July 19, 2016 Subject: File Number S7-06-16

Chair Mary Jo White
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar

Securities and Exchange Commission (SEC)
100 F Street, N.E.
Washington, D.C. 20549-1090

Dear Chairman and Commissioners,

The International Corporate Accountability Roundtable ("ICAR") is a coalition of human rights, environment, labor, and development organizations working to ensure businesses respect human rights in their global operations.[1] We appreciate the opportunity to provide comments to the Securities and Exchange Commission (the "SEC" or the "Commission") regarding the Commission's April 13, 2016 Concept Release relating to the Business and Financial Disclosure Required by Regulation S-K.[2] The Concept Release requests public comment on various issues relevant to modernizing certain business and financial disclosure requirements under Regulation S-K as part of an initiative to review and improve these disclosure requirements for the benefit of investors and registrants.

The Concept Release seeks in part public comment on several issues relating to the disclosure of information on public policy and sustainability matters. Specifically, the release seeks information on what issues within this category are important to investor voting and decision-making, and how such information should be disclosed.

ICAR believes that business policies, processes, and impacts on human rights are material to investment interests, and as such, must be reported in order to uphold the SEC's mandate "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation[.]"[3] Our seminal work in this regard was a 2013 report, "*Knowing and Showing: Using U.S. Securities Law to Compel Human Rights Disclosure*"[4] [hereinafter *Knowing & Showing*] which demonstrated why and how human rights impacts, risk assessments,

---

[1] ICAR acknowledges the expert guidance of Professor Cynthia A. Williams, Osler Chair in Business Law, Osgoode Hall Law School, York University, Toronto, Canada, in the development and production of this submission.

[2] CYNTHIA WILLIAMS ET AL., "KNOWING AND SHOWING" USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE (Oct. 2013) at 16, *available at* http://icar.ngo/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report4.pdf [hereinafter ICAR, Knowing and Showing].

[3] U.S. Securities and Exchange Commission, *What We Do*, SEC.gov http://www.sec.gov/about/whatwedo.html (last visited June 10, 2016).

[4] *See generally*, ICAR, Knowing and Showing.

and procedures are material and should be included in reporting companies' non-financial disclosures. This report is included in this submission as Annex I.

Under Regulation S-K, corporations must disclose non-financial information that is material to investors. Information is material to investors if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or in making an investment decision.[5]

In 2010, in determining the materiality of information related to climate change, the SEC outlined key factors to consider when determining whether a topic of interest is material for corporate reporting purposes. These factors include: (1) heightened public interest in recent years (including academic, government, business, investors, analysts, or the public at large); (2) international accords and other efforts to address a topic of concern on a global basis; (3) federal regulations or state and local laws in the United States; and (4) business leaders' voluntary recognition of the current and potential effect of the category of information on companies' performance and operations.[6]

In the context of human rights, there are a number of developments within each of these factors to support the argument that human rights considerations, including human rights policies, practices, and impacts, are material for corporate reporting purposes.

(1) **Heightened Public Interest in Relation to Human Rights**

In recent years, public interest in human rights information has increased greatly. This rise in interest can be seen through, *inter alia*, the increase in voluntary reporting on human rights issues;[7] the promulgation of state, federal, and international laws and policies relating to human rights disclosure;[8] studies conducted by investment firms affirming investor interest in human rights information;[9] and the increase in academic, government, and corporate engagement with the U.N. Guiding Principles on Business and Human Rights (UNGPs), which were formally endorsed by the U.S. government.[10] The widespread business support for voluntary human rights reporting initiatives, such as the GRI G4 Sustainability Reporting Guidelines[11] and the UNGP

[5] TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976) [hereinafter TSC Industries, Inc.].

[6] Securities & Exchange Comm'n, *Commission Guidance Regarding Disclosure Related to Climate Change* (Jan. 27, 2010), Release Nos. 33-9106; 34-61469; FR-82, http://www.sec.gov/rules/interp/2010/33-9106.pdf.

[7] *See,* ICAR, Knowing and Showing at 30-32.

[8] *Id.* at 16-24.

