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July 24, 2016

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

File Number S7-06-16

Dear Secretary Fields:

I am pleased to have the opportunity to comment on the SEC's Concept Release #33-10064, #34-77599 Business and Financial Disclosure Required by Regulation S-K. I support the Commission's desire to take a comprehensive look at Regulation S-K with the goal of making changes to improve disclosures.

I am an independent security analyst who covers both equity and fixed income securities. Although I do focus on certain industries, such as utilities and real estate, I consider myself a generalist. I have reviewed many SEC 10-K and 10-Q filings over the years and have participated on committees and task forces that have followed and provided input on accounting standards and financial reporting issues. You can view my complete bio, as well as samples of my investment research on my website at www.larkresearch.com.

Although it is true that times change and rules that were once considered relevant often become obsolete, registrant reporting practices constantly change in response to market conditions and stakeholder practices. Registrants are, of course, well aware of the intent of the specific provisions of Regulation S-K and have adapted them to meet their own needs. Often that results in disclosure that goes well beyond the requirements of Regulation S-K; but it is also true, perhaps just as often, that certain disclosures fall short. Clarifying and updating requirements can be helpful in getting companies to change their disclosures to meet the Commission's objectives; but market and internal pressures may very well prevent registrants from changing their reporting practices too.

Advances in technology present an opportunity to change both the form and content of disclosures. Regulation S-K was initially instituted at a time when investors used paper documents exclusively. Back then, obtaining 10-Ks and 10-Qs was a chore and costly. Consequently, it was more important for each filing to be self-contained, offering as complete a picture as possible of the registrant's business and financial performance.

Today, SEC filings are readily accessible. Investors can find years of filings on any given registrant in just a few clicks. This reduces the need to repeat financial data and analysis from prior years in current documents, since registrants can access those earlier documents in seconds.

Technology also makes it possible to consider new methodologies for collecting and distributing the information from periodic filings. The 10-K might now be broken up into separate components that are updated as information changes, instead of once each year. Financial statement users have suggested that boilerplate disclosures, such as accounting policies, be separated from the periodic filings in this way. It would also be feasible to adopt technology that would allow users to compile their own 10-Ks by including only those sections that they deem to be relevant to their own needs.

The drive for utilizing new reporting methodologies arises from the desire to improve "disclosure effectiveness." Although we must make sure that this is not simply a euphemism to reduce disclosure, it is clear that both registrants and users are dismayed by the heft of today's SEC filings. Today's 10-K run on average well over 100 pages and it is not uncommon to see filings approaching 400 pages.

Few people have the time to read all of those pages, but it is also true that because many of those pages are boilerplate, regular readers of those reports usually need not read all of those pages. Consequently, there are few calls from professional security analysts to cut pages from SEC filings.

It is also true that some registrants may have increased the volume of disclosure in an effort to reduce legal liability or to obfuscate their true underlying performance. Although it is important for standard setters like the SEC and FASB to promulgate rules that encourage effective disclosures, those who genuinely want to improve disclosure effectiveness have the ability to tell their stories in as few pages as possible. Security analysts and investors should likewise recognize the role that they must play in improving disclosure effectiveness, including being willing to do without disclosures that do not contribute meaningfully to their ability to evaluate the current performance and future prospects of the companies that they follow.

As implied in this concept release, disclosure effectiveness can take two forms: reducing unnecessary disclosures and cutting the number of pages in a report (for example, by eliminating disclosures that are available in previous filings). The former is the Holy Grail (even though there may be considerable debate about what is unnecessary). The latter may merely shift the burden of accessing disclosure from registrants to users (who would then have to retrieve two or more SEC filings to obtain the same amount of information that they previous got in one document). As long as SEC filings are readily available, it would not be a burden for me to zip around Edgar and access multiple documents. In fact, I do that today anyway. Nevertheless, the Commission must consider whether there would still be a sufficient benefit for less sophisticated users from having access to 10-Ks that are more complete.

The following represents my responses to the questions posed in each of the topics of the concept release:

III. Disclosure Framework

A. Basis for Disclosure Requirements

1. Statutory Mandates
2. Commission Responses to Market Developments – Questions 1-5

Automatic sunset provisions should not be applied to Regulation S-K. It may be appropriate to require the Commission to conduct a formal review of Regulation S-K periodically – say, every decade – to identify disclosures that need to be included, updated or dropped. Putting a sunset provision on all of Regulation S-K exposes even basic disclosures to the risk of being politicized and thus should be avoided at all costs.

It may, however, be appropriate to subject certain, newly adopted provisions to Regulation S-K to sunset provisions, if the need or desire that gave rise to a new provision may change over time. For example, the disclosure requirements mandated under the Iran Threat Reduction and Syrian Human Rights Act of 2012 are well suited for a sunset provision (even though the SEC may not be allowed to do so under the law) because the need for such disclosures may change as the relationship between the U.S. and Iran changes. Similarly, changes in Regulation S-K disclosures for certain groups, such as small companies, may also be appropriate for sunset provisions, in order for the Commission to determine whether the goals of such disclosure modifications have been achieved or unexpected negative consequences have arisen. The Commission should use its judgment in determining the length of time for any sunset provisions on a case-by-case basis.

Sunset provisions can be useful as a way to ensure ongoing relevance of new or modified disclosure requirements. As noted, the primary disadvantage is that they may cause the disclosure requirements then under review to be politicized (potentially, for example, subjecting them to horse trading). While they may introduce some uncertainty for those affected by the specific disclosure requirements under review, there would be no additional cost associated with extending the requirements and a potential cost savings from dropping them, so the uncertainty should be manageable.

As a matter of policy, the Commission should order a study whenever it thinks that new disclosure requirements might have (or be having) an unjustifiably negative impact on registrants. I think that any disclosure of information that is not already captured by a majority of registrants within their own internal reporting and record-keeping systems should be reviewed in advance to determine the potential cost of compliance.

Without a formal system of monitoring disclosure effectiveness, it would be difficult to institute automatic methodologies that would flag necessary changes in disclosure requirements. The Commission should incorporate disclosure effectiveness reviews in its day-to-day surveillance of financial reporting and the financial markets, as well as stay up-to-date on technological advances that might lower the cost of monitoring and compliance.

B. Nature of Disclosure Requirements

1. Principles-Based and Prescriptive Disclosure Requirements – Questions 6-13

Principles-based standards should continue to be the foundation of Regulation S-K. The current materiality standard seems appropriate. A materiality standard helps to ensure that disclosures are relevant, despite the risk that registrants may set too high a bar on their assessment of materiality. Rules sometimes do offer a more objective way of ensuring compliance, so they might still be used in certain circumstances. The objectives-oriented approach, as articulated in the concept release, seems like a spin on principles-based standards. Although applying detail

and structure while articulating the objective of a new disclosure standard might help ensure consistency of application, it is still subject to the pitfalls of a principles-based approach. Yet, if an objectives-oriented approach offers even a modest improvement over the principles-based approach, it may be worth a try.

I think that they key to balancing the benefits of a principles-based approach while preserving the benefits of prescriptive requirements is to have a formal system for getting feedback through both enforcement efforts and by polling registrants, auditors and the investment community about the merits and deficiencies of specific disclosure standards.

