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Via Electronic Submission

February 15, 2016

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: Request for Public Comments on the Securities and Exchange
Commission's Disclosure Effectiveness Initiative –
Recommendations on EDGAR Modernization**

Dear Mr. Fields:

This letter is submitted on behalf of the Disclosure Effectiveness Working Group (the "Working Group") of the Federal Regulation of Securities Committee and the Law & Accounting Committee (together, the "Committees") of the Business Law Section (the "Section") of the American Bar Association (the "ABA") with respect to the "Disclosure Effectiveness" initiative of the U.S. Securities and Exchange Commission (the "SEC" or "Commission"). In particular, we are providing recommendations regarding the EDGAR Modernization initiative, as well as proposing certain shorter-term changes to EDGAR to make it more usable for investors and filers.

The comments expressed in this letter represent the views of the Committee only and have not been approved by the ABA's House of Delegates or Board of Governors and, therefore, do not represent the official position of the ABA. In addition, this comment letter does not represent the official position of the Section of Business Law of the ABA.

We are pleased to submit the following comments and recommendations for improving the delivery and presentation of disclosure on EDGAR in ways that we believe will benefit both investors and filers. This letter does not propose changes to the substance or timing of disclosure, nor does it recommend changes to the current securities disclosure liability regime.

We considered several key principles in formulating our recommendations. First, a modernized EDGAR should be flexible enough to accommodate new and ever-changing technologies, especially mobile technology. Next, any changes to EDGAR should both provide flexibility in filing requirements and reduce cost and time burdens for filers.

Finally, a modernized EDGAR should centralize and consolidate information, making that information more accessible to investors and other users. Accordingly, our longer-term recommendations focus on the creation of an EDGAR "Company File", which would provide investors a centralized location for key information on registrants.

We also address shorter-term, potentially immediate changes that the Commission could adopt to make EDGAR more user-friendly. We refer to the letter addressed to you from the Center for Audit Quality, the U.S. Chamber of Commerce, Financial Executives International and The Business Roundtable, dated May 29, 2015, and we concur with the recommendations contained therein. We understand that the Commission has already begun to consider how it can improve the search experience for EDGAR users, and we support advancements that make EDGAR more user-friendly and capable of advanced and predictive searches.

SHORT-TERM CHANGES

Extension of Same-Day Filing Deadline

Since 1996, most SEC filings have been submitted online through the EDGAR system. The current filing hours for EDGAR are from 6:00 a.m. ET to 10:00 p.m. ET, with most filings required to be submitted by 5:30 p.m. ET in order to be dated as filed on EDGAR on that day. The same-day filing hours are tied to the historical filing window hours for submitting actual paper filings at the SEC's home office in Washington, D.C. With online filings and the ease of access to the Internet, the need for a filing deadline tied to the business day in Washington D.C. is no longer relevant. In fact, the SEC does not even have a filing desk at its home office. Accordingly, the Commission should consider extending the deadline to receive a same-day filing date from 5:30 p.m. ET to 11:59 p.m. ET and correspondingly increasing EDGAR's capabilities to accept and post filings at all times. Such an extension would provide flexibility for registrants throughout the United States and internationally and enable more real time dissemination of information.

For registrants located outside the Eastern Time time zone, the current deadline does not correspond with their business day. Extending the same-day deadline would provide these registrants with a much wider window for their documents to receive a same-day filing date. It would also allow for easier coordination by filers with counsel and advisors who may be in a different time zone and would also eliminate the confusion caused when a filing date does not match the date of EDGAR acceptance date and may also decrease the number of inadvertent late filings. In addition, filings made after 5:30 p.m. ET to 10:00 p.m. ET appear on EDGAR at 6:00 a.m. ET the following morning. Instead, all filings should appear on EDGAR in real-time. In today's global economy, information affects markets around the world. Making filings publicly available when they are filed and extending the same-day filing deadline would facilitate earlier dissemination of material information to investors worldwide.

