SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, New York 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.
BRUSSELS • FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

November 30, 2018

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-1090.

Attention: Brent J. Fields, Secretary

Re: Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities – File No. S7-19-18

Ladies and Gentlemen:

We appreciate the opportunity to present our views on the Commission's proposed amendments intended to simplify the disclosure requirements of Rules 3-10 and 3-16 of Regulation S-X.[1] We commend the Commission's efforts to focus these disclosures on material information and reduce the costs and burdens imposed on registrants, which should encourage issuers to effect more offerings of guaranteed or collateralized securities as registered rather than private transactions, thus also benefiting investors. We generally endorse the approach taken in the Commission's proposed amendments, and the many various accommodations that they reflect, subject only to the few suggestions for improvement noted below.

1 Release No. 33-10526; 34-83701 (October 2, 2018) (the "Release").

As a conceptual matter, we think that perhaps the most important element of the proposed rules is that they subject the required future disclosures to a "materiality" standard. We continue to believe that the Commission should subject all of its disclosure requirements to an overall "materiality" standard.[2] In the absence of such a general "materiality" standard applicable to all of Regulation S-X, we would suggest sharpening the language of the materiality qualifiers included in the proposed rules. Specifically, proposed Rules 13-01(a) and 13-02(a) require the specified disclosures only "to the extent material to holders of" the guaranteed or collateralized security. We would suggest revising this language to focus on the materiality to the investment decision by tracking the more precise formulation used in proposed Rules 13-01(a)(5) and 13-02(b)(5), so that the disclosures are required only "to the extent material to making an investment decision with respect to" the guaranteed or collateralized security.

Proposed Amendments to Rule 3-10 – Eligibility Conditions

We support the proposed amendments to Rule 3-10 relating to the eligibility conditions that allow registrants to omit financial statements of a subsidiary issuer or guarantor. We believe that extending the Rule 3-10 relief to subsidiary issuers or guarantors that are consolidated in the parent company's consolidated financial statements, rather than just 100% owned by the parent company, as well as the explicit requirement that the guaranteed security be "debt or debt-like", are useful modifications for the reasons given in the Release.

---

2 We elaborated on these ideas in earlier comment letters addressing Regulation S-K disclosure requirements, dated August 9, 2016, *available at* https://www.sec.gov/comments/s7-06-16/s70616-354.pdf, and January 2, 2018, *available at* https://www.sec.gov/comments/s7-08-17/s70817-2865545-161733.pdf, but believe the same approach could usefully be applied to Regulation S-X as well.

Proposed Amendments to Rule 3-10 – Disclosure Requirements

We support the Commission's proposal to replace the current requirements for detailed consolidating financial information with a much simpler requirement for summarized financial information for subsidiary issuers and guarantors that may be presented on a combined basis and only as of, and for, the most recently completed fiscal year and year-to-date interim period. We agree that these proposed revisions would focus the disclosures provided to investors on material information while easing the burden on registrants in supplying this financial information.

The proposed required summarized financial information, defined by reference to Rule 1-02(bb)(1), would clearly exclude supplemental cash flow information about subsidiary issuers and guarantors, and we agree with that approach. However, given the catch-all nature of proposed Rule 13-01(a)(5) requiring other information that would be material to an investment decision, and suggestions raised in other comment letters filed to date, we think the Commission should make explicit that it would not expect such summarized cash flow information to be included in response to the proposed new rules. We think the costs associated with preparing such summarized cash flow information (which we understand will often require substantial work to produce) will in most cases greatly exceed its benefits. At the same time, summarized cash flow information about controlled affiliates (such as subsidiary issuers and guarantors) is inherently less meaningful than the information we understand investors are more focused on, i.e., the respective amounts of assets and liabilities of the included and excluded subsidiaries. Therefore, we suggest that the Commission clarify that it does not expect issuers to provide summarized cash flow information in response to the new disclosure requirements.

We would also urge that the language of proposed Rule 13-01(a)(5) be modified to conform to the approach generally taken in all of the Commission's other

disclosure rules and forms. As proposed, this provision would require registrants to disclose any additional information that is "material to making an investment decision with respect to the guaranteed security." By contrast, the Commission's other rules and forms universally take the approach of requiring disclosure of specified line-item information (as clauses (a)(1) through (a)(4) do in this case), along with any other information necessary to render the required information not misleading. In a similar way, proposed Rule 13-01(a)(5) should be revised, so that it instead requires disclosure of such additional information as may be necessary to render the information required by clauses (a)(1) through (a)(4) not misleading.

The note to proposed Rule 13-01(a) would allow the parent company to provide the required summarized financial information either in its consolidated financial statements or in MD&A, but limits this flexibility to the registration statement covering the offer and sale of the subject securities and any related prospectus and Exchange Act reports filed during the fiscal year in which the securities are offered. As a result, the summarized financial information would have to be included in the financial statements in subsequent annual and quarterly reports. With respect, we believe this restriction may work against the Commission's overall intention. Requiring summarized financial information to be included in the financial statements in subsequent Exchange Act reports, and therefore subject to the audit, would not provide any substantial benefit to investors, and the associated costs and burdens may deter issuers from pursuing offerings of guaranteed securities as registered rather than private transactions. We recommend that the Commission instead give parent companies the option to always provide summarized financial information outside of the financial statements.

Proposed Amendments to Rule 3-10 – Continuous Reporting Obligation

We support the adoption of the proposed amendments that would permit a parent company to cease providing summarized financial information if the

corresponding subsidiary issuer's or guarantor's reporting obligation is suspended automatically by operation of Section 15(d)(1) of the Exchange Act or through compliance with Rule 12h-3 thereunder. In our view, as noted in the Release, the proposed amendments would indeed remove the current burden that is unnecessarily imposed on parent companies as well as harmonize Rule 3-10 with other reporting rules.

Proposed Amendments to Rule 3-10 – Application of Proposed Amendments to Certain Types of Issuers

We agree with the Commission's assessment that the proposed amendments should apply to foreign private issuers, smaller reporting companies and issuers offering securities pursuant to Regulation A. In relation to foreign private issuers specifically, we suggest that the Commission confirm that the current practice, under which the periods covered by summarized financial information track those covered by the primary financial statements, would satisfy the requirements of the proposed rules.

Proposed Amendments to Rule 3-16

Our comments to the proposed amendments to Rule 3-16 are substantially similar to those expressed above for Rule 3-10. First, we support the overall approach of the proposed rule, and suggest that the Commission clarify that it would not expect the provision of supplemental cash flow information about the affiliate pursuant to proposed Rule 13-02(a)(5).

Next, we would revise the language of proposed Rule 13-02(a)(5) in the same manner suggested above with respect to proposed Rule 13-01(a)(5), so that registrants would only be required to provide such additional information as may be necessary to make the information specified in clauses (a)(1) through (a)(4) not misleading.

Additionally, we believe that requiring registrants to include summarized financial information subject to proposed Rule 13-02 in the financial statements in subsequent Exchange Act reports would not provide any substantial benefit to investors and would actually discourage issuers from pursuing registration of the original offering. Consequently, we recommend against adopting this requirement, and we recommend giving registrants the option to always provide the summarized financial disclosures outside of the financial statements at all times.

Finally, as discussed above with regards to foreign private issuers, we suggest that the Commission confirm that the periods covered by the summarized financial information would only be required to track those covered by the primary financial statements, consistent with current practice.

* * *

If you would like to discuss our letter, please feel free to contact Robert E. Buckholz at [redacted] or Robert W. Downes at [redacted]

Very truly yours,

Sullivan & Cromwell LLP

Sullivan & Cromwell LLP