



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIR

July 22, 2016

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

This letter responds to your letter of July 7, 2016, regarding the SEC staff's ongoing disclosure effectiveness review.

Since its creation, the Commission has sought to protect investors, preserve market integrity, and promote capital formation through robust disclosure requirements that obligate public companies to provide investors with the information they need to make informed investment and voting decisions. A central responsibility of the agency is to ensure that these requirements and the broader disclosure system remain in alignment with the information investors need, the new ways in which they use and access information, the changing business models and practices of companies, and the evolution in information technology.

Throughout its history, the SEC has engaged in numerous efforts to update, simplify, modernize, and otherwise improve our disclosure system and requirements. For example, in the early 1980s the SEC created the integrated disclosure system that is still in use today.¹ Under this system, most securities registration and reporting forms refer to Regulation S-K for their substantive disclosure requirements. At the time this system was adopted, the Commission stated that its goal was "to revise or eliminate overlapping or unnecessary disclosure and dissemination requirements wherever possible, thereby reducing burdens on registrants while at the same time ensuring that security holders, investors and the marketplace have been provided with meaningful nonduplicative information upon which to base investment decisions."² Since

¹ Adoption of Integrated Disclosure System, Securities Act Release No. 6383, 47 Fed. Reg. 11,380 (Mar. 16, 1982) [hereinafter Integrated Disclosure Release]. This effort, which many consider the genesis of the modern integrated disclosure regime, was itself preceded by a number of efforts to improve the disclosure system and its requirements. See, e.g., Milton H. Cohen, *Truth in Securities Revisited*, 79 Harv. L. Rev. 1340 (1966) (an influential early article suggesting the integration of requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934); *Disclosure to Investors – A Reappraisal of Federal Administrative Policies under the '33 and '34 Acts*, Policy Study (Mar. 27, 1969), available at <http://sechistorical.org/museum/papers/1960/page-7.php> (report of an internal group formed by the Commission "to examine the operation of the disclosure provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and Commission rules and regulations thereunder"); *Report of the Advisory Committee on Corporate Disclosure*, Cmte. Print 95-29, House Cmte. On Interstate and Foreign Commerce, 95th Cong., 1st. Sess. (Nov. 3, 1977).

² Integrated Disclosure Release, *supra* note 1, at 11,382.

that time, and with generally the same objective, the Commission has pursued a series of other initiatives to review and enhance our disclosure system and requirements. These efforts have arisen from a combination of recommendations and issues raised by investors and issuers, Congress, Commission staff, and other stakeholders, and they have been pursued under the leadership of many different SEC Chairs.³

Disclosure effectiveness continues to be a major focus of Commission attention and resources today, as it should be given the importance of disclosure to investors and our markets. And, as it has in the past, it is vital that the Commission's work be thoroughly informed by active engagement with investors, companies, and other interested parties. On December 20, 2013, following the staff's recommendation in its JOBS Act report to conduct a comprehensive review of disclosure requirements,⁴ I announced that the staff would undertake such a review and made clear at the outset that the objective is to improve the disclosure regime for investors and companies, based on input from both investors – about the type of information they want and

