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July 20, 2016

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

Re: File No. S7-06-16
Business and Financial Disclosure Required by Regulation S-K

Dear Office of the Secretary:

This letter is the response of BDO USA, LLP to the Concept Release referred to above.

We support the Commission's efforts to analyze the disclosure regime of Regulation S-K and consider ways to improve the requirements for the benefit of investors. We provide our comments based on our experience working with registrants on their filings and from our perspective as auditors. However, we believe that companies and investors are best positioned to provide feedback on the issues raised in the Release, and we urge the Commission to place the most weight on the feedback they provide.[1]

From a broad perspective, we support a principles-based approach to disclosure outside the financial statements. We believe that using a principles-based approach would promote disclosure of information that is most meaningful and relevant. To implement this approach, we believe Regulation S-K should (a) clearly articulate disclosure objectives, (b) provide a list of related topics a registrant should consider discussing and (c) make it clear that the disclosure is only required to the extent necessary to achieve the disclosure objectives. We believe this approach would help preparers assess whether their disclosures are necessary and adequate. For example, a revised disclosure requirement related to a registrant's description of its business could lay out the overall objective of the business section and provide examples of topics to be addressed when relevant and material to the issuer's business (e.g., people, facilities, contracts, regulatory, etc.). We believe this objectives-based approach is likely to result in more useful disclosure than the line item or "check the box" type approach we observe many registrants taking in response to the current S-K disclosure regime. In the same vein, we support the Commission's outreach related to the level of investor sophistication that should be assumed for purposes of disclosure. We believe that clarifying the investor (whether sophisticated or novice) will also help registrants better assess and guide their disclosures.

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[1] We also urge the Commission to weigh the comments of investors who own securities more heavily than those of other users, since those investors ultimately pay the cost of providing the information they say they want.

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Our comments and recommendations related to specific S-K disclosure items are discussed below.

Item 101 Description of Business

As noted above, we believe the most useful approach to Item 101 would be to identify the overall objective of the disclosure and to provide examples of items that should be discussed to the extent they are relevant to the registrant, such as employment practices, properties, and service contracts that are material to operations, regulatory environment, competitive environment, etc.

In addition, Item 101(c)(viii) requires disclosure of the dollar amount of backlog orders as of a recent date and as of a comparable date in the preceding fiscal year. In many cases, registrants comply with this requirement with one line item in the business section stating such amounts. Given what we perceive is the intent of the requirement, i.e., to provide information about the prospects for the future (not just the size of the backlog, which an investor might use to make assumptions about how it affects the way the business is run), it appears more logical that backlog disclosure and corresponding discussion of its impact on the expected results of the company would appear in management's discussion and analysis when it's relevant and material. We also believe the discussion should be provided for items that are conceptually similar to backlog but described using different terminology.

Item 301 Selected Financial Data

The SEC staff generally expects that all periods presented in selected financial data will be presented on a basis consistent with the annual financial statements, including information for the fourth and fifth back years.[2] We have observed that retrospective application of new accounting standards is required, or at least permitted, in a growing number of circumstances. Depending on the accounting standard, it can be very difficult for registrants to revise amounts for the fourth and fifth back years. Given the difficulties and lower perceived importance of those back years, we recommend providing relief when appropriate. We would support an approach that generally requires recasting unless doing so would require significant effort or expense. If the fourth and fifth back years are not recast, a registrant should ensure there is clear and appropriate disclosure about the difference in presentation (via footnote to the table or otherwise).

Additionally, the Release questions whether auditor involvement should be required for the disclosures contained in selected financial data. We note that the auditing standards (AS 2710[3]) require the auditor to read the information contained in the table and consider whether it, or its manner of presentation, is materially inconsistent with the information contained in the audited financial statements. We also note that an auditor may report on selected financial data in accordance with AS 3315.[4] Accordingly, the current standards already provide an avenue for auditor reporting on selected

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[2] Division of Corporation Finance *Financial Reporting Manual* paragraph 1610.1.

[3] PCAOB AS 2710, Other Information in Documents Containing Audited Financial Statements

[4] PCAOB AS 3315, Reporting on Condensed Financial Statements and Selected Financial Data

financial data. However, in our experience, engagements of this nature are very rare and we perceive little to no demand for this level of auditor involvement.

