

August 31, 2015

Division of Corporation Finance  
Attn: Elizabeth Murphy, Associate Director  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-0213

RE: Survey and Review for Compliance with Regulation S-K, Form 10-K and Securities Exchange Act of 1934 ("Exchange Act") Rule 12b-23(b) by Companies filing Annual and Form 10-K Reports for FY 2014

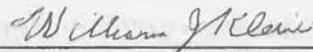
Dear Ms. Murphy:

As you may recall, on March 21, 2014, we submitted to the Commission a letter and an enclosed report because we were concerned that many companies filing Form 10-Ks/Annual Reports ("reports") may not be fully complying with the Commission's above rules and regulations. Our findings in this first report were based on our review of a sample of 60 FY 2012 filings that were received through the mails by Mr. William Klein's household during 2013. We followed up by submitting a second report addressing compliance by a sample of companies that filed their FY 2013 reports in 2014.

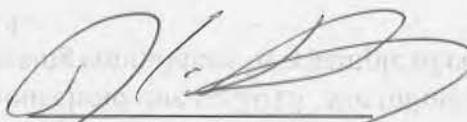
Since then, Mr. Klein has reviewed a sample (65 in all) of reports filed by issuers in 2015 for FY 2014. Mr. Klein still found instances of possible non-compliance with the above requirements in some of these FY 2014 reports filed in 2015.

Accordingly, we have provided for your consideration the enclosed final report which sets forth our findings, recommendations and conclusions regarding Mr. Klein's review of the 65 FY 2014 filings he received in 2015.

Respectfully submitted,



William J. Klein, Esq.



Thomas J. Amy, Esq.

Enclosure: As stated

**SURVEY AND REVIEW FOR COMPLIANCE WITH REGULATION S-K, FORM 10-K AND RULE 12b-23(b) OF THE SECURITIES AND EXCHANGE ACT OF 1934 ("EXCHANGE ACT") BY COMPANIES FILING ANNUAL AND FORM 10-K REPORTS FOR FY 2014**

**PREPARED BY: William J. Klein, Esq. and Thomas J. Amy, Esq.**

**I. Introduction and Background**

This memorandum is a follow up to our previous memoranda of March 21, 2014 and December 8, 2014 regarding compliance by public companies with the disclosure requirements of Form 10K and Securities Exchange Act Rule 12b-23(b) ["Rule 12b-23(b)"] in their filings of annual reports/Form 10Ks filings ("reports") with the SEC. These two memoranda set forth our findings and recommendations resulting from our review of 60 FY 2012 and another 65 FY 2013 reports received by Mr. Klein's household during 2013 and 2014, respectively. The Klein household invested in the shares of these same companies. It should be noted that the Kleins have sold at least seven of the above 60 (2012) stocks since our initial (March 21, 2014) report.<sup>1</sup> As discussed in our above two memoranda, we found possible non-compliance with the above disclosure requirements in many of the 60 2012 and 65 2013 filings that we reviewed.

In 2015, we reviewed another 65 reports filed by issuers in 2015 for FY 2014. The purpose of our review was to determine the level of compliance with the above disclosure requirements in more recent (FY 2014) reports; and to determine any improvement by filers since our March 21, 2014 and December 8, 2014 reports.

**II. Scope of Review**

In 2015, Mr. Klein received through the mail the annual reports/Form 10Ks ("reports") submitted by 65 public companies ("filers") for FY 2014, including the FY 2014 filings of 53 of the original 60 FY 2012 filers in his previous review sample. Mr. Klein looked to see whether any of these 53 filers had corrected the numerous deficiencies noted in our prior memoranda, including their failures in many cases to include a Table of Contents (or Index) ("TC") in the reports to aid the reader. Mr. Klein also examined the Accompanying Financial Statements ("AFS") of all sixty five reports to determine whether, and to what extent, the AFSs made cross references to the related footnotes and page numbers of particular items on the financial statements, as appears to be required by Rule 12b-23(b). Mr. Klein's findings follow.

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<sup>1</sup> Snap-On Tools; Kinder Morgan; Traveller's Insurance Company; Bristol Myers; Hawaiian Electric; Pfizer; and Xerox.

### **III. Findings**

#### **A. Lack of Adequate Cross-References in the AFS to Aid the Reader**

We found that the majority (35 or 53.8%) of the 65 reports in our review sample provided no cross-references between individual items appearing on the AFS and their related footnotes and page numbers.<sup>2</sup> Instead, at the bottom of each page of the AFS for these 35 reports, we found the following terse notation: "The notes to these financial statements are an integral part of these statements" or similar language. The notations at the bottom of each page of IBM's 2014 AFS were only marginally more specific: "The accompanying notes on pages 84 through 146 are an integral part of these financial statements." This means that the readers of IBM's 2014 AFS must peruse 62 pages of footnotes and figure out on their own which of these copious footnotes pertain to which line item on the preceding financial statements. This appears to contravene the clear mandate of Rule 12b-23(b): "[M]aterial incorporated by reference shall be clearly identified in the reference by page, paragraph, citation or otherwise...Matter shall not be incorporated by reference where such incorporation would render the report ... unclear or confusing."

However, the remaining 30 reports of the 65 in our review sample appear to have made a better effort at compliance with Rule 12b-23(b), as follows:

(1) 11 such reports made at least one cross reference between items appearing on the AFS and the related footnotes that followed;<sup>3</sup>

(2) three reports included 18 cross references between individual items on the financial statements and their related footnotes;<sup>4</sup>

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<sup>2</sup> The 35 filers were: Hanover Insurance Group; Amazon; Boulder Brands; Coca Cola; Microsoft; Apple; General Mills; Sysco; Illinois Tool Works; J.M. Smucker; Target; IBM; Republic Services; Travellers Insurance Company; Chevron; Conoco-Phillips; Tiffany; Plum Creek; Emerson Electric; Accenture; Hershey Foods; Weis Markets; Idacorp; Nordstrom; Phillips 66; Xcel Energy; California Water Service; Honeywell; AT&T; du Pont; Health Care REIT; Pepsico; Kimberly Clark; Proctor and Gamble; and Cerner.

<sup>3</sup> The "Commitments and Contingencies" sections of 11 of these 17 FY 2014 reports made multiple cross-references to the related footnotes appearing in their respective AFSs. These 11 reports were filed by: Express Scripts; Mattel; Pepsico Holdings; Mondelez; Disney; Walgreens Boots Alliance; Kraft Foods; Laclede Group; Allstate; Bank of Hawaii; and American Water Works.

and

(3) another four reports provided a separate TC for all the footnotes to the AFS.<sup>5</sup>

**B. Lack of a TC (or Index) in the Front of the Report to Guide the Reader**

We noted some improvement in this area. For example, three of the above 53 filers included a TC in their FY 2014 reports, even though they had failed to include one in their FY 2012 reports.<sup>6</sup> On the other hand, another four filers failed to include a TC or Index in their FY 2014 reports.<sup>7</sup>

**C. Continued Failures to Cross-Reference Discussions of Legal Proceedings Among and Between Different Sections of the Reports and the AFS**

We found no changes in the FY 2014 reports filed by the above 53 filers regarding item 3 (“Legal Proceedings”) of Form 10-K. As they had in their FY 2012 filings, many of these 53 filers variously persisted in their failures to: (1) provide cross-references at item 3 to related disclosures in the footnotes to the AFS; (2) cite both the page number as well as the footnote number where the related discussion of Legal Proceedings may be found in the AFS; (3) provide cross-references between all discussions of litigation that appear in different sections of the report and in the AFS (i.e., to avoid misleading the reader); and (4) provide appropriate descriptive titles (e.g., “Legal Proceedings,” “Litigation,” or “Legal Liabilities”) to clearly identify discussions of all legal matters [i.e., use of broader titles such as “Commitments,” “Liabilities,” and “Contingencies” should be avoided].

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<sup>4</sup> The three filers were: Johnson and Johnson; General Electric; and Exxon-Mobil. Exxon Mobil even had a separate column in its financial statements titled “Note Reference” to identify related footnotes by number.

<sup>5</sup> The four reports were: 3M; Laclede Group; Duke Energy; and General Electric.

<sup>6</sup> The three filers were: Walgreen’s Boots Alliance; Apple; and Illinois Tool Works.

<sup>7</sup> The four FY 2014 filers were Emerson Electric; Microsoft; Verizon; and Smuckers. Microsoft and Verizon had also failed to include a TC or Index in their FY 2012 reports.

#### **IV. Conclusion**

Based on the foregoing, Messrs. Klein and Amy reiterate the recommendations we made in our previous reports, namely that the Commission consider requiring that filers: (1) make specific cross-references between the individual line items on their AFS to the related footnotes and page numbers ; (2) include a TC or Index in the front of the report to guide the reader; and (3) provide specific cross-references between all discussions of Legal Proceedings that appear in different sections of the report and in the footnotes to the AFS (to avoid misleading the reader about the nature and extent of all litigation, and the potential impact of such litigation on the financial condition of the filer).

The Commission could promulgate these requirements by amending Exchange Act 12b-23 itself and/or the Instructions to Form 10-K; or by issuing a clarifying release to the effect that Exchange Act Rule 12b-23 and the Instructions to Form 10-K already incorporate these requirements.