

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

21 March 2019

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

Dear Ms. Countryman:

Ernst & Young LLP is pleased to respond to the request for comment from the Securities and Exchange Commission (SEC or the Commission) on the nature, timing and frequency of earnings releases and quarterly reports, which we refer to as quarterly reporting.

Our feedback reflects our general belief that the quarterly reporting process functions effectively but could benefit from targeted improvements that would reduce the compliance burden on companies while maintaining investor protection. We believe the observations for consideration discussed in this letter are generally consistent with the SEC's ongoing disclosure effectiveness initiative.

Due to the potentially far-reaching implications of changing a fundamental reporting process, we recommend that the Commission expand its outreach efforts beyond evaluating written comments, which may not be representative of the views of all affected parties, particularly investors. For example, to inform any rulemaking initiative on quarterly reporting, the SEC could hold roundtable discussions like the recent roundtable on the proxy process.¹ We believe that engaging with investors and other constituencies could help the Commission better evaluate potential rule changes, and we would be happy to participate in such a discussion.

In addition, should the SEC undertake a rulemaking initiative on quarterly reporting, it would be important to undertake a thorough cost-benefit analysis of any proposed changes, including the potential detrimental effects on transparency in our capital markets from reducing the frequency or extent of quarterly disclosures.

¹ [Spotlight on Proxy Process \(15 November 2018\)](#).

Guiding principles

Our feedback is grounded in the following principles that we encourage the Commission to consider:

- ▶ Changes to the SEC's quarterly reporting requirements should not impede the timely flow of material information to investors.
- ▶ The general framework for quarterly disclosure should focus on material changes in a registrant's circumstances since the previous year end and should be predicated on an expectation that a user has read the latest annual report. Article 10 of Regulation S-X (Article 10) and Item 303(b) of Regulation S-K (Rule 303(b)) already presume this framework for financial statement reporting and management's discussion and analysis (MD&A), respectively.
- ▶ Interim periods are integral to the respective annual period.
- ▶ Auditor involvement contributes to the quality and reliability of quarterly reports filed with the SEC and should be maintained.
- ▶ If management has an undue focus on short-term results, it is a governance issue that cannot be resolved effectively by changing the interim reporting requirements.

In the following sections, we discuss the quarterly reporting landscape and provide specific suggestions for improving quarterly reporting.

Current landscape

A domestic registrant must provide financial and nonfinancial disclosure in a Form 10-Q that is filed with the SEC after each of its first three fiscal quarters. This form must include financial statements that comply with US GAAP and have been reviewed by an independent auditor,² as well as MD&A, material changes to risk factors and officer certifications, among other items.³ Form 10-Q can be incorporated by reference into certain registration statements filed for securities offerings.

A registrant may elect to issue an earnings release prior to filing its Form 10-Q or concurrently with the filing. Companies determine the content of these releases, based on their facts and circumstances (e.g., investor needs, size of the company, industry practices, analysts' expectations). Typically, an earnings release is an abbreviated discussion of a registrant's operating results and significant business and financial developments that can be absorbed more easily by the press and investors than the Form 10-Q filing. In addition to providing historical financial information, a registrant can choose to include forward-looking information, which may include earnings guidance.

² PCAOB Auditing Standard 4105, *Reviews of Interim Financial Information*.

³ The content requirements for Form 10-Q are at 17 CFR § 249.308a.

There are no securities laws or Commission rules or regulations that dictate the content of an earnings release other than the general antifraud provisions of the securities laws and the related rules.⁴ Companies that issue earnings releases must furnish⁵ them to the SEC on Item 2.02 of Form 8-K, which also subjects the information to certain rules governing the use of non-GAAP financial measures.⁶ Earnings releases are not typically incorporated by reference into registration statements, and there are no requirements for auditor involvement or officer certifications.

Suggestions to improve Form 10-Q

Financial statement periods reported

The SEC should consider whether year-to-date (YTD) disclosure in Form 10-Q would provide investors with sufficient information to understand a registrant's operating results and make investment decisions. We note the long and successful history of public and private offerings conducted based on YTD disclosures as evidence that investors' needs can be met by YTD disclosures.

For example, Form 10-Q could require only YTD statements of comprehensive income⁷ and cash flows and a reconciliation of changes in shareholders' equity for both the current period and the comparative period presented. The SEC could do this by amending Rule 10-01(c)(2) to make inclusion of individual quarterly periods optional.

