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

19 January 2017

**Re: List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act
(Release Nos. 33-10209, 34-78845; File No. S7-21-16)**

Dear Mr. Fields:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or the Commission) related to its periodic review required by section 610 of the Regulatory Flexibility Act (RFA).

As noted in the release, the RFA requires the review of final rules that have a significant economic impact on a substantial number of small entities within 10 years of their publication “to determine whether such rules should be continued without change, or should be amended or rescinded ... to minimize any significant economic impact of the rules upon a substantial number of such small entities.” The RFA sets forth the following considerations that must be addressed:

- ▶ The continued need for the rule
- ▶ The nature of complaints or comments received concerning the rule from the public
- ▶ The complexity of the rule
- ▶ The extent to which the rule overlaps, duplicates or conflicts with other federal rules and, to the extent feasible, with state and local governmental rules
- ▶ The length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule

The release notes that the Commission, as a matter of policy, also reviews all final rules to assess their continued utility and identify rules in need of modification or rescission.

While we commend the Commission for going beyond the requirements of the RFA, we believe the process mandated by the RFA should be more transparent and robust and should include an update of the economic analyses performed when the final rules were adopted. We also believe that, in some cases, a post-implementation review should occur sooner than the 10th anniversary of the publication of

a final rule. Such a post-implementation review process would be consistent with our recommendations in our [letter dated 6 October 2011](#) on the Retrospective Review of Existing Regulations (File No. S7-36-11), as well as other previous letters.¹

Consistent with what the Public Company Accounting Oversight Board and the Financial Accounting Foundation are already doing regarding the rules or standards they adopt, an effective post-implementation review should determine whether a rule has accomplished its objective(s), evaluate the compliance costs for issuers and benefits for investors, and provide feedback to inform and improve the rulemaking process. In addition to the considerations prescribed by the RFA, we recommend that the post-implementation review assess whether:

- ▶ The objective of the rule continues to be valid given, among other things, developments in business practices, laws and regulations.
- ▶ The rule has been effective in achieving its stated objective(s).
- ▶ The rule is being followed by entities consistently and as intended.
- ▶ The rule has required the SEC staff to provide implementation and interpretive guidance and the extent to which that guidance should be codified in the rule.
- ▶ The scope of the rule remains appropriate or whether it should apply to more or fewer entities.
- ▶ The costs and benefits of the rule in practice track those originally expected and whether there are other alternatives that would provide better cost-benefit balance.
- ▶ The rule has had unexpected consequences that should be addressed.

For example, we note that one of the most significant items in the List of Rules to be Reviewed is Securities Offering Reform, which since 2005 has allowed well-known seasoned issuers to efficiently access the US capital markets by using automatic shelf registration statements. Given this success, we believe the SEC could use a post-implementation review to consider whether it would be appropriate to expand the group of issuers that can use automatic shelf registration statements. One way to do that would be to allow other Form S-3 eligible issuers to opt in to well-known seasoned issuer status as long as they comply with the same reporting requirements as large accelerated filers.

While the Commission has been conducting the annual RFA review for years, its conclusions can only be inferred based on the absence of subsequent rulemaking to modify or rescind the rules that it has reviewed. We believe the SEC should publish its analysis and conclusions so that constituents can understand and provide any feedback on the post-implementation reviews.

¹ For example, see our [21 July 2016 letter](#) on File No. S7-06-16 and our [11 September 2012 letter](#) on Section 108 of the JOBS Act.



Consistent with the goal of increasing the profile and transparency of post-implementation reviews, we suggest that the SEC increase its efforts to publicize the scope of the final rules to be reviewed and to encourage broader participation by constituents. Unfortunately, the RFA review process has to date flown largely under the radar, decreasing the likelihood that various parties affected by SEC rules will participate meaningfully. We believe increased visibility and participation would enhance the dialogue and improve the effectiveness of the process and its outcomes.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Yours sincerely,

Ernst + Young LLP

Copy to: Wesley Bricker, Chief Accountant, Office of Chief Accountant
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