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October 22, 2019

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via email to rule-comments@sec.gov

**Re: File No. S7-11-19
Request for Comment on Proposed Rules for Modernization of Regulation S-K
Items 101, 103 and 105**

Ladies and Gentlemen:

This letter is submitted on behalf of the Securities Regulation Committee of the New York City Bar Association. Our Committee includes a wide range of practitioners whose areas of interest and expertise include securities laws and the regulation of the U.S. capital markets.

We are responding to the request of the Securities and Exchange Commission for comment on proposed amendments to Regulation S-K Items 101, 103 and 105. We are strongly supportive of the Commission's ongoing effort to address disclosure effectiveness and we are generally in agreement that the proposed amendments are a constructive step forward in that initiative.

Our responses to the Commission's requests for comment in areas that are of particular importance to members of our committee are set forth below.

A. General Development of Business (Item 101(a))

We are generally in agreement with the Commission's proposed amendments designed to make business disclosure more principles-based.

We are encouraged by the Commission's focus on eliminating duplicative disclosure from one periodic filing to the next. We have some concern, however, with the proposal to address duplicative business development disclosure through hyperlinks back to an issuer's initial registration statement and any number of subsequent filings updating business development. Notwithstanding the use of hyperlinks, this approach could lead to a disjointed narrative that is not particularly user-friendly. We would urge the Commission to think more broadly and to consider moving away from the seriatim model of issuer disclosure that leads to hyperlinks back through potentially many years of historical disclosures.

We believe the Commission should give serious consideration to a "company profile" disclosure model, whereby certain information about an issuer would be maintained on a web page and updated periodically. Certain aspects of such a system could be implemented in the near term and would greatly improve the delivery of important information to investors. Currently, for example, an investor who wishes to understand an issuer's governance profile, or capital structure, or material contracts, would have to locate the most recent Form 10-K on the EDGAR system, page down to the exhibit index, find the references to the relevant documents, then search back to multiple prior filings to find various documents and amendments, an exercise which is highly disjointed and time consuming.

One could imagine a far more user-friendly system where companies would be required to maintain on a web page, which could be part of the EDGAR system or a company website, a standing collection of documents organized in clearly identifiable categories. These could include governance documents (charter, bylaws, board committee charters, ethics policy, etc.); material contracts; executive compensation-related documents (compensation plans, employment contracts, etc.); effective registration statements; ownership related documents (Form 13Ds and Form 13Gs); and other relevant categories. A tab or folder system would make navigating through the company profile easy for investors.

The company profile web page could also include portions of Form 10-K and Form 10-Q, such as the Business and Risk Factors sections. This would both reduce the burden on companies and benefit investors by shortening the length of periodic reporting documents.

Importantly, we are not advocating for a continuous disclosure approach, and we believe that a company profile system could work well if companies were required to update information on the same time schedule as currently required for periodic filings.

B. Narrative Description of Business (Item 101(c))

We are generally in agreement with the Commission's proposed revisions to the narrative description of business requirements.

C. Legal Proceedings (Item 103)

We agree with the Commission’s proposed amendments to the legal proceedings disclosure requirement. Eliminating duplicative disclosure is one of the critical objectives underlying the Commission’s disclosure effectiveness initiative, and we believe that enabling issuers to cross-reference or hyperlink to litigation disclosure contained elsewhere in a filing will be helpful to both investors and issuers. We are supportive of the proposed update to the dollar threshold for environmental proceedings disclosure.

D. Risk Factors (Item 105)

We agree that risk factors in many instances have become too long as a result of generic, boilerplate disclosure. We do not believe, however, that imposing an arbitrary page limit is the answer. The Commission has resisted page limits and word limits in its disclosure rules for good reason. Issuers should have the flexibility to provide all material disclosures, particularly in the risk factor area, in the exercise of their best judgment, without regard to arbitrary length restrictions.

Moreover, we are concerned that requiring some issuers to provide summary risk factors would be a step in the wrong direction. We expect that summary risk factors could end up resembling and overlapping with the list of factors cited in the forward-looking statements disclosures, which tend to be more generic, and the summary format would not afford issuers the ability to provide the specificity that the Commission is looking for.

We would recommend that the Commission and the staff continue to use the tools at their disposal – comment letters and guidance – to encourage issuers to streamline risk factor disclosure, eliminate boilerplate and provide greater specificity as to the particular risks applicable to a given issuer.

We agree with the Commission’s proposal to require disclosure of “material” risk factors rather than “most significant” risk factors.

We also agree with the proposed requirement to organize risk factors under relevant headings. As the Commission notes, many issuers already provide headings, which we believe are helpful to investors and issuers alike. We disagree, however, with the proposal to require grouping of generally applicable risk factors under the heading “General Risk Factors.” The Commission and staff are trying to steer issuers away from generic risk factors, so the catch-all category should be used only rarely. To the extent it is used, it would cut against the proposal to group conceptually similar risk factors under descriptive headings. The “General Risk Factors” category would require pulling certain risk factors out of the relevant subject heading and creating a hodge-podge of potentially dissimilar risk factors at the end. If this is the Commission’s way of discouraging generic risk factors, we respectfully suggest that it should continue to rely on comment letters and guidance to address the concern.

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We thank you for the opportunity to comment on this important Commission initiative. Members of our committee would be happy to discuss any aspect of this letter with the Commission staff.

Respectfully submitted,

A handwritten signature in blue ink that reads "David S. Huntington". The signature is written in a cursive style with a prominent initial "D".

David S. Huntington
Chair, Securities Regulation Committee