³ For example, the Task Force on Disclosure Simplification under Chairman Arthur Levitt sought to “review rules and forms affecting capital formation, with a view toward streamlining, simplifying, and modernizing the overall regulatory scheme without compromising or diminishing important investor protections,” and produced several Commission releases. See generally *Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996), available at www.sec.gov/news/studies/smpl.htm. See also, *Report of The Advisory Committee on the Capital Formation and Regulatory Processes* (July 24, 1996), available at <http://www.sec.gov/news/studies/capform.htm> (a report of another disclosure-focused initiative under Chairman Levitt); Securities Offering Reform, Securities Act Release No. 8591, 70 Fed. Reg. 44,722 (Aug. 3, 2005), available at <https://www.sec.gov/rules/final/33-8591.pdf> (under Chairman William H. Donaldson); *Toward Greater Transparency: Modernizing the Securities and Exchange Commission's Disclosure System* (Jan. 2009), available at <http://www.sec.gov/spotlight/disclosureinitiative/report.pdf> (a report of the 21st Century Disclosure Initiative established by Chairman Christopher Cox); Remarks of SEC Chairman Mary Schapiro, *Address to the Practising Law Institute's 41st Annual Institute on Securities Regulation* (Nov. 4, 2009), available at <https://www.sec.gov/news/speech/2009/spch110409mls.htm> (“[I]n the coming year, we expect to begin a comprehensive review of our line item disclosure requirements for companies in their quarterly and annual filings. Our goal is to determine if some information we already require should be omitted — and if some information we don't require should be added. Again, our efforts will be targeted at making sure that investors are receiving the right information, and not just more information.”); Press Release, SEC, SEC Announces Formation of Advisory Committee on Small and Emerging Companies (Sept. 13, 2011), available at <https://www.sec.gov/news/press/2011/2011-182.htm> (a committee focused on advising the Commission on, among other issues, the nature and scope of the disclosures required of smaller issuers, established by Chairman Mary L. Schapiro and continued under Chairman Elisse B. Walter and Chair Mary Jo White).

⁴ See *Report on Review of Disclosure Requirements in Regulation S-K* (Dec. 2013), available at <https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>. As your letter notes, the staff's report on public company disclosure covered the Regulation S-K disclosure regime for all reporting companies and was not confined to emerging growth companies, which was a focus of Section 108 of the Jumpstart our Business Startups (JOBS) Act. The scope of the staff's report was set prior to my arrival at the Commission, as the staff was already working on a comprehensive review of the SEC's core disclosure requirements for public companies when the JOBS Act was passed. See, e.g., Remarks of Keith F. Higgins, Director, SEC Division of Corporation Finance, *Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting* (Apr. 11, 2014), available at <https://www.sec.gov/News/Speech/Detail/Speech/1370541479332> (“Over the years, the Division has consistently challenged itself to rethink our disclosure requirements, and I would be remiss if I didn't mention some of these recent efforts . . . my immediate predecessor, Meredith Cross, followed up by directing the Division's work that produced the detailed study of Regulation S-K that was issued last December.”).

how it can be best presented – and companies.⁵ In particular, as I indicated in my testimony before the Senate Banking Committee on June 14 and elsewhere, the review is intended to make disclosures better and more meaningful for investors.⁶

A review of this magnitude is complex and raises a host of interrelated issues identified by various stakeholders, as I highlighted at the inception of the staff's review.⁷ It also demands broad-based outreach, especially to investors, for views on how to address the full range of these issues, a core element of the staff's initiative from the outset.⁸ Among the issues being addressed by the staff's review are:

- *What, if any, existing disclosures should be modified.* For example, the Commission recently issued a proposal requesting comment on how to update the property disclosures

⁵ Press Release, SEC, SEC Issues Staff Report on Public Company Disclosure (Dec. 20, 2013), *available at* <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540530982> (“The ultimate objective is for the Commission to improve the disclosure regime for both companies and investors.”). In April 2014, the staff created a “spotlight page” on our website to provide additional information about the disclosure effectiveness initiative and for interested parties to submit comments about our disclosure requirements. The spotlight page is available at <https://www.sec.gov/spotlight/disclosure-effectiveness.shtml>. *See also*, Business and Financial Disclosures Required by Regulation S-K, Securities Act Release No. 10064, 81 Fed. Reg. 23,916 (Apr. 22, 2016) [hereinafter Regulation S-K Concept Release], *available at* <https://www.sec.gov/rules/concept/2016/33-10064.pdf> (soliciting comment on a wide range of issues as “part of an initiative by the Division of Corporation Finance to review the disclosure requirements applicable to registrants to consider ways to improve the requirements for the benefit of investors and registrants”).

