

July 19, 2016

Office of the Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

By e-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Concept Release—*Business and Financial Disclosure Required by Regulation S-K***

**(Release No. 33-10064; 34-77599; File No. S7-06-16)**

Dear Mr. Secretary:

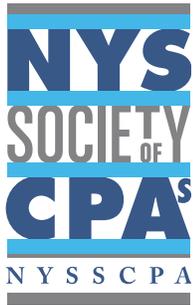
The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 26,000 CPAs in public practice, business, government and education, welcomes the opportunity to comment on the above-captioned concept release.

The NYSSCPA's SEC Committee deliberated the concept release and prepared the attached comments. If you would like additional discussion with us, please contact Charles V. Abraham, Chair of the SEC Committee at (516) 620-8526, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

F. Michael Zovistoski  
President

Attachment



**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON  
CONCEPT RELEASE—BUSINESS AND FINANCIAL DISCLOSURE REQUIRED BY  
REGULATION S-K**

**(Release No. 33-10064; 34-77599; File No. S7-06-16)**

**July 19, 2016**

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# **New York State Society of Certified Public Accountants**

## **Comments on**

### **Concept Release—Business and Financial Disclosure Required by Regulation S-K**

**(Release No. 33-10064; 34-77599; File No. S7-06-16)**

#### **General Comments**

The New York State Society of Certified Public Accountants (NYSSCPA) appreciates the opportunity to comment on the Securities and Exchange Commission’s (SEC or the Commission) Concept Release, *Business and Financial Disclosure Required by Regulation S-K* (the Concept Release).

We support the Commission's recent efforts to update and simplify disclosure requirements as part of its overall disclosure effectiveness review. We believe that all opportunities should be pursued which would eliminate (a) redundant disclosures; (b) items that are currently duplicated between the management’s discussion and analysis (MD&A) and the financial statements, or between one periodic filing to the next; (c) certain areas where the regulations currently require more than three years of financial information, and (d) “boilerplate” risk exposure and risk management discussion. Eliminating such items, and narrowing the focus of disclosures, will allow an investor to focus on relevant, material and meaningful disclosures that promote a deeper understanding of the registrant. We support an objectives-oriented approach to these requirements which allow registrants to develop a presentation method that is clear, understandable and appropriately reflects the information that is meaningful in light of its capital structure and business. At the same time, we also believe that the Commission should endeavor to work toward comparability in presentation in order to allow investors to be able to easily compare and contrast information from different registrants.

Similar to corporate governance issues, we also support disclosures on sustainability to the extent that they are material to the business of a registrant, and we believe that investors should be informed of material strategic thinking and associated initiatives of the registrant. This should include positions which materially impact how a registrant functions and drives its business related to specific sustainability and public policy issues, if material.

#### **Responses to the Request for Comment Questions in the Concept Release**

Presented below are our responses to selected questions from the Request for Comment sections of the Concept Release.

**1. Should the Commission consider including automatic sunset provisions in new disclosure requirements? If so, what types of disclosure requirements should include these provisions? What factors should we consider in identifying them? What would be an appropriate length of time for any sunset provisions? Would this length of time vary with the nature of the rule in question?**

Yes. The Commission should consider including automatic sunset provisions in new disclosure requirements in order to reduce the regulatory burden on all registrants. New disclosure requirements should have sunset provisions, and the length of time can vary with the nature of the rule in question, but should not exceed five years.

**2. What are the advantages and disadvantages of automatic sunset provisions? Would automatic sunset provisions result in unnecessary regulatory uncertainty for investors or registrants?**

A particular advantage of automatic sunset provisions is that they would allow the Commission the ability to extend or modify new disclosure requirements before a new disclosure requirement is made permanent.

**3. How would the use of automatic sunset provisions affect registrants, investors and other users of disclosure? Would registrants, investors or other users incur increased costs associated with the use of automatic sunset provisions?**

In the long term, the use of automatic sunset provisions would reduce the regulatory burden on all companies.

**4. Should we consider requiring the staff to study and report to the Commission on the impact of new disclosure requirements when adopting them, in addition to the review the Commission performs under the Regulatory Flexibility Act (“RFA”)? For what type of disclosure requirements would such an approach be appropriate? What are the advantages and disadvantages of such a study and report on a new rule?**

Yes. The Commission should actively monitor the impact of new disclosure requirements after adopting them and should perform regular disclosure impact studies under the RFA. The advantage of performing disclosure studies on new rules would be the ability to monitor what is working and what is not, which would avoid adding to the regulatory burden for all registrants.

**5. Are there other ways our disclosure requirements could be revised to adapt more easily to future market changes and technological advancements?**

In addition to the above response to Q4, the Commission should review the comment letters issued by the Division of Corporation Finance to registrants to consider whether the disclosure requirements are being met or require additional guidance.

**6. Should we revise our principles-based rules to use a consistent disclosure threshold? If so, should a materiality standard be used or should a different standard, such as an “objectives-oriented” approach or any other approach, be used? If materiality should be**

**used, should the current definition be retained? Should we consider a different definition of materiality for disclosure purposes? If so, how should it be defined?**

We believe that principles-based disclosures can lead to comparability and consistency issues between registrants. Although the international community has embraced the concept of principles-based disclosures, they are also being confronted with the increasing need to issue rules for how to interpret those principles. Additionally, the SEC has not consistently applied a principles-based approach, as evidenced by the more prescriptive requirements of Items 103 and 404.

As the Financial Accounting Standards Board (FASB) has begun moving toward more objectives-oriented standards, we believe that the SEC may want to consider restructuring their disclosure requirements using a similar methodology. This would require the SEC to develop its own comprehensive, conceptual framework as the foundation for all disclosures before it would be able to start drafting objectives-based standards. Achieving this goal would minimize the negatives of a prescriptive-based approach by eliminating bright line tests and would maximize the benefits of a principles-based approach by improving comparability.

**7. Should we limit prescriptive disclosure requirements and emphasize a principles-based approach? If so, how? How can we most effectively balance the benefits of a principles-based approach while preserving the benefits of prescriptive requirements?**

We believe that the most effective and efficient way to balance the limitations and benefits of a prescriptive-based approach against those of a principles-based approach is to essentially scrap both methods in favor of an objectives-oriented approach that can be consistently applied across all registrants, regardless of size. By setting forth a clear objective for all disclosures, each registrant can focus on disclosing those items that are most meaningful to investors, and by eliminating bright line measurements will ensure that disclosures are appropriate to the size of the entity.

**8. What are the advantages and disadvantages of a principles-based approach? Would a principles-based approach increase the usefulness of disclosures? What would be the costs and benefits of such an approach for investors and registrants?**

A principles-based approach relies on management to determine what information is, or may be, significant to investors. Because this approach is individual to each registrant's decision-making process, comparability and consistency between registrants is difficult to achieve. The international community has seen an increased move toward principles-based disclosures in recent years. However, we believe the result of this principles-based movement has resulted in an increase in "guidance" to interpret the principles—effectively, an increase in rules. Therefore, our recommendation is the objectives-oriented standards, as discussed in our response to Q6.

**9. Do registrants find it difficult to apply principles-based requirements? Why? If they are uncertain about whether information is to be disclosed, do registrants err on the side of including or omitting the disclosure? If registrants include disclosure beyond what is**

**required, does the additional information obfuscate the information that is important to investors? Does it instead provide useful information to investors?**

We believe that registrants, particularly smaller registrants, can find it more difficult to apply a principles-based approach than a rules-based approach. Smaller reporting companies usually do not have an accounting team as sophisticated as that of a larger company. As a result, disclosures that should be made may be omitted. The SEC has noted instances of this for years with respect to Item 303(a)(1) Liquidity. Rather than discuss the real sources and uses of cash, registrants of all sizes meet the principles-based requirement with mathematic computations that effectively duplicate their statement of cash flows. We do not believe that there is any impetus for registrants to disclose more useful information than what is strictly required. Unfortunately, with a strictly principles-based approach, what is required to be disclosed would be left to the discretion of management. One of the consequences of a principles-based approach is registrants increasingly disclosing non-GAAP financial measures, which can be misunderstood by investors if not properly reconciled to the equivalent GAAP measure.

**10. Do registrants find quantitative thresholds helpful in preparing disclosure? Do such thresholds elicit information that is important to investors? Do they require registrants to provide some disclosure that investors do not need? To the extent our rules contain quantitative thresholds, how should we define them? Are specified dollar amounts more or less effective than amounts based on a registrant's financial condition, such as a percentage of revenues or assets?**

Quantitative thresholds are useful in preparing disclosures. However, the quantitative thresholds should not be one-size-fits-all. For example, the related party disclosure threshold of \$120,000 in Item 404 may be very material to a smaller reporting company but *de minimus* to a large company. Why is \$120,000 the right disclosure threshold? Similarly, establishing a materiality threshold based on assets or revenues may result in information not being disclosed that an investor may want to know.

**11. Should we develop qualitative thresholds for disclosure? Should there be a combination of quantitative and qualitative thresholds?**

Qualitative thresholds alone would result in even more variability between companies. Probably the best answer is a combination of qualitative and quantitative thresholds, whereby the quantitative threshold – whether based on specific dollar amounts or as a percentage of one or more line items on the financial statements – is applied to required disclosures, and the qualitative threshold is applied to additional information the registrant should consider disclosing.

**13. Would principles-based disclosure affect corporate compliance and governance structures? If so, how?**

As the SEC's disclosure requirements are already largely principles-based, we do not believe that moving to an all principles-based approach would have a significant impact on corporate governance or compliance.

**14. Should registrants assume some level of investor sophistication in preparing their disclosures? If so, what level or levels of sophistication? How should investor sophistication be measured? What are the risks or other disadvantages to investors if registrants either underestimate or overestimate the level of investor sophistication and resources when preparing their disclosures? Does disclosure protect all investors if it is tailored to a subset of the investor community?**

We believe that the registrant's filings should be understandable to a broader range of investors. While we are not suggesting that the SEC's disclosures should be geared toward the most unsophisticated investor, all investors should be required to put in some effort to understand the information disclosed. However, we do not believe they should be required to have an advanced degree in finance in order to do so. If a registrant's filings were more understandable by less sophisticated investors, there may be an increase in the investor's involvement in areas such as voting participation. Large-scale public company audit failures, recent controversies regarding executive compensation, and discussions regarding GAAP vs. non-GAAP financial measures have demonstrated to unsophisticated investors that they too need to be aware of what is transpiring at the companies in which they invest.

**15. Should we revise our rules to require disclosure that is formatted to provide information to various types of investors in a manner that will facilitate their use of disclosure for investment and voting decisions?**

Yes, rules to standardize presentation formats would be beneficial to investors.

