Holland & Knight

ALERT

SEC Concept Release Requests Market Comment to Update Regulation S-K

June 2, 2016

Authors:

Ivan Colao
David S. Cole
Laurie L. Green
Tom McAleavey
Ira N. Rosner
Michael George Taylor
Shawn M. Turner

Editor:

David. S. Cole

HIGHLIGHTS:

- The U.S. Securities and Exchange Commission (SEC) issued a 341-page concept release in April requesting market participants to comment on its proposals to update and modernize Regulation S-K.
- The Holland & Knight Public Companies and Securities Team explores here several of the policies in the release to help market participants understand the current regulatory environment and suggest change.

The SEC issued a concept release in April requesting market participants to comment on its proposals to update and modernize one of the principal regulatory regimes, Regulation S-K, which instructs public companies to disclose material financial and other information to investors when offering securities publicly and when reporting to the market and shareholders periodically.

The concept release is massive – more than 341 pages – so space simply does not permit an exhaustive analysis of every Regulation S-K provision potentially affected by the concept release. Nevertheless, we attempt below to help issuers, investors and regulators reconsider the current integrated disclosure system with an eye toward improving access to material information in an efficient and cost effective manner, ultimately to foster capital formation and well-functioning secondary markets.

Below, we highlight certain key Regulation S-K requirements. For brevity's sake, we present our thoughts in concise points and tables rather than lengthy narratives. First, we roadmap those items we discuss in the first row of each table. Next, we discuss how the market currently responds to the

existing regulations, pointing out problematic areas where possible. We then analyze how the SEC suggests the existing disclosure requirements might change, and we also offer some additional potential comments that market participants may elect to make to the SEC. To help market participants understand both the current regulatory environment and the suggestions for change, we explore the policies supporting the various Regulation S-K items discussed and the relevant suggested changes. By using an outline and tabular form, we hope that readers with a specific interest in an issue addressed by the concept release can quickly move to that point in our discussion.

It remains uncertain how large a bite the SEC might take into Regulation S-K, as the SEC rarely makes dramatic, sweeping changes to the capital markets regulatory regimes. This makes it difficult to predict where the SEC will focus its attention. However, change to any one of the areas discussed below could have important consequences to companies and investors, and even though much of the concept release discusses streamlining certain required disclosure, other portions consider expanding required disclosure or shifting the emphasis or basis of the disclosure. As a result, consistent, vociferous public comment could sway regulators in ways meaningful to registrants and market makers.

We invite you to contact any of our contributors if you would like to make your voice heard on any of these issues explored below or another of importance to you. The deadline to submit comments to the SEC is **July 21, 2016**.

Basis and Nature of Disclosure Requirements	
Disclosure Requirements Examined	1. Sunset Provisions 2. Principles-Based vs. Prescriptive Disclosure Requirements 3. Audience for Disclosure 4. Cost of Compliance
Current Regulatory Requirements	1. Regulation S-K Generally: Regulation S-K regulates all non-financial statement disclosure made by companies who desire access to the U.S. capital markets and who must make periodic disclosure to the markets. Regulation S-K addresses a company's business, activities, obligations, liabilities, risks and a host of other items material to a decision to invest. 2. Sunset Provisions: A sunset provision in an SEC regulation would cause it to cease to have effect after a specified date unless the SEC staff took further action to make the regulation permanent. Though favorably viewed by some in the market, the SEC staff occasionally (but inconsistently) employs sunset provisions. A sunset provision affords regulators and market participants time to react to new regulatory requirements and can provide an opportunity for more deliberative rule-making, and ultimately, more thoughtful regulation. Given the durability of a disclosure requirement once adopted, sunset provisions can inject flexibility into the rule-making process to permit changes in the economic and regulatory landscape to affect a rule before it becomes permanent. 3. Prescriptive vs. Principles Based Disclosure: The current disclosure regime includes a mix of "principles-based" and "prescriptive" disclosure

	requirements. Principles-based disclosure requirements articulate a disclosure objective without clear direction on how to satisfy the requirement, leaving the issuer and its advisors to exercise substantially more discretion in the disclosure process. Prescriptive disclosure requirements employ objective, quantitative and, according to proponents, more easily identifiable disclosure thresholds. In the concept release, the SEC suggests moving toward a hybrid, "objectives-oriented" approach. Consistent with the principles-based method, the objectives-oriented approach would encourage issuers to make determinations about what is material to their business while also offering a consistent framework to allow for more meaningful comparisons of companies and their performance. 4. Audience for Disclosure: The current regulatory environment does not expressly distinguish among institutional investors, retail investors, bondholders, broker-dealers, analysts, lenders and others. However, the requirement to tag financial disclosure in XBRL format aids the financial community to compare financial performance among issuers and registrants. 5. Cost of Compliance: The cost for companies to comply with the nation's securities laws is material to many public companies. The existing regulatory framework imposes material administrative burdens on companies to prepare periodic and other disclosure. Public disclosure can affect a company's ability to compete against private companies or those regulated overseas under less fulsome disclosure regimes. While issuers may request confidential treatment of sensitive information, the SEC indicated that it does not look upon such requests favorably in the context of a public disclosure regime. The SEC also looks to address the appropriateness of scaled disclosure to better adapt disclosure requirements to the size of the disclosing company.
Summary of Requests for Comment	Sunset Provisions The SEC seeks comments on: 1. the benefits and disadvantages of automatic sunset provisions, with particular emphasis on the types of disclosures that would benefit from a sunset provision and on their potential cost to issuers 2. whether further SEC staff study of sunset provisions would be advantageous and cost effective, and what particular provisions might benefit from such study Principles Based vs. Prescriptive Disclosure The SEC seeks comments on: 1. whether the SEC should revise the principles-based approach to adopt a more consistent standard such as an objectives-oriented or other approach

