SOCIETY
for Corporate Governance

June 22, 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SEC File Number S7-01-20 on Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information

Dear Ms. Countryman:

The Society for Corporate Governance (the "Society") appreciates the opportunity to provide comments in response to the U.S. Securities and Exchange Commission ("SEC" or "Commission") proposed rule on the Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information ("Proposing Release").

Founded in 1946, the Society is a professional membership association of more than 3,500 corporate and assistant secretaries, in-house counsel, outside counsel and other governance professionals who serve approximately 1,700 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive managements of their companies on corporate governance and disclosure matters.

Introduction

The Society commends the SEC for its ongoing disclosure effectiveness initiative efforts, which, in this case, consist of proposed amendments to eliminate duplicative disclosures and modernize and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for companies.

The Society agrees with the Commission's goals to revise or eliminate overlapping or unnecessary disclosure requirements and promote the principles-based nature of MD&A to afford companies greater flexibility in providing the required material information to investors. To that end, the Society supports the SEC's proposal to eliminate Item 301 - Selected Financial Data, Item 302 - Supplementary Financial Information, and Item 303(a)(5) - MD&A, Tabular disclosure of contractual obligations. The Society further supports the proposed changes to Item 303(a), *MD&A*; Item 303(a)(3)(iii) and (iv), *Results of operations*; Item 303(a)(5), *Contractual obligations*; Instruction 4 (Material changes in line items); and Item 303(b), *Interim periods*.

The Society's specific comments and concerns on particular components of the proposed rules are set forth below.

I. Proposed Elimination of Items 301, 302 and 303(a)(5)

Item 301, *Selected Financial Data*

The Commission has proposed to eliminate Item 301 of Regulation S-K, *Selected Financial Data*, which requires a registrant to provide selected financial data in comparative tabular form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading. We support the elimination of Item 301 because the burden of preparing and reporting of the selected financial data contemplated by the disclosure requirement outweighs the benefits to investors. As noted by the commentators cited in the Proposing Release, the information called for by Item 301 has become superfluous given the ready availability of prior period financial information, which is electronically filed and data-tagged.

We note that registrants confront challenges with the requirement to provide five fiscal years of selected financial data when a registrant is otherwise only required to present three fiscal years of audited financial statements in the filing. Registrants must incur incremental costs to prepare prior periodic financial statements from which the selected financial data line items are excerpted, which further increases the cost of preparing registration statements and periodic reports. Further, we question the materiality of the limited line items presented for the earliest two fiscal years given that investors are more likely to focus on a registrant's most recent results of operations and financial condition as disclosed in the full audited financial statements provided in accordance with Regulation S-X. In this regard, we believe that registrants are better able to demonstrate and discuss long-term trends in their financial results in accordance with the principles-based disclosure requirements of Item 303 of Regulation S-K.

We concur with the Commission that the elimination of Item 301 recognizes the significant changes in financial reporting that have occurred since the adoption of Item 301 in the 1970s. The advent of electronic filing and associated ease of accessibility of information via EDGAR and the use of eXtensible Business Reporting Language ("XBRL") have transformed financial reporting in ways not contemplated by the Commission fifty years ago; as a result, the largely duplicative information required by Item 301 is no longer necessary as part of the reporting system.

Item 302, *Supplementary Financial Information*

Item 302(a)(1) requires disclosure of selected quarterly financial data of specified operating results, and Item 302(a)(2) requires disclosure of variances in those results from amounts previously reported on a Form 10-Q. In those situations where Item 302(a) applies, a registrant must provide specified information for each full quarter within the two most recent fiscal years and any subsequent period for which financial statements are required pursuant to Article 3 of Regulation S-X. The Commission has proposed to

eliminate Item 302, indicating that the requirement largely results in duplicative disclosures. The Commission notes that the precursor to Item 302 was adopted at a time when quarterly financial information was provided on an abbreviated basis and the disclosure requirement was intended to provide investors with insights into trends over quarterly periods.

