SHEARMAN & STERLING LLP

599 LEXINGTON AVENUE | NEW YORK | NY | 10022-6069
WWW.SHEARMAN.COM | T +1.212.848.4000 | F +1.212.848.7179

August 31, 2016

Via e-mail

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Concept Release on Business and Financial Disclosure Required by Regulation S-K (Release No. 33-10064; 34-77599)

Dear Mr. Fields:

We are pleased to submit this letter in response to the request of the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") for comments on the above referenced concept release ("SEC Concept Release"). Our comments supplement our letter, dated November 26, 2014, submitted on how to improve the disclosure regime and make it more effective. We support the Commission's ongoing efforts to review and streamline the disclosure requirements for public companies and commend its emphasis on improving the clarity and usability of disclosure for investors.

We continue to believe that the Commission should consider the following three key developments in evaluating any changes to the current disclosure regime:

- *Availability of Information.* The internet has made vast amounts of reliable information freely available to investors.

- *Instantaneous Communications.* Ongoing technological change continues to increase the speed and ease at which information is disseminated to the public.

- *Institutionalization of Stock Ownership.* Institutional investors are exerting significantly more influence over U.S. public companies and certain areas of reform, most notably in the environmental, social and corporate governance ("ESG") space, are better addressed by ongoing company engagement with such investors, rather than through SEC mandates.

We have focused our comments on those questions in the SEC Concept Release which we believe to be the most significant.

1. Take a principles-based approach to disclosure (Requests 6-13).

We believe that a principles-based approach to disclosure requirements will generally elicit more relevant and useful information than a strictly rule-based framework because it provides flexibility for issuers to disclose information most meaningful to investors. The basis for principles-based disclosures should be materiality, which is well understood by issuers to involve an evaluation of quantitative and qualitative factors relating to the information that will vary significantly based on the issuer and the specific facts. In addition, we believe that a blended principles-based and objectives-oriented approach might be appropriate in situations where clearly stating the objective of the relevant standard and providing sufficient detail and structure can help ensure consistent application by issuers, such as for disclosure on related party transactions.

2. Assume an appropriate level of investor sophistication (Requests 14-20).

We are concerned that disclosure to the reasonable investor has devolved to disclosure to the neophyte investor. As a result, we believe many issuers feel an obligation to disclose to the lowest common denominator despite the fact that the overwhelming consumers of SEC disclosures are institutional investors, professional investment managers, and research analysts. While individual investors may participate directly in the markets and may access SEC disclosure, they have little impact on offering and trading prices and often rely on third parties to digest and analyze company disclosures. We therefore believe that any attempt at reforming business and financial disclosures should recognize the level of sophistication of the main users of SEC reports and avoid cluttering them with disclosures that are obvious or boilerplate in nature. We believe that this approach is fully consistent with the SEC's mandate of protecting all investors. In addition, we believe that investor education programs can bridge any sophistication gap between individual investors and institutional investors.

3. ***Selected Financial Information (Requests 67-75).***

We believe that selected financial information should be limited to three years consistent with the audited financial statements required by Regulation S-X. The additional two years are burdensome because they often result in a need to recast financial information for these years for consistency with the more recent periods. See SEC Staff Financial Reporting Manual 1610.1. In addition, they do not necessarily demonstrate trend or other information relevant to the company's current financial condition. A company's MD&A and financial statements are already required to provide investors with enough information to identify any significant trends affecting its financial results. Further, the requirement of five years for established companies is inconsistent with current developments in disclosure practice. An issuer's historical financial trends are arguably most important to investors at the time an issuer first enters the public market at its initial public offering. However, IPO companies that are emerging growth companies may provide only two years of audited financial information in their IPO prospectus and are not required to provide selected financial information for earlier periods. In addition, in our experience, even non-EGC IPO companies often include only three years of summary financial information in the summary section of the IPO prospectus, reflecting what investors consider most relevant in making their investment decision. Accordingly, we suggest that the selected financial information requirement either be eliminated or reduced to the periods covered by the audited financial statements included in the filing.

