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Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

31 October 2016

Re: Disclosure Update and Simplification (Release No. 33-10110; 34-78310; File No. S7-15-16)

Dear Mr. Fields:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or the Commission) in response to the proposing release, *Disclosure Update and Simplification*, under the Commission's disclosure effectiveness initiative.

We believe the proposing release is an appropriate step toward reducing the costs of complying with disclosure requirements and simplifying the related requirements, while still providing investors and markets with material financial information necessary for their decision making. We support substantially all of the proposed amendments to remove redundant, outdated or superseded SEC disclosure requirements. For this effort to be successful, we encourage the Financial Accounting Standards Board (FASB) to initiate and expedite a limited-scope project to consider the existing SEC disclosure requirements that the SEC decides to refer to the FASB for inclusion in US GAAP for public business entities.

Financial statement and other disclosures

To promote efficiency for financial statement preparers and comprehensive and timely periodic updates, we believe the FASB's Accounting Standards Codification (ASC or Codification) should be the primary source for all note disclosure requirements for public companies reporting under US GAAP. The FASB standard-setting process is rigorous, involves seeking extensive investor, preparer and other stakeholder input and is subject to implementation reviews, all of which appropriately consider investor interests during the standard-setting process. Our view is consistent with the recommendation in the *Final Report of the Advisory Committee on Improvements to Financial Reporting* (1 August 2008), to "integrate existing SEC and FASB disclosure requirements into a cohesive whole to ensure meaningful communication and logical presentation of disclosures, based on consistent objectives and principles."

In our view, it may be appropriate for the SEC to adopt targeted financial statement disclosure requirements for novel business developments or practices on a timely basis and as an interim measure until the FASB performs a more comprehensive review of the related accounting and disclosure area. Once the FASB adopts accounting and disclosure standards, the SEC should promptly rescind its temporary disclosure requirements to eliminate conflicting guidance and redundancies. To

facilitate this, the SEC should consider ways of streamlining and expediting the process for rescinding SEC disclosure requirements upon finding that they are no longer needed by investors or markets due to accounting standard-setting actions. For example, the SEC should consider implementing an annual technical review of its disclosure requirements, which culminates with issuing an interim final rule that rescinds or modifies aspects that have become redundant or unnecessary due to accounting standards that became effective in the past year and then requests public input on the appropriateness of the nature and extent of those changes.

Aside from such temporary financial statement note disclosures, the SEC rules and regulations should prescribe disclosure requirements only for information located outside the annual and interim financial statements and the notes to the financial statements (e.g., supplemental unaudited information for selected industries, management discussion and analysis (MD&A), legal proceedings, risk factors, pro forma financial information).

Given that many of the existing redundancies have resulted from subsequent developments in disclosure requirements of the FASB without timely reconsideration by the SEC, we believe periodic reviews by the SEC are important. For example, we have previously recommended that the Commission undertake periodic reviews of its disclosure requirements every five to 10 years to evaluate whether they are still relevant to investors in an evolving global business environment and address any redundancies that have not been resolved on a timely basis through the annual technical review process recommended above.

In this letter, we provide responses to certain questions posed in the proposing release and other thoughts for consideration by the SEC.

Disclosure location considerations

In various places in the proposing release, the Commission requested input on the benefits and costs to investors and preparers of relocating certain disclosures into or out of the financial statements. The proposing release also sought feedback on whether changing the location of certain disclosures within a filing could affect investors by changing the prominence and/or context of disclosures that move or remain.

We believe the primary purpose of the notes to the financial statements is to provide explanatory information about measurements in the financial statements or that may be reported in future periods based on events that have already transpired (e.g., contingencies). Otherwise, forward-looking information, analyses and expectations should be provided outside the notes to the financial statements and most preferably in MD&A. The addition of forward-looking information to the financial statement notes, other than those related to accounting measurements, introduces liability issues for preparers and verification/auditability issues for auditors and is not consistent with the objectives of the financial statements.

We also observe that electronic data analysis and search tools render the physical location of a disclosure within a filing less relevant. Users who read hard copies of SEC filings may not read the information "front to back" but instead focus on selected items they find useful. As a result, we do not have a preference or concern over the physical or sequential location of disclosures. For example, we do not believe that something disclosed in Item 1 is more prominent solely based on location because a user who is already familiar with the business and similar filings might choose to focus on the financial statements and MD&A.

Nevertheless, we recommend that issuers be provided latitude in the order of presentation and the prominence given to the disclosures, provided that the filing as a whole complies with the specific disclosure requirements in light of relevant materiality considerations. To facilitate such flexibility in organizing a filing, registrants should provide a cross reference to identify where in the filing each disclosure requirement is addressed.

FASB-related considerations

The FASB's proposal, *Notes to Financial Statements (Topic 235): Assessing Whether Disclosures Are Material*, would clarify that an omission of immaterial information from the notes to the financial statements is not an accounting error.

Provided that the SEC and the FASB retain consistent definitions of materiality,[1] we do not believe the FASB's proposal would have a significant effect on the SEC's proposed amendments. Certain aspects of the FASB's disclosure framework project, which is focused on both its own process for deciding what information to require in the notes to the financial statements and how to promote the use of discretion by reporting entities when evaluating which disclosures to provide, could further enhance disclosure effectiveness. Any referrals of existing SEC disclosures would appropriately be subject to the FASB's due process and its criteria for evaluating disclosures.

The FASB decided[2] in its project on interim reporting that disclosures about matters required to be provided in annual financial statements would be updated in the interim report if there is a substantial likelihood that a reasonable investor would view the updated information as significantly altering the total mix of information available to him or her We believe the FASB interim reporting project does not affect the SEC's proposed amendments. Instead, the project is an important step in aligning disclosure requirements for interim reporting with the objective of highlighting only material events and changes that have occurred subsequent to the end of the most recent fiscal year consistent with the view that interim periods are not discrete but integral parts of the annual fiscal period.

