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January 2, 2018

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-1090.

Attention: Brent J. Fields, Secretary

Re: FAST Act Modernization and Simplification of Regulation S-K – File No. S7-08-17

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Commission's proposed amendments intended to modernize and simplify certain disclosure requirements in Regulation S-K. [1] The proposed amendments would implement modest improvements to various Regulation S-K items and we support their adoption. At the same time, we continue to believe that the Commission should pursue a substantially more robust and comprehensive review of the periodic disclosure system and should subject all Regulation S-K requirements to an overall "materiality" standard.[2]

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1 Release No. 33-10425; 34-81851; 1A- 4791; 1C- 32858 (October 11, 2017) (the "Release").

2 We elaborated on these ideas in our earlier comment letter, dated August 9, 2016, *available at* https//www.sec.gov/comments/s7-06-16/s70616-354.pdf.

Description of Property (Item 102)

In the absence of a general "materiality" standard applicable to all of Regulation S-K, we support the proposed changes to Item 102, which effectively apply such a standard to property disclosures. We agree that materiality "to the registrant" – as opposed to "to the registrant's business"– is the correct standard for the reasons given in the Release. We also agree that disclosure thresholds should be harmonized, by replacing them with a materiality threshold as proposed. We do not see any need for additional detailed disclosure requirements in respect of material properties; Rule 12b-20 and the "known trends and uncertainties" requirement of Item 303 already serve to fill in any gaps in existing requirements to the extent any "missing" information would be material. Whether or not the Commission decides to combine Items 101 and 102, it should make clear in the adopting release that registrants are free to present the responsive disclosure in combined form, when they determine that such a presentation is appropriate for their particular circumstances and disclosures.

Management's Discussion and Analysis (Item 303)

We support the proposed amendment to Item 303, to allow registrants to provide a period-to-period comparison only for the two most recent fiscal years covered by the financial statements. We agree with the proposed instruction's first condition to omission of discussion of the earliest year – that such discussion is not material to an understanding of the registrant's financial condition, changes in financial condition and results of operation – but think that the second condition is drawn too narrowly. A registrant may have filed the prior year's MD&A on a form other than Form 10-K – for example, it may have been included in a registration statement on Form S-1 or Form 10. It should be sufficient for this purpose that the prior year's MD&A was included in any previous EDGAR filing, as long as that earlier EDGAR filing is specifically referenced in the newly-filed MD&A. In a similar vein, we do not the read proposed instruction 1 as

limited in its application to MD&A being included in a Form 10-K report (as the Request for Comment #5 seems to imply), and do not see any reason why its application should be so limited. And we disagree with the alternative approach suggested in Request for Comment #6 – retaining the existing requirement for comparisons covering all periods, but allowing it to be met by hyperlinking to the prior year's MD&A – because we think that alternative would be significantly less useful to registrants who we expect will often be reluctant to, in effect, "re-publish" prior disclosure due to various intervening non-material changes and developments over the course of a year that commonly arise. Finally, we agree that elimination of the reference to the five-year selected financial data is a useful simplification that should have no effect on actual disclosure, given the "known trends and uncertainties" requirement of Item 303.

We also agree with the proposed changes to Item 5 of Form 20-F, subject to our comment above that the second condition to omission of discussion of the earliest year covered should apply in any case where the prior year's MD&A was filed on EDGAR and is referenced in the newly-filed MD&A. And we agree that there is no need to make any corresponding change to Form 40-F.

Management, Security Holders and Corporate Governance

We think that (i) the proposed changes to Item 401, (ii) the proposed changes to Item 405 (and related changes to Rule 16a-3(e)) and (iii) the proposed changes to Item 407 are all useful simplifications, updatings or corrections.

Registration Statement and Prospectus Provisions

While we agree with the other proposed changes to Item 501, we think the proposed changes to the instruction to Item 501(b), to eliminate the discussion of when a name change may be required, is a step in the wrong direction. Recent news reports suggest that the use of misleading issuer names continues to raise potential investor

protection concerns. The Commission should be developing and expanding guidance on this point, not reducing it. Its control over declaration of effectiveness may well give the staff leverage to address problems in this area, but that is not a reason to reduce transparency as to the Commission's approach to the issue.

We agree with the proposed change to Risk Factors (Item 503(c)), Plan of Distribution (Item 508) and Undertakings (Item 512).

Exhibits

Proposed Item 601(b)(4)(iv) would appear to represent a modest expansion of current disclosure requirements, but it calls for information – descriptions of securities registered under Section 12 of the Exchange Act- that we expect should in almost all cases already exist in the registrants' prior filings. We suggest that proposed instruction 3 to Item 601(b)(4)(iv) be expanded to permit incorporation by reference to *any* prior filing, not just to prior Exchange Act annual reports. With that change, we would have no objection to the new requirement.

On the other hand, a requirement to include Item 202 disclosure for securities that are not registered under Section 12 would represent a dramatic expansion of the reporting burden on issuers, and one for which no justification has been offered. We strongly endorse the proposed changes to (i) add Item 601(a)(5), which would permit registrants to omit schedules and similar attachments unless they contain material information not otherwise disclosed; (ii) add Item 601(a)(6), permitting redaction of personal identifying information; and (iii) revise Item 601(b)(10) to permit registrants to omit confidential information that is both not material and competitively harmful, without needing to file a confidential treatment request. This third proposal, in particular, would represent a substantial improvement, relative to current practice, and significantly reduce the burden on registrants with, we expect, no real impact on the quality of information made

available to investors. We would support extending the same procedure to exhibits filed pursuant to Item 601(b)(2).

We agree that Item 601(b)(10)(i) should be revised to limit the two-year look back for material contracts to "newly reporting registrants", and agree with the proposed definition of that term, subject to one suggestion. The definition should be revised in such a way that registrants that were previously subject to a reporting obligation should be required to "look back" only to the last annual report filed with the Commission, if that results in a shorter look-back period, since that shorter period represents the extent of the gap in information needing to be addressed.

Although we do not object to the proposed change to Item 601(b)(21)(i), to disclose legal entity identifiers ("LEI's") that already exist, we do not think the Commission should impose any obligation to obtain LEI's without further notice and comment rulemaking.

We also agree that the exhibit requirements of Form 20-F (but not Form 40-F) should be revised in a manner consistent with the changes being made to Item 601.

Incorporation by Reference

We agree with the proposed change to Item 10(d) – and in particular, with the elimination of the five-year limit on incorporation by reference – and to the amendments to Securities Act Rule 411 and Exchange Act Rules 12b-23 and 12b-32 with respect to exhibit filing requirement and hyperlinks. On the other hand, we disagree with the proposed amendments that would prohibit incorporation by reference or cross referencing of information into the financial statements, because we think they represent a significant lost opportunity. While we absolutely share the concern as to the need to define the scope of the auditor's responsibilities, we also think there is a huge – and heretofore unaddressed- opportunity to improve the delivery of information to investors by

improving the technology platform on which the Commission collects and disseminates that information, and we think it's critical that the Commission approach that opportunity without pre-conditions, such as this no-incorporation rule would represent.

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If you would like to discuss our letter, please feel free to contact Robert E. Buckholz at [redacted] or Robert W. Downes at [redacted].

Very truly yours,

Sullivan & Cromwell LLP

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