



July 21, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Concept Release, Business and Financial Disclosure Required by Regulation S-K [File No. S7-06-16]

Dear Mr. Fields:

The Financial Services Roundtable (“FSR”)¹ appreciates the opportunity to respond to Release Nos. 33-10064 and 34-77599 (April 13, 2016) (the “Concept Release”) issued by the Securities and Exchange Commission (the “Commission”) and agrees with the Commission and its staff (the “Staff”) on the importance of modernizing business and financial disclosures required under Regulation S-K.

FSR commends the Commission for initiating a comprehensive evaluation of disclosure requirements and assessing the costs of disclosure against investor protection. FSR supports the Commission’s adoption of a principles-based approach to Regulation S-K reforms, as opposed to an inflexible disclosure regime. Above all, FSR supports reforms to Regulation S-K that will allow registrants to disclose information to the market more efficiently, while providing investors with greater access to material information that more readily facilitates informed investment and voting decisions.

¹ As *advocates for a strong financial future*TM, FSR represents the largest integrated financial service companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO.

I. Executive Summary

A. Disclosure of Intellectual Property Rights under Item 101(c)(1)(iv)

To honor the recently enacted Defend Trade Secrets Act of 2016 and to recognize the importance of trade secret protection, FSR recommends that the Commission decline expanding Item 101(c)(1)(iv) to include new disclosure requirements relating to trade secrets.

B. Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) Disclosure under Item 303

1. FSR supports the Commission’s consolidation and restatement of MD&A guidance into a single source, given the volume of Commission and Staff guidance already available.
2. FSR recommends that the Staff provide systemic guidance where it has developed a position on a specific issue that is used to guide comment letters to individual registrants.
3. FSR supports a principles-based approach to disclosure and therefore recommends that the Commission continue to apply a standard of materiality for disclosure in MD&A. To the extent that the Commission adopts a different disclosure standard, FSR recommends that the Commission apply qualitative, rather than a quantitative, thresholds to any new disclosure requirements.
4. FSR supports the Commission’s removal of disclosure requirements under Item 303 that duplicate disclosure already required under Regulation S-X.
5. To the extent that the Commission promulgates new MD&A disclosure requirements relating to specific economic events, FSR recommends that such guidance reflect appropriate sunset provisions.

C. Disclosure of Risk under Items 305 and 503(c)

1. FSR supports a streamlined approach to the disclosure of risk and risk management, whereby disclosures made under Items 305 and 503(c) are presented to investors in a single section to reduce repetition and enhance the ability of investors to appreciate fully all material risks.

2. FSR supports the Commission’s initiative to eliminate generic, non-specific risk disclosure under Item 503(c) by specifying generic risks that registrants generally would not be required to disclose.

D. Exhibits Required Under Item 601

FSR supports the Commission’s initiative to modify and/or eliminate certain exhibits required in current, quarterly and annual reports filed under the Exchange Act, based on the costs of preparing and disseminating these exhibits as compared to their minimal benefit to investors.

E. Industry Guides

FSR supports the Commission’s initiative to update Industry Guides. FSR recommends that the Commission review Industry Guide 3 requirements as compared to disclosure requirements under Basel Pillar 3 reports required of certain bank holding companies. FSR also recommends that the Commission harmonize Industry Guide 6 with current accounting standards under U.S. GAAP.

II. Disclosure of Intellectual Property Rights under Item 101(c)(1)(iv)

To honor the recently enacted Defend Trade Secrets Act of 2016 (“DTSA”) and to recognize the importance of trade secret protection, FSR recommends that the Commission decline expanding Item 101(c)(1)(iv) to include new disclosure requirements relating to trade secrets.²

Trade secrets are the proprietary information of a company and reflect research investments and information collected over months and years at the company’s expense. Companies derive great economic value from maintaining the confidentiality of their trade secrets. Requiring registrants to increase disclosure of trade secret information would not only harm registrants, but would allow competitors to take advantage of the work of trade secret owners thereby discouraging innovation and economic growth.

Congress recently recognized the importance of trade secret protection through the enactment of the DTSA, which provides trade secret owners with a federal civil right of action for trade secret misappropriation and passed the U.S. House of Representatives and Senate with overwhelming bipartisan support. For these reasons, FSR encourages the

² See Concept Release Question 42.

Commission to avoid taking a position that would counter the intent of the policymakers and urges the Commission to decline adding new disclosure requirements relating to trade secrets.

