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Via Electronic Filing

Ms. Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Comment on Earnings Releases and Quarterly Reports (Release No. 33-10588; 34-84842; File No. S7-26-18)

Dear Ms. Countryman:

I am a law professor at Temple University Beasley School of Law. I research, teach, and write in the areas of corporate law and securities regulation. This comment letter is provided in response to the request by the Securities and Exchange Commission (the “Commission”) for comments on the Commission’s Request for Comment on Earnings Releases and Quarterly Reports (the “Request”).

I commend the Commission’s continuing efforts and attention to protect ordinary investors in our capital markets through better disclosures, while balancing the administrative burdens and costs borne by reporting companies. In connection with the Request, I would like to highlight five general issues for the Commission’s consideration with citations to my relevant research, where appropriate, for more in-depth discussions:

1. *Initiate a time-limited pilot program to test a 10-Q opt-out rule.* The Commission should consider initiating a time-limited pilot program to test a 10-Q opt-out rule for a select group of companies. A pilot program would allow the Commission to generate and gather data on how reporting companies may behave in the absence of mandated quarterly disclosures or new regulations prior to final rulemaking. Rules can be

difficult and expensive to promulgate, follow, amend, and repeal.¹ As such, changes to the rules relating to Form 10-Q prevailing practices should be made thoughtfully and based on evidence so as to avoid misusing the limited resources of the Commission, and disrupting longstanding practices of reporting companies, investors, auditors, and other stakeholders.

2. *Provide additional guidance and flexibility with Form 8-K.* The Commission should consider providing additional guidance and flexibility with Form 8-K, especially if quarterly reporting on Form 10-Q is made optional, so that investors can still receive the traditional content of the 10-Q from companies that choose to make quarterly disclosures. Furthermore, providing additional guidance and flexibility with Form 8-K would permit companies to better adapt and customize their disclosure practices in accordance to the rules and the demands of the marketplace. That said, it is important to note that the current Form 10-Q and its relevant rules already offer some significant flexibility to reporting companies.
3. *Make disclosures easier for machines to “read.”* The Commission should consider making disclosures easier for machines to analyze as a means to better protect ordinary investors. Much of the disclosure rules are designed with human readers and investors in mind, but in today’s marketplace much of the disclosures are actually “read” by smart machines.² While disclosure remains an incredibly powerful regulatory tool, it may be of only limited utility as a tool for protecting ordinary investors because of numerous behavioral biases and cognitive tendencies, as evidenced by a large body of research in law, psychology and behavioral finance.³ By making disclosures more machine-friendly, the Commission can encourage entrepreneurs and technologists to repackage the disclosures in ways that are more salient and user-friendly for ordinary investors.
4. *Highlight and hyperlink changes in filings.* The Commission should consider implementing tools that highlight and hyperlink changes in quarterly and annual disclosures on Forms 10-Q and 10-K on its website. Institutional investors have the resources to readily compare Forms 10-Q and 10-K to detect language differences on a quarterly and annual basis, respectively, to inform them of salient changes at a company because of variances in the disclosures. Many retail investors and others in the marketplace lack the resources and knowledge to readily engage in such comparative analysis, so the Commission should consider making it easier for everyone to detect such changes in a company’s disclosures.

¹ See [Tom C.W. Lin, *Compliance, Technology, and Modern Finance*, 11 BROOKLYN JOURNAL OF CORPORATE, FINANCIAL & COMMERCIAL LAW 159, 164-168 \(2016\)](#) (discussing compliance costs and burdens associated with new and changing regulations).

² See [Tom C.W. Lin, *The New Market Manipulation*, 66 EMORY LAW JOURNAL 1253, 1270-76 \(2017\)](#) (describing the influential role of smart machines in today high-tech capital markets).

³ See [Tom C.W. Lin, *A Behavioral Framework for Securities Risk*, 34 SEATTLE UNIVERSITY LAW REVIEW 325 \(2011\)](#) (examining how behavioral biases affect investor risk assessments).

5. *Study further the impact of earnings guidance.* The Commission should consider further study of the impact of earnings guidance on firm behavior and investor behavior prior to providing additional guidance or rule proposals relating to disclosures. While earnings guidance may lead some firms to make short-term decisions to meet guidance that sacrifice long-term shareholder interests, earnings guidance can also provide valuable information for the marketplace. This is particularly true of smaller, emerging companies where research coverage is thin or lacking. Earnings guidance, if used properly, can help a firm establish credibility with the marketplace and provide investors with valuable information for price discovery. Because of the diversity of investors and firms in the marketplace with varying needs and expectations, it is important to better understand the impact of earnings guidance prior to issuing guidance or rule proposals that would impact all firms indiscriminately.⁴

I appreciate the opportunity to participate in this process, and would be happy to discuss my comments or any questions the Commission may have with respect to this letter.

Sincerely,

/s/ Tom C.W. Lin

⁴ See [Tom C.W. Lin, *Reasonable Investor\(s\)*, 95 BOSTON UNIVERSITY LAW REVIEW 461, 466-76, 508-13 \(2015\)](#) (discussing the diverse population of investors in today's marketplace with varying needs and expectations).