Item 302(a) Selected Quarterly Financial Data

The Release questions whether the Commission should retain the requirement to disclose selected quarterly financial data (SQFD) and, if so, whether it should modify the requirements. Our sense is that investors find the SQFD useful. We sense that investors find it useful to see fourth quarter results presented discretely, rather than having to infer them based on the annual results and the interim results through the third quarter. When the data is changed from that previously reported, presenting the revised data in the annual report enables investors to understand the effects of the changes sooner than if the changed data was not required to be communicated until it is presented for comparative purposes in subsequent quarterly reports. Even when the data is not changed, our sense is that investors find it useful to see the quarterly results presented sequentially. A sequential presentation is not required in quarterly reports, which report only current quarter and year-to-date results. In that regard, we note that since management's discussion and analysis in quarterly reports only discusses the operating results reflected in the financial statements, there is no specific requirement to discuss results for the current quarter as compared to the preceding quarter. We wonder whether this results in unanswered questions for investors, particularly when the sequential data is presented in the annual report, and suggest that the Commission consider whether some sort of discussion of quarterly results as compared to the preceding quarter, especially when there are material variations, should be required.

The Release also questions whether auditor involvement should be required for the disclosures contained in SQFD. For periods other than the fourth quarter, we note that SQFD is derived from financial information contained in Form 10-Q, the rules of which require auditor involvement via an AS 4105[5] review of the interim period financial statements. In addition, the auditing standards require an auditor to perform a review of the fourth quarter financial information even though it does not appear in a Form 10-Q. Since we perceive that there is a high level of interest in registrants' quarterly results, we believe this level of auditor involvement in such information is warranted.

Item 303 Management's Discussion and Analysis and Item 503(c) Risk Factors

Consolidation of MD&A Guidance

As highlighted in the Release, there are various sources of Commission and staff guidance on MD&A disclosure. Considering the volume of guidance and that MD&A is generally considered one of, if not the most, important disclosures in a periodic report or registration statement, we recommend consolidating the guidance appearing in the Commission releases, sections of the Financial Reporting Manual, and Compliance and Disclosure Interpretations into a single source. We believe that doing so may better facilitate compliance with the guidance and result in improved MD&A disclosure.

[5] PCAOB AS 4105, Reviews of Interim Financial Information

Executive-Level Overview

The Release questions whether the Commission should require an executive-level overview in MD&A. We believe that the need for an overview should be left to the discretion of registrants. If an overview is required, we expect that it will often add little to the filing but redundancy, which would be an undesirable outcome.

Risks and Uncertainties

Item 503(c) requires disclosure of factors that make an *offering* risky, while Item 303(a) requires disclosure of known trends and uncertainties that are reasonably likely to affect the registrant's liquidity, capital resources or results of operations in a material way. Consequently, elements of a registrant's risk-related disclosure are often required to be addressed in both Item 503 risk factor disclosure and Item 303 MD&A disclosure. In our experience, while risk factor disclosures are fairly comprehensive, registrants sometimes struggle with disclosing known trends and uncertainties in MD&A, especially when the disclosures are redundant with risk factor disclosures. We encourage the Commission to consider ways to possibly reduce the redundancy caused by the overlapping objectives of risk factor and MD&A disclosures.

Item 503(c) requires disclosure of factors that make an *offering* risky, e.g., a lack of an operating history or profitable operations. We suggest that much of what is typically disclosed in response to this requirement is already obvious and does not provide investors with meaningful insight to use in making an investment decision. We suggest that risk factor disclosure that is most useful is the disclosure that focuses on *business* risks and encourage the Commission to rewrite the instruction to elicit disclosure of *business* risks.

We also suggest that simply communicating a risk does not tell an investor all that he or she would like to know. After reading about a risk, an investor's next questions are likely to be, "What is the company doing to mitigate the risk," and "How successful does the company expect to be?" We understand the concerns about competitive harm to which the Commission refers in the Release and believe the Commission should respect those concerns if it decides to change the disclosure requirements related to risk mitigation strategies. However, we believe the benefits of discussing risk mitigation strategies outweigh concerns that such discussion could dilute investors' perception of the magnitude of the risk.