III. MD&A Disclosure under Item 303

Guidance Consolidation

FSR supports the Commission's consolidation and restatement of MD&A guidance into a single source, given the volume of Commission and Staff guidance already available.³ The consolidation and restatement of MD&A guidance would not only reduce the time and effort necessary for registrants to identify, retrieve and assess all relevant sources in order to understand the Commission's current position on a given issue, but would also improve the overall quality of MD&A disclosure, thereby promoting more widespread compliance among registrants while improving investor understanding through better disclosure.

FSR proposes that the Commission and Staff consolidate currently effective guidance of the Commission and its Staff with respect to MD&A. Through the Commission's clarification of now-available guidance, both registrants and investors would benefit from a clear understanding of the expectations required with respect to MD&A disclosure. FSR proposes that the Commission consolidate Commission and Staff pronouncements and positions with respect to MD&A, including, but not limited to, speeches made by the Staff, no-action or interpretive letters and comment letters issued in connection with the Division of Corporation Finance's review and comment process.

To consolidate guidance and ensure MD&A compliance among registrants, FSR recommends that the Commission and/or Staff provide, in a single, electronically-accessible location, all sources that it currently deems authoritative with respect to Item 303 of Regulation S-K. This consolidation would promote understanding among registrants, encourage transparency in the Commission's and the Staff's interpretive views and improve quality of MD&A disclosure. The consolidation of this guidance would cost little to the Commission, and could be easily integrated into the Commission's existing electronic resource infrastructure.

To the extent that the Commission wishes to consolidate all prior guidance comprehensively and completely, FSR recommends that the Commission amend and restate Item 303, or otherwise codify in Regulation S-K Staff-level guidance with respect to MD&A.

³ See Concept Release Question 90.

FSR recommends that the Staff provide systemic guidance where it has developed a position on a specific issue that is used to guide comment letters. Under the current scheme, registrants often must divine the Commission's position through comment letters received. Broad, systemic dissemination of such guidance would ensure that all registrants have immediate access to the Commission's most up-to-date MD&A disclosure standards. A systemic approach to disseminating guidance would facilitate better disclosure, result in more consistent compliance with Item 303 and expedite the Commission's comment process.

Materiality

FSR supports a principles-based approach to disclosure, and therefore recommends that the Commission continue to apply materiality as the standard governing disclosure in MD&A.⁴ Mindful of the investor need for clearly-presented, material information, FSR recommends that the Commission take affirmative steps to eliminate MD&A disclosure that is not material.⁵ In particular, FSR recommends that the Commission amend Item 10 of Regulation S-K to allow registrants to omit certain information from MD&A (among other Items included in filings to the Commission), even if disclosure is otherwise specifically required pursuant to a Regulation S-K Item, if such information is not material and the inclusion of such information is not necessary to make any required statements not materially misleading.

To the extent that the Commission adopts a different MD&A disclosure standard, FSR recommends that such a standard take into account qualitative, rather than quantitative, thresholds for purposes of requiring disclosure.⁶ Should the Commission adopt a new MD&A disclosure standard, FSR recommends that the Commission take into account the materiality standards considered or adopted by FASB, IASB and PCAOB.

FSR recognizes that disclosure pursuant to Item 303 should allow for comparability of information among registrants, but should also be comprehensive so as to provide a complete picture about a particular registrant's financial position. FSR believes that while strict, quantitative thresholds for purposes of MD&A disclosure requirements may lead to consistent disclosure, it may unnecessarily yield voluminous disclosure that blurs insight into a registrant's financial position, and is ultimately unhelpful to investors. FSR believes that uniform, quantitative disclosure thresholds fail to facilitate disclosure of the particularized risks and trends encountered by registrants in

⁴ See Concept Release Questions 88 and 89.

⁵ See Concept Release Question 93.

⁶ See *id.*

their respective industries. To the extent that the Commission adopts an MD&A disclosure standard that replaces materiality, that standard should provide qualitative thresholds that provide enough flexibility for registrants to describe the risks and trends that are particular to their respective industries, without requiring discussion of subject matter that provides little informational value to investors.

FSR recommends that the Commission introduce the option of an executive-level overview to preface a registrant's MD&A. Such overviews, to preface the more detailed MD&A disclosure that follows, would provide investors with a "snapshot" of a registrant before requiring an investor to examine that registrant's performance at a more granular level within the MD&A.⁷ To ensure that these executive summaries provide investors with the information most material to investment and voting decisions, FSR recommends that such overviews include a discussion of management's most significant accounting estimates and judgments.

