



# REGULATION FD CORPORATE COMMUNICATIONS POLICY

BOARD APPROVED POLICY			
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Approved by Board:	August 1, 2019	Prior Approval Date:	May 30, 2018



## REGULATION FD CORPORATE COMMUNICATIONS POLICY

*(Adopted May 30, 2018, Last Revised: August 1, 2019)*

### I. Statement of Policy

This Regulation FD Corporate Communications Policy (this “**Policy**”) is an internal Policy of First Choice Bancorp (“**Bancorp**”) and its subsidiaries, including First Choice Bank (the “**Bank**”) and, collectively the Bancorp and its other subsidiaries, the “**Company**”). It is the Company’s policy to provide consistent, full and fair public disclosure of material information pertaining to its business, regardless of the nature of such information, in accordance with the requirements of the Securities and Exchange Commission (the “**SEC**”), the Financial Industry Regulatory Authority and applicable law, most notably Regulation FD promulgated by the SEC under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), as summarized in **Exhibit A** hereto. The Company has adopted this corporate communications policy (this “**Policy**”) in an effort to minimize the potential for the selective disclosure of material nonpublic information and to comply with Regulation FD. This Policy applies to all communications by the Company and its officers, directors and employees with the media, market professionals and institutional investors. Failure by employees to comply with this Policy will result in discipline and may result in termination. This policy is in addition to the Company’s Policy Memorandum Concerning Securities Trading.

### II. Principles

Company believes that proper disclosure controls and procedures involve the following key components:

- **Environment.** The establishment of a proper corporate environment is essential. Proper disclosure depends on (1) the integrity, ethical values and competence of the Company’s employees, (2) management’s philosophy and operating style, (3) the way management assigns authority and responsibility and organizes and develops its employees, and (4) the attention and direction provided by the Board of Directors.
- **Risk Management.** The identification, analysis and control of risks relevant to accurate and timely disclosure.
- **Information and Communication.** The timely transmission of information and communications within the organization.
- **Monitoring.** The assessment of the quality of the Company’s disclosure system over time through periodic monitoring and separate evaluations, including through regular management supervision, with reports of deficiencies upstream and downstream.

### III. Details of Policy

#### A. Press Releases

All press releases must be reviewed and approved by the Company’s CEO or CFO, or by another member of the Company’s Financial Disclosure Committee (whose members shall be selected from the Company’s management by the Board from time to time) and legal counsel, if necessary. Upon approval,

the Company will notify NASDAQ of its intention to distribute the press release. The press release will be distributed to a news wire service, which will then make it available to the general public. After a press release has been made available to the general public, it will be posted on the Company's website promptly, and, if the press release contains matters that are "material" about the Company, a Form 8-K will be filed with respect to the matters disclosed in the press release. Please see paragraph H below for a more complete description of the Company's policy regarding the dissemination of material non-public information. The Company's CEO and CFO will designate the appropriate person to implement the transmission of the press release through the appropriate communication channels.

## **B. Spokespeople**

It is the Company's intent to limit the number of spokespeople authorized to speak on the Company's behalf. Accordingly, the Company has authorized only the Chairman of the Board (Chairman), the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) to communicate with members of the media, institutional investors, analysts or other market professionals regarding the Company's financial performance or corporate activities (the "Spokespeople"). Additional representatives may be authorized in writing by the Chairman, CEO or the CFO to respond to specific inquiries as necessary or appropriate. While others may be authorized in writing from time to time to speak on behalf of the Company, it is essential that the Compliance Officer has knowledge of the information being disseminated by those individuals to facilitate the Company's compliance with other applicable legal and regulatory requirements in its external communications. No employee, agent or representative of the Company is authorized to communicate any information about the Company that is material and nonpublic, except (i) through public disclosure approved in advance by a Spokesperson; or (ii) for business purposes pursuant to a non-disclosure or other confidentiality agreement.