4. ***Promote company-specific risk factors (Requests 145-156).***

We believe that risk factor disclosure is often so lengthy and generic that it does not serve the purpose of alerting investors to the most significant factors that make an offering risky as required by Item 503(c) of Regulation S-K. Registrants from highly speculative startups to Fortune 100 companies catalogue factors that include risks inherent in the operation of any business, describe macro-economic or general stock market considerations or summarize complex regulatory schemes. Some risks are highly remote and others would be subject to active mitigation programs that are not described. The sheer length and complexity of most risk factor disclosure increases the risk that the most important risks applicable to a particular issuer will be obscured.

Risk factor disclosure should be reformed to address risks that are specific to the issuer and that can have a material impact on its business. These would include risks that the board routinely monitors and attempts to mitigate. Issuers should be discouraged from making generic disclosures about general economic risks or risks inherent in the marketplace or risks that are inherent in any business such as the departure of executives or the unforeseen outcome of legal proceedings. To encourage issuers to streamline risk factor disclosure, the SEC should address concerns of issuers regarding potential increased liability exposure from such scaled-back disclosure. One possible approach is for the SEC to include a list or description of general economic, marketplace and regulatory risks in the Industry Guides and deem such risks as incorporated into an issuer's disclosure.

We do not believe that requiring disclosure of the "top ten" risks or asking registrants to discuss the probability of occurrence (which would likely result in boilerplate recitations about uncertainty) would meaningfully enhance disclosure.

We believe that current risk factor disclosures are driven in part by efforts to forestall litigation, and that the Private Securities Litigation Reform Act, which protects issuers who disclose forward-looking information provided that they also include cautionary statements that explain the important factors that could cause actual results to differ materially from forecasts, also plays a role. As a result, we recommend that any effort to improve and refocus risk factor disclosure should leave room for issuers to characterize the specified risks as the ones management, in its judgment, believes are the most significant to the business apart from "standard business" risks, i.e., general economic conditions, but that there may be other risks, including those referenced in an issuer's Cautionary Statement on Forward Looking Statements, that could have a material adverse effect on the company.

5. ***Industry Guides (Requests 205-215).***

We believe that the current Industry Guides provide helpful information to companies and investors alike on specific disclosure issues related to highly regulated industries, such as mining and banking. It would be equally useful to registrants and investors if additional Industry Guides were developed for other industries, such as pharmaceuticals and technology. In general, Industry Guides should be non-binding and principles-based and should integrate any industry-specific disclosure requirements currently included in Regulation S-K. Industry Guides should also standardize regulatory disclosure, which for highly regulated industries often consist of long summaries of regulations that are generally applicable to all issuers of a particular industry. Encouraging a more streamlined approach where disclosure highlights issuer-specific regulatory matters will help investors to more easily identify the key regulatory risks or challenges an issuer may face as compared to industry competitors.

6. ***Environmental, Social and Governance Disclosures (Requests 216-223).***

We believe the yard stick for disclosures applicable in SEC filings should continue to be the presentation of material financial and business information necessary for voting and investment decisions. We believe this objective is consistent with the SEC's investor protection mandate. While there may be special situations where a particular sustainability or social policy is demonstrably material to a particular issuer from a financial point of view, as a general matter, we think there is a risk in redefining materiality to include information that is not primarily financial or business impactful in nature as it moves the SEC away from its core mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation. Therefore, ESG disclosures should not become part of mandatory general disclosure practice.

There are perfectly legitimate reasons for shareholders to be interested in ESG disclosures. We believe that existing methods available to investors, including Rule 14a-8 shareholder proposals and direct shareholder engagement with company management, provide a means to encourage companies to enhance disclosures within, or supplemental to, their SEC filings as ESG issues become more important to their shareholder base.

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We appreciate this opportunity to provide our views on how to update disclosure requirements to facilitate timely, material disclosure by companies as well as shareholder's access to that information. We would be happy to discuss any questions the Staff may have with respect to our comments. Questions may be directed to Richard Alsop, Robert Evans, Lisa Jacobs or Harald Halbhuber at (212) 848-4000.

Very truly yours,

Shearman & Sterling LLP

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