Qualitative thresholds are desirable – for example, expanded disclosures in response to a deterioration in financial performance or new risks and uncertainties that arise – however, they are difficult to establish. Here again, I think that principles communicated through enforcement and feedback efforts can be helpful in implementing rules and standards.

2. Audience for Disclosure – Questions 14-20

Registrants should continue to assume that their primary audience is the professional security analyst, institutional investor and sophisticated retail investor. This audience is most responsible for educating the market about individual registrants, which helps to promote greater market efficiency.

Registrants can continue to use other communication vehicles, such as annual reports, quarterly flyers and brochures that are more accessible for less sophisticated investors to keep them informed and meet this type of investor's desire for simpler disclosures.

It would be cumbersome and costly to have different disclosure requirements targeted to various types of investors within Regulation S-K.

Even sophisticated investors may require instruction on the basic business and financial practices of individual registrants when they are first getting up to speed. This is especially true of generalists, who are experienced analysts but may lack specific industry knowledge. Most companies strike an appropriate balance between explaining basic principles and providing detailed (and often complex) disclosures. I see no reason to change current practice. Instead, the Commission should focus on eliminating duplicative and unnecessary disclosures in order to reduce the size of SEC filings.

It may be useful for the Commission to conduct investor testing through focus groups or surveys, but I am wary of the interpretation of the results. It may find, for example, that few investors read much of the information included in SEC filings. Some constituencies may then try to pressure the SEC to reduce disclosures or make them "less sophisticated" to match the disclosure to the needs of the largest audience. That would be a major mistake because the financial markets benefit from even only a relatively few sophisticated investors making full use of the financial statements. Making wholesale cuts to disclosure or targeting disclosures to a less sophisticated audience would reduce market efficiency.

Although it is true that retail investors rely more these days on technical analysis and, through ETFs, sector trends rather than individual company analyses, the work of analysts both on the sell-side and the buy-side still informs the market's view on individual companies. If these analysts are deprived of the information that they need to gain a deep understanding of companies' financial condition and future prospects, the financial markets would become much less efficient. For that reason, disclosures should continue to target the needs of professional security analysts and others that have the greatest influence on the market's point of view.

3. Compliance and Competitive Costs – Questions 21-23

Current requirements appropriately consider the costs and benefits of disclosure. Regulation S-K has been in effect for many years. Disclosure of financial results is a cost of being a publicly-traded company. Companies who choose to become public have implicitly decided that the benefits of raising capital in the public markets and having publicly-traded securities outweigh the cost of the reporting requirements. Increases in the cost of reporting requirements and the length of periodic filings are due in large part to the increasing complexity of operating large businesses.

IV. Information for Investment and Voting Decisions

A. Core Company Business Information

1. General Development of Business (Item 101(a)(1) – Questions 24-30

Although I was not aware that Regulation S-K called for a discussion of the development of the registrant's business over a five year period, I do know that current disclosure practices in the Business section vary quite a bit, but usually provide information that is useful and not available elsewhere in the filing. Some registrants do repeat disclosures in this section that are also made in other sections, but this is not generally the case. I believe that some registrants do include basic information about their business(es) in the MD&A section, to make the MD&A more complete and portable to other documents, such as the annual report, which may not have a separate description of the business.

Although the Business Description section is almost always useful, it can be improved in many cases. I, for one, would like to see more information about the registrant's business strategy and competitive position, especially the market shares of its products, the competitive landscape and industry trends that are shaping the nature of competition. Although I might alter the wording of Item 101 in some places, it generally does cover the relevant issues, so registrants should be making more complete disclosures of business strategy and competition, but they choose not to do so.

I believe that Item 101(a)(1) should provide more of a historical perspective than the three-year timeframe covered by the financial statements. Registrants tend to repeat much of the disclosure in this section from year-to-year and provide updated information as necessary, which is appropriate. There is little cost to repeat this disclosure and readers of the filing should not be referred to another older document to get it.

I believe that most companies already make more extensive business disclosures in their initial public offerings, which is appropriate. After that, they may cut back on the Business Description section, but analysts and investors then have access to regular communications, such as press releases, conference calls and quarterly filings to stay current on business developments.

Rather than require expanded business discussions every three years, registrants should provide expanded disclosure whenever it is appropriate, such as when they make a significant shift in its business strategy. Most registrants, I believe, already do this.

2. Narrative Description of Business (Item 101(c)) – Questions 31-41

The disclosures specified in Item 101(c) are comprehensive. They do not need to be updated. In practice, the narrative business descriptions of most registrants do not follow these requirements to the letter. The quality of these disclosures varies significantly. It is obvious that most registrants do not treat the thirteen items in 101(c) as a checklist. If a narrative description includes unimportant information, it is because the registrants choose to include it and not because of the way that Item 101(c) is written. If some of the thirteen items are omitted, it is most likely because they are immaterial or relevant or because it is impractical to include them. Most analysts and investors who follow a registrant closely know whether omitted disclosures are material.

Adding items to this list would prompt most registrants to incorporate them into their disclosures, but it is unlikely to spark a substantive change or improvement in quality in the overall disclosure.

Industry specific disclosures are also very useful, especially when the performance metrics are defined and reported consistently by all companies within that industry. I think that it would be too difficult a task for the Commission to take on the job of specifying relevant disclosures across all industries. This is not just a one-time effort: Disclosure requirements should be revisited and updated periodically.

Up until the mid-1990s, the analyst community conducted annual reviews by industry of financial reporting and disclosure practices through the Corporate Information Committee of the CFA Institute (known back then as AIMR). That effort helped promote greater consistency in industry-related disclosures. The CIC was disbanded in 1996. The task of specifying industry disclosures should be decentralized and include the investment community, registrants, auditors and SEC/FASB staff as participants. The SEC should push the investment community to take up such efforts again.

I had the privilege of serving on the last CIC in 1996. On or around 2004, I wrote an article about the role that such decentralized efforts can play in improving corporate disclosures. That article is available on my website at: http://www.larkresearch.com/making-principles-based-accounting-work/

I think that the current practice of repeating the narrative business disclosure each year is preferable to the alternative of requiring it in an initial filing with follow up disclosure of material changes. Each SEC filing should be as complete as possible and external references should be kept to a minimum to avoid placing extra burdens on readers.

Although there may be some overlap with other sections, such as Risk Factors and MD&A, the disclosures included in the narrative description of business are typically unique. Comparable MD&A and Risk Factors disclosures can provide additional information that is a good complement to the Business section disclosure. Duplication is usually minimal. As previously noted, such duplication may serve to make MD&A section more complete, since that section is also used in the registrant's annual report.

3. <u>Technology and Intellectual Property Rights (Item 101(c)(1)(iv))</u> – Questions 42-46

I am not an expert on these issues. Existing disclosure practices usually work well for me. In the pharmaceutical industry, for example, I am most interested in patent expirations and development pipeline milestones, which is standard disclosure for most companies. Of course, analysts and investors who follow these companies usually want and need more, so most companies provide additional disclosure at analysts meetings and on conference calls.

As for other types of technology and intellectual property rights, I believe that registrants typically do address the needs and desires of the investment community. If not, analysts and investors can and do put pressure on companies to comply. In my experience, the value of technology and intellectual property rights is typically expressed in a company's overall financial performance.