The Spokespeople shall be integrally involved in scheduling and developing presentations for all meetings and other communications with financial analysts, institutional investors and stockholders. In addition, the Spokespeople shall also be involved in arranging appropriate meetings or interviews with the Company's management. After public dissemination of any material non-public information, all coverage of the Company's disclosure shall be monitored by the Spokespeople to ensure accurate reporting and to take corrective measures if and when necessary.

Employees who are not Spokespeople shall refer all calls and e-mail messages from outside parties, including without limitation analysts, other market professionals, institutional investors, stockholders and business and industry media, to the Spokespeople.

## **C. Responding to Market Rumors**

As long as representatives of the Company are not the source of market rumors, the Company's general policy is to respond consistently to questions about rumors in the following manner: "It is our policy not to comment about market rumors or speculation."

In addition, it is the Company's policy not to issue news releases that deny or confirm market rumors unless it has been determined that the Company or one of its representatives is the source of such market rumors.

## **D. Forward-looking Information**

The Company may make forward-looking statements in relation to its earnings, business and performance outlook. The Company's policy is to provide investors with forward-looking information

and guidance in conformity with the “safe harbor” provision of the Private Securities Litigation Reform Act of 1995, as amended (the “PSLRA”).

All public disclosures by the Company in the form of news releases, conference calls and investor presentations shall be accompanied by a “safe harbor” discussion that reviews or refers to specific risk factors that could cause actual results to differ materially from those projected in the statement (see further discussion below).

#### **E. Website Policy**

The Company maintains its own corporate website, while outsourcing certain content, on which it offers updated, timely information for investors, including news releases, SEC filings, annual reports and other relevant data. All information posted on the Company’s website or on any social media account maintained by the Company must be reviewed and approved by the Company’s CEO or CFO, or by another member of the Company’s Financial Disclosure Committee, prior to posting. Any written materials shall include a hotlink to or include appropriate cautionary disclosures in order to take advantage of the safe harbor under the PSLRA. No material, non-public information shall be posted on the Company’s website or on any social media account maintained by the Company unless it has previously or simultaneously been disseminated via other methods reasonably designed to ensure broad, non-exclusionary distribution of the information.

#### **F. Electronic Platforms**

Company employees are prohibited from posting any information about the Company, its business or future performance on the Internet, in chat rooms, on social media sites (including, without limitation, Facebook, Instagram or LinkedIn) or on bulletin boards. Any such posting, even though well-intentioned, may be damaging to the Company and its interests. This policy will be strictly enforced.

#### **G. Day-to-Day Communications**

Inquiries from broker-dealers and their associated persons, investment advisers, certain institutional investment managers and their associated persons, investment companies, hedge funds and affiliated persons; analysts and security holders to any employee or director of the Company must be forwarded to a Spokesperson. Under no circumstances should any attempt be made to handle these inquiries without prior authorization from a Spokesperson.

Planned conversations must include at least one Spokesperson and should, if practicable, include a second person. It should be determined in advance whether it is intended that any material nonpublic information be disclosed. If so, the material nonpublic information should be disclosed prior to or simultaneously with the planned conversation by the issuance of a press release, the filing or “furnishing” of a Current Report on a Form 8-K, or both.

Subject to the following paragraph, the Spokesperson will prepare a written record of each call received and a summary of any discussion.

The Spokesperson, in consultation with the Company’s legal counsel, may identify the most commonly asked questions and types of information sought and may prepare and circulate written responses to those questions to Spokespersons and update such written responses as necessary or appropriate. To the extent the Spokesperson simply follows or refers to the script, the written record of the call only needs to identify the caller and note that the script was followed.

## **1. One-on-One Meetings**

Because of the high degree of risk involved in private discussions or meetings with analysts, such discussions shall be limited and shall occur only following consultation with the Company's General Counsel (or other legal counsel, if appropriate). The Company does not intend to disclose any material nonpublic information during these discussions or meetings. If appropriate, the comments of the Spokespersons during such discussions or meetings shall be limited to prepared remarks that do not communicate material nonpublic information. In particular, Spokespersons will decline to answer questions about or comment on internal financial projections during such discussions or meetings, except and only to the extent otherwise disclosed publicly.

