



Tel: 312-856-9100
Fax: 312-856-1379
www.bdo.com

330 North Wabash, Suite 3200
Chicago, IL 60611

March 21, 2019

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

**Re: File No. S7-26-18
Request for Comment on Earnings Releases and Quarterly Reports**

Dear Office of the Secretary:

This letter is the response of BDO USA, LLP to the Request for Comment referred to above.

We appreciate the opportunity to provide input on the Commission's Request for Comment on earnings releases and quarterly reports. We believe that companies and investors are best positioned to provide feedback about how the periodic reporting process and earnings releases affect corporate decision making and strategic thinking. We provide feedback on the overall interim reporting process and disclosure system based on our experience working with registrants, many of which qualify as smaller reporting companies. We support the objective to consider whether the compliance burden can be alleviated while maintaining or enhancing the investor protection attributes of the existing periodic reporting system.

From an overall perspective, we believe there are substantial benefits to investors, registrants, and auditors from the existing periodic reporting system. The quarterly earnings and financial reporting process provides numerous benefits to investors and registrants, including:

- *Quality of Financial Reporting* - we believe that the quarterly reporting process instills a certain amount of discipline and rigor on management on the financial reporting process that assists in ensuring the communication of high quality financial results;
- *Consistency of Financial Reporting* - we believe that a consistent framework for the preparation of financial reporting information provides the greatest benefit to users of the financial statements. The requirements of US GAAP and Article 10 of Regulation S-X provide a consistent framework that is applied today. There is no established framework for reporting financial results in a company's earnings release;
- *Internal Control Benefits* - we believe the quarterly reporting process reinforces the accountability of management in the financial reporting process through the



requirement for management to certify the effectiveness of disclosure controls and procedures and execution of internal controls on a quarterly basis; and

- *Audit Quality* - we observe that the quarterly reporting process requires the ongoing involvement of auditors as gatekeepers and:
 - Allows auditors to address accounting and reporting matters on a timely basis;
 - Allows auditors to spread work across the year, which reduces the concentration of work and time during peak periods; and
 - Adds synergies, efficiency and quality to the annual audit process.

For these reasons, we support the existing quarterly reporting system. However, we wonder if there are opportunities to further streamline the interim disclosure package and reduce the compliance burden, while maintaining the benefits that we have highlighted above. Our other specific comments are organized below based on the Issues for Consideration outlined in the Commission's Request.

Information Content Resulting from the Quarterly Reporting Process

The Request seeks input on many aspects of the quarterly reporting process and the nature of disclosures included in earnings releases and Form 10-Q. Our sense is that there is a symbiotic relationship between the earnings release and Form 10-Q. While there is often a certain degree of disclosure overlap between these two documents, we observe that the differences are shaped by the content drivers of each document - i.e., the content of earnings releases is driven by management, industry-practice and external users; whereas, the content of Form 10-Q is driven by US GAAP and SEC rules and regulations. One key benefit of the earnings release is that management can tailor the content to communicate results consistent with the way they view the business, as well as tailor the message to speak directly to the needs of users. We have observed that companies often present information in their earnings releases that is responsive to inquiries from users during prior quarters. Additionally, we sense that the market reacts to earnings releases as they can be issued earlier than Form 10-Q (though doing so requires more rigor and structure around the financial close and reporting process). These perceived advantages are somewhat mitigated by a lack of standards or information requirements for earnings releases, which reduces the comparability between registrants.

In contrast, the Form 10-Q disclosure requirements are driven by a comprehensive set of rules and requirements. Collectively, these rules and requirements drive consistency in reporting across registrants and provide a solid foundation from which all stakeholders benefit:

- The financial statements included within Form 10-Q are based on US GAAP, the bedrock of the US financial reporting system;



- Management certifications which cover non-financial disclosures, the financial statements, and disclosures related to internal controls over financial reporting hold management accountable and serve to enhance the quality of financial reporting within Form 10-Q;¹
- The execution of internal controls on a quarterly basis enhances management rigor and accountability; and
- Auditor involvement, which is based on PCAOB standards,² serves to minimize the risk that material modifications should be made to the interim financial information so that it conforms with US GAAP.