The separate value of an IP portfolio takes on special prominence only when a company moves to monetize that portfolio (usually in cases of financial distress or bankruptcy). In those situations, companies usually provide aggregate information about the content of the IP portfolio, respond to questions and describe the process by which they are monetizing the portfolio, but they may not have an accurate sense of value until they receive expressions of interest from bidders. Sometimes, third party IP valuation specialists have provided the investment community with independent assessments of a company's IP portfolio for a fee.

4. <u>Government Contracts and Regulation, including Environmental (Item 101(c)(1)(ix))</u> – Questions 47-48

For certain companies, disclosures about government contracts and regulation is important; for many companies, it is not. Regulated companies generally provide extensive details about how they are regulated, but there in some respects the disclosures could be improved.

Companies that do a lot of business with the U.S. government generally provide appropriate disclosures about the size of those contracts in relation to their overall business and the risks that such contracts present to them.

If individual government contracts are material to the overall financial position of the registrant, they should already be disclosed under existing SEC rules. If they are material and not being disclosed because of quirks of the test upon which disclosure is determined, then the Commission should consider revising its rules to ensure that such contracts are disclosed. However, in those cases, most registrants would likely to petition for confidential treatment, due to the sensitive nature of the contracts and potential competitive harm.

If the revenues associated with a particular contract are material, this ought to be picked up in the 101(c)(vii) disclosures of major customers. However, in cases where say the U.S. government provides 80% of a registrant's revenue, but one contract accounts for 10% or more of total revenue, registrants should provide separate disclosure about the major provisions of that contract. I am not sure whether they do so now.

The Commission might also consider expanding the Contractual Obligations table to include Contractual Assets/Revenues. That would provide investors with a perspective on the expected progression of future revenues from existing contracts and/or backlogs. Of course, a large portion of contracts and backlogs are typically subject to uncertainties, such as renewal or cancellation options, so any disclosure should be accompanied by a discussion of the risks and uncertainties of realizing those revenues.

c. Compliance with Environmental Laws (Item 101(c)(1)(xii) – Questions 49-51

While I might alter the composition and/or wording of 101(c)(1)(xii), that provision generally seems to cover the major disclosure points with respect to environmental law compliance. There is some obvious overlap here with GAAP disclosure requirements. For example, many companies subject to reclamation obligations are required to disclose their asset retirement obligations. All companies provide historical information about payments on AROs, but I am not sure whether all provide prospective payment information of these liabilities. ARO and other environmentally related payments are a form of contractual obligation that could conceivably be added to the required disclosures under 303(a)(5).

d. Government Regulation – Question 52-53

I am not an expert on regulation disclosure. However, there are certain regulation-related disclosures that I believe can be improved. For example, it would be useful to see year-to-year changes in utilities' rate base.

5. Number of Employees (Item 101(c)(1)(xiii)) – Questions 54-58

Disclosure of the number of persons employed by the registrant is a simple, yet often useful metric for analysts. It can provide a quick read about the pace and magnitude of hirings and cutbacks. It should cost registrants very little to continue providing it.

I have not analyzed many companies that have no revenues; but it seems to me in that circumstance disclosure in periodic reports of the number of employees in the various

departments would be useful to analysts and investors. That information should be disclosed at least annually and in addition to the total number of employees.

Information about full-time vs. part-time and seasonal workers may be useful in certain circumstances, but I would be in favor of requiring disclosure only if the cost to registrants of producing the information is reasonable, as it should be in most cases.

Range disclosures should be permitted only in circumstances where it is impractical for the registrant to produce an actual number. In most cases, the number of employees should be easy and not costly to compute. The calculation of the number of independent contractors may be more complex, so a range might be more permissible there, in my view.

6. Description of Property (Item 102) – Questions 60-66

Description of Property disclosures are very important. Registrants who determine that this information is immaterial often provide scaled-down disclosures. I can recall a couple of instances where I had wished that the registrants had provided more information about their properties; but for key industries such as mining and real estate, the disclosures are often extensive and useful. As you know, real estate companies, such as REITs, provide detailed supplemental schedules of their properties that are more extensive than what I typically use or need; but those disclosures are important to analysts who specialize in that sector.

I agree that disclosures by registrants whose physical properties are immaterial are generally not useful. However, they can be useful in certain circumstances: for example, to gauge whether a company is expanding or contracting. They are also not costly to produce.

Property disclosures should not be limited to registrants in certain industries. I do not believe that this is a burdensome disclosure requirement for most companies. Although registrants in certain industries, such as mining, must incur additional costs to report property information, such as reserves estimates, this is a necessary and justifiable expense.

Property disclosure requirements might include, but should not focus on, the risks resulting from a potential lack of availability and the rising cost of properties required for operations. If such risks are material, they should be disclosed in the Risk Factors section.

B. Company Performance, Financial Information and Future Prospects

1. Selected Financial Data (Item 301)
    b. Five-Year Trend Data (Instruction 1) – Questions 67-75

Although the information in Item 301 is accessible in other formats, investors would have to piece together information from at least two reports and page through those documents to find similar disclosure. Item 301 disclosure is convenient for users. The cost of preparing the disclosure should be very low.

I consider the Selected Financial Data section to be an example of a layered disclosure that benefits all investors (and especially less sophisticated investors). It provides a quick overview

of company performance in a convenient format. It allows users to quickly spot trends in key financial data. It also gives investors a chance to see which financial and operating metrics management deems to be important.

If eliminated, investors will carry on; but I suspect that retail investors and financial advisors will miss it. Elimination of Item 301 would be an inconvenience for those investors who currently use it.

The SEC should keep the disclosure without modification. As noted in your discussion, some registrants may incur additional costs, if they have to restate results for the two earliest years. In cases where the cost of restatement would be prohibitive, I favor allowing registrants the option of either dropping those years from the table or presenting those years unrestated (with appropriate labelling).

The disclosure should be left as is at five years. Although this is out of line with the three year period covered by the financial statements and in the MD&A, the cost of adding the two earliest years is de minimis (unless a restatement is required) and the additional two years of data provides a better opportunity to spot longer-term trends in the registrant's financial performance.

The Commission should encourage EGCs to make this disclosure, if they are able, identifying any years in which the information is unaudited.

c. Items Included in Selected Financial Data – Questions 76-78

There is a reasonable balance in Instruction 2 between specifying content and giving registrants the flexibility to provide data that they deem as relevant. The specified content is simple and straightforward, but provides the key data points that should be common to all registrants. (The Commission might consider adding total shareholders' equity to its requirements, since most registrants provide this information anyway.)

Nearly all registrants go beyond the Commission's requirements in Item 201 disclosures, but the Commission still should consider suggesting (but not requiring) that registrants include their KPIs in the table.

Since the line items pulled from the registrant's financial statements are already audited, I see little need for auditor involvement in this section. The involvement of auditors might be complicated by any optional unaudited financial and operating data included in the disclosure.

