US SIF
The Forum for Sustainable and Responsible Investment

July 14, 2016

Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: Concept Release on Business and Financial Disclosures Required by Regulation S-K
File Number S7-06-16
Release Number 33-10064; 34-775599

Dear Mr. Fields:

US SIF: The Forum for Sustainable and Responsible Investment welcomes the opportunity to comment on the "Business and Financial Disclosures Required by Regulation S-K" ("Concept Release"): Concept Release No. 33-10064; 34-775599; File No. S7-06-16.

US SIF: The Forum for Sustainable and Responsible Investment is the leading voice advancing sustainable, responsible, and impact investing across all asset classes. Our mission is to rapidly shift investment practices towards sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. US SIF seeks to ensure that environmental, social and governance impacts are meaningfully assessed in all investment decisions to result in a more sustainable and equitable society, including well-functioning financial markets, which depend on accurate information. US SIF's 300+ members collectively represent more than $2 trillion in assets under management or advisement and include money managers/mutual funds; foundations and other asset owners; research, data and index providers; financial planners, advisors and investment consultants; community development institutions and non-profit organizations. For more information, see www.ussif.org.

The main points made in this comment letter are:

1. Sustainability disclosures are material to reasonable investors. Investors are increasingly integrating environmental, social and corporate governance (ESG) information into the investment process. Materiality, or financial relevance, emerges from all the reported facts. We support the Supreme Court's definition of materiality, which states that something is material where there is "*a substantial likelihood that the…fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available*."

2. Investor efforts to comprehensively incorporate ESG information into investment decisions are hindered by a lack of comprehensive, comparable and reliable data. The voluntary nature of

corporate sustainability reporting means that the information available to investors remains inconsistent and incomplete. There needs to be *more* robust and effective disclosure, not less disclosure.

3. All registrants, regardless of size, should be required to report annually on a comprehensive, uniform set of sustainability indicators comprised of both universally applicable and industry-specific standards.

4. The Commission should review the leading voluntary sustainability disclosure and reporting guidelines and frameworks that are currently in place, as well as those recommended by investor coalitions or non-profit organizations.

5. Line-item disclosure requirements are appropriate for sustainability issues and are necessary to meet investor needs for concrete and comparable disclosures.

6. Meaningful sustainability reports are valued by various stakeholders, including investors, and should continue to be encouraged. However, sustainability information provided on company websites is not sufficient to address investor needs as it does not permit comparison of consistent, comparable information on material risks and opportunities. If the purpose is to protect investors, then the information should be filed with the Commission. Moreover, there should be required disclosure from all companies. Some companies do a good job of reporting, but as long as this reporting is voluntary, it is likely that investors will lack the data needed to make informed comparisons among companies.

7. The Commission should focus on stronger monitoring and enforcement of the 2010 Climate Guidance, as well as require additional line-item climate disclosures.

8. Regulation S-K disclosure should be geared towards all types of investors, from the average investor to the sophisticated professional financial analyst. Every segment of the investor community is entitled to have access to information they deem necessary and material – regardless of size, interests and sophistication.

9. Regulation S-K disclosure should include all of the registrant's subsidiaries. In order to properly evaluate the scope of a company's risks and opportunities, investors need a complete understanding of the scope of its operations and assets.

10. Companies should disclose the number of employees and independent contractors, as well the categories of workers. Companies should also disclose the description of all properties. Companies should disclose their tax strategies. All of this information is highly meaningful and valuable to investors in order to understand the full scope of investment risks and opportunities, regardless of the industry or sector.

Background

Sustainable, responsible and impact investing (SRI) is an investment discipline that considers environmental, social and corporate governance (ESG) criteria to generate long-term competitive financial returns and positive societal impact. SRI can be applied across all asset classes. The practice of sustainable, responsible and impact investing is growing in the United States. **From 2012 to 2014, professionally managed assets engaged in one or more SRI strategies grew from $3.74 trillion to $6.57**

trillion to account for more than one out of every six dollars under professional management in the United States. Additional information can be found in the US SIF Foundation's 2014 Report on US Sustainable, Responsible and Impact Investing Trends 2014.

One of the key priorities for US SIF and its members is enhanced reporting of corporate environmental, social and governance information. There is increasing demand from investors for corporate sustainability reporting; many organizations and investment firms strongly support such disclosure.

For example, US SIF, along with other US and global standard setting organizations, has supported ESG disclosure and reporting and believes that that ESG issues can pose material financial risks and opportunities to companies. In 2009, US SIF submitted a detailed proposal to the Commission requesting the Commission to a) require issuers to report annually on a comprehensive, uniform set of sustainability indicators comprised of both universally applicable and industry-specific components and b) issue interpretive guidance to clarify that companies are required to disclose short- and long-term sustainability risks in the Management Discussion and Analysis section of the 10-K (MD&A).[1]

There is broad interest among other investor organizations for sustainability disclosures. **Ceres**, a national non-profit coalition of investors, environmental organizations and public interest groups, directs the **Investor Network on Climate Risk (INCR)**, which is made up of more than 120 institutional investors representing over $14 trillion in assets. INCR is committed to addressing climate change and other key sustainability risks, while building low-carbon investment opportunities. **The Interfaith Center for Corporate Responsibility (ICCR)**, a membership organization of nearly 300 organizations including faith-based institutions, socially responsible asset management companies, unions, pension funds and colleges and universities that collectively represent over $100 billion in invested capital, engages with hundreds of multinational corporations annually to disclose sustainability practices. The deep and expanding interest of mainstream investors in seeking ESG information to help them manage risk and protect shareholder value is also demonstrated by the growth of the **Principles for Responsible Investment (PRI)** which has over 1,500 investor signatories globally with $60 trillion in assets under management, up from $4 trillion in 2006. **CDP**, formerly the Carbon Disclosure Project, is working with 822 institutional investors holding $95 trillion in assets to help reveal the risk in their investment portfolios and is urging companies to disclose greenhouse gas goals and plans to reduce emissions.

Additionally, in the past several years, firms such as Morgan Stanley, State Street, Goldman Sachs, Bank of New York Mellon and Alliance Bernstein have noted the importance of evaluating ESG factors in making investment decisions. Unfortunately, investor efforts to comprehensively incorporate ESG information into investment decisions are hindered by a lack of comprehensive, comparable and reliable data. The primarily voluntary nature of corporate sustainability reporting means that the information available to investors remains inconsistent and incomplete. **We believe there needs to be *more* robust and effective disclosure, not less disclosure**.

This letter offers comments on several issues highlighted in the Concept Release. Since 2010, US SIF has submitted numerous letters on various disclosure rulemaking under the Wall Street Reform Act.[2] We

[1] US SIF Letter to the Securities and Exchange Commission, July 21, 2009, available at http://www.ussif.org/files/Public_Policy/Comment_Letters/SIF_SEC_ESG_Disclosure_Policy_Letter_and_Submission%2008142009.pdf.

