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November 3, 2016

Via E-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Securities and Exchange Commission,  
100 F Street, N.E.,  
Washington, DC 20549-1090.

Attention: Brent J. Fields, Secretary

**Re: Subpart 400 of Regulation S-K Disclosure Requirements  
Relating to Management, Certain Security Holders and  
Corporate Governance Matters – File No. S7-18-16**

Ladies and Gentlemen:

We appreciate the opportunity to respond to the Commission's request for comments on Subpart 400 of Regulation S-K Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters.<sup>1</sup> In this letter, we set forth proposals we believe will result in more meaningful, principles-based disclosure that is more conducive to comparability across registrants while also reducing immaterial disclosure and boilerplate.

Our suggestions in this letter include the following, all of which are detailed further below:

- An overarching materiality standard applicable to all line items in Regulation S-K, requiring the inclusion of additional material information as may be necessary to make the required statements not misleading, and permitting the omission of information called for by a line item on the ground that it is not material and, thus, its omission would not be misleading.

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<sup>1</sup> Release Nos. 33-10198; 34-78687 (Aug. 25, 2016).

- Replacing the current summary compensation table with two new tables that present target compensation and earned compensation of named executive officers in a manner that is more consistent with how registrants view and grant compensation and how market participants connect pay with performance and reorganizing certain other executive compensation disclosure items.
- Unifying and organizing board-related disclosure, and adding new guidance, to create a comprehensive disclosure item regarding the board selection process, independence determinations, and director and nominee qualifications that would facilitate a more cohesive discussion of the board's approach to this issue.
- Consistently using a fiscal year time period for disclosure in order to increase consistency in year-over-year disclosure and improve comparability among registrants, with disclosure for the period after the end of the last fiscal year to be required only if it is material to the understanding of the fiscal year disclosure.
- Additional changes to specific line items that we believe will improve the quality of disclosure and reduce boilerplate.

#### Overarching Materiality Standard

As an initial matter, we reiterate our suggestion, discussed in our letter to the Commission dated August 9, 2016, that one of the best and most efficient ways the Commission could drive improvement in the overall quality of registrants' disclosure would be to subject all of Regulation S-K line-item disclosure requirements to an overarching materiality standard.<sup>2</sup> We believe this applies equally in the context of governance disclosure as it does in the context of business and financial disclosure.

In our letter to the Commission, we supported the adoption of a new subsection (g) to Item 10 of Regulation S-K as follows: "In addition to the information expressly required to be disclosed, the registrant shall disclose such additional material information, if any, as may be necessary to make the required

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<sup>2</sup> [Letter](#) submitted by Sullivan & Cromwell LLP (Aug. 9, 2016) in response to the Commission's Release No. 33-10064; 34-77599; File No. S7-06-16, Concept Release on Business and Financial Disclosure Required by Regulation S-K (Apr. 13, 2016).

statements in the light of the circumstances under which they are made not misleading, and issuers may omit information otherwise called for by a line item on the ground that it is not material, as long as the effect of omitting the information would not be misleading. It shall be presumed, in the absence of facts to the contrary, that the omission of any disclosure called for by a Regulation S-K line item was an intentional omission by the registrant in reliance upon this subsection (g) and not a failure to provide the disclosure called for by such line item.” Our earlier letter also suggested that the Commission expressly provide that for disclosure purposes “materiality” is an economic standard, relating solely to matters that could ultimately be thought to bear on firm value and thus the value of the registrant's securities.

In this letter, we propose a number of specific comments that we believe are consistent with this general principle and with the goals of the Commission’s Disclosure Effectiveness Initiative and the study of the requirements contained in Regulation S-K called for by the FAST Act.<sup>3</sup> We believe that the changes described below would, in fact, be beneficial even if the Commission determines not to adopt such an overarching materiality standard.

#### Executive Compensation Disclosure

We propose substantive and organizational changes to the named executive officer compensation disclosure in Item 402. Most significantly, we believe that certain tabular disclosure requirements should be replaced or modified to present executive compensation in a manner consistent with how registrants’ boards and compensation committees make compensation decisions and how market participants evaluate the connection between pay and performance.

