



Deloitte & Touche LLP
695 East Main Street
Stamford, CT 06901-2141

Tel: + 1 203 708 4000
Fax: + 1 203 708 4797

www.deloitte.com

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

File Reference No. S7-19-18

Re: SEC Proposed Rule Release No. 33-10526, *Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities*

Dear Mr. Fields:

Deloitte & Touche LLP is pleased to respond to the SEC's request for public comment on its proposed rule *Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities*.

We support the SEC's objective of improving its disclosure requirements to enhance the information provided to investors and promote efficiency, competition, and capital formation. As we discussed in our November 2015 letter¹ in response to the Commission's *Request for Comment on the Effectiveness of Financial Disclosures About Entities Other than the Registrant*, we believe that for many preparers, complying with the existing requirements regarding guaranteed securities² is challenging, time-consuming, and costly. In addition, we understand that for collateralized securities,³ registrants may structure transactions to avoid such requirements by reducing the amount of collateral an investor might otherwise receive in the event of default.

While we believe that the guidance in the proposal will result in decision-useful information for investors and other financial statement users as well as mitigate some of the costs and unintended consequences associated with the current rules, the Commission may wish to consider our observations and recommendations below as it finalizes the proposed requirements. Unless stated or implied otherwise, our comments apply to both guaranteed and collateralized securities.

¹ Available at <https://www.sec.gov/comments/s7-20-15/s72015-5.pdf>.

² See Regulation S-X, Rule 3-10, "Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered."

³ See Regulation S-X, Rule 3-16, "Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered."

Summarized Financial Information

Under the proposal, condensed consolidating financial information would be replaced with summarized financial information, as specified in Regulation S-X, Rule 1-02(bb)(1),⁴ for each issuer and guarantor (together, the “obligor group”) that may be presented on a combined basis. We believe that investors and other financial statement users are best positioned to provide input on the most meaningful level of detail regarding obligor group information. The Commission may wish to consider whether requiring separate disclosure of the amounts in each caption of the combined summarized financial information related to the nonobligated entities would enhance the usefulness of the information. Such amounts would include the total noncurrent assets of the obligor group attributable to the investment in nonobligated entities, the net income of the obligor group attributable to the investment in the nonobligated entities, and intercompany amounts and transactions with the nonobligated entities, to the extent material. The proposal appears to suggest that disclosures about these amounts should be provided if they would be material;⁵ however, registrants may benefit from more explicit guidance related to when disclosing such information would be useful. The Commission could also consider whether using different measures such as operating income (or other relevant measures, depending on a registrant’s industry) instead of or in addition to net income would provide information that is valuable to investors and other financial statement users.

Methods for Presenting Investments in Nonobligated Entities in Summarized Financial Information of the Obligor Group

The proposal indicates that financial information of nonobligated entities must not be combined (i.e., consolidated) within the summarized financial information of the obligor group even though the nonobligated entities would otherwise be consolidated by an issuer or guarantor under U.S. GAAP. The proposal further allows registrants to select a method for presenting investments of the obligor group in nonobligated entities (other than consolidation). The selected method must be disclosed, applied consistently, and reasonable in the circumstances.

We believe that methods consistent with those in U.S. GAAP may be reasonable for presenting the nonobligated entities in summarized financial information of the obligor group. Therefore, the following methods outlined in ASC 321⁶ and ASC 323⁷ could be used:

- Fair value.
- Practicability exception for equity investments without a readily determinable fair value.⁸
- Equity method of accounting.

However, registrants, investors, and other financial statement users are best positioned to provide feedback on whether methods other than those described above may be reasonable for presenting investments in the nonobligated entities in the summarized financial information of the obligor group. If the final rule permits the use of methods other than those based on existing U.S. GAAP principles (as described above), the Commission should consider specifically identifying and describing such acceptable methods. Further, if the Commission decides to require auditor assurance for the financial information of the obligor group (see discussion of location and

⁴ Regulation S-X, Rule 1-02(bb)(1), “Summarized Financial Information.”

⁵ The proposal states on page 96, “For example, if a material amount of reported revenues of the affiliate(s) are derived from transactions with related parties, such as other subsidiaries of the registrant whose securities are not pledged as collateral, disclosure of such related party revenues would be required.”

⁶ FASB Accounting Standards Codification Topic 321, *Investments — Equity Securities*.

