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COMPETITIVENESS

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March 21, 2019

Ms. Vanessa Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Request for Comment on Earnings Releases and Quarterly Reports;
Release Nos. 33-10588; 34-84842;
File No. S7-26-18**

To Secretary Countryman:

The U.S. Chamber of Commerce Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to comment on the Request for Comment on Earnings Releases and Quarterly Reports (the “Request”).

The Chamber once again commends the Commission for its ongoing commitment to review existing regulations that impact capital formation in the United States. As we have noted in the past, this issue is especially important in light of the declining number of public companies—in the past twenty years, the number of US public companies has been cut in half. We are confident that a careful reassessment of the SEC’s overall approach to issues affecting the burdens on companies to go public and stay public will, over time and in the aggregate, make an impact.

The Chamber believes that transparency and disclosure are important elements of an efficient capital market and the ability of a business to raise capital from investors. While reporting instills discipline, it is important for the SEC to weigh whether certain disclosures imposing costs or burdens that are unnecessary.

As to whether quarterly or semi-annual reporting is preferable, arguments can be made both for and against each option. Critics of quarterly reporting note the attendant cost and compliance burden, as well as the distraction to management and

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incentives for management to focus on short-term results at the expense of greater long-term value creation. Semi-annual reporting would afford more time for the organization, especially its financial and management teams, to spend on value adding activities and projects. It would also free up two additional months (April and October) for companies to complete statutory reporting related to foreign subsidiaries and to engage with investors. These factors undoubtedly discourage some companies from going public and may cause others to engage in sub-optimal decision-making such as postponing important strategic objectives. Those in favor of maintaining the status quo (a group that includes many prominent investors) argue that quarterly reporting produces greater transparency, results in a lower cost of capital and serves to discipline management.

The current requirement for filing quarterly reports on Form 10-Q dates back to 1970. The Chamber has strongly advocated for a retrospective review of regulations to help determine if they are still useful or if they need to be changed,

New and promising developments in technology could ultimately lead the way to the future of periodic reporting, with potentially a solution that could bring real-time reporting to the market. The SEC should also reevaluate the disclosures themselves that are required in quarterly reports to determine whether they can be streamlined and simplified, particularly with information that is often repeated in subsequent quarters. Inasmuch as the current reporting cycle has remained largely unchanged since 1970, we also urge the Commission to give further consideration to a “company file” or other modern information delivery system that utilizes technology in order to best provide investors with decision useful information.

DISCUSSION

A. Nature and Timing of Disclosures

The Request seeks public comment on the nature and timing of disclosures that reporting companies must provide in their quarterly Form 10-Q and other interim periodic reports, including when the Form 10-Q disclosure requirements overlap with the disclosures such companies voluntarily provide to the public in earnings releases furnished on Form 8-K.

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The vast majority of issuers nowadays report earnings by means of a press release that is contemporaneously reported to the Commission under Item 2.02 of Form 8-K. Because the content and format of the earnings release is subject to fewer Commission disclosure rules, issuers have greater flexibility to customize content to satisfy the unique needs of their respective companies and investors. They are also able to focus the discussion on issues of particular relevance to their respective industries or geographies. We believe this flexibility is beneficial to the marketplace and do not believe that the Commission should revise the requirements surrounding the substance of the earnings release.

Still, there are a number of features common to all earnings releases. For example, the typical earnings release includes important financial information that is repeated in the Form 10-Q. Similarly, the typical earnings release also includes a narrative description of the prior quarter (or year in the case of a report on annual results), again covering much of the same ground as MD&A in Form 10-Q (or Form 10-K) requires. Other material events, such as significant litigation or recent M&A activity, also frequently receive coverage, again mirroring what would be disclosed in Form 10-Q. Many issuers also prepare a slide deck containing useful charts and graphics that are not repeated in the Form 10-Q.

The highlight of this process for many investors and analysts is the earnings call that immediately follows the earnings release. The earnings call allows these constituencies to hear management discuss results in a live format. Because of the public nature of the earnings call and the restrictions placed on non-public communications under Regulation FD, the earnings call also presents a rare opportunity for third parties to question management directly. On the other hand, the ability of management to respond on a one-off basis to private questions after the Form 10-Q is filed is significantly limited under Regulation FD.

