant's last **five** fiscal years and any additional fiscal years necessary to keep the information from being misleading. As a result, a registrant would need to provide information for annual periods before those included in its audited financial statements (years 4 and 5). Given that access to historical financial information is readily available through EDGAR and other electronic means, the Commission should consider whether providing information for years 4 and 5 continues to benefit investors and other users. We have observed that the requirement to provide selected financial data for years 4 and 5 often creates challenges for registrants (e.g., when the audited financial statements are revised to reflect a retrospective change or for companies that are not emerging growth companies (EGCs) conducting their IPO). The SEC staff has recognized these challenges and has provided relief in the past. For

Topic	Recommendation
	example, accommodations are available to foreign private issuers in certain situations. In addition, the SEC staff has indicated that registrants that use the full retrospective method to apply the FASB's new revenue recognition standard are not required to retrospectively revise years 4 and 5 provided they adequately disclose the lack of comparability. Further, under the Jumpstart Our Business Startups (JOBS) Act, an EGC is not required to present selected financial data for any period before the earliest audited period presented in the initial registration statement.
Supplementary Financial Information (Item 302)	**Summary: Consider developing an accommodation for newly public companies preparing their first Form 10-K.** **Details**: We suggest that the Commission consider whether the benefits of preparing supplementary quarterly financial information outweigh the incremental cost and effort for a newly public company, particularly since such information is not required in its IPO. The Commission should consider developing an accommodation for a newly public company that would allow it to accumulate up to eight fiscal quarters of information over the course of filing its first two annual reports. For example, a new registrant could provide information for the most recent four fiscal quarters in its first annual report and then provide information for the most recent eight fiscal quarters in its second annual report. This approach would be similar to the one permitted for EGCs under the selected financial data requirement of Regulation S-K, Item 301.
	Summary: Consider whether supplementary financial information should continue to be required for newly public companies in a follow-on offering after completion of their IPO but before their first Form 10-K. **Details**: During the IPO process, a registrant may be required to provide interim financial information on a year-to-date basis; however, in most cases, supplementary quarterly financial information is not required until the registrant files its first annual report on Form 10-K. If a new registrant files a registration statement for a follow-on offering after its IPO but before its first Form 10-K, supplementary quarterly financial information is required. The Commission should consider whether supplementary quarterly financial information should continue to be required in a follow-on offering after a company completes its IPO but before it files its first Form 10-K given that the information was not required in the IPO registration statement. Such a change could facilitate capital formation and efficient markets by reducing the costs of compliance for newly public companies.

Topic	Recommendation
	Summary: Consider eliminating the requirements to present gross profit in Item 302 because the presentation of gross profit is not otherwise required in financial statements prepared in accordance with Regulation S-X. **Details**: Item 302 requires disclosure of select quarterly financial data, including gross profit, for each full quarter in the two most recent fiscal years. However, a measure of gross profit is not otherwise required to be presented under Regulation S-X, Rule 5-03, and therefore it is frequently omitted from the income statements for annual and interim periods. Registrants that apply the guidance in SEC Staff Accounting Bulletin (SAB) Topic 11.B, "Depreciation and Depletion Excluded From Cost of Sales," exclude depreciation from cost of sales in their income statements and are precluded from presenting an income measure (gross profit) before depreciation. Such registrants may find it challenging to compute gross profit because incremental allocations to cost of sales are required to comply with Item 302. In addition, for certain industries, gross profit may not be a meaningful measure.
MD&A (Item 303) — Guidance	**Summary: Consolidate existing and future interpretive guidance into a single source for registrants to access and use.** **Details**: As acknowledged in the concept release, the SEC staff has published a wide variety of guidance on the preparation of MD&A, including relevant portions of the Division of Corporation Finance's *Financial Reporting Manual,* compliance and disclosure interpretations, and various interpretative releases. We believe that consolidating existing and future guidance into a single source would help registrants prepare MD&A by making the interpretative guidance easier to locate and use. This approach would be consistent, by analogy, with the codification and reorganization efforts undertaken by the FASB and PCAOB, respectively. We believe that improving a registrant's access to interpretative guidance will ultimately improve the overall quality of MD&A.
MD&A (Item 303) — Results of Operations	**Summary: Consider giving registrants the flexibility to discuss their results of operations for comparative periods when an analysis solely of historical information may not be meaningful.** **Details**: Under Item 303(a)(3), registrants must provide an analysis of the historical periods (generally three years) presented in the audited financial statements. This analysis must be consistent with the objectives of MD&A, one of which is "to provide information about the quality of, and potential variability of, a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance."[7] However, certain transactions may affect the business so

[7] See SEC Interpretation No. 33-8350.

