



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

June 6, 2011

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
531 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Rockefeller:

Thank you for your May 11, 2011 letter expressing concern about the level of disclosure of information about security risk, including material information security breaches involving intellectual property or trade secrets. We appreciate hearing your thoughts and recognize that this is an important issue that has become an area of increasing concern for public companies and our financial markets.

As you discuss in your letter, existing disclosure requirements under the federal securities laws impose an obligation on public companies to disclose risks and events that a reasonable investor would consider important to an investment decision. For example, Item 503(c) of Regulation S-K may require risk factor disclosure regarding a prior cyber attack, a potential cyber attack, or the effects of a cyber attack. Additionally, Item 503(c) specifies that risk factor disclosure should clearly state the risk and specify how the particular risk affects the particular company and that the company should not present risks that could apply to any issuer or any offering. Thus, a company should consider whether cyber attacks and vulnerabilities present specific and material risks and should avoid generic risk factor disclosure that could apply to any company. Whether a company is required to provide risk factor disclosure regarding potential cyber attacks, including the potential financial or reputational impacts of the attacks, will depend on the facts and circumstances of the company, and the determination of various factors, including the probability of the risk occurring and the magnitude of the risk.

In addition to the disclosure requirements under Item 503(c) of Regulation S-K, a cyber attack may have effects on the company that may require additional disclosures. Item 101 of Regulation S-K requires a company to describe its business and that of its subsidiaries. Under this item, for example, if a company's trade secrets are compromised in a cyber attack, the company may be required to disclose that its trade secrets were compromised. Item 103 requires a company to briefly describe any material pending legal proceeding to which it or any of its subsidiaries is a party. Under this item, for example, if a company's database of customer personal information is compromised in a cyber attack and litigation is initiated, disclosure of the litigation may be required. Lastly, Item 303 of Regulation S-K (MD&A) requires disclosure of events that materially affect the operations of a company and known trends or uncertainties the

company reasonably expects to have a material impact on its operations. Under this item, for example, if a company's trade secrets are compromised in a cyber attack, the company may be required to disclose the effect of the compromised trade secrets on its operations.

In administering these requirements, the Commission relies on a general materiality analysis in seeking additional disclosure in appropriate cases. Generally speaking, information is considered material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision, or, put another way, if the information would alter the total mix of available information. A company must disclose the information specifically required by the Commission's registration statements and periodic reports, and any further material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. When, in the course of a review, the staff notes instances where it believes a company can enhance its disclosure or improve its compliance with the applicable disclosure requirements, it provides the company with comments.

Although we are not aware that investors have asked for more disclosure in this area, I have asked the Commission staff to provide me with a briefing on current disclosure practices. I also have asked the staff to advise me on whether additional guidance is needed to make sure investors have access to the information they need when making their investment decisions. As we further analyze this issue, we will seriously consider your request for interpretive guidance.

Thank you again for taking the time to share your concerns. Please do not hesitate to contact me, or have a member of your staff contact Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if we can be of further assistance.

Sincerely,



Mary L. Schapiro
Chairman