CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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November 30, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant; 17 CFR Parts 210; Release No. 33-9929, 34-75985, IC-31849; File No. S7-20-15; RIN 3235-AL77**

Dear Mr. Fields:

The U.S. Chamber of Commerce[1] ("Chamber") created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century global economy. The CCMC welcomes the opportunity to comment on the request for comment issued by the Securities and Exchange Commission ("SEC" or "Commission") on September 25, 2015, in the release entitled ***Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant*** (the "Request for Comment") regarding Regulation S-X.

Financial reporting, effective disclosures, and modern communications are integral to the oversight and promotion of efficient capital markets. Effective and material disclosures are necessary for the SEC to promote investor protection, competition, and capital formation. Accordingly, the CCMC believes that any changes or updates to Regulation S-X should be based on four pillars:

1. Disclosures must be material and provide investors with decision useful information;
2. Significance tests under Regulation S-X should rely on revenue and fair value of common equity and other reporting thresholds should be based on materiality;

[1] The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

3. Synchronize the Securities Act's financial statement age requirements with Exchange Act reporting deadlines and codify common Staff interpretive positions; and

4. Financial reporting standards and disclosures should reflect and not drive economic activity. Regulation S-X should not drive transaction structures.

Discussion

The CCMC is pleased to support the Commission's ongoing efforts at improving the quality and effectiveness of corporate disclosure through the Disclosure Effectiveness Initiative. The CCMC has long believed that the aims of investor protection and capital formation are facilitated by improved communications between issuers and their investors. We are encouraged by the prospect that additional proposals on the topic of disclosure effectiveness may soon be forthcoming from the Commission. It is against that backdrop that the CCMC has identified several themes for improving the effectiveness of the requirements under Regulation S-X. Our specific observations on the Request for Comment are stated below.

1. Materiality of disclosures.

Materiality has long been the touchstone for determining the line between what should be disclosed (material information) and what should not have to be disclosed (immaterial information) under the federal securities laws. Thus, the guiding principle for public company disclosure is, and should remain, materiality, as viewed by the reasonable investor. The emphasis on the reasonable investor is an important one because it serves to distinguish the needs of an investor with a special focus or particular world view. In turn, effective disclosure provides investors with the material information they need to make an investment decision, without overwhelming them with information that is trivial or otherwise not useful.

Moreover, one of the animating themes of the Jumpstart Our Business Startups ("JOBS") Act is the determination by Congress that overly complicated or outdated disclosures can serve as a disincentive to seeking a public listing. This situation, in turn, can discourage public capital formation. Refocusing Regulation S-X disclosure on information that is material to investors can balance the need to protect those investors with the Commission's mandate to encourage capital formation.

2. Significance tests under Regulation S-X should rely on revenue and fair value of common equity, and other reporting thresholds should be based on materiality.

As noted above, the guiding principle of disclosure should be materiality, and we believe that any efforts at updating Regulation S-X should be considered through that lens. Doing so will ensure that future disclosure requirements help investors make better-informed investment and voting decisions.[2] Along these lines, we believe that the significance tests in Regulation S-X Rule 1-02(w) would be improved by replacing the existing tests (which focus on investments, total assets and pre-tax income) with tests based on revenue and fair value of common equity. If fair value is not readily determinable, book value could be substituted. Revenue and fair value tests are more straightforward for investors to understand, easier to calculate, and more likely to produce more consistent results.

In addition, we believe the Commission should reconsider the current thresholds for significance under Rule 3-05. In particular, we are concerned that creating presumptive categories of materiality at the 20%, 40%, and 50% levels, as Regulation S-X currently requires, may not always lead to the disclosure of decision-useful information to investors. In lieu of rigid numerical thresholds, we believe that any revised requirement to provide financial statements of acquired businesses should factor in whether providing this information is material to investors and as such is necessary to an investor's understanding of the issuer.

Furthermore, a significance threshold based on materiality should also be applied to Rule 3-10. For example, the Commission should consider expanding the circumstances under which no separate financial information for a subsidiary issuer or guarantor would be required, such as when the issuer or guarantor is a majority-owned (but not 100% owned) subsidiary. Similarly, separate financial statements for recently acquired guarantors under Rule 3-10(g) should only be required when they would be material to investors in understanding the financial capacity of the obligated group. Where the newly acquired guarantor is not significant to the obligated group in the aggregate, the pre-acquisition financial statements of that guarantor are not necessary or

[2] U.S. Chamber of Commerce Center for Capital Markets Competitiveness, *Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation* (July 29, 2014), at 4, *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/07/CCMC_Disclosure_Reform_Final_7-28-20141.pdf.

material to aid investors' understanding. Finally, an issuer or guarantor that could deregister if considered a separate registrant (if, for example, it has fewer than 300 shareholders of record) should be relieved of any ongoing reporting obligation under Rule 3-10.

