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Re: **Comments on the Report on Review of Disclosure Requirements in Regulation S-K**

Mr. Keith Higgins  
Director, Division of Corporate Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Mr. Higgins:

I am a law professor at the University of Florida Levin College of Law. I teach in the school's Graduate Tax Program, and I research and write, among others, in the area of taxation of financial products. This comment letter is written in response to the solicitation by the Securities and Exchange Commission (the "Commission") for comments on the Commission's Report on Review of Disclosure Requirements in Regulation S-K issued in December 2013, as required by the JOBS Act (the "Report").

I fully support the staff's recommendation in the Report to undertake a comprehensive review of the securities disclosure regime, and welcome the opportunity to submit comments. As explored in-depth in the attached article, my research has revealed issues related to *nonfinancial* tax disclosure requirements under Regulation S-K item 601(b)(8) that make such requirements largely ineffective. I would like to highlight those issues for the Commission's consideration, and suggest a reform to the disclosure requirements under item 601(b)(8).

The Regulation S-K requirements for nonfinancial tax disclosures, including the requirements of Item 601(b)(8), create confusion and inconsistency in disclosure practice. Specifically, Item 601(b)(8) seemingly requiring issuers to disclose material information that only the investor, rather than the issuer, would actually possess. (See Omri Y. Marian, *Reconciling Tax Law and Securities Regulation*, 48 University of Michigan Journal of Law Reform 1 (2014)).<sup>1</sup>

Moreover, investors possess different tax interests, even in respect of the same investment. This is due to the special nature of tax laws. In an attempt to address investors' heterogeneous tax preferences, disclosure practice is to draft nonfinancial tax disclosures with an "average taxpayer"

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<sup>1</sup> *Reconciling Tax Law and Securities Regulation*, 48 University of Michigan Journal of Law Reform 1 (2014) is available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2419806](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419806).

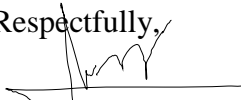
in mind. However, the result of drafting nonfinancial tax disclosure for the benefit of “average taxpayers” is that, many times, disclosures contain irrelevant information that may confuse investors. In addition, the disclosures many times refrain from addressing relevant issuer-level tax information that directly affects how investors calculate their *own* tax liabilities. (*See Id.*).

I believe the effectiveness of Regulation S-K Item 601(b)(8) would be greatly improved by a rewrite that requires disclosure of any (but only) nonfinancial tax item that (i) is an issuing entity-level tax item not already disclosed in the financial statements and (ii) may affect how investors calculate their own tax liabilities, despite the fact that each investor’s actual tax liability may be different. (*See Id.*). This reform would present investors with relevant information necessary to calculate tax costs associate with investments in securities, would greatly shorten irrelevant tax narratives currently found in nonfinancial tax disclosures, and would greatly strengthen the Commission’s enforcement efforts in this area. (*See Id.*).

The Commission has acknowledged the importance of these issues in a recent Staff Legal Bulletin (the “Bulletin”).<sup>2</sup> The enclosed article directly confronts the issues identified in the Bulletin, and proposes practical solutions.

I thank you for the opportunity to participate in this review process. I would be happy to discuss any questions the staff may have with respect to this letter or the attached article. Questions may be directed to [REDACTED] or [REDACTED].

Respectfully,



Omri Y. Marian

Attachment:

Omri Y. Marian, *Reconciling Tax Law and Securities Regulation*, 48 *University of Michigan Journal of Law Reform* 1 (2014).

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<sup>2</sup> SEC Staff Legal Bulletin No. 19, 2011 WL 4957889 (Oct. 14, 2011)

Copyrighted material redacted. Author cites:

Marian, Omri Y., Reconciling Tax Law and Securities Regulation (April 2, 2014). 48 University of Michigan Journal of Law Reform 1 (2014). Available at SSRN:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2419806](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419806)