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December 15, 2015

Mr. Andrew Ceresney
Director, Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-5631

Mr. Keith F. Higgins
Director, Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-5631

Dear Messrs. Ceresney and Higgins:

I write to provide comments on the public disclosures made by Smith & Wesson Holding Corporation (NASDAQ: SWHC) (hereinafter "Smith & Wesson" or "the Company"). Smith & Wesson is a leading manufacturer of firearms. The Company has a 20% share of the U.S. handgun market[1] and estimates that 50% of all revolvers owned in the United States were made by Smith & Wesson.[2]

Companies that manufacture, market, and sell guns are at the heart of a heated debate about public safety, private rights, and regulation. While most manufacturers of guns are privately held, Smith & Wesson is one of three companies that manufacture guns and are publicly traded. Publicly held gun manufacturers have a unique risk profile.

[1] Smith & Wesson Holding Corp., Form 10-K (filed June 22, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015005183/0001564590-15-005183-index.htm.
[2] Smith & Wesson Holding Corp., Exh. 99.1 to Form 8-K (filed Sep. 10, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000119312515316511/0001193125-15-316511-index.htm.

Smith & Wesson fails to disclose material information to its shareholders about these unique risks. In particular, the Company has failed to disclose how many of its guns are involved, each year, in crimes, and whether it is taking necessary steps to lessen the risk that the Company's products are being diverted into the hands of criminals. Without this information, shareholders of Smith & Wesson are unable to assess the risk environment in which the Company operates. This information is material to shareholders, and the Company's failure to disclose this information violates the Securities Exchange Act and Securities and Exchange Commission ("SEC") rules.

I. Factual Background

Smith & Wesson manufactures and sells firearms and accessories, including full lines of revolvers, pistols, rifles, and handcuffs. The Company has three brands of firearms: Smith & Wesson, M&P by Smith & Wesson (M&P stands for "Military and Police"), and Thompson/Center. The Company sells handguns, as well as hunting rifles and "modern sporting rifles," which are more commonly known as assault rifles.

Smith & Wesson firearms have been used by shooters in some of the most notorious mass-shooting events in recent years, including the 2015 shooting at Umpqua Community College in Oregon, the 2014 shooting at Fort Hood, and the 2012 shooting at a movie theater in Aurora, Colorado.[3] Most recently, news reports indicate that the shooters who killed 14 people in San Bernardino, California, used two Smith & Wesson firearms: a Smith & Wesson M&P 15 .223-caliber assault rifle and a Smith & Wesson handgun.[4] Here in New York City, Smith & Wesson firearms have been smuggled into the City[5] and used in connection with gang shootings and other acts of gun violence.[6] As Public Advocate for the City of New York, I have witnessed both the anguish of family and loved ones in the aftermath of a shooting and the resolve of the community to hold accountable all those responsible for the spread of guns.

In the last several years, the frequency of mass shooting events in our country has increased. With the increase in mass shootings, public concern about the proliferation of firearms has animated a national dialogue about gun control measures, interstate gun trafficking, and whether

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[3] Larry Buchanan, Josh Keller, Richard A. Oppel Jr., & Daniel Victor, *How They Got Their Guns*, N.Y. TIMES (Dec. 3, 2015), available at http://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html.

[4] Andrew Blankstein & Alastair Jamieson, *San Bernardino Shooters Used Four Guns, Explosive Device: ATF*, NBC NEWS (Dec. 3, 2015), available at http://www.nbcnews.com/storyline/san-bernardino-shooting/san-bernardino-shooters-used-four-guns-explosive-device-atf-n473286; Ian Lovett, Richard Pérez-Peña, Michael S. Schmidt & Laurie Goodstein, *San Bernardino Shooting Investigators See Terrorism Links*, N.Y. TIMES (Dec. 3, 2015), available at http://www.nytimes.com/2015/12/04/us/san-bernardino-shooting.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=a-lede-package-region&region=top-news&WT.nav=top-news.

[5] Aaron Katersky, *Major Gun Trafficking Bust in NYC Highlights Flow of Guns From States With Looser Gun Laws*, ABC NEWS (Oct. 14, 2015), available at http://abcnews.go.com/US/major-gun-trafficking-bust-nyc-highlights-flow-guns/story?id=34481068.

