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Via e-mail

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

Disclosure Update and Simplification Proposed Rule Release (Release No. 33-10110; 34-78310; IC-32175; File Number S7-15-16)

Dear Mr. Fields:

We are pleased to submit this letter in response to the request of the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") for comments on the above-referenced proposed rule release (the "Release"). Our comments today are complementary to our letter, dated August 31, 2016, submitted with respect to the Concept Release on Business and Financial Disclosure Required by Regulation S-K (Release No. 33-10064; 34-77599).

We applaud the Commission's willingness to modernize certain thresholds, eliminate redundant, outdated and overlapping requirements and have focused our comments on three key areas:

1. *Ratio of Earnings to Fixed Charges*
2. *Quantitative Threshold for Disclosure of Environmental Proceedings*
3. *Location of Legal Proceedings Disclosure*

We have focused our comments on those areas in the Release which we believe to be the most significant or of the greatest utility.

1. *Ratio of Earnings to Fixed Charges (Request 54).*

We strongly support eliminating the requirement to state the ratio of earnings to fixed charges. As the SEC noted in the release, investors rely on other metrics in assessing an issuer's ability to service its debt. Unlike other financial information, the ratio of earnings to fixed charges is generally used in offering documents only when required by Regulation S-K. Debt investors are far more focused on the information readily available from the financial statements and, frequently, earnings before interest, taxes depreciation and amortization or similar metrics commonly used in today's debt markets. We therefore believe eliminating this requirement, and thus omitting an unnecessary calculation, will help streamline filed documents.

2. Threshold for Disclosure of Environmental Proceedings (Request 8)

Instruction 5C to Item 103 of Regulation S-K currently requires disclosure of each administrative or judicial proceeding arising under any federal, state, or local law regulating the discharge of materials into the environment, or enacted primarily for the purpose of protecting the environment if~~:~~ a governmental authority is a party to the proceeding and the proceeding involves potential monetary sanctions of $100,000 or more.

The $100,000 quantitative threshold was set in 1982. It is clearly out of date and does not address whether such a proceeding is material. It bears remembering that the $100,000 threshold was originally introduced to avoid cluttering environmental disclosures with scores of immaterial proceedings. As the Commission noted at the time, it believed that it "could more fully satisfy its responsibilities under the federal securities laws if environmental disclosures were focused on significant environmental proceedings and were not interspersed with information about relatively inconsequential matters." (Release Nos. 34-17762; 33-6315)

We suggest eliminating the $100,000 threshold and, consistent with Instruction 5A, limiting the disclosure to such matters that would be "material to the business or financial condition of the registrant." If the Commission were to adopt that change, the overall disclosure under Item 103 would be consistently focused on the concept of what could be material to the registrant. We do not believe that it would be inconsistent with the Commission's mandate under the NEPA to prescribe environmental disclosure that is more meaningful for investors.

3. Location of Legal Proceedings Disclosure (Request 6)

Although combining the disclosure required by Item 103 of Regulation S-K with the requirements under U.S. GAAP and disclosing all legal proceedings in a single place has a certain appeal, there are very practical obstacles to doing so. They relate to the absence of the protections for forward-looking statements afforded by the Private Securities Litigation Reform Act ("PSLRA"), and certain conceptual differences between a general materiality analysis under *Basic, Inc. v. Levinson, 485 U.S. 224 (1988),* and a loss contingency analysis under ASC 450.

- *Absence of PSLRA Protection for Disclosure in Financial Statements*. The PSLRA provides protection for forward-looking statements that are accompanied by appropriate meaningful cautionary statements. This protection encourages registrants in their Item 103 disclosure to be thoughtful and carefully consider what could be material to their business under a *Basic, Inc. v. Levinson* analysis. We believe that the fallback of the judicially developed "bespeaks caution" doctrine (*see, e.g. Luce v. Edelstein,* 802 F.2d 49 (2d Cir. 1986); *I. Meyer Pincus & Assocs. P.C. v. Oppenheimer & Co., Inc.,* 936 F.2d 759 (2d Cir. 1991)) may not always be sufficient to induce registrants to include forward-looking statements in the footnotes to their financial statements. Ideally, to ensure qualitatively the same disclosure in the footnotes to the financial statements, the protections of the PSLRA would need to be extended to those footnotes. Otherwise, some issuers may prefer to continue to discuss certain aspects of their legal proceedings outside the financial statements in order to avail themselves of PSLRA those protections.

- *Materiality vs. Probability/Range of Loss*. The test under ASC 450 is somewhat more technical and rigid than the materiality analysis under *Basic*, and appropriately so. Financial statements disclosures are of necessity more technical and primarily driven by the probable impact of the loss contingency on the income statement. The *Basic* materiality analysis may therefore sometimes give rise to disclosures that would not necessarily lend themselves to a probability/range of loss financial analysis under GAAP. We fear that if the legal proceedings disclosures are effectively moved into the financial statements and analyzed in the GAAP's probability/range of loss framework, the quality of the disclosure could suffer.

  Conversely, if GAAP were revised to mandate disclosures not currently required by ASC 450, the burden imposed on auditors to attempt to "audit" those additional disclosures would pose a significant challenge. As audit firms have indicated in their comment letters, any such revisions to GAAP would likely necessitate changes to the corresponding auditing standards and procedures that may take time to work out. More fundamentally, there is a question as to whether an income statement impact-based framework like GAAP, even when revised, would lead to disclosures that are most meaningful to investors. The PSRLA may encourage registrants to go beyond an analysis of the potential settlement cost of a lost litigation and instead also consider less easily quantifiable impacts, such as reputational and other potential business impacts, which could result in more nuanced disclosure for investors.

We appreciate this opportunity to provide our views. We would be happy to discuss any questions the Staff may have about our comments. Questions may be directed to Lisa L. Jacobs or Harald Halbhuber at 212-848-4000.

Very truly yours,

Shearman & Sterling LLP