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July 18, 2016

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

Re: Concept Release on Business and Financial Disclosure Required by Regulation S-K (File No. S7-06-16, Release Nos. 33 10064, 34-77599)

Dear Mr. Fields:

I am a law professor at Temple University Beasley School of Law. I research, teach, and write in the areas of corporate law and securities regulation. This comment letter is provided in response to the solicitation by the Securities and Exchange Commission (the "Commission") for comments on the Commission's Concept Release on Business and Financial Disclosure Required by Regulation S-K (the "Concept Release").

I commend the Commission's recent thoughtful efforts to review and reform securities disclosure requirements; and I strongly support continuing attention and work to enhance disclosure requirements to better protect investors and aid issuers in our capital markets. In connection with the Concept Release, I would like to highlight five items generally for the Commission's consideration with page references to the Concept Release and citations to my relevant research for more in-depth discussions:

1. *Sunset Provisions and Temporary Rules (pp. 26-33)*. Given the dynamism and rapid pace of financial innovation and marketplace practices, the Commission should consider sunset provisions, pilot programs, regulatory experiments, and other rulemaking mechanisms in new disclosure requirement proposals, so that it can better ensure that its adopted rules remain salient, evidence-based, and reflective of the realities of the fast changing marketplace. (*See* Tom C.W. Lin, *The New Financial Industry*, 65 ALABAMA LAW REVIEW 567, 619-622 (2014)).[1]

[1] *The New Financial Industry*, 65 ALA. L. REV. 567 (2014) is available at: http://ssrn.com/abstract=2417988.

2. *Materiality (pp.34-44).* The Commission should consider providing guidance that allows for a more flexible understanding of materiality that pivots away from a singular, homogeneous model of reasonable investors towards a diverse, heterogeneous model of reasonable investors, which would be more reflective of the unprecedented investor diversity in today's marketplace. While all investors should receive high-quality, material information, information that is profoundly insightful for one type of investor may be prosaically uninformative to another type of investor. For instance, misstatements or omissions in disclosed lines of computer codes or audit trails may be material for investors using algorithmic trading programs but not for ordinary investors who are unable and unexpected to process such disclosures. (*See* Tom C.W. Lin, *Reasonable Investor(s)*, 95 Boston University Law Review 461, 513-17 (2015)). [2]

3. *Audience for Disclosure (pp. 45-52).* The Commission should consider providing disclosure guidance that better reflects the unprecedented investor diversity in today's marketplaces. Capital markets today consist of an incredibly diverse population of reasonable investors, including many who leverage the new financial technology of smart machines to process disclosed information and manage their investments. Today's diverse population of investors frequently deviates from the theoretical, homogenous reasonable investor paradigm of perfectly rational human beings of average wealth and ordinary financial sophistication that invest passively for the long term that historically has premised much of securities regulation. In fact, many investors today use autonomous, algorithmic programs powered by artificial intelligence to make their investment decisions, which represents a significant departure from historical investor practices and presumptions. Greater awareness of contemporary investor diversity can change the volume and variety of information disclosed relative to the current framework. As such, while it is important to protect every investor, it is also important to acknowledge that not every reasonable investor is the same, and thus not every investor needs the same type of protection and disclosure. (*See* Tom C.W. Lin, *Reasonable Investor(s)*, 95 Boston University Law Review 461, 466-76, 508-13 (2015)).

4. *Risk Factors (pp. 147-154).* The Commission should consider encouraging disclosures of Risk Factors to include narrative discussions of the relative likelihood and relative impact of the disclosed risks. Such narrative disclosures can better account for the dynamic nature of risks facing firms in the marketplace, and make it easier for investors and interested parties to assess the risk profiles of firms individually and comparatively as their risk profiles change over time. (*See* Tom C.W. Lin, *A Behavioral Framework for Securities Risk*, 34 SEATTLE UNIVERSITY LAW REVIEW 325 (2011)).[3]

5. *Structured Disclosures (p. 327-340).* The Commission should consider disclosure reforms that can best adapt and update old disclosure practices for a new marketplace that is more technologically savvy to a create a smarter disclosure framework. Such potential reforms should contemplate ways to leverage new information technology to create a

[2] *Reasonable Investor(s)*, 95 B.U. L. REV. 461 (2015) is available at: http://ssrn.com/abstract=2579510.

[3] *A Behavioral Framework for Securities Risk*, 34 SEATTLE U. L. REV. 325 (2011) is available at: http://ssrn.com/abstract=2040946.

better, more user-friendly disclosure framework that complements longstanding "Plain English" principles with "Plain Data" principles that allows for more types of disclosed information and more mediums of disclosure. In practice, smarter structured disclosures would permit investors and other participants in the marketplace to more readily access, analyze, compare, and tailor the disclosed information for customized or broader utility using new information technology in a cost-effective manner. (*See* Tom C.W. Lin, *The New Financial Industry*, 65 ALABAMA LAW REVIEW 567, 599-603 (2014)).[4]

I appreciate the opportunity to participate in this process, and would be happy to discuss my comments or any questions the Commission may have with respect to this letter.

Sincerely,

/s/ Tom C.W. Lin

[4] *The New Financial Industry*, 65 ALA. L. REV. 567 (2014) is available at: http://ssrn.com/abstract=2417988.