We also note that the disclosure in MD&A of a known trend or uncertainty is based on assessment of whether it is "reasonably likely to occur," a threshold that we believe is not interpreted uniformly by preparers. Preparers sometimes interpret "reasonably likely to occur" to mean "more likely than not," which we understand is not the intended threshold for disclosure. We suggest that it would be helpful to clarify the definition of "reasonably likely to occur" to elicit appropriate and more consistent disclosure across registrants.

Liquidity and Capital Resources

Some preparers interpret the term "capital resources" differently or find the disclosure requirement, as written in S-K 303(a)(2), to be confusing. Some preparers interpret the words to require disclosure of the registrant's sources of capital, while others interpret them to require disclosure of the sources of capital assets used in the registrant's business. We suggest the Commission revise the instruction to more clearly communicate what is required.

We have observed that some registrants focus only on short-term liquidity needs (i.e., funding sources for the next fiscal year) in their liquidity disclosures. We sense that this is due, at least in part, because registrants aren't clear on what is supposed to be said about meeting long-term liquidity needs, particularly in cases where they face significant short-term liquidity challenges and addressing longer term liquidity issues is a far lower priority. While the need to discuss liquidity on a long-term basis is mentioned in the instructions to Item 303, we suggest that the Commission rewrite the instruction to more clearly communicate this objective and provide examples of how to address the objective. We also suggest that the Commission revise the instructions to Item 303 to call for the short-term liquidity discussion to focus on the period covered in ASU 2014-15[6] for which GAAP requires a similar evaluation, i.e., the period that ends one year after the date the financial statements are issued. As discussed below, we also suggest that moving the table of contractual obligations into the discussion of liquidity would help to improve disclosures about long-term liquidity.

The Release questions whether the S-K requirements elicit adequate disclosure of short-term borrowings. In our experience, registrants appropriately assess and discuss short-term liquidity in their filings so we do not believe that additional short-term borrowing disclosure requirements are necessary. We note that the Commission proposed, but did not adopt, short-term borrowings disclosure rules in 2010. Our impression is that the lack of disclosures called for by that proposal has not created a deficiency in registrants' discussion of liquidity.

Auditor Involvement

The Release questions whether auditor involvement in MD&A should be required. We note that the auditing standards (AS 2710) require the auditor to read the information contained in MD&A and consider whether it, or its manner of presentation, is materially inconsistent with the information contained in the audited financial statements. We also note that an auditor may examine or review MD&A in accordance with AT 701.[7] Such engagements are very rare and we do not get the impression there is a demand for this level of auditor involvement in MD&A.

Contractual Obligations

We recommend that the Commission consider moving the table of contractual obligations into the discussion of liquidity. As we believe the table is intended to be an

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[6] ASU 2014-15, Presentation of Financial Statements – Going Concern

[7] PCAOB AT 701, Management's Discussion and Analysis

element of a registrant's discussion of its liquidity, integrating the disclosure requirement within liquidity may facilitate enhanced discussion of liquidity, particularly longer-term liquidity needs as discussed above.

We also recommend that the Commission revise the rule requiring purchase obligations to be disclosed in the table. There are obligations for which there is more than one reasonable way to present them in the table. Our sense is that generally practice has evolved to the point where as long as the approach used provides investors with the information they need, the use of alternative approaches does not harm investors or create practice problems. We believe, however, that improvements should be made in the way purchase obligations are presented. Some companies include some, but not all, of the obligations that have already been incurred and are reflected as liabilities on the balance sheet. Most include only obligations that are not yet reflected as liabilities. We recommend revising the definition to make it clear that purchase obligations include only obligations for executory contracts. Further, we question the usefulness of presenting purchase obligations related to essentially non-discretionary operating expenses. We suggest that it may be more meaningful to define purchase obligations as amounts to be paid under executory contracts for purchases of assets.

Critical Accounting Estimates

In our experience, many registrants struggle with disclosures related to critical accounting estimates. We suspect that this may be because they struggle to envision what should be disclosed or try to cover too many estimates, rather than just the most material ones. We suggest that disclosure might improve if the requirement was stated within Item 303 and, as discussed above, the instruction clearly communicated the objective of the disclosure and provided examples of how to address the objective.

