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January 5, 2018

File No. S7-08-17
SEC Release No. 33-10425

Ladies and Gentlemen:

We write in response to the request by the Securities and Exchange Commission (the "Commission") for comments on the proposed amendments published in File No. 33-10425, *FAST Act Modernization and Simplification of Regulation S-K* (the "Release").

We generally support the proposed amendments, and appreciate the Commission's efforts to improve and modernize the disclosure requirements of Regulation S-K. We believe that the proposed amendments represent an important step towards modernizing and simplifying the disclosure system in a way that reduces the costs and burdens on registrants, while continuing to ensure that investors receive all material information.

Our responses to select requests for comment in the Release follow. Our comments do not address proposed amendments to rules and forms under the Investment Company Act or the Investment Advisers Act.

A. Description of Property.

Question 1

We support the amendments to Item 102 clarifying that a description of property is required only to the extent that physical properties are material to the registrant. As the Commission notes in the Release, current Item 102 and its associated instructions often lead to disclosure consisting of itemized lists of physical properties that convey little information about the importance, if any, of such properties to a registrant's business. The proposed amendments to Item 102 emphasizing materiality should enhance this disclosure where appropriate or eliminate it where not material. We also

support the proposed ability of registrants to rely on collective presentation of physical properties when appropriate.

Question 2

We support the proposed harmonization of non-industry-specific disclosure triggers in Item 102 through the adoption of a general materiality threshold. The use of a consistent threshold of materiality with which registrants are familiar will facilitate effective and efficient compliance with Item 102. The proposed approach also should promote consistency in judicial decisions with respect to litigation alleging disclosure defects under the Federal securities laws.

Question 3

We do not support the proposed amendment to Item 102 that would require businesses with material properties to provide additional disclosure about those properties. We believe that other existing disclosure requirements, including required risk factor and trend disclosure, sufficiently elicit appropriate disclosure in circumstances where a registrant's material properties create competitive advantages or material risks.

B. Management's Discussion and Analysis of Financial Condition and Results of Operations.

1. Year-to-Year Comparisons.

Question 4

While we support the Commission's efforts to streamline the disclosure mandated by Item 303, we believe a more effective approach would be to allow registrants who have filed three years of financial statements to eliminate discussion of the earliest year in Management's Discussion & Analysis of Financial Condition and Results of Operations ("MD&A") when they have filed their prior year Form 10-K on EDGAR containing MD&A of the earliest of the three years, without requiring an independent materiality analysis with respect to the earliest year-to-year comparison. If a registrant has filed an annual report containing MD&A of the earliest year on EDGAR that information is readily available, and, absent unusual circumstances (such as a restatement), permitting that information to be omitted should enhance readability.

We believe that including the proposed materiality test likely will result in very few registrants electing to omit the MD&A discussion of the two oldest years. Because the disclosure already exists, the path of least resistance for registrants will be to include it rather than subject themselves to a potential disclosure claim by omitting it. We believe that any decision to permit omission should be based solely on the fact that the information is readily available on EDGAR. In this regard, we note that—although not entirely apposite—this approach could be viewed as an initial step toward a disclosure regime consisting of "core" disclosure for information that does not change

frequently that would be supplemented by periodic filings for information that changes more frequently.[1] We believe that this approach deserves additional study.

We also see no reason to limit the proposed revisions to apply only where the earliest year-to-year comparison has been filed in an annual report. Any filing available on EDGAR should suffice. However, if the information is not in the prior year's annual report, a registrant should be required to disclose in the current filing which prior filing contains the omitted information.

Question 5

We believe that it would be appropriate to expand the proposal to Form S-1.

Question 6

If the proposed requirement that a registrant determine that the discussion of the oldest year is not material as a condition to omitting it would be included in the proposal, we believe that retaining the earliest year requirement and allowing registrants to hyperlink to the prior year's annual report would be a preferable approach, as it would be a "bright-line" rule and thus easier for registrants to apply.

Question 7

If the financial statements included in the 10-K differ from the financial statements included in the prior year 10-K for any reason, including due to restatement or retrospective adoption of a new accounting principle, a registrant should not be permitted to exclude discussion of the earliest year-to-year comparison unless the registrant has previously published an updated comparison (for example, on Form 8-K).

Question 9

We do not believe that eliminating the reference to the five-year selected financial data would either have a significant impact on the total mix of information available or discourage trend disclosure.