**16. Commenters have suggested that disclosure should be written for a more sophisticated investor than current disclosure appears to contemplate, and that tailoring disclosure to less sophisticated investors contributes to excessive disclosure. Should our disclosure requirements be revised to address these views? If so, how could we revise our disclosure requirements, and which requirements should we revise, to encourage more appropriately targeted disclosure? If we revised our disclosure requirements to address these views, would there be any harm or costs to investors?**

As noted in our response to Q14, we believe that the registrant's filings should be understandable to a broader range of investors, which we believe is consistent with the SEC's mission to protect investors.

**18. Should we use investor testing, such as focus groups or electronic surveys, to provide input on investors' use of and access to disclosure?**

We do not see the benefit of such testing. We believe that a registrant's filings are not readily understandable across the full range of investors; there is no other option for the less sophisticated investor than to rely on annual reports and brokers or advisors (also see our discussion above).

**19. To what extent should the reliance of certain investors on market prices or third-party analysis, rather than using the disclosure directly, be a factor in determining the type of investor to which disclosures should be targeted?**

We believe that all filings should have disclosures that are understandable to a broad range of investors, and not specifically targeted to certain types of investors. We believe that the reliance of certain investors on third-party analyses and market prices should not be considered in the Commission's rules regarding disclosures.

**20. To what extent should we consider the needs of other market participants, such as professional securities analysts and other third parties, in revising our disclosure requirements? What would be their needs?**

We believe that the SEC's primary responsibility is to the investor or potential investor. The desires of professional securities analysts and other third parties should not be an appreciable determining factor in any revisions the SEC decides to make to the disclosure requirements. We believe that these other market participants might want to have detailed and specific information regarding contracts, metrics, and other factors that are not necessarily aligned with providing understandable and objective-oriented information to a broad range of investors.

**21. Do current disclosure requirements appropriately consider the costs and benefits of disclosure to registrants and investors? How should the Commission evaluate benefits, such as those arising from disclosure, that cannot be easily quantified?**

We believe that there is a substantial amount of duplication in the current disclosures. Information that is disclosed in the financial statements is discussed again in the MD&A. This increases the cost of preparing the disclosures while not necessarily providing a substantial benefit to the investor.

**24. Does the current requirement in Item 101(a)(1) to describe the general development of a registrant's business during the past five years provide useful disclosure that is not available either elsewhere in the current filing (e.g., MD&A or the notes to the financial statements) or in any prior filing, including current reports on Form 8-K? Should we require additional or more specific information under Item 101(a)(1) and, if so, what type of information and why?**

The disclosure under this requirement does provide useful information whether in Item 101(a)(1) or elsewhere. However, the number of years can be reduced to a more meaningful time period, and we believe that a two to three year time frame would be sufficient. The development of a registrant's business should be more focused on the current point of time, and a five-year period provides information that is often outdated and irrelevant to an investor's current understanding of the registrant.

**25. How could we improve Item 101(a) (1)? For example, is the five-year time frame for this disclosure appropriate? Would a shorter or longer time frame be more appropriate? If so, what time frame would be appropriate and why?**

This requirement can be improved by shortening the number of years presented as mentioned previously in our response to Q24. A two to three year time period should be sufficient.

**26. Does this disclosure continue to be useful for registrants with a reporting history? Once a registrant has disclosed this information in a registration statement should we allow registrants to omit this disclosure from subsequent periodic reports unless material changes occur? Alternatively, should we require registrants to describe its business as currently conducted as well as any material changes that have occurred in the last five years?**

We believe that past submissions should be updated with more current information as necessary for an investor's understanding. Refer to our response to Q37, discussing a "general business document."

**27. Should we revise Item 101(a) (1) to require disclosure of a registrant's business strategy? Would investors find such a disclosure important or useful? If so, should this requirement be included in a registrant's MD&A? Should we define "business strategy"? If so, how?**

Yes, we believe that this disclosure is and will continue to be an important and useful disclosure. However, the business strategy disclosure should only be disclosed in one section, and preferably not in the registrant's MD&A. There is no need to have a specific definition of "business strategy."

**28. Should we permit a summary disclosure of the general development of a registrant's business in all filings except the initial filing? For example, should we require a more detailed discussion of a registrant's business in the initial filing, and in subsequent filings only require a summary of the registrant's business along with a discussion of material changes in the business as previously disclosed in the registrant's Form 10-K? Alternatively, should we require a more detailed discussion of a registrant's business on a periodic basis, such as every three years, and a summary disclosure in other years? Should any such requirement be conditioned on timely reporting or some other consideration?**

Yes. We believe that a summary disclosure of the general development of a registrant's business is sufficient, in all filings except the initial filing. A reader can research the business simply by reviewing the documents on the Internet or other qualified search engines, and need not be in all types of filings. All current filings should contain updates. The quarterly filings should contain a summary of any updates since the annual filing. The annual filing should be more informative and in depth. Also refer to our response to Q37, discussing a "general business document."

**31. Do the disclosure requirements in Item 101(c) continue to provide useful information to investors? How could we improve Item 101(c)'s requirements?**

Yes, we believe that Item 101(c) provides useful information for investors; however, this item could be simplified. The description of the business should be only for the current business operations that are being reported on, by segment, if material. It should explain what they do, how they do it and where they do it. The breakdown of revenue by class of similar products or services should be disclosed in the MD&A section, if relevant. The sources and availability of raw materials should only be mentioned if difficult to obtain. Amounts spent for research and development during the past three years is already disclosed in the financial statements, if material. They should be allowed to mention the research and development for major projects they are working on if they wish to do so. Disclosure of the effects of compliance with federal, state and local provisions regarding the discharge of materials into the environment should be discussed in the MD&A, if material.

**35. Should we require additional specific disclosure relevant to particular industries, such as manufacturing or technology companies? If so, which industries and why? What are the benefits and challenges of requiring industry-specific disclosure?**

We do not believe additional specific disclosure would be useful. This would most likely become a boiler plate type of disclosure that would be of questionable value to a reader.

**36. What is the impact on disclosure of listing the thirteen item requirements in Item 101(c)? In practice, do registrants view Item 101(c) as a checklist? Do the prescriptive items result in disclosure of information that is not important by some registrants?**

From our experience, it appears that these disclosures have created a “checklist” mentality. Some registrants may say this information is required whether applicable or not. This results in the disclosure of information that is not applicable or useful in certain circumstances.

**37. Should we require Item 101(c) disclosure only in the initial filing with follow-up disclosure of any material changes for subsequent years? Should any such requirement be conditioned on timely reporting or some other consideration? Should the requirements differ for registration statements and periodic reports?**

Consideration should be given to having a general business document with company information that could be the first document for all accounts in the online system with its filings for each company. This would be required once a company becomes a reporting company under the Security and Exchange Act financial filings. This document would be updated for major changes to the business. This could remove the filing of the same information in all annual and quarterly filings and registration statements. It would save time and effort, and would make the reporting less voluminous.

**38. Is there any information currently disclosed in the description of business that should be presented in a different context such as MD&A or risk factors? Why?**

Yes, information regarding properties could be included in information about the business and it is supplemented by the required disclosures in the financial statements.

**39. In some circumstances, disclosure is required under Item 101(c)(1) if material. The item specifies that, to the extent material to an understanding of the registrant's business taken as a whole, the description of each segment shall include the information in (c)(1)(i) through (x) and that matters in (c)(1)(xi) through (xiii) shall be discussed for the registrant's business in general; where material, the segments to which these matters are significant shall be identified. Additionally, some sub-items of Item 101(c)(1) require disclosure if material, such as (c)(1)(ii) and (c)(1)(ix), while others do not. Should we require disclosure of all line items in Item 101(c) in all circumstances, regardless of materiality? Why or why not? Alternatively, would a principles-based approach to disclosure about a registrant's business and operations allow flexibility to disclose information that is important to investors? If so, how should such a disclosure requirement be structured? What factors should we consider in developing such a requirement?**

We have seen many cases where registrants include the information regardless of materiality. We believe this information, when material, would be better discussed in the MD&A with the comparative information. This would give the reader more current information with the related discussion of what has happened during the periods being reported on. Disclosure should be based on materiality. If not, it would make the disclosures more voluminous for information that would be of questionable value to an investor. We believe that a principles based disclosure would result in making comparisons of different companies more difficult. The Commission should consider standard disclosures about a company's business in the introduction to the MD&A if not kept in a separate filing, as mentioned above in Q37.

**42. Should we retain the current scope of Item 101(c)(1)(iv), which requires disclosure of a registrant's patents, trademarks, licenses, franchises and concessions? Should we expand the rule to include other types of intellectual property, such as copyrights? Should we remove the individual categories and instead require disclosure of "intellectual property"? If so, should we define that term and what should it encompass?**

The current scope regarding the disclosure of a registrant's patents, trademarks, licenses, franchises and concessions should be retained, but only to the extent they are material to the business of a particular registrant. The rule should not be expanded to include other material types of intellectual property. Individual categories should be maintained. By combining or being general, this would not give a reader the clear information they seek.

**43. What, if any, additional information about a registrant's reliance on or use of technology and related intellectual property rights should we require and why? Should we revise Item 101(c) (1) (iv) to require more detailed intellectual property disclosure, similar to the disclosure currently provided by some biotechnology and pharmaceutical registrants? If so, should we require such detailed disclosures for all or only some of a registrant's intellectual property, such as those that are material to the business?**

The registrant should disclose the information currently required, only to the extent they are material to its business. It should be optional for the registrant to provide additional information if that information will add value to an investor. In some, but not all, instances, more detail may

be useful, but it should not be mandatory. Only the material components should be more detailed. Often, however, detailed information may be contained in the registrant's notes to the financial statements, which also should be in Item 101(c)(1)(iv).

**44. For registrants with large intellectual property portfolios, does aggregate disclosure of the total number of patents, trademarks and copyrights and a range of expiration dates provide investors with sufficient information? If not, what additional information do investors need about a company's portfolio of intellectual property? Would tabular disclosure or an alternate format or presentation of a registrant's intellectual property portfolio make the information more useful to investors? What would be the benefits and challenges of requiring disclosure of this information in this format?**

Yes, subject to comments above, aggregate disclosure would be very beneficial and will provide sufficient information to investors. A definition would be useful as well for each type of intellectual property. Tabular presentations are often very useful and easy to read and should be beneficial to use in most registrants' filings. However, either tabular or alternate presentations would suffice as long as the reader can easily understand the presentation. The benefits would be to provide more clarity and summarization, and there should not be any major challenges, as the information to be provided is most likely already being used by company management in their business decisions.