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<tr><th>Topic</th><th>Recommendation</th></tr>
<tr><td></td><td>substantially that comparison solely of historical results may not be meaningful. Examples of such transactions include:

Significant acquisitions and dispositions — Since preacquisition periods do not reflect the operations of the acquired business, a comparative analysis solely of historical periods may not provide a meaningful analysis of their results of operations. Similarly, a discussion solely of historical results may not be meaningful when a significant disposition occurs that is not presented as a discontinued operation (under FASB Accounting Standards Codification (ASC) Subtopic 205-20, Presentation of Financial Statements — Discontinued Operations).
Predecessor-successor presentation — Certain situations may result in a predecessor-successor presentation as a result of a change in basis in the underlying financial statements (e.g., when pushdown accounting is applied or fresh-start accounting is adopted upon a company's emergence from bankruptcy). A discussion solely of historical results in connection with these situations may not be meaningful for investors.
Change in fiscal year — Registrants that elect to change their fiscal year often present a transition period that is shorter than a year. As a result, comparison solely of the historical periods presented may not be meaningful because of differences in the periods presented (e.g., a nine-month transition period compared with a full fiscal year).

In addition to a discussion of historical results of operations, we suggest that the Commission consider giving a registrant the flexibility to present the most meaningful comparative analysis given the registrant's unique facts and circumstances. This could be achieved by adapting the pro forma requirements of Regulation S-X, Article 11, for all periods presented to allow a more meaningful discussion in MD&A. For a company that presents a transition period due to a change in fiscal year, flexibility could be achieved by allowing the company to combine certain results of operations with the transition period such that the combined transition period is consistent with the comparative period (e.g., a 12-month combined transition period compared with a full fiscal year).</td></tr>
<tr><td>MD&A (Item 303) — Table of Contractual Obligations</td><td>Summary: Consider whether the disclosure requirements for the table of contractual obligations (the "Table") continue to be necessary given that many similar disclosures are required under U.S. GAAP.

Details: Many of the requirements in Item 303(a)(5) for disclosing certain contractual payments in the Table are substantially similar to those under U.S. GAAP, such as the requirements in ASC 460, Guarantees; ASC 470, Debt; ASC 840, Leases; and ASC 440, Commitments. The Commission should consider input from investors about whether the incremental information in the Table is useful to</td></tr>
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Topic	Recommendation
	investors since many similar disclosures are presented in audited financial statements prepared in accordance with U.S. GAAP.
MD&A (Item 303) — Critical Accounting Estimates	**Summary: Consider amending Item 303 to provide a framework for critical accounting estimates that is principles based to ensure that registrants appropriately evaluate and prepare disclosures that enhance, rather than repeat, the accounting policies that require significant management estimates and judgment and provide further analysis of the uncertainties associated with the application of these policies.** **Details**: The Commission has addressed disclosure of critical accounting estimates in various ways over the years. Despite the SEC's clear indication in the 2003 MD&A Interpretive Release (Interpretation 33-8350) that MD&A should supplement and not duplicate the accounting policies in the notes to the financial statements, a registrant's MD&A often does repeat such policies and neglects to provide further analysis of the uncertainties associated with applying them.
	Summary: Maintain the current disclosure considerations for immaterial errors; management should not be required to disclose the nature of its assessment of errors that it determined to be immaterial and did not correct in the financial statements. **Details**: Under current requirements, registrants must evaluate errors in accordance with SAB Topic 1.M, "Materiality." When a registrant concludes that an uncorrected error is immaterial, the error is generally not disclosed in the financial statements or other parts of the annual report. We believe that this practice is consistent with the Commission's objectives for registrants to disclose material matters affecting them. Once a registrant concludes that an error is immaterial, we do not believe that any further information about the error would be material to investors.
Auditor Involvement With: • **Selected Financial Data (Item 301)** • **Supplementary Financial Information (Item 302)** • **MD&A (Item 303)**	**Summary: Seek input from investors and other users on whether there is a demand or need for greater auditor involvement with such information. While this information may lend itself to additional auditor involvement, investors and other users are in the best position to provide input on this determination.** **Details:** The auditor is currently responsible for the following: • *Selected financial data* — PCAOB Auditing Standard (AS) 2710, *Other Information in Documents Containing Audited Financial Statements* requires the auditor to read the selected financial data 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 on which the auditor has reported. In addition, an