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[1] See Report on Review of Disclosure Requirements in Regulation S-K, Dec. 2013, available at https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf at 98.

2. Application to Foreign Private Issuers.

Questions 10 and 11

We do not believe that there are unique considerations for foreign private issuers and, accordingly, support the Commission's proposal to make corresponding changes to the instructions to Item 5 in Form 20-F.

Question 12

We agree with the Commission's proposal to not make similar changes to Form 40-F in light of the fundamental structure of the multi-jurisdictional disclosure system.

C. Management, Security Holders and Corporate Governance.

1. Directors, Executive Officers, Promoters and Control Persons.

Question 14

We believe the proposed amendment is desirable as it would conform the rule to the Staff's current interpretation of the rule.

Question 15

We do not see any benefit to limiting this instruction only to certain paragraphs; rather, we think that any such limitation would serve only to increase complexity and potential compliance costs.

Question 16

We believe that permitting registrants to omit from their proxy statements S-K Item 404 disclosure that has been included in a previously filed 10-K would reduce duplication.

Question 17

We believe that there would be potential benefits if registrants included all Item 401 (and potentially Item 404) information with respect to executive officers in either the Form 10-K or in the proxy statement. Rather than dictate the same approach for all registrants, however, we believe that a better approach would be to encourage registrants to include the information in one document or the other and make it clear that duplicative disclosure is not required.

2. Compliance with Section 16(a) of the Exchange Act.

Question 18

It is our view that the ability to rely on Section 16 reports filed on EDGAR would reduce the burden to registrants of complying with Item 405, with no attendant impact on a registrant's ability to disclose delinquencies. We also believe that this approach would have no impact on registrants' compliance with their reporting requirements under Section 16(a). Although we believe that registrants carefully monitor EDGAR filings in respect of themselves, there may be additional value in requiring affiliates (but not directors and officers, for whom registrants typically would have internal communication requirements) to provide electronic notice of such reports.

Question 19

The Commission should not require a registrant to disclose delinquencies under Item 405 when it knows or has reason to believe that there is a delinquency not reflected on EDGAR. Filing of Section 16 reports is the responsibility of the relevant shareholder, and the onus of policing that behavior should not fall on the registrant. While the registrant can fairly be expected to take some appropriate course of action if it knows or has reason to believe that there is a delinquency by a director or officer not reflected on EDGAR, public disclosure of that knowledge or belief would seem to be an ineffective tool to police an individual's failure to file required 16(a) reports.

In addition, mandating that the registrant disclose when it has knowledge or belief of a delinquency not reflected on EDGAR effectively would require a registrant to independently evaluate and validate each shareholder's reporting position in every filing. This could require significant resources and involve the registrant in disputes with respect to reporting positions, potentially even resulting in alleged liability. We do not think this is an appropriate burden for registrants and we therefore urge the Commission to leave unchanged the current practice of permitting but not requiring a registrant to disclose delinquencies under Item 405 that it knows or has reason to believe are not reflected on EDGAR.

Question 20

We support the Commission's proposal to add an instruction to Item 405 clarifying that the "Section 16(a) Beneficial Ownership Reporting Compliance" heading may be omitted when the registrant has no delinquencies to report. This instruction will encourage registrants to omit the header when it serves no purpose, and will thereby improve investors ability to search a registrant's filings for disclosure of Section 16(a) reporting delinquencies. Although we appreciate the complex interaction between statutory disclosure requirements, Commission rules and Staff interpretations, we would encourage this approach generally. In our view, requiring registrants to disclose the absence of matters to disclose serves only to clutter filings.

Question 21

We support the Commission's proposal to eliminate the checkbox on the cover page of Form 10-K indicating that disclosure pursuant to Item 405 is not contained in the Form 10-K and will not be contained, to the best of the registrant's knowledge, in any definitive proxy or information statement incorporated by reference. The amendments to Item 405 clarifying that the "Section 16(a) Beneficial Ownership Compliance" heading may be omitted when the registrant has no delinquencies to report facilitates the process of searching documents for Item 405 disclosure, and thereby lessens the usefulness of the checkbox. We also agree with the Commission that because most registrants defer their Item 405 disclosure to their definitive proxy or information statement, the checkbox is already of limited use.

3. Corporate Governance.

a. Audit Committee Discussions with Independent Auditor.

Question 22

For the reasons stated in the Release, we support the Commission's proposal to amend Item 407(d)(3)(i)(B) to refer to the applicable rules promulgated by the Public Company Accounting Oversight Board ("PCAOB") and the Commission. However, we also encourage the Staff periodically to publish Compliance and Disclosure Interpretations or other guidance that catalogs the specific PCAOB and Commission rules that are covered by revised Item 407(d)(3)(i)(B) at the time so as to avoid confusion and provide clarity to registrants.

b. Compensation Committee Report.

Question 23

We support the Commission's proposal to amend Item 407(g) to explicitly exclude Emerging Growth Companies from the Item 407(e)(5) requirement that a compensation committee state whether it has recommended to the board of directors that the Compensation Discussion and Analysis required by Item 402(b) be included in the registrant's annual report, proxy statement or information statement. We believe that Item 407(g) is the appropriate location to make this amendment, given that Item 407(g) already excludes Smaller Reporting Companies from Item 407(e)(5).

D. Registration Statement and Prospectus Provisions.

1. Outside Front Cover Page of the Prospectus.

a. Name.

Question 24

We do not support the Commission's proposal to eliminate the language in Item 501(b)(1) regarding when a name change may be required. If the guidance set forth in the instruction continues to reflect the Staff's position on the issue, we see no benefit to eliminating the instruction.

b. Offering Price of the Securities.

Question 25

We support the proposed amendment to Instruction 2 to Item 501(b)(3) that would allow registrants to include a cross-reference to inside the prospectus where the explanation of the method in which the offering price will be determined is located when it is impracticable to state the price method or formula on the cover page. The requirement that registrants cross-reference to the explanation of the offering price method is in our view sufficient to permit prospective investors to readily find that information even if not on the cover page.

Question 26

We do not support the proposal to amend Instruction 2 to Item 501(b)(3) to require the cross-reference to the explanation of the price method or formula to be accompanied by a hyperlink. Although we appreciate the value of hyperlinking between different disclosure documents, including the recent requirements for hyperlinking to the underlying filings from exhibit indexes in certain circumstances, we see little value in requiring rather than merely permitting hyperlinking within the same filing.

c. Market for the Securities.

Question 27

We support expanding the disclosure required by Item 501(b)(4) to be included on the prospectus cover page to include United States markets other than national securities exchanges, as we concur with the Commission's view that trading activity in the offered security on markets that are not a national securities exchange could be important to investors. We also note the current disconnect between Item 501(b)(4) and Item 201. We would suggest that the Staff evaluate whether these two Items could be harmonized.

Question 28

In connection with the implementation of the European Union Market Abuse Regulation,[2] many registrants have discovered that it is possible for third parties—without any participation by or even notice to the registrant—to list the registrant's securities on a securities exchange. As a general matter, we do not think it is appropriate to require registrants to disclose information relating to unilateral action by third parties that may not be readily available to the registrant. Accordingly, we do urge the Commission, if it makes the proposed change to Item 501(b)(4), only to require an issuer to disclose United States markets where it has taken "affirmative steps" to cause the listing.

Question 29

We believe an identical approach is appropriate for domestic or foreign registrants with respect to domestic and foreign markets.

Question 30

As noted in our response to Question 27 above, we would support further Staff efforts to harmonize these two Items, including by only requiring disclosure of markets where the registrant (or potentially a controlling shareholder) has, through the engagement of a registered broker-dealer, actively sought and achieved quotation for the class of security being offered.

Question 31

We believe that it would be valuable for the Commission to provide additional guidance on when a registrant would be considered to have actively sought quotation through the engagement of a registered broker-dealer. In addition, we suggest that the Commission consider how its proposed amendments would operate under circumstances in which an issuer that actively sought quotation later seeks to terminate trading in a particular market but cannot unilaterally do so.

d. Prospectus "Subject to Completion" Legend.

Question 32

For the reasons stated in the Release, we support the Commission's proposal.

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[2] Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (market abuse regulation), 2014 O.J. L 173/1.

2. Risk Factors.

Question 33

We support the Commission's proposal to move the requirement to provide risk factor disclosure in Item 503(c) to a new Item 105. Subpart 100 governs disclosure covering a broad category of business information and is not limited to offering-related disclosure, and therefore is a more fitting location for the risk factor disclosure currently set out in Item 503(c).

Question 35

We support the Commission's proposal to eliminate the risk factor examples currently enumerated in Item 503(c). We agree with the view advocated by some commenters that the examples currently enumerated in Item 503(c) are outdated and no longer helpful. While risk factor examples may have been helpful to registrants when the requirement to disclose risk factors was first introduced, it is our view that Staff comment letters, scholarly articles and case law provide sufficient guidance in this area. If the Staff believes more comprehensive guidance is appropriate or would be helpful to registrants, it may wish to consider publishing a Staff Legal Bulletin on the topic.

3. Plan of Distribution.

Question 36

For the reasons stated in the Release, we support the Commission's proposal to amend Rule 405 to define "sub-underwriter" as a "dealer that is participating as an underwriter in an offering by committing to purchase securities from a principal underwriter for the securities but is not itself in privity of contract with the issuer of the securities."

4. Undertakings.

Question 37

For the reasons stated in the Release, we support the Commission's proposal to eliminate the Items 512(c), 512(d), 512(e) and 512(f) undertakings.

E. Exhibits.

1. Description of Registrant's Securities.

Question 41

In light of the EDGAR database and the new exhibit hyperlinking requirements, it is not clear to us that requiring registrants to file Item 202 disclosure as an exhibit to the annual report would meaningfully improve access to information regarding the rights of securityholders. The potential complexity described in the

Release (as well as the concept release to which it refers) relates only to equity securities and, as pointed out in the Release, registrants are required to file amended and restated charter documents to eliminate the need to piece together the relevant provisions. Accordingly, we do not see any benefit to the proposed requirement. If the Commission adopts this proposal, however, we would recommend strongly that the requirement to file Item 202 disclosure as an exhibit to the annual report be limited only to a registrant's common stock or other residual equity interests (such as limited partnership or limited liability company interests) registered under Section 12 of the Exchange Act.

In addition, if the proposal is adopted, we recommend that it permit hyperlinking to any filing available on EDGAR to satisfy the requirement to reduce the cost of compliance, which in our view otherwise could be significant. Finally, if the proposal is adopted, it should permit a registrant to qualify any such Item 202 exhibit description by reference to the relevant underlying documents so long as they are available on EDGAR.

Question 42

We believe that existing Item 202 disclosure, together with existing Item 601 exhibit requirements, provide sufficient disclosure about debt securities or other classes of stock with different or preferential voting rights.

Question 43

We expect that a new requirement that Item 202 disclosure be included as an exhibit to the annual report would impose additional costs on registrants. Although this individual additional disclosure requirement by itself may be unlikely to result in "significantly higher" disclosure costs if limited to common stock, in light of the general availability of Item 202 disclosure via EDGAR, the incremental costs would not seem to be justified by the potential benefits. Any requirement for issuers to prepare an Item 202 exhibit for all securities registered under Section 12 could result in substantial costs for issuers with multiple securities so registered and, at the margin, discourage registration.

2. Information Omitted From Exhibits.

a. Schedules and Attachments to Exhibits.

Question 45

For the reasons stated in the Release, we support the proposed amendments to Item 601(b)(2) allowing registrants to omit entire schedules and attachments to exhibits unless the schedules or attachments contain material information and that information is not otherwise disclosed in the exhibit or the disclosure document. We believe that this approach has worked well in the acquisition agreement context and will eliminate significant amounts of immaterial data that is currently required to be filed.

Question 46

We do not see any particular benefit in requiring that a list of omitted schedules be required as a condition to omitting the schedules. Schedules typically are referred to within the exhibit itself in a manner that provides clear information as to the contents of the schedules. If the Commission determines to amend Item 601(a)(5) to require disclosure of information regarding the omitted schedules and exhibits, we urge the Commission to require that only a list of the omitted schedules and attachments be included and that no additional list need be prepared if a list of the schedules appears in the table of contents to, or is otherwise included in, the exhibit itself. We believe that requiring any description or summary of the contents of the schedules will result in incremental and unnecessary expense for registrants that will not provide benefits to investors.

Question 47

We do not believe there would be any benefit to investors in requiring that some exhibits include all schedules and attachments even though they do not contain material information.

b. Personally Identifiable Information.

Question 48

For the reasons stated in the Release, we encourage the Commission to codify in proposed Item 601(a)(6) the current Staff practice of permitting registrants to omit personally identifiable information without making a formal confidential treatment request.

c. Redaction of Confidential Information in Material Contract Exhibits.

Question 49

We support the Commission's proposal to allow registrants to omit confidential information from exhibits filed pursuant to Item 601(b)(10) without submitting a confidential treatment request where that information is both (i) not material and (ii) competitively harmful if publicly disclosed. We believe the proposed revisions to Item 601(b)(10) will significantly reduce the costs and burdens on registrants with respect to exhibit filings. In our experience, seeking confidential treatment for information included in material contract exhibits imposes a significant burden—both in terms of direct expense and timing uncertainty—on registrants even when the request is approved without modification. In addition, we believe that the Staff (including, for example, Staff Legal Bulletin 1) has promulgated clear guidance on the scope of permissible confidential information, thus obviating the need for "real-time" review by the Staff of information proposed to be omitted in reliance on the confidential treatment regime.

Question 50

We do not believe that the disclosure provided in exhibits would change significantly under the proposed amendments to Item 601(b)(10). As noted by the Commission in the Release, the responsibility of a registrant to determine whether all material information has been disclosed and whether redaction from exhibits is permissible would remain unchanged. The fact that Commission Staff would continue to selectively review registrant filings and assess whether registrants are complying with the revised rule should ensure that registrants' incentives to ensure that all material information has been disclosed will remain unchanged under proposed Item 601(b)(10).

Question 51

We do not see any benefit in requiring an explanatory note or highlighting if the registrant files an amendment including some or all of the previously redacted information following Staff review.

Questions 52 and 53

We believe that including Item 601(b)(2) within the coverage of the proposed change makes sense as (b)(2) exhibits are substantively a subset of (b)(10) exhibits. The Staff may wish to limit the proposed amendments to Item 601(b)(2) and Item 601(b)(10) exhibits initially and revisit potential expanded applicability at a future date.

3. Material Contracts.

Question 54

For the reasons set forth in the Release, we support the Commission's proposal to amend Item 601(b)(10)(i) to limit the two-year look-back test to newly reporting registrants.

4. Subsidiaries of the Registrant and Entity Identifiers.

Question 58

We do not see any benefit to investors in requiring registrants to include in Exhibit 21 the Legal Entity Identifier ("LEI") of the registrant and each subsidiary required to be listed in the exhibit if one has been obtained.

Question 60

For the reasons set forth in response to Question 58 and because obtaining and maintaining LEIs will result in incremental expense to registrants, we do not support the adoption of rules that would encourage or require a registrant and each of its subsidiaries required to be listed on Exhibit 21 to obtain an LEI.

5. Application to Foreign Private Issuers.

Question 62

We support the Commission's proposal to amend the exhibit requirements of Form 20-F so that they are consistent with the requirements under the proposed revisions to Item 601.

Question 64

For the reasons stated in the Release, we believe it is appropriate not to modify the exhibit requirements in Form 40-F.

F. Incorporation by Reference.

1. Item 10(d).

Question 65

For the reasons stated in the Release, we support the Commission's proposal to consolidate the requirements governing incorporation by reference to the greatest extent practicable.

Question 66

For the reasons stated in the Release, we support the Commission's proposal to eliminate Item 10(d)'s five-year limit on incorporation by reference.

2. Securities Act Rule 411, Exchange Act Rule 12b-23 and Rule 12b-32 and Related Rules under the Investment Company Act and Investment Adviser Act.

a. Exhibit and Other Filing Requirements.

Question 68

For the reasons stated in the Release, we support the Commission's proposal to eliminate the general requirement in Rule 12b-23(a)(3) and Rule 411(b)(4) that copies of information incorporated by reference be filed as exhibits to registration statements or reports.

Question 70

Because annual reports typically would not otherwise be filed on EDGAR, we would not recommend that the Commission eliminate the requirement in Item 601(b)(13) that an annual report to security holders be filed as an exhibit to Form 10-K when all or part of the report is incorporated by reference in the text of Form 10-K.

b. Hyperlinks.

Question 71

We would encourage the Commission to allow registrants and the Staff to develop greater experience with hyperlinks as a result of the new exhibit hyperlinking requirements prior to requiring (rather than permitting) additional hyperlinking. We believe this will provide the ability to evaluate any unintended consequences associated with the new requirements and mitigate the potential cost of expanding these requirements.

* * *

We would welcome the opportunity to discuss any of the above issues further with the Commission. Please feel free to direct any inquiries to Andrew J. Pitts at [redacted] or Michael W. Marvin at [redacted].

Respectfully submitted,

/s/ Cravath, Swaine & Moore LLP

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