R.G. Associates, Inc.
Investment Research/ Investment Management
201 N. Charles Street, Suite 806
Baltimore, MD 21201

Jack T. Ciesielski, CPA, CFA
President

Phone: [redacted]

Re: File Number S7-15-16

November 2, 2016

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

Dear Mr. Fields,

I am writing to comment, from the investor's point of view, on the Commission's above-referenced *Proposed Rule on Disclosure Update and Simplification.* My remarks are brief; even with the comment period extension of one month, it is still quite a monstrous document in terms of scope and detail. For complete digestion, it demands a comment period comparable to the size of the proposal.

Outdated requirements. In general, it's difficult for an investor to find much enthusiasm for the matters in the proposal. Some parts of the proposal are puzzling as to why they are even submitted for comment. Does the Commission really need to obtain comments on whether or not outdated requirements need to be removed from the SEC rules?[1] I think not. They no longer apply, and should be removed.

Redundancies. Likewise, the fifteen disclosure requirements made redundant by virtue of a FASB standard do not need to be in SEC rules if they are also in a set of rules enforced by the Commission.[2] It may make sense for them to be eliminated from the set of SEC rules, but it certainly doesn't provide a clear - or even opaque - benefit for investors who clamor for more informative disclosures.

Superseded requirements. The same thing can be said for superseded requirements.[3] There are sixteen of these requirements referenced in the proposal; it's hard to make a case for why they currently remain in the SEC rules at all. By default, a new rule that replaces an old rule *should* result in the old one's elimination. While I support the Commission's moves to eliminate superseded and outdated requirements, I would recommend implementation of a mechanism for examining how new standards affect existing SEC rules, so that SEC rules are more consistently and constantly updated.

Those three categories are the low-hanging fruit in this proposal. I do not believe that investors would suffer harm if the items covered in those categories were eliminated from SEC disclosure requirements. That said, I believe that investors would be short-changed if the Commission were to make the proposed deletions, integrations, and modifications to overlapping SEC/FASB requirements, as proposed. These potential revisions make up the rest of the proposal. There may be ways to improve disclosures by modifying those disclosure requirements, but it would be practically negligent on the Commission's part if they were to eliminate these disclosures by simply relying on FASB disclosure requirements to take up the slack - particularly in view of the FASB's September, 2015 proposal to increase management discretion over materiality of disclosures.[4]

Overlapping disclosures. The proposal mentions three considerations related to the proposed deletions, integrations, and modifications to overlapping SEC/FASB requirements. These are: disclosure location considerations (inside audited financials versus outside), disclosure prominence considerations, and bright line disclosure threshold considerations (disclosures made after a certain threshold is reached.) All of the considerations have implications for the utility of disclosures for investors.

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[1] See pages 108-120 of the proposal.
[2] See pages 22 - 30 of the proposal.
[3] See pages 120 - 143 of the proposal.
[4] See my comment letter at:
http://www.fasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175832346661&blobheader=application%2Fpdf&blobheadername2=Content-Length&blobheadername1=Content-Disposition&blobheadervalue2=546444&blobheadervalue1=filename%3DDISFR-M.ED.0024.R.G._ASSOCIATES_INC._JACK_T._CIESIELSKI.pdf&blobcol=urldata&blobtable=MungoBlobs

The disclosure location issue and disclosure prominence considerations are related. The proposal sounds like a boon to investors - at first - in that it usually suggests moving information currently reported outside of the audited financial statements somewhere inside of the audited financial statements. How could this be a loss for investors, if the information would then be audited and the current information is not audited?

The problem is that the disclosures are currently granular and informative because the SEC requirements are specific, and therefore difficult for preparers to ignore. Investors could lose information because the proposal often relies on GAAP requirements to make those similar disclosures appear in the audited financial statements. Where companies may now freely disclose because they must, they might be far less forthcoming if the information is contained inside the audited financial statements where their legal liability would be more precarious. The potential flexibility afforded them by FASB's proposed materiality proposal would only worsen the situation.

The bright line threshold considerations may be the most important of all. In accounting, the term "bright line" refers to a specific threshold that determines the application of a specific accounting treatment. One example is the criteria for determining whether leases should be capitalized or treated as operating leases. Because bright lines exist in the criteria, a desired accounting outcome can be obtained by reaching or avoiding the thresholds needed to attain the desired result. Such "bright line standards" are usually viewed as inferior standards, because they produce inconsistent results among firms and are overly dependent on management intentions in their application.

The proposal refers to "bright line disclosures," which may imply that these disclosures are somehow inferior. I prefer to think of these disclosure requirements as "safety nets" - they pry details out of financial statement preparers that might otherwise go unreported. Rather than fewer safety nets, I think investors would be better off with *more* of them.