We hope that any referrals made to the FASB in connection with the SEC's adopting release that are related to interim disclosure requirements would be considered in light of this objective. We believe that the SEC and the FASB should re-embrace the concept that interim financial statements should be read in conjunction with the annual financial statements and that interim disclosures should focus only on matters that have arisen or changed materially during the interim period.

If the FASB and the SEC had consistent definitions of materiality, we don't believe the source of the disclosure requirements would significantly change the degree to which preparers comply with them, since preparers consider FASB and SEC disclosure requirements to be equally authoritative. The FASB's disclosure requirements historically have been developed through a rigorous due process (including extensive stakeholder outreach) and are subject to post-implementation reviews. The FASB's disclosure requirements are also likely to evolve over time to suit the needs of investors on a more timely basis.

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1 The FASB recently proposed changing the definition of materiality in FASB Concepts Statement No. 8, *Conceptual Framework for Financial Reporting*. In our comment letter to the FASB dated 23 December 2015, we expressed a view that the definition of materiality included in the superseded Concepts Statement No. 2 is directionally consistent with the Supreme Court's definition and provides a better definition of materiality than what was proposed by the FASB.

2 Refer to the minutes from the FASB's meeting on 28 May 2014, available at: http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176164094480.

Bright-line disclosure threshold considerations

In general, we believe many of the bright-line thresholds included in the SEC disclosure requirements should be eliminated. Prescriptive thresholds fail to allow reasoned judgments about whether a disclosure item would be material, which is specific to each separate set of financial statements and based on both quantitative and qualitative considerations. In addition, we observe that the SEC's proposal to eliminate many of the bright-line disclosure requirements is consistent with the proposed elimination of "at a minimum provide" disclosures in the FASB's proposal related to disclosures in the notes to financial statements.

Smaller reporting company considerations

We believe compliance with financial statement disclosure requirements should be focused on materiality, which is subject to a company's facts and circumstances and not necessarily its relative size. Accordingly, we do not have concerns if proposed changes effectively would eliminate existing disclosure accommodations for smaller reporting companies.

Category II — Redundant or duplicative requirements

We support the proposed deletion of all disclosure requirements outlined in Category II because we agree with the staff's assessment that doing so would simplify issuer compliance with disclosure requirements while providing substantially the same information to investors. In addition, we recommend that a portion of Rule 3A-02(d) of Regulation S-X be moved to MD&A.

Consolidation — material exchange restrictions or controls

The second sentence in Rule 3A-02(d) requires disclosures about material exchange restrictions or controls relating to the currency of a foreign subsidiary's domicile. By contrast, US GAAP only prescribes that foreign subsidiaries operating amid severe foreign exchange restrictions casting doubt about the parent's ability to control them should not be consolidated.[3] US GAAP is currently silent on the disclosures a parent is expected to provide when it decides to consolidate a foreign subsidiary operating in an environment with foreign exchange restrictions and controls. The proposing release would move the substance of the second sentence in Rule 3A-02(d) to Rule 3-20(b)(2), *Currency for financial statements*.[4] While we agree with retaining the disclosure, it seems more consistent with the objectives of MD&A given its relationship to a discussion of trends and uncertainties related to liquidity. Accordingly, we recommend moving the requirement to Item 303 rather than retaining it in the footnotes.

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3 ASC 810-10-15-10.

4 The proposed amendment to Rule 3-20 specifies: "If there are material exchange restrictions or controls relating to the currency of a subsidiary's domicile, the currency held by a subsidiary, or the currency in which a subsidiary will pay dividends or transfer funds to the issuer or other subsidiaries, prominent disclosure of this fact shall be made in the financial statements."

Category III.C — Overlapping requirements — proposed deletions

We support all proposed deletions in Category III.C and highlight the following recommendations.

Distributable earnings for registered investment companies

The proposed amendment to Rule 6-04.17 of Regulation S-X would remove the requirement for registered investment companies and business development companies (collectively, regulated investment companies) to disclose separately in components of capital on the balance sheet the accumulated undistributed net investment income, accumulated undistributed net realized gains (losses) on investment transactions and net unrealized appreciation (depreciation) in value of investments.[5] The proposal would require that the total, rather than components of distributable earnings or loss, be presented on the balance sheet. The proposed amendment would align S-X Rule 6-04.17 with US GAAP.

Under US GAAP, investment companies are required to disclose the components of distributable earnings on a tax basis in the notes to the financial statements.[6] We concur with the Commission's statement in the proposing release that disclosing the components of distributable earnings on a tax basis would be more useful to investors, because regulated investment companies are generally structured such that they are not subject to entity-level taxation on the amounts distributed to their investors. In addition, tax-basis information provides shareholders with insight into the tax implications of distributions.

We recommend that the Commission also amend Rule 6-09.3 of Regulation S-X to align it with US GAAP and require regulated investment companies to state separately in the statement of changes in net assets only distributions that represent tax return of capital and the aggregate of all other distributions.[7]

If the Commission agrees with our recommendation to amend Rule 6-09.3 of Regulation S-X, we also recommend that the Commission make conforming amendments to the per-share rollforward that is required to be presented in the financial highlights section under Item 13(a) of Form N-1A and Item 4.1 of Form N-2. That is, we recommend eliminating the requirements for regulated investment companies to disclose separately in the per-share rollforward dividends per share from net investment income and distributions per share from capital gains, and requiring instead disclosure of distributions per share as a result of tax return of capital and the aggregate of all other distributions per share.

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5 Although Article 6 of Regulation S-X applies to registered investment companies, Instruction 1.a to Item 8.6 of Form N-2, registration statement used by closed-end management investment companies, requires that business development companies comply with the provisions of Regulation S-X generally applicable to registered investment companies.

6 ASC 946-20-50-11 requires all investment companies to disclose only two components of capital on the balance sheet: shareholder capital and distributable earnings. The components of distributable earnings, on a tax basis, must be disclosed in a note to financial statements. This information helps investors determine the amount of accumulated and undistributed earnings they potentially could receive in the future and on which they could be taxed.

