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

29 July 2019

Re: Request for Comment on Amendments to Financial Disclosures about Acquired and Disposed Businesses (Release No. 33-10635; 34-85765; IC-33465; File No. S7-05-19)

Dear Ms. Countryman:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or Commission) on its proposal to amend its financial disclosure requirements for acquisitions and dispositions of businesses, including real estate operations and investment companies.

We support the Commission's objective to improve these disclosures for investors, facilitate more timely access to capital, and reduce the complexity and costs of preparing disclosures about business acquisitions and dispositions. We note that the proposed amendments incorporate several of our previous recommendations to the Commission,¹ and we believe that making most of the proposed changes would achieve the Commission's objective.

However, we recommend that the Commission reconsider certain of the proposed amendments and take additional steps, as described below, to help achieve its objective.

Significance tests

Investment test

We recommend that the SEC more closely align the measurement date for the registrant's worldwide market value of common equity (WWMV) in the investment test in proposed Rule 1-02(w)(1)(i) with the measurement date of the fair value of the purchase or sale consideration. This could be accomplished by requiring registrants to determine their WWMV on the last business day before the public announcement of a transaction rather than on the last business day of their most recently completed fiscal year. Since the investment test would no longer be based on a registrant's total assets, the balance sheet date would be a less relevant measurement date. In addition, a more recent measurement date would lead to a more meaningful test because events that occur after the most recent balance sheet date (e.g., additional completed fiscal periods, other acquisitions or dispositions) may affect a registrant's WWMV.

¹ Refer to [our comment letter](#) on Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant (Release No. 33-9929; 34-75985; IC-31849).

We also recommend giving a company that is conducting an initial public offering (IPO) the option to estimate its WWMV at the anticipated offering date for purposes of the investment significance test under proposed Rule 1-02(w)(1)(i). This approach would be similar to the estimate of public float, which is a portion of estimated WWMV, used by an IPO candidate seeking to use the scaled disclosure accommodations available to smaller reporting companies. This would better align the investment test for IPO candidates with the test for existing registrants.

Income test

We recommend that the Commission continue to require registrants to test significance using pretax income, rather than after-tax income as would be required by proposed Rule 1-02(w)(1)(iii)(A)(1), because doing so is more likely to provide a reliable measure of relative significance that is unaffected by tax characteristics of each entity or volatility in their effective tax rates.

Using after-tax income could result in significance determinations that are less consistent and less meaningful than those made today. For example, a pass-through entity could be calculated to be more significant to a registrant than an identical business that pays income taxes. Different tax rates in jurisdictions around the world could also introduce unnecessary variability in measuring the significance of cross-border transactions. In addition, income taxes can be volatile for reasons unrelated to a company's operations (e.g., changes in tax laws or rates), and this volatility could also distort the results of the test.

Based on our experience and observations, the compliance burden related to converting equity in earnings of equity method investees from an after-tax to pretax basis as described on page 22 of the proposing release is not significant.

We also recommend that the Commission define the new term "recurring annual revenue" to make sure registrants consistently apply the income significance tests.

Abbreviated financial statements

We support the Commission's effort to streamline the compliance process by codifying current SEC staff guidance in Section 2065 of the Division of Corporation Finance's Financial Reporting Manual (FRM) regarding when it may be appropriate for registrants to provide abbreviated financial statements in lieu of the full financial statements required by Rule 3-05. However, we recommend that the Commission simplify and condense the eligibility criteria by replacing the first three conditions in proposed Rule 3-05 (e) with:

The acquired business constitutes less than substantially all of the assets and liabilities of the seller and separate financial statements cannot be prepared without unreasonable cost and effort.

We believe that this switch from "impracticable" to "unreasonable cost and effort" would be more consistent with the Commission's objective to reduce preparation costs and would more accurately reflect current practice. This revision also would allow a registrant to avoid unreasonable cost and effort when, for example, it acquires a business that is a reportable segment of the seller but doesn't have separate financial statements.

We also recommend that the Commission clarify in the final rule when it would be appropriate for a registrant to provide carve-out financial statements of an acquired business. Currently, the SEC staff accepts these financial statements “if it is impracticable to prepare the full financial statements required by Regulation S-X.”² However, the proposed rule makes no mention of carve-out financial statements, so it is unclear whether the Commission intends to change current practice.

