

October 28, 2016

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

**Re: Proposed Rule, “Disclosure Update and Simplification,” File No. S7-15-16**

Dear Office of the Secretary:

Crowe Horwath LLP appreciates the opportunity to provide our input on the SEC’s proposed rule, “Disclosure Update and Simplification” (“Release”). We commend the SEC on its efforts to help improve registrants’ 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, 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.

**Overall Objective of the Release**

We support the Commission’s overall Disclosure Effectiveness initiative and its efforts in this Release to reduce redundancy and remove superseded or outdated Commission disclosure requirements. In particular, we believe many aspects of the Release will reduce the costs of compliance for all registrants without altering the total mix of information available to investors and other users of the financial statements.

**Current Overlap**

The Release identifies disclosures where Commission rules directly overlap with or have been superseded by changes in US Generally Accepted Accounting Principles (“US GAAP”) or other developments, including changes in International Financial Reporting Standards (“IFRS”), other Commission rules, or the information environment, and it identifies disclosures specified by Commission rules that overlap with, but are not the same as, US GAAP, IFRS, or other Commission rules. We believe it is consistent with the overall objective of the Release to integrate or eliminate a rule when the intended disclosure objective has been met by subsequent developments in US GAAP, IFRS, Commission rules, or the information environment.

The Release also requests comment on whether certain disclosures incremental to US GAAP should be referred to the Financial Accounting Standards Board (“FASB”) for discussion or standard setting. We agree it is consistent with the objective of the Release to refer such items to the FASB, and we encourage the SEC to work with the FASB to highlight the concerns of the staff intended to be addressed by the Commission’s current disclosure rule to facilitate an effective standard setting process.

As noted in the Release, the Commission has designated the FASB as the private-sector accounting standard setter for U.S. financial reporting purposes, and its objective is “to undertake a transparent, public standard-setting process.” We support the SEC’s continued coordination with the FASB to streamline and enhance financial statement disclosures, and we expect the outcome of the FASB’s standard setting process to result in disclosures “useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity,” as noted in Statement of Financial Accounting Concepts No. 8, “Conceptual Framework for Financial Reporting.”<sup>1</sup> In this regard, we generally believe that the disclosures resulting from the FASB’s due process with respect to any item the Commission refers to the FASB will be sufficient for investors and other users of financial statements to make an informed investment decision such that any incremental Commission disclosure requirements can be eliminated without impacting the total mix of information available to investors and other users. Should the Commission determine any SEC disclosure requirements incremental to US GAAP should be retained, we observe that future developments in US GAAP might later render such disclosure redundant or irrelevant. We recommend the Commission consider formalizing a process to periodically address future redundancies and overlap so that such matters can be identified and remedied timely.

### **Future Redundancies and Overlap**

The Release observes that the Commission has periodically “reviewed and amended its disclosure requirements to eliminate rules that became redundant, duplicative, or overlapping as the FASB updated US GAAP;” however, it is not clear from the Release whether the timing of such reviews are formally scheduled or are executed on an ad hoc basis. Release No. 33-6233<sup>2</sup>, “General Revision of Regulation S-X,” refers to the 1977 report of the Advisory Committee on Corporate Disclosure (“Advisory Committee”), which recommended the Commission should: 1) have a continuing goal of minimizing differences between financial statements prepared in accordance with Regulation S-X (“Reg. S-X”) and US GAAP; 2) provide explicit reasons for disclosures incremental to US GAAP when incremental disclosures are required to address an emerging problem; and 3) refer any emerging problem to the FASB for consideration.

We note the increasing pace of change in business and technology naturally gives rise to an evolution in disclosure issues. To more quickly respond to changes in US GAAP, business, or other aspects (e.g. technological change) of the Commission’s disclosure regime, we recommend the Commission adopt a formal process to monitor the effectiveness of its disclosure requirements and more frequently revise its disclosure rules when they become redundant or are superseded by developments in US GAAP or the business environment. We note the FASB has a standing project to continually improve the Accounting Standards Codification.<sup>3</sup> To the extent the Commission identifies an emerging issue requiring rulemaking that creates disclosure incremental to US GAAP, we support the Advisory Committee’s recommendation that the Commission provide an explicit rationale or objective for the incremental disclosure and refer the emerging problem to the FASB for consideration. The Commission could also consider implementing a policy or practice to state in any disclosure rule adopting release that the staff will review the new disclosure rule after a specific period to determine if it is meeting the disclosure objective identified or to ascertain the outcome of any FASB due process on the issue not materially impact the quality of the information presented. While we acknowledge any disclosures moved from inside to outside the financial statements would not be subject to audit, internal control over financial reporting<sup>4</sup> (“ICFR”) or XBRL tagging requirements, such disclosure would still be subject to the registrant’s disclosure controls and procedures<sup>5</sup> and certain procedures performed by the auditor. For example, under professional

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[http://www.fasb.org/cs/ContentServer?site=FASB&c=Document\\_C&pagename=FASB%2FDocument\\_C%2FDocumentPage&cid=176157498129](http://www.fasb.org/cs/ContentServer?site=FASB&c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=176157498129)

<sup>2</sup> 45 FR 63660 (Sept 25, 1980)

<sup>3</sup> See for example [http://www.fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage&cid=1176163910174](http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176163910174).

