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July 21, 2016

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

Re: Concept Release, "Business and Financial Disclosure Required by Regulation S-K," File No. S7-06-16

Dear Office of the Secretary:

Crowe Horwath LLP appreciates the opportunity to provide our input on the SEC's Concept Release, "Business and Financial Disclosure Required by Regulation S-K" ("Release"). We commend the SEC on its efforts to help improve registrant's disclosures and holistically review the financial and other information provided by registrants to investors, including its broader initiative on Disclosure Effectiveness.

Crowe Horwath audits more than 100 domestic issuers, many of which are middle market companies. Under professional standards[1], we have various responsibilities with respect to disclosures provided pursuant to Regulation S-K ("Reg S-K"), and it is from this perspective that we provide our commentary. We encourage the SEC to continue its outreach to investors, preparers, and other constituency groups in its consideration of feedback received on the Release.

Nature of the Business and Financial Disclosure Requirements in Reg S-K

The Release notes the current disclosure requirements of Reg S-K are a mix of principles-based and rules-based approaches, and the Release requests comment on whether a principles-based, rule-based or some other basis is best suited to the business and financial disclosures in Reg S-K. The principles-based disclosure requirements generally require a response when the item is material. In contrast, the rules-based disclosures specify either a bright-line quantitative threshold or require a definitive response to the disclosure item, regardless of any quantitative measure. In our experience, registrants do not currently have difficulty applying materiality or responding to the rules-based disclosure requirements in Reg S-K. However, we believe it can be difficult for some stakeholders to appreciate why certain rules-based disclosures provide material information to the registrant's investors.

We believe the SEC should consider whether an "objective-oriented" disclosure framework, subject to the principle of materiality, would provide more meaningful and relevant information to investors. Clearly specified objectives would allow more flexibility for each registrant to respond in a way that best communicates how management views the specific disclosure objective in the context of their business. Within the context of an objective-oriented disclosure framework, we encourage the SEC to consider whether registrants should be allowed to omit disclosure for a specific objective, to the extent the disclosure is not material to an understanding of the registrant's business.

[1] See, for example, PCAOB AS 2710, "Other Information in Documents Containing Audited Financial Statements" ("PCAOB AS 2710"), and PCAOB AS 4101, "Responsibilities Regarding Filings Under Federal Securities Statutes" ("PCAOB AS 4101")

Registrants' current disclosures, pursuant to Reg S-K, demonstrate the benefits of an objective-oriented disclosure framework. For example, the instructions to Item 301 of Reg S-K state that the objective of Selected Financial Data is to supply "in a convenient and readable format, [subject to appropriate variation], selected financial data which highlight certain significant trends in the registrant's financial condition and results of operations." Though the Instructions to Item 301 provide guidance as to the minimum disclosures required to meet the disclosure objective, many registrants in certain industries, as noted in the Release, provide significantly more selected financial data than the minimum because those registrants believe providing the additional data meets the stated disclosure objective of "enhanc[ing] an understanding of and…highlight[ing] other trends in their financial condition and results of operations."

The rules-based approach of Item 101(c)(xiii) of Reg S-K produces a contrasting result. This item requires disclosure of the number of employees of the registrant, and in our experience, registrants both within the same industry and across industries provide very similar disclosures. Investors and other users have a limited ability to parse the materiality of this disclosure because the rules-based requirement does not elicit meaningful differences in disclosure between registrants.

The observations above suggest an objective-oriented disclosure framework can function to provide more useful information to investors than a rules-based approach. Though we are unaware of any comparability concerns with respect to current disclosures provided under Item 301, we acknowledge the disclosure objective currently stated in Item 301 might produce some disclosure variability between registrants both within a specific industry and between industries. As noted above, disclosure pursuant to Item 101(c)(xiii) seems to produce very little disclosure variability. We further acknowledge the concerns noted in the Release about the comparability of disclosures between registrants, and we encourage the SEC to further its outreach with investors and other users to determine whether or not any comparability concerns would exist and could be mitigated in an objective-oriented disclosure framework.