Foreign businesses

We recommend that the Commission consider simplifying the proposed rules by making proposed Rule 3-05(c) applicable to both (1) an acquired or to be acquired foreign business and (2) a business that would be a foreign private issuer (FPI) if it were a registrant and eliminating proposed Rule 3-05(d). We believe this would reduce complexity by addressing all foreign acquisitions in one set of requirements, given that there are no substantive differences between the financial statements that would be permitted by Rule 3-05(c) and (d), as proposed.

Registration statements

As written, proposed Rule 3-05(b)(4)(iii) would allow a registrant to omit from registration and proxy statements only pre-acquisition financial statements for an acquisition that has been included in its post-acquisition audited results for at least a “complete fiscal year.” But under Rule 3-06, a period covering nine to 12 months is considered the equivalent of a fiscal year when filing pre-acquisition financial statements of a significant business acquisition.

We recommend that the Commission align the proposed requirements for filing pre-acquisition financial statements in Rule 3-05(b)(4)(iii) with those in Rule 3-06 to prevent confusion and the possibility that the lack of a single quarter or less of post-acquisition results would trigger a requirement to file pre-acquisition financial statements (which could be for a period of up to two years).

Acquired real estate operations

The Commission should consider extending the use of the proposed significance tests for blind pool real estate offerings to blind pool offerings that are in the scope of Rule 3-05 (e.g., offerings involving the acquisition of hotels). The reasons provided by the Commission for proposing the significance tests for blind pool real estate offerings would also apply to other blind pool offerings because they are economically similar.

We also recommend that the Commission allow registrants that lack a WWMV (e.g., non-traded real estate investment trusts (REITs)) to use net asset value (NAV) of their common equity as the denominator of their investment test. We understand that NAV is a widely reported and useful measure of value published by non-traded REITs.³ Allowing NAV to be used in the denominator would better tailor the investment test to this industry’s needs and make the test more comparable to the investment test used for publicly traded REITs.

² See FRM Section 2065.3.

³ Broker-dealers involved in the sale of non-public REITs are required to provide investors an estimate of NAV per share <https://www.finra.org/investors/alerts/public-non-traded-reits-careful-review>. As a matter of practice, most non-public REITs disclose their estimated NAV per share in their filings with the SEC to facilitate broker-dealers providing this information to potential purchasers of their securities.

Absent this change, a non-traded REIT would use an alternative test comparing the fair value of the purchase consideration plus any debt secured by the acquired real estate and assumed by the buyer to its total assets. We believe the numerator in this alternative investment test should be limited to the consideration transferred (i.e., it should exclude any debt assumed by the buyer) to conform with the investment test in Rule 3-05 when a registrant does not have a WWMV.

We also support the proposal to diverge from existing SEC staff guidance in FRM Section 2340 and not require full audited financial statements of a significant lessee when acquiring a real estate operation subject to a triple net lease. We also encourage the SEC staff to reexamine its corresponding requirement in FRM Section 2340 for registrants to annually file audited financial statements of significant lessees. We believe there are multiple disclosure requirements that sufficiently address a registrant's exposure to a significant lessee, such as Items 303 (MD&A) and 503 (Risk Factors) of Regulation S-K and Accounting Standards Codification (ASC) 275-10, *Risks and Uncertainties*.

Pro forma financial information

Objective

We recommend that the Commission retain the existing objective of pro forma financial information in Article 11.⁴ We continue to believe that every disclosure rule should identify its objective, which would function as a guidepost to help resolve uncertainties about its interpretation and application in novel or complex fact patterns. Notwithstanding the proposed amendments to the pro forma requirements, we believe the current objective would still provide a sound principle on which to evaluate compliance.

Management's adjustments

Consistent with our previous comment letter, we believe that the SEC should give registrants the option to include forward-looking management adjustments (MAs) in pro forma financial information but shouldn't require these adjustments. If the Commission decides to make MAs mandatory, we recommend that the SEC exempt smaller registrants such as smaller reporting companies and emerging growth companies so they are not unduly burdened.

We note that the proposed requirement to include forward-looking MAs in pro forma financial information incorporates concepts from the requirement to disclose forward-looking information in management's discussion and analysis (MD&A). In its 1989 interpretive release on MD&A,⁵ the Commission explained that forward-looking MD&A disclosure is "based on currently known trends, events, and uncertainties that are *reasonably expected* to have material effects." Similarly, under the proposal, synergies and other transaction effects would be reflected in pro forma financial information as forward-looking MAs if they are "reasonably expected" to occur.

⁴ 11-02(a): "Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statements should assist investors in analyzing the future prospects of the registrant because they illustrate the possible scope of the change in the registrant's historical financial position and results of operations caused by the transaction."

