September 18, 2014

Mary Jo White
Chair

Keith Higgins
Director, Corporation Finance Division
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Disclosure Effectiveness Review

Dear Chair White and Mr. Higgins:

US SIF: The Forum for Sustainable and Responsible Investment welcomes the opportunity to comment on the ongoing review of disclosure undertaken by your agency following the Commission-issued staff report to Congress on its disclosure rules for US public companies. The report, mandated by the Jumpstart Our Business Startups (JOBS) Act, offered an overview of Regulation S-K, which provides requirements for public company disclosure and the staff's preliminary conclusions and recommendations about disclosure reform. We welcome the chance to build on those preliminary recommendations as the Division of Corporation Finance reviews the disclosure requirements in Regulation S-K and Regulation S-X, which provides requirements for financial statements.

US SIF is the US membership association of investment firms and financial professionals engaged in sustainable, responsible and impact investing ("SRI"). Our members include more than 300 investment management and advisory firms, mutual fund companies, research firms, financial planners and advisors, broker-dealers, community investing institutions, non-profit associations, pension funds, foundations and other asset owners. For more information, see www.ussif.org.

This letter offers comments on several issues highlighted in the Disclosure Effectiveness Review, however, our primary concern is that this process does not result in a weakening or a rollback of corporate disclosure. We believe there needs to be more robust and effective disclosure, not less disclosure.

One of the key priorities for US SIF and its members is **enhanced reporting of corporate environmental, social and governance (ESG) information**. There is increasing demand from investors for corporate sustainability reporting, and 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 underscoring that ESG issues can pose material financial risks and opportunities to companies. The deep and expanding interest of mainstream investors in seeking ESG information to help them manage risk and protect shareholder value is demonstrated by the growth of the Principles for Responsible Investment (PRI) where assets under management by PRI investor signatories now stand at more than $45 trillion, up from $4 trillion in 2006.

Additionally, endorsers of CDP, formerly the Carbon Disclosure Project, are urging companies to disclose greenhouse gas goals and plans to reduce emissions. The CDP's investor initiatives – backed in 2014 by more than 767 institutional investors representing an excess of $92 trillion in assets – gives investors access to information that supports long-term objective analysis. When investment firms such as Morgan Stanley, State Street, Goldman Sachs, Bank of New York Mellon and Alliance Bernstein publicly declare the importance of ESG issues in making investment decisions, we believe there is a compelling case to be made for such disclosure. Unfortunately, investor efforts to comprehensively incorporate ESG information into investment decisions have been 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.

In 2009, US SIF and its members requested that the SEC mandate corporate environmental, social and governance disclosure and that the Commission make ESG or "sustainability" reporting a top priority (*please see attached*). US SIF and our members have met with SEC Commissioners and staff on numerous occasions and have stressed the importance of ESG disclosure, among other issues.

We appreciate the opportunity to weigh in on - and help improve - the effectiveness of the disclosure system—an important issue for both investors and the public.

Objective of the Disclosure Effectiveness Review (hereinafter, "the Review")

The Report on Review of Disclosure Requirements in Regulation S-K submitted by the Corporation Finance staff stated that "*The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and shareholders' access to that information*."[1] We agree that a comprehensive approach that includes "reviewing and updating requirements on a wholesale basis, taking into account the appropriateness of substantive requirements as a whole as well as presentation and delivery issues" is preferable to a targeted approach.[2]

However, we offer the following five broad comments regarding the objective of this Review:

- Engagement with Investors: We urge the Commission to undertake a balanced Review and proactively seek input and participation from investors. It is our general impression that the process appears more focused on issuers than investors. The Commission should strive to hear directly from investors, including investors engaged in sustainable, responsible and impact investment.

- Use of appropriate language: We urge the Commission staff to be mindful and use caution to ensure that language used—or representations made—around the Review process do not diminish investor confidence in the process. Initial comments by staff to review *"…the costs and burdens on companies while continuing to provide material information and eliminate duplicative disclosures*"[3] and references to "*disclosure overload*" could lead to speculation that current disclosures are ineffective and that the review is focused solely on cutting back or

[1] "Disclosure Effectiveness," US Securities and Exchange Commission, accessed August 27, 2014, https://www.sec.gov/spotlight/disclosure-effectiveness.shtml.
[2] Securities and Exchange Commission, *Report on Review of Disclosure Requirements on Regulation S-K* (2013), 95-96.
[3] Keith Higgins, "Disclosure Effectiveness" (Speech, American Bar Association Business Law Section Spring Meeting, April 11, 2014), Securities and Exchange Commission, http://www.sec.gov/News/Speech/Detail/Speech/1370541479332#.U_43gfldWBI.

eliminating disclosure requirements to the benefit of issuers. Investors hope that the Review instead is focused primarily on <u>stronger</u> disclosure and the needs of investors.

- <u>Inclusion of ESG and other risk-related issues</u>: We recommend that the Review result in clear recommendations that take into account the broad-based needs of investors around environmental, social and governance issues and other risk-related topics. There are significant gaps in current disclosure practices, including a general lack of ESG reporting. Additional disclosures are needed, not fewer.

- <u>No weakening of existing disclosures</u>: US SIF strongly cautions against weakening any existing disclosures. While there may be opportunities to eliminate duplication and streamline reporting and modernize technology to improve the way information is presented and delivered, we hope that the Review is focused on the needs of investors for better, more uniform disclosure.

- <u>No distraction from completing Dodd-Frank rules:</u> The staff reported that a comprehensive review of disclosure effectiveness would likely be a long-term project involving significant staff resources across the Commission. We hope that this endeavor can be undertaken without detracting from the ongoing rulemaking duties of the agency, particularly the long-delayed implementation of rules required under Dodd-Frank concerning Section 953(b) on pay ratio disclosure and Section 1504 on disclosure of payments by resource extraction issuers.

- <u>Consideration of the context of disclosures:</u> 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 enterprise issuing the security. 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 judged by assembling a full picture of how the corporation manages risks and opportunities, including environmental and social ones.

In the Report, the Commission identified several specific areas of Regulation S-K that could benefit from review. The following are areas of particular interest to US SIF:

1. **Risk-related requirements**

If the Commission is conducting a review of risk-related disclosures, we encourage that the review be conducted in order to *improve* the disclosures and to identify whether different risk-related disclosures should be required.

<u>ESG Disclosure</u> - In 2009, US SIF and its members provided comments to the SEC requesting mandatory corporate environmental, social and governance disclosure and making ESG or "sustainability" reporting a top priority (please see attached). In this letter we proposed two components for such disclosure. The first requested that the SEC 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 SEC issue interpretative guidance to clarify that companies are required to disclose short- and long-term sustainability risks in the Management Discussion and Analysis (MD&A) section of the 10-K. Since then, US SIF and its members have met with SEC Commissioners and staff on

numerous occasions and have stressed the importance of ESG disclosure, among other issues.

Additionally, there have been several recent important developments related to ESG disclosure:

- In March, Ceres, a non-profit organization, published the **Investor Listing Standards Proposal: Recommendations for Stock Exchange Requirements on Corporate Sustainability Reporting**. Prior to this release, three exchanges, including NASDAQ OMX, urged members of Ceres' Investor Network on Climate Risk to reach agreement and provide clarity on a unified sustainability disclosure standard that could be adopted by all stock exchanges. This proposal, the result of multi-year dialogues between institutional investors and stock exchanges around the world, includes a set of investor recommendations focused on corporate sustainability disclosure. Investors proposed three items of disclosure for all exchanges to consider:

    1. A "materiality" assessment disclosed in annual financial filings for management to discuss its approach to determining the company's material ESG issues;
    2. Specific ESG disclosure on a "comply and explain" basis for about **10 key ESG topics**, in the format and location of a company's choosing;[4]
    3. A hyperlink in annual financial filings to an ESG Disclosure Index (a table or spreadsheet), based on the Global Reporting Initiative Content Index or its equivalent, indicating where existing information can be found.

- On April 15, the European Parliament adopted the Non-Financial Reporting Directive which requires corporate reporting for certain large companies and groups. Companies concerned will need to disclose information on policies, risks and outcomes regarding environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors. In particular, large public-interest entities with more than 500 employees will be required to disclose certain non-financial information in their management report. This includes listed companies as well as some unlisted companies, such as banks, insurance companies, and other companies. The Directive includes approximately 6,000 large companies and groups across the European Union.

- On March 5, 2014, the Toronto Stock Exchange and the Chartered Professional Accountants of Canada issued a new publication that provides guidance on environmental and social disclosure, A Primer for Environmental & Social Disclosure. The primer discusses principles for environmental and social business conduct, mandatory disclosure requirements, developments in key performance indicators and other global initiatives to advance ESG disclosure.

- In December 2013, KPMG, the United Nations Environment Programme (UNEP), Global Reporting Initiative (GRI) and the Centre for Corporate Governance in Africa at the University of Stellenbosch Business School produced the third edition of *Carrots and Sticks: Sustainability reporting policies worldwide – today's best practice, tomorrow's trends* covering 45 countries

[4] The Proposal recommends that every company should disclose information on the following 10 ESG categories, using a "company or explain" approach for each category: 1. Governance and Ethical Oversight, 2. Environmental Impact, 3. Governmental Relations and Political Involvement, 4. Climate Change, 5. Diversity, 6. Employee Relations, 7. Human Rights, 8. Product and Service Impact and Integrity, 9. Supply Chain and Contracting, and 10. Communities and Community Relations. See Investor Listing Standards Proposal, Ceres (2014).

and regions and 180 sustainability reporting policies and initiatives. The report highlighted some of the major developmental trends in sustainability reporting, including the following:

- ✓ a continued and growing interest in regulation;
- ✓ an increase in the number of countries becoming involved in the sustainability reporting policy arena, including developing countries;
- ✓ a growing reference to existing sustainability and reporting frameworks and the continued emergence of new frameworks;
- ✓ sustainability reporting becoming a listing requirement on several stock exchanges in non-OECD countries; and
- ✓ request from the United Nations to governments to stimulate sustainability reporting by developing best practices and smart regulations, among other developments.

One of the key findings of the *Carrots and Sticks* Report was that the gradual integration of organizational performance data is on the rise, with attempts to combine corporate governance, financial and sustainability reporting, and that it is likely that more governments will issue sustainability reporting policies. The Report found that corporate reports will increasingly focus on sustainability issues that are material for stakeholders and investors. By doing so, these reports provide the most accurate and relevant view of organizations' sustainability performance and impacts.

Climate Change

Four years after the SEC issued guidance on climate change disclosure through release Nos. 33-9106, 34-61469 and FR-82 Commission Guidance Regarding Disclosure Related to Climate Change, we are concerned that the guidance has had little effect. According to a recent article, roughly half of the 3,000 biggest publicly traded companies in the US did not report on climate change disclosure in their annual filings. The article states that the guidance was not a game changer: while the number of companies mentioning climate risks in their 10-Ks has increased, according to Ceres, the disclosures have actually become less specific in recent years.[5] Additionally, there appears to be a stark difference between what companies are reporting to CDP and what they are reporting in SEC filings, according to reports from CDP and Ceres.

The SEC climate guidance, which focused exclusively on current conceptions of materiality, has arguably not been followed. There is a more significant gap, however, between investor needs and actual mandated climate disclosure. CDP, an independent not-for-profit organization working to drive greenhouse gas emissions reduction and sustainable water use by business and cities, has an investor initiative which is now backed by more than 767 institutional investors representing an excess of $92 trillion in assets.[6] In 2010 when the SEC issued its climate guidance, CDP was backed by 534 institutional investors with a combined $64 trillion in assets under management.[7] This stunning growth suggests that investors need more than basic MD&A climate risk disclosure. The CDP survey also includes actual emissions reporting, policies, procedures, management systems, relevant lobbying activities, etc. We

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[5] 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.