Prominence of EDGAR

The Commission also should consider updating its websites, and recommending that other government websites do the same, to enhance the prominence of EDGAR in light of its importance to the markets. While the existing SEC.gov website currently has a link to EDGAR prominently displayed on its home page, the investor.gov website includes a link to EDGAR under its "Tools" menu. The Commission should consider adding a similarly prominent link to EDGAR on the investor.gov home page.

Another possible change would be the creation of a new website URL which would be dedicated solely to EDGAR and company filings. A dedicated EDGAR.gov website would simplify the process of locating company filings by removing the burden of accessing EDGAR via other websites. Any current links to EDGAR (e.g., on sec.gov and investor.gov) could link directly to the new URL. A dedicated website would also promote the goal of creating a centralized location for investors to find core information about a registrant in conjunction with the development of a "Company File" as discussed below.

EDGAR Filing Process

In an effort to improve disclosure and reduce compliance costs, we recommend the Commission modify EDGAR to provide registrants with a more efficient and less expensive filing process.

One near-term action would be to expand the types of filing formats that EDGAR can accept to provide registrants and other filers with greater flexibility, thereby increasing the efficiency of the filing process. For example, disclosure is typically drafted in a word processing format such as Microsoft Word, which then needs to be converted into a special plain text or HTML format before submission to EDGAR. This conversion requires the use of expensive financial printers or cumbersome software. Acceptance of word processing formats or searchable PDFs would eliminate this additional step in the process, greatly increasing efficiency and lowering costs for companies and their shareholders.

Another near-term modification that would have a meaningful impact on registrants is to implement more effective XBRL tagging processes. One frequent complaint from registrants is how time-consuming XBRL tagging is as compared to the perceived utility for investors. The Commission should consider technological solutions to improve this process.¹

In addition, with the goal of ensuring that the exact legal names of registrants are reflected in EDGAR, the Commission should improve EDGAR's ability to accept foreign language characters.

¹ For further discussion of potential modifications to EDGAR to improve disclosure by registrants to investors, see the "Formatting of Disclosure" section of this letter.

Enhanced Search Capabilities

Internet search capabilities have improved dramatically since EDGAR's inception and the last major overhaul of its search function. We recommend that the Commission investigate possible improvements to EDGAR's search capabilities to help investors locate, sort and compare company filings. This could be accomplished in many ways, including optimizing EDGAR's search page so that it includes all search methods rather than just the company name and ticker fields; expanding the criteria by which one can search EDGAR; and using technological advancements to provide for predictive searching (*i.e.*, identifying the publicly-traded entity among similarly named entities). Such advancements could also include the ability to (i) search by a filing type across all registrants or an industry by SIC code (*e.g.*, all Form 10-Ks in the airline industry), (ii) search Form 8-Ks by item number, (iii) filter a registrant's filings by more than one filing type at a time and (iv) display the name of the underlying document for each exhibit link so that investors can quickly identify the exhibit for which they are searching (see below for further discussion concerning exhibits).

LONGER-TERM CHANGES

"Company File" Approach to Disclosure

Overview

We believe that the accessibility of company information would be significantly enhanced by the use of a "Company File" presentation of the information required to be included in periodic and current reports. By organizing company disclosures into standardized categories, or "tabs", the Company File would provide investors with quick and easy access to key information and exhibits and facilitate the comparison of disclosures across registrants. The Company File could be updated automatically and incrementally, as changes and additions to previously-disclosed information are filed. It should include some type of time-stamping mechanism indicating when an update last occurred.

Importantly, we are suggesting that the Company File be an enhancement to, rather than a replacement of, the current periodic-report regime. Registrants would continue to file periodic reports, with the information provided in those reports used to update the Company File. This methodology provides the benefits of the "user-friendly" Company File presentation, while also maintaining the capability to search for specific filing types or view historical filings chronologically. Moreover, chronological archiving of previous filings would continue, enhanced by the Company File overlay.