	2. whether the definition of materiality should be revised for disclosure purposes 3. the advantages and disadvantages of a principles-based approach for issuers and investors 4. whether issuers should err on the side of inclusion or omission if there is uncertainty in a disclosure requirement 5. whether additional disclosure provides useful information to investors or obfuscates the disclosure 6. whether quantitative disclosures elicit important information for investors 7. whether the SEC should develop qualitative thresholds for disclosure <u>Audience for Disclosure</u> The SEC seeks comments on: 1. whether issuers assume some level of investor sophistication in preparing disclosure and, if so, how such sophistication should be measured 2. the risks and disadvantages to investors if the issuer inaccurately estimates the investors' level of sophistication 3. whether disclosure protects all investors if it is tailored to a subset of the investor community 4. whether disclosure requirements should incorporate formatting requirements that are tailored to various types of investors in a manner that will facilitate such investors better use of disclosure for investment and voting decisions <u>Cost of Compliance</u> The SEC seeks comments on: 1. whether the current disclosure requirements appropriately consider the costs and benefits of registrants and investors 2. how the SEC can evaluate such benefits 3. whether there are accommodations such as scaled disclosure and confidential treatment that could reduce costs for registrants while still providing investors with important or useful information to make educated investment and voting decisions
Policies Supporting Existing, Expanded or Reduced Disclosure	The SEC must balance the protection of investors against the nation's interest in encouraging capital formation through open, efficient and well-functioning capital markets to support the requirements of business. Disclosure policy should consider the needs of retail investors as well as sophisticated and experienced capital market participants. Disclosure policy also must encourage disclosure of what is material to an investment in any one particular issuer given its industry, customer base, sensitivity to market risk and other factors peculiar to it. Facts and circumstances material to one company may not be material to another company. At the same time, the

	cost to access the capital markets has increased dramatically since the adoption of Sarbanes-Oxley, which can discourage companies from tapping the capital markets. These competing policies make it difficult to craft effective securities regulation and can result in regulations that are difficult for issuers and their advisors to reconcile.
Practical Experience/ Market Approach to Disclosure Requirement	Compliance with Regulation S-K varies among industries and among companies within an industry. The threat of civil lawsuits plays an important role in some companies over-disclosing information not material to an investment decision or unresponsive to a Regulation S-K item. Other companies with an eye toward market reaction disclose only what is minimally responsive to an Item.
Suggestions for Current Comment	1. While a one-size-fits-all disclosure regime makes little sense in a diverse economy, re-examining whether the existing regulatory environment approaches disclosure from a mid-20th century industrial perspective and further consideration of what is most material to companies and investors in an age of instant access to information is worthy. 2. Where quantitative disclosure is necessary, consider emphasizing consistent tabular disclosure with a focus on comparative analysis in a system resembling eXtensible Business Reporting Language (XBRL) analysis. 3. Taking a longer term perspective on certain disclosure may help move companies away from focusing on quarterly earnings reporting and toward maximizing shareholder value. 4. Incorporating on-ramps to reporting obligations can encourage pre-public companies to consider accessing the U.S. capital markets rather than remaining private or seeking capital elsewhere. On-ramps provide issuers time to fine-tune the internal controls and disclosure controls necessary for reliable and accurate public disclosure of material information, which leads to more reliable information for investment decisions.

Core Company Business Information	
Disclosure Requirements Examined	1. General Description of Business During the Past Five Years (Item 101) 2. Narrative Description of Business, including Specific Line Items (Item 101) 3. Patents, Trademarks, Licenses, Franchises and Concessions (Item 101) 4. Government Contracts (Item 101) 5. Environmental Laws Compliance (Item 101)

	6. Government Regulation (Item 101) 7. Employees (Item 101) 8. Physical Properties (Item 102)
Current Regulatory Requirements	1. Items 101 and 102 of Regulation S-K prescribe what registrants need to disclose about their operations. Beyond a general description of the business, the rules require disclosure about intellectual property, the effect of government regulation, the number of employees, the physical plant, sources and availability of raw materials, the effect of seasonality, environmental compliance and certain government contracts risk. 2. Some items ask narrow questions, such as how many employees a registrant has, while some, in contrast, ask for principles-based disclosure, such as a description of the importance of the company's intellectual property rights, franchises and concessions to its business.
Summary of Requests for Comment	Many of the SEC suggestions for comment focus on whether the SEC should require expanded disclosure of these various operational facts material to a registrant. <u>Item 101</u> The SEC seeks comments on: 1. adding specific tabular disclosure concerning the nature of a registrant's IP portfolio and its material contracts 2. whether changes in employee workforce numbers predict future financial performance 3. whether changes in environmental compliance affect capital expenditures 4. whether the SEC should modify disclosure requirements for members of certain industries 5. whether the reporting period of five years should be lengthened or shortened 6. whether registrants should disclose business strategies and contacts with the government <u>Item 102</u> The SEC seeks comments on: 1. whether companies that lease premises should disclose more information about their real property requirements
Policies Supporting Existing, Expanded or Reduced Disclosure	A general description of the business of a registrant is fundamentally important to an informed investment decision. Inclusion of the specific disclosure was intended to provide the investing public with similar information available to venture capitalists, lenders, underwriters and other professional investors.

	Intellectual property has become increasingly important to businesses and, therefore, to investors seeking to understand a company's business performance and prospects. Disclosure of a registrant's intellectual property position often is essential information for an informed investor. Business contracts with agencies of the U.S. government impose terms and rights that are different from those typically found in commercial contracts. They are subject to renegotiation and, as a result, an estimate of the profit potential can be difficult to determine. Viability of a company often can depend significantly on governmental approval of its products or the nature and extent of its contacts with government officials. Understanding the need for government approval and how pervasive the company's governmental contacts are can inform an investment decision. Changes in employee complements can signal trends, but number of employees does not always correlate to revenue, earnings, cash flow and other indicia of financial performance. To the extent that a registrant depends materially on outsourced service or independent contractors, an investor would benefit from understanding the risks that independent contractors might be reclassified as employees. This disclosure together with understanding the employee complement and what it does would provide a more complete picture of a registrant's workforce. Twenty-first century business may rely less on physical plant than when the SEC first introduces the regulations; what may matter to investors is whether the registrant can scale production when needed – so disclosure concerning the ability to access physical plant as a company grows may concern investors.
Practical Experience/ Market Approach to Disclosure Requirement	A general description of a company's business is relevant to an informed investment decision. However, some disclosure required by Item 101(a)(1) can duplicate information disclosed in other filings or elsewhere in the same report, such as in notes to the financial statements and the Management Discussion and Analysis (MD&A). The required disclosure concerning intellectual property does not address all assets generally associated with intellectual property. Many companies, nevertheless, disclose information concerning their intellectual properties beyond the requirements of the regulation. The lack of uniformity of disclosure makes it challenging to compare companies' portfolios. Disclosure concerning a government contractor's revenue and backlog lack not only uniformity, but also have the potential to mislead an investor unless the investor understands well the appropriation and funding process of the federal government and other governments. Disclosure of funded backlog under an IDIQ contract has far more value to an investor than disclosing the maximum value potentially awardable under that vehicle to the registrant along with other awardees under that contract, yet companies do not