[6] "CDP Investor Initiatives," CDP, accessed August 25, 2014, https://www.cdp.net/en-us/whatwedo/pages/investors.aspx.

[7] "CDP Drives Forward Carbon Management Globally," *CDP*, February 17, 2010, https://www.cdp.net/en-US/News/CDP%20News%20Article%20Pages/CDP-drives-carbon-management-globally.aspx.

would urge the Commission to review the CDP surveys, which now cover water, forests and supply chains, in addition to climate, to identify additional line item disclosure requirements in this area.

We are also concerned that the requirement to disclose environmental liabilities of at least $100,000 under Reg. S-K Item 103 regarding environmental liabilities has been historically ignored by companies. In 1998, for example, a study by the EPA Office of Enforcement and Compliance Assurance ("OECA") found that 74 percent of publicly-traded companies had failed to adequately disclose the existence of environmental legal proceedings in their 10-K registration requirements.[8]

The rule, as written, only covers "potential" sanctions, "*unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000 …*" An issuer can generally assert that it has a reasonable belief that any ultimate fine will be less than $100,000. Even if the issuer turns out to be incorrect, and a large fine is paid, however, the rule no longer applies as it only covers "potential" sanctions. In this case, nothing gets disclosed even if that reasonable belief turned out to be wrong. We believe that this runs counter to the original intent of the rule and can be easily fixed by either removing the clause beginning with "unless" or simply requiring the reporting of actual sanctions of $100,000 or more. This information is material to many investors' decisions as it may signal significant fines in the future or a generally lax culture of compliance at an issuer.

Corporate Political Spending and Lobbying Disclosure
Additionally, as part of necessary ESG disclosure, US SIF and its members have urged the Commission to proceed with rulemaking requiring disclosure of political spending information from public companies. Reflecting the intense investor interest in enhanced 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 an SEC rulemaking petition. Nearly one million comment letters have been submitted – the vast majority in support of increased disclosure. These comments, from individuals and institutions, including pension funds, State Treasurers, and other major investors, represent a diverse collection of voices united in their support for greater corporate political transparency. Disclosure of corporate political expenditures exposes whether a company is acting in a manner consistent with its business plan and public values. It can reveal legal, regulatory and business risks not otherwise apparent to investors.

Information about corporate political spending is a clear gap that investors are looking to their regulator to address. Requests by shareholders provide important insight into this demand. A 2014 report by Glass Lewis found that in 2013 resolutions relating to political spending of a company were the most common shareholder proposal put forth during the proxy season for the third consecutive year. Additionally, analysis of recent annual meetings shows that from 2011 to 2014, corporate political activity was the most popular topic for shareholder proposals.[9] From 2010 to 2014, investors filed 449 shareholder proposals calling for increased disclosure of company political spending or lobbying expenditures. Of the 285 proposals that came to a vote, the average vote in favor was 28 percent (30

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[8] The Rose Foundation for Communities and the Environment, *The Gap in GAAP: An Examination of Environmental Accounting Loopholes* (2003) at page 7. The authors state that the EPA study was conducted by Abt Associates Inc., Cambridge, Massachusetts, under Contract #68-W98-005, WA 1-07 and WA-2-07 but never formally released to the public. The EPA study was discussed by Nicholas Franco, in his paper "Corporate Environmental Disclosure: Opportunities to Harness Market Forces to Improve Corporate Environmental Performance" presented at the U.S. Environmental Protection Agency Conference on Environmental Law, Keystone, CO March 8-11, 2001.
[9] Information provided by Heidi Welsh of the Sustainable Investment Institute (Si2), August 27, 2014.

percent for election spending disclosure and 25 percent for lobbying disclosure). During that same time, 123 disclosure proposals were withdrawn because the companies reached an agreement with the filer to provide more information about the political activities. The average vote supporting disclosure for 2014 was 26.9 percent.[10] These figures demonstrate clear and ongoing demand from investors for this information. We infer from the voting results and the negotiated policy changes that there is strong agreement with the observation made in the initial rulemaking petition, which was submitted by a group of prominent law professors specializing in the areas of corporate and securities law, that: "*Absent disclosure, shareholders are unable to hold directors and executives accountable when they spend corporate funds on politics in a way that departs from shareholder interests*."[11]

Undisclosed corporate political spending can encourage behavior that poses legal, reputational and operational risks to companies and systemic risks to the economy. The Supreme Court has stated that complete real-time disclosure of public company political spending allows shareholders to "…*determine whether their corporation's political speech advances the corporation's interest in making profits*..."[12]

Corporations use treasury funds to make a variety of political expenditures, including direct contributions to state-level political candidates, political parties, judicial races, ballot initiatives, and a range of tax exempt entities such as trade associations and 527 organizations that engage in political activity. Corporations may also contribute funds to finance political advertising on public policy issues or to advocate for or against the election of particular candidates. These activities are subject to a variety of state and federal laws. But because there are no current rules that require that companies disclose this spending to their shareholders, it is essentially impossible for an investor to obtain a full picture of any individual company's political spending unless the company chooses to disclose. Without an SEC rule requiring full disclosure for all public companies, shareholders have no uniform means to monitor these activities, or assess the risks of corporate political spending. Voluntary disclosure has led to a patchwork of information that makes it impossible for investors to manage, and potentially mitigate, the full range of risks presented by corporate political spending. From an issuer's perspective, a disclosure mandate would level the playing field by relieving concern that disclosing activities could disadvantage the issuer's standing or competitiveness.

2. Requirements relating to a registrant's business and operations

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.

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

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[10] Ibid.

[11] "Committee on Disclosure of Corporate Political Spending – Petition for Rulemaking," August 3, 2011, 8 at http://www.sec.gov/rules/petitions/2011/petn4-637.pdf.

[12] Citizens United v. FEC, 558 U.S.(2010) Opinion of the Court at page 55. See: http://www.supremecourt.gov/opinions/09pdf/08-205.pdf.

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."[13]

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 <u>all subsidiaries</u>, rather than only "significant" subsidiaries. Several commentators have pointed to the SEC's four-part test of "significance" as the reason for the recent trend of "vanishing" or undisclosed subsidiaries.[14]
- require disclosure of additional information for each subsidiary, such as profits earned and numbers 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 a particularly aggressive and potentially risky strategy to hide profits from regulators.

The SEC'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 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.

3. Corporate governance disclosure requirements

As noted above on our discussion on risk-related requirements, corporate governance disclosures are material to investors. Requirements for corporate governance disclosure should be reviewed to confirm that the information is material to investors. Disclosure should be presented in a manner that provides investors with effective access to material information and avoids boilerplate language.

4. Executive Compensation Requirements

The Report notes that executive compensation disclosure is sometimes pointed to by companies and practitioners as an area of lengthy, technical disclosure. However, we believe that full implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act would supply shareholders with valuable and appropriate disclosures that provide context for the compensation structure of the overall company and how it aligns with executive compensation policies.

In December 2013, US SIF sent a letter to the SEC expressing our strong support for the proposed rule to implement Section 953(b) of the Dodd-Frank Act. We fully support the disclosure of a CEO-to-worker pay ratio because this data benefits investors as well as other important stakeholders (such as employees). We highlighted three broad points: disclosure of CEO-to-worker pay ratio is material to

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

[14] Jessica Holzer, "From Google to Fedex: The Incredible Vanishing Subsidiary," *Wall Street Journal*, May 22, 2013, 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 SEC rules that demand disclosure only when subsidiary operations are "significant."

investors; investors need this data in order to incorporate compensation practices into financial analysis; and the Proposal allows flexibility in how the median compensation of non-principal executive officer ("non-PEO") employees is calculated and allows issuers to provide this information without undue difficulty or expense. Therefore, in our opinion, arguments that the Proposal would be overly burdensome, that the data is too complex to assemble and verify, or that companies are not capable of tracking employee compensation adequately to compute median compensation are simply not valid.[15]

Our members take their proxy voting responsibilities seriously and strongly support transparency by companies to inform their investment decisions as well as voting their shares. We believe that the information sought through this rule will assist investors to exercise both responsibilities.

5. Other General Requirements included in Item 10

We would recommend that Form 8-K be amended to require issuers to break out proxy voting results to eliminate shares controlled by management in order to allow investors to easily determine the actual level of support for proposals by independent shareholders.

Conclusion

Thank you for taking our views into consideration and for the opportunity to comment. 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

Lisa N. Woll
CEO
US SIF and US SIF Foundation

cc: Rick Fleming, Office of Investor Advocate, SEC

Attachments:
US SIF Comment Letter on ESG Disclosure (2009)
Strategic Plan Letter

[15] US SIF comment letter to the SEC on CEO pay, December 2, 2013, http://www.ussif.org/files/Public_Policy/Comment_Letters/Comment_to_SEC_on_Proposed_Pay_Ratio_Disclosure_Rule.pdf.

Via electronic submission to: PerformancePlanning@sec.gov

March 10, 2014

Vikash Mohan
Program Analyst, Office of Financial Management
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–2521

Re: *Comments on Proposed SEC 2014-2018 Draft Strategic Plan*

Dear Mr. Mohan:

On behalf of US SIF: The Forum for Sustainable and Responsible Investment, the U.S. membership association of investors and financial professionals engaged in sustainable and responsible investing ("SRI"), we appreciate that the Securities & Exchange Commission (SEC) is seeking public comment on the 2014-2018 Draft Strategic Plan.[1] US SIF's members include investment management and advisory firms, mutual fund companies, research firms, financial planners and advisors, broker-dealers, banks, credit unions, community development organizations, non-profit associations, and pension funds, foundations and other asset owners. For more information, see www.ussif.org.

One of US SIF's key organizational priorities is enhanced reporting of corporate environmental, social and governance (ESG) information. We are pleased that the Draft Strategic Plan, under Strategic Goals 1 and 3, as well as under several strategic objectives, [2] includes a focus on disclosure. There is increasing demand from investors for corporate sustainability reporting, and investment firms such as Calvert Asset Management Company, Inc., Domini Social Investments, Green Century Capital Management, Inc., MMA Praxis Mutual Funds, Parnassus Investments, Pax World Management, Sentinel Investments, Trillium Asset Management, Corp., Veris Wealth Partners, Walden Asset Management, Bank Sarasin &

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[1] At the start of 2012, $3.74 trillion out of $33.3 trillion of assets under professional management in the United States—11 percent of the market—were held by individuals, institutions, investment companies or money manager that practice SRI.

[2] [DRAFT] Strategic Goals and Strategic Objectives. **Strategic Goal 1: Establish and maintain an effective regulatory environment.** Strategic Objective 1.1: The SEC establishes and maintains a regulatory environment that promotes high-quality disclosure, financial reporting, and governance, and that prevents abusive practices by registrants, financial intermediaries, and other market participants. Strategic Objective 1.2: The SEC promotes capital markets that operate in a fair, efficient, transparent, and competitive manner, fostering capital formation and useful innovation. Strategic Objective 1.3: The SEC adopts and administers regulations and rules that are informed by robust economic analysis and public comment and that enable market participants to understand clearly their obligations under the securities laws. Strategic Objective 1.4: The SEC engages with a multitude of stakeholders to inform and enhance regulatory activities domestically and internationally.
Strategic Goal 3: Facilitate access to the information investors need to make informed investment decisions Strategic Objective 3.1: The SEC works to ensure that investors have access to high-quality disclosure materials that facilitate informed investment decision-making. Strategic Objective 3.2: The SEC works to understand investor needs and educate investors so they are better prepared to make informed investment decisions.

Cie AG, Henderson Global Investors, and Triodos Investment Management, among many others, support such disclosure. Investor efforts to comprehensively incorporate ESG information into investment decisions has been hindered by a lack of comprehensive and comparable data. The still voluntary nature of corporate reporting means that the information remains inconsistent and incomplete.