Reducing Redundancy

FSR recommends that the Commission remove disclosure requirements under Item 303 that are duplicative of disclosures already required under Regulation S-X.⁸ FSR proposes that, where a registrant's financial statements and notes to the financial statements include disclosure that is responsive to Regulation S-K items, a registrant should be permitted to include a cross-reference to the relevant financial statement to satisfy the Regulation S-K requirement if it determines that the cross-reference is appropriate. In particular, FSR notes that Items 301(a)(1), (4) and (5) require disclosure in MD&A of items that are usually found in the financial statements. Rather than require disclosure in MD&A, these three provisions should expressly allow for a registrant to cross-reference to responsive disclosures already made in the financial statements.

Commission Responses to Market Developments

To the extent that the Commission releases new MD&A guidance relating to, or in response to, particular economic events, FSR recommends that such guidance include appropriate sunset provisions that expire in no more than five years.⁹ At the expiration of the sunset period, FSR recommends that the Commission perform a "sunset review" of that guidance before its adoption as a permanent disclosure requirement.

⁷ See Concept Release Question 91.

⁸ See Concept Release Question 88.

⁹ See Concept Release Question 1.

FSR recommends that, in the course of sunset review of guidance, the Staff determine the effectiveness of expiring guidance by surveying market participants. In particular, FSR recommends that the Staff survey both retail and institutional investors to determine whether the guidance in question yielded material disclosure that facilitated investment and/or voting decisions. FSR proposes that after this sunset review, but before adopting a permanent disclosure rule, the Staff should present to the Commission a publicly-reviewable document that summarizes its findings regarding the effectiveness of such guidance.

IV. Disclosures Regarding Risk and Risk Management under Items 305 and 503(c)

FSR supports a streamlined approach to the disclosure of risk and risk management, whereby only material and specific risks related to a registrant are disclosed in a single section to reduce repetition. To encourage more concise disclosure of risks generally encountered by financial-institution registrants, FSR recommends that the Commission allow for a single disclosure of market-risk exposure that satisfies both Items 305 and 503(c).¹⁰ To encourage streamlined risk disclosure, FSR recommends that any changes to risk-related disclosure requirements are accompanied by a rule-based safe-harbor that would protect against liability that would otherwise arise on account of a registrant's less detailed disclosure of risk.

Risk Factors under Item 503(c)

FSR recommends that the Commission take steps to eliminate the disclosure of generic, non-specific risk factors in Securities Act and Exchange Act filings.¹¹ To that end, FSR recommends that the Commission work with its staff economists and the U.S. Government Accountability Office to identify generic risks that are (i) common among registrants across all industries and (ii) common among registrants in particular industries.

Upon identifying generic risk factors common to all registrants and particular industries, FSR recommends that the Commission publish guidance or promulgate instructions to Item 503(c) that identify these generic risk factors. By eliminating the need to disclose generic risks, the Commission would encourage registrants to devote their efforts to disclosing particularized risk factors that would receive more attention from investors not otherwise distracted from generic risk disclosure. In addition, eliminating the time and effort needed to disclose generic risks would encourage

¹⁰ See Concept Release Questions 147 and 158.

¹¹ See Concept Release Questions 149 and 150.

registrants to devote time to more fulsome discussion of industry and/or business-specific risks, thereby promoting more informed investment and/or voting decisions by investors.

Quantitative and Qualitative Disclosures about Market Risk

FSR recommends that the Commission amend Item 305 to elicit better, less costly disclosure about registrants' market risks and risk management practices.¹² Under the current Item 305 disclosure scheme, registrants' analysis and description of their own data may provide investors with an insufficient sense of actual market risk, particularly since many registrants hold complex and evolving derivative instruments. Inadequacies in the summary of such data may also expose registrants to liability. The process of summarizing data for purposes of disclosure is also time-intensive and costly for registrants to disclose.

FSR notes that Item 305 requires disclosure using a "one-size-fits-all" model, and that Item 305's prescriptive approach does not take into account other market-risk factors that may be more relevant to a particular registrant. FSR proposes a new approach to disclosure pursuant to Item 305, whereby registrants are able to formulate their own market-risk scenarios to create a more realistic impression of risk that investors may face. To the extent that the Commission allows registrants to formulate their own market-risk scenarios, FSR recommends that the Commission adopt more flexible Item 305 tabular presentation requirements to better reflect the differences among market-risk scenarios used by each registrant.