**45. Should we limit these disclosure requirements to registrants in particular industries? If so, which industries should we specify and why? Is disclosure about a registrant's intellectual property most useful in the context of the description of business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management?**

No, there should not be limits in particular industries; however, it should be required only to the extent material to the business of the particular registrant. The disclosure will be useful in each disclosure of the description of business, and disclosures about trends and developments affecting results of operations. This is important to a reader, depending on materiality, to understand how intellectual property affects a registrant's business. This will vary by industry.

**47. Is disclosure about government contracts important to investors? Why? Is there any additional information about a registrant's contracts with the government that would be important to investors?**

Yes, we believe that disclosures about government contracts can be important to investors to the extent they are material to the business of the particular registrant. This may also depend on the industry and the materiality to the registrant. A registrant with an abundance of government contracts may have contracts that are more or less profitable which may cause a material effect on the financial statements with a more positive or negative result. Length of the government contracts and estimated gross profits from material contracts would be very important to investors, and will assist and aid in gauging the effect on the overall financial statements of a registrant.

**48. Rather than focusing specifically on government contracts, should we require registrants to briefly describe all material contracts? Would such a requirement elicit disclosure not otherwise provided in MD&A or the description of business?**

All material contracts should be disclosed in the normal fashion. Government contracts should comprise a segment of this disclosure. The requirement should not elicit disclosure not otherwise provided in the MD&A or the description of business.

**49. Should we increase or reduce the environmental disclosure required by Item 101(c)(1)(xii)? Why? What kind of information should we add to or remove from this requirement?**

To the extent material, environmental disclosure can be an important item. Time should be spent with particular focus groups to determine if additional disclosure is needed. We see increased investor interest in such disclosure; including disclosures regarding sustainability (refer to our responses to the specific questions on sustainability). Environmental-related matters may impact a registrant's potential sale of a business unit, real estate, legal costs, prospective and current capital expenditures, as well as other areas.

**50. Is disclosure about the material effects that compliance with provisions regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon a registrant's capital expenditures, earnings and competitive position important to investors? If so, should we require registrants to present this disclosure in a specific format? Would this disclosure be more appropriate in MD&A or the business section?**

The material effects that compliance with provisions regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon a registrant's capital expenditures, earnings and competitive position are very important to investors to the extent material to the registrant's business. As indicated in our response to Q49 above, this information may impact a registrant's potential sale of a business unit, real estate, legal costs, prospective and current capital expenditures and should be disclosed if material. We do not believe that a specific format of such disclosure should be required. The information should be elaborated upon in the business section, and the MD&A should have additional information if the registrant has already displayed effects of discharge of materials into the environment and is in the remediation stage or if similar and related costs are known or estimated.

**51. Should we require specific disclosure about the material effects that other regulations may have on a registrant's capital expenditures, earnings and competitive position? If so, are there specific laws and regulations that our rules should cover?**

We believe that registrants should disclose the material effects that other regulations may have on its capital expenditures, earnings, and competitive position; however, we believe that the current disclosure requirements would imply the need for such disclosures, if material. We do not believe there is a need for specific laws and regulations regarding this subject.

**52. Given that many registrants provide disclosure of material government regulations without a specific line-item requirement, are the current disclosure requirements sufficient? Would a specific requirement seeking this disclosure provide additional information that is important to investors? If so, what specific information and level of detail should we require and why? What would be the costs of requiring disclosure of this information?**

The current disclosure requirements are sufficient and no specific line-item requirements should be required. We believe that a specific requirement seeking this disclosure would not provide significant additional information to an investor.

**53. Foreign regulations, including foreign tax rates and treaties, may have a material impact on a registrant's operations. Should we specifically require registrants to describe foreign regulations that affect their business? If so, what specific information and level of detail should we require? How would any additional information inform investment and voting decisions? Would there be challenges for registrants to provide such disclosure?**

Yes. We believe that foreign regulations that have a material effect on a registrant's business should be specifically disclosed. There should be little challenge in obtaining this information as the registrant's legal departments would likely have reviewed all the material foreign regulations. The information should be equally obtainable for all types and sizes of registrants.

**67. Is the Item 301 disclosure that is not otherwise available or readily accessible important to investors? Are there benefits to having the five-year information in one table?**

All of the information currently required in item 301 can be located in other sections of the registration statement or Exchange Act filing. A reader would get most of this information from the MD&A. We believe that if this information is retained, it should be presented for the prior two to three years. We do not believe that presenting five years of information is useful for an investor and such information is accessible to an investor via the EDGAR filing system, if they so choose.

**68. Should we retain, modify or eliminate Item 301? Why? Does it achieve the goal of highlighting significant trends in a registrant's financial condition and results of operation? Does it also achieve the goal of providing selected financial data in a convenient and readable format? How would the elimination of Item 301 affect investors? Would elimination of this requirement increase costs to investors because they would then need to obtain this information from prior filings?**

Item 301 should be eliminated. We do not believe that the limited information required highlights the trends that an investor should be interested in. The financial statements are in a readable format and provide more information than we believe an investor would want to know. We do not believe that there would be any significant increase in costs to investors if this item was eliminated.

**69. If we retain Item 301, should we modify this requirement and, if so, how? Should we modify the item to require additional disclosure and, if so, what additional disclosure would be important to investors and why?**

If Item 301 is retained, we believe that the long-term debt and redeemable preferred stock disclosures could be removed, as we do not consider them meaningful for this presentation and the information is readily available in other areas of the document filed. We do believe that it would be helpful to include the weighted average shares outstanding used in the earnings per share calculation if this item is retained. The Commission might also consider requiring this disclosure for large accelerated filers.

**70. Instruction 1 to Item 303(a) specifies that, where trend information is relevant, reference to the five-year selected financial data pursuant to Item 301 may be necessary. Despite this instruction, registrants generally do not discuss or analyze trends outside the three-year timeframe of Item 303. Does selected financial data effectively highlight significant trends that are not described elsewhere? If so, is five years an appropriate period or should we modify the number of fiscal years required to be included in the selected financial data? If selected financial data does not effectively highlight significant trends that are not described elsewhere, how could we modify our requirements to best achieve the objective of highlighting significant trends in registrants' financial condition and results of continuing operations?**

We believe that if this item is retained, it should be for the most recent two to three year time frame. Information from years four and five is likely too old and we believe that investors are interested in current information. Should an investor wish to see prior year information, it can be found via the EDGAR filing system. We do not believe that the requirements need to be further modified to highlight significant trends. The MD&A is required to highlight significant trends in a registrant's financial condition and results of operations, and if the requirements in Item 303 are properly followed, the objective would be achieved.

**71. EGCs are not required to present selected financial data for any period prior to the earliest audited period presented in connection with its first effective registration statement. Should we revise Item 301 to provide a similar accommodation for all registrants? Why or why not?**

We believe that a similar accommodation should be provided to all registrants. We believe that this will assist in making the registration statement more cost-effective in its preparation.

**72. Should we require Item 301 disclosure for the full five years only in certain instances such as when a registrant revises its annual financial statements or if information on the earliest two of the last five years is available without unreasonable cost or expense?**

We believe that Item 301 should be eliminated from the filing requirements. Should it be retained, as previously mentioned, it should only be for the latest three years. Regarding this question, we believe that "unreasonable cost and expense" is too subjective.

**73. Currently, Item 301 disclosure is required in comparative columnar form. If we continued to require this disclosure, should we consider other presentation or format requirements?**

We believe that if Item 301 is retained, it should be kept in its current format. This will save a registrant any additional costs that might be required. In addition, users are familiar with the current presentation.

**88. What requirements in Item 303 are important to investors? How could Item 303 be improved?**

The requirements in Item 303 are important to an investor's understanding of the registrant. However, we believe that a significant number of registrants are not providing narrative explanations that allow an investor to see their performance "through the eyes of management." Item 303 generally becomes an exercise where management provides a quantitative analysis, which most investors can recompute—if they chose to—from the financial statements.

**89. Do the current requirements of Item 303 result in disclosure that highlights the most significant aspects of the registrant's financial condition and results of operations? Are there any requirements in Item 303(a) and (b) that result in immaterial disclosures that may obscure significant information? If so, how? Should we consider a qualitative or quantitative threshold rather than materiality for requiring MD&A disclosure? If so, what threshold would be appropriate and why? Would adopting a different standard impede the flexibility of analysis and assessment under the current materiality standard? If so, how?**

We believe that the intent of the current requirements of Item 303 is appropriate; however, as indicated in our response to Q88, we do not believe that the resulting disclosure, in general, provides decision-useful information to the investor.

We believe the tabular disclosure of contractual obligations is not necessary (especially in light of the new FASB ASU 2016-02 which significantly changes lease accounting and disclosure), since this information can be found in the financial statements.

We believe that the best answer is a combination of qualitative and quantitative thresholds whereby the quantitative threshold – whether based on a specific dollar amount or as a percentage of one or more line items on the financial statements – is applied to required disclosures and the qualitative threshold is applied to additional information the registrant should consider disclosing. While we are not in a position to opine on a particular threshold, we believe quantitative thresholds will augment the current "materiality" benchmark.

**90. There are various sources of Commission and Division guidance on MD&A. These include Commission releases, sections of the Division's Financial Reporting Manual and staff Compliance and Disclosure Interpretations. Given the amount of Commission and staff guidance on MD&A, should we consolidate guidance in a single source? If so, which guidance remains helpful, and is there guidance that we should not include in a consolidation? Would consolidation of this guidance facilitate registrants' compliance with the item's requirements, or is the existing form of this guidance sufficient?**

We strongly believe that the guidance should be consolidated, with specific emphasis placed on sections where registrants should endeavor to provide relevant information that gives a reader a deeper understanding of the business and material trends.

**91. Should we revise our rules to require registrants to provide an executive-level overview? If so, should our rules prescribe the information that must be covered? What would be the benefits and challenges of prescribing the content of the overview and what content should we require? For example, should we require an executive-level overview to discuss the most significant accounting estimates and judgments? Should any requirement for an executive-level overview be limited to registrants of a certain size?**

We do not believe that an executive-level overview would be significantly useful. The resulting disclosure from such a requirement would become boiler plate language, and would not be useful to a reader.

**93. Are there other methods that registrants could employ or new rules that we should consider that would result in more meaningful analysis in MD&A?**

No. We believe the current methods are appropriate; however, the responses to the current methods are varied. As discussed in our response to Q94, we believe that the manner of presentation can be more consistent.