In 2009, US SIF and its members provided comments to the SEC requesting mandatory corporate environmental, social and governance disclosure and making ESG or "sustainability" reporting a top priority (*please see attached*).[3] In this letter we proposed two components for such disclosure. The first requested that the SEC 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 SEC 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). Since then, US SIF and US SIF members have met with SEC Commissioners and staff on numerous occasions and have stressed the importance of ESG disclosure, among other issues.

As part of necessary ESG disclosure, US SIF and its members strongly support a rule on corporate political contributions disclosure. In January 2014, investors urged the SEC to move forward expeditiously on a rule requiring corporations to disclose political spending to shareholders. We also expressed concern about the decision to remove the rulemaking from the SEC's 2014 agenda. This rulemaking petition has received a historic level of interest, with more than 750,000 comment letters submitted (including by US SIF and its members), the vast majority in support. These comments, from individuals and institutions, including pension funds, State Treasurers, and other major investors, represent a diverse collection of voices united in their support for transparent markets and elections. Disclosure of political expenditures exposes whether a company is acting in a manner consistent with its business plan and public values. It can reveal legal, regulatory and business risks not otherwise apparent to investors.

Additionally, there have been several recent important developments related to ESG disclosure:

- On March 5, 2014, the Toronto Stock Exchange and the Chartered Professional Accountants of Canada issued a new publication that provides guidance on environmental and social disclosure, *A Primer for Environmental & Social Disclosure*.[4] The primer discusses principles for environmental and social business conduct, mandatory disclosure requirements, developments in key performance indicators and other global initiatives to advance ESG disclosure.

- In February 2014, the European Union (EU) reached agreement on new rules governing corporate disclosure of non-financial information. These new rules apply to publicly listed companies and financial institutions with more than 500 employees, and will require disclosure of information on policies, risks and performance on environmental matters, social and employee-related issues, human rights, anti-corruption and board diversity. The new proposal must be adopted by the European Parliament and EU member states in the European Council, and news reports state that it is expected to pass the European Parliament in April 2014 and go to the European Council for adoption afterward.

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[3] US SIF Letter to Mary L. Schapiro, Securities and Exchange Commission, submitted on July 21, 2009. See: http://www.ussif.org/files/Public_Policy/Comment_Letters/SIF_SEC_ESG_Disclosure_Policy_Letter_and_Submission%2008142009.pdf.
[4] *A Primer for Environment & Social Disclosure* can be found at http://tmx.com/en/pdf/A-Primer-for-Environmental-and-Social-Disclosure.pdf.

- The Sustainable Stock Exchanges Initiative, a project organized by the UN Conference on Trade and Development, the United Nations Global Compact, the Principles for Responsible Investment and the United Nations Environment Programme Finance Initiative, has partnered with nine stock exchanges to develop ways to enhance corporate transparency on ESG issues. One of those exchanges is NASDAQ, and in mid-2013, a group of US investors (members of Ceres' Investor Network on Climate Risk, or INCR), delivered a proposal for new listing standards regarding sustainability disclosure to NASDAQ, per NASDAQ's request for it to do so. The proposal represented feedback from over 100 institutional investors around the world and their views on mandatory ESG reporting. NASDAQ is currently considering the proposal and is discussing it with other exchanges of the World Federation of Exchanges (WFE) in 2014.

Thank you for taking our views into consideration and for the opportunity to comment. 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

Attachment: US SIF Comment Letter on ESG Disclosure, 2009.

cc: SEC Investor Advisory Committee

Social Investment Forum

July 21, 2009

The Honorable Mary L. Schapiro
Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Schapiro:

In January 2009, the 400-member Social Investment Forum (SIF), the U.S. membership association for socially and environmentally responsible investment professionals and institutions, issued a letter to then President-elect Barack Obama asking him to move swiftly on several fronts to restore shareholder rights and to advance corporate responsibility. SIF's letter[1] to the Obama Administration listed mandatory corporate environmental, social and governance (ESG) or "sustainability" reporting as a top priority.

In subsequent meetings with Commissioners Aguilar and Walter and SEC staff, the Securities and Exchange Commission (SEC) asked SIF to frame what mandatory ESG disclosure should look like. This submission constitutes our response, and is endorsed by more than 50 organizations listed below.

There is increasing demand from international investor and accounting bodies for corporate sustainability reporting. The best illustration of this trend is the growing number of signatories to the United Nations' Principles for Responsible Investment (PRI). Launched in 2005, the PRI today counts more than 560 global investment institutions with more than $18 trillion in assets under management as signatories.[2] PRI signatories pledge to integrate consideration of ESG issues into investment decisions and ownership practices. They recognize that social and environmental issues can be material to the financial outlook of a company and therefore to shareholder value**.** Other developments supporting this growing sentiment include:

- A 2004 report by the UN Global Compact's Financial Sector Initiative, endorsed by a group of 20 financial institutions from nine countries with more than $6 trillion under management, called on global regulators to "shape legal frameworks in a predictable and transparent way" to "support integration" of ESG information into "financial analysis."[3]

- The 16 global accounting members of the Prince of Wales's Accounting for Sustainability Forum have signed onto five sustainability principles that include a call to promote reporting that "connects an organization's sustainability impacts with its

[1] Social Investment Forum. (Jan. 15, 2009). "New American Leadership for Environmentally and Socially Responsible Investing and Corporate Responsibility." Retrieved June 1, 2009, from http://www.socialinvest.org/pdf/Obama_Policy_Pri_2009.pdf.
[2] UN Principles for Responsible Investment. (n.d.). Retrieved June 1, 2009, from http://www.unpri.org.
[3] The UN Global Compact. (December 2004). *Who Cares Wins: Connecting Financial Markets to a Changing World*. Retrieved June 17, 2009, from http://www.unglobalcompact.org/issues/financial_markets/who_cares_who_wins.pdf. The report was endorsed by ABN Amro, Aviva, AXA Group, Banco do Brasil, Bank Sarasin, BNP Paribas, Calvert Group, CNP Assurances, Credit Suisse Group, Deutsche Bank, Goldman Sachs, Henderson Global Investors, HSBC, IFC, Innovest, ISIS Asset Management, KLP Insurance, Mitsui Sumitomo Insurance, Morgan Stanley, RCM (a member of Allianz Dresdner Asset Management), UBS, Westpac and the World Bank Group. The working group that prepared the report also included Citigroup, Credit Agricole, State Street Global Advisors, the Conference Board, Columbia Business School and the UNEP Finance Initiative.

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financial performance more clearly and consistently."[4]

- In 2008, the International Corporate Governance Network (ICGN), a global investor coalition, published a Statement and Guidance on Non-financial Business Reporting, that said, "Long term success in managing a business in today's complex economic, environmental and social landscape is increasingly dependent on factors not reflected in financial statements and in some instances thought to be outside the corporation's sphere of concern." The statement identified such factors as "intellectual capital, human capital, the environment, customer goodwill, reputation, human rights, anti-corruption, suppliers and community relations."[5]

- Last month, members of the Investor Network on Climate Risk (INCR), a project of Ceres, and other leading global investors with approximately $1.4 trillion in assets under management sent a letter to the SEC requesting that it "require disclosure of material environmental, social, and governance risks using the Global Reporting Initiative (GRI) as a framework."[6]

However, investors' efforts to incorporate ESG information into investment decisions have been hindered by a lack of comprehensive, comparable data. Because sustainability reporting among corporate issuers is largely still voluntary, it is far from universal, and often inconsistent and incomplete.

Our proposal has two components. The first requests that the SEC require issuers to report annually on a comprehensive, uniform set of sustainability indicators comprised of both universally applicable and industry-specific components and suggests that the SEC define this as the highest level of the current version of the Global Reporting Initiative (GRI) reporting guidelines. GRI was established to develop standardized indicators for reporting on ESG and continues to evolve these over time through a public and transparent standards-setting process. The second asks that the SEC 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).

The present global economic crisis has made it readily apparent that our existing system for corporate reporting has failed shareholders. We believe that robust sustainability reporting could have mitigated some of the impacts of the financial crisis. These types of disclosures would have promoted longer-term thinking by investors and corporations, and earlier detection of predatory lending and other destructive business practices.

There is a tremendous opportunity to learn from these gaps and to construct a system of safeguards to protect investors. We are confident that mandatory sustainability reporting will contribute significantly to rebuilding public trust in corporations as well as the agencies regulating them in the wake of the present crisis.

As a next step, we would like to meet with the SEC commissioners and staff to answer questions and to describe further our rationale and approach. We also would be happy to brief the SEC's Investor Advisory Committee on our proposal. We look forward to working

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[4] Retrieved July 6, 2009, from the Prince's Charities, Accounting for Sustainability Project website at http://www.accountingforsustainability.org. The signatories include the American Institute of Certified Public Accountants (AICPA), Association of Chartered Certified Accountants (ACCA), Chartered Institute of Management Accountants (CIMA), Chartered Institute of Public Finance and Accountancy (CIPFA), Consultative Committee of Accountancy Bodies (CCAB) and Global Accounting Alliance (GAA).

[5] International Corporate Governance Network. (Dec. 10, 2008). "Corporate reporting needs to be forward-looking says ICGN in new Guidance on Non-financial Reporting." Retrieved July 1, 2009, from http://www.icgn.org.

[6] The Investor Network on Climate Risk, a project of Ceres. (June 12, 2009). Retrieved June 12, 2009, from http://www.ceres.org/Page.aspx?pid=1106.

collaboratively with the SEC commissioners and staff, investors beyond our constituencies and other key stakeholders to help craft an ESG disclosure rule that benefits U.S. companies and investors and strengthens U.S. markets.

Sincerely,

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Proposal

The organizations and individuals referenced in the attached letter request that the Securities and Exchange Commission (SEC) require issuers to provide annual disclosures of environmental, social and governance (ESG) or "sustainability" information for the following reasons:

- ESG information can inform investors of potential risks and opportunities and promote market efficiency and long-term thinking.
- Corporate social and environmental performance can have a material impact on portfolio performance. Fiduciaries, including investors and corporate directors, may therefore be legally compelled to consider such information.
- U.S. regulatory requirements and voluntary efforts have failed to produce the consistent, comparable data that a rapidly growing community of retail and institutional investors seek to make investment and proxy voting decisions.
- Several governments and regulators outside the United States already require corporations to disclose various ESG factors. As a result, sustainability reports in these markets are generally more prevalent and substantive, placing U.S. companies and financial markets at a potential competitive disadvantage.

Our proposal for mandatory corporate sustainability reporting has two components, as detailed below.

(1) Standardized sustainability disclosures: First, we are asking the SEC to mandate that companies report annually on a comprehensive set of sustainability indicators comprised of both universally applicable and industry-specific components. To ensure consistent reporting, we would like issuers, after an appropriate implementation period, to adhere to the highest reporting level of the current version of the Global Reporting Initiative (GRI) guidelines. At present, this represents the *G3 Guidelines'* A-plus reporting level. We believe that GRI's reporting levels provide a graduated pathway toward implementation for a new sustainability reporting framework in the United States. (GRI's reporting levels and other details on the reporting framework are discussed in section III of our submission.) A requirement to use the most up-to-date version of the GRI guidelines would permit sustainability reporting to improve over time and address emerging issues as GRI periodically updates and refines its indicators.

Ideally, companies should furnish annual reports with sustainability information and analysis alongside standard financial disclosures. Integration of sustainability reporting with financial information in the annual report is a leading practice, particularly in Europe, and should be encouraged in the United States. Therefore, we support inclusion of sustainability reporting in the annual report required by Rule 14a-3, including a presentation of the company's sustainability management approaches, policies and strategies, ESG performance data, a GRI Content Index that maps the company's sustainability disclosures to the relevant numbered indicator in the GRI reporting framework, and management's analysis of the key takeaways from this information for investors. However, as an alternative, companies could issue separate sustainability and annual reports, as long as the annual report includes a GRI Content Index and management's analysis of the company's fundamental sustainability challenges and opportunities. We also encourage the commission to examine the eXtensible Business Reporting Language (XBRL) rules in this context, as GRI is XBRL compatible.

