The Credit Roundtable
In association with the Fixed Income Forum

September 21, 2018

Mr. Brent Fields, Secretary
& SEC Complaint Center
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: S7-19-18

Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities

Dear Mr. Fields:

The Credit Roundtable[1] respectfully submits the following comment letter on the Securities and Exchange Commission's (the "Commission") proposed amendments to the financial disclosure requirements in Rule 3-10 of Regulation S-X for guarantors and issuers of guaranteed securities registered or being registered, as well as the financial disclosure requirements in Rule 3-16 of Regulation S-X for affiliates whose securities collateralize securities registered or being registered (the "Proposed Rules").

The Credit Roundtable directs attention to one objectionable element of the Proposed Rules: the elimination of Rule 3-10's ongoing Alternative Disclosure reporting requirement for the life of certain securities. This is problematic both in this specific case, and as a more general proposition.

Currently,[2] issuers and guarantors that use an exception for Alternative Disclosures in lieu of separate financial statements are exempt from Exchange Act reporting by Rule 12h-5. The parent company, however, must continue to provide the Alternative Disclosures for as long as the guaranteed securities are outstanding. This obligation continues even if the subsidiary issuers and guarantors could have suspended their reporting obligations under 17 CFR 240.12h-3 ("Rule 12h-3") or Section 15(d) of the Exchange Act. That is, the reporting obligation for the parent remains in place for the life of the security, notwithstanding any suspension of reporting obligations.

[1] Formed in 2007, The Credit Roundtable ("CRT"), organized in association with the Fixed Income Forum, is a group of large institutional fixed income managers including investment advisors, insurance companies, pension funds, and mutual fund firms, responsible for investing more than $3.8 trillion of assets. The Credit Roundtable advocates for creditor rights through education and outreach and works to improve fixed income corporate actions, ineffective covenants, and the underwriting and distribution of corporate debt. Its mission is to improve risk assessment and management through education and seeks to benefit all bond market participants through increasing transparency, market efficiency, and liquidity.
[2] Section J. Exchange Act Reporting Requirements of the Proposed Rule.

The Proposed Rule would change this regime so that the parent company can stop providing Alternative Disclosures if the subsidiary issuers and guarantors suspend their reporting obligations under Rule 12h-3. The Credit Roundtable urges that this aspect of the Proposed Rule be abandoned.

The assurance of ongoing, standardized reporting is a critical element for investors. As the Commission is well aware, bond investors make a distinction between registered and non-registered bonds for very important reasons, among which is the guarantee of standardized financial reports. Financial reporting reduces risks for the investor, which justifies accepting less compensation from the issuer. Further, a failure to provide continued reporting can lead to NRSRO ratings withdrawal. Many investors cannot hold securities that do not have such a rating.

Issuers should not have it both ways: the ability to pay less interest via a registered bond issuance, yet retaining a mechanism that allows them to turn off financial reporting based on their own decisions regarding the percentage ownership of wholly-owned subsidiaries. Eliminating an administrative cost for issuers solely at the expense of investors does not serve the Commission's purpose of guaranteeing fair, free and open markets.

Information is essential to properly assess and price risk. Eliminating reporting requirements results in reduced liquidity and ineligibility which drives down the price or increases the required return. A common feature of corporate actions is to eliminate reporting requirements to compel participation or investor consent. Investor harm is not simply theoretical. In 2018 we have seen specific examples of investors harmed by the termination of reporting requirements. TransCanada aggressively suspended reporting out of Columbia Gas Pipeline after its acquisition. After being acquired, Validus deregistered its bonds (after a failed consent to amend those bonds), and suspended reporting. The adoption of the Proposed Rules allowing reporting to be terminated with respect to certain deregistration is a step in the wrong direction, and would only encourage further abuse.

We urge the Commission to retain the current rules that require a parent company to continue to provide the Alternative Disclosures for as long as the guaranteed securities are outstanding. This is consistent with the Commission's overarching goal that investors rely on both the consolidated financial statements of the parent company and supplemental details about the subsidiary issuers and guarantors when making investment decisions.

In addition, we argue that attaching reporting obligations to the life of the security, independent of subsequent changes in reporting status, should be <u>more</u> common, rather than less. An investment decision made at the time of issuance is, in part, based on the assurance of continued financial reporting used to evaluate that investment decision during the life of the security. If registrants are allowed to terminate reporting obligations without the explicit consent of bondholders, then it is as though the Sword of Damocles is left hanging above investors' heads: at some point during the life of the security, they may face the prospect of no longer receiving the standardized reporting information that was promised to them when they made the investment decision.

It is worth emphasizing that bond investors do not determine if an issuer remains subject to Exchange Act reporting obligations. For this reason, changes in that status should not fundamentally change the financial reporting required with respect to securities sold into the registered market. Accordingly, we urge that in this specific case the Proposed

Alternative Disclosures Rule does *not* allow parent companies to suspend Alternative Disclosure reporting for subsidiary guarantors where an exception was relied upon to not provide separate financial statements for that subsidiary; and as a more general proposition, we believe that the Commission should protect investor interests by seeking to have more defined reporting for the life of the security, and to narrow the circumstances under which reporting can be turned off at all.

We welcome the opportunity to meet with Commission staff to discuss this matter further. Please contact Cathy Scott at [redacted], or [redacted], with any questions or to arrange a meeting with the Credit Roundtable.

Kind Regards,

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