## **2. Non-Intentional Disclosures**

Non-intentional disclosures that would otherwise violate Regulation FD should be promptly reported to the Company's Chief Financial Officer and to the Company's General Counsel and may be remedied as follows:

- In certain situations, a confidentiality agreement may be obtained after the disclosure is made, but before the recipient of the information discloses or trades on the basis of it. Non-intentional disclosures of material nonpublic information do not need to be disclosed publicly if a confidentiality agreement can be obtained prior to the time that the recipient of the information discloses or trades on the basis of the information. The confidentiality agreement should include a representation to that effect and include an agreement that the recipient of the information will not disclose or trade on the information in the future.

If the Company discovers that it has non-intentionally disclosed material nonpublic information and does not obtain a confidentiality agreement on a timely basis, it shall make appropriate public disclosure of the information via Form 8-K promptly, which means as soon as reasonably practicable, but in no event after the later of 24 hours after discovery of the non-intentional disclosure or prior to the commencement of the next day's trading on the NASDAQ Stock Market.

## **3. Compliance Monitoring and Violations**

The Company's Chief Financial Officer and the Company's General Counsel shall implement policies for monitoring the Company's communications, any unusual trading activity in the Company's securities, and other marketplace information to identify potential Regulation FD violations. This policy applies to every director and employee of the Company and its subsidiaries.

If a Regulation FD violation or potential violation is identified, the Company's Chief Financial Officer and the Company's General Counsel (in consultation with other legal counsel, if appropriate) shall promptly take appropriate remedial action.

Violations of Regulation FD are subject to SEC enforcement action, which may include an administrative action seeking a cease-and-desist order, or a civil action against the Company or an individual seeking an injunction and/or monetary penalties. Any violation of this policy by a director, officer or employee shall be promptly reported to the Company's Chief Financial Officer and to the Company's General Counsel and may constitute grounds for termination of service.

## **H. Investor Inquiries**

The Company's policy is to respond to all routine requests for corporate information. An investor kit, including a prospectus or an annual report, recent news releases, and marketing material will be sent within one week of a request for such information. Any request for material, non-public information will be denied. Also, it is the Company's policy not to distribute any analyst reports. Telephone inquiries about the Company will be returned by one of the Spokespeople within a reasonable period of time, subject to the other provisions of this Policy.

#### **I. Conference Calls, Analyst Meetings, Investment Banker Conferences/Roadshows and Media Interviews - Statement of Policy**

When the Company discloses material non-public information to market professionals and institutional investors, its policy shall be to transparently and simultaneously disclose the information to the public.

1. Public disclosure may be made by:
  - a. issuing a widely disseminated (via AP, PR Newswire and Reuters) press release;
  - b. a publicly accessible conference call or webcast, for which there has been advance public notice; or
  - c. filing of an SEC disclosure document most, typically a Form 8-K. (Note, if an 8-K is used solely to satisfy Regulation FD, the information may be "furnished" instead of "filed.")
2. Except for routine information requests or with the prior approval of the CEO or CFO, no one other than one of the Spokespeople shall speak with members of the media, analysts, other market professionals or institutional investors. "Routine information requests" are inquiries from stockholders or others that can be responded to by referring the caller to already-public information, such as the Company's SEC filings, press releases or information posted on the Company's website. The Company recognizes that it may be desirable from time to time for executives other than those listed above to speak with analysts or institutional investors after obtaining the prior approval of either the CEO or the CFO.
3. If the Company learns that it or one of the designated Spokespeople has made a non-intentional selective disclosure of material non-public information, it must make prompt (within 24 hours) public disclosure of that information. If there is an intervening weekend or holiday, the disclosure shall be made before the open of market on the next trading day.
4. The Company shall allow the public to listen via telephone or webcast to quarterly analyst conference calls and to additional open analyst conference calls where it may disclose material non-public information. Only professionals will be invited to ask questions. Any guidance or "color" typically given to sell side analysts that constitutes material non-public information will be given in this public forum. Any such guidance will be preceded by a disclaimer substantially in the form of **Exhibit B**.
5. Before a scheduled analyst conference call, the Company shall issue a press release which provides (a) the date and time of the scheduled call, (b) the specific information needed for a member of the public to dial in or access the call over the Internet and (c) that the Company plans to provide guidance. If situations arise requiring interim conference calls or other public