[9] *See, e.g.*, Ernst & Young LLP & Boston Coll. Ctr. for Corporate Citizenship, *Value of Sustainability Reporting* (2013) at 2, http://www.ey.com/Publication/vwLUAssets/ACM_BC/$FILE/1304-1061668_ACM_BC_Corporate_Center.pdf [hereinafter Value of Sustainability].

[10] *See*, *General Statement by Daniel Baer, Deputy Assistant Secretary of State for Democracy, Human Rights and Labor*, HUMANRIGHTS.GOV (Jun. 16, 2011), http://www.humanrights.gov/dyn/businesses-and-transnational-corporations-have-a-responsibility-to-respect-human-rights.html.

[11] 78% of reporting companies and 82% of the Global 250 companies use the GRI's G4 standards as the basis for their corporate responsibility reporting, making them the largest voluntary reporting initiative in the world. *See,* KPMG, *KPMG Survey of Corporate Social Responsibility Reporting 2013*, (2013) at 10, http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/corporate-responsibility/Documents/corporate-responsibility-reporting-survey-2013-exec-summary.pdf [hereinafter KPMG Survey].

Reporting Framework, is also notable.[12] For example, some of the largest U.S.-based multinational corporations are utilizing the UNGP Reporting Framework to guide their annual reports, including Microsoft and Newmont.[13] This increase in public interest is further substantiated in the attached annexes.

(2) **International Accords and Efforts to Address Human Rights**

The international community has openly endorsed the UNGPs and has further delineated the roles of businesses and States in relation to business respect for human rights.[14] In 2014, the European Union adopted requirements on non-financial reporting which mandate large companies listed on European stock markets and financial corporations to disclose policies and risks regarding human rights.[15] These requirements build directly on the UNGPs. Additionally, multiple international organizations, of which the U.S. government is a part, have developed human rights based frameworks that are consistent with or endorse the UNPGs, such as the Organization for Economic Cooperation and Development and the International Labor Organization.[16] A number of global reporting frameworks have also been created to address human rights, such as the Global Reporting Initiative (GRI),[17] the Sustainability Accounting Standards Board (SASB),[18] and the UNGP Reporting Framework.[19] Further elaboration of these points can be found in ICAR's *Knowing and Showing* report, attached as Annex I.

(3) **Federal and State Regulation for Human Rights in the United States**

There has also been sustained regulation regarding human rights at the federal and state level. At the federal level, the Dodd-Frank Act of 2010 used securities disclosures to require transparency

---

[12] Six global companies and over eighty investors representing over $4.25 trillion dollars in assets under management support the UN Guiding Principles Reporting Framework. UN Guiding Principles Reporting Framework, *FAQ*, http://www.ungpreporting.org/resources/faq/ at Q6.

[13] UN Guiding Principles Reporting Framework, *Early Adopter Company Newmont Publishes First Report Using Reporting Framework*, http://www.ungpreporting.org/early-adopter-company-newmont-publishes-first-report-using-reporting-framework/ (last visited July 11, 2016); Microsoft, *Microsoft 2015 Citizenship Report*, (2015) at 11, https://www.microsoft.com/about/csr/transparencyhub/citizenship-reporting/; Newmont, *Beyond the Mine: Our 2015 Social and Environmental Performance*, overview at 12, http://sustainabilityreport.newmont.com/2015/_pdf2print/pdfs/newmont-beyond-the-mine-sustainability-report-2015.pdf.

[14] ICAR, Knowing and Showing at 17-20.

[15] European Commission Statement/14/29, Disclosure of non-financial information by certain large companies: European Parliament and Council reach agreement on Commission proposal to improve (Feb. 26, 2014) http://europa.eu/rapid/press-release_STATEMENT-14-29_en.htm?locale=en; Business and Human Rights Resource Centre, *EU Requirements on companies' non-financial reporting* (2014) BUSINESS-HUMANRIGHTS.ORG (2014), http://business-humanrights.org/en/eu-requirements-on-companies-non-financial-reporting-2014.

[16] *See* OECD PUBLISHING, OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS FROM CONFLICT-AFFECTED AND HIGH RISK AREAS (2011); International Labour Office, *Update on strategic priorities 2010-11,* G.B.312/POL/13 (Nov. 2011), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_163638.pdf.