7 ASC 946-20-50-8 requires that dividends paid to investors be disclosed as a single line item in the statement of changes in net assets, except tax return of capital distributions, which must be disclosed separately. The notes must disclose the tax-basis components of the dividends paid (that is, either from ordinary income, capital gains or tax return of capital). Disclosing dividends on a tax basis is consistent with how dividends are reported to shareholders during and at the end of the calendar year. The financial highlights table would disclose per-share information that is consistent with the statement of changes in net assets.

Interim financial statements — pro forma business combination information

We support removing the supplemental pro forma disclosure requirements for interim financial statements in Rules 10-01(b)(4) and 8-03(b)(4) in favor of the US GAAP supplemental acquisition pro forma disclosure requirements.[8] However, we note that some inconsistencies in the preparation of pro forma financial information for acquisitions under ASC 805-10-50-2(h) and Article 11 of Regulation S-X would remain:

- Adjustments that are directly attributable to the acquisition transaction but do not have a continuing impact on the registrant ("non-recurring adjustments" as outlined in ASC 805-10-50-2(h)(4)) are included in the preparation of the supplemental revenue and earnings information under ASC 805 but are prohibited in the preparation of pro forma financial information under Article 11.

- Article 11 requires adjustments related to the pro forma income statement to be computed assuming the transaction was consummated at the beginning of the fiscal year presented. In contrast, the assumed acquisition date used to compute pro forma operating results under ASC 805 is not revised as the financial statements are updated. These differences cause Article 11 pro forma operating results that might initially agree with US GAAP pro forma operating results to differ when the Article 11 pro forma financial information is updated.

We recommend that, along with removing the supplemental pro forma disclosure requirements in Rules 10-01(b)(4) and 8-03(b)(4), the SEC also request the FASB to take up a project to:

- Provide public business entities with guidance on the preparation of supplemental pro forma disclosures

- Work with the SEC to eliminate the inconsistencies in the preparation of pro forma financial information between US GAAP and Article 11

- Consider replacing the requirement to disclose "pro forma earnings" with a requirement to disclose "pro forma income from continuing operations" or another appropriate line item on the face of the statement of comprehensive income, because the term "earnings" is not consistently understood or applied among preparers and its use increases diversity in the preparation and presentation of supplemental pro forma information in the notes to the financial statements.

Interim financial statements — dispositions

We support the proposal to remove the requirement in S-X Rule 8-03(b)(4) for smaller reporting companies to present pro forma information about significant dispositions (including pro forma revenue). However, the basis articulated in the proposal for this change implies that smaller reporting companies are currently required to file pro forma financial information for significant disposed businesses under S-X Rule 8-05 and instructions in Item 9.01 of Form 8-K. While some smaller reporting companies may voluntarily provide such pro forma information, we believe the current text of S-X Rule 8-05 only applies to significant acquisitions. The proposed change, therefore, would retain the asymmetry between smaller reporting companies and other reporting companies in the Form 8-K reporting of pro forma information for significant dispositions while eliminating an existing interim disclosure requirement for smaller reporting companies.

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8 ASC 805-10-50-2(h).

To address this asymmetry, the Commission could conform the requirements in Rule 8-05 for smaller reporting companies with those in Article 11 and thus require presentation of pro forma information for significant dispositions by all registrants in Form 8-K and registration statements. This would be consistent with the interpretive guidance in section 5320 of the SEC staff Financial Reporting Manual, which states, "pro forma financial information should be presented whenever consummation of an event or transaction has occurred or is probable for which disclosure of pro forma information would be material to investors. Smaller reporting companies should consider the guidance in S-X Article 11."

Research and development activities

We support the proposed deletion from Item 5.C of Form 20-F of the requirement to disclose the amount spent on company-sponsored research and development activities because similar disclosure requirements exist in IFRS and many country-specific GAAP. The release proposes to retain the requirement for foreign private issuers (FPIs) to "provide a description of the company's research and development policies for the last three years." It is unclear what information this requirement is trying to elicit, and we do not understand why such a disclosure would only apply to FPIs. Therefore, we question whether such a disclosure requirement should remain. If the Commission concludes that it is beneficial to retain this disclosure, we recommend clarifying whether it relates to accounting policies or research and development activities.

Dividends

We understand from section V.B.4.c of the proposing release that part of the reason for extending the S-X Rule 3-04 disclosure of changes in stockholders' equity to interim periods would be to facilitate the presentation of interim dividends per share. However, we are not convinced that the solution proposed is necessary or efficient. Disclosure of total cash dividends and dividends per share for each interim period should not require adding a reconciliation or rollforward of all stockholders' activity for the period. As an alternative, we propose moving the interim dividends per share from the face of the income statement to the notes to the financial statements to eliminate the acknowledged conflict with US GAAP, while retaining the disclosure of the amount and frequency of cash dividends declared for the two most recent fiscal years and any subsequent interim period within S-K Item 201(c)(1).

Category III.D — Overlapping requirements — proposed integrations

We support substantially all proposed rule integrations in Category III.D and recommend the Commission also consider adopting the suggestions below:

Foreign currency

The proposed amendment to Rule 3-20(a) of Regulation S-X would require issuers that do not qualify as FPIs to always present their financial statements in US dollars. This would be a significant change for issuers that currently rely on the interpretive SEC staff position that allows US incorporated registrants that conduct substantially all of their operations in a foreign functional currency environment and that have little or no assets and operations within the US to select the foreign functional currency as their reporting currency. We recommend that the SEC codify the related SEC staff interpretive guidance in section 6640 of the Financial Reporting Manual and retain this accommodation for domestic and foreign issuers that do not qualify as FPIs.

We also believe that Rule 3-20 of Regulation S-X could be reorganized to promote preparer understanding of its proposed broader scope. To that end, we recommend the rule first list the requirements currently placed in Rule 3-20(b) that apply to all issuers and then list the requirements that apply only to FPIs.

