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October 26, 2018

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Brent J. Fields, Secretary

Re: Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities

Dear Mr. Fields:

We appreciate the opportunity to submit this letter to the Securities and Exchange Commission (the "Commission") on the proposed amendments to the financial disclosure requirements for guarantors and issuers of guaranteed securities and affiliates whose securities collateralize a registrant's securities (Release No. 33-10526; 34-83701; File No. s7-19-18) (the "Proposal").

We support the Commission's efforts to focus disclosures on information material to investors, make the disclosures easier to understand and reduce the costs and burdens on registrants. In this letter, we identify three further enhancements to the Proposal which we believe are consistent with the Commission's underlying policy objectives.

Proposed Rules 13-01(a)(4) and 13-02(a)(4)

Proposed Rule 13-01(a)(4) would require separate disclosure of Summarized Financial Information for subsidiary issuers and guarantors affected by the factors in proposed Rule 13-01(a)(3) (*i.e.*, any factors that may affect payments to holders of the guaranteed security) and Proposed Rule 13-02(a)(4) would require Summarized Financial Information for each affiliate whose securities are pledged as collateral. If, in either of these cases, such information would not be material to investors, then the Proposal requires that the registrant disclose that such information has been omitted because it is immaterial and explain the reasons for that determination.

To our knowledge, there are no similar requirements elsewhere in Regulation S-X or Regulation S-K that would require a registrant to make disclosure of a determination of immateriality and to provide a justification for that

determination. Providing an explanation of why disclosure is immaterial would, in our view, run counter to the Commission's underlying policy objectives—to focus disclosures on information material to investors and reduce burdens on registrants. If information has been omitted as immaterial, it is difficult to see how the proposed required disclosure is useful to investors. In addition, the proposed disclosure is inconsistent with a principles-based disclosure framework; instead, it creates an additional line-item disclosure requirement and related burden on registrants to substantiate and disclose a materiality determination. If not complied with, this requirement has the potential to lead to both additional compliance costs and liability for a registrant. Accordingly, we respectfully suggest that the final rulemaking omit the requirement to make disclosure of such a determination of immateriality and provide a justification therefor.

Facilitating Registered Offerings of Secured Debt

We understand that the Proposal aims to reduce the burdens on registrants to comply with Rule 3-16 of Regulation S-X in registered offerings of secured debt. Yet even if the Proposal were adopted as proposed, Section 314(b) of the Trust Indenture Act of 1939, as amended ("Section 314(b)"), would continue to impose opinion delivery and certification requirements that likely continue to impose cost and timing roadblocks to the widespread use of registered offerings of secured debt. For example, under Section 314(b), the trustee must receive annually a legal opinion that all recording and filing action has been taken necessary to maintain the security interest. In addition, to get collateral released, the trustee must receive a certificate or opinion of an engineer, appraiser or other expert as to the collateral's fair value, and stating that the proposed release "will not impair the security under the indenture in contravention of its provisions." We invite the Commission to consider what it can do to facilitate compliance with these and the other requirements imposed by Section 314(b). For example, we recommend that the Commission provide guidance synthesizing the various no-action letters[1] on the topic of "ordinary course" release of collateral, or provide additional interpretive guidance on the definition of "ordinary course."

Definition of "Full and Unconditional"

We note that the Proposal contemplates changing the definition in Rule 3-10 of Regulation S-X of "full and unconditional." If this change is to be made, we invite the Commission to provide guidance around the definition similar to the guidance provided in the August 24, 2000 adopting release.[2] In that adopting release, the

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1 *See, e.g.*, Mary Kay Cosmetics, Inc. (SEC Staff Reply available June 17, 1986); Monogram Models, Inc. (SEC Staff Reply available October 1, 1987); New World Entertainment, Ltd. (SEC Staff Reply available May 31, 1988); Jack Eckerd Corporation (SEC Staff Reply available February 5, 1991); and Federated Department Stores, Inc. (SEC Staff Reply available January 31, 1992).

2 65 Fed. Reg. 51692 (Aug. 24, 2000).

Commission noted that the purpose of the definition was to limit the availability of providing modified financial information and also described certain specific interpretive issues.[3] For example, the Commission noted that a guarantee that includes a "savings clause" related to bankruptcy and fraudulent conveyance laws may still be full and unconditional, and provided examples of specific clauses that would not defeat the full and unconditional nature of the guarantee.[4] This and other guidance should be carried forward, if still applicable, with the release of any final rule.

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As noted above, we support the Commission's efforts to promote disclosure rules that reduce unnecessary burdens on registrants and that promote more useful disclosure to investors.

If you have any questions regarding this letter, please do not hesitate to call Paul M. Rodel at [redacted].

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

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3 *Id.* at 51696.
4 *Id.*