V. Exhibits Required under Item 601

FSR supports the Commission's initiative to modify and/or eliminate certain exhibits required in current, quarterly and annual reports filed under the Exchange Act, given the costs to registrants to prepare and disseminate these exhibits.¹³ In particular, FSR offers two examples of currently-required exhibits that could either be modified or eliminated: (i) computation of ratio of earnings to fixed charges and (ii) immaterial compensation exhibits.

With respect to exhibits regarding the computation of ratio of earnings to fixed charges, FSR notes that offering memoranda for unregistered, high-yield bond offerings typically do not include a computation of an issuer's ratio of earnings to fixed charges, as the market does not require it, and the ratio may be calculated from other available

¹² See Concept Release Question 157.

¹³ See Concept Release Questions 224 and 228.

information. FSR therefore believes that such exhibits can be eliminated entirely from Exchange Act reports.¹⁴

FSR further encourages the Commission to eliminate any required exhibits that are compensation-related and may be immaterial, especially when a registrant may have already disclosed the information in a previously-filed proxy statement. FSR notes to the Commission that a seemingly disproportionate number of exhibits required to be filed in Exchange Act reports are compensation-related and often immaterial to investors.

VI. Industry Guides

FSR supports the Commission's initiative to update Industry Guides. In particular, FSR recommends that the Commission update Industry Guide 3 relating to bank holding companies and Industry Guide 6 relating to property-casualty insurance underwriters.

FSR recommends that the Commission review Industry Guide 3 requirements as compared to disclosure requirements under Basel Pillar 3 reports required of certain bank holding companies.¹⁵ As a threshold matter, FSR notes that Industry Guide 3 has not been materially updated since its publication in 1976. An updated Industry Guide 3 could provide applicable registrants with guidance that take into account the streamlined and more up-to-date disclosure requirements related to credit risk exposure and credit risk mitigation techniques set forth under Basel Pillar 3.

FSR further recommends that the Commission review Industry Guide 6 requirements that apply to property-casualty insurance underwriters.¹⁶ In its current version, Industry Guide 6 requires property-casualty insurance underwriters to use a 10-year consolidated-loss development table in MD&A. In May 2015, however, the FASB issued ASU 2015-09, which expands the breadth of disclosures that an insurance entity must provide about its short-duration insurance contracts. That ASU gives rise to accounting disclosure requirements that differ in key respects from the tabular disclosures required under Industry Guide 6. Among other things, these differences include:

¹⁴ FSR notes that the exhibit requirements set forth under Item 601(b)(12) relate to ratios that must be disclosed in a registration statement or report under Item 503(d). FSR recommends that the Staff separately consider simplifying disclosure requirements under Item 503(d). *See* Concept Release at 273, note 901.

¹⁵ *See* Concept Release Question 209.

¹⁶ *See* Concept Release at 195, note 630.

1. The disclosures required under the ASU are intended to provide claim information by accident year instead of tracking subsequent activity associated with a given reporting year's year-end reserves.
2. Amounts presented under the ASU are not aggregated, while those presented pursuant to Industry Guide 6 are aggregated.
3. The ASU does not require disclosure of information for 10 years; rather, the periods presented need not exceed 10 years.¹⁷

FSR recommends that the Commission harmonize the tabular disclosure requirements set forth in Industry Guide 6 with ASU 2015-09. Specifically, FSR recommends that the Commission eliminate the 10-year consolidated-loss development table in MD&A, in light of the FASB's new disclosure requirements regarding short-duration insurance contracts.

FSR appreciates the opportunity to submit comments on the Concept Release. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact me at [REDACTED], or Felicia Smith, Vice President and Senior Counsel for Regulatory Affairs at [REDACTED].

Sincerely yours,



Richard Foster
Senior Vice President and Senior Counsel
for Regulatory and Legal Affairs
Financial Services Roundtable

¹⁷ For a summary of ASU 2015-09, please see "Insurance Spotlight – FASB issues new disclosure requirements for short-duration insurance contracts," *available at* <http://www.iasplus.com/en-us/publications/us/industry-spotlight/insurance/may-2015#footnote-480-9-backlink> (May 26, 2015).