



July 25, 2019

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

Re: File Number S7-05-19

Dear Ms. Countryman:

We appreciate the opportunity to provide input on the Securities and Exchange Commission's (the "SEC" or the "Commission") Request for Comment on the proposed rule *Amendments to Financial Disclosures about Acquired and Disposed Businesses* (the "Proposed Rule" or the "Proposal"). We commend the SEC for re-examining disclosure requirements for such transactions currently required by Regulation S-X. Our observations and recommendations are included in the accompanying Appendix and are based on our experiences in working with the SEC's disclosure requirements as independent auditors.

We would be pleased to discuss our comments or answer any questions that the SEC staff or the Commission may have. Please do not hesitate to contact John May (██████████) or Diane Howell (██████████) regarding our submission.

Sincerely,

A handwritten signature in black ink that reads "PricewaterhouseCoopers LLP". The signature is written in a cursive, flowing style.

PricewaterhouseCoopers LLP



I. Overall considerations

We support the Commission's objective of amending the requirements for financial statements relating to acquisitions and dispositions of businesses, which will facilitate more timely access to capital and reduce the complexity and costs to prepare the disclosures. We also appreciate the Commission's thoughtful consideration of the input provided in our November 30, 2015 letter responding to the Commission's *Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant* ("2015 comment letter") as it formulated the Proposed Rule. In the following sections we outline a few specific observations and recommended alternatives for consideration.

II. Significance tests

Income test - revenue component

We support the Commission's proposal to add a revenue component to the Income Test. As noted in the Proposed Rule, revenue is an important indicator of the operations of a business and generally has less variability than net income. We believe the addition of a revenue component will reduce the need to request relief under Rule 3-13 caused by situations when the current Income Test results in a significance determination that would not be material to investors.

In order to assist registrants in assessing whether their facts and circumstances meet the criteria to utilize both the income and revenue components of the proposed Income Test, we recommend the Commission define "recurring annual revenue" within Rule 1-02(w)(1)(iii)(A)(2) of the Proposed Rule.

Income test - income or loss from continuing operations after income taxes component

The use of income or loss from continuing operations after income taxes ("net income") for the income test proposed in Rule 1-02(w)(1)(iii)(A)(1) may result in significance determinations that are less consistent and less meaningful than those made under the current rule (e.g., based on income or loss from continuing operations before income taxes ("pretax income")). We recommend the Commission continue to require registrants to test significance using pretax income in order to prevent unusual results caused by income tax anomalies. For instance, we note that income taxes can be volatile for reasons unrelated to a company's operations (e.g., changes in tax law, changes in valuation allowances), which could distort the significance determination. As another example, under the Proposed Rule, a pass through entity for which pretax income is equal to net income would generally appear to be more significant to a registrant than under the current Rule 3-05.

III. Financial Statements for net assets that constitute a business

Currently, registrants frequently request the SEC staff to permit them to provide audited statements of assets acquired and liabilities assumed and of revenues and direct expenses (exclusive of corporate overhead, interest and income tax expense) (collectively, "abbreviated financial statements") in lieu of the complete financial statements required by Rule 3-05. In order to assist registrants in assessing whether their facts and circumstances meet the proposed criteria for providing abbreviated financial statements and to facilitate consistent application, we recommend the SEC clarify certain aspects of the Proposed Rule. For example, it would be helpful to understand whether the term "segment" in the Proposed Rule should be interpreted using ASC 280, *Segment Reporting* (ASC 280), (e.g., operating segment or reportable segment) or a definition that is outside the scope of ASC 280. Additionally, we recommend the Commission consider leveraging the staff's experience in interpreting the terms "separate entity" and "division" in the context of Rule 11-01(d) in order to help registrants better understand those terms in the context of the Proposed Rule.



We also recommend the Commission clarify when carve-out financial statements of an acquired business would be appropriate as the Proposed Rule only addresses the distinction between full financial statements required by Rule 3-05 and abbreviated financial statements.

IV. Foreign matters

We support Rule 3-05(c) and (d) of the Proposal that would allow the financial statements of an acquired business that is a foreign business or an entity that is not a foreign business but would qualify as a foreign private issuer if it were a registrant to be prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB) in most circumstances.

We recommend the Commission permit the audit of such financial statements to be performed in accordance with International Standards on Auditing (ISA). As we noted in our 2015 comment letter, ISAs are high-quality auditing standards that are widely accepted worldwide. The AICPA auditing standards are largely converged with ISAs. In a number of situations, financial statements of the acquiree audited using ISAs are readily available. By accepting an audit performed in accordance with ISAs in this situation, the company will be able to file the financial statements sooner than if the audit has to be performed (or in many cases re-performed) using AICPA or PCAOB standards.

V. Omission of Rule 3-05 financial statements for businesses that have been included in the registrant's financial statements

The Proposed Rule would not require separate acquired business financial statements once the business has been included in the registrant's post-acquisition audited financial statements for a complete fiscal year (i.e., for a full 12 months). We recommend the Commission revise the Proposed Rule to allow registrants to exclude the separate acquired financial statements once the business has been included in the registrant's post-acquisition audited financial statements for at least 9 months. We note that Rule 3-06 permits financial statements covering a period of 9-12 months to satisfy a requirement under Rule 3-05 for filing financial statements for a year.

VI. Rule 3-14 - Financial Statements of Real Estate Operations Acquired or to be Acquired

Blind pools

The Commission should consider extending the use of the proposed significance tests applicable to blind pool real estate offerings to blind pool offerings within the scope of Rule 3-05. The reasons stated in the Proposal for adapting the significance tests for blind pool real estate offerings also apply to other blind pool offerings.

Blind pools - "distribution period"

Significance during the distribution period as described by Industry Guide 5 is computed by comparing the registrant's investment in the property to the registrant's total assets as of the date of the acquisition plus the proceeds (net of commissions) expected, in good faith, to be raised in the registered offering over the next 12 months. Therefore, when discussing the distribution period for blind pools, the Commission should consider clarifying the meaning of "exclude the Income test from their significance determinations *for part of the distribution period*" (emphasis added).



VII. Pro forma financial information

Management's adjustments

We generally support the Commission's proposal to add "Management's Adjustments" (MAs) as a type of pro forma adjustment as it may provide investors insight into the potential effects of the acquisition and the post-acquisition plans expected to be taken by management. However, the level of subjectivity involved in determining whether MAs are required may reduce the consistency of pro forma presentations.

In order to minimize potential inconsistencies, the Commission should consider providing implementation guidance (e.g., examples similar to those provided in Regulation S-X Rule 11-02(b)(3) of the Proposed Rule) to clarify the requirements surrounding MAs. For example, the Commission should consider including other examples that may or may not be appropriate MAs, such as revenue-related synergies.

Underwriter requests for auditor assistance with due diligence

Underwriters typically request the auditor's assistance as part of the underwriters' due diligence efforts in connection with a securities offering. If pro forma information is presented, a registrant's auditor is generally requested to provide negative assurance in a comfort letter on whether the pro forma financial information complies as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X. Currently, Auditing Standard 6101, *Letters for Underwriters and Certain Other Requesting Parties*, particularly sections 6101.42-.43, *Pro Forma Information*, contemplates the existing pro forma requirements in Article 11 when determining the conditions that must be present and the procedures the auditor must complete prior to providing negative assurance with respect to the pro forma information in a comfort letter. The Commission should consider coordinating with the PCAOB to consider whether such standards continue to be appropriate in light of the proposed changes or whether such standards should be revised as a result of the proposed requirements.

VIII. Amendments to financial disclosure about acquisitions specific to investment companies

Applicability of Rule 3-05 to investment companies for non-fund acquisitions

We recommend the Commission clarify the circumstances under which an investment company would follow Rule 3-05 for non-fund acquisitions. It is our understanding that an investment company would follow Rule 3-05 only for an acquisition of an operating company that it would be required to consolidate or account for using the equity method of accounting pursuant to ASC 946-810-45-3 or ASC 946-323-45-2, respectively. We recommend the Commission clarify this given footnote 222 to the Proposed Rule states that "[i]n the event of a non-fund acquisition, investment companies would follow Rule 3-05."

Whether five-year income averaging is permitted for 1-02(w)(2)(ii)(A)

Five-year income averaging is explicitly included in the alternate income test in Proposed Rule 1-02(w)(2)(ii)(B). We recommend investment companies be permitted to use five-year income averaging in the 80% income test in Rule 1-02(w)(2)(ii)(A).



Proposed Rule 6-11 – Financial statements of funds acquired or to be acquired

Proposed Rule 6-11(a)(2)(ii) indicates “a fund acquisition *includes* the acquisition by the registrant of all or substantially all of the portfolio investments held by another fund or an acquisition of a fund’s portfolio investments that will constitute all or substantially all of the initial assets of the registrant” (emphasis added). In order to avoid possible broad interpretations of what is meant by use of the word “includes,” we believe the Commission should clarify the definition of a fund acquisition.