[17] The Global Reporting Initiative (GRI), *Reporting on Human Rights* (Nov. 16, 2015), https://www.globalreporting.org/resourcelibrary/Reporting-On-Human-Rights.pdf.

[18] The Sustainability Accounting Standards Board (SASB), *SASB Materiality Map*, http://www.sasb.org/materiality/sasb-materiality-map/ (last accessed May 20, 2016).

[19] Shift & Mazars LLP, *U.N. Guiding Principles Reporting Framework,* http://www.ungpreporting.org/.

regarding mine safety,[20] payments by extractive companies to governments,[21] and conflict minerals disclosure.[22] In support of the SEC's rulemaking in this regard, California, Massachusetts, and Maryland have all passed laws preventing companies that either do not disclose or disclose inadequately under Dodd-Frank Section 1502 from gaining eligibility to bid on state procurement contracts.[23] Additionally, in 2010, California enacted the Transparency in Supply Chains Act, requiring corporations to disclose their efforts, if any, to combat slavery and human trafficking in their supply chains.[24]

(4) **Voluntary Recognition of Human Rights Impacts on Business**

Currently, 95% of the Global 250 companies generate voluntary sustainability reports that include Environmental, Social, and Governance (ESG) factors that incorporate human rights.[25] Every year thousands of companies around the world issue sustainability reports, and the number of companies reporting grows annually.[26] According to an Ernst & Young report, "investor interest in non-financial information spans across all sectors" and 61.5% of investors consider non-financial information relevant to their investments overall.[27] Specifically, 19.1% of investors would rule out an investment immediately and 63.2% would reconsider investing if there were significant human rights risks associated with the investment.[28] This evidence shows that businesses are voluntarily reporting human rights information because it has direct, indirect, and political impacts on a corporation's ability to generate revenue, attract capital, and operate generally. All these impacts are material information for investors to make informed decisions for both voting and investment purposes.[29]

Based on the above factors, ICAR urges the SEC to recognize that human rights policies, practices, and impacts are material and to require human rights disclosure under the non-financial disclosure provisions of Regulation S-K.

Attached to this letter are two annexes. Annex I is an updated copy of ICAR's *Knowing and Showing* report. Annex II provides specific responses to a number of questions presented within the Concept Release. The structure of ICAR's responses is intended to address only the most relevant questions to human rights policies, practices, and impacts. As such, Annex II is structured to include two sections responding to the SEC's questions (1) about the potential

---

[20] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 §§1502-04, 15 U.S.C. §78a et seq. §1503; 17 C.F.R. §§229.104, 239, 249 (2013) [hereinafter Dodd-Frank Act].
[21] Dodd-Frank Act at §1504; 17 U.S.C. §78m(q) (2013).
[22] Dodd-Frank Act at §1502; 15 U.S.C. §78m(p) (2013).
[23] California S.B. No. 861 (2011), http://accountabilityroundtable.org/wpcontent/uploads/2011/10/sb_861_bill_20111009_chaptered.pdf; B.H. 2898, 188th Leg. (Ma. 2013), https://malegislature.gov/Bills/188/House/H2898; Maryland H.B. 425, Procurement – Required Disclosure – Conflict Minerals Originated in the Democratic Republic of the Congo (May 2, 2012), *available at* http://www.srz.com/files/upload/Conflict_Minerals_Resource_Center/Text_of_Maryland_House_Bill_425_on_Conflict_Minerals.pdf.
[24] California Transparency in Supply Chains Act, S.B. No. 657 (2010), http://www.state.gov/documents/organization/164934.pdf.
[25] Ernst & Young, Value of Sustainability at 2.
[26] *Id*.
[27] Ernst & Young, Value of Sustainability at 18.
[28] *Id* at 16.
[29] *See* ICAR, Knowing and Showing at 25-27.

changes in the definition of materiality and proposed public policy and sustanability additions to Regulation S-K and (2) specific questions posed under Items 101, 103, 303, 503(c) and 305 of the SEC's Regulation S-K.