<sup>4</sup> See Exchange Act Rule 13-a(15)(f)

<sup>5</sup> See Exchange Act Rule 13-a(15)(e)

standards<sup>6</sup>, auditors have responsibilities to consider whether or not disclosures provided outside of the financial statements in a document filed with the SEC are materially inconsistent with the information in the audited financial statements.

### **Disclosure Location**

We believe any Commission required disclosures that elicit forward-looking information should not be moved from outside to inside the audited financial statements. We generally believe the financial statement footnotes should include only historical financial information because forward-looking information is inconsistent with the objective for general use financial statements specified by the FASB<sup>7</sup> and can be difficult to verify or audit. Also as noted in the Release, the unavailability of the safe-harbor provisions of the Private Securities Litigation Reform Act for forward-looking information is undesirable for preparers.

### **Legal Proceedings**

The Release requests comment on whether inclusion of legal proceedings disclosure pursuant to Item 103 of Regulation S-K (“Item 103”) in the audited financial statements would create significant burdens for preparers or auditors. We do not support combining Item 103 disclosure with US GAAP disclosure on loss contingencies. As noted in the Release, the scope and objective of Item 103 differs from disclosure of loss contingencies in US GAAP pursuant to Accounting Standards Codification (ASC) Topic 450, “Contingencies.” Moreover, we agree with previously expressed views of Commission staff that because Item 103 and ASC 450 have differing objectives, satisfying both objectives with a single set of disclosures might “result in lengthy factual recitations rather than focusing on the underlying loss contingency, the related exposure and the likelihood of a loss,”<sup>8</sup> which does not appear consistent with the objectives of the Release or the Commission’s broader Disclosure Effectiveness efforts.

In 2010, the FASB proposed incorporating certain of the disclosure requirements of Item 103 into US GAAP with proposed ASU, “Disclosure of Certain Loss Contingencies,”<sup>9</sup> but, in response to constituent feedback, removed the project from its agenda in 2012.<sup>10</sup> As an alternative, we recommend the Commission re-examine the disclosure objective of Item 103 to determine if its objective remains relevant and whether Item 103 could be modified to streamline disclosure without changing the total mix of information available to users.

Should the Commission proceed with combining Item 103 disclosure with ASC 450 disclosure in the audited financial statements, we encourage the Commission to perform further outreach with various constituents, including the American Bar Association (“ABA”) and the Public Company Auditing Oversight Board (“PCAOB”). Current auditing guidance, including PCAOB Auditing Standard 2505, “Inquiry of a Client’s Lawyer Concerning Litigation, Claims, and Assessments,”<sup>11</sup> and ABA Statement Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information,<sup>12</sup> are based on ASC 450 and do not address disclosure pursuant to Item 103 that are not currently included in US GAAP. Therefore, the PCAOB and the ABA might need to revisit the aforementioned areas of the current auditing rules prior to any integration of Item 103 disclosure into the audited financial statements.

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<sup>6</sup> See, for example, PCAOB Auditing Standard (AS) 2710, “Other Information in Documents Containing Audited Financial Statements,” and PCAOB AS 4101, “Responsibilities Regarding Filings Under Federal Securities Statutes.”

<sup>7</sup> See supra note 1.

<sup>8</sup> <http://www.thecaq.org/sec-regulations-committee-highlights-september-21-2010>

<sup>9</sup>

[http://www.fasb.org/cs/ContentServer?c=Document\\_C&pagename=FASB%2FDocument\\_C%2FDocumentPage&cid=1176157116458](http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176157116458)

<sup>10</sup> [http://fasb.org/jsp/FASB/Document\\_C/DocumentPage&cid=1176160163070](http://fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176160163070)

<sup>11</sup> <https://pcaobus.org/Standards/Auditing/Pages/AS2505.aspx>

<sup>12</sup> <https://pcaobus.org/Standards/Auditing/Pages/AU337C.aspx>

### **Bright-Line Disclosure Threshold Considerations**

We believe eliminating many of the bright-line disclosure thresholds included in the SEC's disclosure requirements would not result in a material loss of information available to users of the financial statements. Bright-line thresholds do not consider the meaningful differences between registrants that can render a specific disclosure material to one registrant but wholly irrelevant to another. As noted in our letter dated July 21, 2016 on the Commission's Concept Release, "Business and Financial Disclosure Required by Regulation S-K" (the "S-K Concept Release") it has been our experience that preparers do not have difficulty applying materiality to disclosure rules in Regulation S-K without bright-line thresholds. We believe the same would hold true if many of the bright-line thresholds identified in the Release were removed. In addition, we note elimination of many of the bright-line disclosure thresholds is consistent with the FASB's reasons for issuing Proposed ASU, "Notes to Financial Statements (Topic 235) – Assessing Whether Disclosures Are Material,"<sup>13</sup> to clarify how to apply materiality in the context of financial statement disclosures. If the Commission believes retaining bright-line disclosure thresholds are in the best interest of investor protection, we recommend revising the specific disclosure rule to state a rebuttable materiality threshold rather than a bright-line threshold to provide additional flexibility to preparers in drafting effective disclosure documents.

