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SEC Division of Corporation Finance Issues Sample Comments for Issuers Conducting Offerings During Periods of Volatility

In response to recent volatility in the stock price of certain companies, the Staff of the Division of Corporation Finance has issued a Sample Letter to Companies Regarding Securities Offerings During Times of Extreme Price Volatility (available here), which identifies a number of sample comments that the Division of Corporation Finance may provide to issuers conducting securities offerings amid market and price volatility.[1]

The sample comments focus on the disclosures made on the prospectus cover page and in the risk factors and use of proceeds sections regarding the impact of price volatility on an offering, investors and the issuer.

Prospectus Cover Page: issuers should describe recent price volatility of their stock price, disclose any known risks of investing in their stock as a result of the volatility, disclose their stock market price prior to the volatility, and describe any recent changes in financial condition or results of operations that are consistent with recent changes in their stock price (and if there are no such recent changes, issuers should disclose that fact).

Risk Factors: issuers should consider the following additional risk factors:

- a risk factor addressing the recent volatility in their stock price, which should include: recent stock price range information presented on an intra-day basis as well as covering a period of time sufficient to demonstrate recent volatility, the impact on investors, the potential for rapid and substantial decreases in their stock price (including those unrelated to operating performance or prospects) and, to the extent recent increases in the stock price are significantly inconsistent with improvements in actual or expected operating performance, financial condition or other indicators of value, a discussion of the inconsistencies and quantification of them where relevant;

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1 The Staff identified the following circumstances as giving rise to the risks its comments were intended to address:

- recent stock run-ups or recent divergences in valuation ratios relative to those seen during traditional markets;
- high short interest or reported short squeezes;
- reports of strong and atypical retail investor interest (whether on social media or otherwise); and
- an issuer that is in distress, faces “going concern” or liquidity challenges or has a smaller public float.

- a risk factor addressing the effects of a potential "short squeeze" on their stock price (which should include a discussion of what typically happens following a short squeeze and the impact on investors who purchase shares during the short squeeze);
- a risk factor addressing the impact of the offering on the stock price and investors if the issuer is issuing a large number of shares relative to the number of shares currently outstanding; and
- if the issuer plans to conduct future offerings, a risk factor addressing the dilutive impact of future additional offerings on investors that purchase shares in the current offering at a significantly higher price.

***Use of Proceeds**:* issuers should include clear disclosure about the maximum offering amount, the stock price that it is predicated on, that they may not raise the maximum offering amount unless they meet or exceed that price, and a discussion of their priorities for the proceeds received in the offering (if less than the maximum offering amount is raised).

The Staff encourages issuers experiencing extreme price volatility to contact the SEC with any questions they may have regarding their proposed disclosures, and urges issuers to be particularly mindful of their comments when preparing filings that are not subject to initial SEC review, such as automatically effective registration statements and prospectus supplements to shelf registration statements.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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