[2] See US SIF Policy webpage for letters and statements at http://www.ussif.org/policyletters.

encourage the Commission to read this letter alongside our recent submissions regarding sustainability disclosure (below) as well as note our numerous meetings with the Commission around disclosure:

- US SIF submission dated September 18, 2014, in response to the Disclosure Effectiveness Review, expressing our concern that this process does not result in a weakening or a rollback of corporate disclosure.
- Corporate Reform Coalition letter to Mary Jo White (Chairman, Securities and Exchange Commission) and Keith Higgins (Director, Corporate Finance Division, Securities and Exchange Commission) dated July 2, 2014 signed by US SIF regarding corporate political spending disclosure and the need for investors to more fully understand the political activities (and the risks those activities present) of companies they invest in.
- US SIF letter to Vikash Mohan (Program Analyst, Office of Financial Management Securities at the Securities and Exchange Commission) dated March 10, 2014 commenting on the proposed SEC 2014-2018 Draft Strategic Plan and urging sustainability disclosure.
- US SIF letter dated January 21, 2014 urging the Commission to move forward expeditiously on a rulemaking to require corporations to disclose their political spending to shareholders and expressing concern that this rulemaking was removed from the Commission's agenda.
- In 2009, US SIF and its members asked the Commission for mandatory corporate environmental, social and governance disclosure and to make ESG or "sustainability" reporting a top priority. In this letter we proposed two components for such disclosure. The first requested that the Commission require issuers to **report annually on a comprehensive, uniform set of sustainability indicators comprised of both universally applicable and industry-specific components**. The second asked that the Commission issue **interpretative guidance to clarify that companies are required to disclose short- and long-term sustainability risks** in the Management Discussion and Analysis section of the 10-K (MD&A). Over the past decade, US SIF and US SIF members have met with SEC Chairs, Commissioners and staff on numerous occasions and have stressed the importance of ESG disclosure, among other issues.

We encourage the Commission to use US SIF and our members as a resource on sustainable, responsible and impact investing and sustainability disclosure. Below are our responses to the specific Requests for Comment in the Concept Release.

US SIF Responses to Requests for Comment

AUDIENCE FOR DISCLOSURE (REQUEST FOR COMMENTS 14-20)

The Securities Act and the Exchange Act requires registrants to provide information prescribed by the Commission as necessary or appropriate in the public interest or for investor protection. While we recognize that there have been debates over the years surrounding the audience for securities disclosure, we believe that being inclusive in required disclosures is consistent with the Commission's mandate of providing the necessary and important information for investment decisions to all investors. We do not agree with the view that market participants are inundated by useless information or that there is "excessive disclosure."

In response to the request for comments, we appreciate that there is some variation among the investor audience for disclosure, such as information that may be more useful to retail versus institutional investors, but we share the view that **the Commission's mandate is to protect *all* investors.**

Disclosure should be geared towards all types of investors, from the average investor to the sophisticated to the professional financial analyst. Every segment of the investor community is entitled to have access to all the information they deem necessary and material - regardless of size, interests and sophistication. Therefore, we caution against requiring that disclosure be written for - or tailored to - more sophisticated investors.

Finally, we do not agree with changes to the existing disclosure regime that would reduce the frequency of periodic reports. We support the view that broad based disclosure requirements improve transparency and builds public trust, confidence and understanding of capital markets by all investors.

GOVERNMENT CONTRACTS AND REGULATION, INCLUDING ENVIRONMENTAL LAWS/INTERNATIONAL TAX ISSUES (REQUEST FOR COMMENTS 52-53)

US SIF encourages the disclosure of all of the registrant's subsidiaries. In order to properly evaluate the scope of a company's risks and opportunities, investors need a complete understanding of the scope of its operations and assets. For example, we have noted a trend among certain multinationals to dramatically limit the number of subsidiaries disclosed in the 10-K, presumably to deflect investor attention from subsidiaries maintained in known tax havens. According to one academic paper, "From 2009 to 2010, 98 percent of Google's and 99 percent of Oracle's subsidiaries disappeared from the Exhibit 21s filed with their SEC Form 10Ks. However, a March 2012 search of available public company registries revealed that at least 65 percent of the missing subsidiaries remained active as of the companies' 2010 filing dates."[3]

These material omissions prevent investors from accurately assessing corporate structure and tax strategy and the attendant contingent liabilities, as well as exposures to political risks in these countries. The need to assess "significance" may also create unnecessary legal expenses for issuers. We recommend that the Commission:

- Require disclosure of *all subsidiaries*, rather than only "significant" subsidiaries. Several commentators have pointed to the Commission's four-part test of "significance" as the reason for the recent trend of "vanishing" or undisclosed subsidiaries.[4]

- Require disclosure of additional information for each subsidiary, such as profits earned and number of employees in each in order to provide investors with sufficient information necessary to understand the structure of the company and its international strategy. A subsidiary in a known tax haven with zero employees and billions in profits, for example, would signal to investors the use of particularly aggressive and potentially risky strategies to hide profits from regulators. For instance, it was reported that prior to its infamous accounting

[3] Jeffrey D. Gramlich and Janie Whiteaker-Poe, "Disappearing subsidiaries: The cases of Google and Oracle," *Social Science Research Network,* March 6, 2013, available at http://ssrn.com/abstract=2229576.

[4] Jessica Holzer, "From Google to Fedex: The Incredible Vanishing Subsidiary," *Wall Street Journal*, May 22, 2013, available at http://online.wsj.com/news/articles/SB10001424127887323463704578497290099032374?mg=reno64-wsj. The author states that vanishing subsidiaries are not the result of asset sales or corporate restructurings. Rather, companies say they are taking advantage of Commission rules that demand disclosure only when subsidiary operations are "significant."

scandals and collapse, Enron used off-balance-sheet special purpose vehicles to hide mountains of debt and toxic assets from investors and creditors.[5]

The Commission's current test of "significance" for subsidiary disclosure was undoubtedly intended to produce the most material information to investors. In our view, however, this test is in practice often used to hide material information. Removal of the "significance" test, combined with the addition of a few key points of information for each subsidiary, would dramatically improve disclosure to investors without imposing additional burdens on issuers. Companies are obliged already to keep accurate records on the operations of subsidiaries, and we do not believe that reporting on those operations would impose a substantial additional burden.

Lack of information prevents investors from accurately assessing corporate tax structure and tax strategy and the attendant contingent liabilities, as well as exposures to political risks in countries. Access to this information helps investors understand complex structures employed by some firms. Additionally, a description of foreign regulatory risks could be useful to investors.