Content of Business and Financial Disclosures

The Release provides the history of Reg S-K, and in many cases, the disclosure requirements of Reg S-K were developed many years ago. In the intervening period, disclosures required in the financial statements and the way investors and other users access and analyze data has changed significantly. We encourage the SEC to undertake a detailed comparison of the disclosure requirements in Reg S-K to those required by U.S. Generally Accepted Accounting Principles ("GAAP")[2]. To the extent a disclosure requirement in Reg S-K is not entirely congruous with GAAP, we urge the SEC to consider the disclosure objective of each Reg S-K requirement and determine if such objective is currently addressed by a disclosure required by GAAP. Examples of overlap we observe include, but are not limited to, segment disclosures, customer concentrations, research and development expenses, earnings per share, guarantees, and various Industry Guide disclosures (see further discussion of Industry Guides below). We recommend any Reg S-K disclosures duplicative of or meeting the same disclosure objective as a GAAP disclosure be eliminated.

The Release notes that most investors, even those who rely on financial advisors, use the Internet to conduct transactions and gather financial information. We recommend the SEC further explore whether the ability to quickly access, manipulate, and analyze data using the Internet has rendered certain of the disclosures required by Reg S-K obsolete. For example, much of the information included in Item 302(a), selected quarterly financial data, can be quickly and easily found in a registrant's Form 10-Q filings utilizing the SEC's EDGAR system. The SEC could therefore consider revising Reg S-K to indicate that such information need not be presented unless it has not previously been filed (e.g. fourth quarter information) or has changed materially since it was originally filed (e.g. through a restatement, retrospectively applied change in accounting principles, etc.).

[2] We also note the SEC may want to consider IFRS as issued by the IASB in instances where Reg S-K is referenced in forms filed by foreign registrants.

Auditor Involvement

The Release asks in multiple sections whether there should be auditor involvement with the financial disclosures required by Reg S-K. For example, Questions 77, 82, and 96 request comment on whether auditor involvement should be required for disclosures pursuant to Items 301, 302, and 303 of Reg S-K, respectively (collectively, "the Items"). Auditors currently have some involvement with respect to the Items. For example, when the auditor's report is included in a document with the Items (e.g. a Form 10-K or a registration statement), auditors are required by professional standards[3] to read the Items and consider whether the Items are materially inconsistent with the financial statements. In securities offerings, underwriters typically request auditor involvement with respect to the numerical information in the Items as part of their due diligence responsibilities. In a comfort letter to underwriters, the auditor might be requested to provide negative assurance on or to report procedures and findings on the numerical information included in the Items. Finally, auditors are generally required to perform a review on supplemental quarterly information provided pursuant to Item 302[4].

Professional standards currently exist that provide guidance when auditors are requested to have a higher level of association with Items 301 and 303[5]. It has been our experience that requests for additional involvement are rare, and we are not aware of any broader market demand for a higher level of auditor association with any of the Items. Investors and other users are in the best position to determine if they currently require additional auditor involvement with the Items, though we question whether investors or other users have an expectation gap about the current level of auditor involvement. We encourage the SEC to work with the PCAOB[6] to first understand the level of involvement investors and other users believe auditors have with respect to the Items prior to assessing what additional involvement might be requested. Finally, we observe the role of the auditor, including enhanced auditor involvement, is a topic of interest for the Center for Audit Quality ("CAQ"). The CAQ's work[7] might be useful to the SEC in considering additional auditor involvement.

Management's Discussion and Analysis ("MD&A")

The objective of Item 303 of Reg S-K is to "give the investor an opportunity to look at the company through the eyes of management[8]." As noted in the Release, the SEC has published several rounds of interpretative guidance for MD&A. We have observed it can be difficult for preparers to identify all of the areas within the interpretive guidance that might apply to their MD&A. To assist preparers in producing a high quality MD&A that meets the SEC's stated disclosure objective, we encourage the SEC to codify, in Reg S-K, any of the MD&A interpretative guidance it believes remains relevant and to rescind interpretive guidance which is not.

