October 27, 2016

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

Re: **Disclosure Update and Simplification; 17 CFR Parts 210, 229, 230, 239, 240, 249, and 274; Release Nos. 33-10110; 34-78310; IC-32175; File No. S7-15-16; RIN 3235-AL82**

Request for Comment on Subpart 400 of Regulation S-K; 17 CFR Part 229; Release Nos. 33-10198; 34-78687; File No. S7-18-16

Exhibit Hyperlinks and HTML Format; 17 CFR Parts 229, 232, 239 and 249; Release Nos. 33-10201; 34-78737; File No. S7-19-16; RIN 3235-AL95

Dear Mr. Fields:

The Corporate Governance Coalition for Investor Value (the "Coalition") was formed to provide a forum for the discussion of issues of common interest among its members to advocate for strong corporate governance policies and federal securities laws that promote long-term value creation for investors and the firms in which they invest. Coalition members represent American businesses of all sizes, from every industry sector and geographic region. These businesses produce the goods and services that drive the American economy, employing and creating opportunities for millions of Americans and serving the countless communities nation-wide in which they operate. The Coalition believes that strong corporate governance policies are important to provide investors with a return on investment and businesses with the capital needed to grow and operate.

The Securities and Exchange Commission (the "SEC" or "Commission") recently released three regulatory initiatives:(1) Disclosure Update and Simplification (the "Disclosure Update Release"), (2) Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters (the "Subpart 400 Release"), and (3) Exhibit Hyperlinks and HTML Format (the "Exhibit Release"; together with the Disclosure Update Release and the Subpart 400 Release, the "Releases"). Given the Coalition's deep interest in each of these issues, we appreciate the opportunity to provide comment collectively on the Releases.

The Coalition applauds the Commission for its continued focus on disclosure effectiveness and the need for modernization. Holistically, we believe that the glide path to robust capital formation is aided by a system of securities regulation in which investors are provided with decision-useful information to deploy capital efficiently and for businesses to obtain the financial resources necessary for growth and expansion. We support the SEC's efforts to streamline its disclosure requirements as part of a broader effort to simplify the reporting rules for public companies and provide information to investors more efficiently.

The "materiality" of disclosures as described by the Supreme Court in seminal cases such as *TSC Industries v. Northway*[1] and *Basic Inc. v. Levinson*,[2] has been a critical component of our American capital markets for decades and has contributed to the formation of the most efficient and riches markets ever. The ability of businesses of all sizes—from small start-up businesses to more mature companies that have employed millions of Americans for decades—to obtain capital investment or financing from a variety of investors or lenders within our disclosure-based regulatory system is the cornerstone of the American free enterprise system.

Traditionally, materiality has also been the dividing line for determining what should be disclosed and what should not have to be disclosed under the federal securities laws. Considering materiality through the eyes of a "reasonable investor" is a critical feature of the Supreme Court's test. Materiality does not turn on the needs of an investor that is not representative of investors more broadly or that is looking to advance some special interest. This approach to materiality mitigates the risk that SEC disclosure documents will become too dense and impenetrable for investors by

[1] 426 U.S. 438 (1976).
[2] 485 U.S. 224 (1988).

seeking to be all things to all people. It also helps ensure that the SEC, in creating and enforcing the disclosure regime under the federal securities laws, focuses on what is best for investors overall and sticks to the agency's mission as the capital markets regulator for the U.S.

Substantial efforts to chip away at the longstanding approach to materiality have been underway the past several years. This development has complicated and confused the definition of materiality and will overload investors with more data points and information that few investors find useful when analyzing a company's financial condition and operations. Some special interest advocates are pushing for materiality concepts that would completely abandon the traditional notion of materiality based in the Supreme Court's jurisprudence. These interest groups are attempting to expand disclosure mandates for businesses in order to advance the groups' own parochial agendas and to further goals that are extraneous and run counter to the SEC's mission. Thus, the guiding principle for public company disclosure is, and should remain, materiality as viewed by a reasonable investor, particularly as the Commission considers additional reform of Regulations S-K and S-X.

DISCUSSION

Disclosure Update Release

Overview

The Disclosure Update Release proposes to streamline SEC disclosure rules as part of the Commission's broader initiative to improve disclosures for companies and investors. It would remove duplicative, outdated, and overlapping requirements, and in particular, would amend rules that call for information already covered by U.S. GAAP or IFRS. The release identifies various requirements under Regulation S-X or Regulation S-K that mandate disclosures substantially similar to those required under U.S. GAAP, IFRS or other SEC rules, and proposes to eliminate those that are duplicative.