However, we also observe that the disclosures in quarterly reports can be extensive and include a significant amount of detail that may not be materially different from information reported in the most recent annual report which may make discerning the key highlights for the quarter more difficult. Accordingly, we believe there may be opportunities for disclosure effectiveness within Form 10-Q to streamline the disclosure package and reduce the compliance burden, while maintaining the benefits from the existing quarterly reporting system.

Based on our experience, many registrants do not take advantage of the existing flexibility contained within Rule 10-01(a)(5) of Regulation S-X to omit disclosures that substantially duplicate those that appear in the latest annual filing. For example, many registrants do not condense the financial statements (i.e., the balance sheet, statement of operations and statement of cash flows). Additionally, the following disclosures are often made in Form 10-Q by some registrants, even though they repeat disclosures appearing the last Form 10-K or annual financial statements:

- Risk factors;
- Significant accounting policies;
- Recent accounting pronouncements (even if they are not expected to have a material effect on the financial statements), and;
- Contractual details of debt arrangements, among others.

While we believe registrants are best positioned to provide feedback about why they choose to include disclosures that are otherwise not required, our impression is that repetition may be prevalent because it is easier to roll forward disclosures from an operational standpoint (i.e., there is significant time and effort required to remove the disclosures during some periods and to add them back in future periods if required, inclusive of the time and effort required for XBRL tagging), and registrants wish to avoid being questioned if disclosures are omitted.

¹ Sections 302 and 906 of The Sarbanes Oxley Act of 2002 (“SOX”) and Exchange Act Rule 13a-14(a)

² PCAOB Auditing Standard 4105, *Reviews of Interim Financial Information* (AS 4105)



In addition to the maintenance of disclosures that are otherwise largely duplicative of disclosures in the latest annual filing, we observe that US GAAP prescribes a set of minimum disclosure requirements for interim statements. Some of these minimum disclosure requirements may not be consistent with one of the over-arching principles of quarterly reporting articulated in S-X Rule 10-01(a)(5) that permits the omission of footnote disclosure which substantially duplicates the annual disclosure appearing in the audited financial statements and “the details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year.” For example, the interim disclosures required for fair value measurements largely duplicate those required in annual reports, including valuation techniques, regardless of whether there have been any significant changes.

With respect to auditor involvement in the quarterly financial reporting process, AS 4105 requires auditors to consider whether any material modifications to the interim financial statements are necessary for them to conform with US GAAP, not whether any material modifications are required for them to conform with Article 10 of Regulation S-X. Accordingly, there is an inconsistency between the PCAOB standards and expectations for the auditor’s review of the interim financial statements, and the SEC’s rules prescribing the requirements for Form 10-Q disclosure. We believe the SEC could help reduce the compliance burden placed on organizations with the existing quarterly reporting system by working with the FASB to consider whether some of minimum interim disclosure requirements are necessary absent significant changes from year end, and with the PCAOB to consider whether the PCAOB standard for the auditor’s review of interim financial statements should contemplate compliance with Article 10 of Regulation S-X (not just US GAAP).

Separately, we observe that many registrants compare different periods in their discussion of results in their earnings release, as compared to their Form 10-Q. Many earnings releases discuss changes in operating results for the current quarter as compared to the prior quarter; whereas, Item 303 of Regulation S-K requires management’s discussion and analysis (MD&A) in quarterly reports to discuss changes in operating results for the current quarter and year-to-date, as compared to the same quarter and year-to-date results in the prior year.

Our sense is that management may explain operating results for the current quarter as compared to the prior quarter in their earnings release, as this is how management often views the business, this presentation is consistent with practice within the industry the company operates (i.e., the company and its business is not seasonal), or the discussion in this format is requested by users of the financial statements. Because MD&A requires the company to describe changes in operating results for the current quarter and year-to-date, as compared to the same quarter and year-to-date results in the prior year, these registrants prepare two completely different comparisons of operating results for these two different presentations (one set for the earnings release and one for Form 10-Q), which increases the compliance burden associated with quarterly reporting. We question whether this disparity between the earnings release and Form 10-Q results in unanswered questions or complexity for investors as they attempt to distill results described with two differing approaches. We recommend the



Commission consider whether registrants should have the option to present their discussion of quarterly operating results in the Form 10-Q consistent with how it manages the business and how users of the financial statements evaluate its results (i.e., quarter over quarter vs. year over year).