While a growing number of public companies file Form 10-Q on the same day they report earnings under Item 2.02 of Form 8-K, many others still defer the Form

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10-Q filing for many days until after the earnings release.¹ For investors at such companies, the Form 10-Q is something of an afterthought. In the interim, issuers have already conducted the earnings call and the capital markets have reacted to the information, leading to market adjustments in stock prices long before the lengthier Form 10-Q is filed. Even for those companies that make both filings on the same day, the seminal events are still the earnings release and subsequent call. In the interest of private ordering, we do not believe that it is necessary for the Commission to take action to address the potential time lapse between the two filings. Market forces are adequate to address the dynamics of these processes.

Assembling a Form 10-Q is an arduous task, even at the largest public companies. Time and attention of senior management and the board of directors that could be devoted to other pursuits are instead diverted to the preparation and review of the filing. The end product of the Form 10-Q is a lengthy document that often repeats information previously disclosed in prior reports or in the earnings release. Considering that earnings releases are focused on more by analysts and investors, there could be an opportunity to streamline and simplify disclosures in the Forms 10-Q, particularly those that are repeated each quarter.

B. Flexibility in the Frequency of Reporting

The Request questions whether Commission rules should allow reporting companies, or certain classes of reporting companies, flexibility as to the frequency of their periodic reporting. Even if such flexibility were granted to all issuers, we would still expect many large- and mid-cap public companies would continue earnings releases and file Item 2.02 Forms 8-K. Indeed, we suspect many issuers—based on feedback from their investors, analysts and other influencers in the capital markets—would elect to continue filing both Item 2.02 Forms 8-K and Forms 10-Q on a quarterly basis in much the same way they currently do. Similarly, some companies may consider the potential impact on liquidity of their stocks and elect to continue reporting quarterly on Form 10-Q.

¹ There are many reasons for the differences in timing across companies. Some companies follow their own historical precedent and either make both filings on the same day (or defer the Form 10-Q until later) on the basis of that precedent. Some companies are able to complete the internal and external reviews necessary to file Form 10-Q by the time the earnings release is filed, others are not. Still others follow one practice or another in response to investor demand. Some industries follow a uniform approach, others do not. At any rate, there is no single driver for the differences in timing.

C. Promoting Efficiency in Periodic Reporting

The Request also requests comment as to how the Commission can promote efficiency in periodic reporting by reducing unnecessary duplication in the information that reporting companies disclose and how any such changes could affect capital formation, while enhancing (or at a minimum maintaining) appropriate investor protection. To this end, we applaud the Commission for its efforts in recent years to advance the agency's Disclosure Effectiveness initiative. Building on this effort in the short term, it would make sense for the SEC to examine ways to streamline and simplify disclosures in the Form 10-Q, particularly those disclosures that are repeated each quarter. But we believe any effort at improving the efficiency of periodic reporting should consider not just what is disclosed, but also how information is presented and delivered to investors.

We therefore reiterate our request for the Commission to rethink the format of public company reports and the fundamentals of how information is delivered to investors, with the goal of enhancing the usability and value of public company disclosures for investors in the modern technological era. Other than migrating the archive of issuers' periodic reports from a nationwide network of physical SEC public reference rooms to an electronic database with the adoption of Edgar in the 1990s, and from time to time expanding the categories of reportable events under Form 8-K, the basic delivery of information to investors remains largely unchanged since 1970. Investors still receive issuer periodic reports in seriatim fashion much the same way they have for nearly fifty years.

Of course, efforts at modernizing the presentation and delivery of public company reports have been considered before. For example, more than ten years ago the SEC's 21st Century Disclosure Initiative published a report that sought to explore "the possibility of using modern technology to move from a document-based disclosure system that requires the repeated filing of the same information in often lengthy static documents to an interactive data disclosure system that avoids

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redundancies and makes the information more accessible.”² The report made a number of recommendations for moving forward, most notably by advocating for the further exploration of what it described as a centralized “company file” to replace the current process for delivering investor information.

Under this type of system, after providing baseline disclosure companies would not be required to repeat prior disclosures on a regular basis as they do under the current regime, but would instead only be required to discuss additional developments that are material. A variation of the company file concept would be to allow companies to satisfy certain disclosure obligations—such as those describing the business, the management team, and the board—by cross-referencing the company’s website. Disclosure effected in this manner would make it easier for investors to identify the most current material information about a company without having to wade through reams of historical information to ferret out what is most relevant. As an additional benefit to capital formation, issuers of all sizes making use of a company file would also spend less time preparing offering documents and could go to market more quickly.

