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December 19, 2017

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-08-17
FAST Act Modernization and Simplification of Regulation S-K

Dear Office of the Secretary:

This letter is the response of BDO USA, LLP to your request for comments regarding the proposal referred to above.

We support the Commission's efforts to modernize and simplify certain disclosure requirements in Regulation S-K. We believe that some of the proposed disclosure amendments may encourage registrants to take a fresh look at their disclosures and support changes intended to elicit disclosure that is material to investors. We provide our comments based on our perspective as auditors and experience working with registrants on their filings.

We recognize that the proposal responds to the SEC's mandate under the FAST Act. We encourage the Commission to continue its consideration of other changes to Regulation S-K, some of which were explored in the SEC's *Concept Release on Regulation S-K*. As previously suggested in our comment letter on that release, we support a principles-based approach to disclosure outside of the financial statements. In this regard, we believe Regulation S-K should clearly articulate the disclosure objectives of each S-K Item and make it clear that the disclosure is only required to the extent necessary to achieve the disclosure objectives. We believe this approach will promote disclosure of information that is meaningful and relevant to investors. For example, the Commission could consider including the principal disclosure objectives of MD&A specified within Section I.B. of the Commission's 2003 Interpretive Release (No. 33-8350) directly within the Instructions to Item 303. This approach underlies our comments and recommendations on specific aspects of the proposal as discussed below.

Item 303 Management's Discussion and Analysis and Materiality Considerations

The proposed rule would add language to Instruction 1 of Item 303(a) to permit a registrant to omit the discussion of the earliest year included in a filing covering three years if (1) the discussion is not material to an understanding of the registrant's financial

condition, changes in financial condition, and results of operations, and (2) the registrant filed its prior year Form 10-K on EDGAR and that Form 10-K contains management's discussion and analysis of the earliest of the three years included in the financial statements of the current filing. We believe that basing this disclosure requirement on an evaluation of materiality would add unnecessary ambiguity to a registrant's decision whether to include a discussion of the earliest period presented. If the condition for omitting the discussion is challenging to apply in practice, registrants are apt to simply default to including the discussion.

We observe that the staff's recommendation related to the year-to-year comparisons in the FAST Act report was to simply require a hyperlink to the discussion of the earliest period presented, presumably on the basis that it was already provided and part of the total mix of information available to investors. In this regard, as the discussion of the earliest period is already part of the total mix of information available to investors, we question why a hyperlink or the proposed materiality threshold would be needed at all.

As highlighted in the proposing release, the disclosure requirements for liquidity, capital resources, and results of operations already require trend disclosure in MD&A. We believe the requirements for trend disclosure are sufficient to elicit relevant discussion of prior year information. Therefore, we believe a registrant should be permitted to omit the discussion of the earliest period presented if it was already included in a previous filing.

Additionally, the proposal only permits the discussion of the earliest period presented to be omitted if it was included in a prior year Form 10-K. As stated above, we believe a registrant should be permitted to omit the discussion of the earliest period if it was included in any previous filing under the Securities Act or Exchange Act, such as on Forms S-1, S-4, 10, or 8-K. If the information is already part of the total mix of information available to investors, it is not clear to us why the Form on which that information appears is relevant. If the Commission is concerned that investors may not be able to find the discussion of the earliest period, it could consider requiring disclosure of where the information is provided.

If the concept of materiality is retained as proposed, we believe the Commission should provide a framework for registrants to follow when evaluating the need for disclosure. We believe a framework would be necessary to help registrants better understand how to think about when the discussion of the earliest period may be omitted.

Moreover, as we previously recommended in connection with our comment letter on the Regulation S-K Concept Release, we believe that the Commission should consolidate the MD&A guidance appearing in the Commission releases, sections of the Financial Reporting Manual, and Compliance and Disclosure Interpretations into a single source. The framework, in connection with this guidance presented in one place, may also result in improved MD&A disclosure.

Lastly, we agree with the Commission's proposal to make conforming amendments to Form 20-F for foreign private issuers.

Incorporation by Reference and Hyperlink Proposals

The proposal contains various questions about whether to change what information may be incorporated by reference or hyperlinked in a prospectus or filing. If the Commission were to consider rule amendments that would increase the information that can be incorporated by reference or allow the further use of hyperlinks to information which is not currently incorporated into a filing, we ask the Commission to also consider the corresponding impact on the responsibilities of auditors that are associated with "other information" in these filings. Although the primary responsibility for the accuracy of the information that is filed or incorporated by reference in SEC filings rests with management, PCAOB Auditing Standard 2710 addresses the auditor's responsibility as it relates to other information in documents that contain the audited financial statements and related auditor's report. AS 2710 requires the auditor to read and consider whether this other information, or its manner of presentation, is materially inconsistent with the information contained in the audited financial statements. If the scope of information appearing or incorporated in a filing expands, the Commission should coordinate with the PCAOB prior to formalizing any rule amendments to ensure that the auditing standards are appropriately designed to address the auditor's responsibilities related to such information.

We support the Commission's proposal to explicitly prohibit registrants from incorporating or cross-referencing information outside of the financial statements into their financial statements unless otherwise specifically permitted or required by the Commission's rules. We note that the Commission proposes to accomplish this by amending the rules under the Securities Act, Exchange Act, and Investment Company of 1940 Act, as well as certain forms (e.g., Forms S-1, S-3 and S-11). It is not clear to us why the Commission needs to amend specific forms in addition to amending the applicable rules that would seem to apply to all forms. It is also not clear why the Commission would amend certain forms (e.g., Form S-3) but not others (e.g., Form F-3). We recommend that the Commission reconsider, or at least clarify, its approach related to these amendments.

Item 407(d)(3)(i)(B) Audit Committee Discussions with Independent Auditor

We support the Commission's proposal to amend Item 407(d)(3)(i)(B) to refer more broadly to the applicable requirements of the PCAOB and the Commission. As highlighted in the proposal, the PCAOB's auditing standards have been either superseded or reorganized several times since the PCAOB's creation. We do not believe that specifying the latest standard or applicable Commission rule improves an investor's understanding of this requirement.

Item 503(c) Risk Factors

We support the Commission's proposal to eliminate the specific examples provided within Item 503(c). We believe that removing the examples may encourage registrants to focus on risk factors that are most relevant to their business.

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Paula Hamric, Partner – National SEC Department, at [redacted] or via email at [redacted], or Christopher Tower, National Managing Partner – Audit Quality and Professional Practice Leader, at [redacted] or via email at [redacted].

Very truly yours,

BDO USA, LLP