We support disclosure of information regarding the issuers' tax strategies. Aggressive tax strategies, particularly those employed by multinationals, present substantial long-term risks to shareholder value, as well as to local and national economies. Investors do not currently have adequate information to assess these risks. The Commission should improve corporate tax disclosures, including information on corporate tax policy and principles, governance and oversight frameworks and management systems for tax-related risks.[6] We also recommend that the Commission's disclosure requirements be aligned with evolving international standards on country by country reporting.

NUMBER OF EMPLOYEES (REQUEST FOR COMMENTS 54-59)

Disclosure of the number of persons employed by the registrant helps investors assess the size, scale and viability of a registrant's operations and any trends or shifts in operations. We agree with the Division of Corporation Finance's interpretive guidance on this requirement stating that, in industries where the general practice is to hire independent contractors rather than employees, companies should disclose the number of persons retained as independent contractors as well as the number of regular employees.

We strongly support that the Commission require registrants to distinguish among their total number of persons employed, such as distinguishing between:

- full-time and part-time or seasonal employees;
- employees and independent contractors; and
- domestic and foreign employees.

---

[5] How did Enron use off-balance-sheet items to hide huge debts and toxic assets? Investopedia, accessed June 8, 2015, http://www.investopedia.com/ask/answers/060815/how-did-enron-use-offbalancesheet-items-hide-huge-debts-and-toxic-assets.asp.

[6] For more details on the substantive disclosures focusing on international tax related issues, please see letter on the Concept Release on Regulation S-K submitted to the SEC by the Financial Accountability and Corporate Transparency (FACT) Fact Coalition dated July 6, 2016. Available at https://www.sec.gov/comments/s7-06-16/s70616-28.pdf.

In a global economy with increased outsourcing, comprehensive information about a company's employment practices is material to investors. For example, in the global retail industry, part-time and seasonal workers represent a significant portion of a company's workforce. There may be higher risks for human rights violations, worker health and safety problems and labor relations concerns where there are more part-time and seasonal workers. Disclosure of the types of workers provides investors with information about any potential workforce and supply chain risks. The exclusion of non-US and non-full-time employees would provide an incomplete picture of a registrant's practices.

Regarding any additional disclosures about a registrant's employees or employment practices, we support sustainability-related disclosures, including, but not limited to, the following items below. We believe that these items are potentially material at *any* company, as all companies have workforces and supply chains.

1. Diversity information – Diversity is critical for a well-managed company, and the business case for diversity is well-established by companies and investors alike. Diversity information is material to investors. Please see our response to the request for comment number 216 (page 14 below) for a detailed discussion on diversity. We ask the Commission to require the disclosure of diversity information for a registrant's employees. Employee disclosure should include, at minimum, gender, race and ethnicity.

   While we understand that the Concept Release does not cover corporate governance issues, we reiterate our support for disclosing board diversity so that investors can better evaluate board effectiveness and the leadership of the company.

2. Gender pay equity information – We regard gender pay inequality as a material risk to investors and ask the Commission to require the registrants to disclose gender pay ratios on an annual basis. We firmly support that "pay equity is a useful and material indicator of well-managed, well-governed companies, and conversely, that companies exhibiting significant gender pay disparities may bear disproportional risk, and that investors therefore may benefit from having such information."[7]

3. Outsourcing and subcontracting arrangements – As outsourcing and subcontracting have become more prevalent, especially with global supply chains operating in countries or regions where working conditions may be challenging, investors need additional information about a registrant's outsourcing or subcontracting arrangements. Despite multiple tragic events that have resulted from poorly managed outsourcing and subcontracting arrangements, only a minority of companies are able to demonstrate responsible management of their supply chain.[8] Investors need information to assess investment risks in outsourcing and subcontracting arrangements, such as those made clear in the Rana Plaza collapse in Bangladesh in 2013 with a death toll of over 1,100 people. Similarly, investors need information on issues such as child labor, human trafficking and violence against women workers, which are not uncommon in the global supply chain.

[7] Letter to the SEC by Pax Ellevate Management LLC, February 1, 2016.

[8] Vigeo Eiris press release, "Preventing social and environmental dumping within international supply chains: the weak link in corporate social responsibility**,"** June 15, 2016. Available at http://www.eiris.org/media/press-release/preventing-social-environmental-dumping-within-international-supply-chains-weak-link-corporate-social-responsibility/.

Information on outsourcing and subcontracting would be most useful in the context of the description of the registrant's business, disclosure about trends and developments affecting results of operations, and in a discussion of risk and risk management. Thus, we would encourage a set of questions asking the company to disclose how it oversees its outsourcing and subcontracting related to health, safety, human rights, and the process it follows to audit this information and seek remediation.

Additionally, disclosure of the company's policies and practices regarding engagement with stakeholders, such as local communities, indigenous communities, NGOs, labor unions etc., is also critical to understanding a registrant's ability to understand and effectively manage these complex risks. We note that the effectiveness of corporate stakeholder engagement processes has been a consistent component of many investor dialogues for several decades.

Regarding the request for comment on a range for employees and subcontractors, companies should be required to report the exact number of employees in the different categories and by region. Reporting on a range for the number of subcontractors may be acceptable *only if* the exact number of subcontractors is not known by the registrant. The range should be narrow and the reasons for providing the range and not providing the exact number should be disclosed by the registrant.

DESCRIPTION OF PROPERTY – ITEM 102 (REQUEST FOR COMMENTS 60-66)

Item 102 of Regulation S-K requires disclosure of the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. We support the disclosure on the description of all properties, as well as requirements to list locations, capacity and ownership. This information is highly meaningful and valuable to investors to understand the full scope of its risks and opportunities, regardless of the industry or sector. For those registrants without any physical properties, the disclosure about their corporate headquarters, office space and other facilities would be important to investors. All investors would likely value the information on property, especially retail investors who may find it harder to access this information.

There are several reasons why the disclosure of properties is useful to investors. For example, many mining companies are significant users of water, and operations of these properties or assets can be affected by the changing location and severity of drought. There is work underway to assess the mining-related water and environmental risks for investors, sponsored by a major institutional investor.[9] However, without thorough disclosure of where these properties are, investment tools will be ineffective in helping investors to properly price water-related risks.

[9] "Water and the Mining Industry," Columbia University Earth Institute, Columbia Water Center, accessed July 13, 2016, http://water.columbia.edu/research-themes/risk-and-financial-instruments/water-and-the-mining-industry/. The Columbia Water Center has received a grant from Norges Bank to develop a modeling platform to quantitatively assess mining-related water and environmental risks and their financial implications. The new modeling platform will allow investors access to a targeted analysis of water-related mining risk, as well as information on the type of mining operation, geophysical and socio-political setting, remediation and mitigation needs, financial implications of particular asset risks on the broader company portfolio, and causal connections between risk factors and financial performance.