	always plainly inform investors what task orders they have received, focusing instead on potential awards. Because loss of a governmental permit or approval can have material consequences to a registrant, many already disclose the extent to which they depend on permits and approvals and the risks involved with the loss of a material permit or approval.
Suggestions for Current Comment	1. The SEC should consider whether information called for in Item 101 is typically disclosed elsewhere and should permit registrants to update previously disclosed information rather than regurgitate it. 2. The list of 13 specific items to be disclosed pursuant to Item 101(c) should be reviewed in light of the changing business environment since the disclosure requirement was implemented. Distinguishing among registrants based on industry classification might be appropriate in order to elicit more useful information from registrants. 3. The SEC should consider tabular disclosure concerning intellectual property to permit investors to compare portfolios and to understand where certain intellectual property (IP) sits in the registration process. This may also simplify the disclosure requirements for registrants. 4. Expanding the disclosure requirement in Item 101(c)(1)(ix) to apply to all material contracts would seem unnecessary given existing MD&A and current reports disclosure requirements. 5. The SEC should consider revising the rule requiring disclosure of the number of employees of a company to account for the changing business environment, particularly the use of outsourced resources. 6. The SEC should consider making Item 102 disclosure only applicable to companies in industries for which physical plants and properties are materially relevant.

Company Performance, Financial Information and Future Prospects – Item 301: Selected Financial Data and Item 302: Supplementary Financial Information	
Disclosure Requirements Examined	1. Five-Year Trend Data (Item 301, Instruction 1) 2. Items included in Selected Financial Data (Item 301, Instruction 2) 3. All required disclosures (Item 302)
Current Regulatory Requirements	1. Item 301 requires listed registrants to disclose certain selected five-year financial data in their annual report on Form 10-K (but not in quarterly reports), including net sales or operating revenues, income (loss) from continuing operations, income (loss) from continuing operations per common share, total assets, and long-term obligations and redeemable preferred stock (including long-term debt, capital leases, redeemable preferred stock and cash dividends declared per common share).

	Registrants may include additional items to enhance an understanding of and highlight trends in their financial condition and results of operations. 2. Item 302 requires listed registrants to disclose quarterly financial data of selected operating results, and the disclosure of variances in these results from amounts previously reported. 3. Items 301 and 302 do not apply to smaller reporting companies.
Summary of Requests for Comment	<u>Item 301</u> The SEC seeks comments on: 1. whether it should (a) retain, modify or eliminate the disclosure requirements under Section 301, (b) add to or subtract from the list of items required to be disclosed as Selected Financial Data or (c) modify the number of fiscal years to be disclosed as Selected Financial Data 2. whether the selected financial data effectively highlight significant trends that are not described elsewhere 3. whether it should consider revising the current presentation requirements for the selected financial information and whether or not there should be auditor involvement on the reliability of the disclosure <u>Item 302</u> The SEC seeks comments on: 1. whether it should (a) retain, modify or eliminate the disclosure requirements under Section 302, or (b) require auditor involvement on the reliability of the disclosure 2. whether the information required by Item 302 helps investors to understand the pattern of corporate activities throughout a fiscal period by disclosing trends over segments of time that are sufficiently short to reflect business turning points
Policies Supporting Existing, Expanded or Reduced Disclosure	1. Item 301 is intended to provide high level financial information so a reader need not parse the registrant's prior annual financial statements for that information. The high level financial information should bring to light any significant trends in the registrant's financial condition and performance over the five-year period. 2. When adopted, the SEC stated its belief that the disclosure required by Item 302 would "materially assist investors in understanding the pattern of corporate activities throughout a fiscal period" by disclosing trends over segments of time that are sufficiently short to reflect business turning points. The SEC also noted that this disclosure would reflect seasonal patterns.
Practical Experience/ Market Approach to	The required selected financial data looks back over the registrant's last five fiscal years, which is longer than the time periods covered by the annual audited financial statements included in Form 10-K. Typically, the prior high-level, selected financial information appears in prior annual reports. Prior

Disclosure Requirement	disclosure mitigates the burden of providing summary financial information based on these prior years in a present-year annual report. While the burdens placed on registrants to provide the information required by Item 301 are not overly significant, it is worth questioning whether such disclosure provides any meaningful benefit to investors, since trends may be apparent elsewhere. The advent of XBRL also should make continued disclosure of five- year summary financial information less meaningful. The same analysis applies to the quarterly information required by Item 302.
Suggestions for Current Comment	3. Should registrants have flexibility to provide additional information about their business that they believe is most relevant to a reader's understanding of the registrant's financial condition and performance. To the extent additional information is not taken directly from the registrant's financial statements, what role should auditors play (i.e., audit, review or specified procedures) to opine on the additional information. 4. The SEC should consider eliminating Item 302, as it is typically included as an unaudited note to the financial statements.

Company Performance, Financial Information and Future Prospects – MD&A	
Disclosure Requirements Examined	1. Content and Focus of MD&A 2. Results of Operations 3. Liquidity and Capital Resources 4. Off-Balance Sheet Arrangements 5. Contractual Obligations 6. Critical Accounting Estimates
Current Regulatory Requirements	Item 303 requires registrants to analyze in an MD&A narrative three core components relevant to assessing a registrant's financial condition, changes in financial condition and results of operations: (1) liquidity, (2) capital resources and (3) results of operations. Registrants should focus on known trends and uncertainties affecting liquidity, capital resources and results of operations. Registrants should employ a "two-step test" to assess whether (1) an uncertainty or trend is likely to come to fruition or continue (if it is not reasonably likely to occur or continue, no disclosure is required), and (2) if the registrant cannot make that determination, disclosure is required unless management determines that a material effect on its financial condition or results of operations is not reasonably likely to occur. Although the registrant should report trends and uncertainties, the registrant is not required to address critical accounting estimates in its MD&A. Item 303 also requires disclosure of a registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on its financial condition, changes in financial condition or capital resources that are material to investors.