We support the Commission's proposal to eliminate Item 302. Registrants are required to file detailed quarterly reports on Form 10-Q with the Commission, and those reports are readily accessible on EDGAR. While the elimination of Item 302 could result in not requiring the presentation of separate fourth quarter information under certain circumstances, a registrant's fourth quarter results are readily determinable through the disclosure provided in the Form 10-K and third quarter Form 10-Q.

We believe that investors would not be deprived of material information regarding seasonal and other trends if Item 302 is eliminated as proposed. In this regard, we believe that registrants will continue to address known trends and uncertainties in response to the requirements of Item 303, as well as the requirement to discuss the extent to which a registrant's business is seasonal pursuant to Item 101(c)(1)(v) of Regulation S-K.

Item 303(a)(5), ***Contractual Obligations Table***

The Commission has proposed to eliminate the requirement for the tabular presentation of known contractual obligations. While the contractual obligations table may have served an important disclosure purpose at one time, we believe that the tabular disclosure is largely duplicative of information that registrants are required to provide under applicable accounting principles, and therefore we support eliminating this disclosure requirement. Given the substantial overlap with information required in the financial statements and the Commission's proposed enhanced liquidity and capital resources disclosure, we agree that this proposal will not result in the loss of material information to investors concerning a registrant's contractual obligations.

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II. Proposed Changes to Modernize, Simplify and Enhance Item 303 Disclosure Requirements

Item 303(a), ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

We generally support the Commission's proposal to consolidate the substance of Instructions 1, 2 and 3 to current Item 303(a) at the outset to emphasize the objectives of MD&A. We believe that the Commission's efforts to restructure and streamline the MD&A requirements will aid registrants in their compliance efforts by making the rule easier to understand and apply.

We agree that providing a clear articulation of the regulatory purpose that precedes the technical requirements of the rule may help guide registrants in preparing disclosure that is more effective. However, to avoid confusion, we recommend that these objectives be presented as a preliminary note to the regulatory text, consistent with the Commission's

approach in other rules, such as Rules 144, 144A, and 145, rather than the proposed approach of incorporating the objectives into the regulatory text. A preliminary note is not a rule but is instrumental to a registrant's understanding of and compliance with a principles-based rule. The preliminary note to Rule 144, for example, states the intent and effect of the rule but is not a separate requirement of the rule and does not affect the substantive operation of the rule. If the Commission were to include the objectives as a separate requirement in Item 303, the objectives would then become a disclosure requirement with increased and uncertain legal risk.

We believe that the strength of the MD&A requirement lies in its principles-based approach to require a registrant to describe the registrant's results of operations and financial condition through the eyes of management. In order to emphasize the purpose of the rule, we believe it is appropriate to include a preliminary note that summarizes the Commission's long-standing guidance that a registrant should provide a narrative explanation of its financial statements that enable investors to see a registrant "through the eyes of management." Further, streamlining and restructuring the text of the item to incorporate the concepts previously included as instructions is helpful in making the objective of the rule clearer to those seeking to prepare disclosures in compliance with Item 303.

To emphasize the Commission's expectation that MD&A provide both a historical and prospective analysis of results of operations and financial condition, we concur that it is appropriate for the preliminary note to include references to disclosure regarding: (i) material information relevant to an assessment of the financial condition and results of operations of the registrant, including an evaluation of the amounts and certainty of cash flows from operations and from external sources; (ii) material financial and statistical data that the registrant believes will enhance an understanding of the registrant's financial condition, changes in financial condition and results of operations; and (iii) material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or future financial condition. All of these potential disclosure considerations should continue to be qualified by materiality, so that the discussion and analysis is appropriately focused on the material information that MD&A is intended to address.

