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October 22, 2008

Re: *21st Century Disclosure Initiative*
Roundtable on Modernizing the SEC's Disclosure System
Securities Act of 1933 Release No. 8962
Securities Exchange Act of 1934 Release No. 58657
File No. 4-567

Ms. Florence E. Harmon,
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Ms. Harmon:

Thank you for the opportunity to comment on the Commission's 21st Century Disclosure Initiative. We agree that there are a number of steps that the Commission could take that would improve the usefulness of information filed or furnished with the Commission pursuant to the requirements of the Securities Act of 1933, as amended (the "Securities Act") or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that would ease the burden on companies that are subject to ongoing Exchange Act reporting obligations. We very much appreciate the Commission's willingness to consider our suggestions.

A. *Recognize the primacy of the earnings release.*

We believe there is a disconnect between what consumers of disclosure want, and what the ongoing Exchange Act disclosure regime requires. Consumers of disclosure (including, for example, individual investors, market professionals, security analysts and rating agencies) make decisions, recommendations and assessments about a company and its securities based on information contained in the company's quarterly earnings release, and only secondarily on information that is later contained in the company's periodic reports on Forms 10-K and 10-Q. We think the Commission should recognize the primacy of the earnings release by giving each reporting company the option, if it chooses, to file all or a portion of its earnings release under cover of Form 10-K or 10-Q concurrently with its release to the public, instead of furnishing the earnings release to the Commission under cover of Form 8-K. The company

should also be given the option of identifying parts of the earnings release as being furnished, not filed, and therefore not subject to the liability provisions of Section 18 of the Exchange Act. If a company elected this option, then on or prior to the reporting deadline for the applicable form, the company would satisfy its Exchange Act § 13 or 15(d) reporting obligation by filing an amendment on Form 10-K/A or 10-Q/A, containing any information required by the applicable form that was not included in those portions of the earnings release previously filed.

We believe such an approach would help streamline and simplify the work done by reporting companies, because they would not be obligated by the market to create an earnings release and then obligated by the Commission to duplicate much of the previously reported information in a separate periodic report. In addition, we believe some companies would choose to expand on the information given in their earnings release to meet form requirements, which would benefit consumers of disclosure by getting information to the market sooner, and could benefit reporting companies by leaving them with less of an obligation to fulfill later.

B. *Call a truce in the war on non-GAAP financial measures.*

Consumers of disclosure often follow a company's non-GAAP financial measures closely, and use these disclosures to help make informed decisions about the company and its securities. At the same time, the current Securities Act and Exchange Act disclosure system prohibits companies from including some non-GAAP financial measures in their Commission filings, flatly prohibits certain non-GAAP measures, and requires often-lengthy justifications, explanations and reconciliations when such measures are permitted. When a non-GAAP financial measure is permitted in a disclosure that is furnished to the Commission but not filed with the Commission (or furnished pursuant to item 2.02 of Form 8-K), or simply disseminated by the company in a manner consistent with Regulation FD, the Commission's own rules produce an outcome in which consumers are driven away from the Commission's disclosure system and the protections of Exchange Act § 18 in order to locate information that they consider to be meaningful.

We believe a company should have the right to tell its story in the way it deems most relevant – subject, of course, to the antifraud provisions. As long as consumers have access to the company's GAAP financial statements, and the company's MD&A adequately discusses its GAAP financials, we see no reason why a company should be prohibited from interpreting and explaining its results in a non-misleading manner through the use of non-GAAP financial measures. We therefore believe the Commission should consider rescinding those provisions of Regulation G and item 10 of Regulation S-K that restrict the ability of companies to use non-GAAP financial measures.

We also see little need to require earnings releases, periodic reports and prospectuses to contain pages and pages of reconciliations of non-GAAP measures to GAAP measures, and justifications as to why a company has chosen

to present non-GAAP financial measures. Often these requirements simply serve to overburden the consumer with unwanted information, detracting from the important information that the company is trying to convey. If the Commission is of the view that these disclosures are necessary, the Commission should permit companies to present them in a Form 8-K. The Form 8-K could give a hypothetical example of how the reconciliation works, which would be in lieu of a requirement to include an actual reconciliation each time a non-GAAP measure is used. A company should only be required to amend the Form 8-K when it changes its justification for using a particular non-GAAP financial measure, or when it changes the method of reconciling the measure to a GAAP measure.

C. *Streamline the disclosure requirements for periodic reports and proxy statements.*

Some items of required disclosure in Regulation S-K are more useful than others, and yet the consumer of disclosure often gets a number of items at once in a voluminous periodic report or proxy statement. We believe that documents that are more focused on disclosing information that investors, security analysts and rating agencies actually use, and that devote less space to information that the disclosure consumer ignores, are better documents. We suggest that the Commission survey consumers of disclosure in order to find out what items of disclosure are useful to them, and what are not. Items that are not of broad interest could be dispensed with, or perhaps made subject to a current reporting obligation when circumstances warrant.

We suspect, for example, that consumers of disclosure place little emphasis on boilerplate disclosure that a company's *principal executive officer and principal financial officer have concluded that as of the end of the period covered by the report, the company's disclosure controls and procedures were effective to ensure that information required to be disclosed by the company in reports it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Commission rules and forms* – and yet the Commission's rules require annual and quarterly reports to contain such turgid recitations. Why not simply have a reporting requirement if the principal executive officer and principal financial officer conclude that the company's disclosure controls and procedures are not effective?

Similarly, we suspect that relatively few investors spend much time fighting their way through a company's compensation discussion & analysis. The Commission has concluded that there are valid regulatory reasons for a company to explain its compensation philosophy, but it does not necessarily follow that this information needs to be in a Form 10-K or proxy statement. Why not give companies the option to report it on Form 8-K – or perhaps under cover of a new Form CD&A? As long as the information is easily accessible to investors and other disclosure consumers, there seems to be little reason to expand the length of the proxy statement to include it. Putting the information in a Form CD&A would identify it and make it easily accessible to anyone interested in it.

D. *Improve the layout and search capabilities of EDGAR.*

We are encouraged that the Commission is exploring new data-tagging technologies in order to make disclosure more useful. We also think that the EDGAR user interface is long overdue for a makeover.

Today, a company's EDGAR page consists of a chronological stack of documents labeled with obscure titles such as "FWP," "4," "Current report, item 8.01," and "424B2." Even though there is a search function on the EDGAR page, if for example an investor types "proxy" into the search box, the search returns zero hits. (To locate the proxy, the investor needs to know to type in the rather unintuitive "DEF 14A.") While experienced market professionals may understand how to access the information they are interested in, we suspect that many individual investors are frustrated by their experience with EDGAR and, as a result, spend little time reading the original documents that a company files with the Commission. Instead, these consumers of disclosure may be more likely to get their information about a company from Internet discussion forums, the company's website and commercial stock ticker sites.

Certainly the technology exists to make EDGAR a more hospitable place. For example, a company's EDGAR page could be organized like a standard Internet homepage, with an easy-to-understand, topical menu. By clicking on "Annual Reports," the investor would be taken to the company's Form 10-K. Or by clicking on "Management," the investor would be taken to such documents as annual proxy statements, Form 8-Ks that include item 5.02 disclosure, and the company's CD&A. Other click-through buttons could include, for example, "Quarterly Reports," "Insider Sales and Purchases," "Risk Factors," "Prospectuses," "Registration Statements," "Non-GAAP Financial Measures" and "Charter & By-Laws." We suggest above that the Commission survey consumers of disclosure in order to learn more about what they would find useful; perhaps the Commission could at the same time seek input on how to redesign the EDGAR user interface to better meet the needs of investors. We are confident that EDGAR's usability for the average disclosure consumer could be improved immensely with a few simple changes to the way filings are organized.

We also believe that EDGAR's search functionality could be made more robust. The "full-text search" feature added to the Commission's website a few years ago is an excellent starting point; if that same feature were offered at the level of each company's filing page, it would be much simpler for an investor to rapidly locate the information he or she is looking for.

E. *Improve the readability of financial statements and related notes.*

A company's financial statements and related notes are often the most important source of information about the company's health, but they can be daunting for anyone without an accounting background. We believe that there are ways the readability of financial statements and related notes could be improved.

Currently, financial statements are followed by a list of notes, but there are generally no cross-references to the notes on the face of the financial statements themselves. We believe readability would be enhanced if each line item on the face of the financial statements displayed a cross-reference to the relevant note. This way the disclosure consumer could view the line item, and immediately know which note provides more in-depth information about that line item. This type of note cross-reference on the face of the financials is already required by International Accounting Standard 1, "Presentation of Financial Statements."

Even more useful would be cross-references that build on available technology. A hyperlink within the financial statements that links the line item to the relevant note would be extremely helpful to disclosure consumers. If the note is cross-referenced on the face of the financial statements and the cross-reference is actually a live hyperlink to the note itself, we believe this would save significant time, and at the same time help the consumer understand the company's financial statements as an integrated whole. Such a hyperlink could also be used to connect to disclosure in the company's MD&A or other relevant disclosure. Such a link would help investors locate relevant information easily and encourage investors to utilize all available information. (A pop-up screen could advise investors that the MD&A or other disclosure was not audited, if the company and its auditors believed that to be necessary.)

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We hope that the foregoing is useful to you as you consider ways to modernize the Commission's disclosure system. Please do not hesitate to contact any of us at (212) 450-4000 if you would like to discuss our comments.

Very truly yours,

Joseph A. Hall

Michael Kaplan

Amber D. Derryberry