Requiring only YTD information in a registrant's second- and third-quarter reports would provide substantial simplification relief in preparing and presenting the basic financial statements and related notes. In lieu of reporting separate operating results for a registrant's second and third quarters, the SEC could require Form 10-Q to include selected quarterly data for all four quarters in the preceding fiscal year and for each of the completed quarters in the current fiscal year. This presentation would resemble what is currently provided in annual reports under Item 302(a) of Regulation S-K.

Allowing companies to focus their reporting on YTD information throughout their Form 10-Q filings, rather than giving equal prominence to the results of the individual quarters, could help address concerns highlighted in the request for comment that quarterly reporting may contribute to a short-term focus.

Financial statement disclosures

We recommend that the SEC encourage the Financial Accounting Standards Board (FASB) to accelerate its Disclosure Framework Project on Interim Reporting.⁸ Also, we note that the recent addition of Chapter 8, *Notes to Financial Statements*, to the FASB's Conceptual Framework for Financial Reporting established a framework for disclosure in interim financial statements that is similar to Article 10. However, this framework will be used by the FASB to develop future guidance and is not part of the accounting standards

⁴ General antifraud provisions of 1934 Act Section 10(b) and SEC Rule 10b-5.

⁵ While the information furnished to the SEC is subject to general antifraud provisions of 1934 Act Section 10(b) and SEC Rule 10b-5, this information is not subject to the liability provision of Section 18 of the Exchange Act that only applies to the information filed with the SEC.

⁶ Item 10(e)(1)(i) of Regulation S-K.

⁷ Comprehensive income may also be presented in two separate statements: a statement of income and a statement of comprehensive income.

⁸ See [Disclosure Framework: Disclosures—Interim Reporting](#).

codification. For the most part, the codification indicates that disclosures are required for each period presented in the financial statements and does not distinguish between annual and interim reporting requirements. Therefore, many companies default to providing the same disclosures for interim periods as they do for annual periods. As a result, changes to the codification would be necessary so that registrants can prepare interim financial statements consistent with the Chapter 8 and Article 10 framework.⁹

Over time, quarterly reports have grown longer primarily due to increased disclosures in the notes to the financial statements. In our study of quarterly reports of 20 large, well-known companies from 1994 to 2018, we found that the average number of pages of notes to interim financial statements increased more than 700%.

Separately, we continue to believe that interim disclosures about equity method investees under S-X Rule 4-08(g)¹⁰ and issuers/guarantors of guaranteed securities under S-X Rule 3-10¹¹ should only be required if material changes have occurred since year end.

MD&A disclosure

A registrant's discussion of its results of operations in MD&A must cover the interim periods that are presented in its financial statements. In practice, Item 303(b)(2) leads to the preparation and disclosure in MD&A of separate commentaries about the results of operations for the most recent quarter as well as the YTD period. The SEC should consider whether separate MD&A of individual quarterly periods is necessary and instead, whether interim MD&A should focus on the YTD results of operations. That is, the Commission should consider amending Item 303(b)(2) to make clear that a separate discussion of the results of operations of individual quarters is not required. As with YTD financial statement periods, an integrated YTD MD&A could simplify disclosure and reduce compliance costs, without adversely affecting investor protections.

We observe that interim MD&A has grown by approximately 325% based on our study of 20 large companies during the period from 1994 to 2018. We recommend that the SEC revisit its MD&A guidance and consider how companies can effectively streamline interim MD&A disclosures and remain in compliance with Rule 303(b). The guidance issued by the Commission in 1989 and 2003¹² was comprehensive in its scope and intended to elicit more disclosure. Now that the SEC has more than 15 years of experience to see the effect of that MD&A guidance, it is an appropriate time to re-evaluate it.

We note that, for many years, MD&A disclosure has received more attention in comment letters from the staff than any other topic.¹³ We recommend that the staff of the Division of Corporation Finance evaluate its filing review comment letter process to make sure that this amount of attention isn't inadvertently causing unnecessary disclosure in MD&A for interim periods.

⁹ [EY Comment Letter, Proposed Statement of Financial Accounting Concepts, Chapter 8: Notes to Financial Statements.](#)

¹⁰ [EY Comment Letter, Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant.](#)

¹¹ [EY Comment Letter, Request for Comment on Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities.](#)

¹² Release Nos. [33-6835](#) and [33-8350](#) issued in 1989 and 2003, respectively.