Item 303(a)(2), ***Capital Resources***

Item 303(a)(2) requires a registrant to discuss its material commitments for capital expenditures as of the end of the latest fiscal period, and to indicate the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments. A registrant also must discuss any known material trends, favorable or unfavorable, in its capital resources, and indicate any expected material changes in the mix and relative cost of such resources. The discussion must consider changes between equity, debt and any off-balance sheet financing arrangements. The Commission proposes to amend current Item 303(a)(2) to specify, consistent with the Commission's 2003 MD&A Interpretive Release, that a registrant describe its material cash requirements, including commitments for capital expenditures, as of the latest fiscal

period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.

The Society supports the Commission's proposed amendments and agrees that requiring disclosure of "material cash requirements, including commitments for capital expenditures"[1] is an appropriate recognition that "while capital expenditures remain important in many industries…certain expenditures and cash commitments that are not necessarily capital investments in property, plant, and equipment may be increasingly important to companies, especially those for which human capital or intellectual property are key resources."[2] Since the SEC issued the above-referenced MD&A Interpretive Release in 2003, the importance for many companies of financial commitments and intangible assets beyond capital expenditures in property, plant and equipment has increased substantially. Accordingly, focusing Item 303(a)(2) disclosure on "material cash requirements" beyond simply capital expenditures appropriately recognizes the changed nature of the assets with which companies deliver shareholder value and that require the commitment of capital resources.

In addition, the Society supports the Commission's effort to preserve registrant flexibility and business-specific discussions by eschewing the opportunity to impose a definition of "capital resources" that would inevitably be of marginal applicability to some companies and lead to superfluous disclosure of little value to investors. Instead, preserving registrant flexibility will allow companies to tailor their disclosure to their unique mix of factors including funds necessary to maintain current operations, complete projects underway, achieve stated objectives and fund capital assets or other business-critical resources such as human capital and intellectual property. Any regulatory definition of "capital resources" would very likely lead to arbitrary prioritization of certain aspects of capital allocation while potentially obscuring those most relevant.

Item 303(a)(3)(ii), ***Results of Operations - Known Trends or Uncertainties***

Item 303(a)(3)(ii) requires a registrant to describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations. In addition, the item requires that if the registrant knows of events that will cause a material change in the relationship between costs and revenues, the change in the relationship must be disclosed. The Commission proposes to amend Item 303(a)(3)(ii) to provide that when a registrant knows of events that are *reasonably likely* to cause (as opposed to *will* cause) a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments, the reasonably likely change must be disclosed. In the Proposing Release, the Commission states, "This proposed amendment would conform the language in this paragraph to other Item 303 disclosure requirements for known trends, and align

[1] Proposed rule, p. 170

[2] Proposed rule, p. 47

Item 303(a)(3)(ii) with the Commission's guidance on forward-looking disclosure." The footnote to this sentence in the Proposing Release cites to the Commission's two-step test articulated in its 1989 MD&A Interpretive Release.[3]

We support the Commission's goal of establishing a consistent disclosure standard for known trends and uncertainties and are generally supportive of the proposal. However, we urge the Commission to use this opportunity to clarify in the adopting release, accompanying guidance, and/or in the corresponding final rule that the new MD&A standard on known trends and uncertainties *supersedes* any existing MD&A guidance on known trends and uncertainties. Specifically, the Commission should clarify that the two-step test articulated in the 1989 MD&A Interpretive Release is being superseded. We believe that the second step in the two-step analysis effectively requires a registrant to prove a negative. Disclosure is required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur. Not only is this step difficult to apply, it creates a broader disclosure mandate than is indicated by the actual words of Item 303(a). Notwithstanding the Commission's language in the Proposing Release that the rule would "align Item 303(a)(3)(ii) with the Commission's guidance on forward-looking disclosure," we believe the actual text of the proposed rule - which dispenses with a negative language of the two-step test - does not align with it. We agree with the Commission's proposed revisions to Item 303(a)(3)(ii) to eliminate the required negative assessment associated with the two-step test; as such, we believe it is important to clarify in the adopting release that the 1989 two-step test is being superseded.