Additionally, the SEC proposes to delete a variety of requirements that provide for disclosures that convey similar information due to overlapping U.S. GAAP, IFRS or SEC mandates, or provide for disclosure incremental to overlapping U.S. GAAP, IFRS or SEC disclosure rules that may no longer be useful to investors. The Coalition supports such proposals. An example of redundant or duplicative requirements includes disclosure of related parties: Rule 4-08(k)(1) of Regulation S-X—as well as Item 404 of Regulation S-K—which mandates identification of related party transactions, while Accounting Standards Codification 850-10-50-1 requires substantially similar disclosure under U.S. GAAP. An example of overlapping requirements is the disclosure of the ratio of earnings to fixed charges. Companies that register debt securities are required to disclose historical and pro forma ratio of earnings to fixed charges under Item 503(d) of Regulation S-K. The SEC recognizes that U.S. GAAP and IFRS require disclosure of many of the same components of this ratio, as well as information from other ratios that convey much the same information about an issuer's obligation to meet its financial obligations.

An example of an outdated requirement is the requirement, under Item 201(a)(1) of Regulation S-K, to disclose the stock market price on which a public company's stock trades along with the historical stock price information. The SEC notes in its proposed rule that there are many free websites that offer this information (in greater detail) than is required by SEC disclosure rules. An example of a superseded requirement relates to disclosure of discontinued operations. Instruction 1 to Rule 11-02(b) of Regulation S-X makes reference to discontinued segments and Item 302(a)(3) of Regulation S-K requires a description of the effect of any disposals of segments of a business. The SEC points out that the U.S. GAAP definition of discontinued operations has changed multiple times since the SEC disclosure rules were adopted and now such U.S. GAAP definitions no longer includes any reference to the term "segment."

The Coalition supports the SEC's objective to simplify compliance efforts, while still providing material information to investors by eliminating duplicative, overlapping or superseded requirements. However, we note that the SEC concedes that, in many cases, the streamlined disclosure rules could move information from the management's discussion and analysis (MD&A) section of a regulatory filing to the financial statements and their accompanying footnotes. While we support the objective of streamlining disclosure requirements and eliminating redundancies, we are concerned that the relocation of this information could create new audit requirements and subject the information to additional internal control requirements or the rules for tagging information in XBRL. Additionally, relocation of information to the financial statement footnotes also creates the risk that the disclosure will lose the benefit of the forward-looking statement safe harbor afforded under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which could in turn make issuers more reluctant to disclose such information.

Overlapping Requirements

The Disclosure Update Release examines what should be considered "overlapping" requirements that are related to, but not the same as, U.S. GAAP, IFRS or other SEC rules. These disclosures provide reasonably similar information or require disclosures incremental to the overlapping SEC rules or accounting principles. The overlying requirements proposed for elimination or integration includes provisions relating to material events subsequent to the end of the fiscal year and changes in accounting principles reportable in interim filings, segment financial information, financial information by geographic area, seasonality, material research and development expenditures, the frequency and amount of cash dividends, tabular disclosure of changes to employee equity plans, ratios of earnings to fixed charges, invitations for competitive bids, foreign currency restrictions, and restrictions on dividends. On the whole we support these amendments though, as the SEC notes, the "proposal relating to some topics would result in the relocation of disclosures from outside to inside financial statements, subjecting this information to annual audit and/or interim review, internal control over financial reporting, and XBRL tagging requirements."

For example, the requirements in Regulation S-K, Item 103, to disclose certain legal proceedings, can in certain cases be more expansive than those in U.S. GAAP, which requires disclosure of certain loss contingencies. However, there is a significant overlap between the disclosure requirements. We believe that the incorporation of Item 103, among other requirements, into U.S. GAAP might be more burdensome on issuers and auditors related to the development and auditing of additional estimates and disclosures. Incorporation of Item 103 requirements into U.S. GAAP could result in more instances of immaterial disclosure of the possible range of loss, more disclosure that is subject to audit or review (such as the internal control requirements), and a more general materiality threshold in connection with environmental legal proceedings. It would also give rise to issues under the PSLRA because such disclosures, which may be inherently forward-looking, would not be afforded the safe-harbor in U.S. GAAP that they presently have under Regulation S-K. Given the complex issues any change may engender, we recommend that the SEC conduct more thorough analysis and outreach in this area, particularly with the accounting and legal professions, and focus its attention elsewhere for the time being as it moves forward with its disclosure effectiveness initiative.