⁵ See [Release No. 33-6835, Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures](#).

However, the form and content of these two types of forward-looking disclosures would differ significantly. A registrant typically describes a trend, event or uncertainty in its MD&A and provides quantified information to the extent reasonably practicable. By contrast, the proposed rules would require a registrant to adjust historical financial information to give pro forma effect to the MAs and disclose material assumptions, calculations, estimated time for completion and qualitative information necessary to give a “fair and balanced” presentation.

It is not clear to us why a registrant should be required to provide substantially more forward-looking information about its operations when acquiring a business than it otherwise would.

In addition, we have the following recommendations for the SEC to consider with respect to MAs:

- ▶ *Probability threshold* – The threshold for reporting MAs should be raised from “reasonably expected” to “more likely than not” or “probable.” It is our understanding that “reasonably expected” is equivalent to “reasonably likely,” and the Commission has clarified in the past that “reasonably likely” is a lower threshold than “more likely than not.”⁶ We believe that adjusting historical financial information to give pro forma effect to the MAs should require a standard higher than that typically associated with the less prescriptive MD&A disclosure.
- ▶ *Estimates* – The SEC should provide criteria and implementation guidance to help registrants make estimates to determine the MAs. For example, the Commission could clarify what amount to use when there is a range of equally likely outcomes.
- ▶ *Timing* – The SEC should establish a time limit for when any action underlying an MA must be implemented. For example, the Commission could restrict these adjustments to those that are likely to occur within 24 months of consummation. Although any time limit would be somewhat arbitrary, we believe application would be easier if the rule limits the time horizon that a registrant must consider when identifying potential MAs.
- ▶ *Synergies* – The SEC should clarify what would qualify as a synergy. The proposed rules provide very limited examples that illustrate what would qualify (e.g., employee terminations) and no examples of what wouldn’t. If the SEC staff expects that it may object to certain types of synergies (e.g., one that increases revenue), the final rules or adopting release should address that.
- ▶ *Fair and balanced presentation* – The SEC should provide examples of the nature of disclosures that would meet this subjective standard.
- ▶ *Format* – The SEC should restrict the MAs column to just the forward-looking adjustments. Under the proposal a registrant would combine transaction effects that have already occurred with those that have not, which could prove confusing for investors. Also, adjustments for transaction effects that have occurred would be similar to pro forma adjustments that are made today so combining those with the transaction accounting adjustments may be more familiar and intuitive for investors.

⁶ See [Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations](#).

- ▶ *Transition* – The SEC should provide transition guidance. For example, registrants that have filed a current report announcing the completion of a significant acquisition or disposition before the effective date of the final rule could be allowed to comply with the existing rules for that transaction. Similarly, registrants that have submitted a draft or confidential registration statement or filed a registration statement before the effective date of the final rule could be allowed to complete their offering under the existing rules.

Effect on US GAAP supplemental pro forma disclosures

While US GAAP and Article 11 both require disclosure of pro forma financial information, the requirements differ. ASC 805, *Business Combinations*, provides limited guidance about the preparation of pro forma information for material business acquisitions. As a result, registrants preparing pro forma financial information under ASC 805 typically analogize to the requirements in Article 11. Before the Commission finalizes its proposed changes to Article 11, it should consider coordinating with the Financial Accounting Standards Board to determine how the proposed changes might affect the pro forma disclosures presented to comply with US GAAP, if at all.

Comfort letter considerations

Underwriters typically request the auditor's involvement as part of the underwriters' due diligence responsibilities in a securities offering. If pro forma information is presented, a registrant's auditor is permitted to provide comfort on the pro forma financial information in certain circumstances. The proposed rules introduce a new framework for pro forma financial information that would significantly change its content, format and the degree of subjectivity involved, particularly with respect to the MAs. Since AS 6101, *Letters for Underwriters and Certain Other Requesting Parties*, contemplates only the existing Article 11 pro forma requirements, the Commission should consider coordinating with the Public Company Accounting Oversight Board to determine whether AS 6101 continues to be appropriate or whether it should be revised or clarified. Otherwise, implementation of the pro forma rule changes could disrupt capital formation activities if auditors are uncertain about whether they can or should provide comfort to underwriters.

Separate rulemaking

We expect the SEC to receive a significant amount of feedback on the proposed changes to pro forma financial information, and the views expressed may vary significantly. If this feedback requires further study that could unduly delay efforts to adopt the remaining proposed rule changes, we recommend that the Commission consider the changes to Article 11 in a separate rulemaking project.