[6] See, e.g., Andrea Cavallier, *Bronx teen accused of pointing gun at officer, pulling trigger*, PIX11 (Dec. 22, 2014), available at http://pix11.com/2014/12/22/bronx-teen-accused-of-pointing-gun-at-officer-pulling-trigger/; *Police: Murder Suspect Arrested After Officers Witness Brooklyn Shooting*, CBS NEW YORK (Sep. 7, 2014), available at http://newyork.cbslocal.com/2014/09/07/police-murder-suspect-arrested-after-officers-witness-brooklyn-shooting/.

gun manufacturers should take additional steps to ensure that their products do not end up in the hands of criminals. To further this dialogue, gun violence prevention advocates are seeking increased access to trace data about guns used in mass shootings and in everyday gun crimes. For example, the day after the shootings in San Bernardino, *The New York Times* published an online interactive feature, "How They Got Their Guns," which provided information about the guns used by mass shooters in recent incidents, where the guns were purchased, and other information about how the shooters obtained the guns that they used.[7] Additionally, news outlets, municipalities, and non-profit organizations are increasingly calling attention to the phenomenon of "bad apple" gun dealers (the small number of gun sellers that are the source of the vast majority of guns traced to crimes in the U.S.) and interstate gun trafficking. In 2014, the City of Chicago released a report detailing the origins of all "crime guns" (that is, guns used in criminal activity) that were confiscated by the City.[8] *The New York Times* and other outlets have extensively covered the connection between interstate gun trafficking and certain gun dealerships,[9] and the Brady Center to Prevent Gun Violence has launched a campaign to target "bad apple" gun dealers.[10]

These efforts have resulted in additional scrutiny on the distribution channels of firearms in the United States and are raising questions about whether gun manufacturers, and in particular those gun manufacturers whose products are sold by bad apple dealers, are sufficiently managing the risk that their guns will end up in the hands of mass murderers, terrorists, and others who use guns to commit crimes.

For shareholders, the risk that the use of the Company's firearms in mass-shooting events will create long-term harmful consequences for the Company is not a speculative risk. On December 14, 2012, Adam Lanza used a Bushmaster XM15-E2S to kill 20 children and 6 adults at Sandy Hook Elementary School in Newtown, Connecticut. At the time, Bushmaster was owned by Cerberus Capital Management, a private equity firm. Within days of the shooting at Sandy Hook, Cerberus announced its intent to sell Bushmaster and its related holdings. To date, Cerberus has

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[7] Larry Buchanan, Josh Keller, Richard A. Oppel Jr., & Daniel Victor, *How They Got Their Guns*, N.Y. TIMES (Dec. 3, 2015), available at http://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html.

[8] City of Chicago – Office of the Mayor & Chicago Police Department, *Tracing the Guns: the Impact of Illegal Guns on Violence in Chicago* (May 27, 2014), available at: http://www.cityofchicago.org/dam/city/depts/mayor/Press%20Room/Press%20Releases/2014/May/05.27.14TracingGuns.pdf.

[9] Gregor Aisch & Josh Keller, *How Gun Traffickers Get Around State Gun Laws*, N.Y. TIMES (Nov. 13, 2015), available at http://www.nytimes.com/interactive/2015/11/12/us/gun-traffickers-smuggling-state-gun-laws.html?smid=tw-nytimes&smtyp=cur; Kevin Quealy & Tim Wallace, *Where 50,000 Guns Recovered in Chicago Came From*, N.Y. TIMES (Jan. 29, 2013), available at http://www.nytimes.com/interactive/2013/01/29/us/where-50000-guns-in-chicago-came-from.html; Mike Spies, *An ATF Official on How Trafficked Guns Are Like Cockroaches*, THE TRACE (Aug. 31, 2015), available at http://www.thetrace.org/2015/08/atf-gun-trafficking-report/.

[10] Mike Spies, *An ATF Official on How Trafficked Guns Are Like Cockroaches*, THE TRACE (Aug. 31, 2015), available at http://www.thetrace.org/2015/08/atf-gun-trafficking-report/.

been unable to find a buyer and has instead had to offer a divestment option for investors in the firm's funds.[11]

II. Company Disclosure

As a publicly traded company, Smith & Wesson makes regular public reports to its shareholders. This submission describes what I believe are material omissions from the Company's regular reports – the most recent Form 10-Q (filed December 8, 2015 and attached hereto as Exhibit A) and the most recent Form 10-K (filed June 22, 2015 and attached hereto as Exhibit B).[12] Additionally, I have reviewed all other filings made by the Company during the last year and the Company has not corrected these material omissions in their other filings.