	Item 303 requires tabular disclosure of a registrant's known contractual obligations for long-term debt, capital leases, operating leases, purchase obligations and other long-term liabilities reflected on its balance sheet under Generally Accepted Accounting Principles (GAAP).
Summary of Requests for Comment	<u>Content and Focus of MD&A</u> The SEC seeks comments on: 1. whether the current requirements result in disclosure that highlights the most important aspects of financial condition and results of operations 2. whether there are requirements that result in immaterial disclosure that obscure significant information 3. whether the SEC should consider a qualitative or quantitative threshold other than materiality for MD&A 4. whether the SEC should consolidate its MD&A guidance in a single source 5. whether registrants should be required to provide an executive-level overview, and, if so, if the SEC be prescriptive in its overview content requirements 6. whether there are additional rules the SEC should consider that would result in more meaningful MD&A 7. whether the two-step test for requiring forward-looking disclosure in MD&A results in the most meaningful forward-looking disclosure 8. whether a standard other than "reasonably likely" should be used in the first prong of the test, or whether a different should standard apply, such as the probability/magnitude standard from *Basic v. Levenson* (balancing the probability of the event and the anticipated magnitude in light of the totality of the registrant's activities) 9. whether registrants should be specifically required to quantify the material effects of known trends and uncertainties 10. whether MD&A should include a principles-based requirement to disclose performance metrics and other key variables important to a registrant's business or whether the SEC should prescribe requirements for discussing specific performance metrics applicable to certain industries <u>Results of Operations</u> The SEC seeks comments on: 1. whether the SEC should retain, eliminate or modify the period-to-period comparisons in MD&A 2. whether the three-year comparison should provide material information about trends that would not be reflected in prior filings, whether registrants should be permitted to omit the earliest period if it does not provide important information to investors, or whether registrants should

	be permitted to cross-reference or link to prior period discussion or the earlier period 3. whether a different format of disclosure – such as a standardized tabular format – provide enhanced understanding of results of operations or encourage greater analysis than the period-to-period comparison <u>Liquidity and Capital Resources</u> The SEC seeks comments on: 1. whether the SEC should elicit more meaningful analysis of these items or whether prescribed separate discussion of liquidity and capital resources would lead to more useful analysis 2. whether the SEC should modify the definition of "liquidity" or adopt a definition of "capital resources" 3. for what periods should discussion and analysis of liquidity and capital resources be required and whether additional measures of intra-period liquidity and capital resources should be required 4. whether registrants should be required to include a sensitivity analysis 5. whether the SEC should require specific line-item disclosure of use and analysis of short-term borrowing as a source of funding <u>Off-Balance Sheet Arrangements</u> The SEC seeks comments on: 1. whether required information should otherwise be available in SEC filings (in financial statements or elsewhere in MD&A) 2. whether additional disclosure should be required, such as an analysis of the risks associated with the arrangements <u>Contractual Obligations</u> The SEC seeks comments on: 1. whether the required tabular disclosure present a meaningful snapshot of cash requirements for contractual disclosure 2. whether disclosure should be required to accompany the disclosure 3. whether there are other categories of contractual obligations that should be included or whether the SEC should provide guidance as to how to treat certain types of contractual obligations <u>Critical Accounting Estimates</u> The SEC seeks comments on: 1. whether the SEC should require disclosure about critical accounting estimates, and if so, how they should be defined

	2. how registrants can be encouraged to eliminate repeating in MD&A the discussion of critical accounting policies provided in the notes to the financial statements 3. whether the SEC should adopt prescriptive requirements on critical accounting estimates 4. whether the SEC should require disclosure of management's judgments and estimates that form the basis of MD&A disclosure, such as the qualitative and quantitative factors used in its assessment of materiality 5. whether the SEC should require management to disclose the nature of its assessments of errors that it determined to be immaterial and therefore were not corrected
Policies Supporting Existing, Expanded or Reduced Disclosure	MD&A Disclosure is intended to satisfy three principal objectives: 1. to provide a narrative explanation of the registrant's financial statements that enables investors to see the registrant through the eyes of management 2. to enhance the overall financial disclosure and to provide the context within which financial information should be analyzed 3. to provide information about the quality of, and potential variability of, the registrant's earnings and cash flow, so investors can ascertain the likelihood that past performance is indicative of future performance The SEC has provided MD&A guidance on several occasions in an effort to improve the quality of the analysis of known trends and uncertainties and discourage the restatement of financial statements in narrative form. In its guidance, the SEC has reiterated the importance of materiality in its principles-based approach to MD&A and encouraged registrants to de-emphasize or remove immaterial information. The SEC also has provided guidance specifically focused on the quality and focus of the analysis, the use of forward-looking information and the use of key performance indicators.
Practical Experience/ Market Approach to Disclosure Requirement	1. Current MD&A drafting reflects an ongoing tension between principles-based disclosure and prescriptive line item disclosure with bright-line tests and required tabular disclosure. While principles-based disclosure permits a registrant to more easily tailor its disclosure to what it believes is relevant to investors, prescriptive-based disclosure may lead to easier comparability among registrants. 2. While some registrants include executive-level overviews in MD&A as the SEC has suggested, these summaries generally do not reduce the length or complexity of MD&A. Because of the risk of liability for failure to disclose information that a registrant may deem immaterial at the time of filing, but is then viewed to be material in hindsight, registrants continue to provide a narrative discussion of the financial statements and respond to every line item, even where immaterial.

	3. The demands of the capital markets sometimes discipline registrants and force them to address the same key performance indicators that others in their industry disclose even where Item 303 does not require disclosure. 4. The overlap of certain line items' MD&A disclosure areas with financial statement disclosure appears to result in duplicative disclosure rather than a nuanced distinction between MD&A analysis and financial statement disclosure that the SEC would prefer.
Suggestions for Current Comment	1. Because liability concerns drive at least some of the lengthy MD&A disclosure that appears to be immaterial, the SEC should consider mitigating liability risk through safe harbors or similar protections in order to encourage registrants to improve the quality and conciseness of MD&A disclosure without fear of incremental liability and second-guessing of business judgment. 2. The SEC should move away from prescriptive-based line item MD&A disclosure to more of a principles-based approach, relying on the capital markets to impose discipline on registrants to ensure that the most meaningful information is disclosed and analyzed. 3. In a principles-based approach, the SEC should consider consolidating its MD&A guidance to identify the factors to be considered when registrants assess MD&A disclosure, without prescribing additional line items. For example, the SEC could specifically indicate that intra-period liquidity should be considered in the registrant's analysis of liquidity in MD&A, if material, without imposing a line item requiring a new chart, graph or table. 4. Consistent with a principles-based approach, the SEC should eliminate the two-step test for requiring forward-looking disclosure in MD&A and instead apply the probability/magnitude standard from *Basic v. Levenson*, consistent with its approach to disclosure elsewhere, and thus easing the burden on registrants of the application of different standards that increases the risk of second-guessing business judgments. 5. Some of the current prescriptive-based disclosure in MD&A – such as discussion of prior period results of operations and off-balance sheet arrangement disclosure – overlaps with prior disclosure documents or financial statement disclosure. To eliminate unnecessary duplication, the SEC should permit cross-referencing where appropriate and consider a principles-based approach to these items.