The minimum requirement to include a GRI Content Index and management's sustainability analysis in the annual report would allow companies to continue to produce standalone sustainability reports in an online format to reduce costs while informing all investors where to obtain important ESG information. It also would prevent companies from having to repeat information, such as certain economic impact statements, descriptions of operations and brands, and reviews of corporate governance structures already required by the SEC. Furthermore, the GRI Content Index is particularly useful to analysts. It organizes a company's disclosures in a standardized reference for each GRI indicator, allowing readers to determine, at a glance, whether the company is providing information on each indicator and where that information can be found. In addition to making available, at no charge, an electronic template for the index, GRI offers companies helpful guidelines for assessing materiality, defining report content and setting boundaries.

We strongly support using GRI as the basis for mandatory ESG disclosure in the United States because it is the most widely used sustainability reporting standard worldwide and draws upon international norms. Formulated through a transparent, multi-stakeholder process begun in 1997 that included a geographically diverse group of hundreds of corporations, labor unions, civil society organizations, multilateral institutions, government agencies, academics and individual experts, GRI's reporting framework has been thoroughly tested over the past dozen years. A collaborating center of the United Nations Environment Program (UNEP), GRI is the preferred reporting format for signatories to the UN Global Compact. Last year alone, more than 1,000 companies, including many of the world's leading brands, issued sustainability reports based on the GRI's *G3 Guidelines*, a 46 percent increase from 2007, making it the *de facto*, international standard for sustainability reporting.[7] Furthermore, GRI offers guidance to companies on materiality and the opportunity for companies to explain to stakeholders why some indicators might not be applicable to them, striking a good balance between specificity and flexibility. GRI was created to provide a common, global framework for sustainability reporting, making it the best option to form the basis of a new SEC rule on corporate ESG reporting.

(2) Materiality guidance and risk disclosures: In addition, we ask the SEC to issue interpretative guidance to clarify that issuers are required to disclose short- and long-term sustainability risks in the Management Discussion and Analysis section of the 10-K (MD&A). This would give companies guidance on reporting in general and particularly on emerging issues that GRI might not directly address. It would also require companies to highlight their most pressing sustainability challenges and opportunities for investors.

We recommend that these disclosures include any significant developments at a company that might harm public health or the environment, involve ethical lapses or labor or human rights abuses, hurt the company's brand or reputation, result in legal liabilities or otherwise detract from shareholder value. For example, corporations could provide information from internal research, from peer-reviewed studies in respected scientific journals, or from significant reports brought to their attention from other companies, regulatory bodies, multilateral institutions, universities or other civil society organizations. It also should address the impacts of new regulatory requirements. In these cases, companies should:

- Discuss the relevant trends or developments in scientific studies that may relate to public health or environmental risks associated with their products or activities. The disclosure of these significant developments should be required even if there is scientific debate or uncertainty, such as some studies finding a lack of such impacts.

- Describe the severity and scale of the risk, such as the percentage of the company's expected sales volume that a potentially problematic product comprises, the potential extent of workplace exposures where potentially toxic materials are used in the fabrication of goods, or overall potential human health effects. To the greatest extent possible, companies should qualitatively or quantitatively describe for each case the magnitude of potential liabilities or opportunities associated with the issue.

- Review measures being taken to minimize adverse impacts or maximize business opportunities associated with the issue. Examples could include consumer education, research, materials modification or substitution, development of new products or services, exposure reduction,

[7] Global Reporting Initiative. (July 15, 2009). "Number of companies worldwide reporting on their sustainability performance reaches record high, yet still a minority." Retrieved July 16, 2009, from http://www.globalreporting.org/NewsEventsPress/PressResources/PressRelease_14_July_2006_1000GRIReports.htm.

public policy efforts, fieldwork, third-party auditing, adoption of new codes, insurance, employee training or other actions.

- Provide management's discussion and analysis of how the issuer's ESG performance relates to its overall business strategy and performance.

Today, more than ever, investors are demanding sustainability metrics to inform their investment decisions. Given the current economic crisis and developments in ESG disclosure globally, we believe that the time is right for the SEC to explore and institute requirements for corporate sustainability reporting. We believe our proposal, if implemented, would help investors make more informed, long-term investment decisions, improve overall corporate performance and conduct and reestablish public confidence in companies, markets and regulators.

The remainder of this submission presents recent research supporting our proposal and explains the merits of a mandatory sustainability reporting framework for the United States. It is organized as follows:

I. Materiality of ESG Information to Investors

Several trends are converging that speak directly to the need for a mandatory ESG disclosure rule in the United States. The first is that 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. The second is that recent legal opinions have come around to the position that consideration of ESG factors in the investment process is not only permissible but also arguably mandatory for fiduciaries. At the same time, a mounting volume of literature is pointing to links between ESG factors and corporate financial performance. However, comparable ESG data is still scarce, and enforcement of even existing disclosure requirements in the United States is lacking.

Investor demand for ESG data: An increasing number of investors are incorporating ESG information into decisions on portfolio selection, proxy voting and corporate engagement. For example, the former UN Secretary General Kofi Annan in 2005 founded the UN Principles for Responsible Investment (UN PRI), which today counts as endorsers more than 560 institutional investors from around the world managing more than $18 trillion in assets. In becoming signatories, investors pledge to "incorporate ESG issues into investment analysis and decision-making processes," as outlined by UN PRI's first principle. As stated by the second, they also endorse the following statement:

> As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time). We also recognize that applying these Principles may better align investors with broader objectives of society.

The UN PRI's third principle calls on signatories to "seek appropriate disclosure on ESG issues by the entities in which we invest." Suggested actions include seeking "standardized reporting on ESG issues using tools such as the Global Reporting Initiative" and asking "for ESG issues to be integrated within annual financial reports."[8]

UN PRI signatories are not alone. The Carbon Disclosure Project (CDP), an annual request to more than 3,700 corporations across the globe, including the S&P 500, for reporting on greenhouse gas emissions, has grown in support from 35 institutions with $4.5 trillion in assets under management in 2000 to more than 475 institutions with $55 trillion in assets today, or by more than 1,122 percent in terms of assets.[9] The CDP not only attests to the materiality of this information, but also to the difficulty investors have in obtaining baseline greenhouse gas emissions data from issuers. Similarly, the Sudan Divestment Task Force, a non-profit provider of data on corporate involvement in the ongoing genocide in Darfur, counts among its subscribers fiduciaries managing more than $3 trillion.[10] Moreover, sell-side providers are also incorporating ESG data, including Goldman Sachs and Société Générale, and the largest consultant firms, including Mercer and Cambridge, now have departments devoted to sustainable investing, a further indication of growing demand from the institutional and high-net worth investor market.

In fact, spurred by such factors as rising institutional investor interest, growing demand for climate-related renewable energy alternatives, concerns about the Sudan humanitarian crisis, and the emergence of new products, socially responsible investing (SRI) in the United States is now growing at a much faster pace than the broader universe of all investment assets under professional management,

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[8] UN PRI. (n.d.) Retrieved June 17, 2009, from http://www.unpri.org/principles/.

[9] Carbon Disclosure Project. (n.d.). Retrieved June 15, 2009, from http://www.cdproject.net/press.asp.

[10] Sudan Divestment Task Force. (n.d.) Retrieved June 17, 2009, from http://www.sudandivestment.org/statistics.asp. On June 8, 2009, the Sudan Divestment Task Force became the Conflict Risk Network (CRN), a project of the Genocide Intervention Network. CRN "is a network of high-net individual and institutional investors whose combined efforts to mitigate conflict risk and increase responsible foreign investment will result in the protection of civilians and improvement of investment returns," according to its website. CRN aims to expand its coverage beyond Sudan to other conflict zones around the world. To date, it includes subscribers managing $400 billion. See http://crn.genocideintervention.net/.

according to a report commissioned by the Social Investment Forum.[11] The report found that, from 2005 to 2007, SRI assets increased more than 18 percent, while all investment assets under management edged up by less than 3 percent. In all, it identified $2.71 trillion in total assets under management—one dollar in every nine dollars or 11 percent of the $25.1 trillion under professional management in the United States.[12]

Proxy Voting: During the 1990s, social and environmental proposals on average were supported by fewer than 10 percent of the shares voted, but this has changed dramatically. Shareholder proposals asking companies to issue sustainability reports have achieved an average of 25 percent support for the last five years, according to statistics from RiskMetrics Group.[13] In the 2008 proxy season alone, 28 proposals were filed at U.S. companies asking them to issue comprehensive sustainability reports. The five proposals coming to a vote averaged 29.6 percent support of the shares voted, with proposals at Dover (40 percent), Dentsply International (36 percent) and Southwest Airlines (26 percent), garnering the highest votes. In addition, 23 of the 28 proposals were withdrawn after companies acceded to proponents' requests for reports—a further indicator that corporate management also recognizes the benefits of sustainability reporting. Most of the sustainability reporting proposals filed for 2008 asked for GRI reports.

Overall, the number of social issue shareholder proposals capturing between 20 and 30 percent support increased 170 percent between 2004 and 2008, and the number winning more than 30 percent support doubled, with proposals on climate change, equal employment opportunity, political contributions and sustainability reporting leading the pack.[14] According to a recent report from the As You Sow Foundation, the number of social and environmental proposals filed over the past decade almost doubled from 219 in 1999 to 402 in 2008.[15]

Fiduciary duty: In 2005, the law firm of Freshfields Bruckhaus Deringer issued a survey of the law of fiduciary duty in the United States, Europe, Japan, Canada and Australia, and concluded that the consideration of ESG factors in the investment process is clearly permissible in every jurisdiction. In fact, Freshfields concluded that the law arguably requires fiduciaries to take ESG factors into account when they may affect the long-term value of the portfolio. They also noted that the law of fiduciary duty accords fiduciaries wide discretion in making this determination.[16]

In July 2009, the United Nations Environment Program Finance Initiative (UNEP-FI) with the backing of asset managers representing $2 trillion in assets under management, issued a 120-page follow-up to the groundbreaking Freshfields report.[17] The report says that professional investment advisors and service providers to institutional investors may have a far greater legal obligation than outlined in the

[11] Social Investment Forum. (March 5, 2008). *Report on Socially Responsible Investing Trends in the United States*. Retrieved June 15, 2009, from http://www.socialinvest.org.

[12] Ibid. The *Trends* report counts the assets of institutions that incorporate one or more social or environmental criteria as part of a formal investment policy, sponsor or cosponsor shareholder proposals on environmental or social issues or corporate governance issues that "cross-over" into areas of social responsibility, as well as the assets of community investing institutions. The report counts assets managed using a screen on a single issue, which includes, for example, approximately 16 percent of the assets from socially screened funds and 37 percent of institutional investor assets.

[13] Heidi Welsh for RiskMetrics Group. (March 25, 2009). *Issue Report, Sustainability Topics, Sustainability Reporting*.

[14] Ibid.

[15] As You Sow Foundation. (April 6, 2009). *Proxy Preview 2009, Helping Foundations Align Investment and Mission*. Retrieved June 1, 2009, from http://www.asyousow.org/publications/Proxy%20Preview%20Release%204-6-09.pdf.

[16] Freshfields Bruckhaus Deringer for the Asset Management Working Group of the UNEP Financial Initiative. (October 2005). *A legal framework for the integration of environmental, social and governance issues into institutional investment*.