⁶ Testimony of the Hon. Mary Jo White, SEC Chair, before the U.S. Senate, Committee on Banking, Housing, and Urban Affairs, “Oversight of the U.S. Securities and Exchange Commission” (June 14, 2016), *available at* <http://www.banking.senate.gov/public/index.cfm/hearings?ID=5651071F-FC14-48FB-B126-413A3971099C>. *See also*, Remarks of Mary Jo White, SEC Chair, *The SEC in 2014* (Jan. 27, 2014) [hereinafter Chair White 2014 Remarks], *available at* <https://www.sec.gov/News/Speech/Detail/Speech/1370540677500>.

⁷ *See* Chair White 2014 Remarks, *supra* note 6 (“We can all probably identify particular disclosure requirements that we might eliminate or modify, but that is not the kind of review and reform I am primarily focused on — and it certainly is not the kind of thoughtful and comprehensive review that I think our disclosure rules demand. I believe we should rethink not only the type of information we ask companies to disclose, but also how that information is presented, where and how that information is disclosed, and how we can take advantage of technology to facilitate investors’ access to information and make it more meaningful to them.”).

⁸ *See, e.g.*, Remarks of Mary Jo White, SEC Chair, *Chairman’s Address at SEC Speaks 2014* (Feb. 21, 2014), *available at* <https://www.sec.gov/News/Speech/Detail/Speech/1370540822127> (“Corp Fin will be broadly seeking input from companies and investors about how we can make our disclosure rules work better, and, specifically, investors will be asked what type of information they want, when do they want it and how companies can most meaningfully present that information.”); Remarks of Mary Jo White, SEC Chair, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), *available at* <https://www.sec.gov/news/speech/chair-white-icgn-speech.html> (“Our overall challenge is to re-focus the lens of disclosure to better serve today’s investors. The challenge for investors is even greater – to use your voices not only to inform us about the disclosures you need to make informed decisions, but also to influence corporate behavior to better protect and generate sustainable corporate value.”).

for mining registrants, which have not been modified significantly in over 30 years.⁹ And last year, the Commission requested comment on modifying certain financial disclosure requirements about entities other than the registrant.¹⁰

- *What, if any, new disclosure requirements should be added.* For example, the Regulation S-K Concept Release requests comment on more than 70 areas where additional disclosure may be appropriate, including short-term borrowings, foreign tax, risk management, and sustainability issues.¹¹
- *What, if any, existing disclosures should be eliminated.* For example, the Commission recently issued a detailed proposal and request for comment addressing certain disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded.¹²
- *Whether, and if so how, disclosure should be presented in a different manner.* The Regulation S-K Concept Release, for example, asks a wide range of questions about the presentation of disclosure, including incorporation by reference, layered disclosure, and the use of company websites.¹³ And, at my direction, the staff has formed a separate working group to address delivery and presentation issues with participants from the Division of Corporation Finance, the Office of Information Technology, and the Office of the Investor Advocate.¹⁴

⁹ See Modernization of Property Disclosures for Mining Registrants, Securities Act Release No. 10098, 81 Fed. Reg. 41,652 (June 27, 2016) [hereinafter Mining Disclosure Modernization Proposing Release], available at <https://www.sec.gov/rules/proposed/2016/33-10098.pdf>.

¹⁰ See Request for Comment on the Effectiveness of Financial Disclosures about Entities Other than the Registrant, Securities Act Release No. 9929, 80 Fed. Reg. 59,083 (Oct. 1, 2015) [hereinafter Regulation S-X Request for Comment], available at <https://www.sec.gov/rules/other/2015/33-9929.pdf>.

¹¹ See Regulation S-K Concept Release, *supra* note 5; Remarks of Mary Jo White, SEC Chair, *Statement at an Open Meeting on Regulation S-K Concept Release* (Apr. 13, 2016) [hereinafter Chair White S-K Statement], available at <https://www.sec.gov/news/statement/white-statement-1-041316.html>.