Risk and Risk Management	
Disclosure Requirements Examined	1. Risk Factors (Item 503(c)) 2. Quantitative and Qualitative Disclosures About Market Risk (Item 305)

Current Regulatory Requirements	1. Item 503(c) requires disclosure of the most significant factors that make an investment in a registrant's securities speculative or risky. Although principles-based, examples such as a lack of operating history, lack of profit, financial position, the nature of the registrant's business or the lack of a market (liquidity) for a registrant's equity securities are provided. 2. Item 305 requires quantitative and qualitative disclosure of market risk sensitive instruments (such as derivative contracts, floating rate instruments and hedges). Disclosure may be made through one or more of the following three alternatives: (1) tabular presentation of fair value information and contract terms, (2) sensitivity analysis expressing the potential loss resulting from hypothetical market movements or (3) value at risk disclosures expressing potential loss from market movements over selected periods and likelihoods.
Summary of Requests for Comment	<u>Risk Factors (Item 503(c))</u> The SEC requests comments on: 1. whether risks should be accompanied by risk management disclosure (mitigation) 2. whether an assessment of risk probability should be required 3. whether more specificity as to how a risk could affect a particular issuer should be required 4. whether risk factors are too lengthy and hinder investors' understanding of risk 5. whether issuers should be prohibited from including generic risks 6. whether risks should be ranked in importance 7. whether boilerplate disclosure should be discouraged 8. whether the rules adequately capture emerging risks <u>Quantitative and Qualitative Disclosures About Market Risk (Item 305)</u> The SEC requests comments on: 1. whether Item 305 effectively elicits market risk disclosure 2. whether Item 305 facilitates effective market risk assessment by investors 3. whether Item 305 generates adequate market risk information and whether a more prescriptive approach would function better 4. whether Item 305 should be limited to certain kinds of issuers such as financial institutions, what types of investors find market risk disclosure valuable and the cost of providing market risk 5. whether the market risk disclosure alternatives adequately reflect changes in market risk exposure

	6. whether fair value disclosures required under GAAP since Item 305 was adopted in 1997 make Item 305 redundant 7. whether Item 305 should require more standardized disclosure to promote comparability of market risk information among issuers
Policies Supporting Existing, Expanded or Reduced Disclosure	SEC rules and guidance have long acknowledged the need to provide investors with adequate risk information, particularly where an issuer's stage of development, business model, industry or capital structure make its securities a speculative investment. In addition, liability concerns of issuers have driven increasing amounts of risk factor disclosure, particularly in light of the safe harbor for forward-looking statements under the Private Securities Litigation Reform Act and the court-created "bespeaks caution" doctrine. Market risk disclosure is intended to provide investors with adequate information regarding, among other things, increasingly common complex financial instruments or obligations, the effects of which on an issuer may vary as a result of market forces that are outside an issuer's control.
Practical Experience/ Market Approach to Disclosure Requirement	1. Risk factor disclosure has become increasingly extensive as issuers develop and adopt additional risk factors. Studies indicate that filings average 22 factors and 8 pages. Other studies indicate that risk factors have grown by 85 percent in terms of word count from 2006 to 2013. Given the potential for liability mitigation resulting from risk factor disclosure, there is little incentive for securities professionals to avoid adding risk factors and increasing their detail and density. This adds to the length of disclosure documents and the cost to prepare them, and leads to including many generic risk factors not effective to aiding an investor's understanding of the risk of investing in any particular registrant. 2. Market risk information required by Item 305 is frequently complex, and the item's requirements are often not well understood. While Item 305 provides three disclosure alternatives, these may not necessarily elicit effective disclosure in the context of an issuer's actual market risk. Often issuers include various contingencies in response to Item 305 that are not true market risks. Summarizing and assessing market risks of many instruments can be daunting given a variety of permutations and market movements.
Suggestions for Current Comment	1. Rule changes should encourage useful risk disclosure and analysis that are relevant to an issuer rather than take a generic form. 2. Risk factors should include mitigating factors and risk management initiatives to promote increased contextualization of risks; however, such disclosures should not vitiate safe harbor protections for forward-looking statements. 3. To the extent that GAAP fair value disclosures overlap with market risk disclosure requirements, greater integration should be permitted.

	4. Given the complexity and burden of market risk disclosure, Item 305 should be revised to permit broader disclosure alternatives than the current three-pronged approach.

Securities of the Registrant	
Disclosure Requirements Examined	1. Number of Equity Holders (Item 201(b)) 2. Description of Capital Stock (Item 202) 3. Recent Sales of Unregistered Securities (Item 701(a)-(e)) 4. Use of Proceeds from Registered Securities (Item 701(f)) 5. Purchases of Equity Securities by the Issuer and Affiliated Purchasers (Item 703)
Current Regulatory Requirements	1. Item 201(b)(1) requires disclosure of the number of holders of each class of a registrant's common equity, which may be based on the number of record holders or also may include the bank and broker participants in Depository Trust Company (DTC). 2. Item 202 requires a description of the terms and conditions of securities that are being registered. 3. Item 701(a) – (e) requires disclosure in Form 10-Q and Form 10-K of recent sales of unregistered securities other than those previously reported in Form 8-K. Item 3.02 of Form 8-K requires disclosure if the amount of sales exceeds 1 percent of the outstanding shares. 4. Item 701(f) requires disclosure of the use of proceeds from the registrant's first registered offering in each subsequent periodic report until all the proceeds have been applied or the offering has terminated, as well as information regarding termination of the offering, the name of the managing underwriters, the amount sold, the offering price and the amount of expenses. 5. Item 703 requires tabular disclosure, on a monthly basis, of shares of equity securities purchased by the registrant and affiliated purchasers, including: total number of shares repurchased; average price paid per share; total number of shares purchased as part of publicly announced plans or programs, and maximum number or dollar of shares that may yet be purchased under the plans or programs.
Summary of Requests for Comment	<u>Number of Equity Holders</u> The SEC seeks comments on: 1. whether disclosure about the number of record holders continues to be important to investors, as the vast majority of investors now hold their shares in street name