A. Disclosure about crime guns

In its Form 10-K and Form 10-Q filings, the Company makes no disclosure about the usage of its firearms in crimes, except to note that fear of crime may drive demand for the Company's products.[13] Nowhere in its filings with the SEC has the Company disclosed information about the number of its guns involved in crimes in the United States, how many of those guns were purchased lawfully, and other information that would enable shareholders to determine whether the Company has in place sufficiently strong control measures. Without this information, shareholders cannot assess whether a disproportionate number of the Company's firearms are involved in crimes and, from this information, infer whether the Company has sufficient controls in place to limit the extent to which its guns are diverted through other means.

B. Disclosure about risk management and distribution chain management

The Company has not disclosed what steps it has taken to minimize the risk that the Company's products will be used in criminal activities, including mass-shooting events. For example, the Company has not disclosed whether it has any oversight or auditing system in place to ensure that the Company's distribution channels do not result in Smith & Wesson products being diverted illegally.

The Company also does not disclose whether it has in place measures to ensure that its products are not sold via those dealers that have been identified as "bad apples." Research conducted by

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[11] Ryan Dezember, *Cerberus Capital to Allow Investors to Sell Stakes in Gun Business*, WALL ST. J. (May 15, 2015), available at http://www.wsj.com/articles/cerberus-capital-to-allow-investors-to-sell-stakes-in-gun-business-1431733796; Michael J. de la Merced, *Cerberus, Hamstrung in Efforts to Sell Firearm Maker, Tries New Tack*, N.Y. TIMES (Dec. 9, 2013), available at http://dealbook.nytimes.com/2013/12/09/cerberus-may-offer-divestment-in-firearms/.

[12] Smith & Wesson Holding Corp., Form 10-Q (filed Dec. 8, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015011337/0001564590-15-011337-index.htm; Smith & Wesson Holding Corp., Form 10-K (filed June 22, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015005183/0001564590-15-005183-index.htm.

[13] Smith & Wesson Holding Corp., Form 10-K (filed June 22, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015005183/0001564590-15-005183-index.htm

my office suggests that they do not have such measures in place. One of the most notorious "bad apple" dealerships in the country is Chuck's Gun Shop in Riverdale, Illinois – a suburb of Chicago. The Chicago Police Department has identified Chuck's as having sold 1,516 guns used in crimes in Chicago from 2009 to 2013 – more than any other store – and calculated that 8% of guns used in crimes in Chicago originated at Chuck's.[14] The website for Chuck's Gun Shop indicates that the shop sells Smith & Wesson firearms.[15] Other dealerships identified as "bad apples," on the basis of publicly available data,[16] likewise indicate on their websites that they sell Smith & Wesson firearms.[17] The fact that these dealerships sell new Smith & Wesson firearms suggests that the Company does not have sufficient control measures in place. Smith & Wesson should disclose what, if any, criteria it uses to determine whether to sell its products to a retailer and how it ensures that its wholesale distributors are in compliance with those criteria.

Finally, previous incidents suggest that the Company has struggled in the past to put into place control measures to prevent theft and diversion from its own facilities.[18] This history makes the question of whether Smith & Wesson has adequate control measures in place even more urgent for the Company's shareholders.

III. Smith & Wesson's failure to disclose information about crime guns and about its risk management and distribution controls violates Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5.

Section 10(b) of the Securities Exchange Act prohibits "any manipulative or deceptive device" used in connection with the purchase or sale of securities.[19] The SEC has promulgated Rule 10b-5, which provides that it is unlawful:

> (a) To employ any device, scheme, or artifice to defraud,

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[14] City of Chicago – Office of the Mayor & Chicago Police Department, *Tracing the Guns: the Impact of Illegal Guns on Violence in Chicago* (May 27, 2014), available at: http://www.cityofchicago.org/dam/city/depts/mayor/Press%20Room/Press%20Releases/2014/May/05.27.14TracingGuns.pdf.

[15] Chuck's Gun Shop & Pistol Range | Products and Services, http://chucksgunshop.net/Products_and_Services.html.