Additionally, as we highlighted in our [comment letter](#) on the *Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant*, we believe the Commission should consider eliminating the requirement to provide financial information about equity method investees on a quarterly basis. Consistent with the updating concept mentioned above for other interim reporting requirements, registrants should not be required to provide the information unless there has been a material change since year end.

Timing of the Quarterly Reporting Process

As noted in the Request, many companies choose to issue earnings releases before or concurrently with the related Form 10-Q. We sense that companies appreciate the ability to tailor their communication of results to be consistent with how management evaluates the business, to present information consistent with industry practice, and to be responsive to requests from investors and other stakeholders, regardless of a release's timing.

Auditor involvement with the earnings release is not mandated by any professional standards. However, as a risk management procedure, auditors often read and tie-out the financial information included in the earnings release. Depending on the timing of the earnings release, the auditor's review of the interim financial statements in accordance with AS4105 may not be complete when the earnings release is issued. As a practical matter, if the auditor has tied out the financial statements to underlying records for the earnings release, the procedure does not need to be re-performed for the Form 10-Q. Accordingly, there are typically synergies of working on both the earnings release and Form 10-Q. An auditor's work during an interim review typically follows the registrant's process and we do not believe the interim review is conducted in phases due to the preparation of two reporting documents.

Separately, we wonder whether investors and others understand the level of auditor involvement with earnings releases - i.e., if they believe a higher level of auditor involvement occurs or is required. To the extent that the Commission's outreach confirms that there is an expectation gap between what auditors are expected to do and have done in connection with an earnings release, the Commission may consider whether additional procedures or disclosures might help bridge this gap.



Earnings Release as Core Quarterly Disclosure

We do not believe an approach to interim reporting which allows companies to use earnings releases to satisfy or partially satisfy the core financial disclosure requirements of Form 10-Q (i.e., the “Supplemental Approach” contemplated by the Request) should be employed. We believe there may be too many challenges or difficulties to overcome before the earnings release could be used to satisfy some or all the quarterly disclosure obligation, including the following:

- *Lack of Standards for Earnings Releases* - There are currently no standards that govern the content in an earnings release, and companies may disclose as much or as little as they choose. Additionally, companies may change their approach and disclosures in an earnings release at any time. If the earnings release is to be the “core quarterly disclosure,” the Commission may want to consider whether standardized guidelines on the content of an earnings release are warranted.
- *Increased Complexity for Preparers and Users* - If the earnings release may be used to satisfy some of the core disclosure requirements for quarterly reporting in addition to the Form 10-Q, there will be increased complexity in the quarterly reporting process for all participants in the financial reporting supply chain.

Preparers will be required to ensure the completeness of a single set of disclosure requirements across two separate documents that may be issued at different times. Preparers will also be required to address XBRL tagging with two separate documents for a single set of disclosures (i.e., the Form 8-K for the earnings release that is furnished to the SEC, and the Form 10-Q that is filed with the SEC).

Users of financial statements will be required to look to two separate documents to obtain a complete disclosure set, and if these documents are issued at different times, investors will be working with piecemeal information until both the Form 8-K and Form 10-Q are issued.

- *Professional Standards for Auditors* - If auditor involvement in the quarterly earnings and disclosure process is desirable, the Commission would need to work with the PCAOB to develop a new or modified standard for the review of information that is something less than interim financial statements that comply with US GAAP. AS 4105 requires interim financial information to be “presented in the form of financial statements or in a summarized form that purports to conform with generally accepted accounting principles and applicable regulatory requirements, for example, Article 10 of Regulation S-X for Form 10-Q.”
- *Liability Considerations* - We note that earnings releases are furnished on Form 8-K. Accordingly, as furnished documents are not subject to Section 18 liability under the Exchange Act and are not automatically incorporated into Securities Act registration statements, the Commission would need to consider the impact



to, and any changes that would be required to, the registration statement process. We believe this would add significant complexity to the process.