In addition, we urge the Commission to apply a clearer standard for disclosure of forward looking information throughout MD&A. Rather than applying the "reasonably likely" standard from Item 303(a)(i), as proposed, we recommend that the Commission amend each of the line item requirements in Item 303(a) to require disclosure about known trends and uncertainties that the registrant "reasonably expects will cause" a material change. This "reasonably expects" standard is the standard used in the current text of Item 303(a)(3)(ii), and we believe that it is a clearer probability standard for registrants to implement in practice than a "reasonably likely" standard.

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[3] *See Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*, Release No. 33-6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)] (the "1989 MD&A Interpretive Release"), where the Commission articulated a two-step test for assessing when forward-looking disclosure is required in MD&A, at 22430: "Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments:

> (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
>
> (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur."

Finally and importantly, we note the disclosure standard of forward-looking information in Item 303 is broader than the probability/magnitude test for materiality approved by the Supreme Court in Basic, Inc., v. Levinson, 108 S.Ct. 978 (1988), which leads to disclosure being required under Item 303 that may not be material under Section 10(b) or Rule 10b-5. As a result, we recommend that the Commission consider addressing in a new rule, or at a minimum in a preliminary note to Item 303, that omission of a disclosure required by an SEC rule does not, per se, constitute a violation of a duty to disclose under Section 10(b) or Rule 10b-5. It is our view that Item 303 provides a disclosure standard solely for purposes of reporting under Exchange Act Section 13(a), to be enforced by the Commission. We believe Item 303 is not intended to address the standard for liability in a private right of action under the antifraud rules, including for purposes of Section 10(b) and Rule 10b-5. This is particularly important to registrants since the U.S. Supreme Court did not review the U.S. Court of Appeals for the Second Circuit's decision in Indiana Public Retirement System v. SAIC, Inc., 818 F.3d 85 (2d Cir. 2016), thus continuing the circuit split on this issue. We also believe this clarification is beneficial to investors as it encourages registrants to disclose known trends or uncertainties information without additional litigation risk by private litigants with respect to disclosure that could be immaterial disclosure when analyzed under Basic v. Levinson. Therefore, we respectfully request that the Commission adopt this view and provide a clear statement to that effect in the adopting release.

Item 303(a)(3)(iii)*, Results of Operations (Net Sales and Revenues)*

We support the Commission's proposed changes to Item 303(a)(3)(iii) to codify its guidance that the results of operations discussion should describe not only increases but also decreases in net sales or revenues. In order to facilitate meaningful analysis in the MD&A, it is useful to incorporate existing Commission guidance directly into the regulatory text.[4] For this reason, the revised references to "material changes" in net sales and revenues are appropriate.

Item 303(a)(3)(iv)*, Results of Operations* – Instructions 8 and 9 (Inflation and Price Changes)

We support the Commission's proposal to eliminate Item 303(a)(3)(iv) and current Instruction 8 and Instruction 9 to Item 303(a) because the specific references to inflation and other changes in prices are no longer consistent with the principles-based approach of the MD&A requirement. In this regard, we note that although the historical conditions that resulted in these disclosure requirements have not been prevalent for a considerable amount of time, registrants feel compelled to provide responsive disclosure regardless of relevance or materiality. We concur in the view that deleting these items will not result in a loss of material information. Registrants will continue to apply the principles of Item 303 to disclose known trends and uncertainties that have had, or the registrant expects to

[4] 1989 MD&A Interpretative Release, at n. 36 ("Although Item 303(a)(3)(iii) speaks only to material increases, not decreases, in net sales or revenues, the Commission interprets Item 303(a)(3)(i) and Instruction 4 as seeking similar disclosure for material decreases in net sales or revenues.").

have, a material favorable or unfavorable impact on the registrant's net sales, revenue or income from continuing operations, including, to the extent material, economic or industry-wide factors.

