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July 25, 2019

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via E-mail: rule-comments@sec.gov

Re: File No. S7-05-19
Amendments to Financial Disclosures about Acquired and Disposed Businesses
Release 33-10635

Ladies and Gentlemen:

We appreciate the opportunity to comment on the proposed amendments of the Securities and Exchange Commission (the "Commission") to the Commission's rules and forms to improve the disclosure requirements for financial statements related to acquisitions and dispositions of businesses (the "Proposed Rules").

We agree with most aspects of the Proposed Rules, which we believe will improve the financial information provided by registrants about acquired or disposed businesses and set forth more appropriate thresholds regarding when financial information will be required to be provided by registrants. In particular, we support the following aspects of the Proposed Rules:

- the proposed increase in the percentage significance for dispositions from 10% to 20%;
- the proposed revisions to the income test for determining significance in the definition of "significant subsidiary" under Item 1-02(w)(3) of Regulation S-X, including the proposed addition of revenue as an additional component of such test;
- the proposed revisions with respect to the periods of historical audited financial statements of the acquired company to be presented and the associated percentage thresholds, including the elimination of the current requirement to file a third year of audited financial statements for an acquired business where significance exceeds 50%; and
- the proposed elimination of the requirement to include separate historical financial statements of an acquired company following such time that such financial results have been included in the consolidated financial statements of a registrant for a complete fiscal year.

However, we respectfully submit one suggested change to the Proposed Rules. In this regard, under the current investment test in Item 1-02(w)(1) of Regulation S-X, the registrant's and its subsidiaries' investments in and advances to the acquired entity (generally, the purchase price in an acquisition or disposition) are compared to the total assets of the registrant and its subsidiaries. The Proposed Rules would make certain revisions to the investment test for purposes of determining

significance in the definition of "significant subsidiary" under Item 1-02(w)(1) of Regulation S-X. In particular, the proposed revisions to the investment test would change the denominator in such test from the total assets of the registrant and its subsidiaries to the aggregate worldwide market value of the registrant's voting and non-voting common equity (when the common equity is traded on a market).

We agree with the view expressed by the Commission in its discussion of the Proposed Rules, and by various commenters in response to the Commission's *Request for Comment on the Effectiveness of Financial Disclosure About Entities Other than the Registrant* issued in September 2015, that the existing test may not in many instances reflect the fair value of the registrant. However, we also believe that the equity value of a registrant will not in various circumstances be a reasonable approximation of the fair value of the registrant. In this regard, we believe that the denominator in the revised investment test should take into account the value of the outstanding indebtedness (as well as minority interests and preferred stock) of the registrant, and that not taking into account outstanding indebtedness of the registrant may significantly undervalue (for purposes of this test) companies that are highly leveraged.

There are different means by which the outstanding debt of the registrant could be taken into account in connection with calculating the denominator in the investment test. One approach would be to provide that, for companies whose common equity is traded on a market, the denominator would be the sum of (1) the aggregate worldwide market value of the registrant's voting and non-voting common equity (that is, as specified in the Proposed Rules), plus (2) the value of registrant's indebtedness, minority interests and preferred stock. The value of the registrant's indebtedness, minority interests and preferred stock could be the fair value of such amounts as of the date of the end of the most recent fiscal year where the value of such indebtedness is based on observable inputs (for example, that are classified within Levels 1 and 2 of the hierarchy of U.S. GAAP), and otherwise such value could be book value.

An alternative test for determining the denominator in the investment test (for companies whose common equity is traded on a market) would be to provide that the denominator would be the greater of (1) the aggregate worldwide market value of the registrant's voting and non-voting common equity (that is, as specified in the Proposed Rules), or (2) the enterprise value of the registrant, as defined below. If this test were utilized, enterprise value could be defined as (a) the equity value of the registrant (that is, the aggregate worldwide market value of the registrant's common equity as set forth above), plus (b) the value of the registrant's indebtedness, minority interests and preferred stock (see the prior paragraph for considerations regarding the determination of the value of such amounts), less (c) the cash and cash equivalents of the registrant as of the end of its most recent fiscal year. We believe this calculation of enterprise value would be readily determinable and is consistent with the commonly understood meaning of enterprise value.

We believe that taking the value of indebtedness (as well as minority interests and preferred stock) of the registrant into account in the denominator of the investment test would be more consistent with the objective of the test (to measure for the fair value of a registrant) than solely utilizing the equity value of the registrant in light of the fact that the capital structure of a company can be heavily determinative of the equity value of a company (unlike the enterprise value of a company or other metric which takes into account indebtedness). We also believe that utilizing only equity value in the denominator would disadvantage registrants within certain industries, which may be more likely (for various reasons) to utilize a more heavily leveraged capital structure. Finally, we would note that, in light of the goal of the Commission that the denominator reflect the fair value of a registrant, it is significantly more common to value a company utilizing enterprise value rather than equity value when the value of a company is being assessed from an investment banking perspective in connection with the potential purchase or sale of a company or business.

To illustrate the point that equity value may significantly understate the fair value of a registrant in certain circumstances, we would highlight the hypothetical scenario of a registrant which has, as of the end of its most recent fiscal year, (1) total assets of $8 billion, (2) indebtedness with a fair value of $6 billion, (3) cash and cash equivalents of $250 million, and (4) an equity value of $750 million. In this scenario:

- Under the Commission's current rules, the amount of the purchase price of an acquisition necessary to trigger this investment test threshold would be $1.6 billion (20% of the $8 billion total assets amount).

- Under the Proposed Rules, the amount of the purchase price of an acquisition necessary to trigger this investment test threshold would be $150 million (20% of the $750 million equity value amount).

- If the greater of equity value or enterprise value was utilized to determine the denominator, the amount of the purchase price of an acquisition necessary to trigger this investment test threshold would be $1.3 billion, or 20% of the enterprise value of the registrant (20% of (a) $750 million (equity value), plus (b) $6 billion (indebtedness), minus (c) $250 million (cash and cash equivalents)).

We believe that this hypothetical example highlights the potential inequity of the differing manner in which similarly sized registrants with different capital structures would be treated where equity value is the sole determinant of value in the denominator of the investment test.

Moreover, we believe that our suggested approach regarding the denominator in the investment test (that is, with an approach considering two valuation metrics of the registrant) is thematically similar to the approach taken by the Commission in the Proposed Rules with respect to the income test, which would require that both a revenue and (after-tax) income test be met, which revised approach reflects the fact that (as recognized by the Commission) the unilateral application of the (pre-tax) income test under the existing rules can lead to significant inequity under certain fact patterns (for example, where the registrant has net income close to zero).

The discussion above does not address all aspects of the investment test which would need be considered by the Commission in connection with the promulgation of final rules (for example, the means of determining the denominator in the investment test where the common equity of the registrant is not traded on a market), but highlights what we respectfully believe is the most important issue which the Commission should consider in connection with making revisions to the investment test.

We thank the Commission for the opportunity to provide feedback on the matters set forth above. If you would like to discuss our letter, please feel free to contact Kevin Douglas at 615-742-7767, Jay Knight at 615-742-7756 or Taylor Wirth at 615-742-7805.

Very truly yours,

Bass, Berry & Sims PLC

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