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<sup>3</sup> Pub. L. 114-94, Sec. 72003, 129 Stat. 1312 (2015).

1. *Replacing the summary compensation table with two new tables presenting target and earned compensation.*

Currently, the summary compensation table in Item 402(b) mixes both (1) awards earned for a year (cash bonuses and non-equity incentive compensation) with awards granted during a year (equity compensation) and (2) the target value of awards (equity compensation) with the amount actually earned (cash bonuses and non-equity incentive compensation). As such, the current summary compensation table presents a mix of compensation opportunities with compensation outcomes and also elevates form over function with respect to the timing of disclosure. Ultimately, the current presentation generally does not reflect either how registrants view or would describe their executive compensation programs or how market participants evaluate the connection of company performance with compensation decisions or compensation outcomes. As a result, registrants almost universally include non-standard tables that present target compensation, amounts awarded and/or amounts earned (such as with respect to equity performance awards). These tables provide meaningful disclosure but increase the length and complexity of registrants' filings. Moreover, while these non-standard tables cure the inconsistencies inherent in the current summary compensation table, the lack of comparability across registrants necessarily limits their utility to investors. We note that, in proposing new Item 402(v) with respect to pay versus performance disclosure, the Commission also found it necessary to present compensation in a format different from that currently required by the summary compensation table.<sup>4</sup>

We propose replacing the summary compensation table with a target compensation table and an earned compensation table. Consistent with a principles-based approach, our proposed target and earned compensation tables seek, respectively, to answer (1) what are the level and components of the annual

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<sup>4</sup> Release No. 34-74835 (April 29, 2015).

compensation opportunity of each named executive officer for each of the three preceding fiscal years and (2) what are the level and amount of the compensation earned by each named executive officer for performance periods ending each of the three preceding fiscal years. As discussed further below, in our proposed tables, target equity awards would be disclosed in the target compensation table in the fiscal year for which they are granted and in the earned compensation table in the fiscal year for which any performance condition is satisfied (and in neither case would the fiscal year in which they are granted be determinative). Consistent with a principles-based approach, Item 402(a)(5) regarding omission of any inapplicable column or table would continue to apply. We believe our proposed tables could also replace the grants of plan-based awards table in Item 402(d) and the option exercises and stock vested table in Item 402(g). We believe our proposed tables will result in disclosure that is more efficient for investors, facilitating comparison of both compensation opportunity and compensation operation over time and/or among registrants, while providing registrants flexibility to present their compensation programs as they have designed them.

A. *The target table would show annual total direct compensation.*

Our proposed target compensation table would show base compensation, target cash and equity annual incentive opportunities, and target cash and equity long-term incentive opportunities granted for services provided in each fiscal year, compensation components often referred to as “direct” compensation. We have provided an example of a proposed form of this table in Annex A. Maximum and threshold payouts of performance awards would be disclosed in footnotes, so that readers are presented with both the target amount and the potential opportunity. Registrants with direct compensation components that are not target-based programs would present the amounts actually awarded for a fiscal year with respect to those components. For such registrants, incentive compensation relating to performance year 2016, for example, would be disclosed alongside salary earned during 2016, even if the grant date was in 2017, and even if there is a multi-year performance period. As stated above, we expect the target

compensation table could replace the grants of plan-based awards table in Item 402(d). The target compensation table would conform the period of reference for these compensation components, providing a clear view to the investor of the level and components of the annual compensation opportunity of each named executive officer for each of the three preceding fiscal years.