¹² *Disclosure Update and Simplification*, Securities Act Release No. 10110 (July 13, 2016) (“Disclosure Update and Simplification Proposing Release”), available at <https://www.sec.gov/rules/proposed/2016/33-10110.pdf>.

¹³ Regulation S-K Concept Release, *supra* note 5. See also Remarks of Rick A. Fleming, SEC Investor Advocate, *Effective Disclosure for the 21st Century Investor* (Feb. 20, 2015) [hereinafter Investor Advocate 2015 Remarks], available at <https://www.sec.gov/news/speech/022015-spchraf.html>. Another example of developing updates to the presentation of disclosure is the Commission’s recent order to allow companies to voluntarily file structured financial statement data through new means (known as “Inline XBRL”), in order to provide investors and companies with opportunities to evaluate the technology’s usefulness. Press Release, SEC, SEC to Permit Voluntary Filing Using Inline XBRL (June 13, 2016), available at <https://www.sec.gov/news/pressrelease/2016-117.html>; *Order Granting Limited and Conditional Exemption Under Section 36(a) of the Securities Exchange Act of 1934 from Compliance with Interactive Data File Exhibit Requirement in Forms 6-K, 8-K, 10-Q, 10-K, 20-F and 40-F to Facilitate Inline Filing of Tagged Financial Data*, Exchange Act Release No. 78,041, 81 Fed. Reg. 39,741 (June 17, 2016), available at <https://www.sec.gov/rules/exorders/2016/34-78041.pdf>.

¹⁴ See Chair White S-K Statement, *supra* note 11.

The broad-based nature of the staff's review is widely acknowledged and apparent in the discussions and questions set forth in the releases that we have issued over the last year. As the Commission's Investor Advisory Committee noted in its preliminary comment letter on the Regulation S-K Concept Release, they "take great comfort from the fact that you have made it clear" that merely reducing the volume of disclosure is not the goal of the disclosure effectiveness review, and they expect the project will "find cost-effective ways to not only eliminate redundant and useless disclosure but also to increase the disclosure of areas critical to investor understanding of the financial risks associated with the companies in which they invest."¹⁵

Your letter primarily focuses on the question of eliminating disclosure requirements, a limited part of our comprehensive review. As investors,¹⁶ issuers,¹⁷ and other stakeholders¹⁸ have acknowledged, this question does not equate simply to providing more or less useful information to investors. For example, certain disclosure requirements may be eliminated without reducing the useful information available to investors – such as when a requirement is outdated or superseded, or redundant with another requirement (whether in whole or in part).¹⁹ Other disclosure requirements may be replaced with new provisions that are better able to elicit information – or present information more meaningfully. And there may be disclosure requirements that can be eliminated because investors no longer want or use the information

¹⁵ Letter from Investor Advisory Committee to Division of Corporation Finance, SEC (June 15, 2016), *available at* <https://www.sec.gov/comments/s7-06-16/s70616-22.pdf>.

¹⁶ *See, e.g.*, Letter from Heather Slavkin Corzo, Director, Office of Investment, AFL-CIO, to Keith F. Higgins, Director, Division of Corporation Finance, SEC (Nov. 20, 2015), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-65.pdf> [hereinafter AFL-CIO Letter].

¹⁷ *See, e.g.*, Letter from Lauren Belot, Director of Accounting Policy, The PNC Financial Services Group, to Technical Director, FASB (July 14, 2014), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-8.pdf>.

¹⁸ *See, e.g.*, Letter from First Affirmative Financial Network to Mary Jo White, Chair, SEC, and Keith Higgins, Director, Division of Corporation Finance, SEC (June 26, 2014), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-5.pdf> (recognizing that "some reporting processes and requirements need to be updated to reflect the rapid technological and marketplace changes since the last review" and that there are "many opportunities to streamline reporting and eliminate[e] duplication and nonmaterial information," while urging a focus on "the effectiveness of disclosure and the needs of investors"); CFA Institute, *Financial Reporting Disclosures: Investor Perspectives on Transparency, Trust, and Volume* (2013), *available at* <https://www.cfainstitute.org/ethics/Documents/investor-perspectives-on-disclosures.pdf>; Investor Advocate 2015 Remarks, *supra* note 13; Letter from Securities Industry and Financial Markets Association to Keith F. Higgins, Director, Division of Corporation Finance, SEC (Oct. 13, 2014), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-20.pdf>.

¹⁹ *See, e.g.*, Letter from CFA Institute to Brent Fields, Secretary, SEC (Mar. 2, 2016), *available at* <https://www.sec.gov/comments/s7-20-15/s72015-50.pdf> [hereinafter CFA Letter 1] ("[W]e are supportive of the SEC's efforts to improve the efficiency of financial reporting requirements to the extent that such initiatives eliminate or improve disclosures that are not particularly meaningful or useful to investors. Eliminating or improving disclosures that are currently not decision-useful ultimately will benefit investors as well as preparers, by reducing the costs of preparing such unnecessary information, and by enabling investors to focus on what is truly important in the financial statements.").

provided under those requirements. The Commission has solicited feedback from investors and others on all aspects of these issues and, as I indicated when the Commission unanimously approved the Regulation S-K Concept Release in April 2016, the staff is deeply sensitive to the view of many investors that they want more, not less information.²⁰

In your letter, you inquire specifically about investor views and input. As part of our ongoing efforts to ensure that investors have access to high-quality disclosure that facilitates informed investment and voting decisions, the staff periodically reexamines whether the disclosure required by our rules is current, meaningful to investors, and presented in a clear format, and directly solicits investor views in various ways as part of that process. For example, the Office of Investor Education and Advocacy has periodically conducted surveys and focus groups to assess how investors use disclosures by companies and mutual funds, including which parts of the disclosure are typically read, what parts are most useful, and what key information might be missing. To date, these surveys have generally suggested that many disclosures are regarded as lengthy and complicated, and could be made more meaningful for investors.²¹ And, beyond the Commission's own efforts, other reports and studies discuss the challenges for investors in addressing the increasing length and complexity of company annual reports and proxy statements.²²

²⁰ See Chair White S-K Statement, *supra* note 11.

²¹ See, e.g., *Mandatory Disclosure Documents Telephone Survey* (July 30, 2008), available at https://www.sec.gov/pdf/disclosure_docs.pdf (“The primary complaint among investors was that the disclosure documents contain too much legal jargon, and as a corollary they are often too complicated or difficult to understand and they appear to be long and wordy . . . [I]t is not enough to simply clear up the language and reduce the legal jargon in the disclosure documents. It needs to be made clear to investors what key information is contained in each document.”).

²² See, e.g., Alastair Lawrence, *Individual Investors and Financial Disclosure* (Oct. 27, 2010), available at <http://www.rhsmith.umd.edu/files/Documents/Departments/Finance/Session3LawrenceIndividualInvestors.pdf>; RR Donnelley, *Highlights from RR Donnelley's Groundbreaking Investor Survey* (2013), available at http://www.shareholderforum.com/access/Library/20131100_Donnelley.pdf; PricewaterhouseCoopers, *Disclosure Reform: What Do Investors Think?* (June 2015), available at <https://www.pwc.com/us/en/pwc-investor-resource-institute/publications/assets/pwc-investors-corporate-disclosure-reform.pdf>; RR Donnelly, Equilar, and the Rock Center for Corporate Governance at Stanford University, *2015 Investor Survey: Deconstructing Proxy Statements — What Matters to Investors* (2015), available at https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survey-2015-deconstructing-proxy-statements_0.pdf.