[16] Brady Campaign & Brady Center to Prevent Gun Violence, *The Truth About Gun Dealers in America*, available at http://www.bradycampaign.org/sites/default/files/TheTruthAboutGunDealersInAmerica.pdf.

[17] See, e.g. Southern Police Equipment Company | Shop by Brand | Smith & Wesson, http://www.southernpoliceequipment.com/shop/default.asp?h=b&b=35; Lone Wolf Trading Co. | Firearms, http://lonewolftradingco.net/firearms.html; Hyatt Guns | Shop by Brand | Smith & Wesson, http://www.hyattgunstore.com/smith-wesson/.

[18] See, e.g. Smith & Wesson Holding Corp., Form 10-K (filed July 1, 2010), available at http://www.sec.gov/Archives/edgar/data/1092796/000095012310062947/0000950123-10-062947-index.htm; Patrick Johnson, *Bridgeport man who stole 111 guns from Smith & Wesson plant in Springfield sentenced to 17 years*, MassLive.com (Oct. 27, 2015), available at http://www.masslive.com/news/index.ssf/2015/10/bridgeport_man_who_stole_111_g.html.

[19] 15 U.S.C. § 78j(b).

> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
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> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.[20]

A violation of Section 10(b) and Rule 10b-5 occurs when "the defendant, in connection with the purchase or sale of securities, made a materially false statement or omitted a material fact, with scienter, and that the plaintiff's reliance on the defendant's action caused injury to the plaintiff."[21]

An omission is material – and thus violates Section 10(b) of the Securities Exchange Act – "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding" whether to sell or purchase securities.[22] Put another way, an omission involves a material fact if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."[23] Omission of a material fact alone is not sufficient to make out a violation of Section 10(b): "a corporation is not required to disclose a fact merely because a reasonable investor would very much like to know that fact. Rather, an omission is actionable under the securities laws only when the corporation is subject to a duty to disclose the omitted facts."[24] Such a duty "arises whenever secret information renders prior public statements materially misleading, not merely when that information completely negates the public statements."[25]

A. Disclosure about crime guns

The failure to disclose the number of Smith & Wesson firearms used in criminal activity is a material omission. As detailed above, this information is material in light of the use of Smith & Wesson firearms in several high profile shootings and in light of the growing public interest in trace data. The Company has acknowledged that its business "is highly dependent upon" the Company's reputation.[26] Given the real risk of reputational harm to the Company from the use of its guns in the San Bernardino shooting and in other crimes, Smith & Wesson shareholders

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[20] 17 CFR 240.10b-5.
[21] *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 161 (2d Cir. 2000).
[22] *Basic Inc. v. Levinson*, 485 U.S. 224, 231-232 (1988) (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438 (1976) (internal quotation marks omitted)).
[23] *Id*.
[24] *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 268 (2d Cir. 1993).
[25] *Id*.
[26] Smith & Wesson Holding Corp., Form 10-K (filed June 22, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015005183/0001564590-15-005183-index.htm; Smith & Wesson Holding Corp., Exh. 99.1 to Form 8-K (filed Sep. 10, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000119312515316511/0001193125-15-316511-index.htm.

"would consider it important" to know how frequently the Company's firearms are involved in criminal activity and whether the Company's firearms are disproportionately used by criminals.

Additionally, this information is material to shareholders because without it they cannot gauge whether Smith & Wesson is following best practices to control the distribution of its products and to limit the extent to which its products are ending up in the hands of criminals and criminal organizations. This information is particularly important at this moment because of the intensity of the ongoing debate about gun violence and the proliferation of guns in America. In the face of ongoing debate in the U.S. about gun control [27] and issues such as liability for the manufacturers of firearms, shareholders face the possibility of legal and legislative changes that could affect the Company's bottom line and core operations. If Smith & Wesson's firearms are disproportionately used in crimes, the Company may face significant additional harm, attention from regulators, and significant litigation from victims of shootings in which the Company's firearms were used.[28] A reasonable shareholder would, thus, want to know information about the use of the Company's products by criminals so that the shareholder could assess whether to purchase or sell the Company's securities.

