



March 20, 2019

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

RSM US LLP

One South Wacker Drive
Suite 500
Chicago, IL 60606
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Re: File Number S7-26-18 - Proposed Rule 33-10588, *Request for Comment on Earnings Releases and Quarterly Reports*

Dear Mr. Fields,

RSM US LLP appreciates the opportunity to offer our comments on SEC Proposed Rule 33-10588, *Request for Comment on Earnings Releases and Quarterly Reports*. Our comments address matters in the Request for Comment for which we have relevant knowledge and experience as a provider of audit services to issuers. When providing audit services to issuers, we understand that our “client” is the audit committee of the board of directors as the representative of the investors and other users of the audited financial statements.

We believe confidence in information is fundamental to the successful operation of the U.S. financial markets, and when making decisions, investors need to know that the financial information they are using is reliable. We also recognize there are cost burdens for reporting companies in providing financial information. We therefore support the SEC’s interest in exploring how it “might enhance, or at a minimum maintain, the investor protection benefits of disclosure, while reducing the costs (including time) that companies spend complying with quarterly reporting requirements.”¹

Regardless of the decisions made to change issuers’ quarterly reporting requirements, we stand ready to continue to serve investors by providing interim review or other services, as appropriate, to enhance the quality and reliability of financial information disclosed in SEC filings.

Reliability of information resulting from the quarterly reporting process on Form 10-Q

The Request for Comment asks whether there are specific benefits of the required Form 10-Q disclosures to investors and the marketplace, separate and apart from the earnings releases. We believe the most meaningful benefit of the required Form 10-Q disclosures results from the uniformity, accountability and rigor within the Form 10-Q financial reporting process that strengthens the quality and reliability of the interim financial information in the Form 10-Q as compared with the information provided in an earnings release. Fundamental quality-instilling elements found in the Form 10-Q reporting process include:

- A financial reporting framework — The financial information in the Form 10-Q is useful because it provides specific required disclosures to investors and the marketplace. These disclosures stem largely from interim financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP) and Regulation S-X, which provide a framework for consistency from year-to-year and comparability among reporting companies within a specific industry. There also is

¹ SEC Proposed Rule 33-10588, page 12.

benefit to investors in the consistency and comparability provided by the Regulation S-K requirements for Management's Discussion and Analysis (MD&A) in the Form 10-Q. In contrast, there is no framework for the consistency or comparability of financial information disclosed in an earnings release.

- Officer certifications — The Sarbanes Oxley Act of 2002 requires that the quarterly reports on Form 10-Q include certification by the principal executive and financial officers of the reporting company. These certifications include requirements that benefit investors by increasing the accountability of those principal executive and financial officers. Certification requirements² include:
 - Statements that the certifying officer has reviewed the Form 10-Q, is not aware of material omissions and believes that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.
 - A statement of the certifying officer's responsibility for establishing and maintaining disclosure controls and procedures and internal control over financial reporting.
 - Disclosure of (a) any material changes in the company's internal control over financial reporting during the most recent fiscal quarter and (b) the officer's conclusions of its evaluation of the effectiveness of the company's disclosure controls and procedures as of the end of the fiscal quarter.
- Auditor involvement — Although the financial statements in Form 10-Q are unaudited, Regulation S-X requires the interim financial statements included in Form 10-Q to be reviewed by an auditor in accordance with the standards of the Public Company Accounting Oversight Board (PCAOB).³ This quarterly review reduces the likelihood that material modifications would be required to the interim financial information for it to conform with U.S. GAAP. In addition, auditor involvement in the interim period decreases the likelihood that a non-routine transaction would be reported improperly over an extended period of time. The quarterly review also frequently includes procedures that directly contribute to the effectiveness of the annual audit. PCAOB standards also require the auditor to perform limited procedures quarterly to provide a basis for determining whether he or she has become aware of any material modifications that, in the auditor's judgment, should be made to the disclosures about changes in internal control over financial reporting in order for the certifications to be accurate and to comply with the requirements of Section 302 of the Securities Exchange Act of 1934.⁴ The auditor's quarterly review procedures increase the likelihood that investors will receive timely information about material changes in internal control over financial reporting. We believe auditor involvement during the review of interim financial information on a quarterly basis contributes significantly to investor protection and confidence.

The Request for Comment asks whether there are approaches the SEC should consider to help alleviate any burden associated with the preparation of a Form 10-Q without adversely affecting the total mix of information provided to investors. To ease some of the burden for reporting companies in the preparation of a Form 10-Q without adversely affecting the reliability of information provided to investors, the SEC could consider removing certain disclosure requirements that are duplicative with annual disclosures or are not material to investors. Regulation S-X Rule 10-01(a)(5) states, "Registrants may presume that users of the interim financial information have read or have access to the audited financial statements for

² Securities Exchange Act of 1934 Rule 13a-14(a) and SEC Regulation S-K item 601(b)(31)(i).

³ SEC Regulation S-X Rules 8-03 and 10-01(d).

⁴ PCAOB Auditing Standard 4105.07.

the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context.” As accounting standards have been added and updated, interim-period disclosure requirements have expanded significantly. The disclosures required for interim periods sometimes are extensive and duplicative with those required for annual periods.

We encourage the SEC to work with the Financial Accounting Standards Board to review the interim disclosures required by U.S. GAAP, seeking input from investors and preparers regarding the usefulness of disclosures and whether the benefits of providing certain interim disclosures justify the cost of compliance. In compliance with Regulation S-X Rule 10-01(a)(5), we suggest that consideration be given to limiting interim financial statement disclosure requirements to (a) items that have changed materially in amount or composition since the end of the most recently completed fiscal year and (b) events subsequent to the end of the most recent fiscal year that have occurred and have a material impact on the registrant.