The length and complexity of disclosures has also been a focus in the context of other financial services. See, e.g. Richard Cordray, Director, Consumer Financial Protection Bureau, *Remarks at the CFPB Forum on eClosings* (Aug. 5, 2015), available at <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-cfpb-forum-on-eclosings/> (“Indeed, the sheer volume of the [mortgage closing] documents can be overwhelming, especially coupled with the short timeframe. . . . The undeniable result is information overload: people find that there is just too much to absorb during the closing process, which may cause them to shut down.”); Joshua M. Frank, Center for Responsible Lending, *Numbers Game: The True Cost of Credit Card Mail Offers* (Oct. 2010), available at <http://www.responsiblelending.org/credit-cards/research-analysis/numbers-game-final-v2.pdf> (discussing “information overload” in the context of credit card offers).

As we have proceeded with our disclosure effectiveness review, we have again asked for comments on a wide range of specific issues.²³ And we are continuing to receive feedback through these channels and others about the type of information our rules require companies to disclose, where and how that information is presented, and how we can take advantage of technology to facilitate investors' access to information in a way that makes it most useful to them.

As part of that process, the Commission has received very helpful comments from investors and investor advocates, which address the need for more streamlined or clearer disclosure while at the same time advocating for more disclosure in certain areas.²⁴ For example, among many other key points about investor perspectives on disclosure, the CFA Institute stated that it “supports the Disclosure Effectiveness Initiative and believes it is essential to maintain and improve the transparency of information provided under the [federal securities laws] and to see that they are updated as markets and technology evolve. In fact, many needed updates are long overdue.”²⁵ And the AFL-CIO, again among several other important points, has noted that “redundancy adds volume to an already cumbersome report but provides little value to investors” and that “where possible, duplicative information should be eliminated.”²⁶ Comments like these have provided insights on the challenges of improving disclosure effectiveness for investors, including by illuminating the complexities in considering eliminating, modifying, or adding any disclosures.²⁷

²³ The Commission has published four major releases in the last year based on the staff's ongoing review, all of which ask numerous questions about critical issues for investors. *See* Regulation S-K Concept Release; Regulation S-X Request for Comment; Mining Disclosure Modernization Proposing Release; Disclosure Update and Simplification Proposing Release. As described above, interested parties have been invited to submit comments on the disclosure effectiveness initiative since its inception.

²⁴ *See, e.g.*, CFA Letter 1, *supra* note 19; AFL-CIO Letter, *supra* note 16; Letter from CFA Institute to Keith Higgins, Director, Division of Corporation Finance, SEC (Nov. 12, 2014), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-24.pdf> (generally supporting a comprehensive review that includes addressing redundancies, while urging investor outreach and cautioning against misperceptions that would entail a focus entirely on eliminating disclosures) [hereinafter CFA Letter 2]; Letter from Jon Lukomnik, Executive Director, Investor Responsibility Research Center Institute, to Secretary, SEC (Apr. 26, 2016), *available at* <https://www.sec.gov/comments/s7-06-16/s70616-5.pdf> (noting that risk factor disclosures are generally lengthy, and asserting that companies with a lower risk profile in particular have opportunities to reduce the extent and number of generic risk factors disclosed). Comments received from some individual investors support removal of “boilerplate” disclosures and assert that some important financial information is buried in financial statements that many individual investors cannot read. *See, e.g.*, Letter from Robert H. Chambers, Information Systems Consultant, to File (June 13, 2014), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-3.htm>; Letter from Rosanne Balfour to File (Sept. 27, 2015), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-59.htm>. *See also* Letter from Carrie Devorah to Mary Jo White, Chair, SEC (Sept. 25, 2015) (“The paperwork is far to[o] complicated for the everyday person to read.”), *available at* <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-58.pdf>.

²⁵ CFA Letter 2, *supra* note 24.

²⁶ AFL-CIO Letter, *supra* note 16.