B. *The earned compensation table would show actual cash and equity when earned.*

The earned compensation table would show compensation actually earned for performance conditions satisfied during each fiscal year, including annual cash incentive earned for a year. We provide an example of a proposed form of this table in Annex B. Awards with performance-based conditions would be shown as earned in the fiscal year the performance condition is satisfied (or, in the case of options and stock appreciation rights, when they become exercisable, if later, in light of the performance features embedded within those types of awards). Awards with only service or time-based vesting conditions would be shown as earned in the fiscal year for which they are granted and valued at the grant date fair value (and would appear the same way in the target table above). All equity awards would be valued using the fair value of the award on the date the relevant condition for inclusion in the table is satisfied. The table would also include above-market or preferential aggregate interest or other earnings accrued under nonqualified deferred compensation plans and aggregate change in the actuarial present value of accumulated benefit under nonqualified defined benefit and actuarial pension plans for the fiscal year, as well as all other compensation, including perquisites (similar to the all other compensation column in the current summary compensation table). Compensation in this table would reflect value actually received by the participant and allow for consistent reference across fiscal periods. The earned table could also replace the option exercises and stock vested table in Item 402(g).

2. *Narrative disclosure of our proposed target and earned compensation tables and the discussion of the role of the compensation committee in executive compensation should move to the Compensation Discussion & Analysis (“CD&A”).*

The current narrative disclosures to the summary compensation and grants of plan-based awards tables in Item 402(e) would be replaced with discussions of the target and earned compensation tables and moved to the CD&A in Item 402(b). This change would reduce duplicative disclosure and organize in one place the compensation discussion. Many registrants already include these disclosures in their CD&As, and organizing these disclosures in the CD&A would provide context and clarity.

In addition, disclosure relating to the compensation committee and its role in executive compensation is currently included with other governance disclosures rather than with executive compensation disclosures. We propose moving the discussion of the role of the compensation committee in the consideration and determination of executive compensation in Item 407(e) to the CD&A in Item 402(b).<sup>5</sup> (Disclosure relating to the compensation committee’s role in director compensation would move to Item 402(k) regarding director compensation). We think these changes have the potential to streamline disclosure and present disclosure in a more meaningful format.

3. *Other disclosure items that reference information from the summary compensation table would be revised to refer to the target or earned compensation table.*

Disclosures that reference information from the summary

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<sup>5</sup> While the CD&A in Item 402(b) relates to compensation of named executive officers, we would envision that the relocated Item 407(e) would continue to call for a discussion relating to the committee’s processes and procedures for consideration and determination of executive compensation.

compensation table would be revised to refer to the new proposed tables. For example, in Item 402(u), total annual compensation of the principal executive officer used for the pay ratio would be the principal executive officer's total target compensation from our proposed target table. The proposed pay versus performance item would refer to earned compensation from our proposed earned compensation table.

4. *The outstanding equity awards at fiscal year-end table should include outstanding and vested but not yet delivered awards and present the market value of performance awards at target.*

The outstanding equity awards at fiscal year-end table in Item 402(f) should include vested, but not yet delivered, equity awards (such as exercised stock appreciation rights with a holding period, or vested restricted stock units with a deferred delivery date). Currently, in light of Question 125.05 of the Commission staff's Compliance and Disclosure Interpretations on Regulation S-K, vested but not yet delivered equity awards are commonly included in the nonqualified deferred compensation table in Item 402(i), with increases and decreases in stock price being reported as changes in the nonqualified deferred compensation balance at fiscal year end. Registrants and investors do not typically consider these awards deferred compensation. Including such awards in the outstanding equity awards at fiscal year-end table would be a more logical and intuitive location for this disclosure, as they are outstanding equity awards.

Furthermore, Instruction 3 should be revised to require disclosure of the market value of performance awards at their market value at target (rather than the next higher performance measure of target or maximum) with a footnote disclosing the market value at maximum performance. Calculating where performance measures are tracking at a year-end date mid-performance cycle is arbitrary and does not provide meaningful disclosure. Moreover, unlike the current summary compensation table, our proposed earned compensation table will fully incorporate the value of earned performance awards.