To implement the Company File model, each registrant's EDGAR page could include a prominent link to its Company File. This link would lead to a Company File "home page" with tabs or hyperlinks for specific areas of disclosure. The Company File home page could also display a high-level description of the registrant's business and financial performance, similar to the Management's Discussion and Analysis overview provided by many companies, as well as other company highlights. The SEC could

allow registrants to determine the contents of this home page, since prominent tabs leading to SEC-prescribed disclosures would also be displayed. At its core, the home page would be principles-based and include dynamic cross-references and hyperlinks to the more detailed disclosure, facilitating efficient navigation and use. In developing the rules mandated by the FAST Act that permit issuers to submit a Form 10-K summary page, the SEC could also consider how such summary page can be integrated into the Company File platform.

Company File Tabs

In order to reduce the complexity of migrating to the Company File model, its website tabs could mirror existing disclosure items, e.g. Form 10-K line-item requirements. This would facilitate population of the tabs and maintain consistency for users who are accustomed to periodic reports. For instance, tabs could include, among others, Financial Statements, Management's Discussion and Analysis, Risk Factors, Corporate Governance, and Executive Compensation. Importantly, consideration should be given to having EDGAR update the information in the tabs based upon the filing of new disclosures. For example, the Financial Statements tab could include audited full year financial statements and the most recent interim financial statements, with the included interim financial statements updated each quarter by Form 10-Q, as well as updated financial statements reflecting reclassified segments or restatements, or acquired company financial statements, that may be filed via Form 8-K or otherwise.

Population of the Company File could be accomplished in a number of ways. Given that it will remain incumbent upon registrants to file periodic and current reports, to limit the burden on registrants and to ensure consistent implementation of the Company File across all registrants, the EDGAR system could populate and update the Company File with information provided by the registrant, who should have the ability to review the Company File for accuracy and in order to ensure new or updated disclosures are properly added to the Company File, within a reasonable timeframe. Alternatively, consideration could be given to having registrants populate and update their Company File when they submit their filings. However, because manual updating poses a substantial burden to timely implementation of the Company File, creates a large ongoing drain on SEC and registrant time and resources and does not use technology to ensure that periodic disclosures and information included in the Company File are aligned, a more automatic hybrid approach, as outlined above, may be more desirable.

Updating the Company File with information from Form 10-K, Form 10-Q and Form 8-K filings, among other disclosures, would provide easy and efficient investor access to the most recent overall disclosure for a registrant. This "snapshot" of all relevant information will facilitate more informed investment decisions, without the need for time-consuming document searches. Continued archiving of all periodic reports will also allow investors to see changes in disclosure over time, and will help with analyzing trends in disclosure.

Adding to or enhancing the existing filing regime by organizing information into a Company File presentation would not require any changes to Forms 10-K, 10-Q or Form 8-K for periodic and interim reporting. For periodic and current reporting, a company would continue to file the Form 10-K, Form 10-Q or Form 8-K, as appropriate, as it does today with unchanged deadlines. The applicable Company File tabs would be updated automatically to include the most recent information.

Exhibits

We also believe that the presentation of exhibits in the Company File could streamline the time-consuming and burdensome process currently required of investors seeking specific documents. Instead of searching for cross-references and footnotes indicating the location of previously filed exhibits, the Company File should have a tab for exhibits that would be arranged by category, with the individual exhibit available via hyperlink. This would streamline access for investors to key corporate governance documents, such as the registrant's charter and bylaws, along with material contracts, executive compensation arrangements and other previously filed exhibits. Hyperlinks to relevant exhibits could also be embedded into other Company File tabs where those exhibits are incorporated by reference, benefitting investors by facilitating immediate access.