Materiality Judgments

We do not believe a registrant should be required to disclose materiality judgments that form the basis for disclosure. Materiality is different for all registrants and may vary from period to period. Similarly, we do not believe a registrant should be required to disclose its assessment immaterial errors that were not recorded. Such a disclosure would be contrary to the overall notion that registrants should address matters which are material to their business and would likely provide useless information.

Item 305 Quantitative and Qualitative Disclosures about Market Risk

In our view, the disclosure requirements within Item 305 are lengthy and overly complex for non-financial services registrants. Many registrants find the requirements to be confusing and our impression is that the related disclosures are not as relevant for non-financial services registrants. We believe the Commission should consider restricting these requirements to financial services registrants. Consistent with our view expressed above, the Commission should also consider taking a principles-based approach to disclosures of market risk for all other registrants, including incorporating that discussion into MD&A.

Exhibits

Duplicative and Outdated Disclosures

Certain exhibits call for disclosures that duplicate disclosures required by GAAP (e.g., the computation of earnings per share required by Item 601(b)(11)) or disclosures that we perceive to be outdated (e.g., the ratio of earnings to fixed charges required by Item 503(d) and the related exhibit required by Item 601(b)(12)).We agree with the approach the Commission is taking in the rule amendments it proposed in Release 33-10110, *Disclosure Update and Simplification*.

Preferability letters –

When the Commission amended Form 10-Q in 1975 to require an accountant's letter stating whether a change in accounting principle is, in the accountant's judgment, preferable, an auditor's review of a registrant's interim period financial statements included in Form 10-Q was not required. Accordingly, the requirement to file a preferability letter in a Form 10-Q caused registrants to involve their independent auditors when making voluntary changes in accounting principles during interim periods. However, in 2000, the Commission adopted rules requiring independent auditor review of quarterly financial statements. Hence, auditors now evaluate the preferability of changes in accounting principles when they perform these reviews. Moreover, as referenced in the Concept Release, there are now more prescriptive accounting and auditing standards such as ASC 250[8] and AS 2820.[9]

In light of these developments and improvements in the consideration and reporting of voluntary changes in accounting principles, the objective of the preferability letter is met by the requirements of GAAP and PCAOB reporting standards. When registrants change an accounting principle, they are already required to establish preferability and auditors are required to assess the change as part of their interim reviews and audits of the financial statements. Accordingly, we believe preferability letters are no longer needed.

Scaled Disclosures and Filer Categories

Over the years (as highlighted in the Release), the Commission has developed a disclosure system which provides for reduced disclosure requirements and different periodic reporting timetables for certain smaller registrants. We believe the proliferation of filer categories (e.g., smaller reporting company, non-accelerated filer, emerging growth company, etc.) has complicated the compliance process. Moreover, the transition rules related to a registrant's change in filing status are not consistent and appear more complex than necessary. For example, a company exiting non-accelerated filer status must do so at the time it files its next annual report. A company exiting smaller reporting company status is not required to comply with the larger reporting company disclosure requirements until the first quarter after the end of the fiscal year in which its status changed. Thus a calendar year-end smaller reporting company whose

[8] ASC 250, Accounting Changes and Error Corrections

[9] PCAOB AS 2820, Evaluating Consistency of Financial Statements

public float exceeded $75 million on June 30, 20X1 would be permitted to file its 20X1 annual report in accordance with the smaller reporting company scaled disclosure requirements but must file it within 75 days of December 31, 20X1 (i.e., the Form 10-K due date for accelerated filers). Further, the tests to determine whether a company is an accelerated filer are not made until year-end. Therefore, a company whose public float was less than $50 million as of the end of its second fiscal quarter cannot exit accelerated filer status until it files its next annual report. In contrast, a company entering smaller reporting company status may do so immediately. Thus a calendar year-end company whose public float dropped below $50 million on June 30, 20X1 would be permitted to file its June 30 and September 30, 20X1 Forms 10-Q in accordance with the smaller reporting company disclosure requirements but must file them within 40 days of quarter-end (i.e., the Form 10-Q due date for accelerated filers). We recommend harmonizing the requirements where possible, particularly at the dates when the requirements of a new filing status take effect.

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Jeff Lenz, National Director – SEC Practice, at (312) 616-3944 or via email at jlenz@bdo.com, or Chris Smith, Accounting and Audit Professional Practice Leader, at (310) 557-8549 or via email at chsmith@bdo.com.

Very truly yours,

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