"Bright-Line" Threshold Issues

The proposed rules also appear to run the risk of removing or adding bright-line disclosure thresholds (i.e., a threshold below which no disclosure is required), which may change the disclosure burden on issuers and the amount of information disclosed to investors. For example, Regulation S-K requires disclosure of the amount of revenue from any class of similar products and services that account for 10% or more of revenue. Such a quantitative threshold seems to run counter to the concept of materiality as it imposes an arbitrary threshold. The Coalition opposes the continued use of special materiality tests – such as 10 percent of revenue or total assets – in the context of individual items under Regulation S-K. These create inconsistency across Regulation S-K disclosure items and could potentially confuse or mislead investors. Instead, we strongly urge the Commission to abandon these special tests and replace it with the *TSC/Basic* approach of considering, with other quantitative and qualitative factors, whether the required disclosure would significantly change the total mix of information available to a reasonable investor.

Additionally, some of the proposed amendments would move certain disclosures from outside to inside the financial statements, which would subject this information to audit or review, internal control over financial reporting and XBRL tagging requirements, as well as eliminate the protections provided by the safe harbor for forward-looking statements under the PSLRA. As the safe harbor may no longer be used, it will likely have the effect of deterring companies from disclosing certain forward-looking information. The SEC also cautions that eliminating seemingly redundant requirements may in practice elicit less or different disclosure. For example, many of the SEC rules proposed for elimination or integration due to apparent redundancies provide bright-line disclosure thresholds, while their counterparts under U.S. GAAP, IFRS or other SEC rules do not. We are sensitive to these concerns and offer an approach below that may help remedy the relocation of certain disclosure requirements to the financial statements.

Outdated and Superseded Requirements

The Disclosure Update Release also identifies disclosure requirements that have become obsolete or ineffectual as a result of the passage of time or changes in the regulatory, business environment. The Coalition is generally supportive of these efforts. The SEC proposes replacing disclosure of the high and low sale prices for an issuer's common stock with a requirement that the issuer need only provide its ticker symbol, given that this information is readily available online. Additionally, the SEC suggests deleting the provision requiring foreign private issuers to provide exchange rate data where the financial statements are prepared in a currency other than the U.S. dollar, as this information is easily found on numerous websites. The SEC also proposes updating certain disclosure requirements to address inconsistencies that have developed over time among the various accounting, auditing and SEC disclosure frameworks. The proposed amendments aim to revise SEC disclosure requirements in light of changes to U.S. GAAP. These include making conforming changes to the statement of cash flows and statement of comprehensive income and information relating to consolidation, discontinued operations and pooling-of-interests.

Additional Comments

Interim Financial Statements. The Coalition supports the proposal to eliminate Instruction 5 to Item 303(b) as both Instruction 5 and U.S. GAAP require disclosures about seasonality in interim periods. Additionally, we believe that interim financial statements should include information only if there are significant changes in financial positions since the most recent annual financial statements or significant differences in results of operations that are unclear from the line items. However, we note that there has been a recent trend in FASB disclosure standards to require the same level of disclosures for interim and full-year financial statements. This ultimately results in forcing preparers to forego their normal materiality judgments, which may weigh down financial statements with immaterial information, and thereby making useful information less visible and less understandable. Therefore, we believe that it is critical for both the SEC and the FASB to clearly set forth the principle that interim disclosures should be made only if they significantly update the year-end information, and that existing disclosure requirements that do not incorporate this concept should be amended to do so.

Use of pro forma information. In 1980, the SEC issued a concept release that requested comment on whether the requirements for the presentation of historical and pro forma ratios should be retained or deleted.[3] Responses from commenters were mixed with a substantial number of commenters supporting retention of the requirement. However, there currently are a variety of analytical tools available to investors that could accomplish a similar objective as the ratio of earnings to fixed charges. This ratio measures the issuer's ability to service fixed financing expenses—specifically, interest expense, including management's approximation of the portion of rent expense that represents interest expense, and preference dividend requirements—from earnings. Other ratios that accomplish similar objectives include other variations of the ratio of earnings to fixed charges, the interest coverage ratio, and the debt-service coverage ratio, which can be calculated based on information readily available in the financial statements. We recommend the SEC consider a more useful and practical dividing line for forward-looking information such as a requirement that information regarding estimates and assumptions embedded within a current measurement used within the financial statements be included in the footnotes, and that information regarding sensitivity analyses, the effects of alternate assumptions regarding future cash flows, and other expectations regarding the future be included in MD&A. These changes would address PSLRA concerns and also make the information easier for investors to locate and process.