We would be pleased to meet with you to discuss this matter.

Yours sincerely,

Amol Mehra, Director
International Corporate Accountability Roundtable

Endorsed by:

<u>The Interfaith Center on Corporate Responsibility ("ICCR")</u>

ICCR is the pioneer coalition of shareholder advocates who view the management of their investments as a catalyst for change. Its 300 member organizations comprise faith communities, socially responsible asset managers, unions, pensions, NGOs and academic institutions representing combined assets of over $100 billion with a record of corporate engagement that has demonstrated influence on corporate policies that further justice and sustainability. ICCR members engage hundreds of corporations annually in an effort to promote greater corporate accountability on questions such as climate change, corporate water stewardship, sustainable food production, human trafficking and slavery in global supply chains and increased access to both financial and health care services for communities in need.

Josh Zinner, CEO
Interfaith Center on Corporate Responsibility

ANNEX I: ANNEX TO ICAR LETTER TO SEC ON BUSINESS AND FINANCIAL DISCLOSURE REQUIRED BY REGULATION S-K

File No: S7-06-16

International Corporate Accountability Roundtable, "*Knowing and Showing": Using U.S. Securities Laws to Compel Human Rights Disclosure* (2013).

ADDENDUM TO ANNEX I

Update to "Knowing and Showing: Using U.S. Securities Laws to Compel Human Rights Disclosures" section on *European Union Legislation* on pages 23-24.

Since the publication of ICAR's "Knowing and Showing" report in October 2013, the European Council and European Parliament adopted national requirements on non-financial reporting, including reporting on business' human rights impacts.[1] The European Parliament and the Council reached an agreement on February 26, 2014, with the European Parliament adopting the amendments to its Annual Financial Statements Directive 2013/34/EU on April 15, 2014 and the Council of the European Union adopting the directive on September 29, 2014.[2] The new regulations require publicly listed European companies with more than 500 employees to disclose policies and risks on human rights, employee-related issues, diversity on boards of directors, anticorruption, anti-bribery, and the environment.[3] This directive amends existing accounting legislation to improve the transparency of corporate social responsibility reports from companies with more than 500 employees, requiring that these reports include human rights information.[4]

