

October 25, 2019

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: Modernization of Regulation S-K Items 101, 103, and 105 (File No. S7-11-19)**

Dear Ms. Countryman:

The American Securities Association<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") proposal to modernize certain disclosures for public companies under Items 101, 103, and 105 of Regulation S-K ("Proposal"). We commend the Commission for prioritizing the modernization of our securities laws and eliminating outdated or duplicative regulations that impose unnecessary costs on public company issuers and Main Street investors.

The Proposal – which is part of the Commission's mandate under the Fixing America's Surface Transportation (FAST) Act of 2015 - seeks to update public company disclosure requirements related to the description of business, legal proceedings, and risk factor disclosures. As the Proposal notes, many of these requirements have not been updated in years, despite the changes that have occurred to how businesses operate and the increasing role that technology plays in the way companies deliver goods and services to their customers.

The ASA supports several key components of the Proposal, including the adoption of a more principles-based approach to certain disclosure requirements, the allowance for businesses to use hyperlinks regarding legal proceedings in order to cut down on duplication in disclosure documents, and the provisions that will help investors better navigate and understand risk factor disclosure.

The ASA also strongly supports the SEC reiterating throughout the Proposal that the materiality standard remains the touchstone to determine what is disclosed under the federal securities laws. As the Commission understands, there has been a concerted effort in recent years by special interest groups to erode the materiality standard force corporate disclosure for purposes outside of providing investors with decision-useful information.

For example, the pay ratio and conflict minerals disclosure mandates included in the 2010 Wall Street Reform and Consumer Protection Act have saddled shareholders with billions of dollars in compliance costs without any corresponding benefit. More recent examples include efforts to

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<sup>1</sup> The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors and support efficient and competitively balanced capital markets that advance financial independence, stimulate job creation, and increase prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States. [www.americansecurities.org](http://www.americansecurities.org)

persuade the Commission to adopt mandated disclosure surrounding corporate political spending or on other political and social matters that do not meet the test of materiality. The Commission must continue to reject these attempts to politicize disclosure and maintain the longstanding materiality standard.

### **The Need to Modernize Corporate Disclosure**

In the eight decades since the securities laws were enacted, annual and quarterly reports as well as proxy statements filed by public companies have consistently grown in both length and complexity. Issuers now spend an average of \$2.5 million for initial compliance costs to complete an IPO, and \$1.5 million annually once they are public.<sup>2</sup> Since the year 2000, the average length of a 10-K filing for public companies has increased by nearly 30%.<sup>3</sup>

The 2011 IPO Task Force Report – which greatly influenced passage of the Jumpstart our Business Startups Act (JOBS) – found that 92% of public company CEOs believe the “administrative burden of public reporting” to be a top challenge to going public.<sup>4</sup> The JOBS Act incrementally tailored certain disclosure requirements for emerging growth companies (EGCs), but more needs to be done in order to encourage more businesses to (1) complete an initial public offering (IPO) earlier in their life cycle and (2) stem the decline of U.S. public companies.

From time to time, the SEC has stated its intention to reform our system of corporate disclosure. These efforts include the 1995-1996 Task Force on Disclosure Simplification, the 1998 “Aircraft Carrier” concept release, and the 2008-2009 21<sup>st</sup> Century Disclosure Initiative. Each of these initiatives – for various reasons - resulted in little actual simplification of disclosure. Each time the SEC has sought to rethink disclosure, its efforts are often stymied by politically motivated groups who do not ultimately bear the cost of a bloated disclosure regime. The seriousness with which the current SEC is pursuing disclosure reform should be commended, and it is laying the groundwork for further actions by the Commission in the future.

### **The Proposal**

The Commission rightly emphasizes that the quality – rather than volume - of disclosure is what ultimately matters to investors. For example, the Proposal notes one study which found that risk factor disclosures at public companies increased by 50% in terms of word count from 2006-2014, but that the increase was not necessarily correlated with *better* disclosure.<sup>5</sup>

We support much of the Commission’s Proposal related to the disclosure of risk factors, which for many companies have become voluminous and difficult for investors to navigate. We believe that consolidating the disclosure of risk factors will improve an investor’s ability to focus on the most relevant risks that a company faces. We also believe that a risk factor ‘summary’ that

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<sup>2</sup> IPO Task Force Report, available at [https://www.sec.gov/info/smallbus/acsec/rebuilding\\_the\\_ipo\\_on-ramp.pdf](https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf)

<sup>3</sup> <https://blogs.wsj.com/cfo/2015/06/02/the-109894-word-annual-report/>

<sup>4</sup> IPO Task Force Report at 25

<sup>5</sup> Beatty et al., *Sometimes Less is More: Evidence from Financial Constraints Risk Factor Disclosures*, Mar. 2015, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2186589](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2186589).

is provided if the disclosures themselves are of a certain length is a positive idea and will help simplify these disclosures for investors.

Additionally, we support the simplification of disclosures surrounding legal proceedings, specifically the allowance for cross-referencing and hyperlinks. As the Commission is well aware, there is a significant amount of duplication regarding legal proceedings in SEC filings, and many of the same disclosures required under Regulation S-K are also captured in a company's financial statements. We believe what the Commission is proposing for legal proceedings will cut down on unnecessary duplication and costs without depriving investors of material information.

The ASA also supports the Proposal's suggested inclusion of disclosure regarding the material impacts of government regulation on a company's business under Item 101 of Regulation S-K. Historically, disclosure regarding regulation centered around environmental regulation. However, given the expanded presence of the federal government in every aspect of the private sector – particularly in the years following the financial crisis – investors would benefit from better understanding how regulation can materially impact a business. If nothing else, such disclosure will help educate investors and the general public about the ever-growing expansion of the federal government into the private sector, and how that impacts our capital markets and the ability of businesses to compete in a global economy.

## **Conclusion**

The ASA once again commends the SEC for taking action to reform our securities laws and make it easier for companies to go public. While the changes included in the Proposal are incremental, once enacted they will help set a baseline for further action down the road. The ASA looks forward to working with the Commission and its staff on these and other proposals to modernize the rules governing our capital markets.

Sincerely,

Christopher A. Iacovella  
Chief Executive Officer  
American Securities Association