2. Supplementary Financial Information (Item 302) – Questions 79-87

The quarterly information provided under 302(a) is useful because it allows investors and analysts to quickly spot a deterioration in quarterly results that may be indicative of a trend that is not readily apparent from the annual financial statements. Nevertheless, I believe that the quarterly information provided under 302(a) is of less benefit to sophisticated users, who typically monitor quarterly results through 10-Qs and press releases. It may be of benefit to less sophisticated users who get a quick glance at the quarterly trends without having to

compile the information themselves. It may also be of benefit to generalists who are taking a quick look at company financials without spreading the Qs. I generally do not use the 302(a) disclosures, except to obtain fourth quarter weighted average shares outstanding for companies that do not make such disclosures elsewhere. (Shares outstanding is not a required disclosure under 302(a), but many companies do provide it anyway.) I believe that 302(a) disclosures can be eliminated without much loss to users of financial statements, as long as the Commission continues to require 10-Q filings.

Like most analysts, I typically infer the fourth quarter by subtracting nine month figures from the annual results. Consequently, some may want to retain 302 disclosures to get the explicit fourth quarter disclosure. I do not believe, however, that this is a strong enough argument for keeping Item 302(a).

The objective of using 302(a) to spot short-term turning points is important, but in my opinion, the small number of data points limits its usefulness. Since analysts can infer the fourth quarter by subtracting nine-month results from annual results and obtain a full set of financial statements in the process, I do not believe that it would be worth expanding the number of data points in 302(a) in an attempt to make it more useful.

It's hard to imagine that auditors can get involved in 302(a) without requiring audited quarterly financial statements. There is a good argument for requiring 10-Qs to be audited, but extending attestation to 302(a) disclosures is not one of them.

While the cost of 302(a) disclosure is low, so is the benefit. 302(a) disclosure may be useful to the less sophisticated investor, who can see basic quarterly information in one place without having to review a full set of 10-Ks and 10-Qs. As such, I view 302(a) as another example of layered disclosure that already exists within the financial statements. Even so, other services, such as Bloomberg, Value Line, Yahoo! Finance and MSN give internet uses access to sequential quarterly financial statements. I do not see the summary quarterly information provided by 302(a) to be as valuable as 301 Selected Financial Data. Consequently, I recommend that the SEC drop the 302(a) disclosure.

3. Content and Focus of MD&A (Item 303 – Generally)
    b. Quality and Focus of Analysis – Questions 88-98

To state it simply: I think all of the requirements in Item 303 are important to investors. I do not think that rewriting Item 303 will lead to improvement. Every registrant is capable of producing an MD&A that discloses clearly and concisely the factors and trends that have affected current performance and are likely to impact future performance.

The requirements themselves, even if written perfectly, do not ensure better disclosure. Immaterial disclosures may often arise because the registrant is looking merely to fulfill its legal obligations to disclose. An alternative materiality threshold probably will not result in improved MD&A disclosure. An increased reliance on quantitative thresholds for disclosure risks raising the compliance mindset of most registrants. Accordingly, the MD&A requirements should

continue to be flexible (which hopefully will encourage improved disclosure over time). They should also emphasize inclusion of and discussions around key performance indicators.

Registrants should continue to have the flexibility to include or exclude an executive level overview. The Commission's rules should not prescribe the information that should be covered in the overview. For one, it would be difficult to come up with a comprehensive list of topics for the executive overview that would apply in all situations. (As for accounting estimates and judgments, these are already supposed to be included in the Critical Accounting Policies section and I have always assumed that the list of such policies is prioritized from top to bottom.) It makes little sense, in my opinion, to require executive overviews only for big companies.

I do not think that the SEC can prevent duplicative disclosures, which are more likely if the executive overview disclosure is mandated. Those registrants that prepare executive overviews voluntarily are more likely to avoid duplicative disclosures.

Creditors and equity investors alike value the MD&A disclosures, but creditors pay more attention to liquidity and resources disclosures. I do not believe that the presentation should be altered to accommodate different classes of users.

Registrants should be free to determine the organization or structure of the presentation that allows them to tell their stories most effectively and serve their stakeholders. Forcing structure on the presentation would benefit quantitatively-oriented investors and high frequency traders potentially at the expense of other stakeholders.

Extending auditor involvement to the MD&A (and other sections of the 10-K) may have strong benefits. Besides putting another set of eyeballs on the disclosures to attest to their accuracy, auditor involvement could facilitate improved disclosure effectiveness and the elimination of duplicative disclosures. For example, if auditors were involved in the entire 10-K filing, accounting policies could be discussed in one section of the 10-K without having to repeat some of the same disclosures within the footnotes of the financial statements. (But then we would have to figure out how to reconstitute the mission of the FASB.)

c. Forward-Looking Information – Questions 99-102

Your discussion suggests that the two-step test does not result in the most meaningful forward-looking disclosure. Generally speaking, I think that reasonably likely risks should be included in the Risk Factors section and a higher standard – either the probability-magnitude test or the "more likely than not" standard – is more appropriate for MD&A disclosures.

For forward-looking disclosure in the MD&A section, I think that a more-likely than not standard is sufficient. I acknowledge that a probability-magnitude test may be a more systematic way of approaching disclosure, but it is more cumbersome and could conceivably produce a lot of false positives for issues that are big in their potential magnitude but have a low probability of occurring. As long as reasonably likely risks are included in Risk Factors, I feel that I have been forewarned and can then perform my own analysis or take action based upon my own assessment of the risks. With a more likely than not approach for the MD&A, I would know

that the registrant is worried about the risk (or perhaps excited about the opportunity) and therefore I should really pay attention.

I think that the Commission should encourage but not require quantification of the material effects of known material trends and uncertainties. Quantifying those effects might cause a perception of precision in the estimates that is unjustified. Probabilities are subject to change as are estimates of the magnitude of impact upon incurrence. Still, if registrants are confident in their probability and magnitude assessments, they should be encouraged to disclose them.

d. Key Indicators of Financial Condition and Operating Performance – Questions 103-106

Although I believe that all registrants should disclose performance metrics and other key variables important to their business, I believe that such disclosures should be voluntary. The investment community will effectively set disclosure requirements for those companies who seek analyst coverage. Companies who fail to disclose performance metrics similar to their peers will get less Wall Street coverage and their securities will probably trade at a discount to others in their industry that make such disclosures.

Certain KPI disclosures may be impractical. Registrants that sell thousands of products, for example, may be hard pressed to find simple metrics for unit sales data.

Consequently, I believe that the SEC should encourage but not require KPI disclosures of KPIs.

There is widespread appeal among all investors for industry-specific KPIs. KPIs are an essential tool for comparing relative performance. They are also provide crucial inputs in spreadsheet models for projecting financial performance.

The responsibility for requiring standardized performance metrics belongs mostly to the investment community. KPIs are prevalent across most industries in no small part because analysts and investors have called for those metrics. Even so, I am sure that there are many instances where analysts and investors would like to see improved disclosures, including greater standardization in KPI reporting.

Although certain KPIs have been utilized for many years, the emphasis on specific KPIs may change over time as the fortunes of the industry change. For that reason, there should be a regular, formal dialogue between investors, registrants, auditors and SEC/FASB standard setters to monitor and improve financial reporting practices by industry.

I believe that the system worked well when AIMR (now the CFA Institute) performed regularly annual reviews of individual company disclosure practices by industry through its Corporate Information Committee. There were at least several instances back when the CIC achieved improved standardization of performance metric disclosures. Rather than develop its own internal process for setting KPI disclosures, the SEC should either push the investment community to re-establish the CIC or it should sponsor the development of a similar effort.