¹³ Based on our analysis of annual comment letters issued on Form 10-Ks since 2013, MD&A has ranked No. 1 or 2 on our top-10 most frequent areas of SEC comments. For the most recent ranking, see the [SEC Comments and Trends](#) publication dated September 2018.

Frequency

We support retaining quarterly reporting for all domestic registrants (except possibly those we identify below) because the transparency it provides benefits investors, and it has contributed to making the US public capital markets so successful. We believe quarterly reporting minimizes information asymmetry between management and investors and reduces market uncertainty. Quarterly reporting also helps reduce risks in the corporate financial reporting system by facilitating timely identification and resolution of potential accounting and reporting issues.

We note that the market capitalization of foreign private issuers (FPIs) is significant,¹⁴ and many of those FPIs are only listed on a US exchange. Currently, FPIs are subject to the reporting requirements that apply in their home jurisdiction and their US exchange, and the frequency and content of and auditor involvement with their interim reporting vary. As the Commission evaluates the frequency of reporting by domestic registrants, it also should evaluate the current interim reporting regime applicable to FPIs.

Consistent with our prior comments to the Commission,¹⁵ semiannual financial reporting could be sufficient for smaller reporting companies (SRCs) that are not listed on a national exchange.¹⁶ As a result of amendments recently adopted by the SEC, these SRCs are now eligible to raise money in exempt public offerings under Regulation A and their Exchange Act¹⁷ reports can satisfy the reporting requirements under Tier 2 of Regulation A,¹⁸ which only requires semiannual reports. The SEC should consider providing SRCs not listed on a national exchange the option to file Form 10-Q on a semiannual basis. Semiannual reporting for these SRCs would be consistent with that of companies that only conduct exempt public offerings under Tier 2 of Regulation A and report semiannually by filing Form 1-SA. Regulation A was expanded in 2015 by adding the Tier 2 regime, among other changes, and we are not aware of any concerns being raised by investors or others regarding its semiannual reporting model.

If an SRC not listed on a national exchange raises capital in registered public offerings (including having an effective or pre-effective shelf registration statement), we believe that it should continue to be required to comply with the age of financial statement requirements that apply to registration statements.¹⁹ In practice, we expect that such SRCs that regularly engage in registered securities offerings would continue to file Form 10-Qs on a quarterly basis, even if there is an option to report semiannually.

¹⁴ FPIs had a total market capitalization of more than \$9 trillion at the end of 2017. See the [keynote address by Bill Hinman, Director of the SEC's Division of Corporation Finance, at the PLI's Seventeenth Annual Institute on Securities Regulation in Europe](#).

¹⁵ [EY Comment Letter, Concept Release on Business and Financial Disclosure Required by Regulation S-K](#).

¹⁶ Based on our review of data retrieved from Audit Analytics on 4 February 2019, there are 1,261 domestic SRCs that are not listed on national exchanges and could potentially take advantage of optional semiannual reporting. Effective 10 September 2018, the Commission amended the definition of an SRC to allow more companies to qualify. As amended, the thresholds to qualify as an SRC are (1) public float of less than \$250 million or (2) annual revenue of less than \$100 million and public float of less than \$700 million (including no public float).

¹⁷ The Securities Exchange Act of 1934.

¹⁸ Release No. [33-10591](#).

¹⁹ Rule 3-12 of Regulation S-X.

We believe this limited option to report semiannually would help advance SEC Chairman Clayton's goal of making raising capital in the public markets²⁰ more attractive by decreasing the cost of periodic reporting for these smaller registrants. However, before adopting any changes allowing SRCs not listed on a national exchange the option to report semiannually, the views of investors in these registrants should be carefully considered.

Earnings releases

Issued prior to Form 10-Q filing

We recognize that investors that rely solely on earnings releases to make investment decisions have less information than they would if they waited until the registrant filed its Form 10-Q. For example, earnings releases typically provide the basic financial statements and other summary financial data but not the notes to the financial statements or details provided in MD&A. However, unless there is a consensus among investors that the long-standing practice of issuing an earnings release before a 10-Q is problematic, the SEC should allow registrants to continue to issue these releases. We believe streamlining the disclosure requirements in Form 10-Q, as discussed above, would allow more companies to shorten, or eliminate, the period between the issuance of an earnings release and filing a Form 10-Q.