Other recommendations

SEC staff guidance

We recommend that the SEC staff undertake a comprehensive review of its extensive interpretive guidance in, for example, the FRM and make clear whether it will continue to apply and, if so, how it will apply in the context of the final rules. The existing staff guidance includes numerous interpretations, exceptions and additional requirements that are not reflected in the current rules. While it would be clear that certain staff guidance would no longer apply because it would be incorporated in the final rule (e.g., when and how to present abbreviated financial statements), that would not be the case for a significant amount of the remaining guidance found in multiple chapters of the FRM and several Staff Accounting Bulletins.

Equity method investees

The proposed rules would “clarify” that Rules 3-05 and 3-14 apply when the fair value option is used in lieu of the equity method to account for an acquisition. The proposing release says this aspect of the proposal is consistent with SEC staff practice that expanded the scope of Rule 3-09 to include these investees when the fair value option became available under ASC 825, by applying the disclosure concepts in ASC 323. We do not agree that Rules 3-05, 3-09 and 3-14 should apply to investees accounted for using the fair value option. We don’t believe that historical financial statements of such investees provide any material information to investors. We also note that acquiring an investment accounted for using the fair value option is no different than acquiring an investment in equity securities without achieving significant influence and for which separate investee financial statements are never required regardless of significance. In addition, we do not believe a registrant could prepare meaningful pro forma financial information for such an acquisition.

We separately recommend the Commission undertake a broader project to reconsider its disclosure requirements that apply to these investments, including those in Rule 3-09 of Regulation S-X, *Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons*. If the Commission adopts the proposed amendments to Rule 1-02(w), we also recommend the Commission make conforming changes to Rules 3-09 and 4-08(g), as both rules currently reference Rule 1-02(w) while the proposed amendments create new Rules 1-02(w)(1) and 1-02(w)(2).

If the Commission codifies and expands staff practice with respect to filing financial statements of investees accounted for using the fair value option in lieu of the equity method, it should consider developing significance tests that are tailored to the fair value option.

‘Totally held’ subsidiaries

The SEC should also consider replacing the term “totally held” in proposed Rules 3-05, 3-14 and 6-11 with “consolidated under US GAAP or IFRS-IASB.” We believe that it is unnecessary to require a registrant to provide financial statements for the purchase of an additional interest in a business or fund that is already consolidated. We also believe that the higher threshold implied by “totally held” would be inconsistent with the SEC staff’s guidance in FRM Section 2020.5 that states that financial statements for such acquisitions of non-controlling interests are “ordinarily” not required.

Investment company considerations

Application of Rule 3-05 to investment companies for non-fund acquisitions and Article 11 for non-fund dispositions

We recommend that the Commission clarify when investment companies would have to comply with Rule 3-05 of Regulation S-X for non-fund acquisitions. It is our understanding that an investment company would follow Rule 3-05 only when it is acquiring an operating company that it is required by US GAAP to consolidate or account for using the equity method of accounting. In the proposal, the SEC's intent is unclear because footnote 222 to the proposing release says investment companies would follow Rule 3-05 in the case of a non-fund acquisition.

We also recommend that the Commission clarify whether and when an investment company would have to comply with the pro forma requirements in Rule 11-01(a)(4) relating to dispositions of businesses. The Commission states in footnote 214 of the proposing release that the concept of a disposition of a business is inapt for investment companies because securities from acquired funds become part of the acquiring fund's investment portfolio. Consistent with our view above relating to the application of Rule 3-05 to acquisitions of non-fund acquisitions, we believe pro forma financial information should only be required for a disposal of a significant operating company that an investment company was required by US GAAP to consolidate or account for using the equity method of accounting.

Definition of significant subsidiary

It appears that the Commission intends for registered investment companies and business development companies to determine whether subsidiaries are significant in accordance with proposed Rule 1-02(w)(2). Accordingly, we recommend that the Commission amend the first sentence of the definition of significant subsidiary in proposed Rule 1-02(w)(1) as follows:

The term significant subsidiary means a subsidiary, including its subsidiaries, which meets any of the conditions in paragraphs (w)(1)(i), (w)(1)(ii), or (w)(1)(iii) of this section; however if the ~~subsidiary~~ **registrant** is a registered investment company or a business development company, **its tested subsidiary** meets any of the conditions in paragraph (w)(2) of this section instead of any of the conditions in this paragraph (w)(1).