4. Results of Operations (Item 303(a)(3)) – Questions 107-112

The SEC should retain the three-year financial tables but include a narrative discussion of relative performance for only the current period (vs. the prior period). It should either drop the discussion of the prior year (vs. two years ago) or reference the discussion from the prior year's filing, unless the results for both previous years need to be restated (because of discontinuing operations or other factors). If historical results have been restated, the registrant should provide narrative discussions for both the current and prior years in the current filing.

303(a)(3) Results of Operations should explicitly require registrants to compare the current year's financial performance with the prior year for both the consolidated enterprise and all business segments. The discussion should cover each line item from the income statement and include non-financial data, such as unit sales, average prices and other KPIs used internally by the registrant.

The analysis should describe the major factors that caused the changes in each line item, including changes in economic trends, industry conditions, sales and costs related to key products and services and unusual or infrequent events or transactions. This, I believe, is the way that most registrant's approach this section. The current requirement focuses mostly on describing the most significant causes of the change in performance.

The three-year financial tables should be retained. I believe that three years provides a better view on longer-term trends. Even so, I am in favor of eliminating the narrative discussion for the prior year because it is repetitive. (Personally, I rarely even look at prior year discussion; but this is mostly because I am usually pressed for time.) In any case, the three year financial table may alert me to a trend that I need to understand, in which case I can refer to the filing from the prior year to get a narrative explanation.

The primary advantage of dropping the prior year narrative is that it would cut a significant number of pages from the disclosure. This would raise disclosure effectiveness from the perspective of the registrant. However it would also decrease disclosure effectiveness from the perspective of the reader, because he/she will have to obtain two documents to get the same information.

It is hard for me to imagine what an analysis without period-to-period comparisons would look like. The registrant could provide breakdowns of fixed vs. variable costs or labor vs. material, other major cost components, such as energy, which would indeed be valuable, but I would still want compare current results vs. the prior period to gain a perspective of the underlying changes in the current year performance.

General Electric has offered a new format for its MD&A disclosures that relies more heavily on charts and tables. It now includes, for example, pie charts of the revenue contribution by segment and the breakdown of revenues between equipment and services. These charts and tables that provide a significant amount of information in a highly readable format.

In general, I think that this new presentation format will ensure that more people will read GE's disclosures, which is a good thing. Investors will also retain more of what they read about this

complex enterprise. Nevertheless, the descriptions provided in GE's MD&A discussion for current and prior periods and significant trends and developments are pithy, so I am wary about the risk that the overall quality and depth of the narrative will decline.

5. Liquidity and Capital Resources (Item 202(a)(1) and (a)(2))
   b. Analysis of "Liquidity" and "Capital Resources" – Questions 113-120

Although I do think that the wording of Item 303(a) can be improved, I do not believe that improving it will raise the quality of disclosures. Liquidity and capital resources are delicate issues for many registrants. Registrants that are facing restrictions or shortfalls in liquidity and capital resources are apt to be less transparent. Those registrants that are sensitive to the interests of investors probably will not be blunt about the challenges that they face, but they may disclose information, such as covenant thresholds, that will allow investors to monitor the company's liquidity themselves.

Even so, many registrants do provide excellent disclosure on liquidity and capital resources. For those that do not, I think that only way for the SEC to elicit better disclosure, if it wants to do so, will be to assess penalties to those registrants that suffer a sudden sharp drop in liquidity that could or should have been disclosed in advance.

I do not believe that separating the disclosure of liquidity from capital resources will necessarily be an improvement. Registrants structure their disclosures about liquidity and capital resources in many different ways. Some do separate the discussion of liquidity from capital resources. Others weave both topics into one narrative. As long as both topics are covered, the SEC should not worry about the format.

I do believe that the definition of "liquidity" I Instruction 5 can be improved. Here's my attempt at doing so.

5. The term "liquidity" as used in this Item refers to the ability of an enterprise to generate or draw upon adequate amounts of cash to meet its current and future obligations. The registrant shall provide a discussion of the sources of and claims upon its liquidity as well as indicators of its liquidity. It should discuss factors, including cash flow from operating activities, capital expenditure commitments, the specific terms of financings (including upcoming maturities, covenant provisions and recent or planned borrowings and securities offerings) as well as likely future events that may impact its liquidity over the short- and long-term.

   c. Short-Term Borrowings – Questions 121-124

Most of the MD&A disclosures regarding short-term borrowings that I have read have been adequate. I do not recall reading any disclosures on this topic that have been deficient. Besides the liquidity and capital resources section of the MD&A, footnote disclosures provide useful and important information about short-term borrowing. The combination of MD&A and footnote disclosure has so far met my needs on understanding short-term borrowing practices.

At this moment, the only additional disclosure that I can think of that I believe would be worthwhile would be a discussion of company policy regarding reliance on short-term debt. Does the registrant have guidelines concerning the maximum amount of short-term debt, either

in dollar amount or as a percentage of total debt or total capitalization, that it is willing to incur? This could be an adjunct to a discussion of its overall policy on debt levels and leverage.

Discussions on short-term debt and overall leverage policies may be especially important for financial institutions. Although these issues are sometimes raised on conference calls, there is comparatively little discussion of them in SEC filings.

6. Off-Balance Sheet Arrangements (Item 303(a)(4)) – Questions 125-130

Off-balance sheet disclosures are of great importance to analysts and investors, but there is surprisingly little disclosure about them in SEC filings. I believe that the actual level of off-balance sheet arrangements exceeds what is reported in the filings, but they are probably structured in such a way that effectively limits the registrants' legal liability, so disclosure under GAAP or 303(a)(4) is not required.

As a result, I do not believe that expanding the requirements is likely to make much difference. I think that the disclosure requirements are straightforward and comprehensive already. If they do not capture the full exposure of registrants to off-balance sheet liabilities, it is unlikely that the disclosure requirements can be written in a way that elicits more disclosure.

The off-balance sheet disclosures are appropriately placed in both the MD&A and footnotes. The MD&A format is more flexible as it allows registrants to expand their discussions of these arrangements as they deem necessary.

Conceivably, if 303(a)(4) was dropped, off-balance sheet disclosures would still take place under U.S. GAAP and could be included in a discussion of liquidity. However, I would prefer that the Commission leave 303(a)(4) in place, despite my disappointment with current disclosure practices.

As for the adoption of a new filing requirement for off-balance sheet arrangements that were in effect during a given reporting period, it seems to me that if registrants are required to identify only what they view as material off-balance sheet arrangements, there will be no change in the disclosures.

7. Contractual Obligations (Item 303(a)(5)) – Questions 131-136

The Contractual Obligations table is useful, but I only tend to focus on debt-related obligations coming due, which is also usually available in the footnotes of the financial statements.

I have not taken the time to figure out how to use the purchase obligations disclosure. It is possible, I think, to compare purchase obligations against total cash operating costs to get a sense of fixed commitments. This may be important when a registrant's financial performance is deteriorating and an analyst wants to get a sense of how much and how quickly the registrant can cut costs.

The disclosure of long-term liability obligations is useful for those who project cash flows for the registrant.

