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November 26, 2014

Via e-mail

Keith F. Higgins
Director, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Disclosure Effectiveness

Dear Mr. Higgins:

We are pleased to submit this letter in response to the request of the Division of Corporation Finance (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") for comments on how to improve the disclosure regime and make it more effective. We support the staff's recommendation in its Report on Review of Disclosure Requirements in Regulation S-K to undertake a comprehensive review of the disclosure regime and believe that a comprehensive review can achieve the dual goals of streamlining disclosure requirements for public companies while improving the clarity and usability of disclosure for investors.

Our firm has held a number of roundtables attended by representatives from several of our corporate clients and other public and private companies to discuss their views on how to make disclosure more effective. While the views expressed in this letter represent the views of our firm, they reflect input from these companies as well. In our roundtables, there was overwhelming support for the Division's disclosure effectiveness initiative. There was also a clear consensus among this group of companies that comprehensive rule changes applicable to all issuers are needed for public company disclosure to change meaningfully and to keep pace with today's dynamic markets.

We believe that the Division should conduct its review in the context of three key developments that we believe affect disclosure effectiveness most significantly:

(1) *Availability of Information.* The internet has put vast amounts of information at investors' fingertips. A multitude of reputable organizations publish for free information which can, and does, serve to educate investors about economic trends, companies and the industries in which they operate.

(2) *Instantaneous Communications.* Advances in communications technology have made the dissemination of news nearly instantaneous and constant. Annual, quarterly and current reports on Form 8-K are only one source of information about an issuer in today's communications environment.

(3) *Institutionalization of stock ownership.* Institutional investors held 67% of equities in 2010.[1] These investment managers are highly sophisticated and the type of information that they use in making investment decisions differs in many ways from information issuers provide in response to Regulation S-K and periodic report forms.

We have focused our comments on some of the most significant areas for review in Regulation S-K and the disclosures required by periodic reports on Forms 10-K and 10-Q, and current reports on Form 8-K, which we understand represents the first phase of the Division's comprehensive review.

1. Take a principles-based approach to disclosure.

We believe that in reviewing the specific disclosure requirements of Regulation S-K, Regulation S-X and the periodic reporting forms, the Division should take a principles-based approach to reworking disclosure rules. We believe that a principles-based approach will elicit more relevant and useful information than a strictly rule-based framework because it will provide more flexibility for issuers to use their judgment in disclosing information that they believe is material to investors depending on facts and circumstances unique to each issuer. The pace at which the business environment changes, the ever increasing challenges businesses face in our global economy, continued advances in the speed with which we communicate and the proliferation of vast amounts of information all contribute to a need to move away from static "line-item" requirements. For many issuers, line-item requirements no longer elicit meaningful information. For example, the evolution of the information required by Item 3.03 of

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[1] Marshall E. Blume and Donald B. Keim, Working Paper, *Institutional Investors and Stock Market Liquidity: Trends and Relationships,* The Wharton School, University of Pennsylvania (Aug. 21, 2012), *available at* http://finance.wharton.upenn.edu/~keim/research/ChangingInstitutionPreferences_21Aug2012.pdf, at p.4.

Regulation S-K, Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), reflects the Commission's decision to take a principles-based approach, and we believe that the resulting disclosure is among the most meaningful disclosure contained in periodic reports. A principles-based approach should also consider the elimination of most disclosure thresholds which often times result in mandating disclosures that are not material.

2. ***Recognize the Profile of the 21st Century Reasonable Investor.***

Disclosure should be written for an audience of "reasonable investors." However, it seems that disclosure is often premised on the assumption that the reasonable investor has little or no knowledge of a company's business, its industry or the merits or risks associated with its business. We believe that the profile of the reasonable investor has devolved to the "neophyte investor" and that this is one of the contributing factors to disclosure overload. We believe the reasonable investor standard should presume at least some level of sophistication so that an issuer does not need to explain in detail, for example, regulatory schemes that are applicable to it or risks that are self-evident or ubiquitous in making an investment in a security.

3. ***Reorganize Regulation S-K.***

We believe that Regulation S-K would benefit from being reorganized around four main areas – (i) a description of the company's business, including its strategic plans, (ii) information about the people who manage and own the company, (iii) financial information, including MD&A, and (iv) non-financial information covering topics including risks and corporate governance. Annual reports on Form 10-K should also be reorganized around these main topics. Requirements related exclusively to smaller reporting companies or foreign issuers should be grouped together under separate headings in Regulation S-K.