Disclosure of accounting principles, methodology, and critical estimates. As the primary purpose of the notes to the financial statements is to supplement information on the face of the financial statements, we believe that notes to the financial statements should only contain information likely to be material to investors and to a significant number of reporting entities. We agree with the SEC that U.S. GAAP requires disclosure of accounting principles and methods that materially affect the financial statements, including those involving a selection from existing acceptable alternatives, and important judgments about the appropriateness of the principles. We also agree that these U.S. GAAP principles call for reasonably similar information as the corresponding requirements in Regulation S-X, as they require disclosure of the

[3] Release No. 33-6196, Ratio of Earnings to Fixed Charges, 45 Fed. Reg. 16,498 (Mar. 7, 1980).

accounting method applied to each aspect of a material derivative transaction from inception to termination.

Additionally, for derivative financial instruments, as defined under U.S. GAAP, U.S. GAAP requires disclosure of how and why the issuer uses derivative instruments, how the derivative instruments and related hedged items are accounted for, and how they affect the financial statements. Although Regulation S-X is more detailed than U.S. GAAP, the specificity in Regulation S-X is derived, in part, from the absence of a comprehensive accounting model for derivatives when the Commission adopted these disclosure requirements. Since that time, the FASB has adopted an accounting model for derivative financial instruments, as defined under U.S. GAAP.

We also recommend that the SEC coordinate with the FASB to enhance U.S. GAAP disclosure requirements on significant accounting policies to provide more robust discussion about critical accounting estimates, highly judgmental underlying assumptions, and the susceptibility of such estimates to change. Such disclosures would better serve investors by explaining accounting policies and related estimates in one place. If instead the SEC still expects companies to discuss critical accounting estimates in MD&A, the rule should clearly articulate the disclosure objective to enhance compliance and the quality of the responsive disclosures. A well-crafted disclosure objective should help narrow the focus to accounting estimates with the highest levels of measurement uncertainty or that are most susceptible to material changes based on likely changes in assumptions in future periods.

Despite this, some of the disclosures that are currently required by the FASB, as well as some of the disclosures that are required under Regulation S-K, seem to sweep "MD&A-type information" into the footnotes. Disclosures such as how changes in assumptions would impact results require entities to maintain records for choices that management did not make, or for events that have not occurred. In this regard, we note that in the past, the FASB has required sensitivity analyses and other similar information to be provided in the footnotes to the financial statements because such disclosures would therefore also apply to private companies that were, by definition, not subject to the SEC's MD&A requirements. We have not observed that the SEC has conducted similar analyses.

The Coalition supports the development of a disclosure framework to establish fundamental concepts of disclosure, and to provide an overarching framework and guide that can be used by the FASB in developing individual disclosure standards, as well as by preparers in determining what disclosures to provide in the absence of specific guidance. We encourage the SEC and FASB to work in close collaboration with other regulatory and standard-setting authorities in this regard. We believe that for this type of framework to be most effective, it should be based on a few, clearly articulated principles. We find the principles—relevance, materiality, and cost-benefit considerations—to be the most important components of this framework, but we have concerns that these principles are not adequately emphasized in the proposal to convey their foundational nature.

Specifically, as indicated earlier in this letter, the concept that FASB should only mandate information that is material to investors should be the starting point for the disclosure framework. In addition to emphasizing materiality as a key disclosure principle, the FASB should also impose the concept of materiality. We believe that materiality decisions must be made by each individual entity, and FASB should establish requirements that are not so prescriptive that they preclude reporting entities from making materiality judgments. The concepts of relevance and materiality are inextricably linked. Providing immaterial information could obscure more relevant information in financial statements, thereby undermining their overall usefulness. Therefore, it is crucial that preparers have the flexibility to exercise discretion and judgment in applying disclosure requirements, and a significant component of this is determining whether a particular disclosure is material to the entity. In this regard, we urge the FASB to review its existing standards and ensure that they incorporate the ability for preparers to apply materiality determinations as this will further the goal of "removing the clutter" from financial statements by enabling preparers to apply materiality judgments to existing disclosures.