⁷ FASB Accounting Standards Codification Topic 323, *Investments — Equity Method and Joint Ventures*.

⁸ ASC 321-10-35-2 states that when an equity security does not have a readily determinable fair value and does not qualify for the net asset value practical expedient, an entity may elect to measure the equity security at cost minus impairment plus or minus price changes observable in orderly transactions for the same or similar equity security.

assurance requirements below), any acceptable methods identified should be objectively auditable. We also encourage the Commission to consider whether implementation guidance would benefit registrants, investors, and other financial statement users by improving the clarity of the requirements and consistency in their application. Such implementation guidance could, for example, help registrants determine which methods are acceptable or reasonable in different circumstances or which factors to consider when evaluating whether a method is reasonable.

In addition, we support the requirement that the selected method must be disclosed, and we believe that the level of disclosure may vary depending on how well the method is understood. For example, the methods outlined above are clearly defined by U.S. GAAP and applied broadly to other aspects of the financial statements. Therefore, if one of these methods is used, a brief disclosure related to its selection may be sufficient, whereas the use of a different method might require more granular disclosure about why the method was selected and how the registrant applied the chosen method in developing the summarized financial information.

Lastly, we support the consistent application of the selected method from period to period regardless of the disclosure's location (see discussion below). As we discussed in our July 2016 letter⁹ in response to the Commission's concept release *Business and Financial Disclosure Required by Regulation S-K*, we believe that comparability is a key characteristic of effective disclosure. As noted in FASB Concepts Statement 8,¹⁰ consistency enables comparability.

Interim Requirements

The proposal requires registrants to provide summarized financial information for interim periods for the obligor group. As discussed in our November 2015 letter,¹¹ we suggest that the Commission reconsider whether the requirement to provide interim disclosures for each quarterly period results in the presentation of material information, particularly when no significant changes have occurred since the most recent fiscal year. Regulation S-X, Article 10,¹² currently permits a registrant to apply judgment and omit details of accounts that have not changed significantly since the registrant's most recently completed fiscal year.¹³ We believe that this model is widely understood by registrants as well as investors and other financial statement users and has been consistently applied. Thus, the Commission may wish to consider whether a similar approach would be appropriate regarding the need to present the summarized financial information of the obligor group for the interim reporting periods.¹⁴

⁹ Available at <https://www.sec.gov/comments/s7-06-16/s70616-131.pdf>.

¹⁰ FASB Statement of Financial Accounting Concepts No. 8, *Conceptual Framework for Financial Reporting – Chapter 3, Qualitative Characteristics of Useful Financial Information*. Paragraph QC22 states, "Consistency, although related to comparability, is not the same. Consistency refers to the use of the same methods for the same items, either from period to period within a reporting entity or in a single period across entities. Comparability is the goal; consistency helps to achieve that goal."

¹¹ See footnote 1.

¹² Regulation S-X, Article 10, *Interim Financial Statements*.

¹³ Regulation S-X, Article 10 states, in part, that "footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest audited financial statements, such as a statement of significant accounting policies and practices [and] details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, . . . may be omitted."

¹⁴ If the proposal's interim requirements are retained, we recommend that the Commission address the application of those requirements to foreign private issuers, which generally are not subject to the guidance regarding quarterly reporting. Issues related to the application of the existing rules regarding interim disclosures for guaranteed securities to foreign private issuers were, for example, discussed at the May 2015 [joint meeting](#) of the International Task Force of the Center for Audit Quality and the SEC staff.

Disclosure Requirements

We support the Commission's efforts related to the proposed transition from bright-line requirements¹⁵ to a principles-based standard that is more tailored to a registrant's specific circumstances and the needs of investors. However, we believe that the proposed requirement to provide "any other quantitative or qualitative information that would be material to making an investment decision with respect to the [guaranteed or collateralized] security"¹⁶ raises the question of whether the Commission is proposing to modify the assessment of the materiality of disclosures. Specific line-item disclosures have historically been required under the SEC's disclosure framework. Those disclosures are then supplemented by Commission laws and regulations, under which additional information must be provided as necessary to prevent the required statements (including the financial statements) from being misleading.¹⁷ However, several of the proposal's examples¹⁸ suggest that disclosure was intended for information not explicitly required by the proposal under a different framework (i.e., an affirmative duty to supply all material information). We therefore recommend that the Commission consider removing from the final rule the affirmative disclosure obligations in proposed Rules 13-01(a)(5) and 13-02(a)(5) given the existing requirement for registrants to provide information necessary to prevent statements from being misleading.