### **Smaller Reporting Company (SRC) Considerations**

The Release requests responses to multiple questions about whether referral to the FASB for a specific disclosure item would cause undue burden or costs on SRCs if the item were incorporated into US GAAP and whether such costs influences whether the disclosure item should be referred to the FASB. We believe the FASB's due diligence process results in high quality standards that allow flexibility to preparers to disclose only material items, a concept which applies equally regardless of the size of the entity. Consequently, we support referring the identified items to the FASB, which is consistent with the Commission's designation of the FASB as the private-sector accounting standard setter for U.S. financial reporting purposes.

### **Other Matters Not Addressed in the Release**

The Release requests comment on whether there are other matters that may have an effect on the proposals. We encourage the Commission to consider the following aspects of Article 9 of Reg. S-X – Bank Holding Companies ("BHCs").

#### ***Scope of Article 9 and Industry Guide 3***

Article 9 of Reg. S-X specifies the form and content of and requirements for financial statements for BHCs filing with the Commission, and BHCs disclose supplemental statistical disclosures in filings, pursuant to Industry Guide 3. As noted in Staff Accounting Bulletin ("SAB") Topic 11:K, the staff believes Article 9 and Guide 3 should also be considered by other types of entities engaged in material lending and depository activities. SABs are interpretations of the staff and are not legally binding. We recommend the Commission consider whether or not the applicability of Article 9 and Industry Guide 3 should be codified and if so, in what manner and to what extent (e.g. all entities within the scope of ASC Topic 942, "Financial Services – Depository and Lending").

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**Redundant Disclosure**

The Release identifies Rules 9-03.6(a), 9-03.7(d), and 9-03.13(h) of Reg. S-X for potential elimination due to redundancies with US GAAP. The chart below identifies additional redundancies that we believe should be considered for elimination.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding US GAAP Disclosure Requirement</b>
Rule 9-03.6	Disclose the aggregate book value of investment securities; show on the balance sheet the aggregate market value at the balance sheet date.	ASC 320-10-45-1 and 50-5
Rule 9-03.7(a) and (b)	Disclose on the balance sheet or in a note the amount of total loans in each of certain specified categories or other categories to the extent appropriate.	ASC 310-10-45-2 and 50-3
Rule 9-03.10(4)	Disclose separately on the balance sheet or in a note other real estate which exceeds thirty percent of stockholders equity. Disclose in a note the basis at which other real estate is carried. A reduction to fair market value from the carrying value of the related loan at the time of acquisition shall be accounted for as a loan loss. Any allowance for losses on other real estate which has been established subsequent to acquisition should be deducted from other real estate. For each period for which an income statement is required, disclosures should be made in a note as to the changes in the allowances, including balance at beginning and end of period, provision charged to income, and losses charged to the allowance.	ASC 310-10-45-3 and 50-11; ASC 310-10-50-11B; ASC 310-40-40-10; ASC 360-10-35-40, 45-14, 50-3 and 50-4;

### ***Bright-Line Disclosure Thresholds***

Article 9 of Reg. S-X contains several bright-line disclosure thresholds. For example, Rule 9-03.10 requires separate disclosure of other assets and liabilities that exceed 30 percent of stockholders equity. Likewise, Rules 9-04.13 and 14 require separate disclosure of other income and expense that exceed one percent of the aggregate of total interest and other income. We believe the Commission should consider whether the bright-line thresholds in Article 9 could be revised to specify separate disclosure of the items when significant, similar to our thoughts on the bright-line disclosure thresholds more generally, which are included above.

### ***Form and Content of Balance Sheet and Income Statement***

Consistent with our letter dated July 21, 2016 on the S-K Concept Release, we believe an objective-oriented disclosure framework could be considered with respect to Rule 9-03 and 9-04 of Reg. S-X. Specifically, we encourage the Commission to consider whether Rule 9-03 and 9-04 could be revised to identify the presentation objective and provide relevant example disclosure. One possible approach is as follows:

<b>Rule</b>	<b>Objective</b>	<b>Guidance</b>
9.03	Order of liquidity	<ul style="list-style-type: none"><li>• Liquidity guidance</li><li>• Typical line items* separately presented by BHCs</li></ul>
9.04	Net Interest Margin Presentation	<ul style="list-style-type: none"><li>• Typical line items* separately presented by BHCs</li></ul>

\* Individual line items presented when significant

The above approach might also be adapted to other Articles of Reg. S-X.

### **Closing**

We appreciate the opportunity to express our views on the Release. Please contact Brad A. Davidson at 317-706-2635 or Mark C. Shannon at 202-779-9921 to answer any questions.

Sincerely,



Crowe Horwath LLP