Business Roundtable℠

300 New Jersey Avenue, NW
Suite 800
Washington, DC 20001

Telephone 202.872.1260
Facsimile 202.466.3509
Website brt.org

April 15, 2015

Mr. Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Mr. Fields:

Re: Request for Public Comments on the Securities and Exchange Commission's Disclosure Effectiveness Initiative

This letter is submitted on behalf of Business Roundtable, an association of the chief executive officers of leading U.S. companies. Our member companies produce $7.4 trillion in annual revenues and employ more than 16 million employees worldwide. Roundtable companies comprise more than a third of the total value of the U.S. stock market, and annually pay more than $267 billion in dividends to shareholders, generate more than $540 billion in sales for small and medium-sized businesses, and invest $158 billion in research and development. Our members also give more than $9 billion a year in combined charitable contributions, representing more than 60 percent of total corporate giving.

The Business Roundtable appreciates the opportunity to participate in the Disclosure Effectiveness Initiative (the "Initiative") underway at the Securities and Exchange Commission (the "Commission" or "SEC"). As an association of chief executive officers, our members are intently focused on the manner in which they and their companies communicate with investors. The dissemination of information to investors plays a vital role in capital formation and the health and prosperity of our capital markets. Thus, our members have a keen interest in the requirements that govern these communications.

Over the years, as the requirements of the federal securities laws have expanded, both as a result of Congressional and SEC-imposed mandates, so too has the size and complexity of the filings required to be made by public companies. The volume of disclosure currently provided to investors in periodic reports, proxy statements, registration statements and other filings is staggering. As Chair White has remarked, "[w]hen disclosure gets to be 'too much' or strays from its core purpose, it could lead to what some have called 'information overload' – a phenomenon in which ever-increasing amounts of disclosure make it difficult for an investor to wade through the volume of information she receives to ferret out the information that is most

relevant."[1] In this light, it is fair to question whether investors need all of the detailed and lengthy disclosures, particularly as the burden and costs associated with meeting disclosure obligations continue to climb and the level of materiality becomes blurred. We therefore applaud the Commission and its Staff for undertaking this important initiative.

We appreciate that the initial stage of the Commission's disclosure effectiveness project is designed to review periodic and current reports under the Securities Exchange Act of 1934 ("Exchange Act"), and our comments are presented with that understanding. Our members also are very interested in the next phase of the project, involving ways to enhance the effectiveness of proxy statement disclosures and delivery, including through the use of current technology enhancements. We look forward to assisting the Commission in both the initial phase of this project and as the focus turns to proxy statements.

Materiality – The Guiding Principle

As the Commission pursues this project, it is important to highlight the central principle underlying the federal securities laws – providing *material* information to investors so that they may make informed investment and voting decisions. Nearly four decades ago, the Supreme Court defined the standard for materiality – "an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."[2] This standard benefits investors because it filters irrelevant information – helping to ensure that investors are not buried in an "avalanche" of "trivial" information[3] – and also carries with it the recognition that what is important to a reasonable investor may change over time and thus disclosures may need to be adjusted accordingly.

We are concerned that in connection with this Initiative and more generally some groups are seeking to use the federal securities laws to address various societal concerns, without giving effect to the bedrock materiality principle. While we recognize the Commission is well aware of the significance that materiality plays in the disclosure regime, in recent years the U.S. Congress has enacted legislation calling for information, such as that relating to conflict minerals and payments for resource extractions that as a general matter will not be material to investors. Moreover, the disclosure effectiveness initiative has already elicited calls by some commenters for *additional* disclosure of general societal, rather than investor, interest. The Roundtable appreciates that from time to time issues arise that potentially are material for a significant number of companies. To address these issues, the Commission in the past has provided guidance to issuers about when disclosure might be warranted.[4] We believe this is an appropriate approach. Accordingly, as the Initiative moves forward, we urge the Commission to reject any calls to expand its disclosure requirements to address societal issues unrelated to investor protection. While we recognize that the Initiative may identify some areas where additional or revised disclosure may be interesting to some investors, all disclosure requirements should be rooted in the

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[1] *"The Path Forward on Disclosure,"* SEC Chair Mary Jo White, National Association of Corporate Directors – Leadership Conference 2013 (Oct. 15, 2013), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370539878806#.VJCJIZh0yHs.

[2] TSC Indus. Inv. v. Northway, Inc., 426 U.S. 438, 445 (1976).

[3] *Id.* at 448-49 (1976).