	2. whether registrants should disclose the amount of each class of equity securities held in street name or the number of beneficial owners, and if so, how to define "beneficial owner" 3. what challenges registrants might face in tracking the number of beneficial owner <u>Description of Capital Stock</u> The SEC seeks comments on: 1. how investors in the secondary market can access information about the terms and conditions of the registrant's securities 2. whether secondary market participants rely solely on the bylaws and articles filed as exhibits to a Form 10-K 3. whether the description of securities should be provided each year in the Form 10-K and whether changes to the terms should be included in quarterly or annual reports, or whether the Form 8-K disclosure of changes is sufficient <u>Recent Sales of Unregistered Securities</u> The SEC seeks comments on: 1. whether the disclosure provides important information that is not already included in the MD&A or the financial statements 2. whether requiring disclosure of issuances that exceed 1 percent promptly in a Form 8-K and all other issuances quarterly are appropriate, and whether 1 percent is the appropriate threshold in any case 3. whether the disclosure should only be in Form 10-Q and Form 10-K, or only in Form 8-K <u>Use of Proceeds</u> The SEC seeks comments on: 1. whether the information should be expanded to cover the use of offering proceeds from offerings other than a registrant's first registered offering 2. whether the disclosure should only be required if the actual use of proceeds differs materially from the description of the offering <u>Purchases of Equity Securities</u> 1. whether more detail should be provided about repurchases – including whether the registrant incurred debt to fund the repurchases and the impact repurchases had on performance measures, such as earnings per share – given the increase in stock repurchases in recent years 2. whether there should be a materiality standard or specify a dollar threshold for the disclosure in periodic reports

	3. whether disclosure should be provided on a more frequent basis than quarterly, and whether Form 8-K disclosure is required for purchases that exceed a certain threshold
Policies Supporting Existing, Expanded or Reduced Disclosure	Having an understanding of the terms and conditions of a security is critical to making an investment decision to purchase or sell that security, especially if the security is a preferred stock or a debt instrument. Disclosure about transactions by registrants in their own securities helps inform investment and voting decisions by providing investors with information that may affect the value of that security. Because registrants can raise significant sums of capital in private placements, existing holders benefit from disclosure of non-registered offerings.
Practical Experience/ Market Approach to Disclosure Requirement	1. Given the large number of investors who beneficially hold their securities in street name through a nominee, information regarding the number of record holders does not provide meaningful information about the number of actual shareholders of the registrant. However, the disclosure provides information on whether the registrant is subject to Section 12(g) of the Exchange Act, which is based on a record holder test. It is difficult for registrants to obtain information about the beneficial owners of its securities. In order to obtain information about the number of beneficial owners and the amount of securities held by such beneficial owners, a registrant must request the information from the banks and brokers who hold the securities for the beneficial owners. This is a time- consuming and costly process. Registrants that are subject to the proxy rules obtain information pursuant to Rule 14a-13 about the number of copies of proxy materials brokers and banks need in order to send them to the beneficial holders, but this information may not provide an accurate count of the number of actual beneficial owners. 2. Currently, a full description of the registrant's securities is only required in registration statements and certain proxy statements. Changes in the terms and conditions of the registrant's securities are required to be disclosed in Form 8-K and Schedule 14A. However, frequently, these disclosures only report on the discrete amendment. There is no comprehensive discussion of the registrant's securities in periodic reports. *3.* Item 701 requires disclosure of *all* unregistered sales of common equity, while Form 8-K does not require disclosure of sales of less than 1 percent of the outstanding shares. Given the overlap with Form 8-K, it is unclear whether information required by Item 701(a)-(f) is necessary in periodic reports, particularly given that it includes information regarding sales of less than 1 percent of the outstanding shares. Further, registrants are required to provide information regarding material sales of securities in the discussion of liquidity and capital resources under MD&A. 4. Information regarding the proceeds for initial public offerings is generally disclosed as a material source of cash in the liquidity section of the MD&A. However, information about the progress of an offering, such as when a registrant has not commenced an offering or the offering is

	terminated before any securities were sold, may not be available to investors outside of the disclosure required by Item 701(b). 5. Item 703 requires registrants to disclose all repurchases of equity securities by issuers and affiliated purchasers on a monthly basis for the period covered by the report. There is no materiality standard. Further, registrants do not generally analyze the impact of stock repurchases in the context of MD&A.
Suggestions for Current Comment	1. Consider whether the disclosure of the number of record holders should be deleted given the vast number of holders who own shares in street name. Also, address the ability to obtain the information regarding the number and amount of beneficial holders, as well as the cost of obtaining such information. 2. Consider whether including the complete description of capital stock in one place in periodic reports would be helpful to investors. Also, consider whether such information is necessary given that it is otherwise available in previously filed reports, the exhibits to the periodic report and Form 8-K and would add to the length of the periodic report. 3. Consider whether disclosure of recent sales of unregistered securities should be required in periodic reports and/or Form 8-K, given than disclosure of material issuances is otherwise required in the MD&A and financial statements. Further, if required, consider whether there should be a materiality standard for disclosure of the amount of sales of unregistered securities, and what that amount should be, such as 1, 5 or 10 percent. 4. Consider whether disclosure of the use of proceeds should be expanded to cover the use of offering proceeds from offerings other than a registrant's first registered offering, particularly given that if material information regarding the use of proceeds is currently required in MD&A. Further, consider whether disclosure only should be required if the actual use of proceeds differs materially from the description of the offering. 5. Consider whether more detailed and frequent disclosure should be required and whether such additional information would provide material information to investors, particularly addressing the additional cost of such disclosure.