The need to carefully consider the cost of providing information in relation to the benefits produced is another important element in developing disclosures that the proposal sets forth. We agree that the cost of a requirement to provide information in notes normally is not justified by the benefits if (a) that information is not specific to the individual entity and is readily and cost effectively available from sources other than the entity and (b) knowledgeable users should be aware of the need for the information and its availability. We do not believe that entities should be required to provide information in notes about general economic, political, and social conditions, events, and circumstances that are common knowledge and not specific to the entity. Investors would be better served if this type of publicly-available information were eliminated, furthering the goal of "removing the clutter" from financial statements.

Subpart 400 Release

Item 401: Directors, Executive Officers, Promoters and Control Persons

In 2009, the Commission amended Item 401[4] to expand the disclosure requirements regarding the qualifications of directors and nominees, past directorships held by directors and nominees, and the time period for disclosure of legal proceedings involving directors, nominees and executive officers. In particular, amended Item 401 includes a requirement to disclose the particular experience, qualifications, attributes or skills that led the board to conclude that a nominee should serve as a director. The Commission also significantly expanded the list of disclosable legal proceedings involving directors, executive officers, and nominees covered under Item 401(f) of Regulation S–K as part of the 2009 amendments.

Item 401 has benefitted investors by increasing the quality of material information that they receive concerning the background and skills of directors and nominees for director, thereby enabling investors to make better-informed voting and investment decisions. Therefore, we believe that Item 401 does not need further amendment or revision at this time. However, we request that the SEC focus its attention elsewhere as it pursues the disclosure effectiveness initiative.

Item 402: Executive Compensation

In 2006, the SEC revamped its disclosure rules on executive compensation[5] with the adoption of the Compensation Discussion & Analysis (CD&A) requirement in Item 402 of Regulation S-K. These rules, as amended in 2006, greatly expanded tabular disclosure concerning executive compensation of named executive officers and directors. They also required a new narrative discussion and analysis of executive

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[4] Release Nos. 33–9089; 34–61175; IC–29092, Proxy Disclosure Enhancements, 74 Fed. Reg. 68,334 (Dec. 16, 2009).
[5] Release No. 33-8732A, Executive Compensation and Related Person Disclosure, 71 Fed. Reg. 53,158 (Aug. 29, 2006).

compensation. According to the SEC's adopting release, the 2006 amendments were "intended to provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors."[6]

Over the past decade, there has been a growing amount of concern over the CD&A, leading it to become the subject of substantial commentary. The complexity of the SEC's rules and interpretations, coupled with the technical nature of the broader subject of executive compensation, means that special expertise is often required to understand what CD&A requires a company to disclose. When in doubt about whether a particular fact needs to be disclosed, many companies now err on the side of disclosing it, even if the information is not necessarily useful or even material to investors.

Issuers and Registrants are undoubtedly in part responsible for the current state of affairs and it also is a natural outgrowth of the SEC's rules and subsequent interpretations. CD&A has become the archetypal example of the "avalanche of information" that Justice Marshall predicted and warned against in *TSC*. Notably, in 2015 Stanford University released a study of institutional investors, who control over $17 trillion dollars in assets, finding that the majority found the proxy statement to be too long and that only a third of the information was relevant.[7] Of several key findings in the Stanford study, we find this one particularly germane to the issue of Item 402 of Regulation S-K:

Investors are Deeply Dissatisfied with Compensation Disclosure

> Less than half (38 percent) of institutional investors believe that information about executive compensation is clear and effectively disclosed in the corporate proxy. Responses are consistently negative across all elements of compensation disclosure. Sixty-five percent say that the relation between compensation and risk is "not at all" clear. Forty-eight percent say that it is "not at all" clear that the size of

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[6] *Id.* at 53,159.

[7] DAVID F. LARCKER ET AL., STANFORD UNIV., 2015 INVESTOR SURVEY: DECONSTRUCTING PROXY STATEMENTS—WHAT MATTERS TO INVESTORS 1 (FEB. 2015), available at https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survyey-2015-deconstructing-proxy-statements_0.pdf.