A very current example illustrates how safety net thresholds can help investors. The FASB issued a standard in March with the purpose of simplifying stock compensation accounting, with early adoption permitted.[5] The standard's changes to the accounting for excess tax benefits tied to stock compensation impact the income tax provision. The amendment requires that an excess tax benefit or deficiency will be reported directly in the income tax provision - increasing its volatility, usually on the lower side. Those benefits also impact the cash flow statement. Additionally, there are choices companies may make on the presentation of the standard's changes on the cash flow statement: they may choose to adopt the standard prospectively or on a modified retrospective basis.

Our firm conducted a study of the application of the new standard by 343 early adopters. As the table below shows, 150 firms had a good reason to adopt early: the change reduced their current year tax provision. Only 4 firms reported income tax deficiencies upon adoption.

Adoption Effects: Tax Provisions

Adoption Effect on Income Tax:	Count	% Total
Benefit *(decreases income tax expense)*	150	***44%***
Deficiency *(increases income tax expense)*	4	***1%***
Not disclosed or not applicable	189	***55%***
Total	**343**	***100%***

The majority choosing early adoption did *not* disclose the effect. Was it immaterial? Not disclosed, through neglect? Intentional? It can't be determined. "Safety net" thresholds that would require disclosure of the effect at a certain level, and a requirement to state that the effect was immaterial (when it is so) would help investors be aware of factors that might influence tax provisions, simply because of an accounting election.

The same pattern appeared in the way early adopters presented the changes in the cash flow statement. Recall that firms may choose from a modified retrospective adoption or a prospective adoption. When a firm chooses a retrospective presentation, they show a trend that's consistent for the periods presented. Investors generally prefer this method. A consistent trend is not present if a firm chooses the prospective method – all else equal, the current year will show higher cash from operating activities compared to prior periods presented. There is no separate cash flow statement line item displaying the change, so investors will be left in the dark unless they can find other disclosures in the accounting policy footnote or the Management's Discussion & Analysis.

Excess Tax Benefits In Operating Cash Flows

	Early Adopters	% of Total	Disclosed $ Effect on OCF	% of Early Adopters
Prospective	102	***30%***	34	***33%***
Retrospective	51	***15%***	39	***77%***
Not Specified or not applicable	190	***55%***	0	--
Total	**343**	***100%***	**73**	***21%***

The table above summarizes the implementation choices made. The prospective method was favored 2-to-1 over the retrospective method. More adopters gave no mention of the method chosen than those who disclosed the method. Once again: Was it immaterial? Neglect? Intentional? It can't be determined. Notice also that retrospective adopters showed effects of the change 77% of the time; the prospective adopters, only 33%. The prospective adopters are the ones where a misleading improvement in operating cash flows may appear - and they disclose the least.

[5] Accounting Standards Update No. 2016-09, "Improvements to Employee Share-Based Payment Accounting."

One might attribute such poor disclosures to poorly constructed disclosure requirements in the FASB standard. That may be so, but rarely - if ever - has the FASB required bright line thresholds for disclosures. Similarly, FASB has never required a statement that application of a standard had an immaterial impact because an effect threshold was not reached. In this case, default “safety net” disclosures, coupled with an immaterial declaration when necessary, would provide investors with information they need to assess the effect of an accounting change on performance. This is only one example, but it’s a disclosure framework that would work to the benefit of investors.

One thing to keep in mind about this example: the application of this standard doesn’t encompass the potential changes in management’s disclosure materiality determination as contemplated by the FASB. These poor disclosure results might be better than what we experience in the future, if those changes come to pass.

In summary, safety net disclosures, coupled with a required “immaterial effect” statement when application of the new standard doesn’t result in the safety net being “opened,” would have greatly improved investors’ understandability of the early adoption of this standard.[6] Safety net disclosures are useful for investors, and their presence in SEC rules should be expanded rather than diminished.

My view on the overlapping disclosures[7] is that the Commission should coordinate with the FASB on a project to determine whether they can be effectively - and specifically - integrated into FASB disclosure standards before elimination of them from the SEC literature. I also recommend that rigorous field testing is needed to determine if elimination of the SEC requirements would result in a loss of investor information. My overall impression, based in part on the evidence in the example discussed above, is that elimination of these requirements and reliance on FASB standard disclosures alone would not benefit investors at all. The SEC’s specific and granular requirements have always been a complement to the FASB’s more general disclosure requirements, and the combination has usually been beneficial to investors. This is especially so in the areas of business and segment information.

If coordination with FASB on these parts cannot be accomplished, then I recommend that the Commission at least do no harm to investors: let these parts of the proposal remain unchanged. I appreciate that the Commission has been required by Congress to find “burdensome” disclosure requirements and clear them from the rule books. I think that the elimination of the requirements in the first three categories described on the first page of this letter will enable the Commission to fulfill its Congressional duty without harming investors. Reasoned study of the overlapping disclosures would benefit investors more than simply excising the requirements creating them.

Please do not hesitate to contact me if you would like to have a further discussion. Best regards.

Sincerely,

Jack Ciesielski

Jack Ciesielski

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[6] It’s not too late for the Commission to focus on this because the standard will be required in the new year. There will be a much more pervasive application of the standard appearing in the first quarter reporting.

[7] See pages 30 - 86.