The Release asks whether registrants should disclose, within MD&A, an analysis of immaterial errors not corrected in the financial statements. We do not believe disclosure of management's assessment of immaterial errors not corrected in the financial statements would be consistent with the Disclosure Effectiveness Initiative's stated goal to "…to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, ***material*** [emphasis added] disclosure by

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[3] PCAOB AS 2710 and PCAOB AS 4101

[4] See PCAOB AS 4105, *Reviews of Interim Information* ("PCAOB AS 4105")

[5] See, for example, PCAOB AT 701, *Management's Discussion and Analysis*, and PCAOB AS 3315, *Reporting on Condensed Financial Statements and Selected Financial Data*

[6] We note the PCAOB is currently considering what action to take with respect to its proposed rule "The Auditor's Responsibilities Regarding Other Information in Certain Documents Containing Audited Financial Statements and the Related Auditor's Report." See *https://pcaobus.org/Standards/Documents/2016Q2-standard-setting-agenda.pdf*

[7] *http://thecaq.org/reports-and-publications/observations-on-the-evolving-role-of-the-auditor*

[8] Securities Act Release No. 6711

companies and shareholders' access to that information[9]." We also believe disclosure of immaterial items could distract investors' and other users' attention from material disclosures and should not be required. Further, should the SEC move forward with disclosure of immaterial errors, there are a number of additional factors to consider including: a) the definition of immaterial (e.g. does immaterial include de minimis errors); b) how immaterial reclassification errors should be treated; and c) how omission of immaterial required disclosures, including omission of only certain parts of required disclosures, should be viewed[10].

Preferability Letters

The Release requests comment on whether to eliminate Item 601(b)(18) of Reg S-K in light of the significant overlap of Item 601(b)(18) with GAAP and PCAOB auditing standards. The Release notes that the benefit of Item 601(b)(18) is that the nature, timing, and extent of auditor reporting on accounting changes currently differs from what is required under GAAP and PCAOB auditing standards.

Assume a registrant makes a voluntary change in accounting principles in its second fiscal quarter. Under GAAP, the registrant is required to determine such an accounting change is preferable[11], and the registrant must disclose, among other things, the nature of and reason for the change in accounting principle, including an explanation of why the newly adopted accounting principle is preferable[12]. Domestic registrants are required by SEC rules[13] to have their interim financial statements reviewed by an independent public accountant, and any financial statements filed must be in accordance with GAAP[14]. The objective of the review under PCAOB auditing standards[15] is to provide the auditor with a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information for it to conform to GAAP. PCAOB auditing standards require various procedures if an auditor becomes aware of likely misstatements in interim financial information. Therefore, even absent Item 601(b)(18), investors and other users have some level of assurance that voluntary changes in accounting principles in an interim period are preferable and have been subject to auditor review.

We acknowledge that the elimination of Item 601(b)(18) might temporarily diminish the level of assurance to investors and other users as to the preferability of a voluntary change in accounting principle in an interim period because the procedures performed in an interim review under PCAOB auditing standards might be less than what auditors have historically performed under Item 601(b)(18). Investors and other users accept differences in level of assurance for interim financial information when compared to audited annual financial statements, and the level of assurance as to the preferability of a voluntary change in accounting principle would be rectified in the annual financial statements.

We also recognize the auditor reporting on voluntary changes in accounting principles would be implicit rather than explicit if Item 601(b)(18) is eliminated. However, we support elimination of Item 601(b)(18) because we do not believe investors would be materially harmed by this change. Similar to the differences in level of assurance mentioned previously, investors and other users are accustomed to

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[9] https://www.sec.gov/spotlight/disclosure-effectiveness.shtml
[10] We note that on September 24, 2015, the FASB issued two exposure drafts that seek feedback on certain aspects of these issues.
[11] ASC 250-10-45-2(b)
[12] ASC 250-10-50-1
[13] Rules 10-01(d) and 8-03 of Regulation S-X for non-smaller reporting companies and smaller reporting companies, respectively
[14] Rule 4-01(a)(1) of Regulation S-X
[15] PCAOB AS 4105

accepting implicit auditor reporting for interim periods[16] and explicit auditor reporting for annual periods. Notwithstanding our views, investors and other users would provide better insight on whether the marketplace demands the information currently required by Item 601(b)(18). If the SEC determines Item 601(b)(18) should be retained for domestic registrants, we encourage the SEC to consider whether preferability letters should be required for non-domestic registrants[17].