Disclosure of Information Relating to Public Policy and Sustainability Matters	
Disclosure Requirements Examined	1. Incorporating Public Policy Concerns into Securities Regulatory Requirements 2. Incorporating Sustainability Concerns into Securities Regulatory Requirements
Current Regulatory Requirements	<u>Congressional Mandates</u>

	In recent years, Congress has mandated new disclosure requirements that address the following specific public policy concerns: 1. Section 1502 of the Dodd-Frank Act mandated that the SEC adopt rules regarding registrants' use of "conflict minerals" originating in specified countries. 2. Section 1504 of the Dodd-Frank Act directed the SEC to adopt rules regarding the disclosure of payments made by resource extraction issuers to foreign governments or the federal government for the purpose of the commercial development of oil, natural gas or minerals. 3. Section 1503 of the Dodd-Frank Act requires certain registrants to disclose information about health and safety violations at mining-related facilities. <u>SEC Initiatives</u> In its 1975 Environmental and Social Disclosure release, Release No. 33–5627 (Oct. 14, 1975) [40 FR 51656 (Nov. 6, 1975)], the SEC concluded that its proceedings did not support a specific requirement for all registrants to disclose information describing "corporate social practices." However, the SEC noted that in specific cases, some information of this type might be necessary in order to make the statements in a filing not misleading or otherwise complete. In 2010, the SEC issued an interpretive release, "Commission Guidance Regarding Disclosure Related to Climate Change," Release Nos. 33-9106; 34-61469, to provide guidance to public companies regarding the SEC's existing disclosure requirements as they apply to climate change matters. For example, the SEC reviewed the following disclosure requirements: 1. Item 101 of Regulation S-K requires disclosure of any material estimated capital expenditures for environmental control facilities for the remainder of a registrant's current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem material. 2. Depending on a registrant's particular circumstances, Item 503(c) of Regulation S-K may require risk factor disclosure regarding existing or pending legislation or regulation that relates to climate change. 3. Item 303 of Regulation S-K requires registrants to assess whether any enacted climate change legislation or regulation is reasonably likely to have a material effect on the registrant's financial condition or results of operation.
Summary of Requests for Comment	The SEC is interested in receiving feedback on the importance of sustainability and public policy matters to informed investment and voting decisions. In particular, the SEC seeks feedback on which, if any, sustainability and public policy disclosures are important to an understanding of a registrant's business and financial condition and whether there are other considerations that make these disclosures important to investment and voting decisions. The SEC also seeks feedback on the

	potential challenges and costs associated with compiling and disclosing this information. The SEC seeks comments on: 1. whether specific sustainability or public policy issues are important to informed voting and investment decisions 2. if the SEC were to adopt specific disclosure requirements involving sustainability or public policy issues, how its rules could elicit meaningful disclosure on such issues 3. how the SEC should create a disclosure framework that would be flexible enough to address such issues as they evolve over time, and alternatively what additional SEC or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues 4. would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors 5. whether the information provided on company websites is sufficient to address investor needs The SEC also seeks comments on the following: 1. If the SEC were to propose line-item disclosure requirements on sustainability or public policy issues: (a) which of the several published third-party sustainability reporting frameworks should the SEC consider; (b) what would be the additional costs of complying with sustainability or public policy line-item disclosure requirements; and (c) whether the disclosures should be scaled for smaller reporting companies or some other category of registrant? 2. In 2010, the SEC published an interpretive release to assist registrants in applying existing disclosure requirements to climate change matters. Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk?
Policies Supporting Existing, Expanded or Reduced Disclosure	1. Disclosure of social and environmental information is material to an investment decision regardless of its economic impact on the financial performance of the company. This kind of information reflects on the quality and character of management, which clearly plays an important role in both investment and corporate suffrage decision-making. 2. Disclosures made in response to the SEC's current rules do not adequately address the risks associated with climate change. 3. Beyond congressional mandates such as under the Dodd-Frank Act, the SEC should require disclosure of matters of social and environmental significance only when the information in question is material to informed investment or corporate suffrage decision-making or required by laws other than the securities laws. The SEC should classify social and environmental information as material only when it reflects significantly on the economic and financial performance of the company.

	4. Beyond congressional mandates, such as under the Dodd-Frank Act, the SEC should require disclosure of matters of social and environmental significance only when the information in question is material to informed investment or corporate suffrage decision-making or required by laws other than the securities laws. The SEC should classify social and environmental information as material only when it reflects significantly on the economic and financial performance of the company. 5. Disclosure to serve the needs of limited segments of the investing public, even if otherwise desirable, may be inappropriate, because the cost to registrants, which must ultimately be borne by their shareholders, would likely outweigh the resulting benefits to most investors.
Practical Experience/ Market Approach to Disclosure Requirement	1. There are limited instances where registrants must respond to questions rooted in policy or sustainability. One example is the new conflict mineral regulatory regime. Another includes disclosure related to mine safety. 2. Congress likely did not realize the extent of the cost involved to comply with the conflict mineral regulations when Congress appended the statutory requirement at the end of Dodd-Frank, but after the SEC took pains to help clarify various potentially ambiguous phrases in the law, what registrants faced was the obligation to dig deep into their supply chains to learn whether they produce products made from certain elements mined in the Congo and adjacent Central African states, which are necessary to the functionality or production of the product. The costs, both hard and soft, to comply are significant given that an audit may be required and registrants with significant supply chains need to spend significant time researching to source of supply of these minerals. Registrants file annually before May 31 a Form SD, a specialized disclosure report, to comply with the prescriptive disclosure requirements.
Suggestions for Current Comment	1. Consider whether sustainability or public policy line-item disclosure requirements are consistent with the SEC's rulemaking authority and mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation. 2. Consider whether existing disclosure requirements are adequate to elicit the information that would permit investors to evaluate material climate change risk and whether the existing requirements are flexible enough to evolve over time. 3. In light of the experience with conflict mineral auditing and disclosure, consider discussing the additional costs, hard and soft, of complying with sustainability or public policy line-item disclosure requirements.

