June 19, 2012

BY EMAIL: rule-comments@sec.gov
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-0213
Attention: Elizabeth M. Murphy, Secretary

Re: Section 108 of the JOBS Act--Regulation S-K Review

Ladies and Gentlemen:

Each of the undersigned Silicon Valley-based law firms has an active practice representing companies that would qualify, were they to complete an initial public offering under the Securities Act of 1933, as an "emerging growth company" as defined in Section 101 of the Jumpstart Our Business Startups Act, or JOBS Act. Section 108 of the JOBS Act directs the Securities and Exchange Commission to conduct a review of Regulation S-K, referred to in this letter as the Regulation, to comprehensively review the registration requirements of the Regulation and determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with those requirements for emerging growth companies, or EGCs, and to report to Congress not later than October 2, 2012 on the results of the review. We appreciate the Commission's invitation to submit comments regarding the modernization and simplification of the Regulation and take this opportunity to provide comments on specific items in the Regulation as set forth below.

OVERVIEW

Before addressing specific comments, we respectfully suggest a framework for the Commission's review of the Regulation. The focus of this review should first be to determine whether an item of the Regulation results in the provision of meaningful information to investors. If any item does not, it should be eliminated. If the item provides for the disclosure of information that may be meaningful only in select cases, then we suggest that the next step would be an analysis of whether other, more nuanced, provisions of the Regulation, or Commission guidance, would lead to such disclosure being made. If it is determined that meaningful disclosure would be provided under other provisions, once again that item should be deleted. We think an opportunity exists with a refinement of the Regulation to move disclosure in IPO registration statements and subsequent periodic reports to a more "principles based" disclosure context where companies are expected to take the initiative to identify material information rather than simply respond to an extensive list of potentially relevant line-item disclosure requirements.

Section 108 of the JOBS Act appears to direct the Commission specifically to analyze the Regulation as it pertains to IPO registration statements filed under the Securities Act of 1933, or Securities Act. We believe that the costs of compliance following the completion of an IPO as a reporting company under the Securities Exchange Act of 1934, or Exchange Act, are also evaluated by potential first-time registrants in weighing the costs and benefits of an IPO. The JOBS Act reflects an awareness of this phenomenon by, for example, deferring the auditor's report otherwise required under Section 404(b) of the Sarbanes-Oxley Act of 2002 for up to four years beyond when such a report would otherwise be required. Thus, while our comments below are largely directed to disclosure in IPO registration statements, in certain cases we also address the burdens associated with subsequent reporting under the Exchange Act.

RECOMMENDATIONS

The following is a list of specific sections of the Regulation that we believe can be either omitted entirely for EGCs or streamlined and simplified. The Item numbers referred to in the following discussion are, unless otherwise indicated, items in the Regulation. In connection with the preparation of this letter, we reviewed the final prospectuses of the 22 technology and life science companies that completed IPOs after December 8, 2011 and that appear to qualify as EGCs. We refer to these companies in the discussion below as the Surveyed Companies.

1. GENERAL ITEM

Item 10 serves as the repository for general information pertinent to all parts of the Regulation, such as: its application to various filed documents; the use of projections, security ratings and non-GAAP financial measures in filed documents; and incorporation by reference. In addition, we note that existing Item 10(f) contains the definition of "smaller reporting company", or SRC, in subsection (1) and instructions with respect to the timing of the determination of SRC status in subsection (2), as well as a helpful chart in the preamble of Item 10(f) entitled "Index of Scaled Disclosure Available to Smaller Reporting Companies." We believe that this type of information should also be included with respect to EGCs.

We specifically suggest that the following be added to Item 10 in a new lettered subsection:

- Definition of "emerging growth company"
- Information about the timing of the determination of EGC status
- Chart and explanatory text, as needed, to provide a quick reference for determining which Items of Regulation S-K are either not required or have less onerous disclosure requirements for registrants that qualify as EGCs

In this regard, we suggest that the chart make a distinction between Items of the Regulation that may be entirely omitted by EGCs and Items that contain modified, less onerous disclosure requirements. It would also be helpful if the chart were to provide the relevant subsections of the affected Items where the EGC requirements are found.

2. BACKLOG

Item 101(c)(viii) requires companies to disclose "the amount of backlog orders believed to be firm" as of a recent date in the current year and as of the corresponding date in the prior year. We believe that the concept of backlog is not a meaningful metric for most EGCs, and that eliminating this disclosure requirement for EGCs will not compromise the delivery of meaningful disclosure to investors. Only four of the Surveyed Companies reported an amount of backlog in their final IPO prospectus.