[17] The Asset Management Working Group of the UNEP Financial Initiative. (July 14, 2009). *Fiduciary Responsibility, Legal and Practical Aspects of Integrating Environmental, Social and Governance Issues into Institutional Investment*. Retrieved July 14, 2009, from http://www.unepfi.org/fileadmin/documents/fiduciaryII.pdf.

original Freshfields report to incorporate ESG issues into their investment services or face "a very real risk that they will be sued for negligence" if they do not.

In May 2008, Weil, Gotshal & Manges LLP issued a memo in support of Professor John Ruggie's[18] latest report[19] to the United Nations Human Rights Council. The memo, signed by Ira Milstein, E. Norman Veasey and litigation counsel Harvey Goldschmid, stated that:

> Violations of human rights may constitute material risks for many U.S. corporations, not only in the United States, but also in foreign jurisdictions where they conduct business….each U.S. company must presently determine for itself, what human rights risks may be material to its business. Additionally, and beyond the obligation to manage risks, and comply with law, there is a substantial business case in favor of safeguarding human rights wherever the company does business.[20]

Recent legal scholarship suggests there may be an emerging fiduciary duty for corporate directors to consider human rights issues that may present severe legal, operational and reputational risks to the long-term value of corporations.[21] If corporate directors must consider these issues, it is certainly prudent for investors to understand them as well.

The financial materiality of ESG data: Investors identify companies and securities in which to invest by forming a conclusion based on dozens to hundreds of individual data points. Indeed, much financial information is not relevant for any given company, yet few question that we need broad, consistent and comparable disclosure of financial data. The same holds true for sustainability information. Materiality, or financial relevance, does not reside in any single factor or particular cluster of factors; 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." There is ample evidence to support the contention that information relating to performance on sustainability issues has financial relevance or materiality, and as noted above, a significant number of investors are deploying the limited data available on these topics to shape their investment decisions. In addition, a growing body of literature finds positive correlations between ESG factors and financial performance.

In 2004, the United Nations Secretary General invited financial institutions to develop a set of guidelines and recommendations on how to better integrate ESG issues into asset management, securities brokerage services and associated research functions. Twenty financial institutions from nine countries and with more than $6 trillion under management endorsed the resulting report:

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[18] In 2005, the Secretary-General appointed Harvard Professor John G. Ruggie to be his Special Representative on business and human rights under the UN Commission on Human Rights Resolution 2005/69. Per the resolution, the special representative has a mandate that includes elaborating on "the role of States in effectively regulating and adjudicating the role of transnational corporations" and identifying "standards of corporate responsibility and accountability for transnational corporations" with respect to human rights matters. United Nations. (n.d.). *Human Rights and Transnational Corporations and other Business Enterprises, Human Rights Resolution 2005/69*. Retrieved June 15, 2009, from htttp://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-69.doc and http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative.

[19] John Ruggie. (April 7, 2008). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to Development; Protect, Respect and Remedy: a Framework for Business and Human Rights; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.* Retrieved June 17, 2009, from http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf.

[20] Weil, Gotshal & Manges LLP. (May 22, 2008). *Corporate Social Responsibility for Human Rights: Comments on the UN Special Representative's Report Entitled: Protect, Respect and Remedy: a Framework for Business and Human Rights*. Retrieved June 17, 2009, from http://www.reports-and-materials.org/Weil-Gotshal-legal-commentary-on-Ruggie-report-22-May-2008.pdf.

[21] Cynthia A. Williams & John M. Conley for the *University of Cincinnati Law Review*. (2005). "Is There an Emerging Fiduciary Duty to Consider Human Rights?" Vol. 74, 2005. Retrieved June 17, 2009, from http://www.law.uc.edu/current/experiences/publications/docs/0075williamsconley.pdf.

> The institutions endorsing this report are convinced that in a more globalized, interconnected and competitive world the way that environmental, social and corporate governance issues are managed is part of companies' overall management quality needed to compete successfully. Companies that perform better with regard to these issues can increase shareholder value by, for example, properly managing risks, anticipating regulatory action or accessing new markets, while at the same time contributing to the sustainable development of the societies in which they operate. Moreover, these issues can have a strong impact on reputation and brands, an increasingly important part of company value.[22]

In 2006, 14 of the world's largest investment firms launched a groundbreaking report for the UNEP-FI titled *Show Me the Money*. The report highlighted the growing importance of ESG concerns to the global investment community and drew on research from leading brokerage firms, including Goldman Sachs, JP Morgan, Morgan Stanley and Merrill Lynch.[23] Covering the impact of several types of sustainability risks on company value, the report found that:

- "There is robust evidence that ESG issues affect shareholder value in both the short and long term." The report notes that over the course of its three-year research period, analysts "presented significant evidence of the positive and negative impacts environmental, social and governance issues can have on share price across multiple sectors," including the automotive, aerospace and defense, media, and food and beverage industries.

- "The impact of ESG issues on share price can be valued and quantified." It notes, "Using a range of valuation tools, including benchmarking, scenario analysis, proprietary valuation methodologies, and case studies, several of the reports incorporate ESG variables into company valuations." It cites nine analysts' reports containing "evidence of a link to materiality" for ESG factors, "of which six were explicitly quantified."

- "Key material ESG issues are becoming apparent, and their importance can vary between sectors." The report found common themes among ESG risk categories referenced by analysts, including "the importance of public policy and regulation in determining materiality; the importance of brand and reputation as emerging categories of risk (particularly to companies whose primary exposure is directly to consumers); the importance of global supply chains and the ability to manage outsourcing and supply chain risk; the importance of aging workforces, pension obligations, and healthcare costs; and the overarching significance of corporate governance."

A 2007 report by the UNEP-FI and Mercer, *Demystifying Responsible Investment Performance*, examines 20 academic studies that discuss the link between environmental, social or governance indicators, or all of them, and financial performance, and documents that half show a positive—and statistically significant—relationship, three show a negative relationship, and seven show neutral

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[22] The UN Global Compact. (December 2004). *Who Cares Wins: Connecting Financial Markets to a Changing World*. Retrieved June 17, 2009, from http://www.unglobalcompact.org/issues/financial_markets/who_cares_who_wins.pdf. The report was endorsed by ABN Amro, Aviva, AXA Group, Banco do Brasil, Bank Sarasin, BNP Paribas, Calvert Group, CNP Assurances, Credit Suisse Group, Deutsche Bank, Goldman Sachs, Henderson Global Investors, HSBC, IFC, Innovest, ISIS Asset Management, KLP Insurance, Mitsui Sumitomo Insurance, Morgan Stanley, RCM (a member of Allianz Dresdner Asset Management), UBS, Westpac and the World Bank Group. The working group that prepared the report also included Citigroup, Credit Agricole, State Street Global Advisors, the Conference Board, Columbia Business School and the UNEP Finance Initiative.

[23] UNEP Finance Initiative Asset Management Working Group. (July 2006). *Show Me The Money: Linking Environmental, Social and Governance Issues to Company Value*. Retrieved June 16, 2009, from http://www.unepfi.org/fileadmin/documents/show_me_the_money.pdf. ABN AMRO Asset Management, Acuity Investment Management, BNP Paribas Asset Management, Calvert Group, ClearBridge Advisors/Legg Mason Groupama Asset Management, Henderson Global Investors, Hermes Pensions Management, HSBC Halbis Partners, Insight Investment, Mitsubishi UFJ Trust & Banking Corp, Morley Fund Management, RCM (Allianz Global Investors) and Sanpaolo AM/Eurizon Financial Group commissioned and signed onto the report's findings.

results.[24] They conclude, "[A] variety of factors such as manager skill, investment style and time period are integral to investment performance. The argument that integrating ESG factors into investment analysis and decision-making will only lead to underperformance simply cannot be made." Moreover, in half the cases examined, integrating some environmental, social, and/or governance factors resulted in the portfolios outperforming.

In 2003, Orlitzky, Schmidt and Rynes[25] conducted a meta-analysis of 52 studies examining links between corporate social and environmental performance and corporate financial performance. The combined studies yielded a total sample size of nearly 34,000 observations. The authors of the study concluded that "corporate virtue in the form of social responsibility and, to a lesser extent, environmental responsibility is likely to pay off." A 2009 McKinsey report[26] reinforces these findings. It surveyed CFOs, institutional investors and corporate social responsibility professionals about ESG programs and financial performance, and showed that 56 percent of those surveyed believed that ESG programs add value, while only 7 percent believed these programs reduced corporate value (the rest believed there was no effect, or did not know).

In addition, academic literature regarding the importance of human capital and other workplace factors to a wide range of outcomes for companies, including financial performance, is extensive. For example, a meta-analysis of more than 70 empirical studies of employee stock ownership, profit sharing, broad-based employee stock options and employee participation systems found that on average, these practices improved a company's productivity level about 4 percentage points. It also found that they lifted total shareholder returns and boosted profit levels as measured by return on assets, return on equity, and profit margins.[27] More than a dozen studies completed since then have come to similar conclusions about these issues, as well as related ones such as employee training and workforce diversity.

Additionally, researchers at Northeastern University concluded that investors react positively to the announcement of labor-friendly practices through the *Fortune* list of "Best 100 Companies to Work For in America," and that the publicly traded firms on the list subsequently outperform a control group matched by size and industry in terms of productivity, profitability and value creation.[28] Generally, investors and markets do not have much information about firms' labor relations, except when there is a calamity—a strike, a class-action lawsuit, or a major accident involving significant morbidity or mortality. While lists or awards such as the Best 100 do not necessarily identify all companies with exemplary labor practices, they do give investors information they do not ordinarily have—insight into workplace practices. Therefore, it is noteworthy that evidence supports the fact that investors react positively to good practices and performance when they have the information.

A smaller number of studies have come to similar conclusions about other social factors such as labor and human rights, which are more difficult to analyze due to a paucity of corporate reporting. For example, two case studies found that codes of conduct addressing labor and human rights issues in global supply-chain factories can lift employee morale and productivity, reduce turnover and accelerate order turnaround time.[29]

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[24] Asset Management Working Group, UNEP-FI and Mercer. (October 2007). *Demystifying Responsible Investment Performance: A review of key academic and broker research on ESG factors.*
[25] Marc Orlitzky, Frank L. Schmidt and Sara L. Rynes. (n.d.). "Corporate Social and Financial Performance: A Meta-analysis," *Organization Studies* 24(3): 403-441.
[26] McKinsey. (n.d.). *Valuing corporate social responsibility, McKinsey Global Survey, 2009.*
[27] Joseph Blasi, Douglas Kruse and Aaron Bernstein for Basic Books. (2003). *In the Company of Owners: The Truth about Stock Options*.
[28] Olubunmi Faleye and Emery Trahan for Northeastern University, College of Business Administration. (May 2006). *Is What's Best for Employees Best for Shareholders?*
[29] Center for International Private Enterprise/Social Accountability International. (Feb. 11, 2009.) *From Words to Action: A Business Case for Implementing Workplace Standards*. Retrieved June 15, 2009, from http://www.cipe.org/publications/papers/pdf/SAI.pdf.

The information and enforcement deficit: However, it is still difficult for investors to find the ESG data they seek. While becoming more prevalent as a corporate reporting practice, only 1,000 companies adhered to the GRI's *G3 Guidelines* in their annual sustainability disclosures in 2008, and most of these claims are not audited or verified by a third party.[30] This lack of data, in turn, is making the integration of ESG performance into mainstream financial analysis difficult.

In June 2009 a report released by Ceres and the Environmental Defense Fund found that useful climate risk disclosure in SEC filings is scarce.[31] The report evaluated the quality of disclosure in 10-K and 20-F reports filed by 100 companies during the first quarter of 2008 in several sectors affected by climate change regulations: oil and gas, electric power, coal, insurance and transportation. It concluded that only two of the 100 companies disclosed more than half of the information sought by investors, despite the significant risks in their industries.