Item 303(a)(4), *Off-Balance Sheet Arrangements*

We are generally supportive of the proposal to replace current Item 303(a)(4) of Regulation S-K "Off-Balance Sheet Arrangements" ("Item 303(a)(4)") with the new proposed Instruction to Item 303(b) (the "Instruction"). Currently, Item 303(a)(4) requires registrants to present their off-balance sheet arrangements in a separately captioned section, and certain aspects of this requirement overlap with disclosure requirements of U.S. GAAP. We believe that this overlap often leads registrants to include disclosure that is duplicative of the notes to registrants' financial statements and/or of little use to investors. Moreover, we do not believe that this prescriptive requirement to separate off-balance sheet arrangement disclosures under a separate caption is particularly amenable to evolving environments and business models, and find that it may result in disclosures that are irrelevant to either the registrant or its industry. It may also encourage some registrants to include an off-balance sheet section in an effort to comply with the bright-line requirements and to include disclosure about off-balance sheet arrangements even when they are not material to the registrant.

The proposed Instruction is an appropriate principles-based approach designed to encourage and better equip registrants to integrate their discussion of off-balance sheet arrangements that impact liquidity, capital resources and financial condition into the existing discussion of those items. We expect that disclosing the information in that context will help provide a clearer understanding of the impact of the off-balance sheet arrangements on the registrant. We also expect it to result in disclosure of those off-balance sheet arrangements that are reasonably expected to have a material current or future effect on the registrant's results or resources while reducing disclosure that is duplicative of the notes to the financial statements or that is not material to the registrant.[5] We believe that this integrated, materiality-centered disclosure will be more valuable to investors than the current requirement of a separately captioned section. In order to achieve the above goals and clarify the impact of the scope of the changes, we encourage the Commission to reaffirm and clarify, in the adopting release or appropriate guidance, its view that the proposed amendment is not intended to broaden or narrow the scope of the off-balance sheet disclosure required in the MD&A, but rather is designed to incorporate this disclosure in a more holistic, principles-based discussion.

We note that many registrants do not have material off-balance sheet arrangements and that, therefore, the proposed change would have minimal impact on those registrants. If the Commission adopts the Instruction, we believe it would be helpful to provide

[5] Consistent with our comments to Item 303(a), we recommend that the Commission amend the instructions to Item 303(b) to use a "reasonably expects" standard rather than a "reasonably likely" standard. We believe "reasonably expects" is a clearer probability standard for registrants to implement in practice than a "reasonably likely" standard. This comment also applies to the proposed revisions to critical accounting estimate disclosure, including the definition of 'critical accounting estimate', in Item 303(b)(4).

illustrative examples of integrated disclosures. Although we find that some companies with material off-balance sheet arrangements serving a strategic purpose integrate disclosure of those arrangements into their MD&A, particularly for those arrangements that could be expected to have a material impact on liquidity, we also expect this new approach to a more integrated disclosure framework may be challenging to some registrants at the time of initial adoption, so examples should be helpful.

Instruction 4, Material changes in line items

We support the Commission's proposal to move to proposed Item 303(b) that portion of current Instruction 4 to Item 303(a) that requires a description of the causes of material changes from year-to-year in line items of the financial statements to the extent necessary to an understanding of the registrant's business as a whole. We concur with the proposed change to the regulatory text that would call for a narrative discussion of the "underlying reasons" for material changes from period-to-period in one or more line items in quantitative and qualitative terms rather than only the "cause" for material changes. We also support the inclusion of language that clarifies that registrants should discuss material changes within a line item even when such material changes offset each other, consistent with the Commission's past guidance on this point. Overall, we believe that these changes should serve to enhance the overall analysis in MD&A without a significant departure from the disclosure requirements that have been applied in this context.