Proposed Rule 1-02(w)(2) – Income test

Numerator of proposed income test

We recommend that the Commission clarify in the adopting release that the numerator would be calculated by summing investment income, the net realized gains and losses on investments, and the net change in unrealized gains and losses on investments from the tested subsidiary and taking the absolute value of the resulting sum, rather than summing the absolute value of each of these components as the proposing release says.

For example, if a registrant recorded from a tested subsidiary investment income of \$5, net realized loss of \$3 and net change in unrealized loss of \$6, we believe the numerator should be calculated as \$4 (absolute value of the sum of \$5-\$3-\$6) and not \$14 (summation of the absolute value of each component calculated as \$5+\$3+\$6). The first calculation appears to be consistent with the proposed rule text and would prevent double counting of a gain (loss) related to a sale that was previously recorded as an unrealized gain (loss).

Income averaging

While we suspect the Commission intended to permit income averaging for both the 80% income test in proposed Rule 1-02(w)(2)(ii)(A) and the “alternate income test” in proposed Rule 1-02(w)(2)(ii)(B), the language permitting averaging is only included for the alternate income test. We recommend that the Commission include language to permit income averaging in both tests.

To promote consistent application of income averaging in the calculation of the denominator in the alternate income test, the Commission should clarify in proposed Rule 1-02(w)(2)(ii)(B) the meaning of an “insignificant” change in net assets. We recommend that the Commission permit income averaging if the absolute value of the change in net assets resulting from operations of an investment company registrant and its consolidated subsidiaries is at least 10% lower than the average of the absolute value of such amounts for each of its last five fiscal years. This would be consistent with the income averaging method proposed to apply to non-investment company registrants.

Financial statements for funds acquired or to be acquired

Filings for which financial statements are required

We recommend that the Commission include an instruction in Form N-CSR and in Rule 30e-1 under the Investment Company Act of 1940, similar to the instruction in Item 8(a) of Form 10-K, to exempt financial statements required by proposed Rule 6-11 or Rule 3-05 from being furnished in Form N-CSR and in reports transmitted to stockholders. Such an instruction would be necessary since Rule 1-01(a)(3) of Regulation S-X states that Regulation S-X applies to both registration statements and shareholder reports under the Investment Company Act of 1940.

Scope

We recommend that the Commission clarify the acquisitions to which proposed Rule 6-11 would apply. Proposed Rule 6-11(a)(2)(ii) states, “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.” The use of the term “includes” could create ambiguity about whether the proposed rule would apply in the ordinary course of business when a fund acquires an equity interest in another investment company as part of its investment strategy, such as when a fund of funds invests in an underlying fund or when a fund invests in a money market fund or business development company. We believe the proposed rule should apply only to a fund acquisition in which the portfolio investments held by an acquired fund would be included in the acquiring fund’s portfolio after the acquisition.

To avoid unintended consequences, the Commission should revise the text in proposed Rule 6-11(a)(2)(ii) to replace “includes” with “is.”

Acquisitions of portions of assets acquired from private funds in formation transactions

A fund may form by acquiring only a portion of assets held by a private fund or multiple private funds and such assets may constitute all or substantially all the initial assets of the fund. In these situations, providing complete private fund financial statements may not be necessary to reasonably inform investors. Therefore, in these situations, we believe registrants should be permitted to file an audited schedule of investments to be acquired in lieu of audited financial statements, consistent with current staff practice.

Periods to be presented

On page 109 of the proposing release, the Commission indicates that the determination of whether financial statements of a fund acquired or to be acquired would have to be provided under proposed Rule 6-11 would be based on the significance tests in proposed Rule 1-02(w)(2), with certain adjustments to the percentages. However, we note that the significance tests would only apply to acquisitions in the scope of proposed Rule 6-11(b)(2) and would not apply to acquisitions in the scope of proposed Rule 6-11(b)(1), which may need to be clarified.

It appears that registrants would apply proposed Rule 6-11(b)(1) to certain private fund acquisitions and therefore would not apply the significance tests. For example, if a shell fund is pursuing a public offering by registering securities and issuing such securities to private fund investors in order to acquire one or more private funds in a formation transaction, such fund acquisitions would appear to be in the scope of proposed Rule 6-11(b)(1) rather than proposed Rule 6-11(b)(2) and therefore, the significance tests would not be applied. If the Commission’s intent is for the significance tests to be performed for all acquisitions of private funds to determine whether audited financial statements or supplemental financial information should be presented, the final rule should make this clear.