> compensation is appropriate. Forty-three percent believe that it is "not at all" clear whether performance-based compensation plans are based on rigorous goals. Significant minorities cannot determine whether the structure of executive compensation is appropriate (39 percent), cannot understand the relation between compensation and performance (25 percent), and cannot determine whether compensation is well-aligned with shareholder interests (22 percent). "Corporations must do a better job of articulating the rationale behind plan design," says [Aaron] Boyd, [Director of Governance Research at Equilar]. "It is not enough that disclosure in the Compensation Discussion & Analysis (CD&A) section of the proxy meets regulatory requirements. Companies should take renewed effort to be clear and concise in explaining their choices."[8]

The past decade's experience with Item 402 undoubtedly demonstrates that reforms are needed to ensure that CD&A continues to provide investors with the material information they need to make informed investment and voting decisions when evaluating a company's executive compensation system. One possible approach to revising Item 402 is to eliminate many of the required compensation tables (which seems to be the source of much confusion to readers of proxy statements) except the summary compensation table, while placing a greater emphasis on qualitative analysis surrounding executive compensation decisions, management of risk and construction of compensation plans.

The Coalition believes that to inform its future actions, the Commission should undertake a data collection effort from a broad cross-section of issuers and investors as to their preferences through surveys, hearings, roundtables and other appropriate means. Materiality should continue to be the filter through which any future disclosure requirements must pass.

Item 404: Transactions with Related Persons, Promoters and Certain Control Persons

Item 404 provides that companies must disclose any transactions with "related persons" (such as a director or executive of the company or their immediate family)

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[8] *Id.* at 1.

and creates a presumptive materiality threshold of $120,000. This amount is scaled for smaller reporting companies but not for other companies.

The Item 404(a) disclosure threshold was last updated in 2006[9] when the SEC increased it from $60,000, where it had been set in the early 1980s, to $120,000. While we certainly agree that disclosure around material-related party transactions is useful information for investors making investment and voting decisions, we also believe that the SEC should revisit the threshold to consider whether $120,000 is appropriate for all companies and thus whether Item 404 is serving its intended purpose. As with other one-size-fits-all standards, the $120,000 level may be over-inclusive for some companies and under-inclusive for others. As detailed in the Disclosure Update Release, recent amendments to U.S. GAAP concerning related party disclosure have also led to a significant divergence from the Item 404 standard.

Specifically, we believe the SEC should delete any quantitative threshold from Item 404(a) and instead require only the disclosure of material related party transactions. Another option would be to implement a scaled approach to disclosure of related party transactions for all companies, expanding the smaller reporting company model. Scaling for larger companies could be based on a percentage of total assets, as is currently the requirement for smaller reporting companies,[10] or some other financial metric, such as a percentage of total revenue.

Item 407: Corporate Governance

The Commission first adopted Item 407 in 2006[11] largely to reorganize and recodify prior reporting requirements. The Commission amended Item 407 in 2007[12] and again in 2008.[13] The Commission then made substantial revisions to Item 407 in

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[9] Release Nos. 33–8732A; 34–54302A; IC–27444A, Executive Compensation and Related Person Disclosure, 71 Fed. Reg. 53,158 (Aug. 29, 2006).
[10] Item 404(d)(1) currently provides that smaller reporting companies must provide related-party disclosure when the amount involved exceeds the lesser of $120,000 or one percent of the average total assets at yearend for the last two completed fiscal years.
[11] Release Nos. 33–8732A; 34–54302A; IC–27444A, Executive Compensation and Related Person Disclosure, 71 Fed. Reg. 53,158 (Aug. 29, 2006).
[12] Release Nos. 33–8876; 34–56994; 39–2451, Smaller Reporting Company Regulatory Relief and Simplification, 73 Fed. Reg. 964 (Dec. 19, 2007).
[13] Release Nos. 33–8961; 34–58656, Technical Amendment to Item 407 of Regulation S–K, 73 Fed. Reg. 57,238 (Sept. 26, 2008).

2009 with its "Proxy Disclosure Enhancements" release, greatly expanding the scope and breadth of required corporate governance disclosure.[14] The 2009 amendments—among many other things—expanded the required discussion around diversity in the process by which candidates for director are considered for nomination by a company's nominating committee and the disclosure about a company's board leadership structure and the board's role in the oversight of risk. These are topics that continue to be top of mind for investors today. The Commission most recently amended Item 407 in 2012 to implement changes required by the Dodd-Frank Act in listing standards for compensation committees.[15] Relative to the many other disclosure requirements that have not seen this level of scrutiny and modification over the past decade, we urge the Commission to instead focus its attention on other areas of Regulation S-K as it continues its disclosure effectiveness initiative.