Another study released in June 2009 by the Investor Environmental Health Network (IEHN) found that as "a result of weak regulations, companies do not assess, quantify or disclose potential and pending liabilities on a timely basis," making it impossible for shareholders and analysts "to use existing disclosures for a realistic evaluation of many companies."[32] The report added, "We find that regulators have yet to close loopholes that have already cost shareholders hundreds of billions of dollars due to under-reported liabilities, wiping shareholder value off the books." The report warns that as potentially hazardous nanotechnologies enter the market, "the same regulatory weaknesses that allowed asbestos manufacturers to conceal information from investors are being abused once again to conceal information…" While focusing on product-related liabilities, the author says that many of its findings "are equally applicable to the broader array of contingent liabilities that appear in disclosure reports and financial statements." The IEHN report recommends that the SEC work with the Financial Accounting Standards Board (FASB) to ensure that companies:

- "Recognize the materiality of the long term, and need for disclosure of potential liabilities that may manifest in the long term."
- "Disclose emerging trends and scientific findings regarding impacts of companies' products and activities relevant to both short and long-term outcomes."
- "Disclose the range of liability estimates, not just the 'known minimum.'"
- Use "third-party consultants who work from non-privileged information" to develop and release liability estimates.
- "Disclose inconsistencies in liability estimates and timelines provided to insurers…investors" and "other parties."
- "Disclose nonprivileged critical assumptions used in estimating liability."
- "Benchmark liability estimates against other companies facing similar litigation."
- "Allow shareholder resolutions requesting disclosure of the risks of concern to investors to appear on the annual proxy ballot."

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[30] Global Reporting Initiative. (July 15, 2009). "Number of companies worldwide reporting on their sustainability performance reaches record high, yet still a minority." Retrieved July 16, 2009, from http://www.globalreporting.org/NewsEventsPress/PressResources/PressRelease_14_July_2006_1000GRIReports.htm.

[31] Ceres & Environmental Defense Fund. (June 2009). *Climate Risk Disclosure in SEC Filings*. Retrieved June 17, 2009, from http://www.ceres.org/Document.Doc?id=473.

[32] Sanford Lewis for the Investor Environmental Health Network. (June 2009). *Bridging the Credibility Gap, Eight Corporate Liability Accounting Loopholes that Regulators Must Close.* Retrieved June 17, 2009, from http://www.iehn.org/documents/EightLoopholes.pdf.

Similarly, a third study this year, by Harvard Law School Labor and Worklife Program, points to the dearth of corporate reporting on labor and human rights issues, especially as they pertain to companies' supply chains. It also calls for better disclosure using existing models for reporting in these areas.[33] A 2008 report from RiskMetrics Group found only one in five large cap firms disclose policies on supplier labor standards aimed at preventing sweatshop abuses, and only 4 percent report on supplier labor standards in any meaningful way that incorporates performance metrics. Furthermore, only a handful discussed these risks with shareholders in securities filings or annual reports.[34]

U.S. government agencies have also pointed out weaknesses in U.S. corporations' reporting on sustainability issues. The Government Accountability Office issued a report in July 2004[35] addressing key stakeholders' views on how well the SEC had defined requirements for environmental disclosure, the extent to which companies had disclosed such information in their SEC filings, the adequacy of the SEC's efforts to monitor and enforce compliance with environmental disclosure requirements, and experts' suggestions for increasing and improving environmental disclosure. The report found that "Some stakeholders who use companies' filings, such as investor organizations and researchers, maintained that the requirements allow too much flexibility and are too narrow in scope to capture important environmental information." The GAO acknowledged that "little is known about the extent to which companies are disclosing environmental information in their filings with the SEC" and described the task of assessing companies' environmental disclosure efforts as "extremely challenging without access to company records, considering the flexibility in the disclosure requirements."

Based on its findings on environmental disclosure, the GAO recommended that the SEC should:

- In its review of filings, take steps to ensure that key information "is electronically tracked and organized in a way that would facilitate its analysis across multiple filings" and "consider organizing the information so that agency officials can systematically determine the most frequently identified problem areas, analyze trends over time or within particular industries, and assess the need for additional guidance in certain areas."

- "Explore the creation of a searchable database of SEC comment letters and company responses that would be accessible to the public."

- Tap "opportunities to take better advantage of EPA data that may be relevant to environmental disclosure and examine ways to improve its usefulness."

The GAO's findings in fact reinforced those of the SEC's Division of Corporation Finance. When the SEC evaluated disclosures that *Fortune 500* companies filed in 2002 10-K reports, it found that "many companies did not provide adequate disclosure relating to [environmental and product liabilities]" and

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[33] Aaron Bernstein for Harvard Law School Labor and Worklife Program. (June 2009). *Quantifying Labor and Human Rights Portfolio Risk*, Occasional Paper Series No. 4. Retrieved June 19, 2009 from http://www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasionalpapers4.pdf. See, more generally, Aaron Bernstein for Harvard Law School Labor and Worklife Program. (September 2008). *Incorporating Labor and Human Rights Risk Into Investment Decisions*. Retrieved June 19, 2009 from http://www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasional_paper2.pdf.

[34] Peter DeSimone for RiskMetrics Group. (May 2008). *RiskMetrics Group Finds One in Five Large Firms Set Labor Supplier Standards*. Retrieved June 17, 2009, from http://blog.riskmetrics.com/2008/05/riskmetrics_group_finds_one_in.html. The study looked at 1,800 large cap firms, comprised of the S&P 500, the Toronto Stock Exchange 300 and the Morgan Stanley EAFE index excluding Japan.

[35] Government Accountability Office. (July 2004). *Environmental Disclosure—SEC Should Explore Ways to Improve Tracking and Transparency of Information*. Retrieved June 1, 2009, from http://www.gao.gov/new.items/d04808.pdf.

that “companies could improve their disclosures” required by Staff Accounting Bulletin No. 92.[36] As a result, it “urged companies with material contingent liabilities to carefully review their disclosures and ensure that they include all required information” at the time and to provide “a meaningful analysis as to why the amounts charged in each period were recorded and how the amounts were determined.”

[36] Securities and Exchange Commission. (December 2001). *Summary by the Division of Corporation Finance of Significant Issues Addressed in the Review of the Periodic Reports of the Fortune 500 Companies*. Retrieved June 1, 2009, from http://www.sec.gov/divisions/corpfin/fortune500rep.htm.

II. ESG Disclosure Requirements Worldwide

Efforts to require sustainability reporting are growing globally. In recent years, several governments have mandated corporate disclosure of sustainability data, including those of France, Malaysia, Sweden and the United Kingdom.[37] In addition, an increasing number of stock exchanges are requiring companies to disclose sustainability data to qualify for listing or for inclusion in special socially responsible indices. Moreover, the European Commission announced in February 2009 that it would convene several meetings through March 2010 to help decide EU policy on ESG disclosure.[38]

As requirements for sustainability reporting have proliferated, so have the number of companies producing these kinds of reports. As tracked by CorporateRegister.com, the number of companies issuing sustainability reports has increased from a handful in 1992 to more than 3,100 today.[39] Larger firms lead the pack, with more than two thirds of the constituents in the Global FT 500 producing sustainability reports. In addition, the percentage of these companies following GRI's reporting standards has increased from less than 5 percent in 2002 to close to one third today, although the report highlighted that only 4 percent of companies in its total sample integrate corporate responsibility data into their annual financial reports. Similarly, KPMG reported that 80 percent of the Global Fortune 250 now releases sustainability information, up from 50 percent in 2005, and that one third of the Global Fortune 250 view shareholder value as a driver for reporting.[40]

If left unaddressed, the lack of comprehensive sustainability disclosure requirements in the United States threatens its reputation for maintaining the world's most transparent capital markets. The lack of enforcement of and rigor in rules on sustainability reporting in the United States is already affecting reporting trends. Of the more than 3,100 reports tracked by CorporateRegister.com in 2008, more than half came from European firms, where ESG disclosure rules are more common, while reports from firms in North and Central America together accounted for only 17 percent of the total.[41] Furthermore, the U.K. consultancy group SustainAbility, in cooperation with Standard & Poors and UNEP, conducts a biannual survey of the state of corporate sustainability reporting. Its fourth and most recent survey, published in 2006, listed the 50 companies that scored best on their CSR reporting. Only five of these were from the United States—Nike (#10), Hewlett-Packard (#15), Ford (#25), General Electric (#25, tied with Ford) and Gap (#34).[42] Finally, of the 1,000 corporate sustainability reports that used the *G3 Guidelines* worldwide in 2008, only roughly 10 percent were from U.S. companies.[43] Among the world's largest exchanges, GRI found that 64 percent of Germany's DAX 30, 48 percent of France's CAC 40 and 22 percent of the United Kingdom's FTSE 100 issued sustainability reports using the *G3 Guidelines*, compared with only 13 percent of the United States' S&P 500.[44]

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[37] The bulk of information in this section was drawn from the following report: Steve Lydenberg and Katie Grace for Domini Social Investments and the Social Investment Forum. (November 2008). *Innovations in Social and Environmental Disclosure Outside the United States*. Retrieved June 15, 2009, from http://www.domini.com/common/pdf/Innovations_in_Disclosure.pdf.

[38] European Commission. (n.d.). Retrieved June 1, 2009, from http://ec.europa.eu/enterprise/csr/forum_2009_index.htm.

[39] CorporateRegister.com. (March 2009). *CRReportingAwards '08, Global Winners & Reporting Trends*. Retrieved June 15, 2009, from http://www.corporateregister.com/pdf/CRRA08.pdf.

[40] KPMG. (October 2008). *KPMG International Survey of Corporate Responsibility Reporting 2008*. Retrieved June 16, 2009, from http://www.kpmg.com/SiteCollectionDocuments/International-corporate-responsibility-survey-2008_v2.pdf.

[41] CorporateRegister.com. (March 2009). *CRReportingAwards '08, Global Winners & Reporting Trends*. Retrieved June 15, 2009, from http://www.corporateregister.com/pdf/CRRA08.pdf.

[42] SustainAbility, Standard & Poor's and UNEP. (November 2006). *Tomorrow's Value, The Global Reporters 2006 Survey of Corporate Sustainability Reporting*. Retrieved June 24, 2009, from http://www.resourcesaver.org/file/toolmanager/CustomO16C45F73016.pdf.

[43] Global Reporting Initiative. (July 15, 2009). "Number of companies worldwide reporting on their sustainability performance reaches record high, yet still a minority." Retrieved July 16, 2009, from http://www.globalreporting.org/NewsEventsPress/PressResources/PressRelease_14_July_2006_1000GRIReports.htm.

[44] Ibid.

Regulatory bodies: As noted earlier, a diverse range of countries have been implementing requirements for companies to disclose material sustainability information to investors. Those are described by region below.

Europe—France was the first country to require companies to report on non-financial information in 1977, when it mandated that companies employing more than 300 people report annually on 134 issues relating to employees and the workplace.[45] While the government did not require these documents to be disclosed publicly outside the works councils, social balance sheets were the first step towards mandated CSR disclosure. In 2001, the French Parliament passed the *Nouvelles Regulations Economiques* (NRE) or New Economic Regulations Act. Article 116 of the NRE mandates that companies listed on the Paris Stock Exchange's Primary Market include social and environmental information in their annual reports.[46] Companies are required to produce missing information if asked by shareholders, and shareholders have the ability to sue if they have been harmed by a company's failure to disclose certain information.