There are other potential disclosures of certain types of obligations that would be useful here. For example, projected cash payments for pension obligations and asset retirement obligations (or environmental liabilities in general) or even tax liabilities would be simple and useful additions to this table, even though the amounts in question may be estimates and not actual contractual liabilities.

The Commission might also consider adding Contractual Assets/Revenues disclosures to this table. For example, it might be very useful to see the proposed progression of contract revenues or delivery of backlog.

It may also be useful for the SEC to publish guidance for certain specialized contractual obligations, even though it might limit some of the intended flexibility of the rule. Such guidance may help to elicit greater disclosure.

Narrative discussions of line items included in the contractual obligations table should be encouraged but not required. In many cases, registrants provide such discussions now. Similarly, in order to preserve the potential benefits of flexibility in disclosure, the Commission might encourage, but not require categorization of the line items into on- and off-balance sheet segments.

8. Critical Accounting Estimates – Questions 137-144

I too have been disappointed in the critical accounting estimates disclosures. Generally, I find them to be boilerplate statements of accounting policy that offer little insight into the choices made by registrants in their accounting estimates. As you point out in the concept release, this section should provide a sense of how the accounting estimates made by registrants have affected financial results. I suspect that companies have refrained from making specific numerical disclosures because it would result in different interpretations of their performance by analysts and investors.

Despite my disappointment, I am reluctant to recommend dropping this disclosure. I find that the disclosure in the Critical Accounting Estimates section is often, but not always similar to the Accounting Policies footnote disclosures. Sometimes, registrants will expand upon their discussions of accounting policies in the Critical Accounting Estimates section in ways that are useful. This extra information can be especially useful for analysts, including especially those that specialize in evaluating accounting practices, who seek to compare accounting policies across companies in a single industry, for example.

The Commission should formally adopt a Critical Accounting Estimates requirement in Item 303. At the same time, it should specify that this disclosure should provide investors with a sense of the impact of specific accounting estimates on the reported financial results as well as the sensitivity of reported results to changes in those estimates.

I think that defining "critical accounting estimates" along these lines is necessary, but would not support the SEC identifying specific critical accounting estimates that are made consistently across an industry in order to mandate disclosure. I believe that it is important for registrants

to have the flexibility to give us their assessments of critical estimates, even if such estimates do not rank as highly in importance as those of competitors within the same industry. It is almost always useful to see how individual registrants prioritize their disclosure choices.

C. Risks and Risk Management

1. Risk Factors (Item 501(c)(3)) Questions 145 to 156

Although I agree that Risk Factors disclosures have become more voluminous, which is undoubtedly due to efforts by registrants to limit liability, I would be hesitant to make changes that would seek to reduce unnecessary disclosures in this area. Registrants should decide for themselves how they want to present this information. Indeed, there is value in seeing the choices that they make.

I think that the format of this section obviates the need, from a user perspective, to eliminate unnecessary disclosures. It is easy to skim through each of the topic sentences on individual risk factors. From there, I can hone in on those risk factors that are of interest to me. Often, the disclosures contained in this section help to expand on the information provided in other sections of the filing.

Registrants should be encouraged but not required to prioritize or quantify their risks and also to describe the specific steps that they are taking, if any, to mitigate specific risks. I think mandating such disclosures might cause registrants to incur extra costs that are unjustifiable. These added disclosures are also subjective to a great degree, so registrants that are forced to make these disclosures may not be completely truthful in their assessments. Omissions from the risk factors list may be just as informative as disclosures.

2. Quantitative and Qualitative Disclosures About Market Risk (Item 305)
3. Disclosure of Risk Management and Risk Management Process
4. Consolidating Risk-Related Disclosure - Questions 157-182

I generally skim over market risk disclosures. Although it may be useful to understand the formal processes by which companies manage risk and to review certain disclosures about a registrant's derivatives exposures (and compare them with the overall size of the enterprise), these disclosures tend to focus more on policies and less on the actual or potential impact of those policy choices on the financial performance and condition of the enterprise. It is also difficult to rely upon these disclosures in part because they are unaudited. I always assume that these disclosures are incomplete.

As with other unaudited disclosures, I believe that the Commission should encourage but not require expanded disclosures along the lines that it has proposed, especially with respect to increasing quantitative disclosures and encouraging companies to report upon the specific steps that they are taking to mitigate risk. I also believe that a "management approach" is preferable, even at the risk of reduced comparability, because it would be less costly for registrants to make such disclosures and should allow users to see more clearly how registrants actually manage risk.

The current risk disclosure regime, which includes Risk Factors, Qualitative and Quantitative Disclosures about Market Risk and information from the footnotes, is adequate to give analysts a good perspective on the risks facing a registrant and how they are managed. Although there may be some benefit to consolidating disclosures in some way, it would be costly and difficult to make such a change. For one thing, it seems to me that either everything would have to be brought into the footnotes or auditor attestation would have to be extended to other sections of the 10-K filing in order to preserve the benefits of auditing much of the information that is disclosed.

D. Securities of the Registrant

1. Related Stockholder Matters – Number of Equity Holders (Item 201(b)) - Questions 183 to 185

I am in favor of retaining the disclosure of number of equity holders and also of expanding it to include information about shares held in "Street" name. The cost of disclosing this information, it seems to me, is low and the argument given by commenters that this information is difficult to obtain does not ring true. (Isn't the information on street holdings available with a phone call or computer connection to DTCC?). The information can help the SEC monitor compliance with Section 12(g). With smaller companies, it can also help to identify those registrants that may be at risk of delisting.

2. Description of Capital Stock (Item 202) – Questions 186-190

I typically access information about capital stock and other securities either directly from prospectuses or from the footnotes of the financial statements. Footnote information is often incomplete but usually tells me what I need to know. I am not familiar with Item 202 disclosures. Nevertheless, I do believe that annual disclosure of the terms of registered securities issued for the current year would be useful and that it could be done at little cost to the registrant.

3. Recent Sales of Unregistered Securities (Items 701(a)-(e)) – Questions 191-196

I am in favor of retaining the requirements of 701(a)-(e) and expanding the disclosure of unregistered securities sales for the current period to 10-Ks and 10-Qs. The cost of providing such disclosure is minimal to registrants; yet, the information can be important to investors.

4. Use of Proceeds from Registered Securities (Items 701(f)) – Questions 197-198

I am in favor of retaining the requirements of 701(f) and of expanding it to other offerings and including the information in 10-Ks and 10-Qs. It seems to me that this serves as a reasonable check against whether the proceeds of a registered securities offering were used as stated in the prospectus. The cost of providing this information is de minimis. The SEC should standardize both the form and location of the disclosure across filing types.

5. Purchases of Equity Securities by the Issuer and Affiliated Purchasers (Item 703) – Questions 199-204

From my perspective, the disclosures under Item 703 are in an easy-to-read format that allows users to quickly spot monthly share repurchase data and, if they so choose, compare it to trends in the registrant's share price. That said, I do not believe that this disclosure adds significant value. As the concept release points out, I can obtain similar information, which is usually suitable for my purposes, from the GAAP disclosures. Even though there is little cost in producing the information here, I would not object if the Commission were to drop this disclosure. I would not be in favor of expanding it.

