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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

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:

We appreciate the opportunity to respond to the Securities and Exchange Commission's ("SEC" or "Commission") request for comments about the effectiveness of financial disclosures about entities other than the registrant (the "Request for Comment"). As a firm involved in various aspects of financial reporting by public companies, KPMG LLP has observed firsthand the difficulties registrants encounter in complying with the SEC's rules and regulations. We believe that the Commission can ease some of the compliance burden and improve the quality of reporting by making some relatively simple revisions to Regulation S-X. Our suggestions and observations focus on the topics included in the Request for Comment and include the following, among other things:

- Financial Statements of Businesses Acquired or to be Acquired (S-X Rule 3-05) – Reconsider the significance test metrics used to determine whether audited financial statements should be provided for a significant acquisition. Full audited financial statements should only be required for acquisitions that are highly significant.

- Pro Forma Financial Information (S-X Article 11) – Conform the U.S. GAAP and SEC pro forma presentation requirements for purchase accounting. Consider the needs of investors and whether allowing more forward-looking information in pro forma financial information might be useful.

- Financial Statements of Subsidiaries not Consolidated and 50 Percent or Less Owned Persons and Related Requirements (S-X Rules 3-09 and 4-08(g)) – Conform the U.S. GAAP and SEC disclosure requirements for investments accounted for under the equity method of accounting. If significance tests are deemed necessary, limit the circumstances when full audited financial statements of an investee are required.

- Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered (S-X Rule 3-10) – Streamline reporting by reducing detailed disclosure of consolidating information.

- Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered (S-X Rule 3-16) – Reconsider the requirement for full audited financial statements of each collateralizing entity.

We are also aware of numerous instances where the requirements for "other" financial statements differ depending on whether a new registration statement is filed by a registrant or the registrant is complying with its ongoing periodic reporting requirements. It can be difficult to identify and understand these differences. We believe the Commission should consider whether the information needed by investors in new securities offerings is different from that needed by other investors in the market. Areas where the reasons for distinction should be revisited include: individually insignificant acquisitions; probable acquisitions; and newly acquired guarantor entities.

In addition, we believe there are opportunities to improve disclosure in, and reduce the cost of preparing, filings of foreign private issuers and registration statements for certain cross-border transactions. The Commission could allow registrants to present financial information for non-issuer entities on an IFRS-IASB basis or on a local GAAP basis reconciled to IFRS-IASB in situations where the current regulations would not allow such IFRS-IASB information. For example, an FPI that acquires an entity that does not meet the definition of a foreign business may be required to include US GAAP financial statements that are either not readily available or, if available, would be included in a document where the preponderance of the information is IFRS-IASB.

Financial Statements of Businesses Acquired or to be Acquired (S-X Rule 3-05)

We believe financial information for material business acquisitions is useful for investors. The form and content of that information should primarily be driven by the input provided to the Commission by registrants and users of registrant reports. However, as auditors, we have observed situations where it is unclear whether the benefit of providing full audited financial statements that comply with Regulation S-X outweighs the cost of compliance. If audited financial statements cannot be obtained on a timely basis and for the periods required by S-X Rule 3-05 (i.e., for acquisitions over 20% significant), a registrant may seek relief from the SEC staff for some or all of the periods to be provided. If relief is not granted, a registrant may be prohibited from capital raising activities until the deficiency is cured. It seems to us that these consequences should only be faced by registrants for highly significant acquisitions.

If the Commission decides to retain the requirement to provide financial information for acquired businesses (which includes acquired investments accounted for under the equity method of accounting), we have the following comments about areas that we see that present complexity and difficulty for registrants.

Definition of a Business

Currently, we encounter many situations where an acquisition meets the definition of a business under U.S. GAAP and IFRS-IASB but not under Article 11 of Regulation S-X. Rarely, if ever, do we see acquisitions that do not meet the definition of a business under U.S. GAAP or IFRS-IASB but do meet the definition of a business under S-X Article 11. The FASB's definition of a business has changed since S-X Article 11 was adopted and it is currently under deliberation again.

We believe conforming U.S. GAAP and SEC reporting requirements as much as possible helps to reduce complexity in reporting and mitigates confusion for investors. Therefore, we recommend that the Commission wait for the outcome of the current FASB deliberations and conform the definitions. However, we agree with the Commission's current view that financial statements that are relevant and meaningful for investors should be predicated on continuity of revenue-producing activities. Therefore, if the FASB's definition does not incorporate a provision that the nature of the acquired business' pre-acquisition revenue-producing activity remains the same after acquisition (as currently included in the S-X Article 11 definition), we believe that aspect should be retained in the Commission's rules.