Registrant's Website and the Company File

In order to make the Company File more useful to investors, the SEC should consider whether to require that the information it and the stock exchanges currently require to be posted on the company website be included in the Company File, via hyperlink or otherwise, in lieu of website posting. For example, the NYSE requirement that a registrant post its audit committee, nominating committee and compensation committee charters on its website could be modified to direct registrants to post the charters in the Company File. Registrants would still be able to post such information on their website as well if they wish. The liability scheme for such information included in the Company File would be the same as for website posting (i.e., "furnished"). Our recommendation does not include a requirement that a registrant post to the Company File all press releases or such other supplemental information that a registrant may post in a Regulation FD context (e.g., investor presentations, supplemental financial data) or otherwise, although there would be a mechanism for a registrant to do so if desired. We are limiting our recommendation to explicit website posting requirements in the stock exchange and SEC rules.²

Having some information on a company website and other information on EDGAR can cause confusion for investors because they are often unsure where, if anywhere, information will be, and information provided on company websites is often difficult to find. A Company File presentation would give investors one easy access

² For example, see the website posting rules in the NYSE Listed Company Manual for committee charters, corporate governance guidelines and code of business conduct and ethics (NYSE Listed Company Manual 303A.04, 303A.05, 303A.07(b), 303A.09, 303A.10).

point for all important company information and documents. In addition, we recommend that any such information included in the Company File be subject to the same liability scheme under the Exchange Act as information that is currently required to be posted on websites. That is, such information should be deemed “furnished” for liability purposes.

Using the Company File for documents and information that are currently required to be posted on a company website would also make it easier for companies to meet the disclosure requirements of the SEC and the stock exchanges as there would be only one place that companies need to go to update information. Having one place where such required information is disclosed will help companies keep track of the information that is required and what needs to be disclosed to the public when it is updated.

Formatting of Disclosure

In addition to adopting the Company File approach, we believe that the formatting of disclosure presented to investors is another area in which modernization of EDGAR can help both registrants and investors. As EDGAR is updated to incorporate more advanced technology, it is important that registrants be able to present disclosure in a format that is both easy for investors to comprehend and more cost-effective for registrants to produce. Specifically, EDGAR reform should address formatting of disclosure in three key areas: (1) XBRL and data tagging; (2) readability of disclosure; and (3) consistency across multiple platforms.

XBRL and Data Tagging

While the SEC is modernizing the EDGAR website and framework, the current XBRL and data tagging system must be addressed. As the SEC is aware, both registrants and investors face problems with the current XBRL and data tagging system. Investors, meanwhile, would prefer data to be presented in a form that can be more easily processed. For many registrants, using XBRL is a costly and time-consuming process for which there is no clear benefit. Moreover, given the time it takes to prepare the XBRL filing, a registrant may need to forego further updates and revisions to its disclosure for a periodic report approximately two days prior to filing in order to allow time for data tagging to be incorporated into the financial information for the filing.³

EDGAR modernization efforts should address XBRL and access to structured data more generally. For example, the SEC could explore providing a data tagging framework that avoids unnecessary duplication and instead consider if XBRL can be modified or another data tagging system used that is truly cost and time-efficient. As registrants utilize a modernized EDGAR system, investors may rely on data tagging, particularly if available in an interactive format. The ability for investors to download

³ See Emily Chasan, *Costly Data Go Untapped*, WALL ST. J. (Jan. 22, 2013, 12:49 AM), <http://blogs.wsj.com/cfo/2013/01/22/costly-data-go-untapped/> (noting that companies have invested in internal systems that they believe are superior to XBRL).

financial tables and other data reported by companies in order to better compare companies' disclosures across industries would appear to be particularly useful and a modernized EDGAR should include functionality to permit this.

While the SEC reaches out to all stakeholders and seeks to develop a consensus on the form a modernized XBRL and data tagging system should take, it should not delay other modernizations of EDGAR or the SEC website. Rather, changes can be made to XBRL, such as the extension of XBRL or other data tagging to MD&A and other parts of filings, on a gradual basis in order for the SEC to seek input from investors and registrants. Any changes made by the SEC to XBRL requirements should use phase-in periods in order to allow registrants to adapt to these new requirements. The SEC must ensure, however, that there is sufficient flexibility in a modernized EDGAR to easily accommodate changes in technology.