E. Industry Guides – Questions 205-215

Although I am not familiar with the Industry Guides, I am familiar with many of the disclosures that they have spawned in periodic SEC filings, including, for example, the Supplemental Oil & Gas Information (i.e. information on reserves) that is disclosed by all oil & gas producers. I recognize that this information is valuable to analysts and that the standardization facilitates comparisons between companies within a given industry.

Although it is easy to recognize that an expansion in the number of industries covered by the guides would be of benefit to the investment community, it is important to assess the availability of resources that the SEC has for doing so. As is pointed out in the concept release, there have also been calls for periodic updates of these industry guides, which are important to keep them relevant. That places an extra burden on expanding and maintaining the SEC's library of industry guides.

One way that the goals of expanding Industry Guide coverage and providing regular updates might be achieved is for the SEC to establish industry task forces, consisting of analysts, investors, registrants, auditors and SEC staff members, who would be charged with the responsibility of preparing and maintaining the industry guides. This would still be an ambitious undertaking for the Commission, but it might be a more practical way of commanding the resources necessary to accomplish the task.

Another alternative might be to offload most of this responsibility to a non-governmental organization, such as the CFA Institute (assuming that it was willing to take on this task). The Commission could still hold final say over the adoption of individual Industry Guides and updates, but such a delegation of responsibility might be a better way of managing the Commission's resources.

Involving those that would be most affected by the adoption of Industry Guides may encourage greater buy-in and therefore would put some additional support behind the Guides as staff policy.

Industry-specific disclosure requirements should be voluntary; but once adopted registrants that do not follow those requirements will likely come under pressure from the analyst community to do so. Consequently, there would probably be a cost to those registrants who do not adopt the recommended disclosures.

F. Disclosure Related to Public Policy and Sustainability Matters – Questions 216-223

As a general principle, I believe that the Commission should avoid adopting disclosure requirements related to public policy and sustainability matters. It may be appropriate to consider new disclosure requirements when it is clear that the specific public policy and sustainability issues will have an effect on the majority of registrants, but even then, unless that effect can be tied directly to registrants' future financial or stock market performance, the Commission should leave the responsibility for public policy and sustainability matters to Congress. Frankly, I believe that the SEC does not have sufficient resources to address even those matters that are within its mandate. It should not go looking for extra work, especially in areas that may require considerable resources to address adequately.

G. Exhibits – Questions 224-228

I access specific exhibits rarely, except perhaps for Fixed Charge Coverage calculations. From what I can tell, I think that existing disclosure practices regarding exhibits are acceptable. I do not have any suggestions for change.

2. Schedules and Attachments to Exhibits – Questions 229-232

As written, 601(b)(2) permits registrants to omit filing schedules and attachments to a merger or acquisition agreement provided that such schedules and attachments are immaterial to an investment decision. That is acceptable, but I have run across at least one instance where a key schedule – one that I thought was potentially material to my investment recommendation - was omitted. Consequently, it is not clear to me whether this provision is being enforced properly. If the Commission cannot enforce this issue properly or finds that many registrants are not following the rules, it should prohibit omission of all schedules and attachments.

3. Amendments to Exhibits – Questions 233-234

If the registrant has found it necessary to amend an agreement, the chances are that the amendment is material, even if it does not affect the economics of the agreement. Consequently, I do not think that registrants should be able to omit filing an amended agreement. I believe that an amendment-only exhibit would be acceptable, provided that the Commission requires a fully updated document after more than three amendments. Piecing together a complete document after multiple amendments have been filed is almost certain to be cumbersome.

4. Changes to Exhibits (Instruction 1 to Item 601) – Questions 235-237

The current practice of allowing modest changes to certain exhibits, such as updating for interest rates, redemption prices, offering prices, typographical errors and others, without refiling, but prohibiting such changed exhibits from being incorporated by reference into other documents seems like sound policy to me.

5. Material Contracts (Item 601(b)(10))
    a. Contracts Note Made Within the Ordinary Course (Item 601(b)(10)(i)) – Questions 238-240

I am admittedly not familiar with all of the nuances surrounding material contracts. However, it seems to me that the existing requirements have worked reasonably well. Registrants seem comfortable with the existing materiality standard, rather than setting a specific financial threshold for the filing requirement. Although the term "not made in the ordinary course of business" is imprecise and subject to interpretation, it is a reasonable principles-based standard. The existing timeframe for qualifying for filing – contracts made within two years of the filing date or which are likely to be performed after the filing date – seems appropriate. I do not know of any specific examples where the existing requirements resulted in material contracts being excluded from exhibit filings (and any subsequent harm that that might have caused investors). Consequently, I think maintaining the status quo is the way to go.

    b. Certain Contracts Made Within the Ordinary Course (Item 601(b)(10)(ii)) – Questions 241-252

Here too, the requirements for filing are exceptional – contracts with insiders, contracts that represent a major part of revenues and costs, contracts for property, plant and equipment that represent more than 15% of fixed assets and any material lease on a (major) property that is described in the property section of the 10-K. I understand that previous commenters have been concerned about the ambiguity of terms like "major" part. All of these thresholds seem reasonable to me, but I do not know whether and how many truly material contracts made in the ordinary course of business are falling through the cracks of disclosure. Rather than take the opinions of respondents to this concept release, the Commission might consider conducting field tests with a sample of registrants to determine where the lines are being drawn. The tests here also exclude financial contracts – such as derivatives. Consequently, the Commission should consider establishing filing requirements for derivatives and other financial contracts that are material to the registrant.

6. Preferability Letter (Item 601(b)(18)) – Questions 253-256

I have seen many financial statements with changes in accounting principles, but do not ever recall seeing a preferability letter or statement within an auditors' opinion or in the footnotes of the financial statements about the preferability of the accounting change (except perhaps a statement in the auditors' letter indicating that the auditor agrees with the accounting change). It is apparently quite rare that auditors question the preferability of an accounting change.

I will leave it for the auditors to debate the merits of the SEC's proposal to drop the requirement to file preferability letters as exhibits. I do, however, believe that it should not be that difficult for the FASB, PCAOB and SEC to adopt a single standard and disclosure methodology for preferability letters.

7. Subsidiaries and Legal Entity Identifiers
    b. Subsidiaries – Questions 257-260

As a security analyst who focuses on evaluating the historical performance and future prospects of companies, I do not typically make use of the list of subsidiaries filed as an exhibit. I recognize that this information might be useful as an indicator of tax avoidance, especially if the registrants were to disclose certain information, as included in your proposal, about each subsidiary. Even so, I would not find such enhanced disclosure useful in the ways that I currently analyze financial statements.

c. Legal Entity Identifiers – Questions 261-263

This too is currently outside of my business model. It seems to me that the cost of the proposed disclosure is low, so adopting it as a requirement may be reasonable, as long as the the purpose behind the requirement is justifiable.

H. Scaled Requirements

1. Categories of Registrants Eligible for Scaled Requirements – Questions 264-267

I am not an advocate of scaled disclosure. I believe that attempts to reduce disclosure requirements for smaller registrants are misguided. Although smaller registrants do not possess the same resources as larger ones for preparing financial disclosures, their businesses are generally simpler, so many of the complex disclosure requirements (or accounting standards) do not apply. Based upon what little I have seen from companies that qualify as EGCs under the Jobs Act, the reduced disclosure requirements are likely to result in many more instances of misleading disclosure and fraud. I think that it would be preferable to provide smaller registrants with a process by which they might seek relief from the SEC from any disclosure requirements that they view as especially burdensome, rather than granting them the wholesale right to scale down reporting and disclosure requirements.

2. Scaled Disclosure Requirements for Eligible Registrants – Questions 268-277

Although there are certain aspects of the disclosure regime that do save time and costs for SRCs and EGCs, such as the two-year audited financial statement requirement, there is little justification, in my mind, for exemptions from meeting Regulation S-K disclosure requirements in areas like Selected Financial Data, Risk Factors, descriptions of working capital requirements, seasonality and backlog and others. SRCs and GRCs are fully capable of preparing such disclosures and the cost of preparing them should not be prohibitive. Although the Commission says that it seeks to facilitate capital formation without compromising investor protection, it is hard to see how cutting back on relatively inexpensive and uncomplicated disclosures would not raise risks for investors.

I might be willing to compromise my position here in the face of data that shows that investment returns on SRCs and EGCs are not significantly dissimilar to those of registrants that are required to meet the full disclosure regime. By now, the SEC should be able to produce such data, given its long history of scaled disclosure. Such information might also help it to fine tune its program to help these companies become successful while reducing investor losses. Although the goal of promoting job growth through the success of smaller companies is admirable, such job gains will be fleeting, if the companies fail. To state the obvious: Maintaining high reporting standards will allow fewer SRCs and GRCs to raise equity capital in

the public markets, but those companies that meet this higher hurdle are more likely to sustain their business operations and the jobs that they create.

3. Frequency of Interim Reporting – Questions 278-285

Even though it would not be received well by many on Wall Street and perhaps even a few registrants, switching from quarterly reporting to semi-annual reporting is worth a try. As noted in your concept release, some argue that making the switch will not by itself reduce "short-termism;" but it would, if adopted by all registrants, cut the number of speculative events in half. There may still be lots of speculative activity around each semi-annual reporting release; but there would then only be two per year instead of four. That alone will likely serve to dampen overall speculative activity.

There are legitimate reasons for retaining the status quo: Many analysts and money managers want to monitor the companies that they follow more closely than twice annually. Some worry that the delay will not give allow them to respond to new developments on a timely basis.

The transition could also create some problems. It is probably better to go "cold turkey" and have everyone make the switch at once. This will avoid some comparability issues between companies that are on different reporting frequencies. I think a test of the switch – by allowing small cap companies to transition voluntarily makes sense; but the Commission may want to see how the transition might work in the large cap sphere by testing it on one or more industries – perhaps a low growth, low P/E sector like financials and a high growth, high P/E sector like technology.

V. Presentation and Delivery of Important Information

A. Cross Referencing
- a. Cross Referencing to Reduce Repetitive Disclosure – Questions 286-290
- b. Cross References to Navigate Disclosure – Questions 291-292
- c. Limitations on Cross-Referencing – Questions 293-295

B. Incorporation by Reference – Questions 296-302
C. Hyperlinks – Questions 303-306
D. Company Websites – Questions 307-318
E. Specific Formatting Requirements – Questions 319-328
F. Layered Disclosure – Question 329
G. Structured Disclosures – Questions 330-340

I personally do not mind a small number of duplicative disclosures, but I also do not object in principal to the limited use of cross-referencing. I believe that cross-referencing within a document is OK, except for cross-references from inside the financial statements to other parts of the document outside the financial statements, because I am not sure whether auditor attestation would apply to information located outside the financial statements. In any case, it would always be preferable to cross-reference from outside the financial statements to inside. Similarly, the example that you discuss in the concept release regarding the possibility of losing protections under the safe harbor for forward-looking information provides another reason to be careful about crafting hyperlinks. For these reasons, I think that the SEC should develop guidance on both preferable and permissible uses of internal and external links within filings.

I believe that cross-referencing to another document outside of the current filing should be severely limited. The SEC, as noted in the concept release, permits certain information or documents, such as annual reports, proxy information, exhibits and certain documents of other registrants to be incorporated by reference. However, there may be a few other instances where links to other documents might be permissible. For example, if the Commission were to permit the adoption of a separate "Accounting Policies" document that would be blessed annually by auditors, it would be necessary to reference that document from within the base filing. Also, a link to the previous year's filing to access the discussion of the previous year's Results of Operations would be OK, if the Commission opts to permit registrants to drop that discussion from the current year's filing. However, links to previously filed information should be severely limited, because too many links impairs readability. Other than those two additional instances, I cannot think at the moment of any links to external documents that should be allowed to reduce repetitive disclosures.

Generally speaking, I think that anywhere that the Commission allows cross referencing, it should also permit hyperlinks. However, as noted, the use of cross referencing (and hyperlinks) should be limited because it impairs readability.

Although the Commission permits certain of its rules to be satisfied with website disclosures (such as non-GAAP reconciliations), it should not permit links to websites and/or website documents to satisfy Exchange Act filing requirements. All such information and/or documents should be included within the filing itself to ensure that it will always be there for the record.

As already noted, the presentation of information in certain sections, such as the Business Description and MD&A for several companies, including General Electric, now relies more heavily on charts and graphs. It is clear that this makes their documents easier to read and almost certainly enhances the retention of information by readers. Changes that enhance readability and retention are obviously good, but it remains to be seen whether there is a decline in the depth of disclosure as a result of these simplified formats. I believe that the SEC can cheer such changes, but it also must then monitor these new disclosure formats carefully to ensure that the financial markets do not become less well informed as a result.

I believe that standardization of disclosures and disclosure formats is neither achievable nor desirable.

I am not a fan of layered disclosure within SEC filings, with the exception of the Selected Financial Data section, which I see as a form of layered disclosure that benefits both sophisticated and unsophisticated investors alike. Although I understand the push for a summary page, it is unlikely that such summaries will give investors and analysts sufficient information to be meaningful. It is hard to imagine an investor justifiably taking action on the basis of what he/she reads in the summary page of a periodic report. As an alternative, I think that the desire for layered disclosure should be met outside of SEC filings, in specialized documents prepared by registrants for their various stakeholders. An example of this would be a summary annual report which typically provides only limited financial information and no footnote disclosures.

I do not use XBRL data and I know of no one who does. In the not too distant past, I heard a complaint from a representative of a registrant that no one seemed to be using its XBRL data. Third party reports, such as a 2013 Survey by Financial Executives International show cost/benefit concerns at the top of the list of concerns about XBRL compliance. I do recognize the value of structured data, but as I noted in a comment letter to the SEC when XBRL was being launched, it is very difficult and time consuming to standardize financial information and adjust for the different ways that companies report their data, including the frequency with which they change or adjust their reporting formats. The Commission obviously seems committed to maintaining and enhancing XBRL, which suggests that enough people are using it to justify continuing the program. Nevertheless, I think that it is time that the Commission prepare a report on XBRL's progress and seek comments from registrants, service professionals and the investment community on it. The report should include an analysis of the categories of users of XBRL (with a focus on investors), the various ways in which it is being used and how using it benefits the financial markets.

Thank you for the opportunity to contribute my views on this important topic. If you have any questions or would like me to clarify any of the positions that I have taken here, please contact me directly.

Sincerely,

Stephen P. Percoco