**94. What types of investors or audiences are most likely to value the information required by Item 303 and does the audience for disclosure vary across the different parts of Item 303 disclosure? If so, how? Would the manner of presentation affect how various types of investors benefit from Item 303 disclosure?**

We believe that all investors can benefit from the information required by Item 303, but as discussed in our response to Q88, the resulting disclosure does not always provide decision-useful information for the reader. Adding additional structure, such as a tabular format, to the presentation of the MD&A can assist with comparability and readability. However, this must be balanced against the need for flexibility, and should not replace narrative explanations that discuss key trends and management views.

**96. Should we require auditor involvement (e.g., audit, review or specified procedures) regarding the reliability of MD&A disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?**

We do not believe that there is a need for increased auditor involvement regarding MD&A disclosures. In our experience, auditors have not had concerns regarding the reliability of MD&A disclosure, but rather about the excessive details about quantitative “ups” and “downs” without providing meaningful explanations that do not assist in an investor having a deeper understanding of the business.

**98. What are the benefits of providing the disclosure required by Item 303? How could the benefits change if we made any of the changes contemplated here? Please provide quantified or qualitative estimates where possible relating to disclosure under Item 303.**

If the changes discussed above are made, we believe that Item 303 will be more comparable between companies, and with the consolidation of the guidance available, it might spur registrants to cull out non-essential disclosures and focus on the objective of Item 303. We are unable to provide quantitative estimates of the benefits, but we believe that it would improve an investor's understanding of the registrant.

**99. Does the two-step test for disclosure of a known trend, demand, commitment, event or uncertainty result in the most meaningful forward-looking disclosure? Why or why not? How do registrants determine when something is “reasonably likely” to occur?**

The two-step test for disclosure is the most appropriate for forward-looking disclosure. We believe that having a lower threshold than the “more likely than not” threshold is appropriate as it provides an investor with more insight regarding the registrant than would be otherwise available. In our experience, registrants normally perform an analysis similar to that prescribed under FASB ASC 450, *Contingencies*, applying probability thresholds in order to arrive at their estimate of trends, demands, commitments, events, or uncertainties that are “reasonably likely.”

**100. Should we revise the two-step test to apply a different standard in the first prong and if so, how? For example, should we require disclosure when a trend, event or uncertainty is more likely than not, probable, or reasonably possible to occur, rather than “reasonably likely” to occur?**

We believe that the two-step test is appropriate. To utilize a higher threshold might limit the disclosures available to investors, and to utilize a “remote” threshold would introduce too many variables that could cause difficulty for the registrant to conclude.

**102. We have stated previously that quantification of the material effects of known material trends and uncertainties can promote understanding and may be required to the extent material. Should we revise Item 303 to specifically require registrants, to the extent practicable, to quantify the material effects of known trends and uncertainties as well as the factors that contributed to those known trends and uncertainties? Why?**

We believe that requiring specific quantification of material effects of known trends and uncertainties would not be practical.

**103. Should we revise Item 303 to include a principles-based requirement for all registrants to disclose performance metrics and other key variables important to their business? Why or why not?**

If such a requirement is put in place, it should also specify the standard format for such disclosure to minimize variability in presentation. Such a requirement may also provide registrants the impetus necessary to change their MD&A disclosures significantly and reduce the data provided in narratives that do not add to an investors understanding of the company. We do believe that any principles-based requirements should be balanced against the basic challenge of comparability between registrants. As previously mentioned, we prefer an objectives-oriented approach.

**104. Should we require disclosure of any commentary, analysis, performance indicators or business drivers related to a registrant’s key indicators? If so, why? For example, would it be feasible to adopt prescriptive requirements for discussion of specific performance metrics that are applicable to an entire industry and are easily comparable between registrants?**

We believe that the disclosure of commentary, analysis, performance indicators and business drivers can be accomplished via the principle-based requirement discussed in Q103, while specifying the format. We do not believe it would be feasible to adopt prescriptive requirements for specific performance metrics, including industry metrics, as that would reduce the flexibility for registrants to provide investors with the metrics that they consider most important.

**108. How could Item 303(a)(3) be improved? Would any additional disclosure about a registrant’s results of operations be important to investors? If so, what additional disclosure would be important and why?**

Item 303(a)(3) would be improved by reducing the number of periods that are required in the period-to-period comparison. With each 10-K filing, the reasons for the increase between year two and year three have previously been discussed. There is a cost to the registrant in repeating the same information again in year one. In addition, the requirement to discuss the effect of inflation on the results of operations probably exceeds the ability of many registrants’ accounting departments. Rather than adding disclosures, it would be preferable to phrase the requirements such that the registrant cannot simply present the change in line items period over period without providing meaningful explanations.

**109. Does the three-year comparison provide material information about trends or uncertainties that would not be reflected in prior periods? Should we permit registrants to omit the earliest period in the three-year comparison when the earliest of the three years does not provide information that is important to investors? What would be the advantages and disadvantages or limiting period-to-period comparisons in MD&A to the most recent fiscal periods?**

The three-year comparison forces the registrant to duplicate information that was communicated in the prior 10-K filing. We believe that the registrant should focus on the variances between the most recent fiscal periods. Reducing the requirement to a two-year comparison would help in decreasing cost of disclosure compliance and would eliminate information available in other filings.

**110. Should we allow registrants to eliminate the earliest of the two periods discussed so long as they cross-reference or include a hyperlink to the prior periods discussion in earlier Forms 10-K and 10-Q? Why or why not?**

Yes, to the extent this information is included in prior filings, it should be eliminated from the current year’s filing. To include the information again is just to restate what’s already out in the public domain. We believe this will allow the disclosures to be more focused, and it will be more useful and effective for the reader.

**111. In complying with Item 303(a)(3), registrants almost exclusively rely on period-to-period comparisons even though our rules permit “any other format that in the registrant’s judgement would enhance a reader’s understanding.” Why do registrants rely almost exclusively on year-to-year comparisons? Would formats or presentations other than period-to-period comparisons enhance a reader’s understanding of results of operations or encourage greater analysis of the income statement? If so, how? What other formats or presentations could result in a discussion and analysis of the material information necessary to an understanding of a registrant’s performance, financial condition and prospects for the future? Should we require registrants to provide the comparison in a standardized tabular format or any other format?**

We believe that part of the reason registrants rely on year-to-year comparisons is that it is a relatively effortless and not particularly time-consuming way to meet the requirement. Because of tight filing deadlines, the time and energy expended working with the outside auditor, and the volume of other disclosures required in a 10-K, accounting departments, especially smaller accounting departments, are challenged to get everything completed on timely basis. Therefore, when there is an easier way to meet the SEC’s requirements, they will take that path. As the SEC has pointed out repeatedly, just computing the percentage change year over year for each line item is not useful to readers. Providing the information in a tabular format will not lessen the use of year-to-year comparisons or enhance the amount of discussion regarding changes in line items year over year.

**112. Does the disclosure required by Item 303(a)(3) provide useful information about registrants that have not yet generated revenue or begun operations? Would additional disclosure about these registrants, such as a description of their plans of operations be more useful to investors? If so, what additional information, if any, that is not already required under Item 101(a)(2) would be useful to investors?**

For registrants that have not generated revenue, the information required by 303(a)(3) does not provide a substantial amount of useful information. For this type of entity, management should be discussing forward-looking plans for the next fiscal year. The SEC should consider that having a special requirement for a registrant that has not generated revenues would be a rules-based disclosure rather than a principles-based one.

**113. How could we revise Item 303(a) to elicit a more meaningful analysis of a registrant’s liquidity and capital resources while retaining the flexibility of registrants to analyze liquidity and capital resources in the context of their business and the way they manage liquidity?**

We believe that there needs to be a definition of capital resources in a broader context than currently implied by Item 303(a)(2)(i). That would add to a more meaningful analysis in Item 303(a). Also refer to our response to Q114.

**114. Item 303(a) provides that discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Would it lead to more useful analysis if we required registrants to provide separate disclosure of these two topics? Why? Would**

**doing so encourage greater disclosure of trends, events and uncertainties affecting capital resources?**

We would recommend that these sections be separated. In our experience, numerous registrants combine these sections to the extent expected by the Commission, even if these two sections are not interrelated. Therefore, we believe that separating these sections would increase the probability of a more thoughtful analysis of each section, without necessarily requiring more verbiage.

**115. When drafting MD&A, how do registrants currently interpret the term “capital resources”? Would defining the term “capital resources” be helpful for registrants or, alternatively, is the plain meaning of the term sufficiently clear? In light of the reference to capital expenditures and the sources of funds needed to fulfill those expenditures in Item 303(a)(2)(i), do registrants currently interpret the term “capital resources” as including mostly funds committed for material capital expenditures and the source of those funds?**

We believe that registrants interpret capital resources as material commitments for capital expenditures and the source of funds related to these commitments due to the implication of this definition in Item 303(a)(2)(i). We believe that if the Commission wants a broader definition of capital resources, it should be clearly defined.

**117. For what periods should we require discussion and analysis of liquidity and capital resources and why? Should our requirements include more periods than what is required by the statement of cash flows? Why? Are developments in the most recent fiscal year sufficient to constitute a “trend” as the term is used in Item 303?**

Similar to our previous responses, we do not believe that the earliest years of disclosure in this section are useful or read with particular interest by the investor. We do not believe that information beyond a two to three year time frame is necessary or useful. We believe that this section can be appropriately referenced to prior years, unless there is specific information that would assist in understanding the registrant’s trends in liquidity and capital resources. We believe that developments in the most recent fiscal year can be indicative of a future change in trends, but it may not rise to the level of a known trend.

**118. Should we require registrants to provide a sensitivity analysis in the discussion and analysis of liquidity and capital resources? If so, what should be the nature of such an analysis? If not, why not?**

We do not believe that providing a sensitivity analysis would be useful to an investor, since it is generally not practical to provide such analysis with sufficient precision in order to be decision-useful. We believe that requiring such disclosures would become boiler plate language in the document.

**121. Do current disclosure requirements under Item 303 elicit adequate disclosure of a registrant’s reliance on short-term borrowings?**

We believe that the current disclosure requirements under Item 303 result in adequate disclosure, especially in light of changes to FASB guidance related to accounting for repurchase financing (ASC Topic 860).

**125. Does Item 303(a)(4) elicit disclosure that is important to investors? Is this information otherwise available in Commission filings?**

Yes. We agree with the Commission that off-balance sheet arrangements are often integral to both liquidity and capital resources. Registrants should “consider all of these items together, as well as individually,” when drafting MD&A disclosure and off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities should be discussed pursuant to Item 303(a) when they are “reasonably likely to materially affect liquidity or the availability of or requirements for capital resources.”