Presentation of Disclosure

In modernizing EDGAR, the SEC should ensure that registrants are able to disclose information, and investors are able to use the information, more easily and effectively. Under the current EDGAR system, registrants are limited in their ability to present data. Registrants must use the limited file formats that can be uploaded to EDGAR, and, as a result, information presented in filings tends to be simplistic. A modernized EDGAR should be able to incorporate software programs in which registrants can use graphs and charts to more clearly present information to investors. For instance, if EDGAR is updated to allow registrants to directly upload files made in .ppt or .xls formats,⁴ registrants will have additional flexibility in how they choose to present their financial information and performance results to investors. By allowing for registrants to be more innovative in choosing how they disclose information to investors, registrants can not only focus on presenting information to investors in the best format possible, but also use feedback from investors to continuously update and revise their disclosure format so it is most useful for investors.

Investors will benefit not just from having information that would ordinarily appear in pages of texts being simply presented through graphics, but also from an EDGAR system in which this information can be exported and used by investors. The SEC should consider how to make information in filings, or on the Company File (if adopted), easier to export by investors in commonly-used filing formats to increase the functionality of the data. As investors rely on technology more and more, the SEC should adapt its approach to encourage registrants to utilize the technology available to them to make data more presentable and usable by investors.

⁴ It is important to note that while Microsoft PowerPoint and Excel are the most commonly used programs for viewing .ppt and .xls files, respectively, by the time EDGAR reforms are implemented there may be increased competition among programs that view and create these types of files. For example, the Google Apps suite of cloud-based programs is growing in popularity and has the potential to supplant Microsoft Office. Moreover, there is always the possibility that new filing formats and programs will be developed that surpass those currently in existence in versatility; a modernized EDGAR should be flexible to allow for registrants to use new and innovative programs to present information to investors, provided that there are no limitations on investors being able to access this information.

A modernized EDGAR should also be able to accommodate the use of video and other non-traditional media. We believe registrants that typically post recorded presentations to their websites would find this particularly useful in the Company File context, as they could upload the video to their Company File,⁵ which investors could view either on computers or mobile devices. In updating EDGAR to permit use of evolving technologies, the SEC should consider revising Regulation S-T Rule 304(e) to allow registrants the flexibility to provide information that the registrant believes is in the best format for investors without any worry about duplication or additional work to present the information elsewhere or in an additional text form.⁶ In addition, the SEC should consider if access to SEC filings for visually-impaired individuals can be enhanced by incorporating features that allow for larger text and text-to-speech capabilities.

Cross References

Reforms to modernize EDGAR for increased accessibility to company information should also provide for greater navigation across and cross-referencing throughout SEC filings. Within documents, a modernized EDGAR should permit investors to navigate quickly between related sections through hyperlinks and other navigational tools. For example, if the MD&A section of a registrant's Form 10-K refers to a particular note to the financial statements for further explanation of a topic, a modernized EDGAR should permit investors to click on a hyperlink to view this note. This concept should be considered for cross-references between documents as well, which would be particularly useful if the SEC were to modernize EDGAR through adoption of the Company File approach. In a Company File system, registrants would be able to enhance their SEC filings by allowing for investors to seamlessly access other filings and exhibits that the registrant wishes to highlight that are related to the current disclosure being viewed by the investor. For example, if a Form 10-Q references a recent acquisition that was previously disclosed during the period in one or multiple Form 8-Ks, the registrant should be able to include cross-references and navigational links to all of the relevant Form 8-Ks that were filed related to the acquisition. A modernized EDGAR system that includes these cross-referencing features would make for better presentation of disclosure to investors, who could more easily access the desired information of a registrant in real-time, as well as allow for registrants to spend less time duplicating disclosure previously made.