Requirements for description of business and description of properties disclosure should be reviewed for continuing relevance in light of changes that have occurred in the way that businesses operate. While we support disclosing material facts about properties and any trends or uncertainties in connection with that property, we would caution against *only* disclosing material properties and eliminating requirements to list locations, capacity and ownership.

INDUSTRY GUIDES (REQUEST FOR COMMENTS 205-215)

The Commission currently has five Industry Guides that address disclosures by: bank holding companies, oil and gas programs, real estate partnerships, property-casualty underwriters and mining companies. The Industry Guides originally were intended to assist registrants, their counsel and accountants in the preparation of disclosure by publishing staff policies and practices related to staff review of registrant filings. We support the Industry Guides, but we recommend that Guides be periodically updated to align more closely with updated standards for the protection of investors. For example, investors and other groups, such as Ceres, have asked the Commission to improve reporting on carbon asset risks for oil and gas companies,[10] as well as electric utilities.[11] Industry Guides may be an appropriate place to require certain line-item sustainability disclosures that are unique to particular industries.

SECTION F: DISCLOSURE OF INFORMATION RELATING TO PUBLIC POLICY AND SUSTAINABILITY MATTERS

US SIF is pleased to respond to the specific questions listed under disclosure of information relating to sustainability matters. We are concerned that the inclusion of public policy in the title of this section erroneously presumes that sustainability matters are the same as public policy matters. Issues around sustainability and matters on public policy sometimes overlap, but they are not identical. Sustainability matters may at times be public policy matters, but sustainability issues are material all the time. Becoming a focus of public policy may make sustainability matters more material episodically, but just because policymakers are not focusing on something at a particular time does not make it immaterial. Before the recession of 2001, corporate governance was not a major public policy focus, but there were clearly material risks being created by poor governance and deceptive accounting.

US SIF would like to emphasize the following broad points:

1. **An increasing number of investors are integrating ESG factors into their investment decisions and requesting greater disclosure from companies through voluntary initiatives and shareholder proposals.** According to the US SIF Foundation, the practice of ESG integration by

[10] See letter from Ceres to the SEC, April 17, 2015, available at https://www.ceres.org/files/confidential/investor-sec-letter-inadequate-carbon-asset-risk-disclosure-by-oil-and-gas-companies.
[11] Ceres press release, "Global investors launch guide to drive engagement on climate risk with the electric utilities sector," April 28, 2016. Available at http://www.ceres.org/press/press-releases/global-investors-launch-guide-to-drive-engagement-on-climate-risk-with-the-electric-utilities-sector.

money managers exploded between 2012 and 2014 from $614 billion to $4.74 trillion in US-domiciled assets.[12]

2. Investors care about sustainability issues because they are material and affect financial performance. We believe that mispricing is much more likely without information on material risks and opportunities. **There is a mounting volume of literature pointing to the links between environmental, social and governance factors and corporate financial performance.** Please see below for some relevant studies. For more studies, see http://www.ussif.org/performance.

    - In 2015, Deutsche Asset & Wealth Management and Hamburg University published an article titled *ESG and Financial Performance: Aggregated Evidence From More Than 2,000 Empirical Studies.* The team conducted a meta-analysis of over 2,000 empirical studies since the 1970s, making it the most comprehensive review of academic research on this topic. They found that the majority of studies **show positive findings between ESG and corporate financial performance (CFP)**. "*The results show that the business case for ESG investing is empirically very well founded. Roughly 90% of studies find a nonnegative ESG–CFP relation. More importantly, the large majority of studies reports positive findings. We highlight that the positive ESG impact on CFP appears stable over time*."[13]

    - A 2015 report by the Morgan Stanley Institute for Sustainable Investing found that "***investing in sustainability has usually met, and often exceeded, the performance of comparable traditional investments*.**" This is on both an absolute and a risk-adjusted basis, across asset classes and over time, based on its review of US-based mutual funds and separately managed accounts. "*Sustainable equity mutual funds had equal or higher median returns and equal or lower volatility than traditional funds for 64 percent of the periods examined*."[14]

3. **Recent regulatory guidance and legal opinions support the consideration of ESG factors in the investment process and state that is not only permissible, but also arguably mandatory for fiduciaries.** For example, in October 2015, the US Department of Labor rescinded a 2008 bulletin that had discouraged some investors from considering environmental and social factors in the companies and funds in which they invest. In announcing this change, the Secretary of Labor noted that fiduciaries of ERISA-governed retirement plans "*need not treat commercially reasonable investments as inherently suspect or in need of special scrutiny merely because they take into consideration environmental, social or other such factors*."[15]

---

[12] See US SIF Foundation, *Unlocking ESG Integration* (2015). This report explores the rapid expansion of ESG integration in recent years and provides detailed profiles of 16 money managers that practice this strategy. The report specifically looked at investment techniques used, the ESG criteria applied and the asset classes involved.

[13] Gunnar Friede, Timo Busch & Alexander Bassen, "ESG and financial performance: aggregated evidence from more than 2000 empirical studies," *Journal of Sustainable Finance & Investment* (2015), 5:4, 210, DOI: http://www.tandfonline.com/doi/pdf/10.1080/20430795.2015.1118917.

[14] Morgan Stanley Institute for Sustainable Investing*, Sustainable Reality: Understanding the Performance of Sustainable Investment Strategies*, (2015). Available at http://www.morganstanley.com/sustainableinvesting/pdf/sustainable-reality.pdf.

[15] Department of Labor, Employee Benefits Security Administration, *Interpretive Bulletin Relating to the Fiduciary Standard under ERISA in Considering Economically Targeted Investments,* October 26, 2015. Available at

In 2005, international law firm Freshfields Bruckhaus Deringer found, after examining fiduciary law in nine developed markets, including the United States, that, *"…the links between ESG factors and financial performance are increasingly being recognized. On that basis, integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions*."[16] In 2015, a follow-on report to the Freshfields study was produced by the Principles for Responsible Investment (PRI), United Nations Environment Programme Finance Initiative (UNEP FI) and the United Nations Global Compact. The authors, informed by interviews with policymakers, lawyers and senior investment professionals, concluded that *"[f]ailing to consider long-term investment value drivers, which include environmental, social and governance issues, in investment practice is a failure of fiduciary duty*."[17]

4. Sustainability issues are important to informed proxy voting and investment decisions. **We ask the Commission to require all registrants, regardless of size, to report annually on a comprehensive, uniform set of sustainability indicators comprised of both universally applicable and industry-specific standards.** With respect to reporting standards, we encourage the Commission staff to review several leading sustainability disclosure guidelines and frameworks, including US SIF's proposal[18], the Global Reporting Initiative (GRI), CDP (formerly known as the Carbon Disclosure Project), the Climate Disclosure Standards Board, the UN Guiding Principles Reporting Framework, Ceres/Investor Network on Climate Risk (INCR), the Sustainability Accounting Standards Board (SASB), the International Integrated Reporting Council (IIRC), UN Global Compact, Dow Jones Sustainability Index and stock exchange listing requirements for sustainability disclosures, among others. Additionally, the Commission should also provide training to its staff on sustainability indicators and risks, as well as have regular dialogues with investment professionals on this matter.

