October 3, 2016

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

**Subject: File No. S7-06-16: Concept Release on Business and Financial Disclosure Required by Regulation S-K**

Submitted via rule-comments@sec.gov

Dear Mr. Fields:

This letter is being submitted by Financial Executives International's (FEI) Committee on Corporate Reporting (CCR) in response to the Securities and Exchange Commission's (SEC or the Commission) request for comment on the business and financial disclosure requirements of Regulation S-K as referenced above.

FEI is a leading international organization of more than 10,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior-level financial executives. The Committee on Corporate Reporting (CCR) is a technical committee of FEI, which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations. CCR member companies represent approximately $5 trillion in market capitalization and actively monitor the regulatory activities of the SEC. This letter represents the views of CCR and not necessarily the views of FEI or its members individually.

## Executive Summary

We commend and support the SEC's initiatives to improve disclosures for the benefit of both investors and public companies. This concept release (the Concept Release) is an important step towards achieving this objective. In our view, the quality and presentation of information provided to investors by companies has been negatively impacted by the requirements and associated layers of rules and regulations, which in certain cases have resulted in compliance objectives undermining effectiveness of presentation. We recognize the importance of providing relevant, decision-useful information to

investors to enable informed investment, credit and voting decisions, and the key role financial executives play in that process as controllers and principal accounting officers.

A **Principles-Based Framework** that results in the communication of **Material Information** to investors in a **Flexible** and meaningful way is the key to improving and simplifying disclosures. This Framework, further discussed below, is the cornerstone of all our responses to the questions posed in the Concept Release:

- ***Principles-based Framework****:* A principles-based framework, appropriately designed with **clearly stated objectives** provides the best foundation to achieve the objective of delivering decision-useful information to investors and other users of our financial statements. In advocating a principles-based framework we are not promoting the removal of decision-useful information from our financial disclosures. We also recognize the SEC's goal is not to make financial reports shorter or to reduce volume. Rather, it is to provide a framework that facilitates the most effective methods to deliver financial information important to investors in making investment decisions. We acknowledge that companies may need to add information in areas where existing standards do not specify disclosure objectives, and to take the necessary steps to ensure that all of the disclosures that remain are clear and understandable.

- ***Material Information***: Materiality should continue to be the foundation, and primary consideration for determining whether disclosures in accordance with Generally Accepted Accounting Principles (GAAP) or the Commission's regulations, are necessary components of available information to sufficiently and appropriately inform the investment and voting decisions of a reasonably knowledgeable investor.[1] We support the SEC's current definition of *materiality*[2] that limits the information required to those matters for which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered. We observe, however, that definitions and interpretations of materiality differ across stakeholders and have led to confusion among investors, standard setters, preparers, auditors and other key stakeholders and interested parties.

  While the Supreme Court definition of materiality has been recognized and adopted by the SEC, we observe this same definition is not universally understood and interpreted similarly by key stakeholders including the Financial Accounting Standards Board (FASB),[3] Public Company Accounting Oversight Board (PCAOB), and auditors. We believe the current system of disclosure could be improved by aligning the definition of materiality and other materiality-related terms (e.g., immaterial, de minimis, clearly trivial, etc.) among key stakeholders including the FASB, PCAOB, SEC and auditors, with the consistent objective to

[1] Refer to our comments below regarding our views on "Audience for Disclosure."
[2] As noted on page 37 of the Concept Release, the SEC adopted the Supreme Court's definition of materiality.
[3] In 2015 the FASB acknowledged this difference and proposed amendments to the definition of materiality in its conceptual framework to align with the SEC's reference to the Supreme Court definition.

promote disclosure of information on the basis of whether such information is material (as defined) to the reasonably knowledgeable investor (as recommended further below). We believe that overly prescriptive disclosure requirements should be eliminated, where possible, as they generally fail to consider materiality thresholds. Furthermore, de minimis or clearly trivial information should be excluded from disclosures, where possible, to avoid distracting the reader. We likewise do not agree that de minimis or clearly trivial[4] unrecorded differences should be disclosed or that a registrant should be required to disclose how they assessed materiality. By definition, such information would not influence a reasonably informed investor's decision but could detract from other more important information. De minimis or clearly trivial error corrections occur routinely, and are evaluated by companies considering both quantitative and qualitative factors (including those factors described in Staff Accounting Bulletin (SAB) 99).

- ***Flexibility:*** Disclosures in general should be flexible and based on meaningful and material factors for a registrant's industry and business. As we believe materiality is the basis for all disclosure, we recommend that existing quantitative thresholds for certain disclosures (e.g., Regulation S-K Item 404 for Related-Party transactions) be eliminated. Management Discussion and Analysis (MD&A) is a good example of a materiality-focused, principles-based disclosure framework that has generally served preparers and users well over time. Therefore, we believe a materiality-focused and principles-based approach would afford companies the appropriate flexibility to determine how to best convey their information within this framework. We believe that these changes (along with other recommended changes as outlined further below) under a principles-based framework, would provide more informative disclosure to investors, as they would serve to focus the investor's attention on the more significant items that are impacting the registrant's business.

The reporting environment, including regulation, standard setting and political/legislative influences, is likely to significantly impact the depth and breadth of reporting changes as efforts to improve disclosures move forward. We believe that key stakeholders in the U.S. financial reporting regulatory regime (i.e., the FASB, SEC, and PCAOB) should evaluate how to remove impediments to improved disclosure and support mechanisms that facilitate continuous improvements in disclosures. Despite barriers and challenges (e.g., existing regulations, political influences, misguided investor activism, checklist approach to disclosures, litigation concerns, etc.), companies across a wide range of industries and sectors are finding **innovative** and **modern** ways to improve disclosures, making them more effective, user-friendly and relevant. We encourage the SEC to recognize, encourage and continue to advance these efforts, and to continue in its various projects and proposals to remove barriers to continued development and progress.

We believe the SEC should avoid calls to expand disclosure requirements intended to address societal issues unrelated to the SEC's core mission of investor protection, and that may not appropriately

[4] While we have used the terms "de minimis" and "clearly trivial" here, we point out that the Concept Release uses the term "immaterial" when discussing disclosure of a registrant's assessment of errors. Refer to questions 142 – 143 of the Concept Release.

consider materiality or whether such information is useful to a reasonably knowledgeable investor. We recognize the relevance of public policy and sustainability issues to a number of stakeholders including certain investors, non-governmental organizations (NGOs), local communities, and interested members of the public. However, the Commission should not pursue an approach where all issues that are "important" to a particular subset of stakeholders are required to be disclosed.

Auditor involvement in disclosures outside of the financial statements should not be expanded. Currently, capital markets function well based on disclosure of information supplied by companies outside the financial statements, which is a good indication that existing auditor involvement is sufficient. Furthermore, the Commission should establish clear boundaries with the PCAOB regarding the auditor's role in a registrants' periodic reports (i.e., disclosure of original information by auditors is not appropriate in the auditor's report). We believe the SEC's establishment of clear boundaries is necessary to limit auditors' involvement in registrant's disclosure. We are deeply concerned with recent developments, for example, by the PCAOB's reproposal of the auditor reporting standard, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*. We encourage the SEC to review our letter[5] and comments made to the PCAOB with respect to original information and the necessity of disclosure requirements remaining within the purview of the SEC. To be clear, the PCAOB's involvement in financial reporting should be limited to its mission to oversee the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, but should not extend to the standards around disclosure by management, or the auditor, of financial information.

We have included our detailed comments and recommendations on many of the questions raised in the Concept Release in the attached Appendix. The Appendix has been separated into the general topics covered in the Concept Release.

In addition to our comments herein, we refer the SEC to our comment letter to the FASB on its two recent materiality proposals, *Qualitative Characteristics of Useful Financial Information* and *Assessing Whether Disclosures are Material*, and in particular our recommendations in the section titled, "The Path Forward." In our letter, we outline our recommendations on how to move these initiatives forward along with findings from our research study, as conducted by FEI's Financial Executive Research Foundation (FERF).[6] In addition, please refer to FERF's recently issued research study titled, "Disclosure effectiveness in action: companies make great strides."[7]

## Conclusion

We support and stand ready to participate in continued discussions on this topic and encourage the SEC to bring key stakeholders together to consider how to continue the effectiveness efforts that are

[5] Refer to https://pcaobus.org/Rulemaking/Docket034/063c_FEI.pdf
[6] A copy of the full research report can be obtained at http://bit.ly/DisclosureEffectiveness.
[7] A copy of the full research report can be obtained at http://bit.ly/EY-Disclosure-Report.
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underway. We support a modernized reporting regime that embraces technology and innovative ways of thinking about disclosure. We believe it will not only lead to better capital formation, as investors have access to better and more relevant information, but will also allow the disclosure regime to become the gold standard for other capital markets across the world.

As financial officers of public companies, we recognize the responsibility we have to the financial markets to produce accurate, informative and reliable financial information, along with the importance of providing meaningful disclosures to investors to facilitate efficient capital formation. While we primarily represent the preparer community in our views, it is important to note that we do also represent the view of investors within our own organizations. Many of our own organizations actively engage in investment opportunities (i.e., in considering acquisitions, mergers, managing our own investment portfolios and pension plans, etc.), where financial information and disclosure are extremely important to our own investment decisions. Therefore, we recognize and support efforts to make financial disclosure more meaningful to investors. We welcome the opportunity to discuss our recommendations with the SEC and would be glad to answer any questions you may have.

Sincerely

Richard Levy

Richard Levy
Chairman, Committee on Corporate Reporting
Financial Executives International

Cc: James Schnurr, Chief Accountant, Office of Chief Accountant
Wesley Bricker, Interim Chief Accountant, Office of Chief Accountant
Keith Higgins, Director, Division of Corporation Finance
Mark Kronforst, Chief Accountant, Division of Corporation Finance
Russell Golden, Chair, Financial Accounting Standards Board

## Appendix

### Disclosure Framework

Consistent with our comments above, we are supportive of the SEC's overall efforts to comprehensively review the disclosure requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and shareholders' access to that information.

*Audience for Disclosure*

We agree with the findings of the Sommer Report,[8] which concluded that the Commission's rules should "*emphasize disclosure of information useful to* ***reasonably knowledgeable*** *[emphasis added] investors willing to make the effort needed to study the disclosures, leaving to disseminators the development of simplified formats and summaries usable by less experienced and less knowledgeable investors*." We note that these findings place the focus of disclosure on a "reasonably knowledgeable" investor willing to make an effort to study disclosure and does not place the focus on sophisticated institutional, or activist investors, who are often the loudest voices calling for additional disclosure or a halt to the disclosure effectiveness improvement efforts of the SEC and FASB. We believe that as financial disclosures become more accessible and readable the "reasonably knowledgeable investor" will become more willing to read, study and make the effort to understand financial disclosures leading to more efficient capital markets overall. We urge the Commission to consider whether requests for additional disclosure from certain investor groups are warranted, understanding that such information, while perhaps important to a particular investor group, may not meet the threshold to be considered relevant to reasonably knowledgeable investors broadly.

*Automatic Sunset Provisions*

In order to maintain relevant disclosure standards, and appropriate flexibility within these standards, we support implementing Automatic Sunset Provisions applicable to all new disclosure requirements, thereby requiring formal action by the SEC to extend the requirements beyond a period of five years. This would allow sufficient time for the Commission to study and evaluate the costs, benefits, relevance and overall impact of each new disclosure requirement. More importantly, the Commission should evaluate whether the disclosure requirement has met its intended objective, at which time a decision could be made to extend, modify, or eliminate the disclosure.

*Cost/Benefit Analysis*

As part of the Automatic Sunset Provisions mentioned above, the Commission should undertake an evaluation of the costs and benefits associated with new disclosures and only move forward with

[8] See page 46 of the Concept Release

disclosures when the benefits outweigh those costs. Furthermore, disclosure requests from investor or activist groups that promote their own agenda or mission should be subject to due process and supported by sufficient evidence for why the capital markets overall would benefit from the additional disclosure including sufficient evidence that the benefits of the additional disclosure would outweigh the costs of providing such disclosure.

## Core Company Business Information

We agree that providing a narrative description of a registrant's business is the most appropriate manner to convey what a business does and how it is done. Further, as stated in the Executive Summary above, we believe a principles-based approach provides a clear, concise understanding to a reasonably knowledgeable investor regarding a registrant's business. However, the current requirements in Item 101(c) (the thirteen specific topics that are mentioned) are not principles-based and are often treated as a checklist by a registrant and result in disclosures that do not provide additional or important information to an investor. These thirteen topics, however, could be the foundation for examples of disclosure objectives rather than required disclosures. For example, while backlog is important for construction firms, manufacturers and defense contractors, it is likely not a meaningful indicator in many other industries. Similarly under a principles-based approach, we do not believe that the Item 101(c)(1)(iv) requirements related to the disclosures of patents, trademarks, licenses, franchises and concessions are necessary for all registrants, nor should it be expanded to require disclosures about copyrights or trade secrets. Disclosures of these matters should also be protected so that they do not subject the registrant to competitive harm. Likewise, the compilation of the number of employees as of a specific date is time-consuming and is not likely to provide investors with relevant information to help support an investment decision.

As indicated above, we believe that the principles should be supported with a clear set of disclosure objectives and examples. The starting point in developing these objectives could be the thirteen topics in Item 101(c)(1) and industry guides. In addressing these objectives, materiality and relevance to a registrant should be paramount. For example, the current quantitative threshold for disclosure of certain environmental matters (i.e., $100,000) can cause a burden on certain registrants given its de minimis nature (see reference above to materiality-related terminology), especially to large-accelerated filers. In an effort to provide material and informative disclosure to investors, we believe that prescriptive disclosures should be removed, such as dollar thresholds or specific requirements. If these matters have or may have a material impact on a registrant's business, a principles-based approach would provide the flexibility for a registrant to provide a narrative description of these matters either in the description of the business, risk factors or legal proceedings.

In addition, Regulation S-K currently includes a number of disclosures that are required by other authoritative literature and thus is included elsewhere in a registrant's filing. For example, requirements about segments and geographic regions frequently are cross-referenced to the financial statement footnotes while information about seasonality and segment results are discussed in MD&A. We agree

with the Commission's recently released proposal, Disclosure Update and Simplification,[9] to remove many of the duplicate disclosures between the FASB and SEC requirements. We suggest that the Commission consider better coordination between various sections of the filing, as certain information in Item 101 may be more effective in the MD&A, or is already required in the audited financial statements. For example, a registrant's disclosure of its business strategy may be more relevant in MD&A, thus allowing an investor to understand the material financial and operating measures that comprise the operating strategy of a registrant. We believe that this will improve the flow of disclosure and eliminate redundancy.

Similar to the above, as it relates to Item 102 – Description of Property, we recommend that the discussion of the registrant's core assets and properties be incorporated into the narrative discussion of the business. Alternatively, if certain properties are material to the business, its operations and results of operations, a registrant could include such discussion of these matters in the business discussion in MD&A.

We do not believe that it is necessary to include a discussion of the general development of the business during the past five years as this information is now much more accessible, including previous filings on EDGAR. In addition, as technological advances and other competitive pressures continue to drive changes in various industries and businesses, we believe that a five-year time frame is too long and does not provide focused insight to investors. To the extent that a registrant's business undergoes impactful changes, we believe these changes will be discussed in a registrant's MD&A as it reports its results of operations.

As an alternative to the current reporting of information on a registrant's business, we would be open to evaluating a separate "company profile" section in EDGAR for business-related disclosures and other information that may not change significantly from period to period. We stress, however, that this profile should not need to be updated more frequently than on an annual basis, as current SEC rules provide. Including information on a company's business in the company profile would have the added benefit of reducing the size of the periodic reports, thereby enhancing the focus and efficiency of investors receiving current financial and operational information. To obtain these benefits without sacrificing investor accessibility, hyperlinks could be used within the current structure of the annual report on Form 10-K.

## Company Performance, financial information, and future prospects

*Item 301 (five-year data tables)*

We note that the original intent of the five-year data was to provide selected financial data that highlights significant trends for the investors. However, whenever acquisitions occur, trend comparisons are not as meaningful. Readers should review prior year MD&A for appropriate details. In addition,

[9] Refer to https://www.sec.gov/news/pressrelease/2016-141.html

multiple adoption approaches for new accounting standards (e.g., retrospective or modified retrospective approach) can cause five-year data to be less comparable period over period. The determination of whether any additional years of data are necessary to keep the information from being misleading should be flexible and left with the registrants similar to the current requirements where any additional years beyond five are voluntary. The five-year table was introduced decades ago when prior annual reports and other registrant information was not easily accessible. With the significant advancement in information technology in the recent years, companies are providing comprehensive information, such as trending, in multiple locations including their websites, so that information is readily accessible for the investors. Therefore, we suggest that five-year data should be provided on a voluntary basis in the Form 10-K. As an alternative, hyperlinks could be used to access such data if placed within a separate “company profile” section of EDGAR

The cost of providing data for years four and five can be significant including both (a) internal costs to prepare any restatement and disclosures, (b) implementation of internal controls and (c) external costs such as legal and audit fees. With the adoption of the new revenue recognition standard, the SEC appears to have recognized that the cost of restating the two earliest years presented in the five year table exceeded the benefit by providing relief to reporting companies.[10] This restatement process is difficult to maintain and administer as often the required information necessary to restate is difficult and costly to obtain.

*Item 302 (quarterly information)*

While the original intent of quarterly information was to help investors understand the pattern of corporate activities throughout a fiscal year, not all businesses are seasonal and quarterly information is already available through Form 10-Q filings. Therefore, we believe a flexible approach, would allow a registrant to determine when and if quarterly information would be relevant and enhance an investors understanding of the business throughout the year. Many registrants’ year-over-year comparisons adequately reflect their financial performance without requiring additional quarter-over-quarter information. Furthermore, when there are no changes to such information, it is redundant to include it in the annual disclosure requirements. Once the Form 10-Ks are filed, fourth quarter information can be easily derived in conjunction with referencing prior Form 10-Q fillings, without requiring fourth quarter information specifically.

Quarterly information may also cause confusion in certain cases. For example, when a registrant early adopts the recently issued Stock-based Compensation Accounting Standard Update in an interim period, the registrant would reflect the year-to-date impact of adoption as of the beginning of the fiscal year, but would only reflect the quarterly impact for the current quarter and would not go back and restate the prior quarters’ results. Those quarters would be revised to reflect the adoption the next time the registrant presents those prior quarters’ results (e.g., year-end footnote disclosures). This leads to quarterly amounts that do not sum to the full year amount reported in the Form 10-K and raises questions of whether quarterly information is always helpful.

[10] Refer to New Topic 11, *Reporting Issues Related to Adoption of New Revenue Recognition Standard*, of the SEC’s Division of Corporation Finance’s Financial Reporting Manual

In addition, similar to the discussion on the five-year table requirement, quarterly information was introduced decades ago when registrants' information was not easily accessible. Companies are providing comprehensive information in multiple venues, including supplemental schedules on their websites, where quarterly information is readily accessible to investors. We therefore believe that registrants should not be required to disclose quarterly information within the Form 10-K filing, but allowed to use hyperlinks to access such information.

*Frequency*

We support quarterly reporting and believe it continues to be appropriate especially for seasonal businesses. We have significant concerns over more frequent reporting (e.g., monthly). The costs of more frequent interim reporting would significantly outweigh the benefits and would create significant operational issues if implemented. As an example, it generally takes 30-45 days for a registrant to complete their quarterly filings. This process not only includes complex consolidation procedures for multi-national registrants to administer and prepare the information, but also includes implementation of proper controls and evidentiary records in order to provide quality documentation to the auditors. This process requires tremendous effort and is time consuming and costly. For significant events occurring between periodic filings, Form 8-K filings are required to capture such events and provide updates to previously filed quarterly or annual reports. Current Form 8-K reporting serves investors well and keeps investors informed timely of any significant events. More frequent reporting would only exacerbate what is already an overly short-term focus on results in the market place and would not serve the purpose of improving overall long-term capital formation.

## MD&A

As noted previously, MD&A is a good example of a materiality-focused, principles-based disclosure framework that has withstood the test of time and generally served preparers and users well. The requirements should remain materiality-focused and principles-based, allowing companies flexibility to determine how to best convey their information within this framework.

*General*

The guidance and related interpretations for MD&A reporting currently reside in various sources. It would be helpful to consolidate the guidance into a single source. In compiling this single source of guidance, we encourage the SEC to retain the materiality-focused, principles-based disclosure framework that currently exists. Accordingly, we encourage the SEC to avoid prescriptive quantitative thresholds—examples of actions that would conflict with retaining a materiality-focused, principles-based disclosure framework for MD&A.

As noted above, the benefits of potential additional auditor involvement (regardless of whether there would be some perceived benefit to the reliability of the information provided) would exceed the costs. Today, auditors are required to read MD&A to confirm that it is not inconsistent with the information presented in the company's GAAP financial statements. Investors are well served by this current limited involvement, which sufficiently balances incremental costs with the level of assurance that investors

want. Both the American Institute of CPAs and PCAOB standards have historically provided for the possibility of an attestation engagement over MD&A, yet the marketplace has simply not registered demand or appetite for such services—a good indication that our capital markets function smoothly and efficiently without additional auditor involvement in MD&A.

*Forward-looking disclosures*

We believe the current two-step test[11] for assessing whether forward-looking disclosure is required in MD&A works well and should be retained.

*Key performance indicators (KPIs)*

As part of a materiality-focused, principles-based disclosure framework, many companies elect to include discussion about various key performance indicators. Within the current disclosure framework, we believe that companies balance a variety of considerations, including costs required to monitor, track, and report, whether management uses the KPI for its own purposes, and the perceived value to investors of providing the KPI, in deciding whether and which KPIs to include in MD&A. Consistent with retaining a materiality-focused, principles-based disclosure framework for MD&A, we do not recommend that the SEC establish prescriptive requirements for the presentation of such performance indicators.

*Results of operations*

We believe that the SEC should modify the period-to-period comparisons to require discussion of only the most recent two years. Advances in technology make historical information easily available to market participants. In addition, most of this disclosure related to the previous two years are repetitive of the information provided in the previous Form 10-K. Furthermore, this would allow companies and investors to focus on new, material developments in the latest fiscal year and would be in keeping with disclosure effectiveness and simplification objectives.

*Liquidity and capital resources and Short-term borrowings*

We believe that current liquidity and capital resources discussion requirements are appropriate and sufficient. Additionally, we believe that current disclosure requirements regarding short-term borrowings, particularly considering the 2010 Liquidity and Capital Resources Interpretive Release, are adequate and represent a good balance of benefits of disclosure versus costs to prepare.

As noted above, we believe it would be helpful to consolidate the guidance on MD&A into a single source. In doing so, we recommend that the SEC not expand prescriptive requirements with respect to

[11] "Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments: (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required. (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur." See 1989 MD&A Interpretive Release at 22430.

liquidity and capital resources, including not further defining the terms “liquidity” and “capital resources” beyond their current general terms.

*Off-balance sheet arrangements*

We believe that Item 303(a)(4) on off-balance sheet arrangements should be eliminated. Since the adoption of Item 303(a)(4), the FASB has issued additional requirements that substantially overlap with this item. Further, the disclosure requirements in Item 303 regarding liquidity and capital resources adequately require disclosures about the business purpose of material off-balance sheet arrangements and the importance of the off-balance sheet arrangement to the registrant’s liquidity or capital resources. Accordingly, if Item 303(a)(4) were eliminated, we believe that investors would receive the same essential information about off-balance sheet arrangements but in a more streamlined form.

*Contractual obligations*

When adopting Item 303(a)(5) on contractual obligations, the SEC recognized that much of the disclosure required by this item is addressed under GAAP requirements. The Commission aimed, in part, for the table of contractual obligations required by this item to present a meaningful snapshot of a registrant’s cash requirements for contractual obligations.

We believe that these disclosures are working as intended, and encourage the SEC to retain the principles-based, materiality-focused approach that currently exists. Under the current requirements, these disclosures vary considerably from company to company; maintaining the ability for companies to appropriately tailor their contractual obligations disclosures is important so the disclosures are meaningful to their particular circumstances.

## Critical Accounting Estimate

The 2003 MD&A Interpretive Release provides clear and sufficient guidance regarding both the definition of critical accounting estimates and the related disclosure objectives. Item 303 does not require amendment, but, as noted above, it would be helpful to consolidate all of the MD&A interpretive guidance, including SEC Release No. FR-72 (FR-72), within Item 303 to improve the accessibility of the guidance.

The definition of critical accounting estimates as stated in FR-72 does not need revising. The PCAOB has adopted the same definition in Appendix A to Auditing Standard No. 16.[12]

In accordance with FR-72, the critical accounting estimate disclosures should supplement, not duplicate, the description of accounting policies disclosed in the financial statement notes. These disclosures should describe (a) the accounting estimate, (b) why it is material and what judgments are involved, and (c) a sensitivity assessment to the extent practicable on reasonably likely changes to the estimate in the future.

[12] Refer to paragraph 12(c) of Auditing Standard No. 16.

We do not believe any new additional disclosures are needed or would be justified from a cost/benefit perspective.

## Risk and Risk Management

*Risk Factors*

We believe the current principles-based Item 503(c) is generally effective as management has the opportunity and flexibility to highlight their most significant risks. While we have concerns with some of the considerations included within the Concept Release, we believe there are targeted areas for enhancement.

We believe arbitrarily limiting or prescribing risk factor disclosure would not benefit investors' understanding of important risks facing the company and would potentially diminish the legal protection afforded to companies. Consequently, we do not recommend limiting the number of risk factors to be disclosed, or ranking risks in order of "management's perception of magnitude" or "probability of occurrence." A limit on the number of risk factors to be disclosed may prevent the disclosure of risks that are deemed significant or material by management and it would also disadvantage companies that operate across multiple industries and limit relevant information for investors. Requiring the ranking of risks would potentially obscure investors' understanding because ranking is subjective, and may lead to incorrect conclusions of magnitude or materiality. It also may increase litigation exposure for companies based on how they rank risks. Some companies find it helpful to categorize risk into common categories by theme or topically (e.g., operational, financial, business, regulatory, legal, etc.)

In addition, we believe disclosure of the probability of occurrence and effect on performance for risk factors requires speculative judgments that could provide investors with a false level of precision, might not result in decision-useful information, and thereby could expose companies to incremental litigation. Therefore we would not recommend such a requirement.

We encourage the Commission to consider enhancements to existing rules to further improve their relevance and usefulness. For example, legal reform such as safe harbor protection for the absence of generic or common risk factor disclosures could assist in limiting unnecessary disclosure and avoid over-disclosure of generic or common risk factors. Improved clarity and interpretation of existing rules, such as a more robust framework for companies to consider when deciding whether a risk factor should be disclosed, or specific guidance for interpreting the terms "speculative" and "risky" as used in Item 503(c), could also enhance application of the existing rules.

*Quantitative and qualitative disclosure about market risk*

Much of the required quantitative and qualitative information about market risk within Item 305 is outdated and does not appropriately consider subsequent developments in GAAP. Certain disclosures related to derivatives and other market sensitive instruments are important to certain industries (e.g.,

financial services). In lieu of the current Item 305 compliance driven requirement, we support a materiality-focused principles-based discussion about market risk and uncertainty.

*Disclosure of Approach to Risk Management and Risk Management Process*

Discussion of specific risk mitigation activities could provide meaningful information to investors and help them understand risk and therefore should be allowed, but not required. We are concerned that requiring such disclosure could result in boilerplate or unhelpful disclosures without specificity, as companies may be reluctant to provide confidential or competitively sensitive information, or any information that could highlight areas for potential litigation.

*Consolidating risk-related disclosure*

We support the option for companies to consolidate risk-related disclosures (e.g., risk factors, market risks, contingencies, etc.) so investors can find all risk related items in one place. Alternatively, the Commission could allow registrants to improve the ease of access to this information with a more flexible table of contents. We do not believe either approach would significantly impact the cost of preparing a filing.

## Securities of the Registrant

*Number of shareholders*

Item 201(b), which requires disclosure of the number of holders of each class of common shares, should be eliminated. As noted in the Concept Release, this requirement was first adopted in 1938. Currently, the vast majority of investors of U.S. public companies own their securities as a beneficial owner. The number of security holders therefore does not provide meaningful information.

While not commented on in the Concept Release, we also recommend deleting the Form 10-K Item 5 of Part II requirement referencing Item 201, to state the high and low sales prices for each full quarterly period within the two most recent fiscal years, and any subsequent interim period for which financial statements are included. Investors can readily access daily stock price history of public companies for any periods needed through freely available websites.

*Purchases of Equity Securities*

Item 703 requires tabular disclosure in Forms 10-Q and 10-K of monthly purchases of registered securities by the registrant, and footnote disclosure providing details on repurchase programs.

While the current S-K requirements go beyond what is required under GAAP, we believe the information provided is helpful in increasing the transparency of security repurchases. We do not believe that more granular information should be required. For example, the effect of repurchases on indebtedness is already covered by the MD&A liquidity disclosure requirements. We also do not believe that purchases

above a certain threshold should be reported on Form 8-K, given the existing 10-Q reporting of monthly purchases.

**Public Policy and Sustainability Matters**

As noted above, we recognize the relevance of public policy and sustainability issues to a number of stakeholders including certain investors, NGOs, local communities, and interested members of the public. These matters cover a wide range of potential items from climate change, water and energy considerations, supply chain practices, trade association membership, charitable contributions, and other topics. However, the Commission should not pursue an approach where all issues that are "important" to a particular subset of stakeholders are required to be disclosed. Such an approach runs the very real risk of obscuring more material financial information that is of vital importance to voting and investment decisions across broader swaths of stakeholders. Moreover, we do not think it is possible, and therefore not advisable, for the Commission to develop a specific disclosure framework to address emerging issues as they evolve. The SEC has regulations in place under the 1933 and 1934 Acts that eliminates the need for any new disclosure framework. Those regulations, as amended, together with the Supreme Court's definition of "material", create a simple, responsive, resilient foundation for disclosures that reasonably balance the needs of stakeholders with requirements imposed on registrants. Furthermore, the specific risks related to climate change, as an example, are not sufficiently different from those risks related to regional / worldwide conflicts, terrorism, financial market meltdowns, and political, social, or legal framework instability to merit specific line-item disclosure requirements. We strongly urge the Commission not to adopt additional prescriptive rules for disclosure of public policy or sustainability-related information, and instead to consider using its option to provide occasional guidance to preparers such as the SEC's disclosure guidance for entities with direct and indirect exposure to European sovereign debt holdings.

Line-item disclosure requirements inevitably force registrants to disclose information that is not material to a reasonable investor. Examples in the current disclosure regime include bright –line disclosure requirements for environmental fines and related parties transactions. Not only are such disclosure requirements irrelevant to the vast majority of reasonable investors, they also can give outsized prominence to immaterial matters and otherwise clutter a filing such that more material information is more difficult to find.

As noted above, CCR recognizes that certain investors and other stakeholders have an interest in sustainability issues. Acknowledging this interest and in response to these parties, many preparers discuss policies and practices in these areas within corporate sustainability or social responsibility reports. These voluntary reports are tailored to the particular industry and set of stakeholder interests of specific companies. The reports are provided outside of Commission filings because the information might be important to certain stakeholders but is not "material" under the U.S. Supreme Court definition. The discussions on policies and disclosure of metrics that are most relevant for one industry are unlikely to be relevant or meaningful for companies operating in different industries. Disclosure

through voluntary reports is far superior to a model involving the Commission prescribing line-item requirements, or adopting a framework that may not have had adequate input from the appropriate range of investors and preparers.

*Transparency in process*

By proposing line-item disclosure requirements on sustainability or public policy issues, the SEC would be far exceeding its mission of protecting investors; maintaining fair, orderly and efficient markets; and promoting capital formation. Codification into line-item disclosure requirements of evolving voluntary sustainability disclosures could change the dialogue between companies and stakeholders into a compliance exercise, likely stifling the continuing evolution of voluntary disclosures. Many industries have developed frameworks that promote transparency related to environmental, social and corporate governance (ESG) matters. These frameworks have been developed by experts, with significant input from users, over the course of many years, and are constantly evolving to address emerging areas of interests. Certain of these sustainability frameworks have useful aspects, but others appear to suffer from a biased development process that emphasizes a particular point of view. The best interests of preparers and other stakeholders are better served by allowing multiple initiatives to continue to evolve through open, transparent dialogue across a wide range of stakeholder interests. However, none of these frameworks should become the basis for required line-item disclosures under Regulation S-K. To the extent the Commission does elect to move forward with required line-item disclosures, it should ensure that the frameworks it considers have been developed with an appropriate blend of specific industry expertise and stakeholder consultation through a transparent, iterative process free from undue bias.

*Cost of compliance*

Establishing line-item disclosure requirements will lead to significant compliance costs for companies, while providing little, if any, incremental benefit to stakeholders. Companies will expect to incur some level of costs in complying with line-item disclosure requirements for enhancing data collection and validation processes to enable reporting of sustainability or public policy disclosures in periodic SEC filings. In addition, companies would likely incur higher internal costs and external audit fees to establish and assess any new internal controls related to such disclosures. To the extent new disclosure requirements coincide with existing filing deadlines, preparers will be distracted during the already intense period of preparing and reviewing existing financial disclosures and will be forced to assemble additional resources to meet critical deadlines. The Commission should consider these significant incremental costs of compliance borne by preparers as it contemplates adoption of any prescriptive disclosure requirements. Without knowledge of the actual line-item disclosures that might be required, we do not believe it is possible to accurately quantify these costs, as the availability of the data required to support a specific disclosure can vary widely from company to company. In a worst-case scenario, companies could find it necessary to implement costly, complex systems solutions with comprehensive controls, similar to those that support financial reporting, to satisfy line-item sustainability-related filing requirements. For larger companies, such process design work and systems installations can amount to millions of dollars of incremental costs as a conservative estimate.

*Recommended Actions*

We do not believe there are additional material line-item disclosures that are not already required to be disclosed under existing Commission requirements. Without necessitating any specific action by the SEC, the existing overarching requirements under Regulation S-K for companies to disclose material information allows for disclosures to evolve in concert with changing perceptions of the materiality of underlying issues. The Commission, therefore, should not prescribe additional requirements for public policy or sustainability matters.

## Exhibits

We recommend revising the Exhibit requirements under Item 601 to reflect a principles-based approach as discussed further below. The process to accumulate, edgarize, review, and redact the exhibits for any registrant is time consuming, while, the value it provides to investors may not outweigh the costs. We recommend the following be considered as part of this evaluation:

- Eliminate the quantitative threshold for contracts made in the ordinary course of business involving the purchase or sale of assets, allowing registrants to determine materiality under a principles-based approach. The objective should be to focus on materiality when requiring additional disclosure of material agreements outside the ordinary course of business, and the Commission should ensure that the requirements do not subject the registrant to competitive harm. If the Commission decides to continue to utilize the quantitative thresholds, they should be modified to match those requirements in the Form 8-K. However, as noted by the Commission in its adopting release to the Form 8-K, we agree that these disclosure requirements are redundant.

- Allow registrants to exclude immaterial schedules and attachments from agreements which are not necessary for an investor to understand the economics of the agreement. The omitted schedules should not be required to be listed. If the Commission were to continue to require registrants to file schedules and attachments to exhibits, the Commission should codify current staff practice and permit registrants to omit personally identifiable information.

- Eliminate the Ratio of Earnings to Fixed Charges calculation, as most of the information is included in a registrant's financial statements and disclosures, as proposed in the Commission's recent Disclosure Simplification and Update. Further, other ratios that are calculable from the registrant's financial statements provide the same, or even more useful, information as the Ratio of Earnings to Fixed Charges. Therefore, we support the removal of this ratio and the related calculation from the exhibits.

- Do not expand the current requirement regarding significant subsidiaries to require a listing of all subsidiaries. If a registrant were to provide all of its subsidiaries in an exhibit, it would not afford any further insight to help an investor make an informed investment decision, or even

provide a special interest shareholder with any specific information about a company's tax structure. Furthermore, these requirements should not be amended to include other information of a subsidiary, such as financial information or a registrant's organizational structure, which would impose material and significant burdens on registrants. Moreover, we do not believe such incremental disclosure would provide any meaningful information to reasonable investors (e.g., the organizational structure). Information on international financial metrics is already presented elsewhere in a registrant's filings as part of entity-wide disclosures required by GAAP. Instead, we recommend that such disclosures be limited to material subsidiaries and that Item 601 (21) (i) reflect such requirement and that Item 601 (21)(ii) be eliminated.

- Do not adopt the disclosure of legal entity identifiers ("LEI"). There is currently no global standard for LEIs and we are not convinced that a system of LEIs is necessary outside of the financial services industry, or whether such standard LEIs would benefit a reasonable investor and improve their investment decisions. Furthermore, it would be costly and time consuming to obtain and maintain an LEI for a registrant and would not be likely to provide any benefit to investors.

- Remove the requirement to file an auditor's "preferability letter." An auditor's unqualified opinion allows an investor to understand that all material accounting decisions were agreeable to the auditor. In addition, disclosure requirements under GAAP have expanded recently to include disclosure on material changes that would be included in a preferability letter. Based on these factors, an exhibit for the preferability letter does not provide any additional information that would be useful to an investor.

- Eliminate the financial statement schedules. While not addressed in the Concept Release (because these requirements are part of Regulation S-X), the financial statement schedules do not provide any additional information to an investor. The schedules, including the condensed financial information of registrant and valuation and qualifying accounts, are costly to prepare. Many registrants do not receive any questions from analysts regarding these schedules. Therefore, we believe the costs far outweigh any perceived or actual benefit.

## Presentation and Delivery

We support the Commission's objectives to improve the usefulness and effectiveness of disclosure with streamlining regular filings with the SEC. As mentioned in the Concept Release, we believe there are some practical, professional and legal issues that must be addressed to allow for expanded use of various streamlining tools, but recommend that the Commission explore these issues to provide investors with more concise, focused reporting of operating results and financial, liquidity and capital positions.

*Referencing Tools (Cross-referencing, Incorporation by Reference, Hyperlinks and Company Websites)*

These tools should be considered together to help streamlined registrant filings become less voluminous and more focused on key drivers of results, trends and risks.

Under a principles-based framework, the Commission should provide guidelines to direct registrants in using these tools, but avoid prescribing their use or formatting, and allow registrants to apply them judiciously to improve the focus and maintain the readability of their filings.

These guidelines should help registrants determine when information is appropriate for referencing (for example, when it is not critical context to the disclosure at hand or is historical and readily available from sources filed with the Commission).

We do not support the required use of these tools in referencing from the financial statement footnotes or to sources outside of Commission filings. Some challenges would need to be overcome including resulting litigation exposure and monitoring and controlling such sources to maintain their relevancy for investors in the context of the reference. If the Commission allows the use of referencing to sources outside of Commission filings, these sources will require time stamping, monitoring, potential updating or stale marking to alert and protect investors as to their current relevance and prevent management and their professional advisors from new, costly litigation exposures. These new processes may offset any cost savings and introduce unknown risks to investors and management. The Commission will also need to identify when information referenced from outside SEC filings should be considered "other information" so that auditor responsibility and professional liability is clearly demarcated to prevent increasing litigation costs.

*Specific Formatting Requirements*

Although we generally do not support specific formatting requirements in the context of a principles-based reporting framework, the Commission might consider limited use of such requirements to encourage registrants to present specified information in a concise, readable, non-generic manner. Such an application might be appropriately applied to Critical Accounting Estimates that currently suffer from generic, repetitive information without enlightening investors as to the potential impact of alternative measurement choices.

Although we believe that few disclosure topics would benefit from scripted formatting, the Commission might also consider providing examples of different formatting for various disclosures that might convey information more clearly or concisely for registrants to consider. The Commission could simply use samples from current filings that they believe use effective formatting.

*Structured Disclosures*

Based on collective years of experience in preparing and filing and applying improvements to structured data, specifically XBRL, we have noted:

- Mandated structured data preparation and software is time-consuming and costly. Often technology is unreliable and extremely complex and burdensome to administer, train staff for, and maintain within an already time-constrained filing environment for large accelerated filers.

- Disclosures in response to principles-based objectives that are properly designed and tailored to a registrant cause them to be peculiar and largely incompatible with the goal of data accumulators to reduce unique disclosures to comparable metrics across registrants and industries. This is particularly true of large, multi-national enterprises.

- The costs of structured data have not been shown to produce comparable benefits for investors – particularly if expansion to the MD&A is considered. The Commission has long encouraged registrants to present MD&A discussions to allow investors to understand the registrant and its results and expectations "through the eyes of management" and this principle should, by its definition, produce disclosures that are unique and patently unsuited for structured data applications. Extension elements are subject to the same constraint in benefits, and likewise, their costs are not justified.

- Registrants focus their efforts on providing clear, concise and specific understandable disclosures about results, trends, risks and contingencies unique to their businesses for their filings. To reap the benefits of these disclosures, investors should review the details rather than to rely on others' technology to accumulate, synthesize and homogenize the data presented.

If the Commission is compelled to proceed with expanding the application of structured data outside the basic financial statements and footnotes, we strongly recommend that any such requirements be limited to block tagging to allow registrants to meet constrained time limitations at reasonable costs to investors. We have little confidence in newer technologies, based on our past experience, and would advise the Commission against mandating new requirements for structured data applications.