Comprehensive Board Disclosure

We recommend the adoption of a new, comprehensive board disclosure item that brings together currently disparate disclosure items in a cohesive way. Under current rules, requirements regarding director selection, independence and qualifications are located throughout Subpart 400, resulting in a piecemeal approach to disclosure. For example, Item 407(a) requires disclosure of the type or category of relationships considered by the board in assessing independence of directors and nominees except for those relationships disclosed under Item 404(a); however, investors would have no way to know which, if any, of the Item 404(a) disclosures were in fact considered. In addition, Item 401(e)(1) requires descriptions of relevant skills and experience for each individual director and/or nominee, and Item 407(c)(v) calls for disclosure of minimum standards for nominees, but these separate requirements do not recognize that the assessment of any individual relates to how he or she complements the mix of skills and experience of the board as a whole. Replacing the current assorted director disclosure items with one comprehensive item would allow for an integrated picture of the selection process and director independence and qualifications. These related disclosures together would provide context and aid investors in discerning meaningful information and also facilitate a principles-based approach to director disclosure comprising an explanation of the material elements of the registrant's director nomination and selection process. In adopting this approach, certain disclosure requirements in Items 401 and 404 would be moved to our proposed item along with all Item 407 disclosure requirements (other than Item 407(e) regarding the compensation committee, which would move to the CD&A with respect to executive compensation and Item 402(k) with respect to director compensation).<sup>6</sup>

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<sup>6</sup> To the extent that the current rules apply to executive officers as well as directors, they would remain in place but be limited to executive officers. In addition, we propose deleting Item 401(c) regarding significant employees as discussed under "Other Streamlining Changes" in this letter.

The new comprehensive board disclosure item would require a brief discussion of the material elements of the registrant's board nomination and selection process. The discussion would include:

1. identification and biographical information of directors and nominees, including any arrangements or understandings pursuant to which a director was or is to be selected as a director or nominee (currently in Items 401(a) and 401(e));
2. the board's conclusion as to each director's or nominee's independence (currently in Item 407(a));
3. the categories and types of direct or indirect relationships between the company and the director or nominee that the board considered in making nomination determinations and in assessing independence, as applicable (currently in Items 404(a) and 407(a));
4. any family relationships between directors or nominees and executive officers (currently in Item 401(d));
5. legal proceedings involving directors and nominees (currently in Item 401(f));
6. the board's policy for considering nominations by shareholders or other stakeholders, including the source of recommendation for new members in the current slate (currently in Item 407(c)(2)(ii)-(iv) and (vii)); and
7. whether any audit committee members are audit committee financial experts (currently in Item 407(d)(5)).

While the material information to be disclosed under our proposed new comprehensive board disclosure item will vary depending upon the facts and

circumstances, examples of such information could include the following, if material to the particular company:

1. any principles followed by the board in determining a slate of candidates and making nomination (including re-nomination) decisions (would be new disclosure);
2. the manner in which the skills and experiences of the directors and nominees, taken as a whole, satisfy the board's principles for selecting a board with an appropriate mix of characteristics (similar to Item 401(e), but in a broader context);
3. whether the board considers board and committee evaluations in making re-nomination decisions (would be new disclosure);
4. any minimum director qualifications for board membership or for membership on specific committees (currently in Item 407(c)(2)(v));
5. whether and, if so, how the board considers diversity in making nomination decisions, including with respect to selecting the current nominees (currently partially covered by Item 407(c)(2)(vi));
6. whether and, if so, how the board considers director tenure in making nomination decisions, including how that factored into the selection of the current nominees, as well as the range of tenure and average tenure of the nominees, if elected (would be new disclosure);
7. whether the board uses a third party to either identify potential hires or advise the board on the nomination process (currently partially covered by Item 407(c)(2)(viii));
8. any heightened independence requirements for audit or other committee members (currently partially covered by Items 407(a) and 407(d)(2)); or

9. any limitations on the number of other public company boards that a director may serve on (would be new disclosure).

In addition, we believe the following revisions to existing Subpart 400 disclosure items should be made when existing items are moved to our proposed board disclosure item:

1. Clarify in Item 401(a) that “any arrangement or understanding . . . pursuant to which [a director] was or is to be selected as a director or nominee” includes compensation arrangements between third parties and directors to ensure disclosure of third-party arrangements with directors. We believe that this disclosure is captured by the current requirement, but that clarification would be helpful due to a growing focus on this topic, as illustrated by the Nasdaq Stock Market’s recent adoption of expanded disclosure on the subject.<sup>7</sup>
2. Revise Instruction 2 to Item 407(a) so that disclosure of the independence of departed directors is not required. If the director no longer serves on the board, it is not clear how meaningful this disclosure is to investors.
3. Clarify that director attendance in Item 407(b) is based on attendance at meetings of standing committees rather than all committees on which the director served. While we believe this clarification reflects how the requirement is commonly interpreted, the words “all committees” could be deemed to include temporary committees with limited delegated authority, such as pricing committees for particular transactions, for which attendance information is not meaningful to investors.