disclosure, notice will be provided as soon as possible. A sample press release is attached hereto as **Exhibit C**.

6. No member of Company management other than one of the Spokespeople will take impromptu phone calls from analysts, other market professionals, institutional investors or members of the media. Instead, all such calls will be referred to one of the Spokespeople. No one will provide material non-public information to such callers.
7. All of the Spokespeople are responsible for keeping current on what has and has not been publicly disclosed by the Company. This means, at a minimum, regularly reviewing the Company's website, all social media accounts maintained by the Company, all SEC filings and press releases and participating in or later listening to a recording of all public conference calls.
8. All of the Spokespeople shall be familiar with the Guidelines for Materiality attached hereto as **Exhibit D**. Each of the Spokespeople should seek legal counsel whenever in doubt about whether information is material. Decisions about materiality should, wherever possible, be made prior to the occasion on which the discussion is to take place to avoid the need to make materiality judgments "on the fly."
9. For any scheduled, non-routine communications involving a significant announcement (e.g., an earnings release, a major acquisition, a new product launch, a major expansion of the Company's business or an important analysts conference), Company management planning to participate in the communication shall generally prepare an outline, slides or script of the discussion that shall be used as the basis of the communication. The outline, slides or script shall be reviewed in advance by legal counsel and be approved in advance by the CFO or CEO. A copy of the outline will be maintained by the Company for a period of one year following the communication. At the beginning of the communication, one of the Spokespeople shall provide an oral safe harbor disclaimer in the form provided on **Exhibit E**.
10. Whenever one of the Spokespeople has a doubt concerning whether a disclosure made by him or her was in fact material or non-public, he or she will promptly consult with legal counsel and the Company's Disclosure Committee in order to permit, if necessary, a corrective public disclosure to be made within 24 hours.
11. The Company will not review analyst notes prior to publication, except as to matters of historical accuracy which can be verified by reference to already-public information, such as the Company's SEC filings, press releases or information posted on the Company's website.
12. Exceptions to the rules governing communications with investors and analysts may apply to communications (a) with investment bankers and underwriters in connection with registered offerings or merger and acquisition transactions or (b) where confidentiality arrangements are in place in other contexts (e.g., a private placement). Management should consult with legal counsel on a case-by-case basis to determine the applicability and scope of such exemptions.
13. Any communications with investors and analysts should generally be in the form of (a) SEC filings, (b) formal press releases, (c) conference calls open to the public, (d) formal presentations previously published on the Company's website or (e) meetings with analysts or investors that comply with Regulation FD. Specifically, the topics discussed at such meetings will not include material information unless such information has been previously or simultaneously disclosed to the public.

14. The Company will not (a) disclose its internal financial projections to analysts or investors, (b) reaffirm previously disclosed internal financial projections, if any, to analysts or investors after the first calendar month of each quarter or (c) state that it is or is not “comfortable” with analyst’s earnings estimates, in each case unless it has previously or simultaneously disseminated such information publicly.