[4] *See, e.g.*, CF Disclosure Guidance Topic No. 2, Cybersecurity (October 13, 2011), *available at* http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm (providing guidance that where cyber-security threats are material to a company, disclosure about the risks associated with such threats should be discussed).

bedrock principle of materiality -- depending upon whether information is important to a reasonable investor.

Enhanced Coordination with FASB

As several commentators have recognized, a significant factor giving rise to duplicative disclosures in filings is the overlap between SEC and Financial Accounting Standards Board ("FASB") requirements.[5] To address this issue, the SEC should explore ways to enhance cooperation and coordination with the FASB not only in formulating standards but also in shaping the extensive guidance that the SEC and FASB issue related to financial reporting matters. The Roundtable appreciates that the Commission and its Staff regularly dialogue with the FASB about a range of matters including standard setting and disclosure issues. Yet, there are a number of instances, particularly as between FASB's requirements for financial statement footnotes and the SEC's requirements in Regulations S-X and S-K (as it pertains to MD&A), where the disclosure requirements and guidance may be duplicative or outdated.

More robust coordination also could help in seeing that the financial statement footnotes are not used for expanded disclosures about forward looking information (or "future-oriented" information as described by FASB). Given that safe harbor protection for forward looking statements in Section 21E of the Exchange Act is not available for disclosures in the financial statement footnotes, the financial statement footnote requirements should not mandate additional forward looking information and the Commission's input would be beneficial in this regard.[6]

We therefore urge the Commission to enhance coordination with the FASB in order to simplify and harmonize the respective disclosure requirements of the two organizations and to develop a framework for approaching these issues in the future.

Elimination of Duplicative and Outdated Information

As the Commission itself has recognized, as have many of those who have submitted comments on this Initiative, some of its requirements are duplicative or outdated in certain respects, such as with respect to litigation-related disclosures, loss contingencies, critical accounting estimates and stock performance charts.[7] We endorse the Commission's effort in seeking to address these issues. In this regard, we support many of the suggestions identified in comment letters submitted to date that aim to address needed changes in the current disclosure regime.[8] Our members also are addressing the Staff's suggestions that companies themselves take steps to eliminate some of the duplicative and outdated disclosure while the Initiative is underway.

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[5] *See* Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, Business Law Section American Bar Association (Nov 14, 2014); Letter from Neila Radin, Co-Chair, Effective Disclosure Task Force, The Society of Corporate Secretaries and Governance Professionals (Sept. 10, 2014) ("Society Letter"); and Tom Quaadman, Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (July 29, 2014).

[6] *See also* Society Letter at 8 (commenting that additional clarity footnote disclosures should be limited to information about a company's historical transactions, financial position and accounting principles underlying the financial statements).

[7] See, for example, *"Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section Spring Meeting,"* Keith Higgins, Director, SEC Division of Corporation Finance (April 11, 2014) ("April 11 Speech"), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370541479332#.VItBHph0yHs.

[8] *See* note 4.

Technology Advances – Modernizing the SEC's Delivery System

Lastly, we applaud the Commission's commitment as part of the Initiative to evaluate how technology advances can be used to make the dissemination of information to investors more efficient and effective.[9] A number of the comments have highlighted the prospect of a company profile system that might compile disclosure sections topically and allow for the updating of such sections automatically when periodic and current reports are filed. Others have noted the benefits of permitting additional use of cross-referencing and allowing for hyperlinks between sections of filings. We urge the Commission to develop a system that takes advantage of technology advances to provide for a disclosure delivery mechanism that presents information to investors in a more effective and efficient manner.

Thank you very much for considering our comments. We would be happy to discuss these comments, or any other matter that you believe would be helpful. We look forward to working with the Commission and its Staff as it addresses disclosure effectiveness, both in this initial phase and as the project turns to focusing on proxy statements. Please contact Michael J. Ryan, Jr. at (202) 496-3275.

Sincerely,

John A. Hayes
Chairman, President and Chief Executive Officer
Ball Corporation
Chair, Corporate Governance Committee
Business Roundtable

JH/mr

C: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Mr. Keith F. Higgins, Director, Division of Corporation Finance
Ms. Anne K. Small, General Counsel and Senior Policy Director

[9] *See* April 11 Speech; *see also* "The SEC in 2014" SEC Chair White, 41st Annual Securities Regulation Institute (Jan. 27, 2014) (noting that "we should rethink not only the type of information we ask companies to disclose, but also how that information is presented, where and how that information is disclosed, and how we can take advantage of technology to facilitate investors' access to information and make it more meaningful to them."), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370540677500#.VJCIvJh0yHs.