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CITY BAR

**COMMITTEE ON
FINANCIAL REPORTING**

DAVID S. HUNTINGTON
CHAIR
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 AVE OF THE AMERICAS
NEW YORK, NY 10019
Phone: (212) 373-3124
Fax: (212) 757-3990
dhuntington@paulweiss.com

FRANCES F. MI
SECRETARY
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 AVE OF THE AMERICAS
NEW YORK, NY 10019
Phone: (212) 373-3185
Fax: (212) 757-3990
fmi@paulweiss.com

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Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via email to rule-comments@sec.gov

**Re: File No. S7-06-16
Request for Comment on Business and Financial Disclosure Required by
Regulation S-K**

Ladies and Gentlemen:

This letter is submitted on behalf of the Financial Reporting Committee of the Association of the Bar of the City of New York. Our committee includes a wide range of practitioners whose areas of interest and expertise include financial reporting under the securities laws and the regulation of the U.S. capital markets.

We are responding to the request of the Securities and Exchange Commission for comment on its concept release regarding possible revisions to the business and financial disclosure requirements in Regulation S-K. We applaud the Commission's effort to undertake a comprehensive review of these disclosure requirements and the ways in which disclosure is presented and delivered to investors. We are encouraged by many of the suggestions in the concept release and have focused our comments on a few topics of particular importance to our committee.

Audience for Disclosure

We acknowledge the challenges in designing disclosure rules for a wide range of investors, who vary in their sophistication and financial resources and who use disclosure in different ways and seek varying degrees of information. We do not believe, however, that the Commission should go down the path of tiered disclosure requirements designed for investors of differing levels of sophistication and industry knowledge. We agree with the Wheat Report's suggestion that the Commission's disclosure requirements should strike a "pragmatic balance . . . between the needs of unsophisticated investors and those of the knowledgeable student of finance." Moreover, we believe that effective disclosure for the most sophisticated analyst need not be incomprehensible to an individual investor without particular industry knowledge.

Through its rulemaking and comment letter processes, the Commission should encourage companies to write clear, plain English disclosure documents that can be easily navigated and digested by individual and institutional investors alike. This is not an impossible task. Minimizing jargon, boilerplate and duplication can help, as can many of the other initiatives suggested in the concept release, including improving the ability of investors to navigate within and across disclosure documents.

Content and Focus of MD&A

Our committee has previously proposed that the Commission adopt a rule requiring registrants to provide an overview describing what happened at the company over the past year and the company's expectations and concerns about the year to come (our proposal is referenced at footnote 292 in the concept release). The rule would encourage companies to effectively communicate their own plain English overview of what's going on – much as a CEO might report to his or her board of directors. The new disclosure would not substitute for the more detailed financial and other business information mandated by Regulation S-K, but would allow management to exercise judgment in presenting a succinct overview of where the company has been and where it is going.

We continue to believe that a simple, straightforward requirement along these lines would be beneficial to investors, and we urge the Commission to consider it.

Presentation and Delivery of Important Information

We believe that the presentation and delivery of disclosure information is one of the most important areas for the Commission to address and one of the easiest to improve.

Cross-referencing and hyperlinks

Cross-referencing and hyperlinks should be encouraged both as a means of reducing duplicative disclosure and as a means of assisting readers in navigating disclosures. There are many examples of areas where cross-referencing could improve disclosure, such as cross-referencing from the MD&A to the financial statement disclosures regarding critical accounting policies and recently issued accounting pronouncements (to avoid duplication) and cross-

referencing from legal proceedings disclosure to financial statement disclosure regarding contingencies (to avoid duplication and assist in navigating to related but not necessarily duplicative disclosure). While we recognize that there are challenges with respect to external hyperlinks, including issues relating to the auditor's responsibility to review information outside the financial statements, the Commission should at the very least encourage hyperlinks within and across Commission filings to the maximum extent possible.

Format of EDGAR documents

One of the easiest ways the Commission could improve the delivery of information to investors would be to fix the formatting of documents in the EDGAR system. Under the current system, companies are required to convert all of their disclosure documents into an EDGAR-compatible format, which typically results in documents that are exceedingly difficult to read. Companies frequently spend tens of thousands of dollars, if not more, on financial printers for their registration statements and periodic reports, and yet as soon as the documents are "EDGARized," the expensive print ready format is completely lost and replaced with a format that is far less user-friendly. A typical EDGARized document has odd page breaks (often in the middle of a line), smaller font size, tables that differ in appearance from the print ready document and text filling only a fraction of each page. Graphical content is often lost or diminished. A 200-page print ready registration statement, once EDGARized, might print out at more than 300 pages, with many pages entirely blank because of formatting issues. An exhibit like a credit agreement or indenture becomes substantially more difficult and cumbersome to navigate once it has been EDGARized. We have not attempted to quantify the environmental impact in terms of paper consumption of such a system applying to all documents that U.S. and foreign companies file with the Commission, but we assume it is substantial.

In the twenty-first century, consumers of Commission-mandated disclosure documents deserve a better system – one that preserves the integrity of filed documents and allows for user-friendly viewing and printing. As an initial step, until the EDGAR formatting system itself can be modernized, the Commission could adopt a simple rule requiring that print ready, non-EDGARized pdf versions of documents be filed together with EDGAR versions and accessible through EDGAR. We note that Canada's SEDAR system allows for filings in pdf form.

Company Profile

We believe the Commission should give serious consideration to a "company profile" disclosure model, whereby certain information about an issuer would be maintained on a web page and updated periodically. Certain aspects of such a system could be implemented in the near term and would greatly improve the delivery of important information to investors. Take a simple example like locating a company's bylaws. Currently, an investor would have to locate the most recent Form 10-K on the EDGAR system, page down to the exhibit index, find the reference to the bylaws, which likely have been filed originally on a Form 8-K many years previously and perhaps amended subsequently on more than one occasion, locate the prior Form 8-Ks on the EDGAR system, and ultimately print out an EDGAR version of the bylaws in a non-user-friendly format. To take another example, an investor would have similar difficulty

locating the current terms of a company's credit agreement, which may have been entered into many years previously and amended multiple times.

One could imagine a far more user-friendly system where companies would be required to maintain on a web page, which could be part of the EDGAR system or a company website, a standing collection of documents organized in clearly identifiable categories. These could include governance documents (charter, bylaws, board committee charters, ethics policy, etc.); material contracts; executive compensation-related documents (compensation plans, employment contracts, etc.); effective registration statements; ownership related documents (Form 13Ds and Form 13Gs); and other relevant categories. A tab or folder system would make navigating through the company profile easy for investors.

As a subsequent step, the Commission could consider identifying portions of Form 10-K and Form 10-Q – such as the Business and Risk Factors sections – that could be pulled and built into the company profile system. This would both reduce the burden on companies and benefit investors by shortening the length of periodic reporting documents.

Importantly, we are not advocating for a continuous disclosure approach, and we believe that a company profile system could work well if companies were required to update information on the same time schedule as currently required for periodic filings.

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We thank you for the opportunity to comment on this important Commission initiative. Members of our committee would be happy to discuss any aspect of this letter with the Commission staff.

Respectfully submitted,

A handwritten signature in blue ink that reads "David S. Huntington". The signature is written in a cursive, flowing style.

David S. Huntington, Chair
Financial Reporting Committee