Geographic areas

We support the SEC's proposed deletion of the disclosure requirements in Item 101(d)(4) of Regulation S-K. However, we question whether the related proposed revisions to Item 303 are necessary, and we are concerned they could be inconsistently interpreted and applied. We believe the addition of the phrase "geographic area" immediately after "for each reportable segment" could be interpreted by some registrants to mean that separate MD&A discussions of operations are required first on a segment-by-segment basis and then for the entire business broken down by geographic area regardless of the basis for segment reporting, while others may believe that there is a choice to discuss operations on segment basis or geographic basis.[9] We believe the requirement to consider further discussion on a geographic basis is already embodied in the following language in Item 303: "...where in the registrant's judgment a discussion of segment information or other subdivisions of the registrant's business would be appropriate to an understanding of such business."

Category III.E — Overlapping requirements — potential modifications, eliminations or FASB referrals

We support referring to the FASB many of the disclosure requirements outlined in Category III.E of the proposing release. However, we believe in certain cases the differences between SEC requirements and US GAAP are not significant enough to warrant retaining two sets of requirements until the FASB reconsiders the topic, particularly if the FASB has recently addressed the topic in its standard setting. We also offer additional thoughts to the Commission and FASB on how to integrate some of the other SEC disclosure requirements into the Codification in a meaningful and expeditious manner.

Consolidation

We believe S-X Rule 3A-03(b) should be deleted in its entirety, because ASC 805 has substantially equivalent disclosure requirements for the first consolidation of a business and ASC 810-10-50-1B provides disclosure requirements on the first consolidation/deconsolidation of entities under the variable interest entity model and the consolidation of entities under the contract model. We have observed that many reporting entities provide these US GAAP disclosures whenever the period in which the transaction or event occurred is presented on a comparative basis. If the SEC's objective in retaining S-X Rule 3A-03(b) is to highlight the lack of comparability in any of the annual periods due to a "change in persons" consolidated or combined, we observe that ASC 205-10-45[10] requires reporting entities to highlight any events leading to a lack of comparability.

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[9] Registrants were required before 1998 to disclose certain financial information in MD&A by both "industry segment" as defined in SFAS 14, *Financial Reporting for Segments of a Business Enterprise*, and by geographic area. This requirement was eliminated in 1998 by Financial Reporting Release 503.01, *Industry Segment Reporting*, which was issued in response to the FASB's adopting SFAS 131, *Disclosures about Segments of an Enterprise and Related Information*.

[10] ASC 205-10-45-3 states that "prior year figures shown for comparative purposes shall in fact be comparable with those shown for the most recent period. Any exceptions to comparability shall be clearly brought out as described in Topic 250." ASC 205-10-45-4 states that "notes to the financial statements, explanations, and accountants' reports containing qualifications that appeared on the statements for the preceding years shall be repeated, or at least referred to, in the comparative financial statements to the extent that they continue to be of significance."

Income tax disclosures

The proposing release asks whether additional income tax disclosures and further disaggregation of foreign amounts would be useful to investors. We observe that, as part of its disclosure framework project, the FASB issued a proposal[11] that would modify the current income tax disclosure requirements (the proposed income tax ASU). As a result, a substantial portion of the additional contemplated disclosures on income taxes have recently been deliberated by the FASB.

As part of its decision-making process, the FASB has:

- Deliberated certain requirements contemplated in the proposing release, including the benefits, costs and impediments of further disaggregation of foreign taxable income and income tax expense by significant jurisdiction.[12] Accordingly, absent the FASB's adopting changes to ASC 740 in response to constituent feedback to the proposed income tax ASU, we believe the SEC should not require additional income tax disclosures or disaggregation of foreign taxable income and income tax expense.

- Considered the needs of investors, including any potential implications for smaller companies. By replacing the term "public entity" with the term "public business entity" as defined in the Master Glossary of the Codification, we believe the FASB determined during its deliberations that the benefits of extending some income tax disclosure requirements to Regulation A and crowdfunding issuers (i.e., smaller companies that are not SEC registrants), certain community banks and insurance entities would exceed the additional costs.[13] Accordingly, we believe the SEC should not expand the scope of the income tax disclosures ultimately adopted by the FASB and not adopt any additional income tax disclosure requirements or relief.

If the proposed income tax ASU is not adopted, we recommend that the SEC consider the comments received by the FASB as part of its due process and consider whether further amendments and expansions to S-X Rule 4-08(h) are warranted. If the FASB's proposal is adopted, we believe that S-X Rule 4-08(h) should be deleted in its entirety.

Interim financial statements — computation of earnings per share

The proposing release suggests referring to the FASB the disclosure of the computation of earnings per share in interim financial statements.[14] However, ASC 260-10-50-1 already requires a reconciliation of the numerator and denominator of both basic and diluted earnings per share "for each period for which an income statement is presented," which appears to include interim financial

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11 Proposed Accounting Standards Update (ASU) *Income Taxes (Topic 740) — Disclosure Framework — Changes to the Disclosure Requirements for Income Taxes*.

12 See further discussion in the Background Information and Basis for Conclusions of the proposed income tax ASU, BC21 through BC26.

13 The proposed income tax ASU would replace the term "public entity" in ASC 740 with the term "public business entity" as defined in the Master Glossary of the Accounting Standards Codification.

14 Rule 10-01(b)(2) of Regulation S-X and Item 601(b) of Regulation S-K.

statements, and we believe that is how it is usually applied.[15] Accordingly, we support deleting the overlapping requirements in Rule 10-01(b)(2) of Regulation S-X and Item 601(b) of Regulation S-K and do not think a referral to the FASB is necessary.

