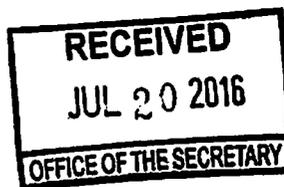


July 19, 2016



Brent Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**Re: File No. S7-06-16 [Comments on SEC Concept Release ("Business and Financial Disclosure"); Release No. 33-10064; 34-77599]**

Dear Mr. Fields:

Thanks for the opportunity to submit our written comments on the above-referenced Concept Release regarding disclosure. In the past, we have submitted several reports and comment letters to the staff of the Division of Corporation Finance regarding the Commission's Disclosure Enhancement Initiative. Below we have set forth our comments in response to certain of the questions posed in the above Concept Release.

**Repurchases of Equity Securities by the Issuer**

We continue to believe that companies should be required to enhance the disclosure in their reports concerning repurchases of their own securities from investors ("buybacks"), particularly regarding material information such as the sources of funds to finance buybacks, and the likely impact of buybacks on corporate indebtedness, net earnings per share, etc. during the reporting period.<sup>1</sup> We also believe that companies should be encouraged to use bar and pie charts in their reports to enhance disclosure of buyback programs without adding more paragraphs and pages to their reports (see, e.g., the pie and bar charts used by one filer to compare its capital outlays during FY 2014 between buybacks, on the one hand, and dividends, internal investments, and acquisitions, on the other.)<sup>2</sup>

Also, the filer should be required to discuss with specificity the reasons for deciding to fund stock repurchases rather than using the money to reduce existing indebtedness; to finance R&D; to hire new employees; to increase compensation paid to managers and employees, particularly "rank-and-file" employees (who may not have had a raise for an extended time – a "hot button" political issue today); among other possibilities.<sup>3</sup>

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<sup>1</sup> See Klein and Amy 3 (letter dated May 15, 2015) in the file.

<sup>2</sup> See discussion of the FY 2014 Annual Report filed by Illinois Tool Works in Klein and Amy 3 (letter dated May 15, 2015), at p. 4.

Regarding the frequency of reporting buybacks, we maintain that filers should report them in all periodic reports, including Form 10-Ks, 10-Qs, and 8-Ks. Since Item 703 requires disclosure of all repurchases without regard to the amount of the repurchase, we do not believe that there should be a limit or threshold amount for reporting repurchases on Form 8-K.

In our view, the Commission should give consideration to amending Item 703 (or provide other guidance) to address the above concerns we (and other commenters) have about the adequacy of buyback disclosures in Commission filings.

### **Cross-Referencing to Reduce Repetitive Disclosure**

As long as it clearly identifies the page, paragraph, citation or caption where the same information may be found (i.e., in lieu of repeating a disclosure), frequent cross-referencing can greatly assist the reader in more easily and quickly navigating SEC filings to locate important information. Otherwise, readers are pretty much left on their own to find all the information important to making an investment decision, particularly when they have to plough through a filing that is voluminous. Regarding volume, cross-referencing also can help reduce the growing size and bulk of SEC filings, since repetition of the same texts or narratives in other places within the same report, including the AFS, can be avoided.<sup>4</sup>

We agree that specific items in Regulation S-K may benefit from greater use of cross-referencing than others. For example, the discussion under Item 3 (“Legal Proceedings”) often has direct relevance to other matters in the report, particularly the AFS and related notes.<sup>5</sup> Also, information in the response to Item 3 may prove to be material; and therefore making cross-references to discussions of legal matters in other sections of the same reports, including the AFS, is essential to ensure the reader has a complete picture of the nature and scope of all legal matters and their impact (or potential impact) on the filer and its financial condition. Of

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<sup>3</sup> Other commenters also have criticized the adequacy of buyback disclosure in SEC filings. *See, e.g.*, the letters submitted by R.G. Associates, Inc., the SEC Investor Advisory Committee, and the FACT Coalition.

<sup>4</sup> In Mr. Klein’s and Mr. Amy’s extensive reviews of annual reports filed by issuers (over a period of more than 40 years), they found that the sheer size of the filings have increased dramatically in recent years. For example, annual reports often meet or exceed 100 pages in length (including the AFS). Mr. Klein recently received an annual report that exceeded 300 pages in length. *See* T. Amy (letter dated June 5, 2014).

