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November 30, 2015

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

Re: SEC Rule 3-05, Financial Statements of Businesses Acquired or to be Acquired

Dear Mr. Fields,

We write in response to the SEC's "Request for Comment on Effectiveness of Financial Disclosures About Entities Other Than the Registrant," dated Sept. 25, 2015 (Release No. 33-9929; 34-75985; IC-31849; File No. S7-20-15).

UNITE HERE represents 250,000 workers in the gaming, hotel, and food service industries throughout the U.S. and Canada. Given our members' stakes in Taft-Hartley pension funds, UNITE HERE has consistently and regularly advocated on behalf of institutional investors. The pension fund of UNITE HERE's Nevada affiliates, Culinary Local 226 and Bartenders Local 165, has over 92,000 participants and assets of over \$2 billion.

Our comments pertain to only Rule 3-05, Financial Statements of Businesses Acquired or to be Acquired (17 CFR-210.3-05), specifically questions 10, 12, and 13 in the Request for Comment.¹

- The Commission should consider changes to the significance tests (Question 10).
- The Commission should revise the current significance tests to lower the percentage thresholds and add a new test to compare purchase price to a registrant's market capitalization or owners' equity (Question 12)
- The Commission should allow registrants less judgment in determining what is considered a significant acquisition if the acquirer and target are affiliates under common control (Question 13).

¹ Question 10: Are there changes or alternatives to the tests that we should consider to further facilitate the disclosure of useful information to investors? If so, what changes and are there challenges that registrants would face as a result?

Question 12: Should we revise the financial measures used to determine significance or change the percentage thresholds? For example, should we consider limiting the use of the income test and/or devise new tests such as purchase price compared to a registrant's market capitalization?

Question 13: Should we allow registrations to apply more judgment in determining what is considered a significant acquisition? If so, why and how? What concerns might arise from allowing registrants more judgment and, if allowed, should registrants disclose the rationale for the judgments?



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We ask the Commission to consider three specific amendments to Rule 3-05: (1) lower the threshold of significance under the three current tests (investment, asset, and income) from 20% to 10% if the registrant and target are affiliates under common control; and (2) add a fourth test of significance that compares the purchase price to the current value of the registrant's owners' equity, whether or not the acquirer and target are affiliates under common control; and (3) require disclosure if the target is not going to be a "business" (as defined by Rule 11-01(d) of Regulation S-X) after the acquisition.

We have arrived at our suggestions after reviewing recent filings by two registrants, Station Casinos LLC and Station Casinos Corp. As part of the proposed IPO by Station Casinos Corp., Station Casinos LLC will purchase Fertitta Entertainment LLC for \$460 million, which will be funded indirectly by IPO proceeds from Station Casino Corp. as well as new debt. Both Station Casinos LLC and Fertitta Entertainment LLC are majority-owned by the Fertitta family, and Station Casinos Corp. will be controlled by the Fertittas after the IPO.

We think investors would find it difficult to evaluate the proposed \$460-million purchase price of Fertitta Entertainment LLC as neither registrant has provided historical financials of the target. The purchase agreement filed in an 8-K by Station Casinos LLC on Oct. 13 does not include any exhibits showing historical financials of Fertitta Entertainment. And these are not disclosed in Station Casinos Corp.'s IPO filings, including an S-1 filed on Oct. 13 and an S-1/A filed on Nov. 24, either.

Investors are thus left in a quandary: they cannot know whether the Fertitta Entertainment acquisition is "significant" because they do not have the necessary information to check the significance of the purchase using the tests provided for under Rule 3-05. They therefore cannot assess and evaluate whether the purchase of an affiliate under common control is a good one for Station Casinos LLC and its proposed new parent Station Casinos Corp.

Therefore, Rule 3-05 should be amended in the following ways:

1. Lower the threshold of significance under the three current tests (investment, asset, and income) from 20% to 10% if the registrant and target are affiliates under common control.

When the transaction is between affiliates under common control, we believe there should be greater scrutiny of the transaction, so it is important for Rule 3-05 to be amended to have lower thresholds for its three current test of "significance." We recommend lower the threshold from the 20% to 10% for all three tests (investment, asset, and income).

2. Add a fourth test of significance that compares the purchase price to the current value of the registrant's owners' equity.

Even though Station Casinos LLC is a privately-held company, we know its owners' equity was valued at approximately \$1.12 billion at the end of August based on a filing by a mutual fund which



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owns economic-interest LLC units in the company.² This means the \$460-million consideration of the Fertitta Entertainment acquisition equals approximately 40% of the purchaser's equity. This surely seems to make the deal a significant use of the registrant's resources. We therefore believe this would be a useful test to include in Rule 3-05 to test the significance of an acquisition, and the significance threshold under this new test should be 20% for non-related party transactions and 10% for a related-party transaction.

3. Require disclosure if the target is not going to be a "business" after the acquisition.

Current Rule 3-05 only requires the disclosure of historical financials of a target if the target is a "business" as defined by Rule 11-01(d) of Regulation S-X, which looks at "whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions" or, for the acquisition of only a part of a company, "[w]hether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction."³

If Station Casinos LLC and Station Casinos Corp. have not disclosed the historical financials of Fertitta Entertainment because the latter will not be a "business" under Rule 11-01(d), they should be required to disclose that reasoning to investors. Investors should know if a registrant is spending cash equivalent to 40% of its equity toward the acquisition of an entity that is not going to be a revenue-generating "business" afterward.

If you have any questions, please feel free to contact me at [REDACTED] or [REDACTED].

Sincerely,

Ken Liu
Research Director
UNITE HERE Culinary Workers Local 226

cc: Anne Nguyen Parker, Assistant Director, Office 5, Division of Corporate Finance, SEC
Sonia Barros, Assistant Director, Office 8, Division of Corporate Finance, SEC

² The N-CSR filed by Fidelity Puritan Trust on 10/28/15 gave an as-of-8/31/15 value of \$4,383,000 to its holding of 1,194,419 Station Holdco LLC units, implying a per unit value of \$3.67. All of Station Casinos LLC's economic interests are held by Station Casinos Holdco LLC. And Station Casinos LLC's 10-K filed 3/10/15 shows Fidelity affiliates own a total of 26,613,550 Station Hold LLC units equaling 8.7% of economic interest in the company, which implies the total number of LLC units outstanding was 305,902,874. The valuation of that total number of LLC units at \$3.67 per at the end of August would be approximately \$1.12 billion.

³ Rule 11-01(d) of Regulation S-X (17 CFR 210.11-01).