There also could be an opportunity for efficiency in the presentation of MD&A in interim periods. Existing MD&A requirements often result in a “Results of Operations” section, discussing all line item changes from the statements of operations periods presented, regardless of whether the information is material. Similarly, the “Liquidity and Capital Resources” section often includes a discussion of changes between comparative periods in cash flows along with a discussion of outstanding debt, regardless of whether significant changes have occurred since year end. We recommend that the SEC perform a comprehensive review of the interim-period MD&A requirements and conduct outreach with investors to consider whether they may be better served by requirements that (a) provide relevant and helpful disclosure, (b) are focused on material changes and known or expected trends and (c) allow for the omission of information that is consistent with prior trends or redundant with information provided elsewhere in the Form 10-Q.

Earnings release as the core quarterly disclosure

In the Request for Comment, the SEC seeks input on a “Supplemental Approach” option whereby “a company would use its Form 10-Q to supplement a Form 8-K earnings release with additional material information required by the Form 10-Q not already presented in the Form 8-K or alternatively incorporate by reference disclosure from the Form 8-K earnings release into its Form 10-Q.”⁵ We believe it would be confusing to the marketplace if SEC rules were to allow for the interim financial statements to be separated so that certain parts would be presented only in the earnings release to satisfy the Form 10-Q requirements.

If a registrant were able to present condensed interim income statements only in the earnings release and the remaining Regulation S-X required interim statements and footnotes in the Form 10-Q, it would not be clear to investors as to whether information was reviewed by the auditor. Although auditors sometimes read earnings releases and provide feedback to management, professional standards do not require auditors to read or review a company’s earnings release or consider the disclosure therein. While earnings releases generally are derived from preliminary interim financial information expected to eventually be included in the Form 10-Q, the auditor’s review of these financial statements often is not complete at the date of the earnings release. Investors may incorrectly assume a level of auditor involvement with the earnings release that is not correct.

⁵ SEC Proposed Rule 33-10588, page 21.

If the Supplemental Approach is used, it would be important for the interim financial information subject to auditor review to be clearly identified to help investors understand which financial information was subject to review by the auditor. Currently, the Form 10-Q uses a defined structure whereby Part I requires the disclosure of financial information, which includes the financial statements that were reviewed by the auditor, and Part II requires the disclosure of other information. The auditor's responsibility for the other information in the Form 10-Q is to read the information for consistency with information in the financial statements. Under the Supplemental Approach, a structure will need to be devised to differentiate that which the auditor reviewed and that which the auditor read for consistency. Also, the structure should require clear differentiation between that which is in accordance with U.S. GAAP and that which is non-GAAP information.

In addition, if the Supplemental Approach is utilized whereby information disclosed in a company's earnings release is used to satisfy a portion of the requirements of Form 10-Q, the public release of earnings information several days prior to release of the Form 10-Q would create confusion as to when the auditor's review was completed. In this situation, it is not clear what steps would need to be taken to address subsequent events that may occur and need to be recorded between the earnings release and the issuance of the interim financial statements on Form 10-Q. Further, it raises questions related to the timing of management certifications if the information required for Form 10-Q can be disclosed in different documents, particularly if the interim financial statements are included in an earnings release.

If an earnings release without complete interim financial statements that comply with U.S. GAAP is used to fully satisfy interim reporting requirements (in lieu of a Form 10-Q), and some level of auditor assurance is desired, the auditing profession could help investors have confidence in the earnings release. However, because there currently is no financial reporting framework for an earnings release, a new framework would be necessary for preparers. In addition, auditing standards would need to be revised to provide a model for general purpose assurance on information that (a) is less than a full set of interim financial statements, or (b) extends beyond U.S. GAAP financial statements.

If earnings releases were utilized to partially satisfy interim reporting requirements, consideration also would need to be given to the related impact on the registration statement process because interim financial information is relied upon by investors to make decisions with the most recent available data. Underwriters historically have expected that auditors review quarterly financial statements included or incorporated in an offering document. However, earnings releases furnished on Form 8-K are not automatically incorporated into '33 Act registration statements. We therefore encourage the SEC to conduct outreach with underwriters as to their needs related to the nature and timing of the work of the auditor and the impact of any changes in the SEC's interim financial reporting requirements on those needs.

Reporting frequency

The Request for Comment seeks input related to the frequency of required interim reporting. We believe companies are in the best position to discern the frequency of an internal financial reporting process they need in order to provide reliable, timely information for significant decisions made internally. We also believe investors are in the best position to discern the frequency of required external interim reporting that best serves their needs. In the SEC's discernment of whether to change the frequency of interim reporting requirements, we suggest consideration of the following in addition to input from companies and their investors:

- As stated above, we believe that quarterly reporting has a positive impact on the quality of financial reporting due to "quality-instilling" elements, such as auditor involvement and management

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certifications that are integral to the quarterly financial reporting process. Such elements can result in the earlier identification and resolution of potential financial reporting issues, and more opportunities for such results are provided when these elements are exercised more frequently.

- Auditors often are asked to provide negative assurance related to changes in specified financial statement line items between the date of the most recent financial statements included in an offering document and the date of the offering. A change in the frequency of interim reporting could impact the time period for which auditors would be able to provide such negative assurance on subsequent changes, thereby reducing the level of comfort auditors are able to provide to underwriters in a securities offering. As discussed above, we encourage the SEC to conduct outreach with underwriters as to their needs related to the nature and timing of the work of the auditor and the impact of any changes in the frequency of interim financial reporting on those needs.

We appreciate this opportunity to provide feedback on the Request for Comment and would be pleased to respond to any questions the SEC or its staff may have about our comments. Please direct any questions to Rich Davisson - Partner, National Professional Standards Group, at [REDACTED].

Sincerely,

RSM US LLP

RSM US LLP