While the assessment of impact may be difficult for registrants at times to determine, registrants can provide certain objective information regarding the total obligations under the contracts, use of resources and possibly the range of results.

Item 303(a)(4) provides that each annual and quarterly financial report filed with the Commission include disclosures about off-balance sheet arrangements. This information, however, should only be required to provide incremental changes and new items since the annual filing, and not a full restatement of all previously provided and released information.

**126. If we retain the disclosure requirements in Item 303(a)(4), should we expand the disclosure required by this item? If so, what additional disclosure would be important to investors and why? For example, should we revise our rules to require registrants to analyze the risks and financial potential associated with its off-balance sheet arrangements?**

If Item 303(a)(4) is retained, we believe that the current disclosure requirements do not need to be expanded.

**127. If we retain the disclosure requirements in Item 303(a)(4), should this information be located in MD&A, the notes to the financial statements, or both? Is the location of the disclosure important? Are there challenges associated with auditing this information?**

The requirements under U.S. GAAP should be thought of as a baseline requirement provided in the appropriate notes of the financial statements under Commitments and Contingencies, with appropriate cross referencing within the financial statements. These notes are “fact based” and not analytical, therefore the MD&A should provide the additional analysis if it is necessary for an investor to gain a better understanding.

While it may be helpful to some readers of the filings to have the information regarding these disclosures located all in one place, this may not be practical or appropriate for every registrant. While Item 303(a)(4)(i) specifies that off-balance sheet arrangements should be discussed in a separately captioned section, the instructions to Item 303(a)(4) permit that discussion to cross-

reference to information provided in the notes to the financial statements. These cross-references should be used so that the MD&A disclosure integrates the substance of the notes to the financial statements in a manner designed to inform readers of the significance of the information that is cross-referenced, rather than just repeat it.

**128. If we eliminate Item 303(a)(4), do the other requirements in Item 303 and the requirements in U.S. GAAP require adequate disclosure in terms of the location, presentation and nature of information about off-balance sheet arrangements? Would eliminating Item 304(a)(4) result in costs to investors?**

We believe that the requirements in U.S. GAAP provide adequate disclosure in terms of the location, presentation and nature of information about off-balance sheet arrangements.

**130. Should we require additional disclosure of off-balance sheet arrangements that occurred during a reporting period, such as an exhibit identifying all such arrangements?**

No.

**131. Does the table of contractual obligations present a meaningful snapshot of a registrant's cash requirements for contractual obligations? How could the format of the disclosure in the table be improved? Should we consider an alternative presentation or format for this disclosure?**

We believe the tabular disclosure of contractual obligations will not provide any material incremental information (especially in light of the new FASB ASU 2016-02 which significantly changes lease accounting and disclosure), since this information can be found in the financial statements.

**132. Should we require narrative disclosure to accompany the tabular disclosure? For example, should we require registrants to discuss how they plan to meet current and future obligations disclosed in the table? If so, what additional narrative disclosure would be useful to investors?**

We do not believe that the tabular disclosure is necessary (see our response to Q131). In addition, we believe that the liquidity and capital resources section provides sufficient requirements for registrants to discuss how they plan to meet current and future obligations.

**133. Item 303(a)(5) was intended to provide aggregated information of contractual obligations in a single location and appropriate context for investors to assess the impact of off-balance sheet arrangements with respect to liquidity and capital resources. Would narrative disclosure improve readers' ability to compare registrants by reconciling the information in the table to information elsewhere in MD&A and financial statements? Should comparability among registrants continue to be a goal? Should we continue to require this disclosure in a single location or is disclosure elicited under U.S. GAAP, in various parts of a registrant's filings, sufficient?**

Narrative disclosure may not improve the readers' ability to compare registrants and could, in fact, create nuances and make it harder to compare registrants. It is better to adhere to the disclosure of the numerical facts of the contractual obligations so that basic metrics can be developed for comparison.

**135. Would additional guidance or instructions about how to treat certain types of obligations, such as interest payments, repurchase agreements or tax liabilities, be helpful to registrants in preparing this disclosure? Would such guidance limit the intended flexibility of the rule?**

We do not believe that additional guidance is necessary.

**136. In the 2010 Liquidity and Capital Resources Interpretive Release, the Commission suggested that separating amounts in the table into those that are reflected on the balance sheet and those arising from off-balance arrangements might be useful to a clear understanding of the information presented. Should we revise Item 303(a)(5) to require registrants to separate amounts in the table of contractual obligations into those that are reflected on the balance sheet and those arising from off-balance sheet arrangements? Should we require this disclosure pursuant to some threshold amount?**

Depending on the materiality of the arrangements, it would be useful to know how much of the contractual obligations has already been reflected on the balance sheet and how much is off-balance sheet arrangements, and that should be incorporated into the financial statement disclosures.

**137. Should we revise Item 303 to require disclosure about critical accounting estimates? If so, what information would be important to investors?**

We believe that Item 303 should clarify the definition of critical accounting estimates (also refer to our response to Q138) and introduce rules similar to those proposed in 2002 (release no. 33-8098). We believe that the proposed rules address matters that would be important to investors rather than the current approach of duplicating the information already found in the financial statements.

**138. Should we define "critical accounting estimates"? If so, should the definition be based on our 2001 guidance, the definition proposed in 2002, or something else? Why? Are there any other elements to a "critical accounting estimate" that have not been captured in prior definitions?**

Yes, the definition should be based on the proposed definition in 2002. We believe that this proposed definition encompasses the key factors of a critical accounting estimate.

**139. Why do registrants repeat the discussion of accounting policies presented in the notes to the financial statements? How can we encourage registrants to eliminate repetition in MD&A of the discussion of accounting policies provided in the notes to the financial statements?**

While we cannot represent that we are aware of the reasoning behind the widespread practice of repeating the discussion in the financial statements, in our experience, this is due to a combination of the following factors: (a) this practice is utilized by others in the industry; (b) the SEC reviewers have not previously commented on it in their review of the registrant's filings; and, most importantly, (c) there is a lack of clarity around the requirements for disclosing critical accounting policies, which leads to the interpretation that "if it's good enough for the financial statements, it's good enough for the MD&A."

As noted in our response to Q138, we recommend that the Commission propose rules to clarify the expectations for the registrant's disclosure.

**140. Do registrants find the guidance for disclosing critical accounting estimates from the 2003 MD&A Interpretive Release helpful in determining whether such disclosure is required? Would it be helpful for registrants if we incorporated this or other elements of our guidance on critical accounting estimates into Regulation S-K?**

We believe it would be helpful to incorporate the interpretative guidance into regulation S-K.

**141. Should we revise our requirements to elicit more comparable disclosure among registrants? If so, how? Should we adopt prescriptive requirements relating to critical accounting estimates? Are there any accounting estimates common to a particular industry that are "critical" to all participants in that industry?**

We do not believe that comparability should be a focus because, in our experience, flexibility is necessary in such a subjective area. We also believe that there should not be prescriptive requirements because they reduce the registrant's judgment and their ability to communicate the most important factors for their company to their investors. We also note that there are certain industries where certain accounting estimates are critical (e.g., for investment companies that follow the accounting under FASB ASC 946, valuation of investments would be a critical accounting estimate to all participants).

**142. Should we require the disclosure of management's judgments and estimates that form the basis for MD&A disclosure? For example, should we require registrants to disclose the quantitative and qualitative factors that form its assessment of materiality? Should we require registrants to disclose how they assessed materiality?**

We do not believe that such disclosure would provide useful information to investors and, as such, would not recommend such a requirement.

**143. Should we require management to disclose the nature of its assessment of errors that it determined to be immaterial and therefore were not corrected?**

We do not believe that such disclosure would provide useful information to investors, and as such, would not recommend such a requirement.

**144. Should we require disclosure of other critical accounting estimates, such as those that impact other metrics or measures, such as the number of new customers or the number of subscribers?**

We do not believe that such disclosure would provide useful information to investors and, as such, would not recommend such a requirement.

**145. How could we improve risk factor disclosure? For example, should we revise our rules to require that each risk factor be accompanied by a specific discussion of how the registrant is addressing the risk?**

To improve the quality of the risk factor disclosure, registrants should prioritize their risks, and focus their disclosure on risks that could have the most significant impact on their business and operations.

**146. Should we require registrants to discuss the probability of occurrence and the effect on performance for each risk factor? If so, how could we modify our disclosure requirements to best provide this information to investors? For example, should we require registrants to describe their assessment of risks?**

Yes, a registrant should discuss the importance of each risk factor, all within the context of materiality so that investors (and other readers of the registration statements) could appreciate the relevance of such disclosure. If the key risk factor is associated directly with the operations of the business (vs. being a general economic or industry risk), the risk factor discussion should provide a cross reference to the Risk Management section that addresses how a registrant manages a particular risk.

**147. How could we modify our rules to require or encourage registrants to describe risks with greater specificity and context? For example, should we require registrants to disclose the specific facts and circumstances that make a given risk material to the registrant? How should we balance investors' need for detailed disclosure with the requirement to provide risk factor disclosure that is "clear and concise"? Should we revise our rules to require registrants to present their risk factors in order of management's perception of the magnitude of the risk or by order of importance to management? Are there other ways we could improve the organization of registrants' risk factors disclosure? How would this help investors navigate the disclosure?**

To enhance the relevance of the risk factor disclosure, the Commission should update its disclosure requirements and provide supplementary guidelines to illustrate what the registrants should do to meet the disclosure objectives. Such guidelines should include a discussion on what to disclose and the key factors that registrants should consider in evaluating the materiality and significance of risks that warrant disclosure.

**148. What, if anything, detracts from an investor's ability to gain important information from a registrant's risk factor disclosure? Do lengthy risk factor disclosures hinder an investor's ability to understand the most significant risks?**

Risk factor discussion should be well organized and concise, and it should be specific to the registrant's business. Boiler plate discussion is distracting and should be strongly discouraged. By leveraging their 10-K filing, registrants should be able to disclose all relevant risks that are most significant to their business and operations.

**149. How could we revise our rules to discourage registrants from providing risk factor disclosure that is not specific to the registrant but instead describes risks that are common to an industry or to registrants in general? Alternatively, are generic risk factors important to investors?**

Generic and boiler plate risk factor discussions are not useful to the investors. To enhance the relevance of risk factor disclosure, the Commission should update its disclosure requirements and provide supplementary guidelines to illustrate what the registrants should do to meet the disclosure objectives.