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<sup>7</sup> See Commission Release No. 34-78223; File No. SR-NASDAQ-2016-013 (July 1, 2016).

4. Delete the last clause of Item 407(h) referring to the effect that the board's role in risk oversight has on the board's leadership structure, as there is not necessarily any nexus between risk oversight and board leadership structure.

#### Director Compensation Disclosure

Similar to our proposed comprehensive board disclosure item, we envision that director compensation items will be organized together by combining Item 402(k) (regarding director compensation) and Item 407(e)(3) (with respect to compensation decisions with respect to directors). This organizational change would provide additional context on the process of setting director compensation and group similar disclosures together. Registrants would include a description of the process for setting director compensation, including objectives, rationale, how amounts and form of compensation are determined, peer analysis and whether a compensation consultant is used, expanding on and replacing the more general disclosure requirement as to director compensation in Item 407(e)(3). As discussed above, Item 407(e) with respect to executive compensation would be moved to the CD&A in Item 402(b).

In addition, similar to our proposed changes to named executive officer compensation tables, we suggest that disclosed equity awards in the compensation of directors table be by reference to the fiscal year for which they are granted, not the year in which they are made. In addition to consistency with the other tables, this change would better reflect how boards make these decisions.

#### Disclosure Timeframe

All Subpart 400 disclosure should be by reference to the registrant's fiscal year (rather than calendar year, prior year or since the beginning of the last fiscal year). This change would conform all of Subpart 400 to the timeframe in Item 402 and promote consistency in year-over-year disclosure and comparability across registrants. A registrant would be required to provide disclosure for the

period after the end of the last fiscal year only if material to the understanding of the fiscal year disclosure, similar to the existing Instruction 2 to Item 402(b). We believe this change will allow investors to focus on the latest fiscal period and any material changes going forward, streamlining and making disclosure more investor-friendly.

We note two Subpart 400 items as examples of where the current prescribed disclosure timeframes often result in a lack of consistency and comparability. First, Item 404(a) requires disclosure of any related party transaction since the beginning of the last fiscal year (that is, the period including the full prior year and the stub period through the date of the filing). Many related party transactions have an ongoing nature, and when presented in an annual report or annual meeting proxy statement, the rule results in disclosure for an arbitrary period of time during the current fiscal year and for a period of time that overlaps in subsequent proxy statements. The focus of the disclosure in the annual report and proxy statement should be the prior fiscal year, as it is for financial, business and compensation purposes.<sup>8</sup> This proposed change would set a more logical and consistent time period for disclosures. Any proposed related party transactions or related party transactions occurring during the period after the end of the last fiscal year would continue to be disclosed if material to the

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<sup>8</sup> This treatment is consistent with the principle behind the Item 404(a) time period requirements. The adopting release for the current Item 404(a) rule discusses that in the case of directors and executive officers, as compared to 5% or greater shareholders, the Commission believes “it is appropriate to require disclosure for transactions in which the person had a material interest occurring at any time during the fiscal year.” Commission Release Nos. 33-8732A; 34-54302A, Executive Compensation and Related Person Disclosure, at 156 (Aug. 29, 2006) (“404(a) Release”).

understanding of the fiscal year disclosure.<sup>9</sup>

Second, Item 403 currently requires a beneficial ownership table to be presented as of the most recent practicable date prior to the filing. As a result, in subsequent years, registrants may choose to present the table on a different date than that used prior years. In addition, many registrants report beneficial ownership of 5% or greater shareholders using information from Schedule 13D or 13G reports that provide disclosure as of the calendar year end. In practice, this means that the most recent practicable date reference has little impact on the disclosure that is provided with respect to 5% or greater shareholders of such registrants. Finally, the date used for the beneficial ownership table generally differs from the year-end date used in the table of outstanding equity awards at fiscal-year end, even though using the same date for both tables would permit investors to assess executive share ownership in the context of total equity exposure through compensation awards. In order to promote consistency and comparability, we propose requiring the beneficial ownership table as of the end of the registrant's last completed fiscal year.