²⁷ The CFA, for example, distinguishes between addressing a general notion of “information overload” and eliminating redundancies, and describes some of the challenges involved in reviewing potentially redundant disclosures. CFA Letter 2. Such insights refine the understanding of how investors use disclosures and have been

We will consider these and the other comments we receive on our various efforts flowing from the staff's review, as well as those received on our work to implement the FAST Act.²⁸ The Commission will engage in a careful analysis of the issues and viewpoints expressed, as is our practice, when enhancing our disclosure requirements. The concept of materiality is well-established in the federal securities laws and our rules, and it will continue to guide many of our disclosure requirements.²⁹ Our rules also include certain other requirements that are more prescriptive, identifying a particular item or threshold for disclosure that the Commission has determined to be useful to investors.³⁰ In considering any changes to our disclosure requirements, we will assess the full range of options – and any proposed changes will be the subject of notice and comment rulemaking, as well as additional outreach to investors and their advocates, companies, and other interested parties.

This continuing effort to improve our disclosure requirements for the benefit of investors and companies requires hard, careful work, and has engaged a wide variety of staff from across the agency. At this stage of our review, the majority of staff work on this project is conducted by members of our operations groups in the Division of Corporation Finance, who are charged with reviewing the periodic disclosures of public companies and who are generally not involved in rulemakings under the Dodd-Frank Act or otherwise. We, of course, work every day to improve the effectiveness of our disclosure regime, a central responsibility of the Commission since its creation.

Please do not hesitate to contact me at (202) 551-2100, Keith Higgins, Director of the Division of Corporation Finance, at (202) 551-3110, or have a member of your staff contact

helpful in considering the preliminary questions that I raised about disclosure shortly after my arrival at the Commission. See Remarks of Mary Jo White, SEC Chair, *The Path Forward on Disclosure* (Oct. 15, 2013), available at <https://www.sec.gov/News/Speech/Detail/Speech/1370539878806>.

²⁸ The Fixing America's Surface Transportation (FAST) Act directs the Commission to carry out a study of the requirements contained in Regulation S-K to: "(1) determine how best to modernize and simplify such requirements in a manner that reduces the costs and burdens on issuers while still providing all material information; (2) emphasize a company by company approach that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across registrants; and (3) evaluate methods of information delivery and presentation and explore methods for discouraging repetition and the disclosure of immaterial information." Pub. L. No. 114-94, Sec. 72003.

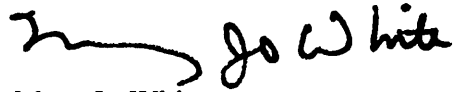
²⁹ The Commission's definition of "materiality" derives from the Supreme Court's unanimous opinion, written by Justice Thurgood Marshall, in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) (stating that an "omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote" and expressing concern that an issuer could "bury the shareholders in an avalanche of trivial information"). See also, Securities Act Rule 405, 17 C.F.R. § 230.405; Exchange Act Rule 12b-2, 17 C.F.R. § 240.12b-2; SEC Staff Accounting Bulletin No. 99, Materiality, 64 Fed. Reg. 45,150 (Aug. 19, 1999), available at <https://www.sec.gov/interps/account/sab99.htm>; PCAOB Auditing Standard No. 11 (Consideration of Materiality in Planning and Performing an Audit), available at https://pcaobus.org/Standards/Auditing/Pages/Auditing_Standard_11.aspx.

³⁰ For example, Items 101 (Description of Business), 103 (Legal Proceedings), and 703 (Purchase of Equity Securities by the Issuer and Affiliated Purchasers) of Regulation S-K provide "bright-line" thresholds for disclosure that companies must provide to their investors. See Regulation S-K Concept Release, *supra* note 5, at Section III.B.1.

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Keith Cassidy, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if you have any further questions or comments. We will also add your letter to our comment file for the disclosure effectiveness initiative and for the Regulation S-K Concept Release.

Sincerely,

A handwritten signature in black ink that reads "Mary Jo White". The signature is written in a cursive, flowing style.

Mary Jo White
Chair