#### **IV. Guidance, Quiet Period and Analyst Reports**

The Company and its employees cannot give earnings guidance in any form (including “soft” or indirect guidance) in nonpublic settings. To the extent practicable, analysts will be requested to provide a written agenda or questions in advance to avoid inadvertent disclosures or to allow the preparation and simultaneous public release of information the Company is willing to disclose. Two Company representatives, to the extent practicable, should be present during any analyst calls or meetings. Any statements regarding earnings expectations will be limited to press releases and publicly available earnings calls.

Whenever the Company has issued any estimate or comment regarding earnings or other financial measures (which will ordinarily be issued through a press release and the filing or furnishing of a Form 8-K), no employee will comment on those projections during the quarter. In response to any question about such information, Spokespersons will say that it is the Company’s policy not to comment on projections during the quarter. The Company will not comment on its intention to update these materials.

No Spokesperson will provide “comfort” with respect to any earnings estimate or otherwise “walk the Street” up or down. If any analyst inquires as to the reliability of a previously, publicly disseminated projection, the Spokesperson should follow the “no comment” policy.

As a general policy, during the period commencing at the close of the market on the last day of the second month of each fiscal quarter and ending at the time of the public dissemination of the earnings release for that quarter (the “**quiet period**”), the Company will not engage in informal contacts, “one-on-one” meetings or telephone calls with members of the investment community or security holders. If authorized by a Spokesperson (after consultation with outside counsel to the Company),

Spokespersons may engage in contacts or “one-on-one” meetings or telephone calls during the quiet period solely to provide historical public information.

Analyst reports and earnings models may only be reviewed to correct errors that can be corrected by referring to publicly available, historical, factual information. No other analyst feedback or guidance on earnings models may be communicated to an analyst. A written record should be kept of any comments provided on an analyst’s report. Such reports must be promptly forwarded to the Spokespersons. Any review of an analyst report may only be done after obtaining the express approval of the Spokesperson.

No Company employee should distribute (including via a web link) copies of, or refer to, selected analysts’ reports to anyone outside the Company without the express approval of a Spokesperson. If approved, any such distribution must include a statement to this effect:

**[“This report has been prepared and distributed by an unaffiliated third party and is being provided to you simply for your information. The Company makes no statement regarding the report or its contents. You should not regard the statements made in the report as being affiliated with or confirmed or denied by the Company in any way.”]**

## **V. Use of Social Networks**

Use of social networks, including corporate blogs, employee blogs, chat boards, Facebook, LinkedIn, Twitter, YouTube and any other non-traditional means of communication, to disclose material, nonpublic information is considered selective disclosure and would violate this Policy.

The Company will only publicly disclose material information that includes non-GAAP financial measures in compliance with Regulation G and Item 10(e) of Regulation S-K, as applicable.

## **VI. Monitor Trading**

The trading activity of Company stock will be generally monitored by management for unusual trading activity. In addition, the Compliance Officer will monitor the financial and news media for stories about the Company. Unusual trading volume or price swings may indicate the inadvertent disclosure of material information that may need to be remedied by a press release.

## **VII. Violation of this Policy**

Violations of Regulation FD are subject to SEC enforcement actions, which may include an administrative action seeking a cease-and-desist order, a civil action against the Company or an individual seeking an injunction and/or civil monetary penalties. Any violation of this Policy by a director, officer or employee of the Company shall be brought to the attention of the Compliance Officer and may constitute grounds for termination of service.

**SUMMARY OF REGULATION FD****I. APPLICATION OF REGULATION FD.**

Regulation FD applies to disclosures of material nonpublic information to the following categories of persons:

1. Broker-dealers and their associated persons, such as analysts;
2. Investment advisers, institutional investment managers and their associated persons;
3. Investment companies, hedge funds, and affiliated persons; and
4. Any holder of the Company's securities if it is reasonably foreseeable that the holder will purchase or sell the Company's securities on the basis of the information.