We would apply this principle to make the following changes to the Subpart 400 line-item disclosure requirements: Item 403(a) would relate to security ownership of certain beneficial owners at fiscal year's end; Item 403(b) would provide that no disclosure is needed for named executive officers who are not employees as of the last fiscal year's end; Item 401(e) would relate to business experience in the past five fiscal years; Item 401(f) would relate to legal proceedings

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<sup>9</sup> Similarly, in the context of a Current Report on Form 8-K reporting the appointment of a new director or executive officer under Item 5.02(c) or (d), we believe that the required Item 404(a) disclosure should relate to the current fiscal year (rather than since the beginning of the prior fiscal year), since that is consistent with the principle underlying the Item 404(a) time periods. In the 404(a) Release, the Commission made clear that it does not intend to require disclosure of transactions during a fiscal year during which the individual was not a related person. See 404(a) Release at 155-56 ("The definition of 'related person' that we have adopted will require disclosure of related person transactions involving the company and a person (other than a significant shareholder or immediate family member of such shareholder) that occurred during the last fiscal year, if the person was a 'related person' during any part of that year.").

in the past 10 fiscal years; Item 401(g) promoters and control person would relate to the past five fiscal years; Item 404(a) related party transactions would relate to the past fiscal year only rather than to the period since the beginning of the last fiscal year. As discussed above, with respect to directors, Items 401(e), 401(f) and 404(a) would be required disclosures in our proposed comprehensive board disclosure item.

#### Related Party Transaction Disclosure

In addition to the timeframe change, we propose revising Item 404(a) to require disclosure of related party transactions that are material to the related-party, with a guideline threshold that the amount of the related party's interest in the transaction will be presumed immaterial if it does not exceed \$145,000. This would shift the focus from the dollar amount involved in the transaction (which may have no connection to the insider's interest) to the materiality of the insider's interest in the transaction, which we believe is the critical point from an investor's standpoint. We have proposed \$145,000 in order to adjust the current \$120,000 threshold for inflation from its adoption in 2006. We believe these changes would more clearly implement the "general materiality standard applicable to the Item" that the Commission noted in the adopting release for Item 404(a).<sup>10</sup>

Moreover, in line with the materiality standard, we suggest that the rule clarify that the following are not related party transactions: (1) Ordinary course transactions where the insider is a customer of the registrant and is not given preferential treatment as compared to similarly situated customers that are not insiders; and (2) ordinary course transactions between the registrant and an insider-affiliated business (for example, a director is an outside director of the registrant but an executive officer of a business that does business with the registrant) where the director receives no special benefit from the transaction. We

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<sup>10</sup> 404(a) Release at 149, 150.



believe that an “ordinary course” exception would be consistent with certain industry-specific instructions to Item 404(a), such as Instruction 4.c. or Instruction 7, though we see no reason for limiting these concepts to specific industries. It would also be consistent with the statement in the 404(a) Release that the ordinary course, non-preferential nature of a transaction can be taken into account in assessing the materiality of an insider’s interest. The “special benefit” standard suggested above is derived from a Commission staff’s interpretation of old Rules 404(a) and 404(b) prior to their amendment in 2006, but we believe the rationale still applies.<sup>11</sup>

For independent directors, any related party transaction disclosure would move to the comprehensive board selection item, as discussed above.

Lastly, we propose excluding from the definition of “related person” all 5% or greater shareholders that are institutions eligible to file on Schedule 13G pursuant to Exchange Act Rule 13d-1(b). In practice, and consistent with a principles-based approach to disclosure, there does not appear to be any reason to require disclosure of transactions that may fall under the definitions in the rule provided the entity is passive. In addition, companies generally have limited, if any, ability to obtain non-public information regarding these large institutional investors.