External Hyperlinks

We support the SEC's endeavors to streamline registrant reporting, and the use of external hyperlinks can be an effective means to communicate information to investors and other users. We also agree there are potential issues in requiring or allowing increased use of hyperlinks, as discussed in the Release. In particular, the increased use of external hyperlinks poses a particular challenge to auditors fulfilling their responsibility under PCAOB AS 2710. Historically, information accessed via an external hyperlink has not been considered other information in the document as contemplated in PCAOB standards, and the use of such hyperlinks has been rare in our experience. Encouraging or requiring registrants to increase the use of hyperlinks to external websites has the potential to raise questions as to what constitutes the "document" for the purposes of fulfilling our professional obligation under PCAOB AS 2710. We have similar concerns with respect to our Section 11 liability in a Securities Act Registration Statement under PCAOB AS 4101. Both concerns are based on how registrants would control and auditors would monitor the content of the information accessed through an external hyperlink. We also have concerns that the information accessed via hyperlink could change in content over time or could become inaccessible to investors as web addresses are frequently changed. We urge the SEC to work with the PCAOB to consider what additional rules would need to be implemented to safeguard our ability to fulfill our professional obligations with respect to information included in an SEC filing via hyperlink.

Cross-Referencing

Cross-referencing can be an additional means to streamline registrant reporting. While cross-referencing within SEC filings is quite common, in our experience, cross-referencing within the financial statement footnotes to other parts of a filing is rare because it can cause confusion as to what information in a filing is covered by the audit report. Investors and other users are in the best position to determine whether additional cross-referencing is beneficial. To the extent investors and other users signal to the SEC that additional cross-referencing from financial statement footnotes to other parts of the document is beneficial, we ask that the SEC consider ways to decrease the aforementioned confusion. For example, designing a mechanism to specifically identify cross-referenced information as audited in other parts of the document may facilitate increased cross-referencing within the financial statement footnotes to other parts of the document. However, should investors and other users indicate a preference for more auditor association with currently unaudited information, further outreach would be needed to effectively consider the costs of such auditor involvement compared to the potential benefits.

Industry Guides

We recommend the SEC update the content and status of the Industry Guides. Since the release of the Industry Guides, GAAP[18] has changed significantly, and many of the disclosures described in the Industry Guides are duplicative of or meet the same objective as current GAAP disclosures. We suggest the best approach to the content of Industry Guides would be to a) delete any Industry Guide disclosures that are duplicative of the content or spirit of GAAP disclosures; and b) revise the disclosures outlined in the

[16] In certain cases, the auditors reporting on an interim period may be explicit. See Rule 10-01(d) and 8-03 of Regulation S-X. This is rare in our experience.
[17] Form 20-F, for example, does not have a requirement for a preferability letter.
[18] See Footnote 2

Industry Guides to be “objectives-oriented” as discussed previously in this letter. In this manner, the Industry Guides would be more flexible and the disclosures provided by registrants would evolve to reflect changes in the business environment and business practices over time. We also recommend codifying the Industry Guides within Reg S-K, or alternatively within Regulation S-X. Codifying the Industry Guides would benefit preparers in the context of definitively determining required disclosures and would benefit the SEC in the context of enforcement.

Closing

We thank the SEC for providing the opportunity to express our views on questions raised in the Request for Comment. Please contact Brad A. Davidson at 317-706-2635 or Mark C. Shannon at 202-779-9921 to answer any questions that the staff may have regarding the views expressed in this letter.

Sincerely,

Crowe Horwath LLP

Crowe Horwath LLP