



March 21, 2019

Vanessa Countryman, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. S7-26-18 Securities and Exchange Commission Release (No. 33-10588; 34-84842): Request for Comment on Earnings Releases and Quarterly Reports

Dear Ms. Countryman,

The Global Financial Institutions Accounting Committee and the Asset Management Accounting Policy Committee of the Securities Industry and Financial Markets Association ("SIFMA")¹, as representatives of preparers of earnings releases and quarterly (and annual) reports, appreciate the opportunity to respond to the Securities and Exchange Commission (the "Commission") Request for Comment on Earnings Releases and Quarterly Reports (Release No. 33-10588; 34-84842; File No. S7-26-18) (the "Request"). We support the Commission's efforts to enhance the investor protection attributes of periodic disclosures and reduce associated administrative and other burdens on reporting companies.

Executive Summary

We believe that the Commission should continue its efforts to modify the content of the Form 10-Q and to modernize the disclosure framework in order to reduce burdens on reporting companies without sacrificing investor protection. Our main points with respect to the Request, which are discussed in further detail below, are as follows:

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

- We believe that companies should continue to have flexibility as to whether and when to issue earnings releases, what content to include in them and whether to have them treated as “furnished” rather than “filed” for purposes of the federal securities laws;
- We believe that the Supplemental Approach should not be adopted because it would not achieve the Commission’s goal of reducing inefficiencies and enhancing investor protection and could increase the burdens on reporting companies without a benefit to investors;
- To achieve meaningful efficiencies, we believe that any changes to the Commission’s rules regarding the reporting framework, including to the frequency and content of required reports, should be harmonized with the rules and regulations of other applicable regulatory authorities;
- We encourage the Commission to reconsider its eXtensible Business Reporting Language (“XBRL”) requirements; and
- We believe that any efforts to discourage undue emphasis on short-term results should be market-driven rather than regulation-driven, taking into account the needs of investors and other stakeholders.

Earnings Release Flexibility

We believe that companies need to retain flexibility with respect to the content and timing of the earnings release and that it would be detrimental to constrain reporting companies by the standardized structure, stricter liability standards, auditor review requirements, officer certification requirements and XBRL requirements applicable to reports that are “filed” with the Commission.² These requirements would unnecessarily increase costs to reporting companies and could potentially lead companies to limit the information included in their earnings releases, delay earnings releases or eliminate earnings releases altogether. We see no reason for companies that have earnings information available earlier in the reporting process to be required to delay their releases to coincide with the filing of their Form 10-Qs. Delaying earnings releases would also unnecessarily delay the quarterly conference calls that many reporting companies host in which the management team can discuss earnings, its strategic initiatives and the progress the company is making in achieving its goals.

Reporting companies use earnings releases to provide a succinct “snapshot” of the information about their financial performance and operations that they believe is most salient to their investors. Compared to the

² We believe that the Commission’s determination in 2003 to permit earnings releases to be “furnished” rather than “filed” continues to be relevant and appropriate. See Final Rule: Conditions for Use of Non-GAAP Financial Measures, SEC Release No. 33-8176; 34-47226 (Jan. 22, 2003), available at <https://www.sec.gov/rules/final/33-8176.htm> (taking into consideration, among other things, the comment letters of the American Bar Association Committee on Federal Regulation of Securities; the American Bar Association Committee on Law and Accounting; the American Council of Life Insurers; and the Association of the Bar of the City of New York, Committee on Securities Regulation).

Form 10-Q, the earnings release format is a more flexible way to provide commentary on the company's financial results and highlight significant items that arise during the reporting period, giving companies an opportunity to provide color and context behind the numbers without being constrained by the technical requirements of the Form 10-Q. The current framework of optional and flexible earnings releases allows each company to tailor its earnings releases to its specific industry, company, investors and other stakeholders.

Similarly, we believe that reporting companies should also be able to retain flexibility as to the timing of earnings releases. Companies can generally prepare earnings releases in a shorter time-frame than the Form 10-Q, allowing companies to quickly report to investors and analysts on trends for the period. In the financial services industry, which we represent, many companies provide financial information as soon as possible after the end of each quarter, while other companies wait to release earnings almost concurrently with the filing of their Form 10-Qs. Companies that release their earnings information earlier may do so for various reasons, including having earlier access to information, the belief that investors and analysts desire early access to this information and a need to minimize the period of time that they must refrain from engaging in transactions in debt and equity securities (including in offerings and repurchases) following the end of a quarter.

Finally, we are concerned about the impact that increased regulation of earnings releases could have on foreign companies. Foreign companies are not currently required to file quarterly reports with the Commission, but they are required to disclose in a Form 6-K filed with the Commission any material information that the foreign company (i) makes or is required to make public pursuant to the laws of its home country, (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange or (iii) distributes or is required to distribute to its security holders. If the Commission were to impose additional requirements on earnings releases and other voluntary financial disclosures, foreign companies might find themselves subject to conflicting requirements or be discouraged from voluntarily disclosing more than the absolute minimum. Additionally, many foreign firms have a single global earnings release process and not a country-by-country regime; as such, we would not support any changes that would impinge upon this existing process.

Supplemental Approach

We do not believe that the "Supplemental Approach"³ would further the Commission's goals of reducing burdens on reporting companies associated with quarterly reporting while enhancing or maintaining

³ As described in the Request, the Supplemental Approach would allow (or, possibly, require) each reporting company to use its earnings release to satisfy the core financial disclosure requirements of Form 10-Q and use its Form 10-Q to supplement a Form 8-K earnings release with additional material information required by the Form 10-Q not already presented in the Form 8-K or, alternatively, incorporate by reference disclosure from the Form 8-K earnings release into its Form 10-Q.

investor protections; but we fully support the Commission's goals and encourage the Commission to continue its efforts to achieve these goals.

We believe that the Supplemental Approach would increase the burdens on reporting companies by imposing additional regulation on earnings releases and disturbing the current earnings release framework that we believe is beneficial to both reporting companies and investors, as discussed above. The Supplemental Approach also strikes us as potentially cumbersome to readers because it would require them to cross-reference between the earnings releases and Form 10-Qs – likely in a different manner for each company – when evaluating quarterly results. We would be opposed to the Commission imposing the Supplemental Approach as a mandatory approach that would require any company that issues a separate earnings release to use it as the foundation for its Form 10-Q.

If the Supplemental Approach were implemented, the Commission would have to determine how the auditor review, officer certification and XBRL requirements of Form 10-Q would apply to any earnings release used as a foundation for a Form 10-Q, as well as whether any earnings release used as a foundation for a Form 10-Q would be deemed “filed” rather than “furnished” and therefore subject to Section 18 of the Securities Exchange Act of 1934 (the “Exchange Act”) and the liability provisions of the Securities Act of 1933 (the “Securities Act”) if incorporated by reference into a registration statement. Because we believe that earnings release flexibility should be retained, we would be opposed to the Supplemental Approach being adopted as an optional approach if it would impose any of these requirements on earnings releases generally.

Reporting Framework

We applaud the Commission's ongoing efforts to simplify the reporting framework, including by adopting its recent Disclosure Update and Simplification Final Rule.⁴ Although we do not believe that the Supplemental Approach would achieve the Commission's goals of simplifying the reporting process and alleviating burdens on reporting companies, we do believe that the Commission should continue to explore options for reducing the burdens imposed on companies in preparing Form 10-Qs without decreasing the usefulness of the reports for investors. Over time, quarterly reporting regulations have evolved from requiring only material updates to requiring expansive detailed and repetitive disclosures that do not represent significant changes to the reporting company's business and are costly and time-consuming to prepare. Rather than mandate the use of the Supplemental Approach, we believe the creation of a joint task force with the Financial Accounting Standards Board (“FASB”) and other interested parties would result in more meaningful changes and enhancements to the existing disclosure framework and ensure harmonization for the disclosure requirements imposed on a reporting company. The Commission's goals

⁴ SEC Release No. 33-10532; 34-83875 (Oct. 4, 2018), available at <https://www.sec.gov/rules/final/2018/33-10532.pdf>.

are similar to the FASB's goals for its Disclosure Framework: Disclosures – Interim Reporting project⁵, and coordination between the Commission and the FASB could increase the effectiveness of changes made by either entity. Other interested parties may include banking regulators, stock exchanges, other self-regulating organizations (“SROs”) and industry trade groups such as SIFMA.

Throughout the Commission's effort to streamline interim reporting, we encourage the Commission to consider SIFMA's view that interim reporting should provide an update of information since the last annual filing when significant changes have occurred, such as changes due to market conditions, business changes, acquisitions and divestitures. Furthermore, the Commission should focus on how in recent history the number of disclosure requirements has increased, and whether there has been a corresponding increase in substantive value.⁶

Additionally, we note that any changes to the frequency or content of interim reporting would have a number of implications and therefore would need to be approached cautiously. Changes would need to be reflected in certain other regulations in order for the change to provide any relief to preparers. For example, reducing the frequency of interim reports to semi-annual would have little impact unless financial statement requirements for registration statements under the Securities Act were also changed to treat the financial statements in the most recent semi-annual report as current so that companies could continue to register securities using Form S-3 and investors could continue to resell restricted and control securities pursuant to Rule 144 under the Securities Act between reporting dates. The reporting requirements of other applicable regulatory authorities (e.g., banking regulators, stock exchanges, other SROs) currently require quarterly reporting of much of the same information that is included in a Form 10-Q. Failure to harmonize these requirements would at best effectively maintain the status quo and at worst increase costs to reporting companies or create conflicting requirements.

With that in mind, we would suggest that the Commission (together with the task force) consider, among other areas, possibilities for eliminating redundancies within the Form 10-Q; allowing flexibility within the Management's Discussion and Analysis (the “MD&A”); modernizing the EDGAR reporting system, including by allowing quarterly reports to be filed in PDF format; and removing (or making optional) items that are unnecessary for the majority of public companies or do not provide information that is useful to investor decision-making.

We would also encourage the Commission (together with the task force) to concurrently consider annual reporting requirements that would similarly make the reporting cycle more efficient. Some examples of potential enhancements include eliminating redundancies such as analysis of the two prior years within the

⁵ https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdateExpandPage&cid=1176170690730.

⁶ For example, over the past ten years, the FASB has issued 169 Accounting Standards Updates, many of which have resulted in significant incremental disclosure requirements.

See <https://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176156316498#2009>

MD&A, which typically is repeated verbatim from the prior year's filing, and eliminating redundancies between the MD&A and the notes to the financial statements.

Overall, we recommend that the Commission (together with the task force) evaluate the entirety of reporting requirements for both quarterly and annual filings to determine if modifications are appropriate in light of the demands of investors and capital markets and current business practices. We understand the complex nature of these issues and the time and dedication that would be required to ensure harmonization of any modifications. SIFMA would be happy to participate in the task force or to engage in further discussions with the task force on these topics.

XBRL

In addition to considering how to reduce unnecessary content in the Form 10-K and Form 10-Q, we believe that the Commission should eliminate its XBRL requirements, including its recently adopted Inline XBRL ("iXBRL") requirements.⁷ We appreciate the Commission's recent efforts to simplify the XBRL preparation and review process and improve the quality and usability of XBRL data, but we do not believe that iXBRL sufficiently addresses concerns that the time and expense of preparing XBRL data may outweigh its benefit to investors. There have been significant advancements in technologies since the introduction of both XBRL and iXBRL, and even iXBRL data may now be considered antiquated given the rise of natural language processing tools that allow data analytics to be performed on the words within any document or filing. These new technological tools could alleviate the need for the manual tagging process using the XBRL taxonomy because analytics can be performed on the disclosures themselves. Further, we believe the usefulness of the existing XBRL tagging requirement is limited as reporting companies may utilize custom tags for similar disclosures or may choose to utilize a different XBRL tag included in the taxonomy which diminishes its comparability across companies, even within the same industry. While acknowledging the Commission staff's analysis of XBRL usage, our reporting companies have not received many questions from investors, analysts or others about information disclosed in their XBRL filings, making it unclear to us who actually utilizes the XBRL data for purposes of data analytics when making investment decisions.⁸

If the Commission cannot eliminate the XBRL requirements in the near-term or if there are specific concerns with taking such action, we recommend that the Commission perform outreach with investors and analysts and explore the new natural language processing technology that may be available to investors to assess the feasibility of such tools.

Should the Commission conclude that the XBRL requirements are necessary (and that XBRL/iXBRL is the most efficient technological tool for providing this type of data), we recommend that XBRL submissions be

⁷ SEC Release No. 33-10514; 34-83551 (Aug. 16, 2018), available at <https://www.sec.gov/rules/final/2018/33-10514.pdf>.

⁸ We recognize that certain data aggregators incorporate XBRL information into their products, but it is unclear whether the data actually informs investors in their investment decisions.

limited to the core financial statements, excluding data included in the footnotes to the financial statements. Additionally, we recommend that companies be permitted to file XBRL data separately from their quarterly and annual reports. Although many companies would be reluctant to prepare and review XBRL data separately from the underlying periodic report, certain companies with capital-raising needs may desire to avail themselves of this option in order to gain access to debt and equity securities markets as soon as possible following the end of the reporting period by filing a periodic report (Form 10-Q or Form 10-K) well before the filing deadline and then filing the XBRL data as an amendment to the report closer to the filing deadline.⁹

Earnings Guidance

We recognize that there are growing concerns in the market regarding reporting companies providing quarterly earnings per share (“EPS”) guidance as it may negatively influence management behavior and decision making to meet short-term expectations, which could be damaging to the longer-term interests of shareholders. We acknowledge that there are diverse practices with respect to quarterly EPS guidance and other types of financial guidance and diverse circumstances in which it may be provided, and that these circumstances may change over time. Moreover, other market factors and practices may contribute to undue emphasis on short-term results. Crafting specific regulation to minimize the focus on short-term results would be complex and could extend beyond the purpose of the Exchange Act and into regulating corporate governance. Accordingly, we believe that any efforts to discourage undue emphasis on short-term results should be market-driven, taking into account the needs of investors and other stakeholders, rather than regulation-driven. We believe that reporting companies and the market should come to a consensus on the best practice to balance the needs of market participants and promote the development and execution of effective long-term strategies by companies.

Conclusion

SIFMA appreciates the opportunity to comment on the Commission’s Request for Comment on Earnings Releases and Quarterly Reports (Release No. 33-10588; 34-84842; File No. S7-26-18). SIFMA commends the Commission on its continued efforts to enhance investor protection while reducing administrative and other burdens on reporting companies associated with quarterly reporting. We encourage the Commission to continue to explore options for simplifying the interim reporting framework (including by eliminating XBRL requirements) in a manner that would not impose increased regulation on earnings releases and to coordinate its efforts with the FASB and other regulatory authorities and interested parties. We strongly urge the Commission not to impose increased regulation on earnings releases nor adopt the Supplemental

⁹ We do not believe that it would be necessary to extend the filing deadline for XBRL data beyond the currently established quarterly and annual reporting deadlines under this approach. A company availing itself of this approach would still be required to file both a quarterly (or annual) report and the related XBRL data by the filing deadline for the report, but would be permitted to file the report and the XBRL data separately.

Approach. SIFMA would be pleased to discuss its views further with the Commission or to provide any additional information needed to address our comments. If you have any questions or require further information, please contact me, Mary Kay Scucci, at 212-313-1331 or our counsel, Mark Attar and Victoria Pool of Schiff Hardin LLP, at 312-258-5500.

Sincerely,



Mary Kay Scucci, PhD, CPA

Managing Director

Securities Industry Financial Markets Association

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