Item 303(b), ***Interim Periods***

We note that the Commission proposes to amend Item 303(b) (to be renumbered to proposed Item 303(c)) to provide more flexibility to registrants in comparisons of interim periods, and to simplify the item. In particular, under the proposal, registrants would be permitted to compare their most recently completed fiscal quarter either to the corresponding fiscal quarter of the prior year or to the immediately preceding fiscal quarter. While we recognize that this approach may initially be confusing for investors, in time it will become clear that the more flexible approach will allow registrants to provide the comparative information that is most relevant to understanding their business. We believe that the safeguards that the Commission has proposed in the form of additional disclosures that are required when changes are made to the presentation should serve to provide all material information to investors while discouraging registrants from "gaming" the system.

Critical Accounting Estimates

We support the Commission's goal of improving the quality and transparency of MD&A disclosures and are generally supportive of the proposed rule to require a discussion of critical accounting estimates ("CAE") in the MD&A, particularly given that this proposal would codify existing guidance from the Commission rather than impose new requirements and provide greater clarity regarding the disclosure requirement. We believe codifying the existing guidance will facilitate compliance, will likely reduce

repetitive disclosure and may encourage registrants to provide deeper qualitative and quantitative analysis in their MD&A. We appreciate that the proposed instruction to proposed Item 303(b)(4) would clarify that the required CAE disclosure should supplement, but not duplicate, the description of accounting policies or other disclosures included in the notes to the registrant's financial statements. As discussed further below, we believe a few clarifications to the proposed rule could benefit both investors and registrants.

A. Clarify the scope of the required disclosures triggered by the CAE disclosures.

We believe that the purpose of the CAE disclosure is to help investors understand that the financial statements could differ significantly depending on the breadth of the range of reasonable accounting assumptions and judgments and where along that spectrum the registrant's accounting judgments lie, and to provide additional insights into the potential variability of the company's financial and operating performance as a result of these assumptions and estimates.

Without further clarification in the rule about the scope of the required disclosure, however, we expect that the proposed rule may result in extensive, lengthy and granular detail and discussion relating to the assumptions underlying the disclosed CAEs. Including such extensive disclosures about accounting estimates for numerous accounting policies risks obscuring other, more material, disclosures.

The Commission's proposed rule defines a CAE as "an estimate made in accordance with generally accepted accounting principles that involves a significant level of estimation uncertainty and has had or is reasonably likely to have a material impact on the registrant's financial condition or results of operations." The proposed rule would then require registrants to discuss, to the extent material: (i) why each CAE is subject to uncertainty, (ii) how much each estimate has changed during the reporting period, and (iii) the sensitivity of the reported amount to the methods, assumptions and estimates underlying the calculation, providing qualitative and quantitative information reasonably available.

In addition to the instruction that the CAE disclosure should supplement rather than duplicate disclosure in the notes to financial statements, we request that the Commission clarify in the adopting release that this requirement is materiality-centered and principles-based and designed to elicit disclosure of those estimates and judgments made in the process of applying accounting policies that have the most significant effect on the amounts recognized in the financial statements.[6] Accounting can be imprecise and many accounting measurements include varying degrees of uncertainty and are susceptible to

[6] Indeed, this revision would align the proposed rule more closely with the current approach required by the International Financial Reporting Standards (IFRS) (IAS 1, paragraphs 122 to 133), which requires disclosure of the estimates and judgments made in the process of applying accounting policies and judgments that have the most significant effect on the amounts recognized in the financial statements.

fluctuation. Registrants may therefore be inclined to determine that they have a high number of assumptions for which they must include disclosure of each of the above items. The resulting volume of disclosure dedicated to CAEs within the MD&A would not be of significant assistance to many investors and could detract from the purpose of the disclosure requirement to provide more meaningful insight. Therefore, we believe it would be helpful to clarify in the instructions that registrants are not required or expected to provide CAE disclosure for each accounting policy described in the notes to the financial statements or to provide sensitivity analysis for each estimate or element of judgment.[7] As it relates to sensitivity analysis specifically, we believe that disclosing the sensitivity of reported amounts to the elements of judgment serves the purpose of CAE disclosure; on the other hand, however, we do not believe it is necessary or useful for CAE disclosure to require discussion of how much an estimate has changed during the reporting period. Incorporating this requirement would be duplicative of current Item 303(a) which would require disclosure of such a change if it is material to a registrant's financial condition or results of operations. The Society believes this focus would result in a helpful and appropriately narrowed disclosure designed to enhance investors' understanding of a registrant's financial condition and results of operations and the predictive nature thereof, and reduce the likelihood of registrants including potentially excessive and distracting disclosures that could otherwise result.