5. We request the Commission to strengthen enforcement mechanisms of current sustainability disclosures, such as the 2010 Climate Risk Disclosure.

The following represent US SIF's responses to the requests for comments on the disclosure of information relating to sustainability:

216. Are there specific sustainability or public policy issues that are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such

---

https://www.federalregister.gov/articles/2015/10/26/2015-27146/interpretive-bulletin-relating-to-the-fiduciary-standard-under-erisa-in-considering-economically.

[16] Freshfields Bruckhaus Deringer and United Nations Environment Programme Finance Initiative, *A Legal Framework for the Integration of Environmental, Social, and Governance Issues into Institutional Investment* (2005). Available at http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf.

[17] Principles for Responsible Investment, United Nations Environment Programme Finance Initiative and United Nations Global Compact, *Fiduciary Duty in the 21st Century* (2015), 9. Available at http://www.unepfi.org/fileadmin/documents/fiduciary_duty_21st_century.pdf.

[18] US SIF Letter and Proposal to the SEC on ESG Disclosure, July 2009. Available at http://www.ussif.org/files/Public_Policy/Comment_Letters/SIF_SEC_ESG_Disclosure_Policy_Letter_and_Submission%2008142009.pdf.

issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?

US SIF asks the Commission to require issuers to report annually on a comprehensive uniform set of sustainability indicators comprised of both universally applicable and industry-specific components. We understand that not all indicators might be judged material at any given moment, but the same is true of individual pieces of financial information included in accounting standards. Different factors will be more or less material for different industries, sub-industries and sectors, over time.

Instead of identifying one or two specific sustainability issues that are important to informed voting and investment decisions, in reality investors base their investment decisions on dozens to hundreds of individual data points on both financial and sustainability issues.

Materiality, or financial relevance, does not reside in any single indicator or a particular group of indicators, rather it emerges from all the reported facts. According to the Supreme Court's definition of materiality, something is material where there is *"a substantial likelihood that the…fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."*[19] There is ample evidence to support the contention that information relating to performance on sustainability issues has materiality, and a significant number of investors are deploying the limited data available on these ESG topics to shape their investment decisions.

Sustainability matters that are relevant and important to investors vary over time. In many instances, investors have already provided information to the Commission on what is considered relevant and why. US SIF and its members enthusiastically endorse disclosure of sustainability information that is material and affects our financial interests as shareholders.

Numerous investors and organizations, such as the Principles for Responsible Investment, Ceres, Sustainable Accounting Standards Board (SASB) and Interfaith Center on Corporate Responsibility (ICCR), have also made articulate cases for the need for such information to meet our fiduciary obligations as investors. We are aware that thousands of global companies embrace the case for such disclosures as they publish extensive and useful annual Sustainability Reports. The value of such information is affirmed by an expanding number of global investors and companies alike.

In addition, US SIF and its members understand the importance of disclosure of relevant and significant information that is potentially not yet deemed "material" in a financial sense, but may potentially damage or strengthen a company's reputation, potentially affect its sales, or could easily slip into the realm of "material" in the future. In short, we encourage disclosure that includes being responsive to employees, communities, customers or investors. It would be prudent to support such disclosure even when an iron tight case cannot yet be made for its financial materiality. This allows investors to assess trends over time and to act on emerging risks before they become financially material, either by engaging with the company, voting their proxies or selling their shares.

There is a great deal of financial information for which reporting is required, and in our experience, investors use this information to assemble a picture of the value of the company. Rarely are single bits of information used in isolation. Yet when it comes to ESG information, judgments as to the materiality or relevance of such information is often judged exactly that way: in isolation. We urge the Commission to be open to the possibility that the quality of management, one of the key indicators of value, is best

[19] *TSC Industries, Inc. v. Northway*, Inc., 426 U.S. 438 (1976).

judged by assembling *a full picture* of how the corporation manages risks and opportunities, including environmental and social ones.

We submit that sustainability information is particularly useful in assessing quality of management. A management team that can consistently ensure healthy relations with its customers, suppliers, employees, local communities and investors while maintaining a clean environmental record, is a team that is likely to be highly skilled in a range of areas and is forward-thinking. A company that can go even further by anticipating societal needs is likely to prosper far into the future.

For sustainability issues that are important to informed voting and investment decisions, please review the various sustainability reporting frameworks, including GRI, SASB, CDP, IIRC, UN Guiding Principles, and others. As an illustrative example, the consequences of poor human rights practices can materially impact a company's stakeholder relations, financial performance, and prospects for sustainable value creation. Companies that are involved in human rights controversies, such as supply chain abuses, suppression of freedom of expression, support of repressive regimes, and/or companies that have a pattern of disrespectful or exploitative behavior toward Indigenous Peoples may face substantial reputational, legal and operational risks. One of the standards used for companies to report on human rights is the UN Guiding Principles Reporting Framework.[20] This responsibility is set out in the UN Guiding Principles on Business and Human Rights, which is one of the authoritative global standards in this field. In May 2016, the investor coalition supporting the Framework grew to include 83 investors representing $4.8 trillion assets under management. These investors are encouraging other companies to join Ericsson, H&M, Nestlé, Newmont and Unilever in using the Framework to proactively assess and manage their human rights risks, demonstrate how they meet their responsibility to respect human rights and support long-term financial stability.[21]

In addition, we strongly urge the Commission to mandate disclosure on other issues that may not be covered by *existing* disclosure frameworks, but which are important to investors. These include, but are not limited to, the following:

- Corporate political spending disclosure – US SIF and investors have been calling for the Commission to mandate political spending disclosure. The rulemaking petition filed at the Commission on political spending disclosure by 10 prominent securities law professors has attracted a record level of support for SEC rulemaking, reflecting the intense investor interest in enhanced political spending disclosure. More than 1.2 million comment letters have been submitted to support the petition, with the vast majority in support of increased disclosure. Those in favor go far beyond retail investors to include institutional investors, state treasurers, Members of Congress, former SEC Chairs and Commissioners, the founder of the mutual fund-Vanguard Corporation, major endowed foundations, public pension funds, and more. In the years since the Supreme Court decision *Citizens United vs. FEC*, shareholders concerned about a lack of transparency and the impact of secret political spending on their investments have filed hundreds of shareholder resolutions calling for companies to disclose this information. Political spending disclosure resolutions have become one of the most frequently filed type of resolution

[20] UN Guiding Principles Reporting Framework, http://www.ungpreporting.org/.
[21] Guiding Principles Reporting Framework Investor Statement, May 2016, http://www.ungpreporting.org/early-adopters/investor-statement/.

in the ESG space, with nearly 100 such resolutions filed this spring.[22] The votes consistently get a strong showing (in the 30-40 percent range) and generally receive majority winning votes when the major mutual funds (which generally abstain) are removed from the calculation. We strongly believe that corporate governance disclosures are material to investors and must be disclosed. Although roughly 150 major corporations have voluntarily agreed to provide these disclosures – recognizing both its materiality to investors and its importance to the business – these disclosures are inconsistent and incomplete due to their voluntary nature. Only a regulatory solution can provide the consistency needed by investors.

- Diversity – In a global economy, diversity is critical for a well-managed company, and the business case for diversity is well-established by companies and investors alike. Investors have been calling for diversity disclosure because they recognize that recruiting, retaining, and promoting diverse employees are critical to a corporation's success in an evolving marketplace.

  US SIF and our members support reporting on diversity including disclosure of EEO-1 information, which provides a comprehensive breakdown of a company's workforce by race and gender. This data can be helpful for investors to measure a company's progress on diversity and to compare companies across industries and sectors. In addition, we propose that companies be asked to disclose their diversity policies, steps they take to expand diversity in the workforce and executive ranks, successes they have achieved and a description of challenges faced, and finally the value of the diversity for their company.

  Investors have engaged with companies for decades advocating for the disclosure of EEO-1 data. Most recently a number of major tech companies released annual information on the racial and gender make-up of their employees.[23] The success on EEO-1 disclosure with tech companies was in response to the Reverend Jesse Jackson and the Rainbow PUSH Coalition, which launched its PUSHTech2020 initiative in 2004 that called upon tech companies to release their EEO-1 workforce data.[24]

  In addition, numerous studies have shown that companies that empower and advance women are likely to reap the benefits in terms of improved performance and profitability.[25] In a recent report, Credit Suisse's research team identified and mapped more than 28,000 senior managers at over 3,000 companies actively covered by Credit Suisse analysts worldwide – The Credit Suisse Gender 3000. The report confirmed that companies with higher female representation at the board level or in top management exhibit higher returns on equity, higher valuations and also higher payout ratios.[26]

---

[22] As You Sow, the Sustainable Investments Institute and Proxy Impact, *Proxy Preview (2016). A*vailable at http://www.proxypreview.org/.

[23] Rani Molla and Renee Lightner, "Diversity in Tech," Wall Street Journal, April 10, 2016, http://graphics.wsj.com/diversity-in-tech-companies/.

[24] Rev. Jesse Jackson Sr., "The 2 Percent Problem and What I'm Doing About It," The Well, April 11, 2016, http://thewell.jopwell.com/posts/jesse-jackson-silicon-valley-diversity-is-good-for-business/.

[25] Catalyst, The Bottom Line: Corporate Performance And Women's Representation On Boards (2004–2008), accessed July 12, 2016, http://www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards-20042008.

[26] Credit Suisse Research Institute, *The CS Gender 3000: Women in Senior Management (2014)*. Available at https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A5B1E4366DF.

We are supportive of additional disclosure on board diversity. As Chair White stated clearly in an address at the International Corporate Governance Network in June 2016, broadening diversity on company boards is an important priority.[27] At present, fewer than 20 percent of board seats in S&P 500 companies are held by women.[28] Investors and women's organizations have joined together under the umbrella of the Thirty Percent Coalition, a national organization of more than 80 members committed to the goal of women, including women of color, holding 30 percent of board seats across public companies. They have pressed companies with no or inadequate diversity to add women and people of color to their boards. They have done this through letters, discussions with management and boards and the filing of shareholder resolutions.

US SIF and its members have supported past Commission guidance requiring company proxy statements to respond to the question of whether they have a policy on board diversity. But many companies ignored this opportunity to address the issue simply by saying they had no such policy.

We believe the proposed Commission rule should include information on the company's policy on board diversity and on steps taken to implement a diverse board in terms of gender and race. In addition, companies should disclose how they instruct their search firms or search committees to provide a diverse candidate pool, as well as the successes or challenges the companies have faced in the last year in meeting those goals.

Diversity disclosure is material and it should include, at minimum, information on representation of women and minorities on the board and among management-level positions, in particular among senior level executives, as well as policies and programs on sexual harassment and respect for diversity.

- Stakeholder engagement – Engagement with stakeholders, such as local communities, American Indian nations/indigenous communities, NGOs, labor unions etc., is a critical element in sustainability disclosure. Stakeholder engagement may involve many different sustainability issues. Investors can partially determine a registrant's management of risks by its efforts to engage stakeholders. We recommend that the Commission require registrants to disclose their stakeholder engagement efforts. In particular, it would be useful for companies to disclose who they have determined to be their key stakeholders and the processes they utilize to see their views.

---

[27] US Securities and Commission Chair Mary Jo White speech, "Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability," June 27, 2016, US Securities and Exchange Commission. Available at https://www.sec.gov/news/speech/chair-white-icgn-speech.html.
[28] Rachel Feintzeig, "*Another Study Shows Little Progress Getting Women on Boards*," *Wall Street Journal*, (June 14, 2016).

217. Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant's business and financial condition? Why or why not?

We encourage the Commission to consider line-item disclosure requirements for sustainability disclosure. We do not believe that line-item requirement disclosures would cause registrants to disclose "non-material" information to investors, any more than current financial reporting standards do. It would be difficult for any investor to have to justify specific requirements in accounting standards or financial reporting as material in isolation because all are needed to paint the full picture of risks and opportunities. For example, measured or quantifiable environmental, social and corporate governance data can – and should be - integrated and included as line items. As stated before, the Supreme Court's definition of materiality is defined as where there is "*a substantial likelihood that the…fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available*." According to Keith Higgins, "*the Commission also can prescribe rules "as necessary or appropriate in the public interest or for the protection of investors*."[29] Therefore, we believe that it is in the public interest and for the protection of investors to require line-item disclosures. By line-item disclosure, we mean a specific requirement that could elicit a quantitative response, as well as a narrative response.

Without line-item disclosures, investors are left with management's view of risk in the Management Discussion and Analysis (MD&A). Management's view of risk is critically important, but not sufficient. Investors should be able to supplement management's view with sustainability information that is widely recognized to be relevant and material to an industry or to public companies generally, just as investors today rely on line-item disclosures for certain financial and governance information. Line-item disclosures help to ensure comparability between companies and over time.

218. Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their websites. Corporate sustainability reports may also be available in databases aggregating such reports. Why do some registrants choose to provide sustainability information outside of their Commission filings? Is the information provided on company websites sufficient to address investor needs? What are the advantages and disadvantages of registrants providing such disclosure on their websites? How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting? If we permitted registrants to use information on their websites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?

US SIF believes that companies should create meaningful sustainability reports. Investors use sustainability reports to engage directly with companies on the quality of their responses to sustainability concerns and to understand the risks and opportunities posed by these issues. Companies see the business value of such reports which are used by various stakeholders including employees, consumers, investors and peer companies. In the last decade, hundreds of companies have been asked

[29] Keith F. Higgins, Director of Corporate Finance, US SEC, "Shaping Company Disclosure: remarks before the George A. Leet Business Law Conference," October 3, 2014. Available at https://www.sec.gov/News/Speech/Detail/Speech/1370543104412.

to produce sustainability reports and post them online. Sustainability reporting is seen as necessary information for investors who seek to integrate ESG factors into investment decisions.[30]

We understand that many registrants already provide information about ESG matters in sustainability or social responsibility reports or on their website. We support such reporting. However, we believe that sustainability information solely provided on company websites is not sufficient to address investor needs for a number of reasons including:

- The website reporting is not universal. While some large companies have sustainability disclosures on their websites, few small cap companies do. Reporting also varies by industry, country and region.
- Disclosures on individual websites do not adhere to a uniform reporting system that would lead to sufficient information. Many of these disclosures are anecdotal, and while some reports adhere to a specific voluntary standard, there are not enough reports that fully adopt any voluntary standard to allow investors to compare companies with their peers on sustainability scales.
- There is no regulatory oversight of voluntary information provided on websites.
- Investors generally agree that browsing through websites to find ESG data, company-by-company, in order to compare registrants and make investment decisions is a time-wasting, onerous and arduous process. Information on websites can be hard to find and may not be structured or labeled in a consistent way. With voluntary reporting, such as currently done on websites, the disclosures may be anywhere, and it can be a laborious and inefficient process for investment analysts to determine where - and even whether - certain sustainability data exists.

We believe that the Commission should provide investors with access to the sustainability information in a machine readable interactive format. Disclosure should be presented in a manner that provides investors with effective access to material information and avoids boilerplate language. For example, the registrant may use hyperlinks or cross-references in its financial filings to the specific sustainability reporting framework(s) being used.

Regarding the Commission's request for comment on integrated reporting, the International Integrated Reporting Council describes it as a way to communicate a clear, concise and integrated story that explains how all of the resources of the organization are creating value.[31] Integrated reporting may allow investors to see the how sustainability is integral to the business. While there may be some benefits to an integrated reporting framework, we want to make sure that the Commission understands that there are many other meaningful approaches, such as releasing the annual report and good quality sustainability reports simultaneously and providing links on those reports, or including a sustainability section in the annual report and linking to the fuller sustainability report, among others. Even the best integrated report is not a substitute for requiring issuers to report annually on a comprehensive, uniform set of sustainability indicators comprised of both universally applicable and industry-specific components.

---

[30] According to the US SIF Foundation, the practice of ESG integration by money managers exploded between 2012 and 2014 from $614 billion to $4.74 trillion in US-domiciled assets. See *Unlocking ESG Integration* (2015) available at http://www.ussif.org/files/Publications/UnlockingESGIntegration.pdf. Additionally, PRI's signatories, with $62 trillion in assets, are required to publicly report on their responsible investment activity through the PRI Reporting Framework. See https://www.unpri.org/about.

[31] International Integrated Reporting Council at http://integratedreporting.org/.

219. In an effort to coordinate ESG disclosures, several organizations have published or are working on sustainability reporting frameworks. Currently, some registrants use these frameworks and provide voluntary ESG disclosures. If we propose line-item disclosure requirements on sustainability or public policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?

Several organizations have published or are working on *voluntary* sustainability reporting frameworks. We recommend that SEC staff review reporting frameworks and industry guidance developed by these organizations, including, but not limited to:

- **CDP (formerly Carbon Disclosure Project)** - CDP administers the largest database of primary corporate climate change information in the world. The CDP acts on behalf of 882 institutional investors, holding $95 trillion in assets under management and some 75 purchasing organizations.

- **Global Reporting Initiative (GRI)** - GRI is an international independent organization that helps businesses, governments and other organizations understand and communicate the impact of business on critical sustainability issues such as climate change, human rights, corruption and many others. The GRI Sustainability Reporting Guidelines is the most widely used sustainability reporting standard in the world. In 2013, GRI launched its new G4 guidelines after extensive stakeholder consultation. In addition to companies, US government agencies that either reference GRI in their sustainability reports or do full GRI reporting include the US Postal Service, US Army and the US Air Force.[32]

- **The International Integrated Reporting Council (IIRC)** - The IIRC, a coalition of regulators, investors, companies, accounting professionals, standard setters and civil society organizations, was established to demonstrate the linkages between an organization's strategy, governance and financial performance and the social, environmental and economic context within which it operates.

- **Sustainability Accounting Standards Board (SASB)** - SASB is a non-profit organization that issues sustainability accounting standards for the disclosure of material sustainability information in SEC filings. SASB has developed provisional standards for 79 industries in 10 sectors and plans to finalize the standards within the next 18 months.

- **The UN Guiding Principles on Business and Human Rights** - The Guiding Principles (UNGPs) are a set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations. They were proposed by John Ruggie, UN Special Representative on Business and Human Rights. The UN Human Rights Council endorsed the UNGPs in its resolution 17/4 of June 16, 2011. The UNGP Reporting Framework was developed to establish a framework to allow companies to report on their compliance with the UNGPs.

Commission staff should also review disclosure frameworks from other investor coalitions or non-profit organizations on issues like human rights, hydraulic fracturing, deforestation and responsible sourcing. There are also additional required disclosures from several regulatory agencies including the US

[32] Global Reporting Initiative, "US federal community marches into a sustainable 2012," February 1, 2012, https://www.globalreporting.org/information/news-and-press-center/Pages/US-Federal-community-marches-into-a-sustainable-2012-.aspx.

Environmental Protection Agency's greenhouse gas reporting program, the Department of Labor's Occupational Safety and Health Administration, the Equal Employment Opportunity and others.

Some registrants use these frameworks and provide voluntary ESG disclosures. While we appreciate that some companies have used these frameworks to disclose material information, given the voluntary nature of these disclosures the information is not consistent and comparable. We recommend that the Commission encourage companies to disclose the frameworks or programs used.