The Company has a duty to disclose this information because it has made statements that render the non-disclosure of this information materially misleading. For example, in an investor presentation filed with the SEC on September 10, 2015 and attached hereto as Exhibit C, the Company emphasized the importance of the growth of its consumer channel for the handgun and long gun units in one slide and in the next described the reasons buyers of guns give for gun ownership and the characteristics of purchasers of new guns.[29] The latter slide describes the top reasons for gun ownership as: (1) Personal safety and protection; (2) Hunting; (3) Recreation and sport; and (4) Target shooting. In the same slide, the Company asks "who is buying?" and provides detailed information about those who purchase firearms for use in sport shooting. The slide omits any mention of consumers who purchase Smith & Wesson firearms to harm other people, but there is strong evidence to suggest that many consumers purchase Smith & Wesson firearms to do just that. The Company's 10-K filing similarly leaves the reader with the impression that consumers who purchase Smith & Wesson always do so for lawful purposes and uses. For example, in describing the Company's customer base, the 10-K includes this passage: "The ultimate users of our firearm and accessories products include gun enthusiasts, collectors,

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[27] Smith & Wesson Holding Corp., Form 10-K (filed June 22, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015005183/0001564590-15-005183-index.htm.

[28] While the Company may assert that it would be insulated from liability because of the Protection of Lawful Commerce in Arms Act ("PLCAA"), the company raised that defense in a lawsuit brought by the City of Gary, Indiana, but an Indiana appellate court concluded that PLCAA did not preclude the City's lawsuit. *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007). More recently, in a lawsuit against Bushmaster and the gun dealership that sold the rifle used by Adam Lanza in the Sandy Hook shooting, the U.S. District Court for the District of Connecticut allowed the case to proceed against both the dealer and Bushmaster. *Soto v. Bushmaster Firearms Int'l, LLC*, 2015 U.S. Dist. LEXIS 138046 (D. Conn. Oct. 9, 2015).

[29] Smith & Wesson Holding Corp., Exh. 99.1 to Form 8-K (filed Sep. 10, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000119312515316511/0001193125-15-316511-index.htm.

sportsmen, competitive shooters, hunters, individuals desiring home and personal protection, law enforcement and military personnel and agencies, and other government organizations."[30] Taken together, company statements mislead shareholders by indicating that Smith & Wesson consumers are purchasing guns for lawful purposes. As recent events, such as the massacre in San Bernardino, make clear, many consumers purchase Smith & Wesson firearms for unlawful purposes.

B. Disclosure about risk management and distribution chain management

Smith & Wesson's failure to disclose what steps it has taken to minimize the risk that the Company's products will be used in criminal activities, including mass-shooting events, and whether it has in place measures to ensure that its products are not sold via "bad apple" dealers is a material omission. The Company has indicated that, with the ongoing debate about gun control and manufacturer liability, the Company faces a possible shift in the regulatory environment that could affect the Company's profit and capacity to develop new products or distribute its existing products.[31] Both because of the reputational harm discussed above and because the shifting regulatory landscape and current scrutiny on the gun industry heighten the potential liability and restrictions that the Company may face, shareholders "would consider it important" to know whether Smith & Wesson is taking all reasonable steps to control the distribution of its products and to ensure that they do not end up in the hands of criminals.

The Company has a duty to disclose this information because it has a disclosure obligation under Item 303 of Regulation S-K. The regulation requires that companies "[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." 17 C.F.R. § 229.303(a)(3)(ii); *see also Litwin v. Blackstone Group, L.P.*, 634 F.3d 706, 716 (2d Cir. 2011). Smith & Wesson knows that it is at risk of grave reputational harm, which could create significant financial consequences – as happened to Bushmaster after the Newtown shooting – given that it appears to sell its guns to "bad apple" gun dealers, which raises broader questions about what steps it does take to minimize the risk that the Company's products will be used in crimes. The Company was required to disclose this risk in its 10-K filings, pursuant to Regulation S-K.

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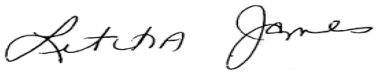
[30] Smith & Wesson Holding Corp., Form 10-K (filed June 22, 2015), available at http://www.sec.gov/Archives/edgar/data/1092796/000156459015005183/0001564590-15-005183-index.htm.
[31] *Id*.

IV. Conclusion

For the foregoing reasons, I ask that you investigate whether Smith & Wesson has materially misrepresented or made material omissions to shareholders about the use of its firearms in crimes and the measures the Company has taken to minimize the risk of diversion and criminal use of its products.

Sincerely,



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Public Advocate for the City of New York