4. ***Harmonize financial disclosure requirements.***

Any comprehensive review needs to focus on the interplay between the financial disclosures required by Regulation S-K and Regulation S-X and FASB's financial statement disclosure requirements with a view toward integrating the common elements of those requirements. Reducing complexity and redundancy will improve clarity, transparency and usability of financial information. The August 2008 Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission recommended that the Commission and the FASB work together to develop a framework to integrate existing SEC and FASB disclosure requirements into a cohesive whole to ensure meaningful communication and logical

presentation of disclosures, based on consistent objectives and principles. [2] We believe that recommendation should be implemented as part of the Commission's disclosure effectiveness initiative.

We believe the Division should also coordinate with the Public Company Accounting Oversight Board (the "PCAOB") on its two proposed standards: The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion (the "proposed auditor reporting standard") and The Auditor's Responsibilities Regarding Other Information in Certain Documents Containing Audited Financial Statements and the Related Auditor's Report (the "proposed other information standard") and consider whether these proposals can further the Division's goal of making disclosure more effective. [3] Many constituencies have expressed concern that these proposals have the potential to add duplicative information to Form 10-Ks and shift the perspective from management to the auditors on information that is often already presented in MD&A. Coordinating with PCAOB on the Commission's goals for the disclosure effectiveness initiative will hopefully address these concerns.

5. ***Revise existing industry guides and create new industry guides.***

We believe that improved industry guides could be very helpful to both issuers and investors in focusing on the specific disclosure issues that are relevant to companies in highly regulated or specialized industries, such as financial institutions and banks, mining, oil and gas exploration and pharmaceutical companies. Requirements currently found in Regulation S-K that apply only to these specialized industries could be moved to the relevant industry guide.[4]

Companies with which we met in the pharmaceutical industry noted that the level of disclosure related to descriptions of regulation and other issues common to all pharmaceutical companies that has become industry norm has detracted from rather than enhanced meaningful disclosure. We believe the Division should consider designing an industry guide applicable to pharmaceutical companies and other industries that could benefit from such guides. These industry guides could contain disclosure standards that address issues that are common across companies in that industry, such as the regulatory environment in which it operates (e.g., the Food and Drug Administration regulations).

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2 Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission (August 2008). *Available at* http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf.

3 http://pcaobus.org/Rules/Rulemaking/Docket034/Release_2013-005_ARM.pdf

4 For example, Regulation S-K, Item 104 – Mine Safety Disclosure and Item 4 of Form 10-K could be moved to an industry guide for metals and mining companies.

6. Promote company specific risk factor disclosure.

Risk factor disclosure is often so lengthy and generic that it no longer serves its purpose of alerting investors to the "most significant factors that make the offering speculative or risky" as directed by Item 503(c) of Regulation S-K. Despite Item 503(c)'s requirement that the discussion be "concise", the risk factors section of 10-Ks and prospectuses span in some cases more than 40 pages and describe many obvious factors that affect all companies. Companies from highly speculative start-ups to Fortune 100 companies disclose risk factors that go well beyond factors that make an investment "speculative". Instead, risk disclosure has become a catalogue of factors that are inherent in the operation of any business, describe macro-economic or general stock market considerations or summarize complex regulatory schemes. Some risks are simply so remote that they are unlikely to occur or if they did, the negative impact would be mitigated by other considerations that are not described.

We believe that the sheer length of risk factor disclosure is driven by efforts to forestall potential litigation by providing investors with every conceivable factor that could, if realized, negatively affect the company's business and price of its stock. We also agree with Chair White's view that The Private Securities Litigation Reform Act, which encouraged issuers to disclose forward-looking information provided that they also disclose cautionary information that explained the important factors that could cause actual results to differ materially from what the company was forecasting, contributes to lengthy risk factor disclosure.[5] Based on our discussions with a number of companies, there is significant concern that an effort, particularly one undertaken without a specifically mandated change in the rules that is applicable to all issuers, to scale back risk factor disclosure could potentially give rise to increased litigation exposure. As a result, there is little incentive for companies to voluntarily act to remedy this problem without the protection of a safe-harbor.

Risk factor disclosure should be refocused to address risks that are specific to the issuer and that can have a material impact on the company. Any new risk factor disclosure requirements should take a principles-based approach, such that only risks material to an understanding of the issuer's business are required to be disclosed. Rather than providing the risk factors that an issuer ***may*** include as Item 503(c) currently does, consider whether revisions to Item 503(c) should include examples of generic disclosure and other items that need ***not be*** included as risk factors. Some examples are:

- macro-economic risks that effect all businesses in a particular industry,

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[5] The Path Forward on Disclosure, October 15, 2013. Available at http://www.sec.gov/News/Speech/Detail/Speech/1370539878806

- general stock market risks, such as volatility in a company's stock price,
- summaries of regulation, and
- risk disclosure that repeats disclosure provided in response to other specific requirements or financial disclosures, such as risks related to key management, legal proceedings and the payment of dividends.