A company file system would be synergistic with a semi-annual reporting system and provide additional benefits to investors as well. Again, rather than flipping manually through a series of filings to find relevant information, everything would be available in a single integrated report at a central location. Not only would placing the information in a single, central location reduce potential informational asymmetries, but it may also entice more retail investors to invest in individual equities by making it easier for them to track information about individual stocks. Additionally, with other promising developments in technology such as blockchain and distributed ledger technology, the idea that one day companies can operate in a real-time reporting construct is no longer a remote possibility.

² Staff Report of 21st Century Disclosure Initiative, “Towards Greater Transparency: Modernizing the Securities and Exchange Commission’s Disclosure System” (Jan. 2009), at 4, available at <http://www.sec.gov/spotlight/disclosureinitiative/report.pdf>. The events of the financial crisis overtook this initiative and little progress has since been made on the company file format since 2009.

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We also think it is prudent for the SEC to use this opportunity to reevaluate the entities it requires to report using eXtensible Business Reporting Language (XBRL). While XBRL was created in order to move away from a paper-based system of financial disclosures, the cost-benefit of this requirement hasn't been fully realized, particularly for smaller and newly public companies who bear the reporting burden in this technical format more disproportionately. The additional burdens include cost, personnel, additional liability, and increased time and documentation to conduct extensive reviews in order to submit filings in XBRL format. Additionally, XBRL has not been shown to be utilized by a large number of investors, particularly retail investors, when analyzing issuers for investment. While the SEC's amendments to XBRL made last year to allow for "in-line" XBRL filings present potential cost and time savings for larger issuers, it still does not account for the disproportionate cost and resource burden it places on smaller issuers.

Be it a centralized company file to replace the current process for delivering investor information or some other forward-looking construct, modern technology allows us to shape a more effective disclosure regime, and the Commission should take full advantage of it. We believe our 1930s disclosure regime should finally begin to function more like one for 2020 and beyond, and urge the Commission to turn its attention to achieving this important goal.

D. Quarterly Earnings Guidance

Finally, the Request seeks comment on how the existing periodic reporting system, earnings releases, and earnings guidance (either standing alone or in combination with other factors) may affect corporate decision making and strategic thinking, including whether these factors foster an inefficient outlook among reporting companies and market participants by focusing on short-term results. As noted above, the distraction to management that accompanies quarterly reporting and the attendant focus on short-term results often comes at the expense of greater long-term value creation.

Our comments thus far have focused on the frequency of Form 8-K and Form 10-Q reporting, but we would be remiss not to make mention of the separate but related issue—the voluntary practice engaged in by some companies of disclosing quarterly or annual earnings forecasts. We believe quarterly earnings guidance may be a greater concern than quarterly reporting.

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Providing an explicit target often motivates executives to manage to those targets, as investors expect management to meet or exceed those targets, penalizing firms that do not. It all leads to a vicious cycle. Even many advocates for maintaining the status quo with respect to quarterly reporting on Form 10-Q would prefer to see less emphasis placed on quarterly guidance. With them the CCMC shares common ground.

Nevertheless, Commission rules neither prohibit nor require companies to set periodic earnings targets or publish other operational metrics (such as same-store sales or EBITDA), though Regulation FD and the Commission's rules on the presentation of non-GAAP financial measures may impact the manner in which such information is disclosed. Whatever route the Commission takes in the future on the reporting of information under Form 10-Q, we do not believe it should further regulate the dissemination of earnings guidance. Again, we believe this to be an area that private ordering and market dynamics can best resolve.

CONCLUSION

We commend the Commission for reconsidering the one-size-fits-all approach to quarterly reporting. In addition, we also urge the Commission to continue to streamline and simplify current disclosure requirements, particularly related to the Form 10-Q, and to give further consideration to a company file or other modern information delivery system that utilizes latest advancements in technology. We appreciate your consideration of these comments, and we are available to discuss them further with the Commissioners or Staff at your convenience.

Sincerely,



Tom Quaadman

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman