

COMMENTS OF BUSINESS ROUNDTABLE

Re: File No. S7-08-17, Release Nos. 34-81851, IA-4791; IC-32858
FAST Act Modernization and Simplification of Regulation S-K

These comments are submitted on behalf of Business Roundtable, an association of chief executive officers who collectively lead companies with more than \$7 trillion in annual revenues and more than 16 million employees. The combined market capitalization of Business Roundtable member companies is the equivalent of nearly 30 percent of total U.S. stock market capitalization, and Business Roundtable members invest more than \$130 billion annually in research and development – equal to 38 percent of total U.S. private research and development spending. Our member companies annually pay nearly \$270 billion in dividends to shareholders and generate more than \$440 billion in revenues for small and medium-sized businesses.

Business Roundtable appreciates the opportunity to comment on the Securities and Exchange Commission’s (the “Commission” or “SEC”) proposed rule—FAST Act Modernization and Simplification of Regulation S-K (the “Proposed Rule”).¹ Business Roundtable supports the Commission’s efforts to evaluate its disclosure regime and modernize and simplify certain disclosure requirements. Consistent with the statement in the Proposed Rule that, “while material disclosures provide important information to investors about their investments, sorting through information that is unnecessary or not material can obscure material information that investors find useful,” Business Roundtable believes that the Commission should strictly adhere to the materiality standard when evaluating disclosures.

Business Roundtable has reiterated the importance of the materiality standard on many occasions. In its comment letter on the Commission’s Concept Release on “Business and Financial Disclosure Required by Regulation S-K,” Business Roundtable emphasized that materiality is the time-tested cornerstone of securities disclosures because it sets an investor-focused standard for the appropriate information to be shared, is customized to the characteristics and circumstances of each registrant and naturally addresses current issues as they emerge.²

Materiality also helps filter unnecessary information out of disclosures, providing investors a clearer picture of a company’s business and financial profile and performance. By focusing disclosure requirements on materiality, the SEC ensures that investors receive decision-driving company information without having to sift through an “avalanche of trivial information.”³ In contrast, prescriptive requirements without a materiality threshold invite regulations that

¹ Securities Exchange Act Release No. 34-81851 (October 11, 2017), 82 FR 50988 (November 2, 2017).

² Letter dated July 16, 2016, in response to the Commission’s Concept Release entitled “Business and Financial Disclosure Required by Regulation S-K,” Securities Exchange Act Release No. 34-77599 (April 13, 2016), 81 FR 23915 (April 22, 2016). This comment letter is available at: <https://www.sec.gov/comments/s7-06-16/s70616-208.pdf>.

³ TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448 (1976).

impose potentially costly and distracting disclosures unrelated to investment decisions and, in some cases, serve the purposes of only a limited group of investors with a specific agenda that may not serve the best interests of the corporation or its shareholders taken as a whole.

In addition to eliminating investor confusion, focusing on materiality eliminates unnecessary compliance costs for registrants that are ultimately borne by the investing public. Over time, the breadth of periodic disclosures has grown, increasing the cost and complexity of producing regulatory reports. Much of this increase in the volume of disclosures is attributable to line-item requirements that, depending on the issuer, may or may not contain material information. This increased expense reduces the investment returns of shareholders, often providing limited value to that very constituency. In addition, the cost of compliance is a disincentive for companies to enter the public markets and has contributed to some registrants' decisions to go private.⁴ Chairman Clayton has noted that "increased disclosure and other burdens may render alternatives for raising capital, such as the private markets, increasingly attractive to companies . . ."⁵

Business Roundtable commends the Commission's proposed elimination of certain obsolete or duplicative disclosure requirements and implementation of a materiality standard for certain disclosures. For example, we support the Commission's proposed amendments to Item 102 (Description of Property) to clarify that a description of property is required only to the extent that physical properties are material to the company's business. We also support the proposed amendments to Item 303 (Management's Discussion and Analysis or MD&A) to reduce the period-to-period comparison required in MD&A from three to two years when the third year of comparison is no longer material and already included in the company's previous Form 10-K. In addition, we support the proposed amendments to Item 601 (Exhibits) to allow issuers to omit schedules and similar attachments to exhibits unless they contain material information and unless that information is not otherwise disclosed in the exhibit or disclosure document.

Business Roundtable believes that amendments with a focus on materiality (such as those referenced above) enable reporting companies to tailor disclosures to their own specific circumstance in regard to length, content, and detail. This focus thus allows companies to capture important emerging issues as they arise without additional regulatory action by the Commission.

Thank you for considering our comments and recommendations. We would be happy to discuss our views or any other matters that you believe would be helpful. Please contact Maria Ghazal, Senior Vice President & Counsel of the Business Roundtable, at (202) 496-3268 or mghazal@brt.org.

⁴ See Geoff Colvin, *Going Private: Take This Market and Shove It*, FORTUNE (2016), <http://fortune.com/going-private/>. See also Alix Stuart, *The True Costs of Being Public: More Than You Think*, CFO (2011), <http://ww2.cfo.com/credit-capital/2011/11/the-true-costs-of-being-public-more-than-you-think/>.

⁵ "Remarks at the Economic Club of New York," Speech of Chairman Jay Clayton at the Economic Club of New York (Jul. 12, 2017), <https://www.sec.gov/news/speech/remarks-economic-club-new-york>.