The concept of backlog is most relevant where the product involved is a tangible product requiring manufacturing or assembly and where there is typically some passage of time between the receipt of the order and its fulfillment. In our experience, most EGCs producing hardware, devices or other tangible products do not have a significant lag period between the placement of an order by the customer and the delivery of the product to that customer. As such, the calculation and reporting of backlog for these types of products does not provide investors with meaningful information regarding orders to be filled for any substantial period into the future.

We are aware that certain EGCs enter into agreements or receive orders under which they will receive future revenue. For example, some technology companies enter into agreements to license products, such as software, for a period of time, and under applicable accounting rules are required to recognize the revenue over the life of the contract. Similarly, EGCs often enter into contracts for the delivery of services for a specified period of time, and these involve the recognition of the associated revenue over the service period. In these license and services situations, there frequently is a recognizable event for accounting purposes, such as the recording of deferred revenue, that would reflect the level of future revenue to be earned from the existing contracts. For those EGCs that have meaningful amounts of future revenue committed under customer orders or agreements that have not yet ripened into deferred revenue, we believe that there are other disclosure provisions that would lead to the disclosure of this metric, if material to the company. In particular, in its 2003 release addressing disclosure in Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-8350 (December 19, 2003), the Commission encouraged companies to discuss key indicators of financial condition and operating performance. If a company has a material amount of committed revenue that is not yet reflected in the financial statements, and especially if this amount of committed revenue has changed significantly from recent prior periods, we would expect that backlog, or some other metric that captures this future revenue, would be disclosed pursuant to this guidance.

3. DISCLOSURES REGARDING MARKET RISK

Item 305 calls for extensive and complex disclosure regarding market risk related to interest rates, foreign exchange rates, commodity prices and other relevant market rates or prices. In our experience, companies that have not yet achieved the revenue or market capitalization thresholds that would disqualify them from EGC status are unlikely to face meaningful market risks based on these factors. Of the Surveyed Companies, only three identified a sufficient level of risk from specified levels of change in foreign currencies to even quantify the potential exposure from assumed levels of currency changes, and none quantified an amount of interest rate risk or commodity risk.

Prior to their IPOs, very few EGCs have such significant cash balances or outstanding borrowings that they are subject to interest rate risk that is material to the company, and they generally do not engage in hedging activities. Growing companies increasingly conduct business globally, and thus face traditional foreign exchange rate risk. But for a variety of reasons, including their lack of trading in foreign currencies and their completion of some offshore sales in US dollars, exchange rate risk is typically not a meaningful risk to EGCs. With regard to commodity prices, we believe that it is rare for EGCs to be active commodity traders.

We note that smaller reporting companies are not required to provide Item 305 information. We suggest that EGCs should likewise be exempted from Item 305 disclosure.

4. Dilution

Item 506 requires disclosure regarding dilution sustained by IPO investors. The amount of dilution sustained by investors in an IPO does not appear to be a matter that is regarded as meaningful by investors. The Surveyed Companies reported dilution to new investors as a percentage of the initial offering price that ranged from approximately 41% to 136%, with an average dilution of 80%.

It is frequently the case that EGCs are relatively young companies, founded to pursue an opportunity that has not yet been fully developed. As such, these companies naturally start with a low valuation. In addition, as these companies develop their technologies and business models, they are typically doing so through research and development activities and sales and marketing programs that are expensed as incurred. Even if these efforts are very successful, they rarely produce meaningful amounts of tangible net book value until such time as the company is actually profitable and producing earnings.

Viewed in this context, one would naturally anticipate that investors in an EGC's IPO would pay substantially more for their proportionate interest in the company than earlier investors, given the dramatically different risk profile of the company at the time of their respective investments. In addition, EGCs rarely feature an amount of net tangible book value per share that even approximates the initial public offering price in the IPO. For those investors interested in dilution, the recent balance sheet and capitalization information included in the prospectus would enable them to determine the level of dilution that would be sustained from purchasing shares in the offering.

5. Stock-Based Compensation

While Item 303 does not directly call for the discussion of Critical Accounting Policies, Release No. 33-8350 urges companies to discuss accounting estimates and assumptions that may be material due to the levels of subjectivity necessary to account for highly uncertain matters or the susceptibility of such matters to change, and that have a material impact on financial condition or operating performance. Heeding this guidance, and in response to comments from the staff of the Division of Corporation Finance, or Staff, companies now include in their IPO prospectuses discussions of such policies.