Significance Testing

The application of very narrow significance tests under Rule 1-02(w) of Regulation S-X often results in a registrant being required to provide audited financial statements in situations where the registrant does not believe the information is material to investors. While a principles-based approach for determining what information is material to investors is theoretically attractive, we believe that use of quantitative factors makes application of the rules more consistent across registrants. However, we are aware that registrants often seek and obtain relief when the current bright-line tests result in what the registrant believes is an unreasonable answer. We are also aware that for some acquisitions the significance may not be tripped but information about the acquired business might be useful to investors. These anomalies typically occur when either the registrant or the acquired business has significant unusual charges or credits reflected in their financial statements, or if the registrant's operating results are near breakeven, and the Rule 1-02(w) income test indicates the acquisition is significant. In addition, the investment and asset tests are based on historical book values and may not consider the economic substance of the entity subject to the test or the relative significance to a registrant.

We believe changes to the significance tests should be considered by the Commission as follows:

Income Test

The income test can be difficult to apply for preparers and often results in registrants providing financial statements that may not be meaningful or relevant to its investors, especially in circumstances when the registrant has near break-even results or when either entity has large, nonrecurring expenses or income in the period tested.

We believe the income test should be accompanied by a revenue test. A registrant could consider significance using both the income test and the revenue test and apply reasonable judgment in determining which test provides a rational determination of significance.

Adoption of more flexible significance testing would potentially eliminate the need for averaging of historical results described in Computational Note 2 to S-X Rule 1-02(w) (e.g., revenue typically does not fluctuate in the way that pretax income fluctuates); however, averaging of income may still be applicable for equity method investees (see section below).

Also see below for discussion of pro forma measures.

Asset Test

We believe the Commission could eliminate the asset test. In our experience, the current value of the acquisition used in the investment test is more relevant to registrants and users of the financial statements.

Investment Test

The investment test compares a fair value metric (purchase price under U.S. GAAP or IFRS, as appropriate) to a historical book value metric (total assets of the registrant) which may not provide a meaningful comparison for purposes of determining overall significance of an acquisition to the registrant's business. However, use of total assets of the registrant in the denominator will measure how significant the purchase is to the registrant's financial statements from an accounting and financial reporting (U.S. GAAP or IFRS) perspective. The Commission should determine whether the objective of providing financial information for an acquired business is to allow investors to assess how material an acquisition is to the registrant's business or how material the acquisition is to the historical financial statements. If the former, a fair value test that compares the purchase price of the acquired business to the fair value of the registrant could be employed. The fair values should be readily determinable for registrants with public equity outstanding. If a registrant does not have public equity outstanding and fair value is not readily available, shareholders' equity (or net book value) could be permitted in the denominator. If significance to the registrant's financial statements is the objective, significance should be calculated using the registrant's total assets in the denominator.

Pro Forma Financial Measures

The Commission could *require* a registrant to calculate significance using pro forma financial information that has been filed by a registrant for significant acquisitions, dispositions or other material transactions in order to identify acquisitions that are significant based on the current composition of that registrant. Alternatively, the Commission could allow a calculation similar to that set forth in Staff Accounting Bulletin Topic 1J, *Application of Rule 3-05 in Initial Public Offering* (SAB Topic 1J or SAB 80) if a registrant is quickly growing through acquisitions; however, that approach may introduce additional complexity to the process.

<u>Number of Periods</u>

S-X Rule 3-05 requires three years of audited financial statements when an acquired business exceeds 50% significance yet an emerging growth company (ECG) is provided an accommodation allowing it to file two years of audited financial statements. In some situations, EGCs voluntarily provide more financial information than is required if they believe the market requires it. We are not aware of information to suggest that investors in EGCs are not receiving adequate information to allow them to evaluate the financial condition, results of operations and cash flows of an acquired business. The Commission should consider making the acquired business reporting requirements consistent between EGCs and other registrants.

Pre- and Post-Acquisition Periods

We recommend that the Commission codify the SEC staff's practice of allowing post-acquisition audited results (i.e., included in the registrant's audited financial statements) to satisfy acquired business audited financial statement requirements in an initial registration statement.