The **United Kingdom** requires companies to report on their business activities in an annual "business review." The British Companies Act of 2006 mandates that companies listed on the London Stock Exchange disclose in their annual review information on environmental, workplace, social and community matters "to the extent that they are important to understanding the company's business."[47]

Sustainability reporting is also a fundamental part of corporate disclosure requirements in **Sweden**. The Swedish government decided in late 2007 to require all 55 fully or partially state-owned companies to produce annual sustainability reports in accordance with the GRI's reporting framework. Companies were required to comply with the mandate by March 31, 2009.[48]

Meanwhile, **Germany's** 2004 Reform Act on Accounting Regulations (*BilReG*) requires that companies examine and report on key financial and non-financial indicators that materially affect their development or performance in their annual report.[49] Similarly, companies in the Netherlands have been required since 1999 to publish environmental reports annually that include information on their environmental performance and environmental management system. The reports must include quantitative data on all relevant pollutants emitted by the company from a list of 170 substances.[50]

In **Norway**, the 1998 Accounting Act mandates that Norwegian companies report annually, in the board of directors' report, on three non-financial issues: the environment, working conditions and gender equality. Further specified in the 2007 Norwegian Accounting Standards, companies must include in their reports the type and quantity of raw materials and energy used, type and quantity of polluting emissions, type and quantity of waste generated, and environmental degradation due to transportation.[51]

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[45] European Foundation for the Improvement of Living and Working Conditions. (Oct. 31, 2007). *Social Balance Sheet*. Retrieved June 1, 2009, from http://www.eurofound.europa.eu/emire/FRANCE/SOCIALBALANCESHEET-FR.htm.

[46] Susanne Schaller for ," Institute for Development and Peace, University of Duisburg-Essen (n.d.). *The CSR Navigator: Country Profile—France*. Retrieved June 1, 2009, from http://www.bertelsmann-stiftung.org/cps/rde/xchg/SID-0A000F0A-3C26D05A/bst_engl/hs.xsl/prj_5982_5988.htm.

[47] UK Department for Business and Regulatory Reform. (n.d.). *Policy & Legislation, UK*. Retrieved June 1, 2009, from http://www.csr.gov.uk/ukpolicy.shtml.

[48] Swedish Government. (n.d.). *Guidelines for External Reporting by State-Owned Companies*. Retrieved June 1, 2009, from thttp://www.sweden.gov.se/content/1/c6/09/41/25/56b7ebd4.pdf.

[49] Buchheim, Regine and Kati Beiersdorf. (May 1, 2005). "New Developments in Management Reporting—The Modernization of the Annual Report," *German Law Journal*, Vol. 6 No. 5,. Retrieved June 1, 2009, from http://www.germanlawjournal.com/print.php?id=599.

[50] C.WA. Evers Ph.D. for the Ministry of Housing, Spatial Planning and the Environment, Inspectorate General for Environmental Protection, Department for Monitoring and Information Management. (July 29-31, 1997). *The Pollution Emission Register in the Netherlands.* Retrieved June 1, 2009, from http://www.unitar.org/cwm/publications/cbl/prtr/pdf/cat2/PER-NL.pdf.

[51] Audun Ruud. (2006). *Corporate Environmental Reporting in Norway*. Retrieved June 1, 2009, from http://www.cbs.dk/content/download/81939/1087167/file/Ruud%20presentation.pdf.

More recently, **Denmark** adopted legislation in December 2008 that requires the country's 1,100 largest businesses, as well as state-owned companies and institutional investors, to disclose in their annual reviews their corporate responsibility policies and how they are implemented.[52]

On Feb. 10, 2009, the **European Commission** hosted a plenary meeting of the European Multi-stakeholder Forum on CSR (corporate social responsibility) to review progress on sustainability initiatives in Europe and globally, and to discuss possibilities for future joint initiatives. Coming out of the meeting, the European Commission said it would convene (within the European Multi-Stakeholder Forum on CSR) five one-day workshops between September 2009 and March 2010 to discuss ESG disclosure.[53] The results will be presented in March 2010 during Spain's term of the EU presidency.

Austral-Asia—In an effort to increase the transparency of **Malaysian** corporations and rebound from the 1997 Asian financial crisis, the Malaysian government took up mandatory corporate social responsibility reporting as an important part of its overall plan to strengthen the Malaysian economy. During a budget speech in 2007, Malaysia's prime minister announced that publicly listed companies would be required to disclose their corporate social responsibility activities in their annual financial reports. He said, "It can be expected that PLCs [public limited companies] which practice CSR are likely to attract investors, particularly large domestic and international institutional investors."[54] He added that the Malaysian Employee Provident Fund (EPF) would "consider favorably PLCs with good CSR practices" when making investment decisions.

Meanwhile, **China's** influential State-Owned Assets Supervision and Administration Commission (SASAC) released a directive on Jan. 4, 2008, strongly encouraging state-owned enterprises to follow sound sustainability practices and report on their sustainability activities.[55] While this is not yet a requirement, a directive from the SASAC carries substantial weight in the Chinese business community.

In 2007, **Indonesia** passed Article 74 of Indonesia's Limited Liability Company Law, which mandates that companies involved in or affecting natural resources create and implement corporate social responsibility programs. Companies that do not carry out or implement "social and environmental responsibility" programs will be subject to government sanctions.[56]

In addition, **Japan's** 2004 law concerning the promotion of environmentally friendly business activities by facilitating access to environmental information, among other measures, requires companies and government agencies to produce annual reports on their activities related to the environment. Companies must report on specific indicators including the amount of greenhouse gas emissions, amount of release and transfer of chemical substances, and total amount of waste generation.[57]

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52 Mission of Foreign Affairs of Denmark, Permanent Mission of Denmark to the UN. (Dec. 16 2008). "New law brings Denmark in the lead concerning CSR; As of today the 1100 biggest companies in Denmark must report on their work with corporate social responsibility (CSR)." Retrieved July 16, 2009, from http://www.missionfnnewyork.um.dk/en/menu/dkandtheUN/news/PressreleasefromtheMinistryofEconomicandBusinessAffairs16December2008.htm.

53 European Commission. (n.d.). Retrieved June 1, 2009, from http://ec.europa.eu/enterprise/csr/forum_2009_index.htm.

54 Prime Minister Yab Dato' Seri Abdullah Bin HJ. Ahmad Badawi. (Sept. 1, 2006). "The 2007 Budget Speech" Retrieved June 1, 2009, from http://www.epu.jpm.my/bajet/engbajet2007.pdf.

55 CSR Asia. (Jan. 9, 2008). "CSR as 'No. 1' Issue for state-owned enterprises in China." *CSR Asia.* Retrieved June 1, 2009, from http://www.glinet.org/standard.asp?id=4955.

56 Down to Earth. (August 2007). "CSR a la Jakarta." *Down to Earth.* Retrieved June 1, 2009, from http://dte.gn.apc.org/74hcs.htm.

57 Japan's Ministry of the Environment. (June 2007). *Law Concerning the Promotion of Business Activities with Environmental Consideration by Specified Corporations, etc., by Facilitating Access to Environmental Information, and Other Measures (Provisional Translation)*. Retrieved June 1, 2009, from http://www.env.go.jp/en/laws/policy/business.pdf; and *Environmental Reporting Guidelines: 2007 Version* from http://www.env.go.jp/en/policy/economy/erg2007.pdf.

The **Australian** government funds the Corporate Responsibility Index, run by the non-profit St. James Ethics Center, which describes the index on its website as a strategic management tool that "assists companies to identify their non-financial risk, as well as develop and improve corporate responsibility in line with their business strategy."[58]

The United States—In contrast to some of the more systematic and deliberate efforts to direct companies toward comprehensive commitments to sustainability reporting around the world, the United States government's efforts have been more sporadic and anecdotal, and have typically arisen in response to crises. As a result, the information these disclosure mandates produce is often difficult to assemble, analyze and interpret, potentially placing U.S. markets and exchanges at a future competitive disadvantage. For example, large companies doing business with the U.S. government must disclose to the U.S. Equal Employment Opportunity Commission their records on the hiring and promotion of women and minorities, but this information is considered confidential and is not necessarily available to the public, or if so, only through the filing of Freedom of Information Act requests.[59] Similarly, after the Love Canal disaster came to light in the 1970s and prompted legislation to clean up hazardous waste sites, the SEC began to require disclosure of certain hazardous waste liabilities and environmentally related regulatory fines and settlements.[60] However, enforcement of this disclosure requirement has been weak and remains the only explicit SEC requirement on environmental and social disclosures. Legislation responding to the Bhopal chemical disaster of 1984 has mandated that companies in certain industries disclose their releases and transfers of toxic chemicals, but this information is almost never discussed in investor filings and often is not analyzed by companies for potential liabilities or trends for other stakeholders.[61]

Stock exchanges: Stock exchanges, often working in tandem with government agencies, also have revised their listing requirements to require disclosure of social and environmental data from listed companies or created socially responsible investment (SRI) indices. The Johannesburg Stock Exchange, the London Stock Exchange, Shenzhen Stock Exchange and the Tel Aviv Stock Exchange have all been influential in increasing the disclosure of environmental and social information. However, the New York Stock Exchange and NASDAQ do not make the list of exchanges active in ESG disclosures beyond governance considerations.

As a co-owner of the FTSE Group, the **London Stock Exchange** was involved early on in the development of SRI indices when it helped launch the FTSE4Good Index Series in 2001 to help investors compare the performance of companies on globally recognized corporate responsibility standards.[62] The information used in the index, which spans environmental, social, ethical and governance indicators, is updated by research provider EIRIS. FTSE4Good also regularly consults key stakeholders in updating its indicators and scoring model.

In May 2004, the **Johannesburg Stock Exchange (JSE)** launched its Socially Responsible Investment (SRI) Index, which identifies those companies listed on the JSE that meet certain minimum criteria for integrating sustainability principles into their business practices and reporting on their performance in these areas.[63] The indicators for the index cover environmental, social and economic sustainability, as well as good governance, and are loosely aligned with the GRI's reporting guidelines, while reflecting "the complex nature of social responsibility in South Africa." Companies must report in a minimum number of core and desirable indicators, as well as set targets in at least a few areas. The JSE continues to work closely with EIRIS, FTSE4Good and KPMG on refinements to the index's indicators.

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[58] St. James Ethics Centre. Retrieved July 9, 2009, from http://www.corporate-responsibility.com.au.
[59] Equal Employment Opportunity Commission. (n.d.). Retrieved June 1, 2009, from http://www.eeoc.gov/eeo1/.
[60] O'Melveny and Myers LLP. (Feb. 7, 2008). *Disclosure Requirements for Environmental Liabilities Under US Securities Laws*. Retrieved June 1, 2009, from http://www.omm.com/newsroom/publication.aspx?pub=590.
[61] Environmental Protection Agency. (n.d.) Retrieved on July 6, 2009, from http://www.epa.gov/tri/triprogram/whatis.htm.
[62] FTSE. (n.d.). Retrieved June 1, 2009, from http://www.ftse.com/Indices/FTSE4Good_Index_Series/index.jsp.
[63] Johannesburg Stock Exchange. (n.d.). Retrieved June 1, 2009, from http://www.jse.co.za/sri/development_index.jsp.

Similarly, in December 2005, the **Sao Paulo Stock Exchange *(BOVESPA)*** in Brazil, in coordination with the Brazilian Ministry of the Environment, the Brazilian Association of Pension Funds, the United Nations Environment Program (UNEP) and a wide range of other organizations, created the Corporate Sustainability Index *(ISE) as* a benchmark for socially responsible investments.[64] Brazil's Center for Sustainability Studies of the Business Administration School of São Paulo identifies companies for inclusion in the index, using a questionnaire covering social, environmental and governance criteria to verify the sustainability performance of the exchange's most liquid stocks.