One such policy that is typically the subject of extensive, detailed disclosure by EGCs is the accounting for stock-based compensation, including, invariably, a significant review of the historic process for establishing the fair value of the company's common stock for the purpose of stock option awards. The IPO prospectuses of the Surveyed Companies contained on average a full seven pages of discussion of stock-based compensation under Critical Accounting Policies. We fail to understand the significance of this information to investors, over and above the already substantial information about stock-based compensation that is included in the financial statements and the notes thereto.

We believe that the guidance in Release No. 33-8350 has led to certain meaningful disclosure about the extent to which companies' reported operating results and financial condition are dependent upon the assumptions and estimates made in preparation of their financial statements. In particular, the most meaningful information that has been provided pursuant to this guidance is information that assists investors in understanding how historical financial results and condition may not be predictive of future results, as would be the case if different assumptions and judgments were applied or if future events do not develop as anticipated.

Stock-based compensation disclosure provided in response to this guidance in IPO prospectuses addresses the various assumptions that are employed in valuing stock options under SFAS 123R. This disclosure typically provides very little information not otherwise provided in the financial statement note regarding the calculation of stock-based compensation expense. Further, the bulk of the disclosure has evolved into a process of justifying the fair value ascribed by the Board of Directors, or its Compensation Committee, to the Company's common stock at the various option grant dates (typically since the beginning of the last completed fiscal year). We believe that investors well understand the imprecision involved in valuing the shares of privately held companies. Further, this explanation and justification of historical determinations has virtually no relevance to understanding post-IPO financial results. Following the IPO, the company will have a public market price from which it will establish the fair value of its shares, and this valuation process will not be subject to the assessment of subjective variables as was the case prior to the IPO.

If the rationale for requiring this disclosure is, in essence, to force companies anticipating an IPO to make a reasonable and good faith estimate of the fair market value of the shares underlying stock options, that rationale itself seems misplaced. Companies using stock options to attract and motivate employees are under well-understood pressure from applicable federal income tax provisions, including Section 409A and Section 422 of the Internal Revenue Code, to issue stock options with an exercise price not lower than the fair market value of the underlying shares and to have a well-supported basis for their finding of fair value. Further, companies are required to demonstrate to their auditors that they have applied a reasonable process to estimate fair value.

We believe that appropriate MD&A/Critical Accounting Policies disclosure of stock-based compensation should consist of a brief explanation of the **process** that was used to arrive at fair value of the shares underlying equity awards. This would include such matters as whether a third-party valuation firm was used, how frequently reports were obtained from the third party, and how frequently the issuer changed its determination of fair value. Investors would find more detailed information regarding the estimates employed to value stock options and other equity awards in the financial statement footnotes.

6. RECENT SALES OF UNREGISTERED SECURITIES

Part II of IPO registration statements requires companies to provide information specified in Item 701. This information consists of a delineation of all sales of unregistered by the company within the past three years, the consideration received for such sales and the exemption from registration relied upon in completing such sales. We believe this information is not meaningful to investors.

Item 19 of Schedule A to the Securities Act requires disclosure of the net proceeds received from the issuer's sale of any security in the two years preceding the filing of the registration statement, the price at which the security was offered to the public and the names of the principal underwriters of such security. With its reference to an offer "to the public" and to "principal underwriters," it is not even clear that Item 19 contemplated the reporting of the private offerings of securities that represent the vast majority of sales reported pursuant to Item 701. Even if it were assumed that it did, the statutory specification would be fulfilled by a report of sales over the preceding two, and not three, years and would not require disclosure of the exemption relied upon.

The Commission is granted authority in Section 7 of the Securities Act to provide that any information specified in Schedule A need not be included in a registration statement if it finds that the requirement of such information is inapplicable to the subject security and that information fully adequate for the protection of investors is otherwise required to be included in the registration statement. As an initial matter, we note that the Commission has effectively made such a finding regarding the necessity or importance of Item 19 information. The registration statement on Form S-1 promulgated by the Commission does not require that Item 19 information be included in the prospectus contained in the registration statement, as would otherwise be required by Section 10(a) of the Securities Act. Presumably the Commission relied on the authority granted in Section 10(a)(4) to determine that the inclusion of Item 19 information in the prospectus is not necessary or appropriate in the public interest or in the protection of investors.

We believe that the Commission could make a further determination regarding the lack of a need for any disclosure of Item 19 information in the registration statement. To the extent recent sales of securities are material to investors, there are other disclosure requirements that would mandate disclosure of this information. These include Item 303(a)(1) and (2), under which issuers describe their liquidity and capital resource matters over the period covered by the financial statements included in the registration statement. Issuers would report any meaningful amount of proceeds from the issuance of their securities pursuant to Item 303(a) in discussing the financing activities disclosed in their statements of cash flows. The cash flow statements included in the registration statement would contain more detailed information about the proceeds of securities issuances in these periods, as would the statements of stockholders' equity with respect to the sales of equity securities. Finally, Item 404 would require disclosure of the terms of any such sales made to related persons.

7. MATERIAL CONTRACTS

Item 601(b)(10)(i) requires the filing with IPO registration statements, and subsequent reports under the Exchange Act, of contracts "not made in the ordinary course of business." These agreements frequently contain confidential information regarding the terms on which the company and its counterparty have agreed to do business and, accordingly, confidential treatment is often sought for portions of these agreements. This filing and confidential-treatment process is quite burdensome to the company and, we believe, provides information that is of limited value to investors.

Expounding upon the elemental requirement of Item 601(b)(10)(i), subsection (b)(10)(ii) of that Item provides that a contract that is such as ordinarily accompanies the kind of business conducted by the registrant will be deemed to have been made in the ordinary course of business and need not be filed unless, among other things, it is a contract "upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell *the major part* of registrant's products or services or to purchase *the major part* of registrant's requirements of goods, services or raw materials." *(Emphasis added.)* Were Item 601(b)(10) to be applied literally in referring to continuing contracts to sell "the major part of registrant's products or services" or to purchase "the major part of registrant's requirements of goods, services or raw materials," it would be much less burdensome for EGCs than is the case in practice. However, as evidenced by the review over time of comment letters from the Staff, the Staff interprets this item as requiring the filing of contracts made in the ordinary course of business under which the company derives 10% or more of its revenue. This frequently leads to the filing of one or more contracts with customers from whom the company derives as little as 10% of its revenue or with vendors whose components are used in products representing as little as 10% of the company's revenue.

As referred to above, these customer and vendor agreements very often contain heavily negotiated terms regarding such things as pricing, delivery requirements, warranties, return rights and the scope of the licensed technology or other property. The disclosure of this information would invariably be disadvantageous to the company insofar as other customers or vendors could use it to negotiate their own contract terms with the company, and competitors could use this information to compete with the company. Needless to say, the disclosure of these commercial terms is strongly resisted by the counterparty to the contract for similar reasons. While customers, vendors and competitors typically have a well-developed sense of the meanings of these agreements in their particular contexts, this information is likely to be of much less significance to an investor who typically would lack the necessary industry-specific knowledge and interest.

Clearing the confidential portions of these exhibits with the Staff is a laborious, time-consuming process for EGCs, not to mention the Staff. For starters, agreements with customers and vendors invariably provide that the terms thereof will not be made public without the consent of the other party. Thus, from the very beginning the company is caught between the interests of the Staff in seeking disclosure and the counterparty in resisting disclosure. The review process with the Staff often involves several rounds of detailed comments and re-filings by the company of the subject agreement, as well as the corresponding re-engagement with the counterparty. In our experience, this is a time-consuming, expensive process that has the risk of creating tension with a customer or vendor.

Another aspect of Item 601(b)(10) that leads to the same disproportionately burdensome consequences is Item 601(b)(10)(ii)(A). This section requires the filing of any agreement between the company and, among others, a security holder of the company named in the registration statement, unless the contract is "immaterial in amount or significance." EGCs not infrequently enter into customer/vendor or joint venture or similar agreements with parties that have a five percent or greater equity interest in the company. Many of the terms of these commercial arrangements with these security holders are as heavily negotiated, and as potentially harmful to the parties if disclosed, as described in the preceding paragraphs for other commercial agreements. However, the filing threshold, *i.e.*, more than "immaterial in amount or significance," is considerably lower for these agreements than for agreements with unaffiliated counterparties.

Once again, other disclosure provisions will require the disclosure or filing of relevant information regarding these related party agreements. As noted above, Item 404(a) would require a description of these agreements in an IPO registration statement or annual report on Form 10-K. If the terms of the agreement with the related party establish terms of the company's securities, the agreement would have to be filed under Item 601(b)(4). Further, for joint venture agreements where the company would own an ownership interest in the jointly owned enterprise, the financial statement footnotes would disclose the nature of that interest and how it would be accounted for.

