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November 30, 2015

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant; File No. S7-20-15

Dear Office of the Secretary:

Crowe Horwath LLP appreciates the opportunity to provide our input on the SEC's Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant ("Request for Comment" or "Request"). We commend the SEC on its efforts to help improve registrant's disclosures, and more holistically review the financial and other information provided by registrants to investors, including its broader initiative on Disclosure Effectiveness.

Crowe Horwath audits a significant number of domestic registrants, and many more non-public companies that are at times impacted by the SEC's requirements when, for example, an SEC filer acquires a non-public company or makes a significant investment in one. We believe the areas addressed in the Request for Comment are important to consider as they often require extensive disclosure and financial information, and have not been reconsidered in several years. In our experience, we have observed instances where the requirements do not result in information that is material to an investor. Input from investors about how they use the financial information required by the current rules, and what information is most important to them will be critical to the SEC in developing any new or revised requirements. We encourage the SEC to continue its outreach to investors, preparers, and other constituency groups in its consideration of feedback received on the Request for Comment.

Our suggestions are based on working with public companies in the capital markets, and other companies (e.g. acquired private companies) affected by these requirements. As possible changes to Regulation S-X are being considered by the SEC, we believe incremental improvements can be achieved by addressing individual topics in the Request for Comment. Though not as ideal as addressing the proposed rule changes in combination, it is worth considering if incremental changes can be achieved more expeditiously.

Our views are organized into the following sections:

1. Financial statements of acquired or to be acquired businesses (S-X Rule 3-05)
2. Significance tests (S-X Rule 1-02(w))
3. Pro forma financial information requirements for acquisitions and dispositions (S-X Article 11)

Financial statements of acquired or to-be-acquired businesses (S-X 3-05)

Number of periods

When an acquired business exceeds 50% significance, S-X Rule 3-05 generally requires three years of audited financial statements. Certain registrants, however, such as emerging growth companies (EGCs) and smaller reporting companies (SRCs) are permitted to provide only two years of audited financial statements for both the registrant and its acquired businesses.

In order to maintain appropriate balance in the disclosure requirements, we recommend the SEC consider requiring only two years of audited financial statements for any acquisition, except in limited circumstances, such as predecessors and reverse acquisitions. Alternatively, if the SEC decides to retain the requirements for up to three years of audited financial statements for acquired businesses, we recommend increasing the significance threshold requiring three years (e.g., based on major significance of 80% under S-X Rule 3-05).

SRCs are disproportionately affected by the requirement to provide audited financial statements of significant acquired businesses. Our suggested modifications to the significance tests (below) will provide some relief. However, further scaling the SRC requirements is appropriate given their limited market exposure, and we recommend the SEC require only one year of audited financial statements for significant businesses acquired by SRCs. Alternatively, if the SEC decides to require up to two years of audited financial statements of acquired businesses, then we recommend increasing the significance threshold requiring two years (e.g. based on major significance of 80%).

Using existing financial statements of acquired entities

In some cases, audited financial statements of an acquired or to be acquired private company might already be available. The company might have already provided its audited financial statements to shareholders, creditors and other users, using a widely accepted accounting framework (e.g. U.S. GAAP). When these financial statements need to be revised solely to comply with S-X Rule 3-05, significant incremental costs may be incurred. It might be necessary, for example, to revise the otherwise U.S. GAAP compliant financial statements to comply with S-X form and content requirements, Staff Accounting Bulletins and other staff positions. As an example, some private companies may present redeemable equity instruments in shareholders' equity or members' equity following U.S GAAP, which then needs to be reclassified outside of permanent equity to comply with S-X form and content requirements.

A company that is not a public business entity (PBE), as defined in U.S. GAAP, might have applied Private Company Council (PCC) accounting alternatives (e.g., goodwill or hedge accounting alternatives) in its historical financial statements. That company may become a PBE when it is acquired by a public company solely because the financial statements are included in an SEC filing, as required under S-X Rule 3-05. The company would then be required to retrospectively revise its application of the PCC accounting and reporting alternatives for all periods presented. We encourage the SEC to consider an accommodation[1] to accept PCC alternatives in S-X Rule 3-05 financial statements.

Permitting the use of the historical pre-acquisition financial statements of an acquired entity that are otherwise compliant with an acceptable accounting framework (U.S GAAP or IFRS) would maintain investor protections. The acquired entity has no ongoing reporting obligation for SEC purposes; its accounting policies will be conformed to those of the registrant, and such adjustments would be reflected in the pro forma financial information. It's also important to note that when these rules were developed, the pooling of interests method

[1] We also acknowledge the FASB would have to amend criterion (a) of the definition of a PBE in ASC Master Glossary to remove the reference to "other entities whose financial statements or financial information are required to be or are included in a filing" so those entities would not be included in the scope of a PBE and prohibited from using PCC alternatives. Refer to paragraph BC3 of Accounting Standards Update 2013-12, "Definition of Public Business Entity".

of accounting for business combinations was still permitted and was widely used. Today, with assets and liabilities of the acquired entity recorded at fair value in the large majority of transactions, the relevance of the historical financial statements of the acquired entity to the future financial position and results of operations of the combined entity is diminished.

In requiring otherwise U.S. GAAP compliant financial statements to be revised to comply with S-X Rule 3-05, significant incremental costs might be incurred and perhaps delay the ability of a registrant to provide more timely financial statements of an acquired company to investors. We believe this requirement should be eliminated in the large majority of instances.