<sup>5</sup> *See* T. Amy (letter dated June 5, 2014); and Klein and Amy 4 (letter dated August 27, 2015).

course, added advantages would be to reduce duplicative disclosure and shorten the length of the report.

Another Item in Regulation S-K that appears suitable for cross-referencing is the all-important discussion under “Management Discussion and Analysis” (“MD&A”) (the core of the annual report). It goes without saying that the presentation of MD&A matters often ties in with information in multiple other sections and parts of the report, including the AFS and related notes. In our view, as suggested above with regard to Item 3, increased use of cross-referencing of MD&A would: (1) ensure the reader has a complete picture of the current state of the filer, its prospects, business model, strategies, plans, the caliber of its management, its financial condition, etc.; (2) reduce duplicative disclosure; and (3) shorten the length of the report.

In light of the above, we agree that the Commission should consider amending both the aboves items in Regulation S-K to specifically encourage the use of cross-references in the disclosures of Legal Proceedings and MD&A.

In sum, we strongly believe that the increased use of cross-referencing would significantly enhance the transparency of the financial and other critical information in SEC filings.<sup>6</sup> Again, the cross references should specifically identify the page number, title or caption, and paragraph number where the cross-referenced material may be found, in accordance with Securities Exchange Act of 1934 Rule 12b-23 (“Rule 12b-23”).

Finally, as yet another way to shorten the length of SEC filings and reduce duplication, we reiterate our recommendation that filers increase the use of pie and bar charts in their reports.<sup>7</sup>

### **Specific Formatting Requirements**

We strongly believe that the Commission continue to promulgate the existing disclosure requirements which, in our view, strike an appropriate balance between standardization and flexibility in the presentation of disclosures in SEC reports. In particular, the continued use of item numbers and captions would continue to improve the clarity, navigability and overall effectiveness of disclosure by filers. However, as discussed below, we have some suggestions on how to improve the quality and effectiveness of disclosures in the reports.

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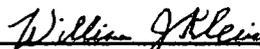
<sup>6</sup> See Klein and Amy 1 (letter dated November 7, 2014).

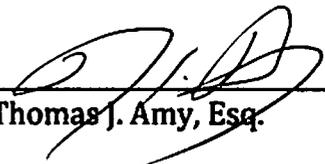
<sup>7</sup> See Klein and Amy 3 (letter dated May 15, 2015).

There are a number of ways the Commission could facilitate or encourage better presentation of disclosure by filers. For example, as we have stated before, filers should include a detailed Table of Contents ("TC"), or Index, in the front of all reports, using descriptive titles and sub-titles and page numbers to indicate where all important or required information may be found.<sup>8</sup> In our view, the increased use of TCs would prove to be a highly useful guide to the reader, assisting him or her to more easily locate and better understand the disclosures in the report. Moreover, the increased use of TCs or Indexes is essential to enabling the reader (particularly the retail [i.e., non-professional] investor) to effectively navigate the more voluminous reports and AFSs. We also recommend the increased use of a separate TC, or Index, to the numerous footnotes in the AFS which would make it easier for the reader to locate important information in the footnotes not set forth in the main body of the reports.<sup>9</sup>

In our view, the Commission could promulgate the above requirements by amendments to Rule 12b-23 itself; issuance of a clarifying release (i.e., that revisits the requirements of Rule 12b-23 as they apply to present-day filings); and/or an amendment to the instructions to Form 10-K.

We thank you for this additional opportunity to comment on the many important issues presented by the SEC and staff in their efforts to enhance disclosure by public companies in their SEC filings.

  
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William J. Klein, Esq.

  
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Thomas J. Amy, Esq.

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<sup>88</sup> See, e.g., T. Amy (letter dated June 5, 2014).

<sup>9</sup> *Id.* We also noted that the annual reports filed recently by Exxon included a separate TC for the AFS which, in turn, included a separate column correlating each line item in the financials to the related footnote, if any. In our view, this should be the model for all filers to follow.