We believe that investor interests would be well protected with respect to exhibit filings if all commercial agreements with customers, vendors and joint venture partners were subject to the literal interpretation of Item 601(b)(10)(i). That is, such agreements would be filed only if the subject matter thereof related to agreements to sell "the major part" of the registrant's products or services or to purchase "the major part" of the registrant's requirements of goods, services or raw materials. The Staff could add clarity to this area by providing guidance in the instructions to the Item that "the major part" refers to agreements involving a majority of the products or services sold or purchased.

While we believe that it would be appropriate to revise the exhibit filing requirement as proposed, a less desirable alternative would address the timing of the review of confidential treatment requests for exhibits filed in connection with IPO registration statement. Similar to the process for which confidential treatment is requested for exhibits filed with reports under the Exchange Act, we propose that an IPO registration statement be eligible to be declared effective even if the Staff has not cleared confidential treatment requests submitted for exhibits filed with the registration statement.

8. USE OF PROCEEDS INFORMATION

Item 504 requires the disclosure of the principal purposes for which the net proceeds from the IPO are intended to be used. As a general rule, we agree that such information is useful to investors. On the other hand, the continuing requirement to provide information regarding the application of the proceeds pursuant to Item 701(f) in subsequent quarterly and annual reports on forms 10-Q and 10-K does not provide investors with useful information inasmuch as cash is fungible and it is impossible for a company to determine whether a dollar of revenue was spent versus a dollar from the net proceeds of a securities offering. In any event, a company's cash flow statement will depict the use of cash in the year-to-date or annual period covered by the quarterly or annual report and the discussion of cash flow under Item 303 required in both types of reports will discuss material uses of cash. We therefore suggest that Item 701(f) and Rule 463 under the Securities Act be deleted.

9. <u>SELLING STOCKHOLDER INFORMATION</u>

Item 507 requires the disclosure of the following information with respect to any stockholder selling shares in the offering covered by the registration statement:

- Stockholder's name
- Nature of any position, office or other material relationship which the stockholder has held with the company in the preceding three years
- Number of securities owned by the stockholder prior to the offering
- Amount of securities offered by the stockholder in the offering
- Amount of securities to be owned by the stockholder after the offering
- Percentage of securities to be owned after the offering, if it is more than one percent of the post-offering outstanding shares.

It is virtually impossible to articulate a reason why investors would have any valid interest in knowing the identities of each of the stockholders selling shares in the offering, regardless of the size of their holdings or their relationship with the company.

The IPOs of EGCs often include the offering of some portion of the shares that are the subject of the offering by existing stockholders. Approximately two-thirds of the Surveyed Companies' IPOs included shares being offered by existing stockholders.

The information required by Item 507 is consistently included in the prospectus as part of the table presented pursuant to Item 403, which requires the disclosure of shares held by named executive officers, directors and owners of five percent or more of the company's outstanding shares. Presumably the rationale underlying Item 403 is that the persons about whom stockholder information is required is the universe of persons about whom investors would reasonably be expected to have an interest. It is a logical extension of Item 403 to require detailed information about the stock to be sold in the offering by persons covered by that Item. To require the information listed above about unaffiliated, smaller stockholders simply because they are selling shares in the offering seems to serve no purpose. By way of example, in a recent IPO, while the company was able to exclude 24 sellers from the list in the prospectus and report such holdings on an aggregate basis pursuant to a Staff Compliance & Disclosure Interpretation, it was still required to list another 24 less-than-1% holders selling in the IPO. Such information added another page to the registration statement.

An appropriate disclosure obligation with respect to selling stockholders would be to continue to provide individual information for each stockholder already identified per Item 403. For all other selling stockholders, appropriate disclosure would be provided in the aggregate. This information would include, in the aggregate, the number of such selling stockholders, the number of securities to be sold by them, the number of securities, and percentage ownership, held by such stockholders prior to the offering and the number of securities and percentage ownership of such stockholders after the offering.

10. SECURITIES AUTHORIZED UNDER STOCKHOLDER-APPROVED PLANS

Item 201(d) requires companies to disclose specific information about securities that may be issued under compensation plans approved by stockholders and under those not approved by stockholders. Item 201(d) is not applicable to registration statements filed under the Securities Act, unless that information is otherwise incorporated into the registration statement. That being the case, this disclosure item applies to annual reports by EGCs that are reporting companies under the Exchange Act. We believe that the required Item 201(d) disclosure provides very limited information not otherwise available to stockholders and that this information is of only marginal significance.