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	auditor may be engaged to report on selected financial data in accordance with AS 3315, *Reporting on Condensed Financial Statements and Selected Financial Data*, although we do not believe that engagements under AS 3315 are common. • *Supplementary financial information* — Regulation S-X, Rule 10-01(d)), requires interim financial information included in quarterly reports on Form 10-Q to be reviewed by an independent public accountant in accordance with AS 4105, *Reviews of Interim Information*. In addition, AS 4105 specifically requires the auditor to perform a review of the fourth quarter interim financial information, even though a quarterly report on Form 10-Q is not required for such period. Therefore, the interim information presented in the supplementary financial information is always subject to an interim review in accordance with AS 4105. • *MD&A* — As with selected financial data, the auditor is required under AS 2710 to read MD&A and consider whether it is materially inconsistent with the information in the financial statements on which the auditor has reported. In addition, an auditor may be engaged to examine or review MD&A in accordance with PCAOB Attestation Standard (AT) No. 701, *Management's Discussion and Analysis*. However, we do not believe that engagements under AT 701 are common. This information, which is closely related to the financial statements and, in many cases, developed from the books and records of the company, may lend itself to additional or increased auditor involvement. There are various types and levels of auditor involvement that may be appropriate, ranging from a review to an examination of selected financial data or MD&A or an audit of supplementary financial information. However, we believe that investors and other users are in the best position to provide input on whether the market would demand greater auditor involvement than it does currently. We stand ready to offer our expertise and perspectives on the appropriate degree of auditor involvement with particular disclosures and to provide assurance should the SEC determine that greater auditor involvement is needed. In some cases, assurance could be provided under current standards, while in others, additional preparer standards and auditor performance requirements and criteria may need to be developed.
	Summary: Continue to coordinate with the PCAOB on auditor involvement with other information in documents. **Details**: The PCAOB is currently considering potential changes to its standards on auditor involvement with other information in documents containing audited financial statements. We encourage the Commission to coordinate with and provide input to the PCAOB as it considers such matters.

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Preferability Letters	**Summary: Eliminate the requirement for preferability letters.** **Details:** Given the development of auditing and accounting standards, we do not believe preferability letters provide incremental information to justify their continued requirement and should therefore be eliminated for the following reasons: • We do not believe revisions to Item 601(b)(18) would provide additional insight into a determination that a change is preferable. AS 2820, *Evaluating Consistency of Financial Statements,* requires auditors to evaluate whether disclosures about accounting changes are adequate. The financial statements should therefore provide sufficient details about an accounting change and offer reasonable assurance regarding the auditor's evaluation of the accounting change, including the related disclosures. • The financial statement disclosures required by the underlying U.S. GAAP (ASC 250, *Accounting Changes and Error Corrections*) remains the same whether or not a registrant separately files a preferability letter from the auditor. A preferability letter therefore would not provide additional information. • AS 2820 states, "A change in accounting principle that has a material effect on the financial statements should be recognized in the auditor's report on the audited financial statements." A preferability letter is therefore redundant in light of the reporting requirements for auditors under current auditing standards. We acknowledge that in the context of a misstatement, entities may have attempted to justify the use of an allowable alternative accounting principle on the basis that it is preferable. However, we believe that auditors are already obligated to consider such instances in accordance with the PCAOB's note in AS 2820 that states, "A change from an accounting principle that is not generally accepted to one that is generally accepted is a correction of a misstatement." We do not believe, however, that the current requirement for a preferability letter exhibit offers any additional scrutiny of accounting changes beyond that provided under ASC 250 and AS 2820 because the independent accountant must simply state separately its conclusion without having to perform additional procedures or communicate incremental information within the letter.
	Summary: Maintain the current requirements for a change in accounting principle in an auditor's report (i.e., do not require an indication of preferability). **Details**: We do not believe that it is necessary for the independent accountant to indicate in the auditor's report whether a change in accounting principle is preferable. AS 2820 requires the auditor to "evaluate a change in accounting principle to determine whether . . .