220. Are there sustainability or public policy issues for which line-item disclosure requirements would be consistent with the Commission's rulemaking authority and our mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation, as described in Section III.A.1 of this release? If so, how could we address the evolving nature of such issues and keep our disclosure requirements current?

US SIF urges the Commission to require line item disclosures in Regulation S-K for sustainability issues, which would result in more consistent and comparable disclosures. As stated earlier, by line-item disclosure, we mean a specific requirement that could elicit a quantitative response, as well as a narrative response. Line item requirements result in more uniform, concrete and comparable disclosures, including checks on misleading or incomplete information.

For example, we support line item disclosures for ESG issues, including, but not limited to:

- Environmental and climate change issues, such as water, energy, emissions, toxins, packaging, greenhouse gas emissions, energy use, etc.
- Social issues, such as labor relations, employee health and safety, diversity, human rights, global supply chain and subcontracting, product safety, community relations, impact on indigenous peoples, etc.
- Governance issues such as shareholder rights, shareholder and stakeholder engagement, executive compensation, sustainability policies and oversight, bribery and corruption prevention, board diversity, corporate political lobbying and spending disclosure and tax strategy, etc.

In addition, investors want to see systematic disclosure of sustainability risks and environmental and social externalities or issues that have longer time horizons. These sustainability risks and externalities may not necessarily be captured by a strict line item analysis, but could present a significant portfolio-level risk over time.

222. If we propose line-item disclosure requirements that require disclosure about sustainability or public policy issues, should we scale the disclosure requirements for SRCs or some other category of registrant? Similarly, should we exempt SRCs or some other category of issuer from any such requirements?

Investors would like to have information that allows them to see which companies may be incurring ESG-related risks before those problems arise. The Commission defines smaller reporting companies (SRC) as those that have a common equity public float of less than $75 million or revenues less than $50 million, if float cannot be calculated. We do not support the exemption of SRCs from sustainability disclosure.

Investors need information that is consistent and comparable, regardless of the size of the registrant. Large, mid-sized and smaller reporting companies are all exposed to significant sustainability risks and the exclusion of SRCs from the disclosure requirements would undermine investors. SRCs face the same market pressures that drive larger companies. While larger companies with more resources tend to disclose more on sustainability issues, that is often because they have had costly sustainability problems and have developed policies to prevent recurrence. Investors are demanding more environmental, social and governance information from companies of all sizes. A report drawing on research from KPMG and IW Financial found that small cap companies are starting to report on sustainability and that disclosure among small cap companies has risen significantly.[33]

Since all companies, regardless of size, have the potential to affect or be affected by sustainability issues, we would not recommend an exemption for any category of issuer. We would not be opposed to a phased approach to reduce costs whereby SRCs would commence full sustainability reporting requirements no more than one year after the commencement of the requirements, but we do not support a complete exemption of SRCs.

223. In 2010, the Commission published an interpretive release to assist registrants in applying existing disclosure requirements to climate change matters. As part of the Disclosure Effectiveness Initiative, we received a number of comment letters suggesting that current climate change-related disclosures are insufficient. Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk? Why or why not? If not, what additional disclosure requirements or guidance would be appropriate to elicit that information?

US SIF would like to assert the following principal points:

- <u>Stronger monitoring and enforcement of the 2010 Climate Guidance</u>. We commend the Commission for issuing the guidance on climate change disclosure through release Nos. 33-9106, 34-61469 and FR-82 Commission Guidance Regarding Disclosure Related to Climate Change (2010). We believe that the Guidance is comprehensive. Despite the increasing importance of climate change to businesses and investors, we remain very concerned that the 2010 guidance is not being adequately monitored and enforced and that as a result, it has had little effect. According to Ceres, the Division of Corporation Finance has issued very few comment letters to companies facing material risks from climate change. We ask the Commission to issue comment letters when filings fail to discuss the material risks and impacts of climate change. In its letter to the Commission, CDP noted that poor compliance is attributable to other reasons, primarily focused on the implementation of the Commission's guidance, and not attributable to the guidance itself.[34] According to a recent article, roughly half of the 3,000 biggest publicly traded companies in the US did not report on climate change risks or opportunities in their annual filings. While the number of companies mentioning climate

---

[33] IW Financial, "Smaller Companies and Sustainability Reporting," March 2014, http://info.iwfinancial.com/RESOURCES/Issue_Updates/How-smaller-companies-fit-into-sustainability-reporting.

[34] Letter to the SEC by CDP dated June 22, 2016.

risks in their 10-Ks has increased, according to Ceres, the disclosures have actually become less specific in recent years.[35]

- Additional line item disclosures beyond the 2010 guidance would be appropriate and important to investors. For example, disclosures that apply to industry sectors, disclosure of the alignment of business plans with the greenhouse gas reduction targets of The Paris Agreement within the framework of the United Nations Framework Convention on Climate Change, water risks, carbon asset risk and energy efficiency, among other issues, should be encouraged.

- Board and senior management level commitment required. When issues are considered important at companies, they get the attention of the board. The Commission should enforce the disclosure in Regulation S-K, or any new disclosure requirements or guidance, to reinforce that these are serious matters that deserve the attention of the Commission, and therefore the attention of management and directors. For example, a recent study examined the current climate orientation of the boards of the 25 largest US investor owned utilities by revenue. The report showed that most utilities lack boards with relevant climate science expertise; only three firms, Ameren, Exelon and PG&E, currently have specifically articulated climate change board oversight responsibilities.[36]

Thank you for taking our views into consideration and for the opportunity to comment. We call on the Commission to live up to the mandate "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." If you have any questions regarding the contents of this letter, please contact me directly at lwoll@ussif.org or 202-872-5358.

Sincerely,

Lisa N. Woll
CEO
US SIF and US SIF Foundation

cc: Chair Mary Jo White, SEC
Commissioner Kara Stein, SEC
Keith Higgins, Director, Division of Corporation Finance, SEC
Rick Fleming, Office of Investor Advocate, SEC

[35] Tom Randall, "Is Climate a Material Risk? Here's What Companies Are Really Reporting," *Bloomberg*, June 30, 2014, http://www.bloomberg.com/news/print/2014-06-30/is-climate-a-material-risk-here-s-what-companies-are-really-reporting.html.

[36] Sustainable Investments Institute for the Investor Responsibility Research Center Institute, *The Top 25 U.S. Electric Utilities: Climate Change, Corporate Governance and Politics*, (2016). Available at http://irrcinstitute.org/wp-content/uploads/2016/04/FINAL-Climate-Change-Corporate-Governance-and-Politics.pdf.