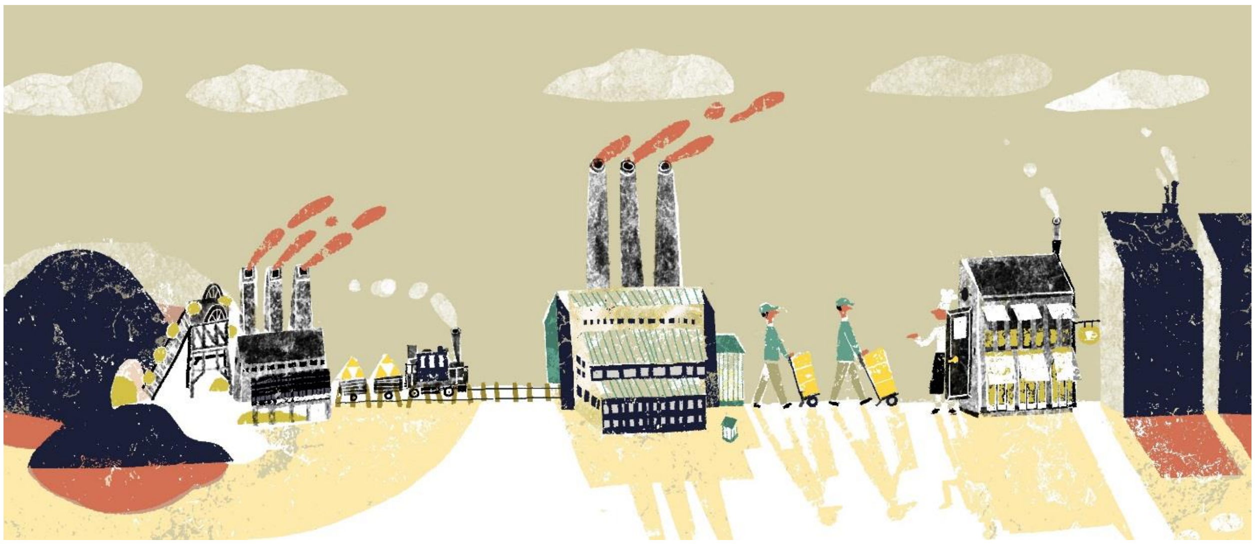
---

[1] European Commission, "Disclosure of non-financial information by certain large companies: European Parliament and Council reach agreement on Commission proposal to improve transparency" Press Release Statement (Brussels, Feb. 26, 2014) http://europa.eu/rapid/press-release_STATEMENT-14-29_en.htm?locale=en.

[2] European Council Directive 2013/34/EU, 2013 O.J. (L 182) 19 (EC) [hereinafter EU Directive]; Anil Yilmaz & Rachel Chambers, *New EU human rights reporting requirements for companies: One step beyond the current UK rules,* EU LAW ANALYSIS (Oct. 22, 2014) http://eulawanalysis.blogspot.com/2014/10/new-eu-human-rights-reporting.html.

[3] Business and Human Rights Resource Centre, "EU Requirements on companies' non-financial reporting (2014)" BUSINESS-HUMANRIGHTS.ORG, http://business-humanrights.org/en/eu-requirements-on-companies-non-financial-reporting-2014.

[4] *See generally* EU Directive, *supra* note 1.



"KNOWING AND SHOWING"

USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE

A REPORT BY

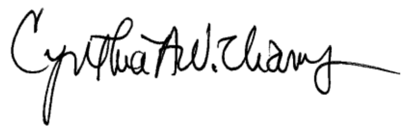
THE INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE (ICAR)

ENDORSED BY

PROFESSOR CYNTHIA WILLIAMS

Endorsement

This document has been reviewed, edited, and endorsed by Professor Cynthia A. Williams.



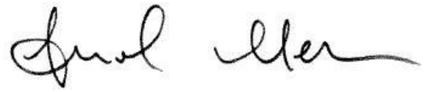
Professor Cynthia A. Williams joined Osgoode Hall Law School on July 1, 2013 as the Osler Chair in Business Law, a position she also held from 2007 to 2009. Before coming to Osgoode, she was a member of the faculty at the University of Illinois College of Law and, prior to that, she practiced law at Cravath, Swaine & Moore in New York City.

Professor Williams writes in the areas of securities law, corporate law, corporate responsibility, comparative corporate governance, and regulatory theory, often in interdisciplinary collaborations with professors in anthropology, economic sociology, and organizational psychology.

Professor Williams' work has been published in the Georgetown Law Journal, the Harvard Law Review, the Journal of Corporation Law, Theoretical Inquiries in Law, the University of New South Wales Law Journal, the Virginia Law Review, and the Academy of Management Review.

Acknowledgment

ICAR would like to acknowledge the following individuals who participated in the production of this report: Stephen Winstanley, Katie Shay, Sara Blackwell, Kendall Scott, Mike Lally, and Caitlin Peruccio.



Amol Mehra, Esq.

Director, International Corporate Accountability Roundtable (ICAR)

Table of Contents

Introduction

After decades of economic globalization and trade liberalization, traditional legal and regulatory enforcement systems have proved to be inadequate in holding corporations accountable for the adverse social impacts of business activities. Due partly to limitations on courts' jurisdictional authority over extraterritorial activities of corporations[1] and weaknesses in the rule of law in operating jurisdictions,[2] corporations have functioned in an environment where regulations that are intended to hold them accountable for the way in which they conduct business are insufficiently enforced.[3] Yet, public reaction to recent corporate disasters such as the factory collapse at Rana Plaza in Bangladesh,[4] the adoption of socially responsible investment policies by a broad cross-section of investors,[5] and international policy convergence on the responsibility of businesses to respect human rights[6] all indicate that human rights concerns related to business activities are relevant and material to a broad set of stakeholders.