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	the company has justified that the alternative accounting principle is preferable." Further, ASC 250-10-45-2 states that an entity can only change an accounting policy if "the entity can justify the use of an allowable alternative accounting principle on the basis that it is preferable." Accordingly, by issuing an unqualified opinion, the auditor acknowledges that the accounting change and related disclosures comply with GAAP in all material respects.
	Summary: Coordinate with the PCAOB when contemplating changes to the content of the auditor's report and expansion of the auditor's involvement. **Details**: The PCAOB is currently considering changes to its guidance on the content of the auditor's report and expansion of the auditor's involvement. We suggest that the Commission continue to coordinate its efforts with those of the PCAOB.
Risk Factors (Item 503(c))	**Summary: Encourage (but do not require) registrants to list risk factors in order of their priority to the company.** **Details**: Disclosure of registrants' risk factors can become voluminous, hindering the ability of investors to determine which factors are the most significant. To help registrants improve the organization of their risk factor disclosures and provide greater context about their significant risks, we suggest that the Commission encourage registrants to list risk factors in the order of their priority, in a manner consistent with SEC's instructions on Form 20-F for foreign private issuers.
Quantitative and Qualitative Disclosures About Market Risk (Market Risk Disclosures) (Item 305)	**Summary: Consider whether market risk disclosures continue to be necessary given that recently developed U.S. GAAP disclosure requirements are substantially similar to those required under Item 305.** **Details**: The SEC's requirements related to market risk disclosures took effect in 1997. Since then, U.S. GAAP has evolved considerably, and the current disclosure requirements related to market risk under U.S. GAAP have expanded significantly (e.g., ASC 815, *Derivatives and Hedging;* ASC 820, *Fair Value Measurements;* and ASC 825, *Financial Instruments*). The disclosure requirements in that guidance are substantially similar to those in Item 305, particularly for less sophisticated financial services institutions and nonfinancial services entities, which often use standardized methods to qualitatively and quantitatively provide disclosures about market risk. Therefore, we recommend that the SEC consider whether the disclosures required by Item 305 continue to be relevant in light of the guidance in U.S. GAAP.

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	Summary: If market risk disclosures are retained, consider whether investors and other users would benefit from disclosures that are tailored to reflect a registrant's holistic market risk exposure and corresponding risk management activities. **Details**: Market risk disclosures appear to be primarily relevant for large financial services and commodity institutions that are engaged in market making activities or actively use derivative instruments as part of their risk management practices and that have the capacity to informatively disclose the institution's tailored risk management activities and market risk exposure. Less sophisticated institutions often lean toward providing standardized descriptions of market risk, which offer little clarity about their unique market risks and risk management activities. Market risk disclosures also do not appear to be as relevant for nonfinancial services entities since they are primarily involved in derivative trading as a means to hedge their underlying business risks, which is not fully contemplated in Item 305. To make information about market risk disclosures more meaningful for a broader range of companies, the Commission should consider whether investors and users would benefit from information that is less standardized and tailored to reflect holistic market risk exposures and corresponding risk management activities.
Industry Guides — General	**Summary: Continue to modernize the industry guides.** **Details**: In recent years, the guidance in U.S. GAAP has been promulgated in ways that render some of the requirements of the SEC's industry guides less meaningful or relevant than when the guides were first developed. We note that the Commission has recently proposed rules to modernize property disclosure requirements for mining registrants, and we understand that a similar review of Guide 3, "Statistical Disclosure by Bank Holding Companies," is in process. We encourage the Commission to continue its evaluation of all the industry guides to provide investors with more comprehensive and relevant information about the respective industries.
Statistical Disclosure by Bank Holding Companies (Industry Guide 3)	**Summary: Consider whether certain disclosure requirements in Part C of Item II, "Investment Portfolio"; Item VI, "Return on Equity and Assets"; and Item VII, "Short Term Borrowings," continue to be informative or useful for investors.** **Details**: Part C of Item II requires disclosure of the aggregate book value and aggregate market value of securities of an issuer when the aggregate book value of such securities exceeds 10 percent of stockholder's equity. In practice, registrants often do not disclose information in response to this requirement because they generally do not exceed the quantitative threshold, in part because capital

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	requirements for banks have increased. In addition, U.S. GAAP (ASC 825-10-50-21) requires certain disclosures about concentrations of credit risk, which may offer similar information should a concentration exist. Therefore, we encourage the Commission to consider the usefulness of these disclosures as it evaluates the requirements of Industry Guide 3. Item VI prescribes disclosure of four ratios (return on assets, return on equity, dividend payout, and equity to assets) and outlines the method of calculation for each ratio. The ratios can be calculated on the basis of information provided in the Annual Report on Form 10-K. Since the industry guide was written, disclosure requirements regarding regulatory capital and other similar measures have evolved. Therefore, we encourage the Commission to consider the usefulness of these disclosures as it evaluates the requirements of Industry Guide 3. Item VII requires, for each category of short-term borrowing, disclosure of the amount outstanding at the end of the period, the maximum amount outstanding during the reporting period, and the approximate average amount outstanding, along with related interest rates. Item I, "Distribution of Assets, Liabilities and Stockholders' Equity, Interest Rates and Interest Differential," generally requires disclosure of average balances and interest rates for short-term borrowings in the aggregate. Therefore, certain Item VII disclosures, while more detailed, appear to duplicate the disclosures required by Item I. In addition, as the banking industry evolves, the use of short-term liquidity has decreased. Therefore, we encourage the Commission to consider the usefulness of these disclosures as part of its evaluation of the requirements of Industry Guide 3.
	Summary: Consider whether the quantitative threshold in Part D of Item V, "Deposits," which requires disclosure of deposit in amounts of $100,000 or more, should be updated to be more meaningful (e.g., in a manner consistent with the FDIC insurance limits currently in U.S. GAAP). **Details**: Part D of Item V requires disclosure of the amount of outstanding time certificates of deposits and other deposits in excess of $100,000. Similar disclosures required by U.S. GAAP (ASC 942-405-50-1, *Financial Services — Depository and Lending*) have recently been updated to refer to FDIC insurance limits (currently $250,000) rather than an arbitrary amount. Therefore, we encourage the Commission to consider such change as it evaluates the disclosure requirements of Industry Guide 3.

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Preparation of Registration Statements Related to Interest in Real Estate Limited Partnerships (Industry Guide 5)	**Summary: Consider summarizing and combining meaningful disclosures of prior performance for registrants subject to Industry Guide 5.** **Details**: Registrants subject to Industry Guide 5 are required to provide, among other disclosures, a narrative summary of prior performance and detailed quantitative disclosures of prior performance related to both open and completed investment programs. The presentation requirements are specifically prescribed, which may make preparation of such tables onerous, and the information may not be meaningful, particularly when prior programs are not similar to the current programs being registered. In addition, the information provided in prior-performance tables may not be informative given the use of multiple share classes with differing expense loads and servicing fees and differences in compensation structures. While certain performance results of the adviser and past programs may be useful, the Commission should consider whether summarized information would be more meaningful and relevant to potential investors. For example, the Commission could consider combining the meaningful disclosures into one table for open programs and one table for completed programs. This approach would eliminate the multiple tables required and limit details presented in the tables to those that are most useful and relevant to potential investors.
Disclosures Concerning Unpaid Claims and Claim Adjustment Expenses of Property Casualty Insurance Underwriters (Industry Guide 6)	**Summary: Consider whether the 10-year loss reserve development table remains meaningful after issuance of FASB Accounting Standards Update (ASU) No. 2015-09, *Financial Services — Insurance (Topic 944): Disclosures About Short-Duration Contracts*.** **Details**: Registrants subject to Industry Guide 6 are required to provide, among other disclosures, an aggregated 10-year loss reserve development table. With the issuance of ASU 2015-09, registrants will be subject to a new U.S. GAAP disclosure requirement to provide similar tabular information in the incurred- and paid-loss development tables. Although the new U.S. GAAP disclosure requirement is similar to the Industry Guide 6 requirement, they differ in key respects, including the following: • The disclosures required under the ASU are intended to provide claim information by accident year instead of tracking subsequent activity associated with a given reporting year's year-end reserves. • The ASU requires disaggregated tables, while the table in Industry Guide 6 is aggregated. • The ASU does not require disclosure of information for 10 years; rather, the periods presented need not exceed 10 years. • The ASU requires health insurance claim activity to be included in the development tables.

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<tr><th>Topic</th><th>Recommendation</th></tr>
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The ASU requires tabular amounts to be presented net of reinsurance.
Information for the most recent reporting period included in the development tables required under the ASU will be audited.

As part of its evaluation of the disclosure requirements of Industry Guide 6, we encourage the Commission to consider whether the aggregated 10-year loss reserve development table continues to provide useful information to investors and users of financial statements given the issuance of ASU 2015-09.</td></tr>
<tr><td colspan="2">Presentation and Delivery of Important Information</td></tr>
<tr><td rowspan="2">Cross-Referencing and Hyperlinks</td><td>Summary: Coordinate with the PCAOB to ensure clarity about what information forms a set of audited or reviewed financial statements if cross-referencing and internal hyperlinks from the financial statement to areas outside the financial statements are considered.

Details: Under current practice, it is common for companies to use cross-referencing and internal hyperlinks in the same filing (i.e., from one section to another section in the same filing), a practice we believe that the SEC should continue to encourage. While allowable, it is rare to see cross-references and internal hyperlinks in the footnotes to the audited financial statements to other sections in Form 10-K (MD&A, business section, etc.) since they could potentially cause confusion about what disclosures may be covered by the auditor's report. If the Commission is considering expanding the use of this form of cross-referencing and internal hyperlinks, we believe that it should coordinate with the PCAOB to ensure that there is clarity about what information forms a set of audited or reviewed financial statements.</td></tr>
<tr><td>Summary: Evaluate the use of external hyperlinks to information outside the EDGAR system (e.g., external Web sites) and consider its impact on the auditor's responsibility under AS 2710 with respect to other information in documents containing audited financial statements and the related auditor's report.

Details: Regulation S-T, Rule 105, allows registrants to include hyperlinks (1) in a filing, (2) to exhibits within the same filing or (3) to other commission filings. However, the SEC's rules and regulations do not allow registrants to include hyperlinks to information outside the EDGAR system (i.e., external Web sites). While we encourage the Commission to evaluate the use of external hyperlinks to streamline information included in documents filed with the SEC, it should also consider the impact of such use on the auditor's professional responsibility under AS 2710, which addresses the auditor's responsibility with respect to "other information" in</td></tr>
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	documents containing audited financial statements and the related auditor's report. AS 2710 requires the auditor to read "other information" contained in a document that includes the independent auditor's report and consider whether such information, or the manner of its presentation, is materially inconsistent with the information, or manner of its presentation, in the financial statements on which the auditor has reported. Because of these responsibilities, it is important for the other information in a filing to be defined if external hyperlinks are introduced into the reporting system. Problems could arise if there is no clear definition or if the information in the external hyperlinks changes over time. Accordingly, the Commission should consider how the hyperlinked information is monitored over time and how to maintain oversight of it, particularly if the use external hyperlinks is being considered.
Summaries and Layered Disclosure	**Summary: Encourage the use of summaries and layered presentations of information enabled by "click-through" technology.** **Details**: The Commission should encourage the use of summary discussions and layering techniques, including "click-through" technology, to improve disclosures for investors and other users. The use of simplified summaries that highlight what management believes is the most important information, while still providing detailed data and analysis in a layered presentation, may help make filings more useful and navigable and will encourage presentation of information that is most important for investors and users. This approach will allow investors and users to choose different levels of information since some may prefer a summary presentation while others may seek detailed data that can be analyzed and compared among registrants or industries. The MD&A, risk factors, and business sections of the Form 10-K all lend themselves to such summaries and layered presentations.