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December 21, 2017

Mr. Brent Fields
Secretary
U.S. Securities & Exchange Commission
100 F Street N.E.
Washington, DC 20549

Re: File Reference No. S7-08-17; FAST Act Modernization and Simplification of Regulation S-K (SEC Rel. Nos. 33-10425; 34-81851; IA-4791; IC-32858)

Dear Mr. Fields:

Deloitte & Touche LLP is pleased to respond to the request for public comment from the Securities and Exchange Commission (the SEC or the Commission) on the proposal: *FAST Act Modernization and Simplification of Regulation S-K* (the current proposals).

We support the Commission's recent efforts to consider ways to update the current disclosure regime to facilitate timely, material disclosure by companies and enhanced investor access to that information. As we discussed in our July 2016 letter¹ in response to the Commission's concept release, *Business and Financial Disclosure Required by Regulation S-K* (SEC Release No. 33-10064), we believe that the current SEC disclosure regime largely supports effective disclosure, but we also believe that there are aspects that could be modernized. We therefore encourage the Commission to continue with its disclosure effectiveness initiative to consider both targeted changes, such as those in the current proposals, as well as broader changes that will help build the foundation for the SEC disclosure regime as it moves into the future. We have shared our views on potential areas of future focus in our July 2016 letter, as well as in other letters in response to proposals that are part of the SEC's disclosure effectiveness initiative.²

We also have set out below some observations and recommendations related to the current proposals that we believe the Commission should consider as it moves to finalize the rules.

¹ Available at <https://www.sec.gov/comments/s7-06-16/s70616-131.pdf>.

² See, e.g., May 5, 2017 letter re: SEC Release No. 33-10323, 34-80133, *Inline XBRL Filing of Tagged Data* available at <https://www.sec.gov/comments/s7-03-17/s70317-1740650-151193.pdf>; October 5, 2016 letter re: SEC Release Nos. 33-10110, 34-78310, *Disclosure Update and Simplification* available at <https://www.sec.gov/comments/s7-15-16/s71516-23.pdf>; November 23, 2015 letter re: File Reference No. S7-20-15, *Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant*, available at <https://www.sec.gov/comments/s7-20-15/s72015-5.pdf>.

YEAR-TO-YEAR COMPARISONS IN MD&A

We support the Commission's proposal to amend Instruction 1 to Item 303(a) of Regulation S-K. Allowing a registrant to omit the discussion in Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) of the earliest of the three years when the discussion (i) is not material to an understanding of the registrant's financial condition, changes in financial condition and results of operations and (ii) has been included in the registrant's prior year Form 10-K on EDGAR, is consistent with the Commission's objective to discourage repetition of immaterial disclosures and modernize Regulation S-K. As such, we also support the Commission's proposal to make equivalent changes to the disclosure requirements for Foreign Private Issuers (FPIs).

We do recommend, however, that the Commission consider refining the proposed new instruction as follows:

- We recommend that registrants be allowed to omit the discussion of the earliest of the three years in MD&A if that discussion was provided in *any* SEC filing on EDGAR made by that registrant, such as Form S-1, Form S-4 and Form 8-K,³ not just in prior Forms 10-K, because the MD&A requirements for those filings are consistent with that for Form 10-K.
- We further suggest that the Commission consider clarifying whether the use of the phrase "material to an understanding of the registrant's financial condition, changes in financial condition and results of operations" is intended to convey any special considerations beyond those registrants normally consider in assessing materiality of disclosure. If so, the Commission should consider providing guidance on what those considerations would be. If not, the Commission should consider revising the instruction to be consistent with other more common references to materiality in Item 303 of Regulation S-K (e.g., "material" or "material to investors").
- We also believe the Commission should clarify that a registrant may exclude the discussion of the earliest year in MD&A even when there has been a change in the registrant's financial statements due to a retrospective accounting change, so long as the discussion of the third year was previously provided in an SEC filing on EDGAR (prior to the retrospective accounting change) and is not otherwise material.

AUDIT COMMITTEE COMMUNICATIONS WITH THE INDEPENDENT AUDITOR

We support the proposal to revise Item 407 of Regulation S-K to update the reference to the applicable requirements of the Public Company Accounting Oversight Board ("PCAOB") regarding required audit committee communications with the independent auditor. Specifically, we agree with the Commission's proposal to make a general reference to PCAOB standards, rather than to any specific standard or standards, because that will allow the SEC's rule to remain current as the PCAOB continues to revise its standards and issue new ones.

CROSS-REFERENCING WITHIN SEC FILINGS

We generally believe the SEC should continue to encourage cross-referencing and internal hyperlinks within a company's filings. We support, however, the Commission's proposed exception to this general rule that would explicitly prohibit registrants from including in the financial statements cross-references to disclosures found elsewhere in company filings. We believe this prohibition will reduce potential confusion about what disclosures are necessary to comply with the requirements of the applicable financial reporting

³ A registrant may file a Form 8-K to include retrospectively revised financial statements and MD&A covering three years as a result of a retrospective accounting change (e.g., a change in segment presentation under FASB Accounting Standards Codification Topic 280, *Segment Reporting*, reporting of a discontinued operation under FASB Accounting Standards Codification Topic 205, *Presentation of Financial Statements*, and accounting changes resulting from the adoption of newly issued standards).

framework and therefore part of the audited financial statements (and accordingly covered by the auditor's report on those financial statements), as we discussed in our July 2016 letter.

While we support the proposal, we understand that there are standards within International Financial Reporting Standards (IFRS) (e.g., IFRS 7, *Financial Instruments: Disclosures*) that permit certain disclosure that are part of the audited financial statements to be located outside the footnotes with a cross-reference in the notes to the financial statements. Because it is not uncommon for FPIs to use their home country annual report as the basis for the annual report on Form 20-F, we suggest that Commission consider whether it would be appropriate to permit cross-referencing in the financial statements when such cross-referencing is expressly permitted by applicable accounting standards, law, or regulation in the registrant's home country.

GENERAL OBSERVATIONS ON THE USE OF TECHNOLOGY

The move from paper SEC filings to electronic delivery has allowed for more user-friendly formats and technologies that aid investor analysis. The SEC has played a leadership role in adopting and allowing additional uses of these technologies, and continues to do so in the current proposals, including by considering the use of Legal Entity Identifiers (LEIs) and additional XBRL tagging.

It is important that new technologies be integrated into the SEC disclosure regime in a way is consistent across all company filings and contributes to a regime that fully realizes the possibilities presented by the digital world. Therefore, while we support the proposals that utilize standard technologies to streamline disclosures (such as the current proposal to bring the rules for investment companies regarding the use of hyperlinks and HTML on par with those for other registrants), we urge the Commission to focus on more advanced uses of technology in future proposals, such as data tagging that facilitates analysis and comparison in a way that hyperlinking cannot.

A single strategy for high quality data tagging applied to all filings will help ensure a cohesive experience for investors and other users and maximize the return on investments already made to move to these approaches in selective cases. Thus, we also urge the Commission to consider current overlapping or inconsistent requirements in the disclosure regime between different tagging approaches, such as that which could result from the proposed overlapping requirements for EDGAR headers and proposed data tags on cover pages of filings, to ensure these do not cause confusion.

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We appreciate the opportunity to provide our perspectives on the current proposals. If you have any questions or would like to discuss our views further, please contact Dave Sullivan at [REDACTED].

Sincerely,



Deloitte & Touche LLP

cc: Jay Clayton, Chair
Michael Piwowar, Commissioner
Kara Stein, Commissioner
William Hinman, Director, Division of Corporation Finance
Wesley Bricker, Chief Accountant