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Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1000
Sent via email: rule-comments@sec.gov

SUBJECT: File Number S7-06-16
Regulation S-K Concept Release – Comments

The SEC published a Concept Release seeking public comments on modernizing certain business and financial disclosure requirements in Regulation S-K. Douglas Hileman Consulting LLC (DHC) welcomes the opportunity to provide comments, submitted herein.

I submit comments on several issues SEC raised in the Concept Release. I summarize the question number(s) below, provide initial perspectives, and my comments (underlined at the beginning). I have provided a brief bio at the end of this comment letter.

CORE COMPANY BUSINESS INFORMATION

Question 50: Material effects of compliance with … environment.. may have upon a registrant's capital expenditures, earnings and competitive position.

The National Environmental Policy Act (NEPA) required this disclosure. DHC notes that NEPA pre-dates environmental statutes and regulations that have arguably accounted for the largest capital expenditures to achieve compliance and meet legal obligations. The Clean Air Act (and Amendments) required installation and operations of air pollution control equipment, as well as modifications of processes to achieve emissions reductions requirements. The Resource Conservation and Recovery Act (RCRA) included requirements related to active hazardous waste facilities. The Comprehensive Environmental Responsibility, Compensation, and Liability Act (CERCLA, or "Superfund"), enacted in 1980, imposed strict liability on legacy practices that impacted the environment.

As some environmental problems have been addressed, more challenges have emerged. Climate change is a current focus worldwide; laws, regulations, international treaties, or pressure from customers, investors, or other stakeholders could necessitate capital expenditures or operational changes that could be material to an entity. Companies have had to reformulate products to remove materials that have been shown to be harmful to the environment. The European Union's Restriction of

Hazardous Substances (RoHS) and Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulations imposed these requirements (and costs) on SEC registrants from outside the U.S. Nanoparticles and pharmaceutical components in wastewater are areas of concern that were not anticipated at the time NEPA was passed; either issue (or others) could result in requirements for substantial capital expenditures or operational changes that affect an entity, their customers, and their investors.

DHC believes the SEC should maintain this requirement, and update it to reflect current applicability and extend of capital requirements and operational impacts of compliance with laws, regulations, and other enforceable requirements that affect impact on the environment.

Question 54: Disclosure of number of persons employed by the registrant….

The number of persons employed by a registrant does help investors assess the size, scale and viability of a registrant's operation. DHC believes the requirements should be expanded, as suggested by Q56.

Question 56: Distinguish among full-time and part-time; employees and contractors; domestic and foreign?

The current business model is such that disclosure of full-time employees alone can be misleading. Companies now routinely use contractors and part-time workers. The workforce is seasonal in some industries. For other registrants, there may be a temporary surge in employees (or contractors) to fulfill a contract or prepare for launch of a new product. Many functions that typically involved full-time employees 20 or 30 years ago are now routinely contracted out altogether (janitorial, food service). Some jobs are being phased out in favor of using individuals in the gig economy. Investors interested in non-financial information (Sustainability, as included in the Concept Release Questions 216 through 220) are also interested in registrants' policies and practices with their supply chain, as evidenced by the SEC Conflict Minerals rule, and regulations governing anti-slavery and human trafficking.

DHC believes that SEC should require these distinctions. DHC believes the SEC should modify this requirement to more accurately reflect the current business model, and issues of concern to many investors. This could include reporting on the number of individuals (or aggregated Full-Time Equivalents) engaged in contract, part-time, and seasonal work. Companies may also be invited to report on core support functions that are contracted to another entity, or business activities where the registrant makes significant use of individuals in the gig economy.

Q57: Range of numbers for employees allowed?

DHC believes that companies should be permitted to provide a range of employees, including ranges in various types of employment arrangements. Employment fluctuates, and investors are aware of this. The ranges should apply to the reporting period, and should not be so broad as to be meaningless.

Q58: Additional Information about Employees and Employment Practices?

DHC suggests two aspects of employees and employment practices that could be of interest to investors. The employee turnover rate can indicate level of stability in the workforce. It can also suggest the level of costs the registrant may incur for separation agreements and/or for hiring and training expenses. The scale and impact of turnover may differ at different levels of the organization.

DHC suggests that companies be encouraged to disclose turnover rates, and they should be invited to provide data in a manner that is meaningful to users [e.g., by general level in the organization].
DHC also notes that some industries and job categories have an inordinate number of employees with many years of service. These employees have skills that can only be acquired through years of experience. This has been noted, for example, in the utilities and petroleum refining and transportation sectors. Failure to plan for replacement of this aging, critical workforce can pose risks to the entity, which, in turn, would be of interest to investors.

DHC suggests that SEC encourage reporting on employment practices as they involve managing risk from loss of employees with key experience in a moderate timeframe.

COMPANY PERFORMANCE, FINANCIAL INFORMATION, AND FUTURE PROSPECTS

Q89: Consider a qualitative or quantitative threshold for materiality in MD&A disclosure?

The Global Reporting Initiative[1] (GRI) is arguably the most widely-adopted reporting framework for comprehensive Sustainability [or non-financial] reporting. The GRI released the G4 Guidelines in May 2013; this is the latest iteration in a series of versions of these guidelines. A notable change in the G4 Guidelines is for reporting entities to consider materiality, and to report on their process for how they applied materiality in selecting reporting parameters. Once the reporting entity identifies subject areas via materiality analysis, the entity can report qualitative or quantitative information – or both – for the reporting period. The entity may also state goals.

[1] See www.globalreporting.org

DHC suggests that this approach could be equally well-suited for MD&A disclosures for SEC registrants.

Q91: Auditor involvement regarding reliability of MD&A disclosure?

If investors regard MD&A disclosures as being important, then there should be some confidence in the information. Assurance is one way of providing confidence. Involvement of the (financial) auditors is one way. The Internal Audit function is a mechanism for organizations to assess internal systems and controls. Enterprise Risk Management is a widely-known and increasingly common approach to improve the design and operating effectiveness of programs, controls, and practices to manage risk. Many registrants have other in-house auditing functions (environmental, IT, security, compliance) that help ensure the reliability of data and information. Some information included in MD&A may be subject to independent review or assurance as part of the registrant's business.

DHC believes that involvement of the financial auditor could have the effect of increasing audit scope and costs on a permanent basis, and imposing additional financial burden on registrants. DHC suggests the SEC consider encouraging registrants to disclose the measures they have taken to ensure the completeness, accuracy, and reliability of content in MD&A disclosures. The approach SEC took to the Independent Private Sector Audit (IPSA) could be one model; DHC discusses this in response to Questions 216 to 220 below.

Q100: Regarding forward-looking statements, should the SEC revise two-step test……
Q101: Regarding forward-looking statements, should SEC eliminate the two-step test.
Q102: Should we revise Item 303 to require registrants to quantify material effects….

DHC notes that forward-looking statements enable the registrant to share insights on trends or future scenarios that could significantly affect the entity, and provide comfort to investors on their approach to managing these possible developments. However, a series of forward-looking statements over time provides, in effect, a series of snapshots out the windshield of the car – but there are no snapshots out the rear window to see how the entity has navigated the hazards previously described. There is no counterpart to income statements or balance sheets, which provide a report card on their performance on criteria using a clear, comparable format.

DHC suggests the SEC should require or encourage registrants to describe how they have fared with regard to forward-looking statements listed in the MD&A of the prior filing, and to indicate the extent to which containment of risks posed by these scenarios has been due to the entity's management, other developments, or external factors.

RISK AND RISK MANAGEMENT

Q154: Changing risk profiles.

The SEC may specify a number of risk factors for registrants to disclose (Q152). DHC believes it is also important to acknowledge changing risk profiles, and for investors to gain insight regarding the registrant's management of this dynamic. DHC suggests that the SEC require such a disclosure. The disclosure could take a form such as:

- Among the top risks the registrant is following, the registrant should Identify the three risks that the registrant believes have increased in potential impact the most during the reporting period. Describe management's approach to addressing these risks.
- The registrant may also identify the three risks that management believes have decreased the most in potential impact on the entity during the reporting period. The registrant is encouraged to disclose if they believe the reduction in risk is due to the profile in the registrant's business, management's implementation of more effective controls, or external factors.

DISCLOSURE OF INFORMATION RELATING TO PUBLIC POLICY AND SUSTAINABILITY MATTERS

Q216: Sustainability issues important to investors; disclosure framework; Commission or staff guidance?

The Government Accountability Office (GAO) published the Report "Environmental Disclosure: SEC Should Explore Ways to Improve Tracking and Transparency of Information[2]" in July 2004. This report was requested by three U.S. Senators, at the urging of investors seeking to screen their investments for social, economic, or environmental factors, and expressed frustration that there was insufficient information in SEC filings for meaningful analysis. The GAO report agreed that there was insufficient information in SEC filings to meet the expectations of the socially responsible investment community. The GAO report noted the growing adoption of the Global Reporting Initiative by companies publishing Sustainability reports, and of the Carbon Disclosure Project[3] for disclosure of greenhouse gas (GHG) emissions and other information related to climate change.

Socially responsible investing has grown expansively during the last two decades. The Forum for Sustainable and Responsible Investment tracks such things; they reported $639 billion of such

[2] See http://www.gao.gov/new.items/d04808.pdf

[3] Now simply the CDP; see www.cdp.net

investments in 1995, increasing to $2.29 trillion in 2005[4], and to $6.57 trillion at the beginning of 2014. Over this 20-year period, USSIF reported only one period (2001 – 2003) where there was a decline in assets under management; the decline was very slight. There has been at least a three-fold increase in assets under some type of social screening since the GAO report. I have seen no reports or predictions that this trend will reverse.

Many other countries require reporting of non-financial information, either as a condition for public trading of equities, or included in filings overseen by entities that correspond to the SEC. In France, Article 225 of the Grenelle II Act widened the breadth of companies required to submit reports of non-financial information. Grenelle II includes flexibility on selection of performance indicators. It requires that the reporting must be verified by an independent organization – but this is not restricted to the financial auditor.

With these developments and trends, DHC believes it is increasingly difficult to avoid any requirement for registrants to include reporting of any non-financial information in filings with the SEC. DHC believes the SEC should require registrants to report of some non-financial information. The non-financial information should be appropriate and reliable. DHC offers additional comments on these issues below.

Q217: Line-item requirements and materiality.

DHC believes that the narrative and selection of reporting parameters varies sufficiently by industry sector, registrant, business conditions and time, that it may prove difficult to impose line-item requirements. DHC believes the GRI's approach to materiality (discussed elsewhere in this submittal) could be a good approach.

Q218: Sustainability reporting via other channels; integrated reporting.

Sustainability Reporting via Other Channels

Registrants and other entities report publicly on Sustainability via several channels. Companies typically use their own websites, as well as those maintained by prominent entities that have developed or promote reporting.

[4] See http://www.ussif.org/files/Publications/05_Trends_Report.pdf and http://www.ussif.org/Files/Publications/SIF_Trends_14.F.ES.pdf

Despite being common, the content and trustworthiness of Sustainability reporting via these channels varies considerably. There are few (if any) consequences to reporting information that is incomplete or unsupported. DHC's experience is that there are few entities that have systems and controls for identifying or correcting (even internally) errors that have been discovered for data reported in prior reporting periods. There are few instances where companies have publicly reported such corrections. There are no standard requirements for assurance. Companies often downplay or omit negative information – even information that has been publicly reported.

There are few avenues for regulatory enforcement. The Federal Trade Commission's (FTC) Green Guides create standards for products and claims related to the environment. FTC has enforcement authority, but has infrequently exercised it.

Sustainability reporting via other channels has resulted in information that is often incomplete, and self-serving. A growing contingent of Non-Governmental Organizations (NGOs) - including social investors - are coming to regard self-published Sustainability reports as little more than marketing exercises or greenwashing.

The growth in assets under management by social investors points to the need for some type of Sustainability reporting through the SEC. Registrants will – and should – continue to report Sustainability information via other channels, but this is not sufficient to meet the needs of social investors.

Integrated Reporting

With regard to "integrated reporting," DHC notes that the International Integrated Reporting Commission's[5] has defined and proposes a certain view of "integrated reporting. The IIRC has published a reporting framework; however, it is still conceptual. Some companies have published "integrated reports," but DHC contends that they resemble traditional financial reports accompanied by Sustainability reports. The IIRC's Reporting Framework emphasizes description of how a reporting entity draws from six [defined] types of capital, uses them, and how this results in changes to financial capital. Many of these principles resemble those of enterprise risk management; SEC already has mechanisms to address enterprise risk, such as Management Discussion and Analysis. Furthermore, there is no agreed-upon provision for assurance of the non-financial aspects of Integrated Reports.

"Integrated reporting," as may be considered from more vernacular perspective, would involve reporting of financial, operational, and other non-financial information, and how the registrant's

[555] See www.integratedreporting.org

management of these issues has affected (or could affect) the investor. DHC has noted that some stakeholder requests for integrated reporting could involve disclosure of confidential or trade secret information, or disclosure of business strategies that, if disclosed, could undermine the entity's ability to achieve their goals and objectives.

DHC believes this concept is not sufficiently understood or developed to enable meaningful reporting, or useful comparison of such reporting by investors, and the SEC should not pursue integrated reporting at this time.

Q219: Reporting frameworks

Global Reporting Initiative (www.globalreporting.org) is arguably the most complete reporting framework for non-financial reporting (NFR). The GRI Guidelines have had the benefit of several iterations. GRI has invited stakeholder and public comment on guidelines; this consensus approach has helped identify a broad array of parameters of importance to an equally broad array of stakeholders. The G4 Guidelines were published in May 2013. One notable change from the prior version is the applicability of materiality, and inclusion of materiality analysis in the Sustainability Report. GRI indicates that companies that publish Sustainability reports must adopt the G4 Guidelines for reporting periods ending at or after December 31, 2015 if they are to state they are "in conformance" with GRI guidelines at the specified level of disclosure.

The CDP (www.cdp.org, and formerly the Carbon Disclosure Project) is another widely-adopted reporting mechanism for non-financial reporting. The parameters included in CDP reported are focused on more limited areas than the GRI framework. Companies can include all content provided to CDP in a GRI report if they choose to do so.

The Sustainability Accounting Standard Board (www.sasb.org) has used a methodology to identify issues material to each industry sector and category. This has the benefit of applying materiality, and suggesting reporting parameters for each sector. SASB's framework is still new, and has not yet been widely adopted. Furthermore, adopting the reporting topics and parameters proposed by any group poses the risk that some topics of great importance to some investors will be omitted.

DHC believes there are merits to each of these frameworks and approaches. GRI's G4 framework is the most comprehensive; SASB's approach is one way to implement materiality decisions on selection of reporting parameters. DHC also believes that the SEC's Conflict Minerals rule provides a useful precedent for reporting of non-financial information. DHC presents an analysis and suggestions below.

SEC's Conflict Minerals Rule as a Precedent for Reporting of Non-Financial Information

<u>Summary of Key Provisions of the SEC Conflict Minerals Rule</u>

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") addressed the sourcing of tin, tantalum, tungsten and gold (3TG) from the Democratic Republic of Congo (DRC) and surrounding countries ("Covered Countries"), with the premise that registrants should take steps to avoid furthering human rights abuses and unrest in the region via their sourcing of 3TG for products they manufacture or contract to manufacture. Dodd-Frank directed the SEC to promulgate a rule, which it did in August 2012. The SEC Conflict Minerals Rule requires reporting by regulated registrants, applying the requirements by calendar year, and with reports due on May 31 of the following year. The SEC Rule includes provisions for two types of submittals; a Form SD and (if applicable) a Conflict Minerals Report (CMR). Of the registrants submitting such filings, the majority submit a CMR. Neither the Form SD nor the CMR is part of financial filings.

CMR provides background on the company and the context of the applicable rule, and includes the filer's description key aspects of processes and systems. The Conflict Minerals Rule does not oblige filers to make specific statements, or to provide a prescribed level of detail for any topic. Filers are free to describe as many (or as few) details about their programs as they see fit. The objectives of external assurance (discussed below) accommodate this.

The SEC Rule defers to nationally- or internationally-recognized frameworks as a benchmark for processes and systems to address the underlying issue. The SEC Rule references the OECD Due Diligence Guidelines for Responsible Sourcing of Minerals in Conflicted-Affected and High Risk Areas[6] ("OECD DD Guidelines"), since it was the only such framework published and with credible market acceptance at that time. The SEC allowed room for other frameworks, in case they were not familiar with some, or other more suitable frameworks should arise.

The Conflict Minerals Rule includes provisions for assurance. If a filer makes a specific conclusion, this triggers the requirement to conduct an Independent Private Sector Audit (IPSA). The IPSA is not part of the financial audit. The IPSA may be done by a CPA or a non-CPA auditor. The Conflict Minerals Rule requires audits to be done to GAGAS ("Yellow Book") standards. CPAs use the attestation standards, and non-CPAs use performance standards. It may be done by the financial auditor; it is considered a non-audit service, and the fees must be disclosed.

[6] OECD Guidelines at http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf

The Conflict Minerals Rule provides two objectives for the IPSA. The criteria for one objective is for the auditor to gain comfort that the design of the due diligence framework is consistent, in all material respects, with recognized framework [for all practical purposes, this is the OECD Guidelines]. The second objective is for the IPSA Auditor to gain comfort that the filer's description of steps taken for due diligence were actually taken.

Selected Observations on SEC's Approach

I submitted comments to the SEC on the proposed rule, and have been involved in conflict minerals (advisory and assurance) from the outset. In the preamble, the SEC provided rationale for several aspects of the Conflict Minerals Rule. DHC has observed how other provisions have affected conflict minerals programs of filers (and their supply chains), and the implementation and benefits of external assurance. DHC provides selected observations on SEC's approach to the Conflict Minerals Rule that could apply to Sustainability reporting in this Concept Release.

A statutory requirement in Section 1502 of Dodd-Frank required the SEC to promulgate this rule. It is arguably the first SEC Rule to originate from a concern that is exclusively non-financial in nature. There have been requirements to estimate costs and establish reserves for environmental liabilities for at least 20 years. However, this is a result of a requirement that applies to all contingent liabilities; it just happens to apply to environmental liabilities. Similarly, SEC's interpretation describing criteria for disclosing risks due to climate change (February 2010[7]) simply reiterated the criteria for evaluating materiality for any issue and making appropriate disclosures; it did not make new law or regulation.) SEC was diligent in fulfilling their statutory obligation. There were two rounds of public comments, and many types of stakeholders submitted many comments. The preamble to the SEC's Rule is a thoughtful, comprehensive explanation of the comments received, and SEC's rationale for decisions that affected key topics in the final conflict minerals rule.

Section 1502 requires filers to undertake a process, and to submit filings. Section 1502 does not impose a prescription. It is not a ban on sourcing from the Region. Theoretically, a filer could report that they affirmatively or intentionally source from entities that enable unrest in the Region; the effect of transparency in reporting should be that investors and other stakeholders (customers) would exert pressure to improve the filer's practices on social responsibility in their supply chain.

The Rule recognizes that supply chain management is a matter of processes and due diligence. It is impractical to expect filers to make an iron-clad conclusion about the sourcing of 3TG in any particular product at any particular time.

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[7] See https://www.sec.gov/rules/interp/2010/33-9106.pdf

The SEC Rule did not require filers to achieve any particular status. The Rule provided three defined terms as conclusions for the first two year, reducing this to two defined terms after a transition period. Ongoing litigation has deferred the requirement to make any specific conclusion – but even the original provisions of the Rule did not require filers to achieve any particular performance goal (e.g., "DRC Conflict Free") – *only to report on their due diligence practices* related to the sourcing of 3TG.

With regard to assurance, use of the Yellow Book has several advantages. The Yellow Book is a tried-and-true reference. It is available at no cost. It is widely used for all types of audits for all types of government entities. This necessitates that the standards include flexibility. Indeed, the performance standards are ideal for audits of processes, systems, and controls. The broad availability and widespread use of the Yellow Book creates a substantial pool of available auditors to perform the assurance engagement. There are several organizations that grant and maintain credentials for non-CPA auditors. The Institute of Internal Auditors (www.theiia.org) is perhaps the largest, with 180,000 members worldwide. The IIA grants a credential in Certified Risk Management Assurance; this credential focuses on many of the same principles that apply to Sustainability programs and reporting.

The IPSA objectives address materiality, as it pertains to the design of the filer's due diligence program. SEC published the CM Rule without knowing what investors would want to know on the issue of conflict minerals. A cottage industry has arisen, whereby Non-Governmental Organizations (NGOs), consultants, and other analysts have evaluated SEC filings. They have rated and ranked filings. The look, flow, and content of CMRs have evolved over the first three reporting periods, in part due to these analyses. Investors are free to use these analyses as they see fit. DHC is not aware of public announcements of investments made (or withheld) due to content of SEC filings for conflict minerals; still, there is sufficient basis for analysis and comparison to do so.

The prospect of enforcement is always a concern in the regulated community. DHC is not aware of any SEC enforcement on the Conflict Minerals Rule. DHC's observation has been that the possibility of enforcement has elevated the level of scrutiny for external reports, as compared to typical scrutiny for contents of Sustainability reports that are posted only on company websites.

<u>Applicability to Sustainability Reporting in Financial Filings</u>

DHC believes there are many principles and practices in the SEC Conflict Minerals Rule that can be adopted or adapted for Sustainability reporting in MD&A or elsewhere in SEC filings. These include those listed below.

Reference existing reporting frameworks: Reference existing Sustainability reporting framework(s), and allow for the possibility for others to evolve. GRI is the most widely-known and adopted taxonomy for Sustainability reporting. Do not impose new frameworks, or reporting on new parameters.

Include materiality. IPSA Objective #1 addresses conformance with recognized framework "in all material respects." GRI's G4 framework includes the requirement to perform a materiality assessment, and to describe the process and the conclusions. The SASB's campaign has included an emphasis on determining materiality of Sustainability issues as applied to sectors and industries. Require companies to disclose how they approached materiality for Sustainability reporting parameters.

Allow flexibility (but require transparency) for registrants. Allow registrants to select the Sustainability parameters they believe are most material or relevant to them and their (current or targeted) investors. Require the registrants to describe – even if briefly – how they determined these issues.

Limit the scope. Recognize that registrants will likely need to continue reporting on Sustainability parameter(s) to an array of other stakeholders. Do not require or incorporate all Sustainability reporting into MD&A or elsewhere in SEC filings.

Stay separated from financial reporting – but include where it's required. Do not embed Sustainability reporting into financial reporting. Remind investors and registrants alike that several other SEC reporting requirements can apply to Sustainability or non-financial issues[8].

Include a provision for assurance. Assurance should be encouraged, but not required. Registrants should have flexibility for procuring assurance for Sustainability parameters in whole or in part. As with the IPSA, financial auditors should be permitted to perform assurance as a non-audit service. Encourage adoption of existing, widely-used audit standards, such as the Yellow Book or the IIA's International Professional Practices Framework. Require the auditors to indicate what standards they use, and what credentials (if any) they hold at the time of the audit. Audit objectives should be simple; one can address the overall design of processes, systems, and internal controls related to the topics the registrant has deemed to be material. A second audit objective could require the auditor to gain comfort on reasonable basis for statements made about the Sustainability matters.

[8] SEC's Interpretation on disclosure requirements as they apply to climate change (effective February 8, 2010) is an excellent example of this. Available at https://www.sec.gov/rules/interp/2010/33-9106.pdf

CLOSING

I am president of DHC, and work with a network of contractors in areas of compliance, operations, and non-financial reporting. I have 40 years of experience in operations, corporate compliance, in-house environmental/ health/ safety (EHS) auditing, Internal Audit, support to financial audits, and advisory and assurance engagements with SEC's conflict minerals rule. My experience includes six years at PricewaterhouseCoopers LLP, where I was an environmental specialist supporting financial audits, and helped companies develop formal internal systems and controls to meet requirements of Sarbanes-Oxley (Sections 404 and 302). I submitted comments to the SEC on the draft conflict minerals rule. My firm is one of only four that has conducted Independent Private Sector Audits (IPSAs) for the conflict minerals rule for each of the three reporting periods. Of the four, my firm is one of only two based in the U.S., and one of two that has conducted audits (as a non-CPA auditor) to the performance standards in the U.S. Generally Accepted Government Auditing Standards (GAGAS, or "Yellow Book"). I have been active in professional associations for auditing, and am on the Board of the Institute of Internal Auditors, Los Angeles Chapter.

DHC commends the SEC for publishing the Concept Release, and for soliciting comments on a broad array of issues that are of interest to investors.

Sincerely,

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