



July 21, 2016

Via Electronic Mail

Mr. Keith F. Higgins
Director, Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-06-16, Concept Release, *Business And Financial Disclosure Required By Regulation S-K*

Ladies and Gentlemen:

The Clearing House Association L.L.C. (“The Clearing House”)¹ appreciates the opportunity to comment on the above-referenced Concept Release (the “Concept Release”). The Clearing House strongly supports efforts to identify ways to improve the efficiency and effectiveness of disclosures. We are limiting our response to the questions in the Concept Release that pertain to the Securities Act and Exchange Act Industry Guide 3 – Statistical Disclosure by Bank Holding Companies (“Guide 3”).

Executive Summary

- Of most importance, Guide 3 should remain a guide and not a mandatory set of requirements. This provides critical flexibility in two respects: first, it takes into account the fact that banks can vary widely in their business operations; and second, relevant factors change over time. Specifically, Guide 3 should not be codified into Regulation S-K or Regulation S-X as this would not enhance adherence by registrants and may make updating the Guide more cumbersome;

¹ The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.

- Guide 3 should be updated, as it has been several decades since meaningful changes have been made to it, and many of its suggested disclosures overlap with or are different from other disclosure requirements; and
 - The SEC should work in close cooperation with other standard-setting authorities to develop a set of disclosure requirements that is complementary and not duplicative or inconsistent.
1. **Codification of Guide 3 would not impact compliance by registrants, and may make updating the Guide more cumbersome.**

We do not believe Guide 3 should be codified as part of Regulation S-K or Regulation S-X. The record over the past 40 years demonstrates that financial institutions will continue to adhere to the guidance in Guide 3 regardless of whether Guide 3 is a statement of SEC staff policy or a regulatory requirement. Application of Guide 3 in its current form has resulted in uniformity of application and consequent comparability in the disclosures provided by registrants in the banking industry. At the same time, as guidance instead of a rule, Guide 3 has permitted flexibility for BHC registrants in their approach to disclosure in appropriate circumstances. That flexibility, combined with the SEC staff's periodic review of and comment on filings, has, we believe, worked well for investors.

Furthermore, codifying Guide 3 would result in a more cumbersome procedure for the SEC in updating disclosures in the future, as well as limit the opportunity for registrants to selectively omit or update disclosures as they become obsolete over time. For example, currently the threshold for disclosure of time deposits outstanding (Items V.D and V.E of Guide 3) is amounts greater than or equal to \$100,000. This disclosure threshold was established to distinguish "retail" from "wholesale" deposits as this amount was co-incident in 1980 with the then-applicable FDIC insurance limit. We believe that this type of disclosure should be updated to reflect the current FDIC insurance limit, which is currently \$250,000. Thus, another important reason for leaving Guide 3 in its present form, as a statement of SEC staff policy, is so that these types of updates can be made more readily by the SEC.

2. **Guide 3 should be updated to address changes in accounting and regulatory reporting requirements and also to the core banking businesses that lend themselves to the comparable disclosure approach the industry guides were designed to address.**

Since adoption, Guide 3 has resulted in disclosure that is important to investment decisions and has provided useful guidance that improves disclosure to investors. It continues to do so. Nevertheless, we believe Guide 3 should be updated. As the Concept Release notes, there have been only minor revisions to Guide 3 since 1982. Given the sweeping changes to the accounting treatment and regulatory reporting for and disclosure of financial instruments in the last three decades, and also to the core banking businesses that lend themselves to the comparable disclosure approach the industry guides were designed to address, we believe a fresh look at Guide 3 is warranted.

More specifically, we believe Guide 3 is duplicative of disclosure requirements under the Accounting Standards Codification ("ASC") and reports required to be filed by BHCs and banks with the Federal Reserve Board and other banking agencies (for example, the public portions of reports filed by BHCs on Form FR Y-9C), such that we believe there is an opportunity to streamline the suggested disclosures in Guide 3. Focusing on the loan portfolio as a point of discussion, Item III of Guide 3 specifies various categories of loans (real estate, commercial, consumer, etc.) for MD&A loan portfolio disclosures. By comparison, ASC requirements for presentation in financial statements and

accompanying footnotes and the break-down of the loan portfolio in Schedule HC-C to Form FR Y-9C use different reporting categories. Consideration should be given to conforming them. Additionally, management may categorize the loan portfolio yet another way for MD&A purposes to reflect how it actually manages the business. Accordingly, the requirement to present loans pursuant to the pre-specified categories of Guide 3, given the other ways in which loans are presented in the financial statements, may create confusion for investors.

With the issuance of the new standard on Impairment of Financial Instruments by the Financial Accounting Standards Board (the "FASB"), which introduces many new and robust disclosure requirements for financial institutions, we believe this is a particularly appropriate time to compare and contrast the existing body of disclosures as promulgated by the FASB, regulatory reporting requirements of the banking agencies, Regulation S-K, and Guide 3.

3. The SEC should work in close cooperation with other standard-setting authorities to develop a set of requirements that is complementary and not duplicative.

We further recommend the SEC work in close cooperation with the FASB, banking regulators and other groups that promulgate financial disclosure requirements, such as the Basel Committee on Banking Supervision and the Financial Stability Board. For example, when the U.S. banking agencies' Pillar III disclosures required by their rules applicable to BHCs and banks are finalized, consideration will need to be given to the interplay between these regulatory disclosures and disclosures in BHCs' reports and registration statements filed under the U.S. Federal securities laws. Required disclosures may become more redundant as additional disclosure requirements are established. Thus, we encourage the SEC to collaborate with these other groups so that disclosure standards are consistent and non-redundant, while still addressing the specific regulatory and investor needs for which these disclosures are developed.

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In conclusion, we support the SEC's efforts to improve and enhance disclosures. We hope you find our suggestions regarding areas of focus and improvement useful. We would be pleased to meet with you in person to discuss these suggestions in more detail, or provide additional thoughts on any of our individual recommendations. If you have any questions, please contact me at (212) 613-9883 or by email at david.wagner@theclearinghouse.org.

Respectfully submitted,



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The Clearing House Association L.L.C.

cc: Ms. Susan M. Cospers
Technical Director
(Financial Accounting Standards Board)

Mr. Mark Kronforst
Mr. James Schnurr
(Securities and Exchange Commission)

Ms. Joanne Wakim
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Ms. Kathy Murphy
Mr. Louis A. Thompson, Jr.
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