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April 10, 2019

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via email to rule-comments@sec.gov

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

Ladies and Gentlemen:

This letter is submitted on behalf of the Securities Regulation Committee of the New York City Bar Association. Our Committee includes a wide range of practitioners whose areas of interest and expertise include securities laws and the regulation of the U.S. capital markets.

We are responding to the request of the Securities and Exchange Commission for comment on earnings releases and quarterly reports. We applaud the Commission's effort to undertake a review of the requirements related to quarterly reporting and to consider how to better tailor those requirements to the needs of investors. We have focused our comments on certain topics of particular importance to our Committee.

A. Information Content Resulting from the Quarterly Reporting Process

The Commission has requested comment on the interplay between the earnings release and the Form 10-Q and the relative usefulness to investors of those documents.

We acknowledge that the quarterly reporting process can be burdensome for many public companies. Typically, this process involves preparation of an earnings release, a management script for the earnings call, a power point presentation for the earnings call and the Form 10-Q, which includes interim financial statements and MD&A. These documents and communications contain overlapping disclosures and market practice varies with respect to the scope of the earnings release and related earnings disclosures.

Nonetheless, we believe that it would be a mistake for the Commission to impose additional disclosure requirements with respect to quarterly earnings releases or other quarterly disclosures outside of the Form 10-Q. Under the current system, investors benefit from the uniform disclosure requirements of the Form 10-Q and also benefit from the flexibility afforded companies in supplementing that information with earnings communications. Many investors rely heavily on earnings releases, and they do so with the knowledge that the financial information contained in the earnings release will be consistent with that contained in the Form 10-Q and that the latter disclosure is subject to auditor review. In our experience, investors are readily able to digest the information contained in the earnings release and Form 10-Q, respectively.

The Commission has also requested comment on whether the practice of companies providing quarterly forward-looking earnings guidance creates an undue focus on short-term financial results and whether the Commission should take steps to discourage the practice.

We believe it would be a mistake for the Commission to attempt to discourage particular types of disclosures that investors and financial markets have historically found useful. We acknowledge that certain investors have concerns about “short-termism,” but we are not persuaded that quarterly guidance necessarily leads to an unhealthy short-term outlook. More fundamentally, we do not believe the Commission should be in the business of attempting to regulate business decision-making – including the extent to which companies make long-term capital investments – by further regulating forward-looking guidance. In particular, we believe it would be a mistake to assign heightened liability to such guidance by requiring that it be filed with the Commission, as it would have a chilling effect on disclosures that some investors have historically found useful. We note that shareholders and boards of directors have many tools that can be used to encourage a focus on long-term growth.

B. Timing of Quarterly Reporting Process

As the Commission notes, some companies issue their earnings release prior to filing the associated Form 10-Q, although it appears that more and more companies are filing their Form 10-Q on the same day their earnings release is issued.

As a general matter, we do not believe that investors are disadvantaged at the time of the earnings call by not having access to the more detailed information in the Form 10-Q. By its

very nature, the earnings release is designed to provide investors with the most material information about the company's results and financial condition and, as noted above, the earnings release is heavily relied upon in part because investors know that it will be consistent with the Form 10-Q.

Companies may have a variety of reasons for issuing an earnings release prior to filing the Form 10-Q, including the time required to complete the disclosure controls and procedures and auditor review processes associated with the Form 10-Q and an investor relations desire to release earnings as early as possible following the end of the quarter. In some instances, companies may choose to pre-release certain earnings figures or ranges of earnings figures (*e.g.*, revenues and EBITDA) earlier in the cycle in order to provide information to the market in connection with a transaction or for other investor relations purposes.

We believe that the flexibility afforded in the current system is valuable to both companies and investors and we do not believe that the Commission should take any action to address time lapses between an earnings release and Form 10-Q.

C. Earnings Release as Core Quarterly Disclosure

The Commission has requested comment on whether it should provide an option for companies to use earnings releases to satisfy the core financial disclosure requirements of Form 10-Q. Under the Commission's proposed "Supplemental Approach," a company could use its Form 10-Q to supplement information contained in the earnings release or to incorporate by reference disclosure from the earnings release into the Form 10-Q.

While we are generally in favor of greater flexibility in disclosure rules, we are concerned that the proposed Supplemental Approach would result in greater complexity for companies and investors at the cost of sacrificing the benefits of a uniform Form 10-Q disclosure document.

The core components of the Form 10-Q are the interim financial statements, including footnotes, and the MD&A. Under the proposed Supplemental Approach, a company could include the interim financial statements and MD&A in its earnings release and be relieved of the requirement to include those items in the Form 10-Q. As a practical matter, we do not believe many companies would voluntarily choose to include financial statements and MD&A in their earnings releases, as they are free to do so today and rarely do. But leaving open this option would create a system in which some Form 10-Qs would be less complete than others, which could be confusing to investors.

We also believe it would be a mistake to allow the interim financial statements to be separated so that certain parts, such as condensed interim income statements, could be presented only in the earnings release and the remaining Regulation S-X required interim statements and footnotes would be presented in the Form 10-Q. The potential confusion this would create, in our view, significantly outweighs the potential benefits.

D. Reporting Frequency

We commend the Commission for seeking comment on an issue as fundamental as reporting frequency. We acknowledge that many companies would benefit from the reduced reporting burdens of a semi-annual system and that certain investors may be comfortable receiving only semi-annual reporting. We appreciate that there are a variety of different accommodations that the Commission could propose – such as allowing semi-annual reporting for certain categories of issuers (*e.g.*, non-accelerated filers, smaller reporting companies, emerging growth companies) or allowing an issuer to specify a reporting model at the time of its initial public offering.

We are concerned, however, that the complexity of introducing accommodations with respect to reporting frequency, even if optional, would outweigh the benefits. Investors could have difficulty comparing companies with different reporting frequencies and, as the Commission notes, the rules with respect to accounting procedures, including comfort letters, and underwritten public offerings would need to be substantially revised.

Moreover, we suspect that investors would continue to demand quarterly reporting, even if the Commission’s rules allowed for semi-annual reporting. We note by way of analogy that the Rule 144A debt markets generally require quarterly financial reporting as a contractual matter, even though many debt issuers are not subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended.

E. Reducing Disclosure Burdens

We encourage the Commission to examine whether any of the current requirements of Form 10-Q could be eliminated or streamlined to reduce the reporting burden on issuers. In particular, we urge the Commission to work with the Financial Accounting Standards Board, in conjunction with the FASB’s Disclosure Framework Project on Interim Reporting, to improve the effectiveness of quarterly reporting and reduce duplicative disclosures across the interim financial statements and the other parts of the Form 10-Q.

Finally, as described more fully in the Financial Reporting Committee of the New York City Bar Association comment letter of August 30, 2016 in response to the Commission’s concept release on Regulation S-K (file no. S7-06-16), we encourage the Commission to consider implementing a “company profile” disclosure system, which we believe would both enhance the accessibility of public company disclosure for investors and significantly reduce the burden on investors.

* * * *

We thank you for the opportunity to comment on this important Commission initiative. Members of our Committee would be happy to discuss any aspect of this letter with the Commission staff.

Respectfully submitted,

A handwritten signature in blue ink that reads "David S. Huntington". The signature is written in a cursive style with a large, stylized initial "D".

David S. Huntington
Chair, Securities Regulation Committee