### Shareholder Engagement

Board and management shareholder engagement is meaningful information to investors, especially when investors are making voting decisions.

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<sup>11</sup> See SEC Division of Corporation Finance, Telephone Interpretation Manual, Q. I.25 (“A is the President of X Corporation. X Corporation is a supplier of the registrant. A is also on the registrant’s board of directors. The registrant purchased supplies from X Corporation in an amount that exceeded the . . . disclosure threshold of Item 404(a), but which did not exceed 5% of either registrant’s or X Corporation’s consolidated gross revenues, the disclosure threshold of Item 404(b). The registrant was advised that disclosure of such transactions would not be required, as long as the relationship between the corporation was solely a business relationship which did not afford A any special benefits. Under these circumstances, it is the Division staff’s position that if a transaction or relationship is permitted to be excluded pursuant to Item 404(b), disclosure under 404(a) is not required.”)

Many registrants currently include a description of shareholder engagement in their annual proxy statements beyond what is required regarding shareholder communications with the board in Item 407(f) and the consideration of the say-on-pay vote in the CD&A required by Item 402(b)(1)(vii). Consistent with a general materiality standard, we believe there should be an instruction to Item 402(b)(2) to include, if material, the extent to which investor engagement and feedback played a role in named executive officer compensation decisions. In order for this disclosure to not become boilerplate, we would not recommend prescribed line-item requirements (such as quantitative disclosure regarding meetings with shareholders). We hope that would result in more registrants including such disclosure, improving comparability across registrants and providing descriptive disclosure tailored to each registrant.

#### Other Streamlining Changes

1. *Delete the Item 407(d) audit committee report and the Item 407(e) compensation committee report requirements.*

Neither the audit committee report nor the compensation committee report provides meaningful disclosure to investors since the conclusions are required by the rules. As a result, these reports are often boilerplate with little substantive value. In addition, the reports cover only a very narrow subset of the responsibilities imposed on these committees by stock exchange rules – specifically, the recommendation for the inclusion of the financial statements and the CD&A in the registrant’s filings. The reasons for the audit committee report, in particular, have been superseded by the extensive governance regulation now required by the stock exchanges and the Public Company Accounting Oversight Board rules on auditor communications and audit committee responsibilities.<sup>12</sup> There is no reason for the responsibilities currently covered by these reports to be treated differently

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<sup>12</sup> See [New York Stock Exchange Listed Company Manual](#), Section 303A.07(b); [NASDAQ Listing Rules](#), Rule 5605-5; Public Company Accounting Oversight Board, [Auditing Standard No. 16](#), *Communications with Audit Committees* (Dec. 15, 2012).

than other critical audit committee and compensation committee responsibilities. If the Commission believes that the stock exchange rules are not clear enough as to these committees' responsibilities for the matters covered in the report, that would be best addressed by directing the stock exchanges to make clarifying changes to their listing standards.

2. *Delete Item 401(c) regarding identification of certain significant employees.*

Delete Item 401(c) regarding disclosure of significant employees, as it is not clear who "significant employees" are, and there is rarely any disclosure in response to this item.

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We appreciate this opportunity to participate in this process and would be happy to discuss any questions with respect to this letter. Any such questions may be directed to Heather L. Coleman [REDACTED], Robert W. Reeder III ([REDACTED]), Glen T. Schleyer [REDACTED] or Marc Trevino [REDACTED] in our New York office.

Very truly yours,

*Sullivan & Cromwell LLP*

Sullivan & Cromwell LLP

Annex A

**Target Compensation Table**

Name and Principal Position	Fiscal Year	Base Salary	Target Annual Incentive Compensation			Target Long-Term Incentive Compensation			Target Other Incentive Compensation			Total Target Compensation
			Cash	Options	Shares	Cash	Options	Shares	Cash	Options	Shares	
(a)	(b)	(c)	(d)			(e)			(f)			(g)
PEO	- - -											
PFO												
A												
B												
C												

(a) The name and principal position of the named executive officer (column (a)).