Investment company considerations

In the SEC's Request for Comment (Question 16), feedback was requested on applying S-X Rule 3-05 to investment companies, including business development companies (BDCs), when they acquire an investment fund or a significant part of the assets of an investment fund. As stated in the Request, an investment company or BDC may be formed by acquiring investment funds or a significant portion of the assets of investment funds, and they might have limited historical information in their IPO registration statement. In our experience, the staff has sometimes accepted an audited schedule of investments in lieu of audited financial statements of an acquired investment fund. We believe this information provides prospective investors with appropriate information to understand the likely composition of the newly formed investment company. Accordingly, we recommend that the SEC consider whether the provision of an audited schedule of investments under these circumstances would be sufficient for investment company IPOs.

Significance tests (S-X Rule 1-02(w))

S-X Rule 1-02(w) uses bright-line percentage thresholds for certain financial measures that a registrant must apply to determine the significance of an acquired or to be acquired entity, equity method investee, and other entities. These tests of significance are used in S-X Rules 3-05, 3-09, 4-08(g) and 11-01.

Some preparers and others might favor a principles-based approach to determine significance versus the current bright-line thresholds. A principles-based approach does have some merit, because it allows the preparer to use judgment and select appropriate metrics for determining significance of a transaction to the registrant based on their individual facts and circumstances. However, we favor keeping bright-line tests as a practical means to evaluate significance, and to allow for consistent application across all SEC reporting companies.

That noted, there are practical challenges to the current income, asset and investments tests of significance as currently prescribed under S-X Rule 1-02(w). These tests might require the registrant to include historical financial statements of other entities that are not material to investors, or seek a waiver of the requirement from the SEC staff. The income test can yield anomalous results, particularly when the registrant is near break-even, or when either the registrant or acquired entity has unusual gains or losses in the period tested. The asset and investment tests are largely based on historical book values, which do not measure the economic significance of the entity tested.

We recommend that the current income, asset and investment tests by replaced by measures (e.g. revenue and fair value[2]) that more faithfully represent the economic significance of an acquisition or equity method investment to the registrant.

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[2] For more detail on how the revenue and fair value tests could be calculated, refer to the American Bar Association letter to dated Nov. 14, 2014, available at http://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-23.pdf.

Pro forma financial information requirements for acquisitions (S-X Article 11)

Usefulness of pro forma financial information

Both U.S. GAAP and S-X Article 11 require disclosure of pro forma financial information for significant business combinations. Pro forma operating results might differ under each requirement, given the two rules differ in their treatment of nonrecurring adjustments, assumed transaction dates, and earnings measures (e.g. income from continuing operations for S-X Article 11 versus "revenue and expenses" in U.S. GAAP). We recommend the SEC coordinate with the FASB to establish more consistency between the two pro forma information requirements.

S-X Rule 11-02(c)(2)(i) requires a registrant to present a pro forma income statement for the most recent fiscal year and subsequent interim period for a business combination. In the SEC financial reporting manual (FRM 3230.1), the SEC staff has informally indicated that they will not object if a registrant presents pro forma comparative prior year interim income statement information. ASC 805-10-50-2(h) requires two years of pro forma income statement information when comparative financial statements are presented. Consistent with our recommendation above about promoting consistency, we recommend a registrant be permitted to present S-X Article 11 pro forma income statement information for two years if it believes the presentation would provide investors with more useful information.

As noted in the Request for Comment, "restrictions on pro forma adjustments prohibit a registrant from reflecting other significant changes it expects to result from the acquisition." Under current S-X Article 11 requirements, a pro forma adjustment must be factually supportable, directly attributable to the transaction, and expected to have continuing impact to the registrant in order to be reflected on the face of pro forma income statements. A registrant may discuss in footnotes to pro forma information the effects of actions to be taken by management (e.g. workforce reductions, facility closings) and other expected effects of the transaction. We recommend the SEC consider allowing such "other" pro forma adjustments to be presented on the face of the pro forma financial statements, subject to certain requirements in order to maintain investor protections. For example, if permitted, the SEC could require clear disclosure about and distinction of the "other" adjustments from currently permitted pro forma adjustments, and require a certain threshold of probability (reasonably likely to occur).

Auditor Involvement

The Request for Comment (Question #5), specifically asks whether there should be further auditor involvement with pro forma financial information. Auditors already have some involvement with pro forma financial information. When S-X Article 11 pro forma information is included in the same document as the auditor's report (e.g. Form 8-K or registration statement), then the auditors are required by professional standards to read such information and consider whether it is materially inconsistent with the financial statements[3]. In some cases, this might cause the auditor to question the reasonableness of a pro forma adjustment, if such adjustment was materially inconsistent with the historical financial statements. Further, in securities offerings, underwriters typically request auditor involvement as part of their due diligence responsibilities. In a comfort letter to underwriters, the auditor may be requested to provide negative assurance on the Article 11 pro forma information, or to report procedures and findings on the pro forma information.

We are not aware of market demand for a higher level of auditor association with pro forma financial information, although we believe that investors and other users would have better insight on whether the marketplace demands more assurance on this information.

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[3] PCAOB AU 550, *Other Information in Documents Containing Audited Financial Statements;* and AU 711, *Filings Under Federal Securities Statutes*

We thank the SEC for providing the opportunity to express our views on questions raised in the Request for Comment. Please contact Sydney K. Garmong at [redacted] or Brad A. Davidson at [redacted] to answer any questions that the staff may have regarding the views expressed in this letter.

Sincerely,

Crowe Horwath LLP

Crowe Horwath LLP