Location and Assurance Requirements

The proposal would permit a registrant to provide supplemental financial and nonfinancial disclosure about issuers as well as guarantors and guarantees ("proposed alternative disclosures") in MD&A or immediately after "Risk Factors" in the registration statement for the offer and sale of the subject securities. Beginning with a registrant's Form 10-K or Form 20-F filed for the fiscal year during which the first sale of the subject securities is completed, the registrant would be required to provide the proposed alternative disclosures in its annual and interim financial statements.

However, as a result of a registrant's flexibility to first provide the proposed alternative disclosures outside the financial statements and then move them into the financial statements, investors and other financial statement users may be confused about the location of, and the level of assurance applied to, such disclosures. Under PCAOB Auditing Standard 2710,¹⁹ if the proposed alternative disclosures are presented outside the financial statements, the auditor is required by PCAOB standards "to read the other information and consider whether [it], or the manner of its presentation, is materially inconsistent with the information, or the manner of its presentation, appearing in the financial statements" the auditor has audited or reviewed. In these circumstances, the auditor has no obligation to perform any procedures to corroborate other information, including the proposed alternative disclosures, contained in a document. However, if the proposed alternative disclosures are included as part of the financial statements, they would be subject to the audit or review, as applicable, of the financial statements taken as a whole. We suggest that the Commission consider whether investors and other financial statement users would benefit from consistency in (1) the location of the proposed alternative disclosures and (2) the level of assurance applied to the proposed alternative disclosures. We encourage the Commission to consider the input it receives from investors and other financial statement users when evaluating the location and level of assurance for the proposed alternative disclosures. As an independent registered public accounting firm, we stand ready to provide the level of assurance required by professional standards.

¹⁵ Such as the existing 3 percent threshold used in certain definitions in Rule 3-10(h) or the 20 percent collateral threshold in Rule 3-16(b).

¹⁶ See proposed Rule 13-01(a)(5) and Rule 13-02(a)(5).

¹⁷ See Securities Act, Rule 408(a), and Securities Exchange Act, Rule 12(b)(20), "Additional Information"; and Regulation S-X, Rule 4-01(a), "Financial Statements."

¹⁸ See discussion of proposed Rule 13-01(a)(5) on pages 56, 68, and 84.

¹⁹ PCAOB Auditing Standard (AS) 2710, *Other Information in Documents Containing Audited Financial Statements*. PCAOB AS 4105 — *Reviews of Interim Financial Information* includes similar requirements.

If the Commission decides that flexibility related to the location and levels of assurance for the proposed alternative disclosures should be retained, we suggest that it provide examples to further clarify when the disclosure must be provided within the financial statements or when it should be subject to assurance, such as in an exchange offer to publicly register guaranteed or collateralized securities that were originally privately placed in accordance with Rule 144A.²⁰

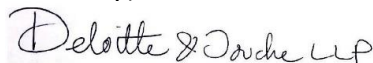
Transition Guidance

Given the significant changes being contemplated in the proposal, we recommend that to help facilitate a smooth transition, the Commission provide detailed transition guidance that clarifies when registrants would need to include the new requirements in both Exchange Act reports and new registration statements filed after the final rule's effective date. We believe that such guidance, which could be included in the adopting release or in a separate document released contemporaneously with the adopting release, may alleviate questions and confusion that often occur when new rules or regulations are published.

* * * *

We appreciate the opportunity to provide our perspectives on the current proposal. If you have any questions or would like to discuss these issues further, please contact Christine Davine at [REDACTED] or Dave Sullivan at [REDACTED].

Sincerely,



Deloitte & Touche LLP

cc:

Jay Clayton, Chairman
Kara M. Stein, Commissioner
Robert J. Jackson, Jr., Commissioner
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
William H. Hinman, Director, Division of Corporation Finance
Kyle Moffatt, Chief Accountant, Division of Corporation Finance
Wesley R. Bricker, Chief Accountant

²⁰ Securities Act Rule 144A, "Private Resales of Securities to Institutions."