**II. COMMUNICATIONS EXEMPTED FROM REGULATION FD.**

The following types of communications are specifically exempted from the disclosure requirements of Regulation FD:

1. Communications made to a person who owes the Company a duty of trust or confidence, such as an attorney or accountant;
2. Communications made to any person who expressly agrees to maintain the information in confidence (such express agreement may be given after the disclosure of material nonpublic information, but must be before the recipient discloses or trades on the basis of it);
3. Disclosures to a credit rating entity, provided that the disclosure is made solely for the purpose of developing a credit rating and the ratings are publicly available; and
4. Communications made in connection with most registered securities offerings.

**III. DISCLOSURE OF MATERIAL NONPUBLIC INFORMATION.**

Regulation FD requires that whenever the Company or a person acting on its behalf discloses material nonpublic information to securities market professionals or holders of the Company's securities who may well trade on the basis of the information, the Company must make public disclosure of that same information as follows:

1. If the Company or any person acting on the Company's behalf intentionally discloses material nonpublic information, the Company must make public disclosure of such information **simultaneously**.
2. If the Company or any person acting on the Company's behalf **unintentionally** discloses material nonpublic information, the Company must make public disclosure of such information **as soon as reasonably** practicable (but in no event after the later of 24 hours or the commencement of the

next day's trading on the Nasdaq) after discovery of the disclosure. Discovery happens when a director, executive officer, investor relations or public relations officer learns that the Company or any person acting on the Company's behalf disclosed information that such director, executive officer, investor relations or public relations officer knows, or is reckless in not knowing, is both material and nonpublic.

#### IV. DEFINITIONS

1. **Intentional Disclosure.** A selective disclosure of material nonpublic information is “intentional” when the person making the disclosure either knows, or is reckless in not knowing, that the information he or she is communicating is both material and non-public.
2. **Material Information. Information** is “material” if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision, or if a reasonable investor would view it as altering the total mix of information available. In short, material information includes any information that could reasonably affect the price of the Company's stock. See **Exhibit D** for a summary of items considered in determining if information is material.
3. **Nonpublic Information. Information** is “nonpublic” if it has not been disclosed to the general public by means of a press release, SEC filing or other media for broad public access. Disclosure to even a large group of analysts does not constitute disclosure to the public.
4. **Person Acting on the Company's Behalf.** A “person acting on the Company's behalf” is a senior official or any other officer, employee, or agent of the Company who regularly communicates with market professionals or with the Company's stockholders. A senior official is defined as any director, executive officer, investor relations or public relations officer, or other person with similar functions.



## EXHIBIT B

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### DISCLAIMER TO ACCOMPANY GUIDANCE

#### Option 1

In a moment we will be providing you with a discussion of some of the factors that we currently anticipate may influence our results going forward. Before doing so, I want to emphasize that our discussion is based in part on projections that any projection involves judgment and that individual judgments may vary. Our projections are based on information available to us now, which will likely change over time. Actual results may differ substantially from our projections and no one should assume that any projections we provide today will remain valid at any later date. Moreover, we are not undertaking any obligation to provide updates in the future. Specific factors that could change, causing our projections not to be achieved, include, but are not limited to, [list factors]. Further information about these factors can be found in our most recent filings with the SEC, including the “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” sections of our most recent Form 10-Q/10-K filed on [\_\_\_\_].

#### Option 2

Moreover, the projections and forward-looking statements we discuss during this conference call are based upon the information we currently have available. This information will likely change over time. By discussing our current perception of our market and the future performance of the Company and our products with you today, we are not undertaking an obligation to provide updates in the future. Actual results may differ substantially from what we discuss today and no one should assume that our current projections will remain valid at any later date.



## EXHIBIT C

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### SAMPLE PRESS RELEASE ANNOUNCING CONFERENCE CALL

First Choice Bancorp to Release - [QUARTER E.G. THIRD] Quarter Earnings On [DATE].

First Choice Bancorp (NASDAQ: FCBP) (the “Company”) today announced that the Company will release its financial results for the [ ] quarter \_\_\_\_\_, after the NASDAQ market closes on [DAY OF WEEK, DATE].