Exhibits

Disclosure Requirements Examined	1. Scope of Exhibits Filed 2. Schedules to Exhibits 3. Amendments to Exhibits 4. Changes to Exhibits 5. Material Contracts 6. Subsidiaries
Current Regulatory Requirements	1. Item 601 prescribes specific agreements, corporate governance, consents, certifications, reports, lists, statements, ratio computations and other documentation that registrants must file with periodic reports and registration statements. 2. SEC policy requires registrants filing a material agreement outside the ordinary course of business to file the entire agreement, including all exhibits, schedules, appendices and documents incorporated into the material agreement by reference. However, if filing certain material plans of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement, Item 601 permits registrants to omit schedules unless they contain information material to an investment decision not otherwise disclosed. 3. Registrants must file amendments to previously filed exhibits unless the amendment inserts closing information such as pricing, underwriter names or commissions, and the like or to correct typographical errors. 4. Registrants must file material agreements outside the ordinary course of business entered into within the two years preceding the filing. However, registrants must file ordinary course agreements if the business substantially depends on that contract. For example, the business might substantially depend on a sole source of supply agreement or a requirements contract for a concentrated customer.
Summary of Requests for Comment	<u>Scope of Exhibits Filed</u> The SEC requests comments on: 1. whether it should add to or subtract from the list of required exhibits 2. what the cost is to compile and file the required exhibits 3. whether the exhibits are useful and, if so, to whom 4. whether presentation of exhibits could be improved 5. whether technology could make them more useful, such as by making them searchable or by tagging information in them in a manner similar to XBRL files <u>Schedules</u> The SEC requests comments on:

	1. whether the exception for filing schedules for certain plans of acquisition, disposition, reorganization and the like should continue and whether the SEC should expand this exception to other exhibits such as material contracts 2. if schedules are not filed, whether registrants should undertake to file them upon request by the SEC 3. whether it should codify its office policy not to require schedules to contain personally identifiable information 4. whether the staff should codify means to help registrants make materiality determinations when filing schedules <u>Amendments and Changes</u> The SEC requests comments on: 1. whether it should permit incorporation by reference of a previously filed exhibit into subsequent periodic reports if the amendment or change is immaterial <u>Material Agreements</u> The SEC seeks comments on: 1. whether the ordinary course of business standard is clear 2. whether the two-year time period is appropriate and whether the standard should look to whether the agreement remains material whether or not it was entered into recently or in the past 3. quantitative materiality thresholds applicable to certain agreements concerning property, plant and equipment upon which the registrant substantially depends <u>Subsidiaries</u> The SEC seeks comments on: 1. whether a registrant should list all of its subsidiaries, provide a graphic chart showing the organization of the registrant on a consolidated basis and also indicate the basis for control over a subsidiary 2. whether the significant subsidiary test remains appropriate to exclude certain subsidiaries from the exhibit list
Policies Supporting Existing, Expanded or Reduced Disclosure	1. A hallmark of federal securities law is full and complete disclosure of information material to an investment decision. Filing an exhibit allows the registrant to concisely report on the material provisions of a transaction or the material nature of a security it offers in the base filing, while allowing investors who wish to explore a subject in more detail the opportunity to do so. Filing exhibits also permits registrants the opportunity to provide disclosure that may make what is disclosed in the base filing not misleading.

	2. Filing schedules to exhibits in some circumstances helps the reader more fully understand the provisions of a transaction, such as schedules to an agreement to sell a business that qualify representations and warranties made in the purchase agreement. However, some schedules to exhibits merely add to the total weight of information disclosed without disclosing any information material to an investment decision, such as when registrants file schedules detailing specifications about intellectual property licensed in a material non-ordinary course license agreement. Good disclosure policy encourages registrants to supplement disclosure in base filings with schedules to exhibits containing information material to an investment decision. 3. Registrants amending previously filed agreements in a non-material manner should not incur the expense to file the non-material amendment or change. 4. Pricing changes to underwriting agreements and material contracts filed as an exhibit to a registration statement should not delay closing if filed as an exhibit to a post-effective amendment. Incorporation by reference into a subsequent periodic report should be permitted as long as the change was disclosed in the body of the appropriate periodic report. 5. Investors, especially investors in secured bonds, want to understand the value that a subsidiary generates for a consolidated registrant. However, multi-nationals may have hundreds of subsidiaries globally, and the cost to report on their performance beyond merely listing them can become significant. Conglomerates also can obtain significant revenue and earnings, and have significant exposure, from a group of subsidiaries within the same industry, even if any subsidiary within that industry standing alone may not rise to the level of significance. Reporting based on the significance of a group of subsidiaries within the same industry can provide material information to investors.
Practical Experience/ Market Approach to Disclosure Requirement	1. Filing exhibits requires issuers and registrants to cull through files for material agreements and other documentation, which can take significant time and expose them to the soft costs involved in compiling the documentation at the expense of running their businesses. But in the electronic age, most of these material documents are readily available, and issuers and registrants can spend more time determining whether to seek confidential treatment for information contained in exhibits than gathering the information. Filing exhibits undoubtedly adds to the length of periodic reports, and registration statements thereby adding to the cost of filing – the cost to Edgarize exhibits can be quite substantial. However, having exhibits on file aids investors to understand risk associated with material transactions often better than reading boilerplate risk factors and can help to streamline the mergers and acquisitions (M&A) due diligence process. 2. Filing schedules to exhibits can create difficult decisions for issuers and registrants if the schedules contain sensitive information that may or may not be material to an investment decision, but the disclosure of which could be harmful to someone associated with the registrant or issuer. An

	example of this is when lead arrangers of credit facilities might prefer that certain fees it charges a public company borrower that inure only to itself and not to other lenders within a syndicate are made public through an exhibit and schedule filing. Filing exhibits and the schedules associated with them have created 10(b)-5 liability for registrants where a representation and warranty in a purchase agreement has proven untrue (e.g., *Titan*), which can cause problems where a seller makes a purchase agreement representation strategically but does not consider the effect such a representation might have if filed with the SEC. 3. Registrants amend material agreements regularly, but the amendments sometimes matter not to investors and only to the parties, such as where lenders drop in and out of syndicated credit facilities, but the total credit available and the terms for borrowing do not change. Filing amendments that do not add to the mix of information a reasonable investor finds material to an investment decision adds no value, but such filings can incur hard dollar costs for lawyers and financial printers and soft dollar costs for those inside the registrant addressing the filing. 4. Sometimes, material agreements contain sensitive information not material to an investment decision, however the disclosure of which would be competitively harmful to the registrant. Registrants can seek confidential treatment, but the process can take time and can cost significant sums. 5. Registrants lack guidance on what qualifies as substantial dependence when considering whether to file ordinary course agreements.
Suggestions for Current Comment	1. The exhibit requirement should focus on what is material to a particular issuer, which might differ from industry to industry. Taking less of a prescriptive approach and more of a principles-based approach might be helpful. 2. Consider the timing for filing exhibits – it is less helpful to investors to have an exhibit filed with the next 10-Q if the transactions contemplated by the exhibit are disclosed in a Form 8-K. 3. Prescribe a numbering convention for material contracts so that registrants do not duplicate an exhibit number already on file. This can aid investors tracking a registrant's material agreements. 4. Test significance across similarly situated subsidiaries within the same industry.