In May 2008, the **Shanghai Stock Exchange** issued a "Notice of Improving Listed Companies' Assumption of Social Responsibilities" and the "SSE Guideline on Environmental Information Disclosure by Listed Companies," which aim to encourage listed companies to improve ESG performance by committing to "promoting sustainable development of the economy and society." To promote these practices, the exchange has introduced incentives for listed companies attaching "importance to assumption of social responsibilities." The notice says that companies should, based on the characteristics of their industry groups and their own operations, devise a sustainability strategy and operational plans and it advises companies to issue annual sustainability reports together with annual reports on the exchange's website, including a calculation of "social contribution value per share." The guidelines also define the procedural requirements concerning environmental information disclosure.[65]

Meanwhile, the **Shenzhen Stock Exchange** issued social responsibility guidelines for its listed companies in September 2006.[66] Under the exchange's listing requirements, companies must issue sustainability reports for investors, either alone or as part of their annual reports, that review their "implementation of social responsibility relating to employee protection, impact on environment, product quality and community relationship; assessment of implementation of these instructions and reasons for the gap, if any; and measures for improvement and the timetable."

In addition, the **Tel Aviv Stock Exchange** launched its own SRI index, the Maala SRI Index, in 2005. Maala tracks the shares of the top 20 public companies on the Tel Aviv-100 index as ranked by Israeli non-profit Maala based on their level of community involvement and contribution to society.[67]

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[64] Sao Paulo Stock Exchange. (n.d.). Retrieved June 1, 2009, from http://www.bovespa.com.br/Market/MarketIndexes/ise_i.shtml.

[65] Shanghai Stock Exchange. (May 14, 2008). "SSE Drives Listed Companies to Fulfill Social Responsibilities." Retrieved July 16, 2009, from http://www.sse.com.cn/sseportal/webapp/datapresent/EnglishNews?PAGE=6.

[66] Shenzhen Stock Exchange. (n.d.). Retrieved June 1, 2009, from http://www.szse.cn/main/en/rulseandregulations/sserules/2007060410636.shtml.

[67] Tel Aviv Stock Exchange. (n.d.). Retrieved June 1, 2009, from http://www.tase.co.il/TASEEng/MarketData/Indices/Additional/IndexMainDataAdditional.htm?Action=2&IndexID=150.

III. The Global Reporting Initiative

We strongly recommend consideration of the GRI's most up-to-date standard for sustainability reporting as the benchmark framework for an SEC mandatory ESG disclosure policy. Today, this represents GRI's third generation *G3 Guidelines*. We endorse GRI because it:

- Is the most widely used sustainability reporting standard worldwide.
- Draws upon international norms.
- Is the product of a transparent, ongoing multi-stakeholder dialogue that has already spanned more than a dozen years and included representatives from hundreds of businesses, labor unions, civil society organizations, colleges and universities, multilateral institutions and government departments.
- Has a multi-stakeholder governance structure, with board representatives from industry, labor, accounting, multilateral institutions and civil society.
- Has been tested by corporations and their stakeholders for nearly three years in its latest version and more than a decade overall.
- Includes core, as well as industry-specific, indicators, accompanied by detailed reporting guidance and national annexes covering unique country-level information, making the reporting framework flexible and easily adoptable.
- Evolves over time to address emerging areas of corporate environmental and social responsibility.
- Allows for flexibility and innovations in reporting by not dictating a format—only content.
- Is working with governments around the world on how best to integrate references or thinking about GRI into the framing of their rules on sustainability disclosures.
- Is compatible with the eXtensible Business Reporting Language (XBRL).
- Is available for free to the public online.

More specifically, we are asking the SEC to require that companies, over an implementation period, comply with an A-plus level of GRI reporting.

The global standard: Last year alone, more than 1,000 companies worldwide, including many of the world's leading brands, used GRI's *G3 Guidelines* to issue sustainability reports.[68] Consequently, the guidelines have in effect become the global standard for sustainability reporting. Of the 3,100 companies issuing sustainability reports in 2008 tracked by CorporateRegister.com, a global directory of sustainability reports, approximately one third followed the GRI's guidelines in issuing reports.[69] Similarly, KPMG found that 60 percent of the 250 largest companies in the world—the Global Fortune 250—and more than 30 percent of the 100 biggest companies worldwide by revenue used the GRI

[68] Global Reporting Initiative. (July 15, 2009). "Number of companies worldwide reporting on their sustainability performance reaches record high, yet still a minority." Retrieved July 16, 2009, from http://www.globalreporting.org/NewsEventsPress/PressResources/PressRelease_14_July_2006_1000GRIReports.htm.

[69] CorporateRegister.com. (March 2009). *CRReportingAwards '08, Global Winners & Reporting Trends*. Retrieved June 15, 2009, from http://www.corporateregister.com/pdf/CRRA08.pdf.

guidelines in their reporting in 2008.[70] Many large-cap U.S. companies from a diverse range of industries have issued reports using the guidelines, including American Electric Power, Dell, McDonald's, Microsoft, Office Depot and The Walt Disney Company.[71] It also is the preferred reporting standard of the world's leading providers of ESG data to investors, including Asset4, EIRIS, IW Financial, KLD Research & Analytics, RiskMetrics Group and SAM Sustainable Asset Management.

Inclusive and transparent: GRI is a collaborating center of the United Nations Environment Program. To ensure the highest degree of technical quality, credibility and relevance, the reporting framework is developed and continuously improved through a consensus-seeking process with participants drawn globally from business, civil society, labor and professional institutions. Hundreds of organizations have participated in formulating the guidelines to date.[72]

Comparable and flexible: The *G3 Guidelines* provide uniform, comparable indicators—essential for meaningful assessment of companies on these issues—based on international norms, including the United Nations' *Universal Declaration on Human Rights*, the International Labor Organization's *Declaration on Fundamental Principles and Rights at Work* and the World Resources Institute's and the World Business Council for Sustainable Development's *Greenhouse Gas Protocol*. The framework is applicable to organizations of any size, constituency or location.

The reporting framework consists of four principal parts:

- **Profile—**The first includes a description of a company's operations and governance. Beyond disclosures already required by the SEC, the governance disclosures include descriptions of board and management oversight of sustainability issues and links between executive compensation and social and/or environmental performance. It also requires each company to describe the boundaries for its report, including the time frame it covers, and any major changes since its last reporting period.

- **Disclosure of management approach—**The second incorporates statements about management's approach to, and systems to deal with, ESG matters, the materiality of these issues to the company, and the completeness of the report. It also includes the company's approach to engaging key stakeholders.

- **Performance indicators—**The third consists of standard disclosures and performance indicators. The approximately 50 core performance indicators are organized into 3 pillars—social, economic and environment—and six categories—environmental, human rights, labor practices and decent work, society (community impacts), product responsibility and economic.

- **Content index—**As mentioned earlier, the index includes a line item for each indicator in a GRI report, the opportunity for a corporation to include a reference to a website or publicly available document, such as an annual report, for investors to retrieve the information, as well as the option for a company to indicate that it is not reporting because the indicator is not applicable or relevant to it. This helps companies highlight the newest and most relevant information to investors, while not overloading reports with basic policies that are disclosed to the public on its website. A template for the index is available for free online and readily exportable to a number of document and data management tools.[73]

[70] KPMG. (October 2008). *KPMG International Survey of Corporate Responsibility Reporting 2008*. Retrieved June 16, 2009, from http://www.kpmg.com/SiteCollectionDocuments/International-corporate-responsibility-survey-2008_v2.pdf.

[71] All information for this section came directly from the Global Reporting Initiative website, http://www.globalreporting.org. In addition, a full copy of the GRI *G3 Guidelines* can be retrieved from http://www.globalreporting.org/ReportingFramework/ReportingFrameworkDownloads/.

[72] A list of these organizational stakeholders can be found at: http://www.globalreporting.org/AboutGRI/WhoWeAre/OrganizationalStakeholders/.

[73] The GRI Content Index template is available at: http://www.globalreporting.org/griportal/GRI/G3online/frmContentIndex.aspx.

GRI was created to provide a common, global framework for sustainability reporting, not to dictate reporting formats or inhibit innovation in reporting. GRI offers guidance to companies on materiality and the opportunity for companies to explain to stakeholders why some indicators might not be applicable to them. It does not dictate performance goals or weightings for components or prescribe a format or specific order by which information must be presented. Reporters are free to present information in a way they feel best represents their businesses, which spurs creativity in reporting. At the same time, the required content index makes it easy for analysts and other users of reports to find the information they need quickly.

Guidance on materiality: GRI offers guidance to companies in determining what sustainability issues are important to manage and monitor. It has launched a project to create a protocol defining how to use its four principles for defining report content—materiality, stakeholder inclusiveness, sustainability context and completeness—to select the material issues and indicators for a report.

Sector customization: GRI also publishes sector supplements for a growing number of industries that face unique sustainability challenges. As of June 2009, GRI had completed or was in the process of formulating guidelines for airports, apparel and footwear, automotive, construction and real estate, electric utilities, financial services, food processing, logistics and transportation, media, mining and metals, oil and gas, and telecommunications firms.

Reporting levels: In addition, GRI offers three levels of reporting and encourages all reporters to engage third parties, such as accounting firms, to assure reports. While we are advocating that companies eventually report at an A-plus level, we can envision the SEC using the GRI's reporting levels to provide companies with a clear path toward compliance and global best practice:

- Its basic or **"C" level** requires companies to include a statement from the most senior decision-maker—CEO, chair or equivalent—about the relevance of sustainability to the organization and its strategy. It also asks companies to provide an organizational profile, outlining the company's locations and business operations and governance structure. In addition, it asks companies to report on 10 ESG performance indicators, with at least one from each reporting pillar—social, economic and environment. Each reporter must include a GRI Content Index that maps the information in the company's sustainability report, annual report or website to the relevant, numbered indicator in the GRI reporting framework. All levels of reporters can apply for a "plus" to their grades by having a third-party provide an assurance statement confirming the reporter met all of GRI's requirements for that grade.

- **"B" level** reports, in addition to meeting the C-level prerequisites, must furnish two concise narrative sections on key ESG impacts, risks and opportunities as they relate to the company's key stakeholders and long-term prospects. Even if the company does not tap outside auditors, "B" companies must explain their approaches to external assurance, in addition to data measurement techniques applied to each of its indicators, and disclose any links between compensation for all members of the board and key performance indicators. "B" level reporters also must discuss management approaches and disclosures to each of GRI's pillars—economic, environmental and social. Finally, "B" firms must report on 20 performance indicators, with at least one from GRI's economic, human rights, labor, society, and product responsibility categories.

- **Level "A**" companies report on all of the above plus all key performance indicators outlined by GRI, in addition to any applicable sector supplements.

GRI and governments: GRI is engaging with a range of governments as they think about their policies on sustainability disclosure. This engagement takes the form of bilateral and group discussions surrounding policy developments. Through such mechanisms, for example, GRI also could help the SEC determine how best to integrate references or thinking about GRI into the framing of their rules in the U.S. context, but with global developments in mind.

XBRL compatibility: eXtensible Business Reporting Language or "XBRL" is an open data standard and associated tagging language that supports information modeling and the expression of semantic meaning commonly required in business reporting. The SEC's proposed rule introducing an XBRL-based reporting system provides a unique opportunity for the integration of ESG data into the business reporting system, and GRI is a leader in this movement toward interactive reporting and data.

GRI has established a partnership with XBRL International and is working on an implementation framework for XBRL tagging of GRI reports. In 2006, GRI released the first version of XBRL taxonomy— a list of tags organized into a single set—for the *G3 Guidelines*. GRI is now convening a group of investors and companies to identify how to further improve the taxonomy such that it can become a routine tool to support company-investor exchange of information. The output of the project will be a second version of the taxonomy that can potentially reduce the time needed to respond to investors' basic information needs on sustainability issues.

Free to companies, investors and the public: The guidelines, along with instructions on reporting, are available at no charge on GRI's website at http://www.globalreporting.org.