Auditor involvement

We believe auditor involvement with Form 10-Qs (i.e., the requirement since 2000 that financial statements in Form 10-Q be reviewed by the registrant's independent registered public accounting firm) positively affects the quality of interim reporting and provides important investor protections. Quarterly auditor involvement facilitates timely identification and resolution of potential financial reporting issues. It also helps auditors understand and assess risks from company developments on a timely basis and provides them the opportunity to apply audit procedures to significant transactions during the year.

We recommend that the SEC determine whether investors are aware that auditors currently don't have responsibility for earnings releases and, if not, consider ways to address that misperception. For example, if it finds there is a widespread, mistaken belief among investors that auditors have responsibility for any information contained in an earnings release or that the financial statement close process is complete, the SEC could consider requiring registrants to clarify that auditors don't have responsibility for the content of the earnings release and that the interim information could change upon filing Form 10-Q.

If there is sufficient interest among investors to receive assurance on information contained in earnings releases, the SEC, the Public Company Accounting Oversight Board (PCAOB) and the profession could work collaboratively to facilitate the development of a framework to provide such assurance, which would require proposing and adopting changes to regulations and standards.

²⁰ SEC Chairman Jay Clayton's [remarks on Capital Formation](#) at the Nashville 36/86 Entrepreneurship Festival.

Supplemental approach

We believe the “supplemental approach” that the SEC discussed in the request for comment (i.e., leveraging financial information included in earnings releases to satisfy the requirements in Form 10-Q) would present significant challenges that may cause this approach to be impractical. We concur with the concerns expressed in the comment letter issued by the Center for Audit Quality about these challenges.²¹

Disclosure controls and procedures (DCPs)

Registrants and their certifying officers must maintain DCPs and report on their effectiveness in each Form 10-Q. We believe these requirements add valuable rigor to the quarterly reporting process and should be maintained. However, we have observed some uncertainty regarding whether DCPs apply to earnings releases furnished on Form 8-K. We recommend that the SEC clarify this by amending the rules or issuing guidance explaining how DCPs apply to earnings releases.

Effect of quarterly reporting on management decision making

We believe that how management makes decisions is a governance matter. Therefore, any concerns about whether quarterly reporting contributes to an undue focus on short-term results should not be resolved by altering the frequency of reporting, which could be detrimental to investors and the capital markets. We note that many companies are already demonstrating that management is taking a long-term view by disclosing additional information addressing sustainability and long-term value creation.²² We recommend that the SEC monitor and encourage these efforts rather than seek a regulatory solution at this time.

* * * * *

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

Yours sincerely,



Copy to:

William Hinman, Director, Division of Corporation Finance
Kyle Moffatt, Chief Accountant, Division of Corporation Finance
Wesley R. Bricker, Chief Accountant, Office of the Chief Accountant
Russell Golden, Chair, Financial Accounting Standards Board

²¹ [Center for Audit Quality Comment Letter, Request for Comment on Earnings Releases and Quarterly Reports.](#)

²² [Embankment Project for Inclusive Capitalism releases report to drive sustainable and inclusive growth.](#)

Appendix: Summary of our suggestions to improve interim reporting

Existing requirement	EY suggestions	Basis for suggestions
Financial statement periods reported		
<ul style="list-style-type: none"> ▶ Form 10-Q requires: <ul style="list-style-type: none"> ▶ Statements of comprehensive income for both the quarter-to-date (QTD) and year-to-date (YTD) periods on a comparative basis. ▶ Statements of cash flows for the YTD period on a comparative basis. ▶ A reconciliation of changes in shareholders' equity for the quarter and YTD on a comparative basis (either in the notes or as a primary statement). ▶ In a Securities Act registration statement, registrants are only required to present YTD interim financial statements on a comparative basis. 	<ul style="list-style-type: none"> ▶ The SEC should consider allowing Form 10-Q to include only YTD statements of comprehensive income, cash flows and a reconciliation of changes in shareholders' equity for the current and the comparative period, consistent with what is required in a Securities Act registration statement. ▶ The SEC could require Form 10-Q to include selected quarterly financial data for each completed quarter of the current and prior year, similar to the disclosure under Item 302(a) of Regulation S-K in annual reports on Form 10-K. 	<ul style="list-style-type: none"> ▶ YTD disclosure may provide investors with sufficient information to understand a registrant's operating results and make investment decisions. ▶ The long and successful history of public and private offerings conducted based on YTD disclosures is evidence that they are sufficient for investor information and protection. ▶ YTD-only information in Form 10-Qs could help address the concern that quarterly reporting may contribute to short-term decision making.
Financial statement disclosures		
<ul style="list-style-type: none"> ▶ Accounting Standards Codification (ASC) 270, <i>Interim Reporting</i>, provides disclosure requirements applicable to interim financial statements. ▶ Various other accounting standards (e.g., ASC 820, <i>Fair Value Measurement</i>) specify disclosures required in financial statements without specifying whether they apply to both interim and annual financial statements. 	<ul style="list-style-type: none"> ▶ The SEC should encourage the FASB to accelerate its Disclosure Framework Project on Interim Reporting. ▶ The SEC should only require interim disclosures about equity method investees under S-X Rule 4-08(g) and issuers/guarantors of guaranteed securities under S-X Rule 3-10 when material changes have occurred since year end. 	<ul style="list-style-type: none"> ▶ Over time, quarterly reports have grown longer primarily due to disclosures the FASB requires in the notes to financial statements. ▶ Disclosures required by S-X Rules 4-08(g) and 3-10 are only relevant for investors when material changes have occurred since year end, consistent with the framework in Article 10.
MD&A disclosure		
<ul style="list-style-type: none"> ▶ MD&A disclosure requirements are included in Item 303 of Regulation S-K and supplemented by SEC guidance (e.g., Interpretive Release Nos. 33-6835 and 33-83500 issued in 1989 and 2003, respectively). ▶ Item 303(b)(2) requires the MD&A discussion of results of operations to cover the interim periods presented in the financial statements, which leads to the separate commentaries about the results of operations for the QTD and YTD periods. 	<ul style="list-style-type: none"> ▶ Only require discussion in MD&A of the YTD results of operations, and don't require a separate discussion of the results of operations of individual quarters ▶ Revisit MD&A guidance and consider how companies can effectively streamline interim MD&A and remain in compliance with Rule 303(b). ▶ Evaluate the SEC staff's filing review comment letter process to make sure that it isn't inadvertently causing unnecessary or immaterial disclosure in MD&A for interim periods. 	<ul style="list-style-type: none"> ▶ Requiring only YTD MD&A would simplify disclosure and reduce compliance costs, without adversely affecting investor protections. ▶ The SEC's interpretive MD&A releases are dated and typically intended to elicit more disclosure. ▶ For many years, MD&A disclosure has received more attention in SEC staff comment letters than any other topic, leading to more extensive disclosures.

Existing requirement	EY suggestions	Basis for suggestions
Frequency		
<ul style="list-style-type: none"> ▶ A domestic registrant must provide financial and nonfinancial disclosures in a Form 10-Q that is filed with the SEC after each of its first three fiscal quarters. ▶ Interim reporting by FPIs varies based on their local jurisdiction. However, US exchanges generally require FPIs to provide information at least semiannually. 	<ul style="list-style-type: none"> ▶ Consider allowing SRCs not listed on a national exchange the option to file Form 10-Q semiannually. For registration statements, continue to require SRCs to comply with the age of financial statement requirements under Rule 3-12 of Regulation S-X (i.e., provide YTD financial statements that are no more than 135 days old). ▶ Evaluate the current interim reporting regime for FPIs. 	<ul style="list-style-type: none"> ▶ SRCs not listed on a national exchange are similar to small private entities that are only subject to semiannual reporting after raising money in exempt public offerings under Tier 2 of Regulation A. Investors and others have not raised concerns regarding the semiannual reporting model for these private entities. ▶ FPIs represent a significant portion of US market capitalization, and many are listed only in the US.
Earnings releases		
<ul style="list-style-type: none"> ▶ There are no requirements for auditors to be involved in earnings releases or for registrants to make that clear. ▶ Registrants must maintain DCPs, but it is unclear whether DCPs apply to earnings releases. 	<ul style="list-style-type: none"> ▶ If there is a misperception among investors about auditor involvement with earnings releases, consider requiring registrants to clarify that auditors don't have responsibility for the content of the earnings release and that the interim information could change upon filing Form 10-Q. ▶ Clarify how DCPs apply to earnings releases furnished on Form 8-K. 	<ul style="list-style-type: none"> ▶ Investors may mistakenly believe that auditors have responsibility for information contained in an earnings release or that the financial statement close process is complete. ▶ DCPs add rigor to the quarterly reporting and public disclosure processes, and their applicability to earnings releases should be clear.