Reporting Frequency

As the Commission considers whether to change the frequency of reporting for some or all registrants, we believe the Commission should consider the following:

- *Comparability* - If different organizations are permitted to prepare interim financial information less frequently than other organizations, there will be a lack of comparability between domestic registrants on information provided to users of the financial statements. While we acknowledge that Foreign Private Issuers (“FPIs”) report less frequently than U.S. registrants, it is important to note that the frequency of reporting is consistent for all FPIs - semi-annual reports furnished on Form 6-K and annual reports filed on Form 20-F.
- *Capital Formation* - A reduced frequency in reporting may affect registrants’ capital raising activities. Underwriters ordinarily expect to receive “negative assurance comfort” on subsequent changes in specified financial statement line items as of a date less than 135 days from the end of the most recent period that has been audited or reviewed by the auditor. A reduced frequency in reporting would lower the circumstances in which an auditor is able to provide negative assurance comfort in accordance with PCAOB Auditing Standard 6101, *Letters for Underwriters and Other Requesting Parties*, without performing additional audit or review work on more current financial statements. Consequently, the speed at which registrants can access the capital markets may slow to allow auditors to perform more work in advance of issuing a comfort letter. Should the Commission continue to explore a change in the frequency of reporting, it will need to work with the PCAOB to amend its standards to avoid this outcome.
- *Internal Controls over Financial Reporting* - We believe less frequent reporting may have a negative effect on a registrant’s internal control over financial reporting. There would be fewer opportunities to execute internal controls, particularly over the financial close and reporting process. In addition, if there are control failures, there will be fewer opportunities to demonstrate operating effectiveness causing the remediation time of such failures to increase. Alternatively, organizations may be required to increase the frequency of execution of the financial close cycle to demonstrate operating effectiveness of remediated controls, which diminishes potential benefits of a change in the frequency of interim financial reports.
- *Transitioning Between Reporting Frequency Statuses* - If a subset of registrants were permitted to report less frequently, we believe there would be operational and practical challenges associated with transitioning in and out of a filer status that may require more frequent interim reporting. During transition, registrants would need to modify their internal control structure very quickly, which might increase the likelihood of errors.



- *Auditor involvement* - Absent quarterly reporting and the need for auditor involvement in review of the financial information, such organizations might not require, or desire, auditor involvement throughout the year, which potentially reduces audit quality and effectiveness for those sized entities.
- *Other Reporting Requirements* - Certain stock exchanges and regulated industries also require quarterly reporting. Accordingly, the compliance and administrative relief intended by reducing the frequency of reporting for SEC rules may not be realized, or as significant, for all registrants.

We support the existing quarterly reporting system as it may have a positive impact on the quality of financial reporting due to the rigor, processes and controls, management certifications, and auditor involvement that is integral to the quarterly financial reporting process. We believe this is especially true for middle-market and smaller organizations. However, as noted earlier in this letter, we believe there are opportunities to reduce the compliance burden on smaller organizations without sacrificing the benefits of the existing quarterly reporting process.

Other Considerations

While we support the existing quarterly reporting system for all the reasons articulated above, we note that the time to file quarterly reports can be challenging for some smaller public companies. As we highlighted in our [comment letter](#) on the proposed amendments to the smaller reporting company definition, one way to potentially alleviate the burden associated with quarterly reporting for smaller companies while maintaining the benefits of the existing reporting system might be to extend the due date of Form 10-Q for smaller companies. Currently, companies with a public float between \$75 million and \$250 million are required to file within 40 days of period end. Although the exercise of internal control reporting has caused companies to enhance their controls, our sense is that the contribution this has made to reliable reporting tends to be somewhat diluted by accelerated reporting. No matter how automated and well controlled a company's systems are, closing the books and thoughtfully preparing and reviewing financial reports are still people-dependent processes at many levels. The 40-day due date for these smaller public companies puts pressure on their staff and increases the risk of error, or at least makes it more difficult to maintain quality.

For these reasons, we believe it would be desirable for the Commission to amend its rules so that all filers with a public float of less than \$250 million are able to file their quarterly reports within 45 days. We believe the benefits of allowing these small companies the extra time to file periodic reports would outweigh the benefit of disseminating the information five days earlier.

* * * * *



We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Tim Kviz, National Assurance Managing Partner - SEC Services, at [REDACTED] or via e-mail at [REDACTED], or Christopher Tower, National Managing Partner - Audit Quality and Professional Practice Leader, at [REDACTED] or via e-mail at [REDACTED].

Very truly yours,

BDO USA, LLP

BDO USA, LLP