Item 201(d) was adopted by the Commission in Release No. 33-8048 (December 21, 2001). At that time, the Commission acknowledged that much of the information required by this item had previously been subject to disclosure in financial statement footnotes, by Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation (Oct. 1995). In justifying the similar disclosure requirements of Item 201(d) and the required footnote disclosure, the principal factor identified was that Item 201(d) would require itemized disclosure broken out by plans approved, and not approved, by stockholders.

As a practical matter, an EGC that is listed on a US securities exchange is prohibited, other than in very limited circumstances, from issuing equity awards under plans that have not been approved by stockholders. Even prior to the time that they are registered on an exchange, companies almost universally seek stockholder approval of their equity compensation plans to secure various tax benefits for certain awards made thereunder, or to avoid tax burdens that might otherwise apply to award recipients. All of this being the case, the typical disclosure made in response to this requirement, if any, relates to small numbers of pre-IPO equity awards that remain outstanding following the IPO.

Current GAAP reporting requirements mandate extensive footnote disclosure regarding existing equity plans and outstanding awards. As long as investors are advised of the number of equity awards outstanding and the relevant economic terms of those awards, whether or not the plans under which these awards were made were approved by stockholders should not be meaningful to investors.

11. CONFLICT MINERALS

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act mandates that the Commission adopt rules to require certain procedures and disclosures with respect to conflict minerals and prescribes the principal requirements of the conflict minerals provisions. Section 1502 added new Section 13(p) to the Exchange Act. In Release No. 34-63547 (December 15, 2010), the Commission proposed rules to implement the conflict minerals procedures and disclosures.

The Commission received a large number of comment letters on the proposal, which prompted an extension of the deadline for comments in Release No. 34-63793 (January 28, 2011). As of the date of this letter, the Commission has not yet adopted final rules with respect to conflict minerals.

It is widely acknowledged that the final rules, when adopted and effective, will impose significant burdens on reporting companies in terms of time and money needed to comply with the requirements. In addition, because there is no existing framework in place to conduct the required diligence and obtain the necessary representations from third parties, it will take time to establish a workable framework that can actually provide the information that reporting companies will need to meet the requirements of the final rules.

We note that the Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association, in its comment letter to the Commission dated June 30, 2011, expressed concern about the burdens that the conflict minerals rulemaking may impose on smaller reporting companies. We agree, and we further suggest that any accommodations that are made available to smaller reporting companies also be extended to EGCs.

We encourage the Commission to use its exemptive authority to exclude EGCs from the conflict minerals rules. Only the largest reporting companies will have the resources necessary to comply in a timely manner with the rules. Further, without minimizing the serious policy issues underlying Section 1502, we believe that the information that is likely to be required in the final conflict mineral regulations will not be material to investors in EGCs.

CONCLUSION

We believe that a comprehensive review of the Regulation is long overdue. Over time the disclosure obligations of the Regulation have been increased with the addition of new items and subsections, through Commission releases and guidance encouraging disclosure not clearly required by language in the Regulation, and through Staff comments on registration statements and reports under the Securities Act and Exchange Act. Indicative of this trend, the average length of the prospectuses of the Surveyed Companies was 183 pages. Less than 20 years ago, under essentially the same statutory disclosure scheme, IPO prospectuses were considered large if they contained over 100 pages.

EGCs will include companies ranging significantly in size, in terms of both revenue and market capitalization. As the Commission undertakes its analysis of the Regulation, we believe that it should have the flexibility, if and where it deems appropriate, to modify the Regulation to apply to different classes of EGCs. For instance, different requirements may be applied to companies after a certain period of time following their IPO (and prior to the five-year limit on EGC status) or to companies that reach specified revenue levels that are lower than $1 billion annually. In any event, we are hopeful that the Commission will consider the full range of costs related to an EGC's disclosure of information in an IPO registration statement, including the costs of exhaustively verifying that information, and coordinating that verification with the underwriters and their counsel, and, as is the case for the disclosure of financial information, the costs of the auditor's providing "comfort" on the subject item.

We thank the Commission for this opportunity to provide feedback on how Regulation S-K should be modified for EGCs. We would be happy to meet with members of the Staff to discuss our suggestions. Please feel free to contact any of us with any questions.

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