



**American
Fuel & Petrochemical
Manufacturers**

January 2, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
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Washington, DC 20549-1090

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**RE: AFPM Comments on the U.S. Securities and Exchange Commission’s Proposed Rule,
“FAST Act Modernization and Simplification of Regulation S-K” (File Number S7-08-17)**

Filed electronically via www.sec.gov/rules/proposed.shtml

Dear Mr. Fields:

The American Fuel & Petrochemical Manufacturers (“AFPM”) appreciates the opportunity to provide comments on the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) proposed rule, “FAST Act Modernization and Simplification of Regulation S-K”¹ (“Proposed Rule” or “Proposal”). AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. AFPM’s member companies produce the gasoline, diesel, and jet fuel that drive the modern economy, as well as the chemical building blocks that are used to make millions of products that make modern life possible.

Many AFPM member companies are publicly traded and therefore prepare regular filings as specified in Regulation S-K² concerning relevant and material aspects of the company’s financial performance and prospects. As such, AFPM supports transparent and timely disclosure of information that is necessary for shareholders to make sound investment and voting decisions in light of the financial performance and prospects of companies.

I. BACKGROUND

On November 2, 2017, the SEC published the Proposed Rule, the purpose of which is to modernize and simplify disclosure requirements in Regulation S-K in a manner that reduces the costs and burdens on registrants while ensuring investors receive all material information necessary to make sound investment and voting decisions. The proposed amendments are based on recommendations from the SEC’s “Report on Modernization and Simplification of Regulation

¹ See Release No. 33-10425, 82 FR 50988, November 2, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-22374.pdf>.

² Regulation S-K was established to promote uniform and consolidated disclosure for registration statements under the Securities Act of 1933 and the Securities Exchange Act of 1934. In 1982, the SEC expanded Regulation S-K to serve as the central repository for its non-financial statement disclosure requirements.



S-K”³ (the “Report”), public comments received on the Commission’s 2016 concept release,⁴ and other internal reviews and stakeholder outreach performed by SEC staff.

II. AFPM’S COMMENTS ON THE PROPOSED RULE

Congress enacted the Securities Act of 1933 (“’33 Act”)⁵ and the Securities Exchange Act of 1934 (“’34 Act”)⁶ to respond to the tremendous loss of corporate and investor financial value following the 1929 stock market crash. The intent of the Acts was to restore the public’s confidence in capital markets, enable investors to pursue and protect their financial interests, and maintain fair and honest markets. Over the past eight decades, the SEC, through the ’33 and ’34 Acts, has facilitated capital formation and a fair and efficient market.

Materiality (*i.e.*, information a reasonable investor would consider important in deciding how to vote or make an investment decision⁷) is the cornerstone of the disclosure system established in Regulation S-K under the ’33 and ’34 Acts. In comments AFPM submitted responding to the Commission’s 2016 concept release,⁸ we advocated for the SEC to uphold the guiding principles of materiality in considering changes to its disclosure regime. We therefore applaud the SEC’s decision not to propose more prescriptive risk disclosure requirements in the Proposed Rule and to keep those decisions tethered to the traditional definition of materiality.

Against this backdrop, AFPM broadly supports the SEC’s efforts to streamline and improve its disclosure framework. Such efforts, if implemented in accordance with the objectives of the ’33 and ’34 Acts, will help ease the burden on both registrants and shareholders by reducing the potential for “disclosure overload,” thereby enabling the Commission to meet its purpose of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation.

While providing material information to investors is a core principle of U.S. securities law, requirements to report extraneous information have the potential to obfuscate material information, confuse investors, and decrease market efficiency. As the SEC works to finalize any proposed changes to the disclosure framework, AFPM urges the Commission to continue adhering to its original and abiding purpose, the objectives of the ’33 and ’34 Acts, the traditional definition of materiality, and the integrity of the disclosure regime to ensure the continued reliability and efficiency of the securities markets.

³ See “Report on Modernization and Simplification of Regulation S-K,” November 23, 2016, <https://www.sec.gov/files/sec-fast-act-report-2016.pdf>. The Report was developed by SEC staff for Congress as mandated by Section 72003 of the Fixing America’s Surface Transportation Act of 2015 (“FAST Act”).

⁴ See Release No. 33–10064, 81 FR 23915, April 13, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-04-22/pdf/2016-09056.pdf>. The concept release was issued as part of an ongoing initiative by the SEC’s Division of Corporate Finance to improve disclosure requirements for the benefit of both investors and registrants, as mandated by Section 108 of the Jumpstart Our Business Startups Act, as well as Sections 72002 and 72003 of the FAST Act.

⁵ See <https://www.sec.gov/about/laws/sa33.pdf>.

⁶ See <https://www.sec.gov/about/laws/sea34.pdf>.

⁷ *TSC Industries v. Northway, Inc.*, 426 U.S. 438 (1976), 445.

⁸ See https://www.afpm.org/uploadedFiles/Content/documents/AFPM_Comments_on_SEC_Concept_Release.pdf.



Below are AFPM's specific comments on several amendments outlined in the Proposal.

A. Description of Property (Item 102)

The Proposed Rule notes that current disclosure requirements surrounding the description of property occasionally go beyond the scope of what is considered material (*e.g.*, information regarding corporate headquarters). As such, Commission staff in the Report recommended that the SEC revise Item 102 to require a description of property only to the extent it is material to the registrant's business. AFPM supports this approach, as it would help reduce disclosure of immaterial information and therefore alleviate the possibility of disclosure overload for both registrants and shareholders.

The Proposal also seeks input on whether Item 102 should require further disclosure concerning material properties, "including uncertainties such as information about properties that are located near designated areas where natural disasters are more likely to occur"⁹ and asks whether such a requirement would duplicate disclosure in the Management's Discussion and Analysis ("MD&A").

The MD&A already requires discussion of known trends, events, or uncertainties that may have a material effect on a company's financial condition. Requiring disclosure of such uncertainties in Item 102 and in the MD&A sections of a registrant's financial report would unduly flood shareholders with duplicative information. If the Commission's goal is to streamline and improve disclosure requirements, amending Item 102 in this manner would have the opposite effect. AFPM therefore urges the SEC to strike this proposed amendment to Item 102 and to continue requiring disclosure of such material uncertainties in the MD&A.

B. Year-to-Year Comparisons (Instruction 1 to Item 303(a))

Registrants are currently required to provide year-to-year comparisons of their financial conditions and operations from the three most recent fiscal years in the MD&A. The Proposed Rule requests comment on whether to eliminate discussion of the earliest of those three years if: 1) that discussion is not material to an understanding of the registrant's financial condition and business operations; and 2) the registrant has previously filed its Form 10-K through the SEC's electronic filing system, EDGAR.

AFPM supports this amendment. The Commission's electronic filing system already allows shareholders to access registrants' prior filings. As such, providing registrants flexibility in eliminating the third year of comparison if it is no longer material would reduce the costs and burdens on registrants while still providing all material information to investors. This would also enable both registrants and shareholders to focus solely on the company's most recent, relevant trends and uncertainties.

⁹ See 82 FR at 50992.



C. Risk Factors (Item 503(c))

The instructions to Item 503(c) enumerate risk factor examples a registrant may disclose. The inclusion of these examples creates confusion by suggesting that a registrant must address each factor in its disclosure, regardless of whether it is material to the registrant's financial condition. This is particularly troublesome because the risk factor examples may not apply to all registrants and could therefore result in a distortion of a company's true risk factors. AFPM applauds the SEC for outlining these concerns in the Proposed Rule, and encourages the Commission to eliminate the risk factor examples in full.

D. Information Omitted From Exhibits (Item 601)

The SEC is also proposing to permit the omission of personally identifiable information from exhibits. Financial forms are filed electronically, which presents a security risk due to the possibility of hackers and other cyber threats. AFPM therefore strongly supports this amendment and the increased level of security it would entail.

E. General Technical Amendments

AFPM generally supports other technical amendments outlined in the Proposed Rule to the extent they would modernize and simplify the disclosure process and ease the costs and burdens on both registrants and shareholders. Such proposals include: 1) permitting registrants to link to information incorporated by reference if that information is available on EDGAR; 2) allowing registrants to exclude schedules and attachments from filed exhibits if they do not contain material information and the information is not disclosed elsewhere in the exhibit; and 3) updating various other outdated forms and filing formats.

III. CONCLUSION

AFPM applauds the SEC's goal of streamlining and improving its disclosure framework in order to reduce the costs and burdens on registrants and shareholders and to maintain fair, orderly, and efficient markets. Additionally, AFPM encourages the Commission to continue adhering to the original and abiding principles of the '33 and '34 Acts to ensure the reliability and efficiency of the securities markets.

AFPM thanks the SEC for the opportunity to comment on its Proposed Rule. Please contact the undersigned at DMorgan@afpm.org or (202) 457-0480 if you wish to discuss these issues further.

Sincerely,

Derrick Morgan
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