7. ***Permit the use of a company profile for disclosure of core information.***

The issuers we met with were receptive to the idea of creating a company profile that would contain basic disclosure about the company and its business that does not change frequently. This information would be filed via EDGAR and would also be posted to a company's website. The company profile could include information about the company's core business, risk factors, management and the board of directors as examples. Issuers would have the ability to update the disclosure as it deemed necessary and the sections of a company profile could indicate the date of the last update. We do not believe that this disclosure enhancement would eliminate the need for periodic reports, including current reports on Form 8-K.

8. ***Discourage repetitive disclosure by permitting cross-references and hyperlinks.***

Repetitive disclosure contributes to the length and lack of navigability of disclosure documents. There are many factors that contribute to repetition, including disclosure requirements that overlap with GAAP requirements. We encourage the Division to amend Regulation S-K to specifically encourage the use of cross-references or hyperlinks to another part of a periodic report or registration statement that contains the same information. For example, disclosure of material legal proceedings is required by Item 103 of Regulation S-K, but is also covered in the notes to the financial statements. A simple cross reference or hyper-link in the text of a report could serve to focus a reader on the disclosure in the financial statements without repeating it. We believe that this approach can be easily implemented by issuers and could eliminate a significant amount of redundancy while improving navigability of the report. The Division should also consider whether a hyperlink to information posted on an issuer's website could also satisfy particular disclosure requirements.

9. ***Eliminate outdated or unnecessary disclosure requirements.***

The Division's review should also focus on eliminating outdated disclosure requirements that are no longer relevant or helpful to investors because they do not provide information that is useful in making an investment decision in today's environment.

Some examples include:

Item 102 of Regulation S-K – Description of Property. Disclosure of physical properties does not in most cases provide investors with meaningful information, particularly for companies not engaged in manufacturing. Also consider whether Item 601(b)(10)(ii)(D), which requires the filing of material leases, is necessary.

Item 201 of Regulation S-K – Historical Stock Prices. The availability of reliable stock price information on the internet, much of it in real time, obviates the need for a number of disclosure requirements in Item 201 of Regulations S-K. For example, Item 201(a)(1)(ii) through (v) of Regulation S-K, which requires disclosure of historical trading prices, should be deleted as the information becomes stale before it is published by an issuer and investors have access through any number of websites (including the issuer's own website) to current and historical trading prices.

Item 201 of Regulation S-K – Holders. Given that most holders of equity securities hold through a nominee, the number of holders of a class of common equity does not provide meaningful information.

Item 301 of Regulation S-K – Selected Financial Data. We do not believe that five years of selected financial information is necessary disclosure as recent trends can easily be gleaned from the financial statements and MD&A.

Item 503(d) of Regulation S-K – Ratio of Earnings to Fixed Charges. We do not believe that this information is relevant to investors as it is not a metric that investors rely on in evaluating a company's financial condition.

10. Encourage issuers to use their websites as a repository for basic corporate documents.

Robust corporate websites are ubiquitous in today's world. These websites serve a variety of purposes from e-commerce, advertising and customer education to investor information, as well as complying with stock exchange regulation. We believe that corporate websites could be used as a repository for basic documents that are currently filed as exhibits pursuant to Item 601 of Regulation S-K. For example, the Division could require that an issuer's certificate of incorporation and by-laws be provided on its website much as the stock exchanges require corporate governance documents to be posted to an issuer's website.

The current system of listing exhibits in periodic reports should be revised as it is very cumbersome to trace a particular exhibit back to the report with which it was actually filed. One alternative is to permit an issuer to indicate in the exhibit list to its Form 10-K

whether a particular contract is available on its website or alternatively, an exhibit list could contain a hyper link to the document on the Company's website or on EDGAR.

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We appreciate this opportunity to provide our views on how to update disclosure requirements to facilitate timely, material disclosure by companies as well as shareholder's access to that information. We would be happy to discuss any questions the staff may have with respect to our comments. Questions may be directed to Danielle Carbone (212) 848-8244, Robert Treuhold (212) 848-7895 or Robert Evans (212) 848-8830.

Very truly yours,

Shearman & Sterling LLP

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