**150. Should we specify generic risks that registrants are not required to disclose, and if so, how should we identify those risks? Are there other ways that we could help registrants focus their disclosure on material risks?**

No, we believe that a discussion of generic business or industry risks should be included if it is deemed critical to the overall understanding of the registrant's business environment. For the risk factor discussion to be relevant to the investors, registrants should disclose those risks that could have a material impact on their business and operation. The Commission should update its disclosure requirements to help registrants focus their disclosure efforts on material risks.

**151. Should we retain or eliminate the examples provided in Item 503(c)? Should we revise our requirements to include additional or different examples? Would deleting these examples encourage registrants to focus on their own risk identification process?**

We believe the examples should be retained, but that they should be expanded to include other risks that are company-specific and critical to investors' understanding of the overall risk profile of the registrant (refer to our response to Q147).

**152. Should we require registrants to identify and disclose in order their ten most significant risk factors without limiting the total number of risk factors disclosed? If so, should other risk factors be included in a separate section of the filing or in an exhibit to distinguish them from the most significant risks? Alternatively, should we require registrants to provide a risk factors summary in addition to the complete disclosure? Would a summary help investors better understand a registrant's risks by highlighting certain information? Are there challenges associated with requiring a summary of the most significant risks?**

No, we do not believe it is necessary to limit the disclosure to the top 10 risks and we should leave that decision to the registrants. If a registrant is able to prioritize its key risks, as we discuss in our response to Q145, we believe that a summary will not be necessary or meaningful.

**153. Are there ways, in addition to those we have used in Item 503, our Plain English Rules and guidance on MD&A, to ensure that registrants include meaningful, rather than boilerplate, risk factor disclosure?**

To improve the quality of the risk factor disclosure, the registrants must be properly educated; in that regard, we believe the Commission should issue guidelines on compliance with the disclosure requirements, in addition to the supplementary guidance and examples provided to registrants via the SEC comment letter process.

**154. Risk profiles of registrants are constantly changing and evolving. For example, registrants today face risks, such as those associated with cybersecurity, climate change, and arctic drilling, that may not have existed when the 1964 Guides and 1968 Guides were published. Is Item 503(c) effective for capturing emerging risks? If not, how should we revise Item 503(c) to make it more effective in this regard?**

We believe Item 503(c) should be updated to include a discussion of all relevant risks, specifically emerging risks that could have a significant impact on the registrant's business or operation.

**157. Is Item 305 effective in eliciting disclosure about market risks and risk management practices that investors consider important? If not, how could Item 305 be improved?**

While we believe Item 305 is effective in eliciting disclosure about market risk, it should be updated so that such disclosure will include a balanced discussion of its potential impact on the registrant and the related action, if any, the registrant has put in place to address it.

**158. Does Item 305 result in information that allows investors to effectively assess (1) a registrant's aggregate market risk exposure, and (2) the impact of market risk sensitive instruments on a registrant's results of operations and financial condition? If not, how could we revise Item 305 to achieve these goals?**

We believe Item 305 should be updated to properly reflect the specific objectives of the Commission's revised disclosure requirements.

**169. Should we require registrants to describe their risk management processes? If so, what level of detail would be appropriate? If a registrant has no formal risk management approach or process, should we require it to describe how it monitors and evaluates risk?**

Yes, it would be helpful for registrants to describe their risk management process and specifically their plan to mitigate, monitor or address those risks that could materially impact their business and operation. If such a risk management plan does not exist, registrants must explicitly state so.

**170. Should we require registrants also to describe their assessment of any risk management process? If so, how often should such disclosure be required?**

Yes, the discussion should be annual or at any time when there is a significant change in the risk management process.

**172. Should we require registrants to disclose when risk tolerance limits or other fundamental aspects of its risk management approach are waived or changed, including any assumptions or relevant changes in business strategy that underlies the new limits or policies?**

No, as the emphasis should be placed on how the risk is being monitored or addressed.

**173. Should we require registrants to identify, if material, other “primary risk exposures” not already addressed and to disclose actions taken to manage those risks?**

Yes, if such disclosure was not already addressed in an annual filing, it should be included in the registrant’s first periodic filing following the identification of the primary risk exposure.

**174. How could we facilitate a more integrated discussion of risk exposure and risk mitigation? Should we require registrants to disclose management’s view of how material risk exposures are related and how risk mitigation actions are connected?**

We agree that there needs to be more integration between risk exposure and risk mitigation. We believe that the risk factor disclosure should comprise a discussion of its potential impact on the registrant’s business and operation, as well as the registrant’s plan and action to mitigate and address the risk. Also refer to our response to Q145 through Q147.

**175. To the extent we require disclosure of risk management and risk management processes, should we move the disclosure about the extent of a board of directors’ oversight of risk from Item 407(h) to this new requirement? Similarly, should we move compensation risk disclosure to this new requirement, or should we otherwise provide an option for compensation risk disclosure to be given in the risk management discussion rather than in the compensation discussion?**

Yes, we believe board oversight should be an integral part of the disclosure. We do not believe that changes are necessary to the compensation risk disclosure.

**176. Should we require registrants to disclose their efforts to manage or mitigate each risk factor disclosed, similar to the risk management disclosure required for market risk under Item 305(b)(1)(ii)? What are the challenges, including those associated with preparation and competitive harm, with this disclosure?**

Yes, but to avoid any unnecessary competitive harm to the registrant, such discussion should be balanced and informative, but not detailed.

**177. Would additional disclosure about risk mitigation inhibit investors’ ability to fully appreciate the significance of the risk? Would requiring a registrant to explain how it addresses a disclosed risk discourage registrants from disclosing generic or insignificant**

**risks? Alternatively, would registrants provide boilerplate disclosure about how they address less meaningful risks, thereby resulting in even longer risk factor disclosure?**

No. The registrant should be encouraged to focus its risk factor disclosure on potential risk exposures that could have a material impact on its business; such disclosure should contain a discussion of not only the relative significance of the risk but also the related risk mitigation efforts that are being contemplated or implemented.

**178. Should we require registrants to address mitigation or management of each risk factor as part of the risk management discussion? If so, should we also clarify that, although references to the general risk management discussion will not satisfy this requirement, cross-references to appropriate portions of MD&A or the financial statements will, if disclosure otherwise would be redundant?**

Yes, and we believe it is helpful to allow cross-referencing.

**179. Should we require registrants to disclose their known uncertainties about their risk management and risk management policies and how these might affect the registrant?**

Yes.

**180. Should we require registrants to provide a consolidated discussion of risk and risk management, including legal proceedings, in a single section of a filing? If so, what information should be included? How should this information be presented?**

We believe it would be useful for an investor to see a consolidated discussion of all relevant risk and risk management. However, we submit that perhaps such information would be more useful in the “general business document” (as discussed in our response to Q37), or as part of the registrant’s investor relations section on its website.

**181. How could investors benefit from a consolidated discussion of risk factors, legal proceedings and other quantitative and qualitative information about market risk and risk management? What would be the challenges of requiring such a presentation?**

One benefit is “ease in reference” when all relevant risks and exposures are grouped together in one location of the filing, such as an index of disclosures.

**216. Are there specific sustainability or public policy issues are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?**

Yes. To the extent the issues are material to the business of registrants, they should succinctly state their positions, or indicate an absence of a position or impact, and then cross reference to

the appropriate documents where Corporate Social Responsibility (CSR) and Environmental Social and Governance (ESG) reports, public policy documents, website or other information can be found.

Comprehensive sustainability frameworks already exist (the Global Reporting Initiative G4 Sustainability Guidelines and the Sustainability Accounting Standards Board, or SASB) and continue to evolve as these ideas become more mainstream in the United States and have taken root in a variety of international markets. Additional frameworks are specific to certain kinds of sustainability initiatives such as the Carbon Disclosure Project (CDP) related mostly to greenhouse gas emissions or the Global Real Estate Sustainability Benchmarks (GRESB) which is industry specific for real estate. In addition, the Financial Stability Board (FSB), of which the SEC is a member, has recently announced the formation of a Task Force on Climate Related Financial Disclosures (TCFD).

The Commission should seek to adopt or integrate these existing frameworks and not create yet another framework, and should incorporate by reference where possible. The NYSSCPA has recently formed a Sustainability Committee and is actively working to assess the direction of these evolving standards and how they can be incorporated into general practice.

It is appropriate for registrants to assess their business risks and opportunities, fair labor practices, diversity, culture and corporate governance. While these items do not always create substantial immediate profit, they do indicate what efforts a registrant is taking to be a long-term sustainable corporation seeking to operate in an environment in which it is actively managing environmental and social resources for a sustained length of time.

**217. Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant's business and financial condition? Why or why not?**

Sustainability efforts may not cost a great deal but could have a significant influence on the operations of a business which makes these initiatives so often hard to measure. Great strides have been made in the attempt to “quantify, qualify and rank” these initiatives, but it is an evolving effort. The GRI and SASB frameworks should be referred to for development of line-item requirements to the extent they are material to the business.

**218. Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their websites. Corporate sustainability reports may also be available in databases aggregating such reports. Why do some registrants choose to provide sustainability information outside of their Commission filings? Is the information provided on company websites sufficient to address investor needs? What are the advantages and disadvantages of registrants providing such disclosure on their websites? How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting? If we permitted registrants to use information on their websites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?**

We believe that there is significant variation in (a) location, (b) detail, and (c) format of the ESG matters in sustainability and corporate social responsibility reports currently provided by registrants because this is an evolving area. We believe that investors are very interested in these disclosures, however we do not believe that there is a consensus regarding integrated reporting as opposed to separate financial and sustainability reporting. Currently, we believe that only material ESG disclosures should be incorporated into the registrant's filings, however, as this area matures, we believe that there can be further improvement in order to standardize disclosures and reduce diversity.

**219. In an effort to coordinate ESG disclosures, several organizations have published or are working on sustainability reporting frameworks. Currently, some registrants use these frameworks and provide voluntary ESG disclosures. If we propose line-item disclosure requirements on sustainability or public policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?**

Refer to our response to Q216.

**221. What, if any, challenges would registrants face in preparing and providing information? What would be the additional costs of complying with sustainability or public policy line-item disclosure requirements, including the administrative and compliance costs of preparing and disseminating disclosures, beyond the costs associated with current levels of disclosure? Please quantify costs and expected changes in costs where possible.**

Some large companies are already providing this information in some fashion as a result of competition and interest in the investment community, so the incremental cost should not be significant; for example, some larger registrants already publish corporate sustainability reports on their external corporate websites. Over time, comparison of these disclosures would reveal which companies are leaders in these areas or not, and therefore, provide valuable information to investors as to the management of the company and overall corporate governance policies.