Consistent Formatting for Disclosure Across Multiple Platforms and Mobile Application

As the SEC modernizes EDGAR, it should address the various platforms in which investors are accessing information today; for example, by providing for the same

⁵ Provided that the videos are subject to the current liability scheme and are considered "furnished" for purposes of being uploaded to the Company File. Please see discussion above.

⁶ Regulation S-T Rule 304(f), which explicitly states that animated graphics cannot be included in a registrant's EDGAR filing, would also need to be revised or repealed accordingly to allow for registrants to upload videos to their Company File. 17 C.F.R. § 232.304(f).

information currently accessible on desktop computers to be displayed consistently on other devices, such as tablets and smartphones. Currently, the SEC does not have any app or platform for mobile access to EDGAR on these types of devices. While reforming EDGAR, the SEC should consider developing apps for the major mobile operating systems (e.g., Google's Android and Apple's iOS) to allow investors to easily access EDGAR no matter what device they are using. There is an increased technological role in society for using smartphones and tablets to access information, and the SEC should use EDGAR reform as an opportunity to catch-up to the current state of technology.

One drawback that the SEC may have in creating a mobile platform is the infrastructure investment needed to allow for the same level of usage of EDGAR across multiple platforms. Therefore, in creating a mobile app for EDGAR and analyzing the ability for investors to access data using the EDGAR computer website as opposed to an EDGAR app, the SEC should carefully consider what type of structured data should be available for mobile platforms. If EDGAR is modernized to allow certain complex features such as interactivity of data, it is understandable that the full suite of uses for investors on the EDGAR website may not be initially possible on an EDGAR mobile app. Still, having the ability to review disclosure and go through the Company File of a registrant, even on a basic level, would be extremely useful for investors. In developing a mobile platform for EDGAR, the SEC should consider involving a broader base of developers, such as through a public competition among students at U.S. universities to create the best EDGAR mobile app, with the winner for best mobile app receiving a prize.

Address Security Concerns

In modernizing EDGAR, the SEC will need to focus on cyber-security, in particular if the modernized EDGAR allows a wider range of file formats and other features that could increase the risk of viruses and malware. As part of the modernizing process, the SEC should seek input from registrants, investors and the public regarding such security concerns. In addition, in light of recent fraudulent filings, the SEC should revisit its processes and safeguards for submitting filings on EDGAR and consider ways to implement stronger security measures in a modernized EDGAR.⁷

Pilot Projects

Finally, before adopting a modernized EDGAR system, any changes will need to be tested by the Commission, filers and investors. A pilot program could allow EDGAR users to provide comments on proposed new features and the system as a whole. Targeted feedback could help designers and engineers more efficiently remedy problems with new features before the Commission permanently adopts them.

⁷ See Liz Hoffman, Gillian Tan and Dana Cimilluca, *SEC Reviews Dubious Avon Bid* (May 14, 2015, 3:23 PM), <http://www.wsj.com/articles/avon-hasnt-received-bid-from-ptg-capital-1431621828> (describing filing of a fake takeover bid for Avon Products Inc.); Yogita Patel, *Kraft Heinz, Phillips 66 Targeted by Fake Securities Filings* (Sept. 24, 2015, 6:18 PM), <http://www.wsj.com/articles/kraft-heinz-phillips-66-targeted-by-fake-securities-filings-1443133132>.

During the pilot period, the Commission should allow filers to voluntarily provide disclosure in the modernized EDGAR format, including the Company File approach, provided that disclosure is also made to investors in the current EDGAR format. This proposed testing scheme would allow users to compare, in real-time, the relative strengths and weaknesses of the modernized EDGAR with the existing EDGAR system. Conceivably, users participating in pilot could toggle between the modernized and existing versions of EDGAR to better understand the nature of the Commission's proposed changes.

* * *

We appreciate the opportunity to comment on the Commission's efforts to modernize the EDGAR system and respectfully request that the Commission and its Staff consider our suggestions. We are available to meet and discuss these matters with the Commission and/or its Staff, and to respond to any questions.

Very truly yours,

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