After acquisition, an acquired business may be operating under new management within a different corporate structure and pre-acquisition financial information may not be comparable. More recent information is generally considered more useful and relevant to investors. Therefore, the Commission should consider allowing registrants to omit pre-acquisition financial statements if the acquired business has been included in a registrant's post-acquisition audited financial statements for at least one year, unless the acquisition is very significant. We believe the same should apply to acquired real estate under Rule 3-14 of Regulation S-X.

Less than Full Financial Statements

As noted above, an acquired business does not typically operate in the same corporate structure once it is acquired. This change may be a valid reason to allow registrants to satisfy S-X Rule 3-05 for a business component acquired from a larger entity (e.g., a carveout) by reporting pre-acquisition financial information that is limited to direct revenues and expenses.

Individually Insignificant Acquisitions

Calculation of financial statement requirements, if any, for individually insignificant acquisitions is complicated as indicated by the several pages of interpretive information contained in the Division of Corporation Finance Financial Reporting Manual (FRM). Even if these acquisitions exceed 50% significance, providing multiple sets of audited financial statements for small acquisitions appears to be of limited usefulness. The U.S. GAAP (ASC 805-10-50-3) requirement to disclose pro forma revenues and earnings for the most recent two years for individually immaterial acquisitions that are material in the aggregate is likely sufficient information.

Acquired Private Businesses

We have begun to see situations where a registrant acquires a private business that has applied private company alternatives in its historical financial statements. Because the acquired business' financial statements will be filed to satisfy S-X Rule 3-05, the entity meets the FASB's definition of a public business entity (PBE). Therefore, the financial statements must be retrospectively revised to undo the application of private company accounting standards and apply public company standards. These financial statements are provided to satisfy a one-time reporting requirement, as opposed to ongoing reporting for registrants. The requirement to provide such financial statements adds time and cost to modify existing audited financial statements that already comply with U.S. GAAP.

Recently, in adopting Regulation Crowdfunding[1] and Regulation A+[2], the Commission considered allowing non-registered issuers under Crowdfunding and Regulation A to apply private company standards in financial statements to be used for offering and ongoing reporting documents. The

[1] SEC Release No. 33-9974, Crowdfunding, October 30, 2015.

[2] SEC Release No. 33-9741, Amendments to Regulation A, March 25, 2015.

Commission did not grant that accommodation. We think a distinction can be made between financial statements for issuers of securities and financial statements of acquired private companies that are filed in connection with a one-time presentation, and recommend that the Commission consider an accommodation for private acquired businesses. The acquired business could disclose the material differences between the private company accounting standards applied and public company accounting standards in a note to the financial statements.

Pro Forma Financial Information (S-X Article 11)

The Commission could potentially improve the usefulness of pro forma financial information by addressing: (1) differences between U.S. GAAP and S-X Article 11 presentations; (2) the time periods for which information is presented; and (3) the types of adjustments allowed.

<u>Consistency with U.S. GAAP requirements</u>

Both U.S. GAAP (ASC 805-10-50-1) and S-X Article 11 require disclosure of pro forma financial information. For various reasons, pro forma operating results giving effect to business combinations may be different under each requirement. For example:

- Nonrecurring adjustments – S-X Article 11 prohibits income statement adjustments for nonrecurring charges or credits directly attributable to a transaction. U.S. GAAP requires these adjustments.

- Different assumed transaction dates – S-X Article 11 requires adjustments related to a 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 in accordance with U.S. GAAP is not revised as the financial statements are updated. These differences cause S-X Article 11 pro forma operating results that might initially agree with the U.S. GAAP pro forma operating results to move out of alignment as time passes.

- Different earnings measures – S-X Article 11 requires pro forma income from continuing operations and related pro forma per share amounts, and it prohibits showing pro forma amounts reflecting discontinued operations. U.S. GAAP simply requires a company to present pro forma "earnings" and does not specify which "earnings" measure is to be presented.[3]

We recommend that the Commission coordinate with the FASB to establish more consistency between the pro forma presentation requirements.

<u>Permitting pro forma income statements for more than one year</u>

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. We note that the SEC staff has informally indicated that they will not object if a registrant presents pro forma comparative

[3] ASC 805-10-50-2.h.3.

prior year interim income statement information.[4] ASC 805-10-50-2(h) requires two years of pro forma income statement information when comparative financial statements are presented. Consistent with our recommendations above for promoting consistency between S-X Article 11 and U.S. GAAP pro forma disclosures, we recommend that a registrant be permitted, at its discretion, 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. Such presentation could also facilitate useful comparative analysis for investors in Management's Discussion and Analysis.

Restrictions on pro forma adjustments

In considering what adjustments should be permitted in preparing pro forma information, the Commission should consider the objectives of preparing information that is (1) consistently prepared and reliable and (2) useful in analyzing the future prospects of a registrant. As the Commission acknowledges 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" and this may cause "some limitations as a predictor of the financial condition and results of operations of the combined entity following the acquisition." We note that under the current requirements, while an adjustment must be factually supportable to be reflected on the face of pro forma financial statements, a registrant may discuss in the notes to pro forma information the effects of actions to be taken by management and other expected effects of the transaction for which pro forma information is being presented.[5]

The Commission actively encourages registrants to discuss in MD&A the current and future expected effects of material acquisitions and dispositions, and other material events. If, based on registrant and user feedback, the Commission contemplates expanding the types of adjustments a registrant is permitted to reflect in pro forma financial information (e.g., elimination of redundant executive positions), we believe it important to distinguish in the pro forma financial information the purchase accounting effects of a transaction on the registrant's financial statements (i.e., the adjustments currently permitted under Article 11) from other adjustments intended to depict management's estimate of other ongoing effects on the registrant's business. We believe that this would preserve the consistency and reliability of pro forma financial information that currently exists while providing insight into how management expects a transaction will affect its business.

Auditor Involvement

The Commission does not require auditors to audit or review pro forma financial information. However, there are a number of existing ways in which auditors have involvement with pro forma financial information. When S-X Article 11 pro forma financial information is included in the same document as the financial statements on which an auditor has reported, as may be the case for an Item 2.01 Form 8-K or a registration statement, the auditor carries out its responsibilities as required by professional standards. In the case of securities offerings, underwriters typically request the auditor's involvement as part of the underwriters' due diligence responsibilities. A registrant's auditor is generally requested to provide negative assurance in a comfort letter on the application of pro forma adjustments to historical amounts in the compilation of pro forma financial

[4] FRM section 3230.1

[5] FRM section 3310.

information, and whether the pro forma financial information complies as to form in all material respects with the applicable accounting requirements of S-X Article 11. PCAOB AU sec. 634, *Letters for Underwriters and Certain Other Requesting Parties*, does not allow the auditor to provide this level of comfort unless the historical financial statements that serve as the basis for the pro forma financial information have been reviewed or audited. In other situations, auditors perform procedures and report findings in a comfort letter.

The Commission should consider the feedback from registrants and users as to whether they believe this level of auditor involvement is sufficient for investor protection.

<u>Disposition Transactions</u>

Significance Threshold

S-X Rule 11-01(b)(2) requires that a registrant file pro forma financial information in a registration statement or an Item 2.01 Form 8-K for the disposition of assets or a business (as defined in S-X Rule 11-01(b)(2)) if the disposition is greater than 10% significant using the tests in S-X Rule 1-02(w). S-X Rule 11-01(b)(2) differentiates the percentage thresholds used to determine significance of an acquisition and a disposition of a business, requiring registrants to provide pro forma financial information for an acquisition using a 20% threshold versus a 10% threshold for a disposition. We have seen this disparity create confusion for preparers.

We recommend that the Commission consider raising the significance threshold for providing pro forma information related to dispositions to make it consistent with the significance thresholds for acquisitions.

Periods Presented

Item 2.01 of Form 8-K requires that a registrant report a significant disposition of assets or a business within four business days of the transaction. The Form 8-K must also include the required pro forma financial information. The SEC staff requires a registrant to present pro forma financial information for all years presented (i.e., three years, or two years for a smaller reporting company) for a disposition that qualifies as a discontinued operation under ASC 205-20, which can be challenging, particularly if the business disposed of is not a separate subsidiary or legal entity.

We recommend that required pro forma financial information for a disposition that qualifies as a discontinued operation be limited to a minimum of the most recent fiscal year and interim period. A registrant may provide additional comparative years if it deems the information useful to investors.

Financial Statements of Subsidiaries not Consolidated and 50 Percent or Less Owned Persons and Related Requirements (S-X Rules 3-09 and 4-08(g))

U.S. GAAP requires that registrants provide financial information for investments accounted for under the equity method of accounting that are, in the aggregate, material to the financial position or results of operations of a registrant. As set forth in ASC 323, *Investments – Equity Method and Joint Ventures*, summarized assets, liabilities and results of operations for investees may be necessary in the notes or in separate statements, either individually or in groups, as appropriate. The Commission has largely delegated to the FASB the task of identifying and establishing standards for registrant financial statement disclosures that are material to investors. However, Rules 3-09 and 4-08(g) of Regulation S-X establish bright-line tests for determining what level of financial disclosure is necessary for this element of the financial statements for which U.S. GAAP exists. Registrants generally default to S-X Rules 3-09 and 4-08(g) for determining what financial disclosures or separate financial statements are required for equity method investees whether or not they believe the information is material to investors under U.S. GAAP. We have observed instances where registrants have great difficulty in obtaining full audited financial statements for equity method investees within the 90-day filing deadline which is usually attributable to a lack of control over the investee's financial reporting process.

In the interest of eliminating redundancies and complexity for registrants, we believe that the Commission should work with the FASB to establish an appropriate level of equity investee disclosure requirements in the financial statements so that separate S-X Rule 3-09 financial statements are no longer required. If the Commission continues to believe that S-X Rule 3-09 financial statements are necessary in certain circumstances, and, as a result, significance tests are necessary to establish the level considered material to a registrant's financial statements, we have the following recommendations.

- Separate audited financial statements of equity method investees under S-X Rule 3-09 should be required for only those investments that are highly significant to the registrant. The significance levels and information to be provided for each investee should be consistent with the significance levels set for acquired business financial statements. For example, if audited financial statements for an acquired business are required at 50% significance, an equity method investee's financial statements would be required for 50% significance and only for the annual period for which that level of significance is met. Financial information for individual investees at lower levels of significance could be in the form of audited summarized or condensed financial information contained in a footnote to the registrant's financial statements. Otherwise, registrants should apply the U.S. GAAP disclosure requirements of ASC 323-10-50-3.

- Conform the S-X 3-09 and 4-08(g) significance tests to the income and investment tests used for S-X Rule 3-05. If a registrant utilizes the fair value option, we do not believe that the investment should be subject to the income test.

- Eliminate the SEC staff's practice of requiring that a registrant recalculate how significant an equity method investee is to previously reported periods after the registrant, or the investee, reports a retrospective application of U.S. GAAP. Such practice can impact a registrant's decision to retroactively revise its financial statements or the timing of filing retrospectively revised financial statements because of difficulty in obtaining the appropriate financial information for investees for back periods that were not contemplated or required in the past.

- Rather than have complex significance testing for interim periods, require interim financial information in the notes to the registrant's financial statements for those individual investees for which the registrant was required to provide financial information on an individual basis in its most recently filed annual report.

Investment Companies

Prior to the SEC staff's views expressed in September 2013, investment companies, particularly business development companies, did not view Rules 3-09 and 4-08(g) of Regulation S-X as being applicable. As required under the Investment Company Act of 1940, business development companies and other investment companies report their financial interests in portfolio companies at fair value and generally are not permitted to consolidate a controlling interest or apply the equity method of accounting to a non-controlling interest.

We recommend that the Commission further consider whether financial information of investees under S-X Rules 3-09 and 4-08(g) is necessary as in most instances neither the operating results nor the financial condition of an investee are directly included in the investment company's financial statements. As an example, the balance sheet information for the investee does not correlate to the fair value presented in the financial statement of the investment company and the net income in the statement of operations of the investment company does not correspond to the investment company's share of the earnings of the investee.

However, we recognize there could be instances when financial information for investees of investment companies may be useful to investors. If the Commission believes that financial information should be required, we recommend that the Commission modify the reporting requirements for investment companies, particularly business development companies, by updating Article 6 of Regulation S-X.

Alternatively, if the Commission believes S-X Rule 3-09 and 4-08(g) financial information is required and necessary, we encourage the Commission to consider requiring summarized information as applicable, which might include a listing and description of investments held by the investee company, other assets, debt, other liabilities, income, and expenses.

We also urge the Commission to utilize a uniform definition of control for purposes of financial reporting. Based on the guidance provided by the SEC staff in their September 2013 letter, investment companies are being required to apply 3-09 and 4-08(g) based on the Investment Company Act definition of control, which is presumed to be 25%. Generally, this is a much lower threshold than what operating companies would utilize in applying these rules. If the Commission believes that these rule do apply, we would recommend permitting investment companies and business development companies to utilize the U.S. GAAP definition of control rather than the Investment Company Act definition of control.

Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered (S-X Rule 3-10)

In our experience, compliance with the reporting requirements of S-X Rule 3-10 is difficult and time-consuming for registrants. We have seen extensive negotiation involving management, professional advisors and lenders to structure debt offerings and related subsidiary and parent guarantees to meet or avoid S-X Rule 3-10 requirements in Securities Act and Exchange Act filings.

While the prescribed alternative disclosure (i.e., condensed consolidating financial information) available under certain circumstances provides relief from filing numerous sets of financial statements under the Securities Act and Exchange Act, the preparation of condensed consolidating financial information presents its own challenges. Registrants do not always maintain books and records to capture the required financial information for each individual issuer, co-obligor or guarantor. In particular, investment by a parent entity in lower level subsidiaries, intercompany accounts and cash flow information are not typically available, necessitating detailed and expensive analysis. The resulting alternative disclosure for comparative periods on both an annual and quarterly basis is cumbersome, sometimes filling several pages of a filing. The effect is amplified when a single registrant has numerous public debt issuances with differing guarantee structures.

We believe the current reporting could be streamlined by allowing a registrant to present financial information (e.g., summarized or condensed) in its annual financial statement notes or in a schedule to the filing that distinguishes between all guarantors and issuers as a group and non-guarantors, if guarantees are full and unconditional. We also believe it reasonable to consider limiting quarterly financial information for subsidiary issuers and guarantors using the same "updating" concept available in S-X Rule 10-01(a)(5). We believe that the Commission is in the best position to determine the appropriate detail and timing of financial information related to public debt guarantees after it considers the recommendations of preparers and users of financial statements.

Some foreign jurisdictions legally require some portion of ownership interest by a third party which can result in a guarantor subsidiary in such a jurisdiction not meeting the definition of 100% owned as referenced in S-X Rule 3-10(h)(1). Registrants that want to avail themselves of alternative disclosure in lieu of separate financial statements of the guarantor are required to pre-clear their fact patterns with the SEC staff when 100% ownership is not met. The Commission should consider amending the definition of 100% owned to include scenarios where foreign jurisdictions legally require a minor portion of ownership interests to be held by a third party and only the minimum amount legally required is held by the third party. This would enable efficiency, as there would be certainty in the application of the rules, without having to seek SEC staff approval.

Financial presentation could further be simplified by:

- Eliminating the distinction between a parent with no independent assets or operations and a parent that does have independent assets or operations for purposes of allowing narrative disclosure when all subsidiaries guarantee.

- Eliminating the practice of requiring a registrant to continue to provide the alternative disclosure as long as its debt is outstanding (and guaranteed), regardless of whether it is deregistered.

- If financial information is required to satisfy the objective of S-X Rule 3-10(g) for newly acquired guarantor subsidiaries, the Commission should consider allowing registrants to use the same significance testing metrics discussed above for acquired businesses (by comparison of the acquired guarantor subsidiaries to the guarantors and issuers combined) instead of the current test involving the principal amount of the securities being registered. A non-public newly acquired guarantor or issuer subsidiary's audited financial statements should not be required to comply with public company form and content, nor should it be required to meet PCAOB audit requirements. Finally, the Commission should further consider whether the level of detail for such information could be presented in a manner consistent with that which is accepted for other guarantors (e.g., summarized or condensed financial information).

Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered (S-X Rule 3-16)

It is our experience that registrants rarely file financial statements to comply with Rule 3-16 of Regulation S-X because public debt agreements that provide for collateralization will (1) collateralize the debt with assets or (2) include provisions that release each affiliate's securities from collateral if its inclusion would trigger the financial statements requirements of S-X Rule 3-16. However, the "substantial portion of collateral" test can trigger significance for individual entities that are very small compared to the consolidated registrant.

We ask that the Commission consider revising the substantial portion of collateral test for purposes of the Form 10-K annual reassessment such that the test is performed annually based on the amount of collaterialized securities originally issued and not the amount outstanding as of the end of each year. This change would avoid instances where affiliates meet the substantial portion test due to a portion of the collateralized securities being repurchased or repaid.

While investors have the best perspective on what financial information should be provided about collateralizing affiliates, we question the cost benefit of providing full audited financial statements for each affiliate.

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We appreciate the opportunity to respond to the Request for Comments. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Glen Davison, ([redacted], [redacted] or Melanie Dolan, [redacted], [redacted].

Very truly yours,

KPMG LLP

cc:

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