Interim financial statements — retroactive prior period adjustments

Rules 10-01(b)(7) and 8-03(b)(5) of Regulation S-X and ASC 250-10-50-6 require disclosure of the effect of changes in reporting entities on net income (in total and per share) in the period of change and for all periods presented. Further, the SEC rules explicitly require additional disclosure by entities other than smaller reporting companies of the effect of the change on retained earnings. ASC 250-10-50-6 requires presentation of the effect of the change "on other appropriate captions" or on "the applicable net assets or performance indicator," and we have observed that reporting entities often disclose the effect of a change in the composition of consolidated or combined subsidiaries on additional financial statement line items besides those prescribed in the SEC rules (e.g., effect on consolidated revenues, income from continuing operations, total assets). Therefore, we support deleting from Rules 10-01(b)(7) and 8-03(b)(5) all disclosure requirements related to changes in reporting entities, and referring to the FASB a request to reconsider the disclosure requirements in ASC 250-10-50-6. We believe during its standard-setting due process, the FASB will appropriately weigh the benefits to investors and costs to reporting entities of disclosing the effect of a change in reporting entity on retained earnings and whether to modify the existing requirements in ASC 250-10-50-1 to include additional financial statement captions and performance indicators.

Interim financial statements — common control transactions

We believe that investors in certain industries (e.g., oil & gas master limited partnerships) may benefit from disclosure of key performance indicators (e.g., income from continuing operations and net income) on a separate basis for periods prior to a combination of entities under common control reported retroactively. Therefore, we support retaining the requirement in S-X 10-01(b)(3) pending reconsideration by the FASB. For similar reasons, we question whether disclosure of the supplemental separate results of the combined entities should be limited to interim periods. The proposing release points to ASC 250-10-50-6 as the source of existing overlapping annual disclosure requirements. However, we believe those disclosures do not accomplish the same objective and are only required in the year of the change rather than until the financial statements no longer include the date of combination.

Products and services

Item 101(c)(1)(i) requires disclosure of the amount or percentage of revenue from any class of similar products or services which account for 10 percent or more of consolidated revenue in any of the last three fiscal years or 15 percent or more of consolidated revenue, if total revenue did not exceed $50 million during any of such fiscal years. It appears that the objective of the quantitative disclosure requirement in Item 101(c)(1)(i) is to highlight to investors significant concentrations. However, the US GAAP disclosure requirement[16] is more comprehensive as it calls for disclosure of all revenue for each product and service or each group of similar products and services without regard to any bright-line threshold.

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[15] Our interpretation is supported by paragraph 137 in the Basis for Conclusions to SFAS 128, *Earnings per Share*, the source for the disclosure requirement in ASC 260-10-50-1.

[16] ASC 280-10-50-40.

We believe that the existing quantitative disclosure requirements about products and services in S-K Item 101 are redundant and duplicative of US GAAP, and that none of the differences warrant referral to the FASB. Accordingly, it would be appropriate to delete the quantitative disclosure requirements about products and services in Item 101(c)(1)(i). While US GAAP provides an impracticability exception, we don't see the exception used frequently and then usually by companies with financial reporting systems that have limited reporting functionality. However, when the exception has been applied, the same practicability issues would apply to the Item 101 quantitative disclosures.

Major customers

Disclosure requirements about major customers in US GAAP[17] and S-K Item 101 are substantially similar (except for the Item 101 requirement to name significant customers) and share a common objective to inform readers about significant concentrations in revenue with one or more customers. Accordingly, we recommend that the SEC delete its disclosure requirement related to major customers in Items 101(c)(1)(vii) and 101(h)(4)(vi).

We believe the existing GAAP disclosure requirement[18] is sufficient to highlight customer concentrations and their related risks without inflicting potential competitive harm by having reporting entities name their major customers. MD&A should provide supplemental information about those risks and uncertainties, particularly the uncertainty of generating future revenue or collection of receivables from significant customers. In our view, naming customers is not essential to achieving these disclosure objectives.

Legal proceedings

In our view, the SEC should not refer the legal proceedings disclosures currently required by Item 103 of Regulation S-K to the FASB for integration or inclusion in the Codification. The contingencies disclosures specified in ASC 450 are consistent with the financial statement objectives outlined in the introductory section of this letter. The ASC 450 accounting and disclosure model has withstood multiple deliberations and interpretations and has functioned as the conceptual basis for other US GAAP developed after its adoption by the FASB in 1975.[19]

The relocation of some of the additional disclosure requirements in Item 103 of S-K to the Codification would pose auditability challenges because the current Statement of Policy Regarding Lawyers' Responses to Auditor Requests[20] of the American Bar Association (ABA) does not provide guidance or requirements for attorneys to disclose such matters to auditors. If such additional disclosure requirements are incorporated into ASC 450, the ABA policy statement would have to be revised to

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17 ASC 275-10-50-18a.

18 ASC 280-10-50-42.

19 Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies* (July 10, 2010). This project was removed from the FASB's standard-setting agenda in 2012. The accounting and disclosure provisions in ASC 450 (formerly SFAS 5, *Contingencies*) were previously deliberated by the FASB and Emerging Issues Task Force (EITF) when issuing interpretations like FIN 45 in 2002, FIN 48 in 2006, EITF Topic D-77 in 1999 and FIN 34 in 1981, among others.

20 Also referred to as the "ABA policy statement."

allow auditors to perform corroborative procedures on the reporting entity's assertions about the disclosures related to litigation and environmental matters. For instance:

- For low probability/high magnitude proceedings, it is currently unclear whether "low probability" in Item 103 of Regulation S-K coincides with "remote" under ASC 450 and the ABA policy statement. Paragraph 5 of the ABA policy statement instructs lawyers to refrain from expressing to auditors judgments about outcomes, except in those few clear cases where the outcome is either "probable" or "remote."

- Attorney letters to auditors rarely provide a probability assessment for cases that would result in cease or desist or other nonmonetary damages that are within the scope of S-K Item 103. Paragraph 5 of the ABA policy statement currently instructs attorneys to provide an estimate of the monetary loss, if practicable, but it is silent about an attorney's reporting responsibility to auditors regarding nonmonetary damages. Potential nonmonetary damages also may not have a direct or estimable future financial effect. Accordingly, disclosures about potential nonmonetary damages seem inconsistent with the objective of the notes of the financial statements.

- The ABA policy statement requires attorneys to furnish information to auditors only on those unasserted claims that the reporting entity has specifically identified and determined are probable of being asserted. Item 103 of Regulation S-K requires all unasserted but contemplated legal proceedings by governmental authorities to be disclosed, regardless of the reporting entity's assessment about whether such proceedings are probable of being asserted. Absent a change to the ABA policy statement, auditors would not be in a position to receive corroborative information to assess the completeness of the reporting entity's disclosures related to unasserted claims by governmental authorities.

We prefer that the SEC reconsider the disclosure objectives of Item 103 and modernize its disclosure requirements, if deemed necessary, under a separate rulemaking project. We have also previously recommended that bright-line quantitative thresholds be removed, such as the $100,000 and 10% of consolidated current assets included in Item 103. Such bright lines assume that materiality, both quantitatively and qualitatively, is constant across all registrants. This appears to contradict the principle that both the SEC and the audit profession currently apply; materiality should be assessed based on the facts and circumstances unique to each company.[21]

We further believe incorporation of Item 103 into GAAP could add voluminous disclosure to the financial statement notes that would be unrelated to the other disclosures in the financial statements. We acknowledge that some investors and analysts may prefer to receive all information about legal proceedings in one location within a company's SEC filing to expedite their analyses. However, the disclosure requirements related to contingencies in Item 103 of Regulation S-K and ASC 450 have different objectives. Item 103 requires more information about case development over time, venue of legal proceedings and a broader spectrum of low probability, high magnitude loss situations that would be challenging to include in the notes to the financial statements and subject to a financial audit. Accordingly, if a single disclosure location for all legal proceedings is valuable to investors, we

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[21] Our comment letter dated 11 September 2012, on the SEC Regulation S-K review under section 108 of the Jumpstart our Business Startups Act and our comment letter dated 21 July 2016, on the SEC's concept release on business and financial disclosure required by Regulation S-K.

recommend that such location be outside the audited financial statements. The SEC could satisfy investor requests for a single disclosure location by expanding the disclosure requirements in Item 103 to include any incremental disclosures residing in ASC 450 or requiring cross reference or hyperlink in the legal proceedings section of a filing to the ASC 450 disclosures in the notes to the audited financial statements.

Oil and gas disclosures

We believe Item 302(b) of Regulation S-K could be removed in its entirety because it provides no incremental informational value to domestic issuers or to FPIs. All domestic SEC registrants are required to provide the disclosures under ASC 932-235 because they meet the definition of "publicly traded companies" used in ASC 932-235. FPIs are separately instructed by Item 7 of Form 20-F to provide the supplemental US GAAP disclosures on oil and gas activities under ASC 932-235 regardless of their GAAP basis of reporting. Further, we recommend that the SEC and the FASB work together to further reduce redundancies between ASC 932 and Subpart 1200 of Regulation S-K and develop a single cohesive set of requirements for supplemental unaudited oil and gas activity disclosures.

Category IV. Outdated Requirements

We support removal of all obsolete disclosure requirements outlined in Category IV. Outdated Requirements and highlight that the following may need further clarification.

Market price disclosures

We support the proposal to amend Item 201(a)(1) of Regulation S-K to require disclosure of the trading symbols for each class of the registrant's common equity. Further, we agree that only in the absence of an established trading market should it be necessary for an issuer to disclose the range of high and low bid information for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included. However, the terms "established trading market" and "limited or sporadic quotations" would likely need further clarification and definition.

Category V. Superseded Requirements

We support deleting all superseded disclosure requirements and terminology outlined in Category V. Superseded Requirements and draw attention to the following additional amendments for consideration.

Auditing standards

The proposed revision to S-X Rule 10-01(d) indicates that interim financial statements included in quarterly reports on Form 10-Q must be reviewed by an independent public accountant using "applicable professional standards and procedures for conducting such reviews." We highlight that periodic reports on Form 10-Q are those of an issuer, and therefore, the applicable professional standards with respect to such a review are those of the Public Company Accounting Oversight Board (PCAOB). To prevent any potential misinterpretation of which professional standards should be applied, we recommend that the Commission revise Rule 10-01(d) to state that interim financial statements included in quarterly reports on Form 10-Q must be reviewed by an independent accountant "in accordance with the standards of the PCAOB."

Related parties — intercompany profits (losses)

We believe Rule 4-08(k)(2) should be deleted in its entirety. Its scope is limited to the separate financial statements of a parent, subsidiary or investee, and it requires disclosure of intercompany profits (losses) from transactions with related parties. This requirement, which predates Statement of Financial Accounting Standards (SFAS) 57, *Related Party Disclosures*, is unnecessary because ASC 850-10-50-1 already requires disclosures about related party transactions necessary to understand their effects on the financial statements.[22] Further, it is unclear whether the scope of the explicit SEC disclosure requirement applies to transactions with all related parties or just members of the consolidated group. Accordingly, we recommend deleting Rule 4-08(k)(2). However, if the SEC decides otherwise, we recommend it clarify that the rule's scope only applies to intercompany profits (losses) recognized by the reporting entity on transactions with other members of its consolidated group and that the disclosure is not required in the separate financial statements of significant equity investees provided under S-X Rule 3-09.

Development stage entities

We support eliminating the outdated requirement to present cumulative financial information since inception for development stage entities from Rules 8-03(b)(6) and 10-01(a)(7) of Regulation S-X. We further recommend eliminating the definition of "development stage company" in Rule 1-02 of Regulation S-X to avoid any implication that Regulation S-X provides reporting requirements for development stage companies beyond those in the Codification.

Discontinued operations

We agree that the recent US GAAP changes to the definition of "discontinued operations" have superseded certain existing SEC disclosure requirements and support the proposed revisions to Instruction 1 to Rule 11-02(b) of Regulation S-X.

However, we believe the SEC should consider different revisions to Item 302 of Regulation S-K to better accomplish the objective. In lieu of the proposed changes, we recommend that the SEC change Item 302(a)(1) to require "income (loss) from continuing operations" to be disclosed in the supplementary quarterly financial information rather than "income (loss) before extraordinary items and cumulative effect of a change in accounting principle" as previously required. Presenting "income (loss) from continuing operations" as well as "net income (loss)" would highlight the effects of discontinued operations. We are unclear about what income statement line item was intended by the text of the proposed amendments, which currently refers to "income (loss)."

We also suggest that the SEC reconsider which interim period financial metrics must be disclosed on a per-share basis and make them consistent with measures that are presented on the face of the interim income statements.

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[22] ASC 850-10-50-1b requires disclosure of the following: A description of the transactions, including transactions to which no amounts or nominal amounts were ascribed, for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements.

Other outdated requirements

Consolidation requirements for registered investment companies

We recommend that the Commission eliminate the conflict between the investment company consolidation guidance in Regulation S-X and US GAAP by deleting Rule 6-03(c)(1)(i) of Regulation S-X. Rule 6-03(c)(1)(i) of Regulation S-X states that the financial statements of regulated investment companies may be consolidated only with those of subsidiaries which are investment companies. ASC 946-810-45-2 states that consolidation by an investment company of an investee that is not an investment company is not appropriate, with one exception. ASC 946-810-45-3 provides that an investment company holding a controlling financial interest in an operating entity should consolidate that investee, rather than measure its investment at fair value, if the investee provides services to the investment company (e.g., an investment adviser or transfer agent). In those cases, the purpose of the investment is to provide services to the investment company rather than to realize a gain on the sale of the investment.

Furthermore, it is unclear whether the term "investment companies" used in the phrase "subsidiaries which are investment companies" in Rule 6-03(c)(1)(i) Regulation S-X is consistent with the definition of "investment company" in US GAAP. While the term "investment company" under Rule 6-03(c)(1)(i) of Regulation S-X is likely based on the definition of an investment company in section 3(a) of the Investment Company Act of 1940 (1940 Act), US GAAP defines an investment company as an entity that meets the assessment criteria described in ASC 946-10-15-4 through 9.

There is also ambiguity about whether, under Regulation S-X, an investment company investee that could be consolidated by a regulated investment company must itself be a regulated investment company, or whether it could be an entity that would otherwise be an investment company under section 3(a) of the 1940 Act if it were not excepted from the definition of an investment company under the 1940 Act (e.g., a holding company or "a blocker entity" excepted from the definition of an investment company pursuant to section 3(c)(1) or 3(c)(7) of the 1940 Act).

Therefore, depending on the interpretation of "investment company" under Regulation S-X, an "investment company" subsidiary eligible for consolidation by a regulated investment company under US GAAP (e.g., a holding company or "blocker entity") technically may not be eligible for consolidation by a regulated investment company under Regulation S-X.

There are also certain entities that would not meet the definition of an investment company under section 3(a) of the 1940 Act because, for example, they do not invest or trade in securities (e.g., "a blocker entity" that invests only in commodities), but they would meet the definition under US GAAP. Such entities could be consolidated by regulated investment companies under US GAAP but technically could not be consolidated by regulated investment companies under Rule 6-03(c)(1)(i) of Regulation S-X.

In 2014, the Division of Investment Management issued Investment Management Guidance Update No. 2014-11 (IMGU) on investment company consolidation. The IMGU, among other things, expresses the staff's view that generally a regulated investment company should consolidate a wholly owned or substantially wholly owned subsidiary if the design and purpose of such subsidiary is to act as an extension of the regulated investment company's investment operations and facilitate the execution of the regulated investment company's investment strategy (e.g., a subsidiary that is a holding company

or blocker). The staff believes that consolidation of such subsidiary provides the most meaningful presentation,[23] which US GAAP permits; however, Regulation S-X may technically prohibit consolidation of certain of these subsidiaries. Therefore, we recommend that the Commission delete Rule 6-03(c)(1)(i) of Regulation S-X to eliminate the conflict between the investment company consolidation guidance and US GAAP and any ambiguity in Regulation S-X regarding which investment entities could and which operating entities should be consolidated by regulated investment companies.

Article 6A — Employee stock purchase, savings and similar plans

Plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) may file Forms S-8 and 11-K with their financial statements and schedules prepared in accordance with the US GAAP financial reporting requirements,[24] which are currently codified in ASC 962, *Plan Accounting — Defined Contribution Pension Plans*. We have observed that substantially all plans subject to ERISA choose to present financial statements compliant with US GAAP in their filings with the SEC instead of following the outdated presentation requirements in S-X Article 6A. Only a handful of plans, namely those that are not subject to ERISA regulation, are currently required to comply with the financial statement presentation requirements in S-X Article 6A. We encourage the Commission to rescind S-X Article 6A and allow all defined contribution plans to provide US GAAP-compliant financial statements in their filings on Forms S-8 and 11-K to promote comparability and remove redundancies between SEC rules and US GAAP.

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

Yours sincerely,

Ernst & Young LLP

Copy to: Wesley Bricker, Interim Chief Accountant, Office of Chief Accountant
Keith Higgins, Director, Division of Corporation Finance
Mark Kronforst, Chief Accountant, Division of Corporation Finance
Russell Golden, Chair, Financial Accounting Standards Board

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23 Prior to the issuance of the IMGU, the staff granted no action relief to certain regulated investment companies in connection with consolidation of such subsidiaries. *See* NGP Capital Resources Co., SEC Staff No-Action Letter (December 28, 2007) and Fidelity Select Portfolio, SEC Staff No-Action Letter (April 29, 2008).

24 29 CFR Chapter XXV — Employee Benefits Security Administration, Department of Labor, Part 2520.103-1.