Exhibit Release

Generally, we support the proposed requirements regarding exhibit hyperlinks on a going-forward (but not retroactive) basis if the Commission includes the qualifications incorporated. The Coalition agrees that, in many cases, doing so will make navigating SEC documents more user-friendly for investors.

Proposed Rule 105(c) of Regulation S-T provides as follows:

> If a filer includes an external hyperlink within a filed document, the information contained in the linked material will not be considered part of the document for determining compliance with reporting obligations, *but the inclusion of the link will cause the filer to be subject to the civil liability and antifraud provisions of the federal securities laws with reference to the information contained in the linked material*. (emphasis added)

While this language appears relatively unchanged from the current rule text, we believe it takes on new significance in light of the proposed hyperlink requirement.

[14] Release Nos. 33–9089; 34–61175; IC–29092, Proxy Disclosure Enhancements, 74 Fed. Reg. 68,334 (Dec. 16, 2009).
[15] Release Nos. 33–9330; 34–67220, Listing Standards for Compensation Committees, 77 Fed. Reg. 38,422 (June 20, 2012).

In modern times it is common to include email addresses and URLs of all kinds in contracts and other documents that might be required to be filed under Item 601 of Regulation S-K. Examples include links to a contractual counterparty's website, a customer service or supplier website, a service provider's website (such as a website listed on the letterhead of an Exhibit 5 opinion), a government agency's website (such as sec.gov, eeoc.gov or corp.delaware.gov), a disclosure schedule of owned domain names attached to a credit agreement or purchase agreement, and a proprietary online portal established for purposes of advancing a contractual relationship (such as an online data room established for due diligence purposes or to facilitate communications among lenders). Additionally, many software programs, including commonly available word-processing programs, automatically create functional hyperlinks to third party websites whenever letters such as "http" or "www" precede a domain name. As it reads, proposed Rule 105(c) would extend civil liability and antifraud liability to each of these third-party websites simply by virtue of the existence of a hyperlink.

Many websites and their content are usually not prepared with a view towards compliance with the federal securities laws. Therefore, subjecting registrants to liability for the information (particularly when the site is controlled by an unrelated third party) appears to be a particularly harsh and unintended result. It is one thing to subject a registrant to liability concerning a hyperlink when the registrant intentionally directs the reader there for purposes of satisfying the federal securities laws, such as a hyperlink to a reconciliation of non-GAAP financial information under Regulation G or the hyperlink referenced in Item 1.01(b) of Form SD. It is quite another when the overly broad language of Proposed Rule 105(c) creates a liability dragnet with regard to a large body of other hyperlinks included for non-SEC purposes, such as those described in the preceding paragraph. Although we do not object to liability in the case of the former, we object to liability in the latter case, and strongly urge the Commission to clarify the scope of Rule 105(c) in any final rule.

We are also concerned about the disproportionate burden the Exhibit Release would have on smaller reporting companies and non-accelerated filers. As the release indicates, these types of issuers are more likely to make their filings in ASCII format, which would require refiling of exhibits or other technical measures to satisfy the requirement to hyperlink in HTML format. Even when such companies make Edgar filings in HTML format, they may not have the same resources as large companies to complete the exercise of hyperlinking to historical filings. Although the Exhibit Release does not appear to address compliance transition periods, we request that the Commission grant smaller reporting companies and non-accelerated filers one additional year beyond the compliance date for accelerated filers to allow sufficient time for these smaller companies to comply with any final rules and take advantage of any technological enhancements that their larger peers may develop over this time.

CONCLUSION

The Coalition believes that as the SEC continues its disclosure effectiveness initiative, materiality should be the main focus, and that any goals outside the SEC's core mission should be left to other governmental bodies, civil society organizations, and the private sector to address outside federal securities laws. SEC-mandated disclosures should not be used to further social, cultural, pecuniary or political motivations that the federal securities laws were not designed to advance. The SEC disclosure regime should not provide a glide path for special interests to impose their agenda on shareholders at large, particularly when doing so does not maximize long-term value for a company. We commend the Commission for its efforts to streamline and improve disclosure, as reflected in the Releases.

Thank you for your consideration of our comments, and we stand ready to assist the Commissioners or Staff with this initiative.

Sincerely,

American Insurance Association
American Petroleum Institute
National Black Chamber of Commerce
National Association of Manufacturers
National Association of Real Estate Investment Trusts
Retail Industry Leaders Association
U.S. Chamber of Commerce

cc: The Honorable Mary Jo White
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar