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January 12, 2018

By Electronic Mail

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

Re: FAST Act Modernization and Simplification of Regulation S-K
File Number S7-08-17

Dear Mr. Fields:

We are pleased to submit this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on the proposed amendments to modernize and simplify certain disclosure requirements in Regulation S-K. We support the Commission's continued efforts to improve disclosure effectiveness by updating, streamlining or otherwise improving disclosure requirements. We believe the proposed amendments to Regulation S-K will reduce costs and burdens on registrants by focusing on disclosure of information that is material to investors and will improve the readability and navigability of disclosure documents. We believe that the Commission should continue to take a principles-based approach to disclosure requirements founded on the materiality of information to an investment decision. This standard has served both registrants and investors well for decades by providing registrants with the flexibility to respond to changes and challenges, discouraging disclosure of trivial information that obscures information that is important, and recognizing the uniqueness of each registrant. Continuing to eliminate rules-based disclosure requirements refocuses registrants and investors on what matters.

We offer the following more specific comments for your consideration in formulating the final rules.

Description of Property (Item 102)

We support the proposed revisions to Item 102 of Regulation S-K to emphasize materiality and use a consistent materiality threshold for non-industry specific disclosure triggers. We agree that Item 102 has often elicited disclosure that is not material, particularly for registrants not engaged in manufacturing. Although we agree that Item 102 should require disclosure only to the extent physical properties are material to the registrant, we do not support expanding Item 102 disclosure to include material facts about those properties, including uncertainties in connection with those properties. We believe this would likely result in disclosure that is duplicative of disclosure covered by other Regulation S-K items, such as Description of Business (Item 101), Legal Proceedings (Item 103), Risk Factors (Item 503(c)) and Management's Discussion and Analysis of Financial Condition and Results of

Operations, or MD&A (Item 303).[1] We also believe that material information regarding property characteristics, environmental liabilities, geographic location or extreme weather is best addressed in the risk factors or MD&A sections, which are required to be updated at least quarterly in connection with Form 10-Q filings.

Management' s Discussion and Analysis of Financial Condition and Results of Operations (Item 303)

We support the approach to MD&A that would allow registrants to tailor their presentation of the information required by Item 303 to their particular circumstances. This approach underscores the a focus on materiality and we believe that it will result in less repetitive disclosure, better readability and disclosure that is more clearly focused on the material financial issues facing the registrant. We support eliminating the year-to-year comparison for the earliest of the three fiscal years covered by the financial statements in the filing, subject to the conditions outlined in the proposal. We believe that the discussion of the earliest year adds to the repetitive nature of MD&A disclosure, particularly as it relates to the drivers of changes in financial line items, and is often stale three years later.

Because under the proposal, registrants must first determine whether discussion of the earliest year is material to an understanding of their financial position, registrants will need to take a "fresh look" at their MD&A in order to satisfy the condition for eliminating the earliest year disclosure. This opportunity should also inspire registrants to refocus their efforts on their analysis of the present and future, rather than the past. In cases where discussion of the earliest year has been omitted from MD&A, a registrant's historical periodic reports are easily accessible through registrants' corporate website and EDGAR.

We believe that the second condition to not requiring the earliest year of the three-year period (the registrant has filed its prior year Form 10-K on EDGAR containing MD&A of the earliest of the three years included in the financial statements in the current filing) should be changed to include other reports or registration statements that contain an analysis of the earliest of the three years included in the current filing and should not be limited to Form 10-K reports. For example, a company that has recently completed an IPO that is not an emerging growth company, should be allowed to exclude the earliest year of the three-year period covered by its first Form 10-K filing because the earliest year would have been included in its Form S-1 registration statement.

Hyperlinking to the Prior Year's Annual Report

We do not support an alternative that would amend Item 303 to allow registrants to in effect incorporate by reference the earliest year of their MD&A by hyperlinking to the prior year's Form 10-K in lieu of repeating the disclosure in the current year's report. We do not believe that this approach is workable because the earliest year discussion may not be isolated in a standalone section to which the

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[1] *See, e.g.*, *Commission Guidance Regarding Disclosure Related to Climate Change*, Release No. 33-9106 (Feb. 2, 2010) [75 FR 6290, 6293 – 6295 (Feb. 8, 2010)].

registrant can easily hyperlink or may be intertwined with other MD&A disclosure that would need to be updated if incorporated by reference into the context of a current filing. We also note that registrants often address liquidity and capital resources in a single section that covers the three-year period, and not as part of the year-to-year presentation, which further complicates hyperlinking to the earliest year.

Alternative Presentation Formats

Because a significant number of registrants use the year-to-year comparison format in MD&A, we believe the staff should consider retaining some reference to year-to-year comparisons in Instruction 1 to Item 303(a). This could be accomplished by including an express statement that year-to-year comparisons are not the exclusive presentation format registrants may use. We believe that many issuers will continue to use the year-to-year comparisons because completely revamping MD&A will require significant internal accounting, finance and legal resources, and a considerable investment of time. We otherwise agree that Instruction 1 to Item 303(a) should encourage registrants to use any other presentation format that, in the registrant's judgment, would enhance a reader's understanding of the registrant's financial condition, changes in financial condition and results of operations. We believe registrants should have the flexibility to develop their own alternative presentation formats and do not believe including a specific list of alternative formats is necessary.

Risk Factors (Item 503(c))

Location of Risk Factor Disclosure Requirement

We support the proposal to move Item 503(c) to a new Item 105 to reflect the addition of the risk factor disclosure requirement to Form 10 and periodic reports. As noted in the rule proposal, Subpart 100 of Regulation S-K covers a broad category of business information and is not limited to offering-related disclosure. Since risk factor disclosure for purposes of Form 10 and periodic reports relates to the company's business as a whole and is not offering-specific, reorganizing Regulation S-K to reflect this broader application of risk factor disclosure requirement is logical.

Elimination of Examples of Risk Factors

We support the proposal to eliminate the risk factor examples that are currently contained in Item 503(c) because we view these examples as having limited usefulness as guidance. As noted in the rule proposal, the examples given in Item 503(c) do not apply to all registrants and often do not correspond to the material risks of any particular registrant and as such, the examples seem to have created a perceived obligation to address them whether or not material to the registrant. We believe that the inclusion of additional or different risk factor examples would likely have limited utility in a principles-based disclosure regime.

We also recommend deleting the words "speculative or risky" from Item 105. This emphasis may have been appropriate at the time the risk factor disclosure requirement was first introduced in connection with offerings of securities; but does not reflect current risk factor disclosure practice. Today, risk factor disclosure captures a broader range of factors affecting a registrant than those that,

strictly speaking, would actually make an offering by, or an investment in, a registrant speculative or risky. Also, given the application of risk factor disclosure to periodic reports, the "speculative or risky" language does not reflect the broad scope of topics covered by typical risk factor disclosure of well-established registrants. We suggest instead re-focusing the requirement as follows:

"Where appropriate, provide under the caption "Risk Factors" a discussion of the risks that are material to an investment in the registrant or offering."

This type of language supports a principles-based approach to disclosure and aligns the risk factor disclosure requirement with a materiality standard.

Description of Registrant's Securities (Item 601(b)(4))

Under the current rules, an investor who invests in the listed securities of a public company generally does not have ready access to the terms of the securities in which the investor is investing unless the investor received a prospectus in connection with the company's IPO or registered public offering. We agree that this anomaly should be addressed as part of the Regulation S-K modernization. For the curious investor, the current disclosure scheme assumes she knows that the description of a listed security is generally found in a Form 8-A. Once located on the EDGAR database, a Form 8-A typically contains no disclosure other than a statement that the description of the listed security is incorporated by reference from the description in the prospectus related to the offering of the securities. While we do not object to the staff's proposal to require registrants to provide a description of their securities that are registered under Section 12 of the Exchange Act as an exhibit to Form 10-K, we believe that the same result can be accomplished by listing the new exhibit in the exhibit index and hyperlinking to the filings that contain the description of the securities rather than creating a new exhibit that includes this disclosure. This would have the benefit of making the information readily accessible to investors and others while minimizing the burden to registrants of recreating disclosure. Alternatively, to the extent that a registrant prefers to provide the required information in a newly created exhibit in response to new Item 601(b)(4), registrants could be given this flexibility as well, and any updates to existing Item 202 disclosure could trigger the need to file a separate exhibit with the registrant's next Form 10-K. We do not support extending this requirement to securities that are not listed pursuant to Section 12 of the Exchange Act.

We also encourage the staff to consider at a later time how a registrant's website can be used as a repository for this type of information. We note that Item 406 of Regulation S-K expressly permits registrants to post their code of ethics to their corporate website instead of filing the code of ethics as an exhibit to Form 10-K. Corporate websites serve an important investor relations and compliance function, and investors are well-accustomed to using corporate websites as a reliable source of key information about the companies in which they invest.

Information Omitted From Exhibits (Item 601)

Redaction of Confidential Information in Material Contracts

We enthusiastically support the proposal to permit registrants to redact confidential information that is both not material and competitively harmful if publicly disclosed from material contracts filed pursuant to Item 601(b)(10) without submitting a confidential treatment request pursuant to Securities Act Rule 406 and Exchange Act Rule 24b-2. This proposal, together with the proposal to allow registrants to omit entire schedules and similar attachments from all material contracts, will relieve registrants from a significant compliance burden without meaningfully changing the mix of material information available to investors because the premise for redacting information will remain unchanged. The time and expense involved in preparing a request for confidential treatment is significant. It is also a requirement that disproportionately burdens smaller reporting companies compared to larger companies because smaller reporting companies have a lower threshold for determining whether a contract is material and therefore required to be filed publicly in the first place.

Emerging growth biotechnology companies undertaking an IPO often are hardest hit by the arduous confidential treatment process. These companies, which often rely on technology licensing arrangements and collaborations, are faced with the daunting task of requesting confidential treatment of numerous, technical scientific contracts at the same time. The process not only costs a registrant precious time during the SEC review process, but creates a significant distraction for senior management or the company's scientists, who will often need to get "into the weeds" to craft explanations for why a particular word, number or phrase in a highly technical contract can cause the company competitive harm if made public. The legal fees associated with the preparation of a confidential treatment request can also be equally as daunting to a smaller company.

We believe that the current proposal as it applies to reporting companies is clear and will be workable. In the event that the staff, after reviewing the redacted contract in connection with a normal review cycle for a registrant, requires redacted information to be restored, we do not think that any explanation or other highlighting of the previously redacted information should be required because this could overemphasize the importance of a particular piece of information.

It would be helpful to companies considering an IPO, for the staff to clarify how the proposal will apply to the confidential treatment process for contracts filed with an S-1 Registration Statement for an IPO. As currently proposed, newly reporting registrants would follow the same process as reporting companies and submit redacted exhibits without submitting a formal confidential treatment request. Because Form S-1s submitted in connection with an IPO are routinely reviewed, we assume that the staff will make an assessment of the redactions as part of the registration statement review process and will condition effectiveness of the registration statement on completion of the confidential treatment review process as is currently the case. We note that the timing of the assessment and any request to submit unredacted contracts and an analysis of why the redacted material both is not material and would cause competitive harm if publicly disclosed could impact the timing of effectiveness of the registration statement.

Hyperlinking to Information Incorporated by Reference (Rule 411, Rule 12b-23 and Rule 0-4)

We support the continued use of available technology to improve the navigability of registration statements and reports filed with the Commission. The Commission's adoption of the rule mandating hyperlinking to most exhibits filed pursuant to Item 601 has significantly reduced the amount of time it takes to locate a document filed as an exhibit and has greatly simplified the exercise for anyone interested in reviewing an exhibit filing. Although we generally support the proposal to require all information incorporated by reference in registration statements under the Securities Act and Exchange Act and Forms 10-K, 10-Q and 8-K to be hyperlinked to the related filing on EDGAR, we believe there are a few exceptions, mainly related to incorporation by reference of entire reports, where hyperlinking may not be particularly useful and could cause some confusion. For example, Item 12 of Form S-3 requires incorporation by reference of the registrant's latest annual report on Form 10-K and all other reports filed pursuant to Sections 13(a) or 15(d) of the Exchange Act since the beginning of the fiscal year covered by the report. Registrants are also required to forward incorporate all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of any offering. This list of incorporated filings included in a registration statement is current only as of the effective date of the registration statement, and filings that supersede the incorporated documents are deemed incorporated by reference into the registration statement. As a result of forward incorporation by reference, and particularly in connection with shelf-registration statements which remain effective for three years, readers could be redirected to a stale or superseded periodic report or other filing. We believe it would be preferable for readers to access these filings via the EDGAR database rather than through a hyperlink included in the report to ensure that an investor is reviewing the most current information when making her investment decision. We also urge the staff to consider ways to improve the usability of the EDGAR database document search function, for example by adopting more user-friendly search terms for the form types appearing in registrants' filing history, such as changing "DEF 14A" to "Proxy Statement".

Inaccurate Hyperlinks

We agree with the proposal that, in the event a hyperlink to an incorporated document is inaccurate, registrants should not be required to correct the hyperlink in a post-effective amendment or subsequent periodic report. Imposing a requirement to file an amended report or post-effective amendment to correct inactive hyperlinks imposes too significant of a burden on registrants and can result in confusion to investors. Given that the proposed rules require an express statement clearly describing the specific location of the information that is being incorporated by reference, there is a readily available method for locating the incorporated document in the event of an incorrect hyperlink. Although not required, registrants that are aware of inaccurate or inactive hyperlinks can correct them in a subsequent periodic report to the extent the same disclosure continues to be incorporated by reference. We believe that Instruction (1) to paragraph (e) of Section 105 of Regulation S-T should be revised to clarify that an electronic filer does not need to correct an inaccurate or nonfunctioning link or hyperlink to information incorporated by reference pursuant to Rule 411, Rule 12b-23 and Rule 0-4, other than in connection with a registration statement that has not yet become effective.

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Use of Item Numbers and Captions

We do not support the proposed amendments to Form 10 and Form 10-K to permit registrants to exclude item numbers and captions or to create their own captions. We understand and appreciate the desire to eradicate unnecessary duplication and to declutter reports, but this seemingly innocuous change will make it more difficult to easily locate the same disclosure across a subset of registrants. The item numbers and captions are extremely helpful and simple navigation tools that easily enable the reader to locate disclosure that addresses similar issues in similar filings. As an alternative, we suggest that registrants be encouraged to delete inapplicable caption headings, such "Mine Safety Disclosures" in these reports.

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We appreciate this opportunity to provide our views on the proposed amendments to modernize and simplify certain disclosure requirements in Regulation S-K. We would be happy to discuss any questions the staff may have with respect to our comments. Questions may be directed to Danielle Carbone at [redacted] or Peggy Heminger at [redacted].

Very truly yours,

/s/ Reed Smith LLP

Reed Smith LLP

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