The Company will conduct a conference call at [TIME. Pacific Time], which is open to the public. The conference call dial-in number is [PHONE NUMBER], and the passcode number is [PASS CODE]. The conference call will also be available by webcast on the Company’s website, [www.firstchoiebankca.com](http://www.firstchoiebankca.com).

For those unable to listen in at the designated time, a conference call replay will be available for 24 hours following the conference call, from approximately [3:30 p.m. PDT] on [DATE] to [3:30 p.m. PDT] on [DATE]. The conference call replay can be heard by dialing [PHONE NUMBER] then entering passcode number [NUMBER]. The webcast will also remain available for replay over website until [DATE].

About [First Choice Bancorp - (usual language to be included)].

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**EXHIBIT D**

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**GUIDELINES FOR MATERIALITY**

Information is material according to the SEC if “there is substantial likelihood that a reasonable shareholder would consider it important” in making an investment decision. To fulfill the materiality requirement, there must be a substantial likelihood that a fact would have been viewed by the reasonable investor as having significantly altered the total mix of information available. The following is a non-exclusive list of the types of information or events that are likely to be considered material:

- earnings information, quarterly results and related conference calls;
- Guidance/statements on earnings estimates;
- Speeches, interviews and conferences;
- Responding to market rumors;
- Reviewing analyst reports;
- Referring to or distributing analyst reports on the Company; Analyst and investor visits;
- Postings on the Company’s websites;
- Social media communications, including through corporate blogs, employee blogs, chat boards, Twitter, Facebook, LinkedIn, YouTube and other non-traditional means of communication;
- mergers, acquisitions, tender offers, joint ventures or changes in assets;
- new products or services, or developments regarding customers or suppliers;
- significant changes in the Company’s prospects;
- significant write-downs in assets or increases in reserves;
- changes in control or in senior management;
- change in auditors or auditor notification that the Company may no longer rely on the auditor’s audit reports;
- events regarding the Company’s securities (e.g., repurchase plans, stock splits or changes in dividends, public or private sales of additional securities by the Company);
- changes in corporate strategy, financing developments, or accounting or financial reporting methods or measurements;

- significant litigation and developments
- regulatory approvals or changes in regulations and any analysis of how they affect the Company;  
and
- bankruptcy or receiverships.

The SEC has explicitly cautioned: “[W]hen an issuer official engages in a private discussion with an analyst who is seeking guidance about earnings estimates, he or she takes on a high degree of risk under Regulation FD. If the issuer official communicates selectively to the analyst nonpublic information that the company’s anticipated earnings will be higher than, lower than, or even the same as what analysts have been forecasting, the issuer likely will have violated Regulation FD.” The SEC cautions that “[t]his is true whether the information about earnings is communicated expressly or through indirect ‘guidance,’ the meaning of which is apparent though implied. Similarly, an issuer cannot render material information immaterial simply by breaking it into ostensibly non-material pieces.”

On the other hand, the SEC acknowledges that what may be immaterial to a reasonable investor may help an analyst reach a material conclusion. Therefore, a company “is not prohibited from disclosing a non-material piece of information to an analyst, even if, unbeknownst to the issuer, that piece helps the analyst complete a ‘mosaic’ of information that, taken together, is material.



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**EXHIBIT E**

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**ORAL SAFE HARBOR DISCLAIMER LANGUAGE**

During the course of this conference call [presentation, etc.], we may make forward-looking statements regarding future events or the future performance of the Company. Actual events or results could, of course, differ materially. We refer you to the documents the Company files from time to time with the Securities and Exchange Commission, specifically the Company's most recent Form 10-K and Form 10-Q filed on [\_\_\_]. [During an immediate post offering period, you can also refer to the Registration Statement.] These documents contain and identify important factors that could cause actual results to differ materially from those contained in any forward-looking statements.

[Note: use the written safe harbor for statements in writing or those that will be transcribed and available in written form.]