**222. If we propose line-item disclosure requirements that require disclosure about sustainability or public policy issues, should we scale the disclosure requirements for SRCs or some other category of registrant? Similarly, should we exempt SRCs or some other category of issuer from any such requirements?**

We do not believe that smaller reporting company (SRC) requirements on sustainability or public policy issues should be scaled or that SRC's should be exempt from these requirements. These disclosures can be particularly beneficial to investors in smaller registrants in providing insights into management's direction and attitudes on sustainable and public policy issues, which may not have developed separate detailed CSR or ESG reports.

**229. Should we continue to allow registrants to omit schedules and attachments for exhibits filed under Item 601(b)(2)? Why? If so, what qualitative or quantitative factors should be considered when determining if omission is appropriate?**

Yes, registrants should continue to be permitted to omit schedules and attachments for exhibits filed under Item 601(b)(2) relating to plans of acquisitions, reorganizations, etc. Judgment should be exercised with respect to the materiality and significance, and whether the information is disclosed elsewhere by the issuer.

**230. Should we allow registrants to omit immaterial schedules and attachments from their filed exhibits? If so, should we expand this approach to all exhibits, or should we limit it to material contracts filed under Item 601(b)(10)? Should we provide examples or other guidance on how registrants could evaluate materiality for purposes of including schedules and attachments? If so, what type of guidance would be most useful for assessing the importance of the information (e.g., quantitative thresholds, qualitative factors)? What would be the potential benefits and challenges associated with such an approach? If registrants omit schedules and attachments based on immateriality, should we require registrants to disclose how they assessed materiality for these purposes?**

Registrants should be allowed to omit immaterial schedules and attachments for all exhibits. Guidance for considering materiality should be provided based on measurements commonly in use. Consideration needs to be given to qualitative factors, as well. How materiality was assessed should not be a required disclosure.

**231. If we allow the omission of immaterial schedules and attachments from all or certain filed exhibits, should we require registrants to include with such exhibits a list briefly identifying the contents of all omitted schedules, together with an agreement to provide a supplemental copy of any omitted schedule to the Commission upon request, similar to the requirement in Item 601(b)(2)?**

A list of the contents of omitted immaterial schedules and attachments should not be required.

**232. Schedules and attachments to exhibits sometimes contain personally identifiable information (“PII”), and registrants may request confidential treatment of that information. Division staff generally does not object to the omission of PII from exhibits without a formal confidential treatment request, provided the registrant does not omit any other information from its exhibits. If we retain the requirement for registrants to file schedules and attachments to exhibits, should we codify current staff practice and permit registrants to omit PII without making a formal request under Rule 24b-2 of the Exchange Act? Should we limit such an accommodation to information contained in schedules and attachments to exhibits, or should we expand it to all exhibit filings?**

Current staff practice permitting registrants to omit personally identifiable information from exhibits without making a formal request should be codified, and should be expanded to all exhibit filings and not limited to information contained in schedules and attachments.

**233. Should we continue to require registrants to file all amendments or modifications to previously filed exhibits as required under Item 601(a)(4)? Should we instead amend Item 601(a)(4) to exclude immaterial amendments? If so, should we provide guidance to registrants about how to determine whether an amendment is immaterial? Instead of**

**materiality, should we permit registrants to exclude amendments based on a different standard? If so, what standard would be appropriate?**

Item 601(a)(4), requiring registrants to file all amendments or modifications to previously filed exhibits should be amended to exclude immaterial amendments.

**234. Does an amendment-only exhibit provide investors with the information they need to evaluate the impact of the amendment on the registrant? Should we instead require registrants to file a complete, amended and restated agreement each time an exhibit is modified, consistent with the requirement for amendments to articles of incorporation and bylaws? If so, should we require registrants to identify changes in the amended and restated contracts such as by underlining or highlighting the changes? Would complying with such a requirement be more burdensome for agreements than for articles of incorporation or bylaws? If so, why?**

Registrants should not be required to file complete amended and restated agreements each time an exhibit is modified. Only the amendment, accompanied by an explanation where deemed helpful, should be required.

**235. Should we eliminate Instruction 1?**

Instruction 1 to Item 601 of Regulation S-K should be eliminated and exhibits that previously omitted certain information should be re-filed to insert such information in order that the exhibits may be incorporated by reference in any subsequent filings.

**239. Does “not made in the ordinary course of business” provide a clear standard for agreements covered by the rule? Should a different standard to apply? Should we revise Item 601(b)(10)(i) to define the types of contracts not made in the ordinary course of business that companies are required to file as exhibits? If so, how should we define such contracts?**

It would be helpful to provide examples of contracts “not made in the ordinary course of business.”

**240. Item 601(b)(10)(i) requires registrants to file material contracts that either (i) are to be performed in whole or in part at or after the filing of the periodic report, or (ii) were entered into not more than two years before such filing. This requirement was enacted in the context of requiring material contracts for newly reporting registrants that were entered into within the last two years but may have been fully performed before the period covered by the report. Do such contracts continue to be important to investors? Should we limit subparagraph (ii) to newly reporting registrants? For registrants that are already subject to reporting requirements, should we eliminate subparagraph (ii) and require registrants to file only material contracts that are to be performed in whole or in part at or after the filing of the report? Should we revise Item 601(b)(10)(i) to require all material agreements to be filed regardless of when they were entered into, as long as such**

**agreements remain material to the registrant? Under what circumstances could a contract remain material to a registrant if it has been fully performed in a prior period?**

We do not believe that contracts should be filed as exhibits. We believe that investors do not read the actual contracts included as exhibits, however they are generally interested in any material impact due to any new or modified contracts. Information about material contracts should continue to be disclosed by the registrant in various filings.

**241. Should we expand Item 601(b)(10)(ii) to include other types of contracts that, although made in the ordinary course of business, should be filed?**

No, Item 601(b)(10)(ii) should not be expanded to include other types of contracts that, although made in the ordinary course of business, should be filed.

**242. Should we revise our overall approach to Item 601(b)(10)(ii) and if so, how? Rather than specifying categories of contracts, is there an alternative approach that would appropriately capture those ordinary course contracts that are important to investors? For example, should we replace the current requirements in Item 601(b)(10)(ii)(A)-(D) with a requirement for registrants to file all ordinary course contracts entered into (i) since the beginning of the last fiscal year, (ii) that exceed a percent of some measure, such as revenue or net income and (iii) where the registrant has a direct or indirect material interest? If we took this approach, how should we establish the relevant time frame and percentage threshold and what measures should we use? What would be the benefits and challenges of such an approach?**

The approach to Item 601(b)(10)(ii) should be revised to require only disclosure in the appropriate filing(s) of significant, material provisions of all contracts. There should be no requirement to file entire contracts.

**244. Is “immaterial in amount or significance” a helpful standard by which to determine when a contract need not be filed? How do registrants currently apply this standard? Should we revise the item to provide guidance on the meaning of that phrase? Is it possible for contracts to be material in amount but not in significance? Should we revise the item to exclude only contracts that are immaterial in amount *and* significance? Would it facilitate compliance if we revised Item 601(b)(10)(ii) to state in the affirmative that registrants must file all material contracts made in the ordinary course of business that fall within one or more of the categories listed?**

Yes, “immaterial in amount or significance” is helpful when determining when a contract need not be filed. Guidance should be issued that is consistent with any other guidance on the subject being issued, and should be based on commonly used metrics, including percentages of total assets or revenues, along with qualitative factors.

**245. Item 404(a) of Regulation S-K requires disclosure of any related party transaction since the beginning of the registrant’s last fiscal year if the amount involved exceeds \$120,000. Unlike this bright-line disclosure threshold in Item 404(a), Item 601(b)(10)(ii)(A)**

**generally requires registrants to file related party contracts as exhibits unless immaterial in amount or significance. Do the two different disclosure thresholds provide investors with the information they need to evaluate related party contracts? Should we revise Item 601(b)(10)(ii) to require registrants to file as exhibits all contracts involving related party transactions disclosed pursuant to Item 404(a)? What would be the benefits and challenges associated with such a revision?**

Any requirements to file related-party contracts should be deleted. Information on material related-party transactions is, and should be, disclosed. In addition, the requirement in Item 404(a) of Regulation S-K to disclose related-party transactions in excess of \$120,000 should be replaced by a requirement for disclosure of material related-party transactions.

**248. Should we revise Item 601(b)(10)(ii)(B) to provide qualitative or quantitative standards for what constitutes “substantial dependence”? Should we define the term “major part” in addition to or in lieu of defining “substantial dependence”? What factors should we consider in developing definitions or quantitative thresholds? What other alternatives should we consider to clarify which contracts must be filed under Item 601(b)(10)(ii)?**

Qualitative and quantitative standards for what constitutes “substantial dependence” should be provided, together with illustrations, in an effort to achieve some degree of consistency in information filed.

**251. Should we revise Item 601(b)(10)(ii)(C) to either increase or decrease the fifteen percent threshold for exhibits relating to acquisitions of property, plant or equipment? Should the threshold continue to be based on fixed assets? Alternatively, should we eliminate the threshold in favor of a principles-based requirement, such as “material” or “significant” acquisitions of property, plant or equipment?**

Again, there should not be a general requirement to file contracts. Information should be disclosed on material asset acquisitions, property, plant and equipment, and other. A threshold of 15% certainly seems to be satisfactory, but perhaps it should be 10% or some other number. Before setting a bright-line, the entire issue of materiality, significance, and qualitative and quantitative considerations should be addressed again.

**253. Given the development of auditing and accounting standards over the past 40 years, including the adoption of more prescriptive standards such as SFAS No. 154 and AS No. 6, do preferability letters continue to provide incremental information to investors that is not otherwise available in either the auditor’s opinion on the annual financial statements or in the notes to the interim financial statements? If so, is this incremental information important to investors and how could it be improved?**

We do not believe that preferability letters provide incremental information to investors beyond the information available in the auditor’s opinion or in the notes to the financial statements, and are no longer needed for their original intent.

**255. Should we eliminate Item 601(b)(18) in light of the current requirements under U.S. GAAP and the PCAOB’s auditing standards? When a change in accounting principle is material, is an auditor’s report without a qualified or adverse opinion sufficient to convey the independent accountant’s conclusion that the registrant has justified the change to be preferable? Would eliminating the exhibit requirement affect the independent accountant’s analysis of whether an accounting change is preferable?**

Yes, Item 601(b)(18) should be eliminated in light of current U.S. GAAP requirements and PCAOB auditing standards.