B. Provide illustrative examples of the adopted rule.

If the Commission adopts the proposed rule, we request that the Commission provide, in the adopting release or related guidance, illustrative examples of the required disclosures, especially as it relates to the quantitative disclosures relating to the CAEs. In particular, it would be helpful for registrants to understand whether the range of possibilities included in the quantitative disclosure should be estimated using information available as of a point in time (e.g., a period end), which we find to be the more typical current practice, or should incorporate future expected changes in assumptions or variables used to determine the CAE. Furthermore, it would be helpful if the illustrative examples help identify and

[7] We note that many registrants currently follow an approach consistent with this recommended clarification. See, by way of example, the Form 10-K of Cardinal Health, Inc., filed on August 20, 2019, which includes in its MD&A a discussion of a subset of the more extensive list of critical accounting policies disclosed in the notes to financial statements and includes a quantitative sensitivity analysis for two of the six accounting policies discussed in the sensitive accounting estimates section of the MD&A. See also, the Form 10-K of JPMorgan Chase & Co., filed on February 25, 2020, which includes in its MD&A a discussion of a subset of the more extensive list of critical accounting policies disclosed in the notes to financial statements, includes a quantitative sensitivity analysis for one of the six accounting policies discussed in the sensitive accounting estimates section of the MD&A, and includes more detailed and granular technical detail in the significant accounting policies disclosed in the notes to the financial statements. See also, the Form 10-K of Chevron Corporation, filed on February 21, 2020, which includes in its MD&A a discussion of a subset of the more extensive list of critical accounting policies disclosed in the notes to financial statements, includes a quantitative sensitivity analysis for two of the five accounting policies discussed in the sensitive accounting estimates section of the MD&A, identifies that it is not practical to provide sensitivity analysis for several of the accounting estimates, and includes an analysis of the accounting policies in the MD&A that is not in the notes to the financial statements.

acknowledge that not all estimates and judgments lend themselves to quantitative sensitivity analysis.

III. Timing for Final Rule Compliance

In preparing the final rules, we request that the Staff and Commission consider an effective date that gives preparers adequate time to comply. Specifically, the Society requests a staggered effective date requirement that gives smaller reporting companies, emerging growth companies and initial public offering issuers a longer transition period to adopt the proposed rule, allowing them to better understand which assumptions most significantly affect their reports on financial condition or results of operations.

In addition, we urge the Commission to modify the proposed compliance date such that a registrant would be required to first comply with the new rule in its first annual report on Form 10-K or Form 20-F that is due on or after the rule's effective date, subject to the staggered effective dates as noted above. This compliance date adjustment would permit registrants to first prepare MD&A disclosure under the new rule in an annual report, which would then serve as a new MD&A "template" for all subsequent periodic reports. We understand that due to differing fiscal year end dates, not all registrants would implement the new rule at the same time. We believe, however, that this result is preferable to requiring some registrants to first comply with the new rule in a quarterly report on Form 10-Q when disclosure in its previously filed annual report was prepared under the prior rules.

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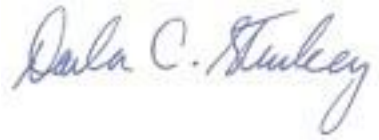
We appreciate the opportunity to provide comments on this proposal.

Respectfully submitted,



Darla C. Stuckey
President and CEO
Society for Corporate Governance

cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee
William Hinman, Director, Division of Corporation Finance
Dalia Blass, Director, Division of Investment Management