The Request for Comment also asks whether investors would benefit from having all the financial disclosures related to entities other than a registrant filed in XBRL format to the extent that they are part of the registrant's financial statements. As we have previously commented to the Commission, we do not believe that investors make widespread use of XBRL financial statements. We are not aware of any analysts, for example, using XBRL data in their decision making. Thus, the CCMC does not believe that presenting this information in XBRL format will provide any material benefit for investors. Before requiring companies to incur the additional expense to prepare these disclosures in XBRL format, we believe that the Commission should demonstrate that a material number of investors are using the disclosures now prepared in XBRL format to make their investment decisions.

3. Synchronize the Securities Act's financial statement age requirements with Exchange Act reporting deadlines and codify common Staff interpretive positions.

There are a number of scenarios under Regulation S-X in which staleness dates for purposes of providing financial statements in registration statements filed under the Securities Act of 1933 do not perfectly align with the filing deadlines for periodic reports under the Securities Exchange Act of 1934. In some cases, this situation arises because Exchange Act deadlines run from the end of the most recently completed quarter, whereas Securities Act dates run from the end of the preceding quarter. The "45-day" rule under Rule 3-01 of Regulation S-X also contributes to this disconnect, which likewise increases the complexity of compliance for registrants without adding sufficient benefit for investors. We recommend that future versions of Regulation S-X make a better effort to synchronize the Securities Act and Exchange Act requirements.

Due to the age of Regulation S-X and the kinds of conundrums described in the preceding paragraph, SEC Staff have over the years developed a series of informal positions, procedures and accommodations to provide limited relief to registrants. Some, but not all of these interpretive positions are reflected in the Division of Corporation Finance's Financial Reporting Manual. Others are reflected in Compliance and

Disclosure Interpretations or Staff FAQs. For the sake of simplicity, we urge the Commission to codify these positions into Regulation S-X itself. Likewise, as part of any amendment of Regulation S-X, we urge the Commission to formally incorporate any changes necessitated by Title I of the JOBS Act into the revised regulation.[3]

4. Regulation S-X should not drive transaction structures.

The CCMC believes accounting and auditing standards should reflect economic activity and not drive it. Therefore, financial reporting should, by and large, be transaction-neutral and not encourage parties to take (or refrain from taking) certain actions based solely on accounting considerations. Nevertheless, the significant compliance burden of certain components of Regulation S-X has over time led issuers to structure transactions around the requirements of Regulation S-X. This situation neither benefits companies nor investors.

One example of this phenomenon is preparing and disclosing separate audited financial statements for affiliates whose securities serve as collateral as required by Rule 3-16. To avoid application of this rule, market participants regularly permit issuers to avoid pledging capital stock and other securities of a subsidiary if the pledge would trigger Rule 3-16 and its requirement to disclose separate audited financial statements.

Neither issuers nor investors benefit when collateral is excluded from a transaction because of the compliance cost of providing audited financial statements. Registrants are not able to take advantage of the possible usefulness of the subsidiary's stock for capital-raising, and investors lose a potential security interest. Indeed, some registrants include a risk factor in their registration statement explaining that stock and other securities of their subsidiaries will automatically be released from the lien when the pledge of such securities would require filing separate financial statements with the SEC pursuant to Rule 3-16. As registrants often explain in such a risk factor, there are consequences to investors of losing their security interest in these subsidiary securities.

One possible solution is to permit registrants to provide summary financial information about subsidiaries in this context rather than separate financial statements.

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[3] *See, e.g.*, Questions 15, 16 and 45, Division of Corporation Finance, Jumpstart Our Business Startups Act Frequently Asked Questions, *available at* https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm.

As demonstrated by current market practice, institutional investors do not believe that separate financial statements are necessary for informing their investment decisions, and it seems likely that such information would also not be useful to other types of investors. Future modifications to Regulation S-X should balance the interests of registrants and investors, and ideally generate a higher likelihood of compliance rather than avoidance of the rule.

Conclusion

The CCMC believes that an effective disclosure regime is important to improving capital formation, supporting small business and eliminating excessive regulatory burden. We welcome the SEC's actions to address the effectiveness of the current Regulation S-X disclosure requirements and we encourage further progress on this initiative.

We thank you for your consideration of these comments and would be happy to discuss these issues further with the Commissioners or Staff.

Sincerely,

Tom Quaadman

cc: The Honorable Mary Jo White
The Honorable Luis A. Aguilar
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar