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April 5, 2019

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, D.C. 20549

**Re: Petition for Rulemaking to Require Filers to Submit Earnings
Conference Call Transcripts on Form 8-K, Pursuant to Regulation FD
Compliance**

Dear Mr. Fields,

The law firm of Adam M. Altman, Ltd. respectfully petitions the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) to initiate rulemaking proceedings regarding earnings conference calls. The proposed rule would require companies to transcribe, from audio to text, all discussion during an earnings conference call, including prepared remarks and any “question and answer” sessions. In addition, the proposed rule would require companies to publicly disclose all such transcriptions, by furnishing to, or filing with the Commission, a Form 8-K, and attaching the transcript as an exhibit, as a matter of compliance with Regulation FD.

Background

The vast majority of filers under Section 15(d) of the Exchange Act regularly host earnings conference calls shortly after releasing their quarterly and annual earnings results. Companies typically disseminate details for how investors can participate in a conference call via a press release on a major newswire, and on Form 8-K with the SEC.

The earnings calls that typically follow earnings results are generally available to all investors, live, via either webcast, a dial-in teleconference phone call, or both. Many filers keep a replay of the webcast available for investors for one to three weeks after the conference call concludes.

By allowing all investors to participate in these conference calls, and also keeping a replay available for a limited time, regulated companies seem to satisfy Regulation FD’s requirements. However, this current industry standard has serious problems and limitations.

First, the information that companies provide on their earnings calls usually involve several forward-looking statements. Likewise, the companies often go into much

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greater detail about their business plans, competition, customers, and their longer-term strategy, than what they would disclose in filings with the SEC. Indeed, this information often remains relevant and material for several months, if not years, after the conference call occurs.

Second, because the majority of filers have calendar fiscal year reporting schedules, it is commonplace for multiple conference calls to occur at the exact same hour of the exact same day. An investor cannot listen to two (or more) calls at the same time. Reading conference call transcripts, and having the ability to skim the transcripts, is much more efficient than listening to the conference calls, and at a minimum, investors should have the option to choose the format, between audio or transcription, of how they consume this information

Many investors consider earnings call transcripts, including historical transcripts, a material component of their investment due diligence. Moreover, an entire industry has developed for transcribing nearly every single filer's conference calls (all companies that host one), and then selling these transcripts to more affluent and privileged investors.

A small group of primary vendors provide conference call transcripts. The cost to subscribe to services that provide access to historical conference call transcripts is generally thousands of dollars per month. Of those providers, the lowest cost option appears to start at a price tag of \$2,400 per year.

The existence and pricing of the service of providing historical conference call transcripts, by itself, evinces investors' beliefs that the information contained in these historical transcripts - which are not available publicly anywhere else - is material to making investment decisions.

As stated supra, many companies allow investors to participate in earnings calls in real-time, and they also provide replays for one to three weeks afterward. The problem is, however, that the information contained in historical conference calls is usually not available to all investors; that information is only available to the privileged investors who can afford the expensive pricing of a transcript service. This disparity in investor access to transcripts is especially troublesome because the information contained therein is almost always material with respect to assessing a filer's business strategy and future business plans; filers also frequently provide other material information, including much greater detail about forward-looking operating and earnings guidance.

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Implementation Assessment

The proposed rule would have the SEC mandate that any company hosting a conference call promptly prepare a transcript of the conference call and then provide this transcript to the SEC, as an attachment to its Form 8-K filing.

The proposed rule would not unduly burden companies that would be bound to its transcript filing requirements. Several technology companies now offer very low-cost transcription services. For example, Amazon Web Services' "Amazon Transcribe" service, costs about \$1.50 per hour of audio transcription. Similarly, IBM's "Watson Speech" costs about \$1.20 per hour of audio transcription. Even less expensive, Google's "Cloud Speech-to-Text" comes with no charge for the first hour of audio transcription, and \$0.024 per minute after one hour.

The estimated cost to comply with this proposed rule could be less than \$500 per year for filers, and possibly as high as \$3,000-\$5,000 if a company desires to have several accountants and lawyers carefully proofread each transcript. Attorney review would be, however, an unnecessary and fruitless expense because filers cannot change statements after the fact. Notably, transcribing for accuracy is a well-known and heavily practiced clerical job. Whether a company discusses dozens of different figures that they then want to later "fact check" is a separate cost and burden from the transcription of what participants actually said on the earnings call (which cannot be changed after the fact, even if it was in error).

The proposed rule would result in a very small increase to the regulatory, reporting, and compliance costs associated with maintaining a public company. The additional cost would be inconsequential compared to the sums of money that publicly traded companies currently spend to comply with regulations related to earnings. A review of a few smaller companies, which spend the least to comply with regulatory costs of being a filer under Section 15(d), illustrates the miniscule burden that the proposed rule would impose.

For example, Xtant Medical Holdings, a medical product company located in Montana, which has a market cap of less than \$40 million, currently spends more than \$300,000 per year on audit fees alone for their 10-K filing. Similarly, Lifeway Foods, a manufacturer of dairy products, located in Illinois, which has a market cap of \$35 million, currently spends more than \$550,000 per year just on audit fees for their 10-K filing. Likewise, US Auto Parts Network, an auto parts retailer in California, which has a market cap of \$35 million, spends in excess of \$500,000 per year on audit fees for 10-K filing compliance.

Given the expenses involved in submitting audited earnings results, even for the smallest of publicly traded companies, the additional cost of providing transcribed

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earnings conference calls is meaningless. The potential benefit to the investing public, on the other hand, is substantial.

Conclusion

The proposed rule would benefit investors and overall market efficiency. The rule would both lower total costs in the investment marketplace while at the same time making more information readily available to all investors. By contrast, under the status quo, only privileged and professional investors can afford to spend the thousands, or tens of thousands, of dollars per year to obtain transcripts from a service provider.

For good reason, the SEC has “declined to set forth an all-inclusive list of what matters are to be deemed material.” *S.E.C. v. Siebel Systems, Inc.*, 384 F. Supp. 2d 694, 703 (S.D. NY 2005). Earnings information, however, falls squarely within the seven categories of information that the SEC has determined “have a higher probability of being considered material.” *Id.* Moreover, conference calls relating to that earnings information, even historical conference calls that are several quarters old, contain material information that is relevant to investors.

In its Adopting Release for Regulation FD, the SEC warned that “the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets.” *Final Rule: Selective Disclosure and Insider Trading*, 65 Fed.Reg. 51716, 51716 (August 24, 2000). In contravention to the purpose of Regulation FD, the current system, whereby companies do not publish transcripts of their earnings calls, favors a single small class of wealthy investors, at the expense of all other investors, and the market as a whole. The proposed rule would help to remedy this imbalance. A new rule requiring companies to file a transcript of their earnings calls both improves compliance to Regulation FD while also leveling the playing field for all investors.

Thank you for your time and consideration to this matter.

Sincerely,

Adam M. Altman

Adam M. Altman, Ltd.