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NEW YORK
CITY BAR

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September 3, 2014

Mr. Keith F. Higgins
Director, Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dear Mr. Higgins:

On behalf of the Committee on Financial Reporting of the Association of the Bar of the City of New York, I am submitting this letter regarding the Commission's initiative to improve the quality and usefulness of public company disclosure. The Committee has discussed the speech entitled "*The Path Forward on Disclosure*" by Commission Chair Mary Jo White at the National Association of Corporate Directors conference on October 15, 2013 as well as your own speech of April 11, 2014 entitled "*Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting.*" We believe both were excellent contributions to the objective of disclosure enhancement, and we write in response to help with the effort to make public company disclosure more effective.

By way of introduction, the Committee on Financial Reporting consists of attorneys representing different roles and perspectives within the financial reporting community, including preparers, users, and auditors. An important objective of the Committee is to enhance the integrity of financial reporting systems in order to foster the objectivity, understandability, and reliability of financial reports. The Committee seeks to improve financial reporting integrity through the

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enhancement of the rules and regulations of financial reporting as well as the culture in which those rules and regulations are called upon to function.

We are in strong support of the Commission's initiative. We share in particular the concern expressed by Commission Chair White regarding "ever-increasing amounts of disclosure" that can "make it difficult for an investor to wade through the volume of information she receives to ferret out the information that is most relevant." We are similarly concerned that, while disclosure has become more detailed and voluminous, it can be difficult for investors and other users of financial information to develop a comprehensive overview of what is really going on.

The irony, of course, is that much of the "disclosure overload" is the result of a well-intentioned regulatory approach that seeks to enhance disclosure through prescriptive rules and regulations. Your own example of the evolution of "risk factor" disclosure is an apt illustration but, alas, it is far from unique. The core problem is that, while prescriptive rules certainly play an important role in disclosure, it can be exceedingly difficult to mandate effective communication through rulemaking. The natural managerial reaction to rulemaking, rather, is an effort to comply, which can result in an understandable but potentially counterproductive "compliance mindset" that places technical conformity to the rules over effectiveness in communication.

The challenge, therefore, is to develop a rule to cut through the rules. We have a modest proposal. As part of the Commission's disclosure enhancement project, we would propose a rule, separate and apart from existing disclosure requirements such as Item 303 (Management's Discussion and Analysis), that encourages companies at the outset of their annual reports on Form 10-K or 20-F to effectively communicate their own plain English overview of what's going on – much as a CEO might report to his or her board of directors. Our proposed rule would state, in its totality, the following:

> *Provide an overview describing what happened at the company over the past year and your expectations and concerns about the year to come.*

That's it. No definitions. No detailed disclosure requirements. No boxes to be checked. Just a rule that calls upon companies to describe what's going on.

Such an approach would obviously leave to the judgment of management those aspects of business activity worth reporting. However, our experience suggests that some of the most effective communication of business information has been achieved where management judgment has been permitted to play a significant role. We also believe that such a regulatory appeal to the better instincts of candor and transparency may invite a managerial response that seeks to rise to the occasion. In any event, such a rule would not substitute for the more detailed financial and other business information that allows analysts to populate their models and otherwise scrutinize performance.

Business disclosure should not be akin to a game of "Where's Waldo" in which a reader is left suspecting that critical information is buried somewhere in the document but good luck finding it. Rather, the most important information is best volunteered, up front, by management in a way that is both understandable and provides context. The challenge is to formulate a rule that seeks to accomplish that without inadvertently sending disclosure in the opposite direction.

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Congratulations to the Commission and its Staff for your willingness to take on this project.

Very truly yours,

Michael R. Young

MRY/dt

cc: Hon. Mary Jo White
Hon. Luis A. Aguilar
Hon. Daniel M. Gallagher
Hon. Kara M. Stein
Hon. Michael S. Piwowar

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