Summary of recommendations

SEC rule/disclosure item affected	Proposing release discussion	EY commentary
In order of SEC disclosure requirement in the demonstration version of the proposing release		
▸ Rule 1-02 of Regulation S-X	▸ V.B.5 Development stage entities	▸ Remove the definition of development stage company.
▸ Rule 3-04 of Regulation S-X	▸ III.C.16 Dividends	▸ Do not extend the reconciliation of stockholders' equity requirement to interim financial statements.
▸ Rule 3-20(a) of Regulation S-X	▸ III.D.1 Foreign currency restrictions	▸ Codify the SEC staff interpretive guidance currently residing in section 6640 of the Financial Reporting Manual and retain the accommodation for certain issuers that are not FPIs to not use the US dollar as their reporting currency.
▸ Rules 4-08(k)(2) of Regulation S-X	▸ V.B.4 Consolidation	▸ Remove Rule 4-08(k)(2) given the disclosures required by ASC 850-10-50.
▸ Rule 4-08(h) of Regulation S-X	▸ III.E.7 Income tax disclosures	▸ Assess feedback in response to the FASB's proposed income tax ASU and related FASB standard setting and conclude whether further amendments and expansions to the disclosure requirements in Rule 4-08(h) of Regulation S-X are warranted or whether it can be deleted in its entirety.
▸ Rule 6-03(c) of Regulation S-X	▸ N/A	▸ Remove from Rule 6-03(c) the prohibition for an investment company to consolidate a controlled operating company providing services to the investment company.
▸ Rule 6-04.17 of Regulation S-X	▸ III.C.5 Distributable earnings for registered investment companies	▸ Amend Rule 6-09.3 of Regulation S-X to align it with US GAAP and require investment companies to state separately on the statement of changes in net assets only dividends that represent tax return of capital and all other distributions. ▸ Make conforming amendments to the per-share rollforward required to be presented in the financial highlights pursuant to Item 13(a) of Form N-1A and Item 4.1 of Form N-2.
▸ Rule 8-03(b)(4) of Regulation S-X	▸ Category III.C.10 Interim financial statements — dispositions	▸ Consider conforming the requirements in Rule 8-05 for smaller reporting companies with those in Article 11 of Regulation S-X related to pro forma information for significant dispositions.
▸ Rule 10-01(b)(2) of Regulation S-X and Item 601(b) of Regulation S-K	▸ III.E.10 Interim financial statements — computation of EPS	▸ Delete the requirements in Rule 10-01(b)(2) of Regulation S-X and Item 601(b) of Regulation S-K that overlap with US GAAP.
▸ Rule 10-01(b)(3) of Regulation S-X	▸ III.E.12 Interim financial statements — common control transactions	▸ Refer to the FASB for potential incorporation in US GAAP of the disclosure of supplemental separate pre-combination results of entities combined under common control in the interim period when the combination occurs, the annual period which contains such interim period and all other annual periods presented on a comparative basis with the annual period of the combination.
▸ Rules 10-01(b)(4) and 8-03(b)(4) of Regulation S-X	▸ Category III.C.9 Interim financial statements — pro forma business combination information	▸ Encourage the FASB to provide public business entities with guidance on the preparation of supplemental pro forma disclosures and eliminate inconsistencies in the preparation of pro forma financial preparation between US GAAP and Article 11 of Regulation S-X. ▸ Encourage the FASB to consider replacing the requirement to disclose "pro forma earnings" with "pro forma income from continuing operations."

SEC rule/disclosure item affected	Proposing release discussion	EY commentary
▸ Rules 10-01(b)(7) and 8-03(b)(5) of Regulation S-X	▸ III.E.11 Interim financial statements — retroactive prior period adjustments	▸ Delete from Rules 10-01(b)(7) and 8-03(b)(5) all disclosure requirements related to changes in reporting entities while asking the FASB to reconsider the disclosure requirements in ASC 250-10-50-6.
▸ Rule 10-01(d) of Regulation S-X	▸ V.B.1 Auditing standards	▸ Revise Rule 10-01(d) to state that an issuer's interim financial statements included in quarterly reports on Form 10-Q must be reviewed by an independent accountant "in accordance with the standards of the PCAOB."
▸ Rules 3A-02(d) and 3-20(b)(2) of Regulation S-X	▸ Category II.2 Consolidation	▸ Incorporate the disclosure about consolidated subsidiaries that operate under material exchange restrictions or controls into the requirements for MD&A.
▸ Rule 3A-03(b) of Regulation S-X	▸ III.E.2 Consolidation	▸ Delete.
▸ Article 6A of Regulation S-X	▸ N/A	▸ Allow all defined contribution plans to provide US GAAP-compliant financial statements and rescind the presentation requirements in Article 6A of Regulation S-X.
▸ Item 101(c)(1)(i) of Regulation S-K	▸ III.E.13 Products and services	▸ Delete.
▸ Items 101(c)(1)(vii) and 101(h)(4)(vi) of Regulation S-K	▸ III.E.14 Major customers	▸ Delete.
▸ Item 103 of Regulation S-K	▸ III.E.15 Legal proceedings	▸ Do not refer the legal proceedings disclosures currently required by Item 103 of Regulation S-K to the FASB for integration or inclusion in the ASC. The SEC should consider the disclosure objectives of Item 103 and modernize it if deemed necessary under a separate rulemaking project.
▸ Item 201(a)(1) of Regulation S-K	▸ IV.B.4 Market price disclosures	▸ Provide further clarification of the terms "established trading market" and "limited or sporadic quotations."
▸ Item 302(a)(1) of Regulation S-K	▸ V.B.8 Discontinued operations	▸ Amend Item 302(a)(1) of Regulation S-K to require supplementary quarterly financial information to disclose "income (loss) from continuing operations" where it currently requires "income (loss) before extraordinary items and cumulative effect of a change in accounting principle." ▸ Consider what interim financial metrics are required to be disclosed on a per-share basis and make them consistent, to the extent possible, with measures that are presented on the face of the interim income statements.
▸ Item 302(b) of Regulation S-K	▸ III.E.16 Oil and gas producing activities	▸ Delete Item 302(b) of Regulation S-K and work with the FASB to further reduce redundancies between the disclosures in ASC 932 and Subpart 1200 of Regulation S-K for public entities engaged in oil- and gas-producing activities.
▸ Item 5.C of Form 20-F	▸ Category III.C.14 Research and development activities	▸ Rescind the requirement to disclose research and development policies for FPIs or clarify whether it relates to accounting or actual R&D activities.