(b) The fiscal year covered (column (b)).

(c) The dollar value of base salary (cash and non-cash) to be earned by the named executive officer for the fiscal year covered (column (c)).

(d) The target dollar value of all annual equity and non-equity incentive opportunities for the fiscal year covered. If there is no target level, use the dollar value of any annual bonus or award actually made for the fiscal year covered. Include separate columns, as applicable, for each of cash, stock options (or stock appreciation rights), and restricted stock or restricted stock units, and disclose in a footnote to the table the threshold and maximum potential payout if applicable. For equity awards, use the aggregate grant date fair value computed whether an incentive was guaranteed, purely discretionary or based on performance metrics and in accordance with FASB ASC Topic 718 (column (d)).

(e) The target dollar value of all long-term (i.e., multi-year) non-equity and equity incentive opportunities for the fiscal year covered. If there is no target level, use the dollar value of any long-term bonus or award actually made for the fiscal year covered. Include separate columns, as applicable for each of cash, stock options (or stock appreciation rights), and restricted stock or restricted stock units, and disclose in a footnote to the table the threshold and maximum potential payout if applicable. For equity awards, use the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e)).

(f) The target dollar value of any non-equity or equity incentive for the fiscal year covered that neither comprises nor is a substitute for the named executive officer's annual or long-term opportunities and therefore is not shown in column (d) or (e), including, without limitation, retention or sign-on bonuses (column (f)).

(g) The dollar value of total target compensation for the applicable fiscal year (sum of (c) through (f)) (column (g)).

Annex B

**Earned Compensation Table**

Name and Principal Position	Fiscal Year	Salary	Non-Equity Incentive Compensation	Equity Incentive Compensation		Total Earned Salary and Incentive Compensation	Nonqualified Deferred Compensation Earnings and Change in Nonqualified Pension Value	All Other Compensation	Total Earned Compensation
				Options	Shares				
(a)	(b)	(c)	(d)	(e)		(f)	(g)	(h)	(i)
PEO	- - -								
PFO									
A									
B									
C									

(a) The name and principal position of the named executive officer (column (a)).

(b) The fiscal year covered (column (b)).

(c) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c)).

(d) The dollar value of all equity and non-equity incentive compensation awards earned by the named executive officer during the fiscal year covered. Non-equity incentive compensation awards are earned in the year the applicable performance period ends (column (d)).

(e) The dollar value of equity-incentive compensation plan awards earned by the named executive officer during the fiscal year covered. Equity incentive compensation plan awards are earned in the year the applicable performance period ends and valued using fair value in accordance with FASB ASC Topic 718 on the date the relevant condition for inclusion in the table is satisfied, except that options and stock appreciation rights are not included in the table before they are exercisable and equity awards subject to time/service-based vesting requirements are earned in the year for which they are granted. Include separate columns for options or stock appreciation rights and restricted stock or restricted stock units (column (e)).

(f) The dollar value of total earned salary, bonus and incentive compensation for the fiscal year covered (sum of columns (c) through (f)) (column (f)).

(g) The dollar amount of above-market or preferential aggregate interest or other earnings accrued under nonqualified deferred compensation plans during the fiscal year covered and the aggregate change in the actuarial present value of accumulated benefit under nonqualified defined benefit and actuarial pension plans for the fiscal year. Only aggregate interest or other earnings accrued under nonqualified plans must be included (column (g)).

(h) The dollar amount of all other earnings for services during the fiscal year that could not be properly reported in any other column of this table, including, but not limited to: perquisites, "gross-ups," the compensation cost of securities purchased at a discount not generally available to all shareholders or employees of the registrant, termination and change of control payments, registrant contributions to nonqualified defined contribution plans, life insurance premiums paid by, or on behalf of, the registrant, and dividends paid on equity awards when those amounts were not factored into the fair value of those awards (column (h)).

(i) The dollar value of total earned compensation for the fiscal year covered (sum of columns (c) through (e), (g) and (h)) (column (i)).