**256. Would it be more appropriate for the independent accountant to indicate in the auditor’s report whether a change in accounting principle is to an alternative principle that in the auditor’s judgment is preferable under the circumstances?**

As noted in our response to Q-253, we do not believe that preferability letters provide an appreciable amount of usefulness to investors, and therefore it should be eliminated. We believe that with the adoption of SFAS 154 and AS6, investors have sufficient information in the notes to the financial statements regarding any changes in accounting principles. In addition, we believe that while an auditor’s report should include an “emphasis” paragraph if the change in accounting principle is material –we do not believe that the auditor should opine on whether the change in accounting principle is preferable under the circumstances.

**257. Should we revise Item 601(b)(21) to eliminate the exclusions and require registrants to disclose all subsidiaries? What would be the benefits and challenges associated with this alternative?**

No, Item 601(b)(21) should not be revised to eliminate exclusions and require disclosure of all subsidiaries.

**258. Should we expand the exhibit requirement to include additional disclosure about the registrant’s subsidiaries? What additional information would be important to investors and why?**

No, the exhibit requirement should not be expanded to include additional information about the registrant’s subsidiaries.

**259. Should we require registrants to include an organization or corporate structure chart or similar graphic depicting their subsidiaries and their basis of control? How could such a graphic facilitate investors’ understanding of a registrant’s corporate structure? Should we require this chart or graphic as an exhibit or in the text of the annual report? What would be the challenges associated with this approach?**

No, an organizational or corporate structure chart should not be required. In many, if not most instances, it would only cause unnecessary confusion and would not be useful.

**260. For purposes of identifying which subsidiaries a registrant may omit from the exhibit, Item 601(b)(21) relies on the definition of “significant subsidiary” in Rule 1-02(w) of Regulation S-X. Does this definition appropriately exclude subsidiaries that are not important to investors? Does it exclude any subsidiaries that should be included? Should we consider a different definition or test for excluding certain subsidiaries from the exhibit? If so, what factors should we consider?**

The definition of “significant subsidiary” in Rule 1-02(w) of Regulation S-X is satisfactory for purposes of identifying which subsidiaries a registrant may omit from an exhibit, as addressed in Item 601(b)(21).

**264. In the context of registered offerings, the Commission has determined that certain types of issuers are unsuited for short-form registration or disclosure-related relief. These issuers include reporting companies that are not current in their Exchange Act reports, issuers that may raise greater potential for abuse (such as blank check and shell companies) and issuers that have violated the anti-fraud provisions of the federal securities laws. Are there types of registrants that would meet the current criteria for scaled disclosure but are unsuited for providing such disclosure? If so, which issuers and why? Should we exclude certain types of registrants from the use of scaled disclosure and if so, what should be the criteria (e.g., failure to timely file, subject to enforcement actions for disclosure violations or fraud, being an “ineligible issuer” as defined under Rule 405 of the Securities Act or disqualified under Regulation A or Regulation D) and the time period of exclusion?**

We believe that in order to offer sufficient protection to investors, registrants that have been found to have engaged in fraud should not be eligible for scaled disclosure requirements. We find that “failure to file timely” or “enforcement action for disclosure violations” are often signs that a company has trouble meeting even the reduced requirements, and therefore, such occurrences should not be used as criteria for scaled disclosure eligibility.

**265. Should we tie eligibility for scaled disclosure to a certain proportion of companies, such as companies in the lowest one percent of total U.S. market capitalization or the lowest six percent of total U.S. market capitalization, as previously recommended by the ACSPC?**

We believe that eligibility for scaled disclosure should be tied to a percentage of the total U.S. market capitalization as suggested by the Advisory Committee on Smaller Public Companies (ACSPC), which would make a greater number of companies eligible for scaled disclosure.

**266. Should we allow one or more categories of larger companies, such as companies with a longer reporting history or more readily available public information to benefit from scaled disclosure requirements as a means of reducing compliance costs?**

We do not believe that companies with a longer reporting history or with more readily available public information should benefit from scaled disclosure requirements as a means of reducing compliance costs. In order to ensure comparability and consistency of public information across

companies that is available to investors, disclosure requirements should not be reduced to save costs if the company does not meet any of the criteria for scaled disclosure.

**267. The benefits of disclosure may be greater for smaller registrants because information asymmetries between investors and managers of smaller companies are typically higher than for larger, more seasoned companies with a large following. However, disclosure requirements may impose disproportionate costs on smaller registrants, especially if these requirements impose fixed rather than variable costs. To what extent are the costs imposed by our disclosure requirements fixed costs that do not scale with the size of a registrant?**

We believe that most costs associated with disclosure requirements scale with the size of a registrant. Nonetheless, the requirements impose disproportionate costs on smaller registrants because smaller registrants often do not have the “bare minimum” infrastructure (i.e., processes, technology and staff) to produce the required information. The procurement, implementation and training related to this bare minimum infrastructure present a major hurdle for smaller companies.

**268. Are there any disclosure requirements for which scaling is not appropriate?**

We believe that disclosure requirements that provide basic information about the background, performance and risks of the company should not be scaled. Therefore, we believe that Business Description (Item 101), Risk Factors (Item 503(c)), and MD&A disclosure requirements should be the same for all filers and not scaled. Investors should receive a proper description of the registrant including a discussion of seasonality and working capital resources, which can be very impactful to a smaller business with limited cash availability. Investors should also obtain an understanding of the risks associated with the company. Given that SRCs have less information available to the general public than larger filers, and are exempt from various disclosures required of larger companies, the investors are at a disadvantage in assessing the risks associated with such companies without this disclosure.

**270. Are there disclosure requirements that are particularly beneficial for investors in smaller registrants? For example, are there disclosure requirements that elicit information that is not as readily available outside of smaller registrants’ filings although this information might be readily available outside of a filing for larger or more seasoned companies? If so, which requirements and why? Does the information elicited from smaller registrants by these disclosure requirements appropriately consider the costs of these requirements to these smaller registrants?**

Of the currently required disclosures for SRCs, we believe that the MD&A section is particularly beneficial for investors in smaller registrants, as such analysis is not otherwise available to them. This is in contrast to larger companies, whose business transactions and industry developments receive more analyst and press coverage. We do not believe that such requirements would be unduly harsh or cost prohibitive to smaller firms.

**271. Are there additional item requirements that we should consider scaling for SRCs? Are there any current scaled disclosure requirements that we should scale further or eliminate entirely?**

We do not believe that the benefits of further scaling of disclosures for SRCs would outweigh the costs to an investor.

**272. Should we allow EGCs to take advantage of the scaled disclosure requirements currently available only to SRCs, such as the less extensive requirements for the description of business set forth in Item 101(h) of Regulation S-K or the elimination of the contractual obligations table available under Item 303(d) of Regulation S-K?**

We believe that since EGC's can be registrants with less than \$1 billion of gross revenues, their size and resources could far exceed the "normal" SRC, and therefore, we do not recommend that EGCs have the ability to take advantage of the scaled disclosure requirements currently available only to SRCs.

**273. Should we reorganize Regulation S-K, as recommended by one commenter, to group the requirements related exclusively to SRCs together under separate headings? Why or why not?**

SRC requirements should not be grouped separately. It is informative for SRCs to view the full disclosures first, so that they may make preparations for meeting these requirements in the future and within the same chapter to view the scaled requirements for an SRC.

**274. Should we eliminate or reduce the XBRL tagging requirements for SRCs? What, if any, XBRL tagging should we require of SRCs?**

XBRL tagging requirements should not be reduced or eliminated for SRCs. XBRL tagging was introduced to create consistency in definitions used in business and financial reports worldwide. If any companies are exempt from using XBRL, their reports will not be readily comparable to other reports, thereby leading investors to assign a greater risk profile to these companies. Furthermore, once these companies phase out of SRC status, their reports would have to be tagged for XBRL but would not be readily comparable to historical reports issued.

**275. Should we permit SRCs to exclude disclosure that would be responsive to specific items in Regulation S-K from their periodic reports if such disclosures are not material? Should we permit SRCs to omit all such disclosure or should we limit this accommodation to specific items in Regulation S-K?**

Yes, immaterial disclosures should be permitted to be excluded from periodic reports for SRCs. This would alleviate some of the compliance costs—which is the goal of the Commission—and since these disclosures are not material, their exclusion should not be detrimental to investors.

**278. Do investors, registrants and the markets benefit from quarterly reporting? What are the benefits and costs to investors, registrants and the markets from the current system of**

**quarterly reporting? Should we revise or eliminate our rules requiring quarterly reporting? Why or why not?**

Quarterly reporting is useful for investors, as it provides insight into developments especially at companies that are in the growth stage and which often have significant transactions or strategic shifts in every quarter. We believe smaller and newer companies are often less stable than larger companies, and are likely to be more severely impacted by changes in industry, economy, policy and business environment, and within a shorter time frame. It is important to keep investors informed of current business developments and their impact on the business in a timely manner. Therefore, we believe all companies should report on a quarterly basis despite the fact that reductions in periodic filings would bring significant cost savings to smaller companies. The costs of quarterly reporting are both related to compliance costs for registrants, as well as a potential for management to “manage” their performance on a quarter-to-quarter basis. While these costs are important considerations, we believe that the benefits of quarterly reporting outweigh the costs.

**279. Should the reporting requirements be different for different types of registrants? Should we consider permitting SRCs to file periodic reports on a less frequent basis, such as semi-annually? If so, what disclosures should we require in those reports?**

We do not recommend exempting all SRCs because the lack of timely information to investors would cause uncertainty and increase the risk profile of these companies. Both of these factors could negatively affect the stock price and liquidity for these companies. SRCs are typically in a high growth stage, and we believe that quarterly reporting is necessary to provide investors with a timely picture of the company’s performance and direction.

**280. Should we allow other categories of registrants to file periodic reports on a less frequent basis, such as semi-annually? If so, which categories of registrants should be permitted to file less frequently, and what disclosure should be required?**

We do not believe that there are any categories of registrants that should be allowed to file periodic reports on a less frequent basis.

**281. Should we require certain registrants to file periodic reports on a more frequent basis such as monthly?**

We do not believe that monthly reporting adds enough value for investors that could justify the costs of compliance.

**282. Should we consider reducing the level of disclosure required in the quarterly reports for the first and third quarters? If so, what disclosure should we require in these abbreviated quarterly reports? Should the disclosure requirements for SRCs be the same as those that apply to other categories of registrants?**

No, we believe that reporting should be consistent across quarters.

**283. Do quarterly reporting obligations influence the strategic goals and timelines of registrants' management? Do quarterly reporting obligations help or hinder long-term decision making by registrants?**

Quarterly reporting obligations may indeed influence the strategic goals and timelines of management. However, we believe that timely delivery of information to investors should be the primary guide, with respect to any revisions to interim reporting requirements.