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Jack T. Ciesielski, CPA, CFA
President

Phone: [redacted]
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Re: File Number S7-26-18

February 24, 2019

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Mr. Fields,

I am writing to comment, from the investor's point of view, on the Commission's above-referenced *Request for Comment on Earnings Releases and Quarterly Reporting.*

I appreciate the Commission's concerns with capital formation and the attractiveness of the public markets. Private equity has drained many dollars and listings from America's public markets. That's a tidal force powered by the appeal of reduced reporting, a perception that looser internal controls are satisfactory, and the massive cash inflows from institutional investors of all stripes. It's no wonder that the SEC has made capital formation a high priority.

It's not often considered, but the health of the public markets matters greatly to the private equity markets. In the valuations of private companies, either for reporting or for exchanges of firms within private markets, reference is made to the valuations of public companies. Ironically, in addition to providing a means for firms to seek capital, and for investors to save for their own futures, robust public markets contribute to the health and veracity of the private markets which simultaneously sap their vitality.

For public markets to function as efficient means of capital distribution, allowing capital to go where it is served best, there must be a healthy exchange of information between investors and public companies. Market participants – equity analysts, credit analysts, individuals – thrive on fresh information, and more information is better than less. For that reason alone, I believe that any move the Commission makes to reduce quarterly reporting is a mistake. Attempts to make the markets more like private markets will not necessarily produce more listings. The public markets have their own attractions: they provide companies with access to tremendous amounts of capital, and at a low cost of capital. Quarterly reporting is but a monitoring cost for gaining that capital.

The current quarterly reporting requirements were enacted in 1970, when computing power was a fraction of what it is today, and desktop computers were the stuff of science fiction. It hardly seems credible that quarterly reporting has become such a burden since then. Much has been made of the added material in quarterly and annual reporting over that same time span as a cause of complexity and added burden, but that criticism rings hollow. The added information didn't happen overnight, or over a month or a year. It debuted incrementally, as companies embarked on ever-more complex business combinations, derivatives transactions, equity compensation plans, and tax strategies. Companies have had to cope with new accounting and disclosure requirements on an incremental basis. It is not a sudden burden.

In short, the evolution of business has involved increasingly complex transactions, and market participants need information about them to process them with efficiency. Eliminating consistent, comparable information about companies or obscuring information from investor view by limiting the frequency of reporting does not reduce complexity; instead, it permits rumors and misinformation to grow.

That said, there are ways quarterly reporting could be improved without diminishing its frequency, while affording increased flexibility to reporting companies. Suggestions for improving quarterly reporting are addressed next in the responses to the broad categories contained in the Request for Comment (RFC), Section II.

A. Information Content Resulting from the Quarterly Reporting Process. Earnings releases are elective and may speed the injection of new information into markets in advance of filing requirements. Conversely, the information provided by companies may be sparse or selectively framed to benefit the company's stock price or reputation. There are no standards governing the content of earnings releases, and no case is made for such standards here. The information imparted by earnings calls is often supplemented by questions and answer sessions, which makes earnings releases popular with many investors, particularly those working in the sell-side research firms. (One feature lacking in earnings releases: they do not require the use of XBRL, which is valuable to investors. The solution, however, is not to require XBRL in earnings releases, which would require a new taxonomy. It would be better to integrate earnings releases with 10-Q filings, to be addressed later.)

The 10-Q provides comprehensive and confirming information for the earnings release, is reviewed by auditors, and requires standard information for all companies, regardless of whether or not a firm chooses to report earnings before the release of the 10-Q. It is in many ways superior to the earnings release alone, and in conjunction with earnings release, provides a valuable information package to all investors – whether they are concerned with being first to have something to say about a company's prospects (sell-side analysts) or first to perform thorough analysis of a company's investment worth (long-term institutional and individual investors).

As pointed out in the RFC, many companies release earnings and file their 10-Q on the same day. This is an optimal choice. Allowing companies the choice of, say, "in-substance" filing of 10-Qs through reference to 8-K earnings releases would result in disharmonious information being released to the markets.

B. Timing of the Quarterly Reporting Process. Keep in mind that the earnings release process is an election made by companies, while the 10-Q reporting process is mandatory. My view is that they should be one and the same: companies should be required to file their 10-Q on the same day they file the required earnings release 8-K. As mentioned above, this provides more comprehensive, consistent information to all market participants. It affords flexibility, too. Such a rule could require companies to simultaneously file these reports, but it would not shorten the required filing period for 10-Qs. They would still have the same time span to file the 10-Q, and companies could still choose to file an earnings release – or not. The only difference would be that if they chose to report earnings before the last day the 10-Q is due, they would have to move up the date of the 10-Q filing. If they chose to release earnings before the 10-Q filing due date, they could choose a date within the window when they would be able to complete both filings.

One reason companies sometimes give for electing to release earnings as soon as possible after quarter's end: to shorten the period between the time when the earnings figures are known and are "hot" inside information, and the time they are released and are no longer inside information. Making the figures public sooner than when the 10-Q is ready to file relieves policing pressure on a company's legal and compliance function. If a company takes longer to simultaneously report earnings *and* file the 10-Q, the wider window between reporting and filing increases the chances of wrongful insider trading, whether inadvertent or intentional. Given the increasing popularity of equity compensation over time, this is probably a very important consideration for companies in deciding whether to report early.

This may be true, but if so, it calls into question the effectiveness of internal controls of companies rationalizing the need to release as early as possible. Furthermore, a complete elimination of quarterly reporting could actually make life more difficult for the legal and compliance functions. Inside information would be "inside" twice as long as it is now and require more scrutiny of trading by insiders.

C. Earnings Release as Core Quarterly Disclosure. I do not support any substitution of earnings release information for 10-Q information. The 10-Q is reviewed by auditors, while the earnings release is not. Any combination of the two would be well-served only by having all information reviewed by auditors and would entail a need to have the earnings release 8-K – or parts of it – reviewed by auditors. It seems as if this would create complexity, unless the 10-Q is eliminated altogether – which I do not support.

While auditors might welcome the revenue opportunity afforded by reviewing earnings release 8-Ks, "partial 10-Qs" would create unwieldiness for investors. When an investor prints a 10-Q, he or she knows what to expect for every company. If companies are allowed to omit information from the 10-Q because it's reported in an 8-K, it degrades the 10-Q information package. It's unclear how this serves investors better.

Investors would be better served by consistently prepared, reviewed and comprehensive 10-Qs presented at the same time as the optional earnings release documents.

D. Reporting Frequency. I support the continuation of quarterly reporting and oppose any move to semi-annual reporting.

I also do not support making exceptions for companies to eliminate quarterly reporting based on their scale, for several reasons. This has long been a rationale for relief, beginning with the JOBS Act of 2012. I find it unconvincing that our country's entrepreneurs are clever enough to find incredible scientific discoveries or ingenious methods of delivery logistics - yet are completely helpless in finding cost-effective and adequate solutions for dealing with reporting requirements. These exceptions create a backdoor undoing of capital market reforms and contribute to a two-tier market system.

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Please do not hesitate to contact me if you would like to have further discussion of the matters discussed in this letter – or any other issues in the Request for Comment that may not have been addressed here. Best regards.

Sincerely,

Jack Ciesielski

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