Moreover, if the Commission’s intent is for proposed Rule 6-11(b)(1) to apply only to acquisitions of business development companies or registered investment companies, we recommend that the Commission clarify the periods for which financial statements would be required to be provided under proposed Rule 6-11(b)(1) and revise the first sentence of proposed Rule 6-11(b)(1) to state:

“If securities are being registered to be offered to the security holders of the fund to be acquired, the financial statements **of the fund to be acquired** specified in §§ 210.3-01 and 210.3-02 **if the fund to be acquired is a business development company** or **in § 210.3-18 if the fund to be acquired is a registered investment company** and the supplemental information specified in paragraph (d) shall be filed, except as provided otherwise for filings on Form N-14 (§ 239.23 of this chapter).”

We also recommend the Commission clarify the number of fiscal years for which financial statements must be presented for private fund acquisitions in the scope of proposed Rule 6-11(b)(2). On page 106 of the proposing release, the Commission states that it proposes to require only one year of audited financial statements for these acquisitions. However, later in the same paragraph, the Commission indicates the proposed change would be consistent with the staff’s current practice of permitting investment company registrants to provide financial statements for the periods set forth in Rule 3-18,

and we note that proposed Rule 6-11(b)(2)(iii) refers to Rule 3-18 that requires audited statements of changes in net assets for the two most recent fiscal years and Rules 3-01 and 3-02 that require audited financial statements for periods exceeding one year.

We also recommend the Commission use consistent language in proposed Rules 6-11(b)(2)(ii) and (iii). Proposed Rule 6-11(b)(2)(ii) would require financial statements of an acquired fund for “the most recent fiscal year and the most recent interim period,” while Proposed Rule 6-11(b)(2)(iii) would require financial statements of each acquired fund in a multiple fund acquisition for “at least the most recent fiscal year and the most recent interim period specified in §§ 210.3-01 and 210.3-02, or § 210.3-18.”

If the Commission believes the periods presented for a private fund acquisition in the scope of proposed Rule 6-11(b)(2)(ii) or (iii) should be the most recent fiscal year and the most recent interim period specified in §§ 210.3-01 and 210.3-02, or § 210.3-18, the Commission should clarify the extent to which Rules 3-01 and 3-02 or 3-18 would apply. For example, it is unclear whether the Commission’s intent is for a business development company registrant to follow the requirements of Rules 3-01 and 3-02 and a registered investment company registrant to follow the requirements of Rule 3-18.

Determination of when to file financial statements and supplemental financial information for newly formed funds

We recommend that the Commission clarify in the adopting release the principles that a newly formed registrant acquiring the assets of a private fund or multiple private funds should consider when determining whether to file audited financial statements of the private fund(s) and supplemental financial information, because the calculations specified in proposed Rule 6-11 cannot be performed for a newly formed registrant that has not completed a fiscal year.

For example, proposed Rules 6-11(b)(2)(i) through (iii) refer to the conditions in proposed Rules 1-02(w)(2)(i) and (ii)(B), which refer to the “most recently completed fiscal year” and proposed Rule 6-11(b)(3) refers to the “most recent annual financial statements.” We suspect that the Commission’s intent is that a newly formed registrant that will be acquiring the assets of a private fund or multiple private funds should file audited financial statements and supplemental financial information if the private fund(s) to be acquired would constitute at least 20% of the initial assets of the registrant, which is conceptually consistent with the investment test that would be calculated under proposed Rule 6-11(b)(2)(ii).

Presentation of financial statements

The Commission should clarify that proposed Rule 6-11(c) is applicable to private funds acquired in addition to private funds *to be acquired*, which would be consistent with the text in proposed Rule 6-11(b)(2).

Supplemental financial information

The Commission should clarify what content proposed Rule 6-11(d)(1)(iii) would require in the narrative disclosure relating to material differences in financial and operating policies between the acquired fund and the registrant, because the proposing release indicates on page 115 that the narrative disclosure would only include material differences in accounting policies. If the Commission instead believes disclosure about material differences in other policies should be required, the Commission should provide guidance on its expectations and explain why the Commission believes this disclosure is necessary to reasonably inform investors.



Form N-14

The Commission should revise proposed Item 14.2 of Form N-14 to conform to proposed rule 6-11(c) as follows:

if the company to be acquired is a private fund, then such company may provide the financial statements, ~~including the schedules thereto, described in Rule 3-18 of Regulation S-X~~ that comply with U.S. Generally Accepted Accounting Principles and only Article 12 of Regulation S-X;

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

Yours sincerely,

Ernst + Young LLP

Copy to:

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