In recent years, public attention on business-related human rights abuses has grown in a wide variety of industries. Popular disapproval of corporate complicity in human rights violations has manifested in the form of direct boycotts by consumers, as well as pressure from an investor community that is increasingly interested in social issues. For instance, the garment industry has received widespread and largely negative attention after multiple deadly factory disasters in Bangladesh, including the Tazreen Fashions fire that killed 114 workers in Dhaka on November 24, 2012[7] and the Rana Plaza factory collapse on April 24, 2013 that left more than 1100 workers dead.[8] In addition, the information and communications technology industry has struggled to effectively self-regulate and monitor labor standards in its supply chains, as demonstrated by the frequent publicity surrounding the harsh conditions facing workers at the FoxConn factory complex in China.[9] The extractives industry has similarly faced scrutiny for adverse working conditions, human rights abuses by security personnel at mines,[10] forced labor and other modern forms of slavery,[11] and the contamination of ground water supplies.[12]

In response to these types of incidents, consumers have increasingly taken direct action to boycott and encourage divestment from socially irresponsible companies.[13] Certification labels such as "Rainforest Alliance"[14] and "Fair Trade"[15] have become sought after by companies in order to market their products to socially-motivated purchasers. Moreover, investors are adopting socially responsible policies to guide their decisions and are expecting valuable returns on their outlays as a product of doing so, as indicated by the rising asset values of socially responsible investment funds in the United States over the past two decades (from $639 billion in 1995 to $3.74 trillion in 2012).[16] Mainstream institutional investors, including institutional mutual and equity funds, have also signed onto international principled investing standards, joining more than 1188 signatories to the United Nations Principles for Responsible Investment—altogether commanding a total of more than $34 trillion (or over 15% of the world's investable assets) in market capital.[17]

A company's reputational risk—the material damage to a company's reputation as a result of social missteps—can therefore result in significant business costs. As has been shown in a multitude of instances, consumer and client preferences can change dramatically upon the discovery of human rights risks. Employees, recruits, investors, and shareholders alike may seek to disassociate from a corporation that is implicated in human rights violations. This ripple effect from the discovery of human rights risks and impacts can negatively alter any competitive advantages that a business might have because of changes in public perception. For example, the rise in popularity of "fair trade" coffee illustrated this effect when major coffee shops faced backlash and demands from customers before agreeing to serve fair trade certified coffee.[18] Now, more than ever, consumers and investors are making the conscious decision to purchase from and invest in companies that utilize an ethical supply chain and are not complicit in human rights violations. As such, companies should reasonably expect consumers and investors to prefer and even demand complete and accurate information concerning human rights risks before making the decision to purchase or invest.[19]

In the absence of enforceable and uniform regulations for corporate accountability at the global level, domestic law must work to answer this call for corporate accountability. U.S. securities regulation is a key and promising area for such domestic efforts as it is based on a philosophy that uses transparency to allow market actors to hold corporations accountable for social conduct and standards.[20] This paper applies that purposeful logic to provide a road-map for how U.S. securities laws can be used to create conditions for investors to hold companies accountable for their social and human rights impacts. Market actors can and should motivate companies to act more responsibly regarding their impact on human rights by allocating capital resources to more responsible companies. However, market actors can only do so if there is transparent, clear, and comparable disclosure of those human rights risks and impacts, as well as the policies and procedures that are related to the assessment and management of such risks and impacts.

This paper argues that human rights are materially relevant to corporate securities reporting and encourages the U.S. Securities and Exchange Commission (SEC) to guide businesses in reporting material human rights information in their periodic and proxy disclosure reports. First, the paper outlines the legal framework for securities disclosure regulations that are relevant to human rights. Second, the paper explains the methodology for assessing whether information related to corporate activities is material and uses this methodology to analyze whether human rights information is material to corporate securities disclosures. Finally, the paper proposes a plan for implementing disclosure of material human rights information related to business activities, incorporating human rights due diligence standards at the global level to assess and identify material human rights risks and impacts.

As part of this proposed plan, this paper identifies two alternative and complementary actions that the SEC could take to clarify precisely how issuers should disclose material human rights information. First, given its authority to issue interpretive guidance, the SEC should provide such guidance in order to explain how material human rights information should be incorporated into existing securities reporting items. Second, given its authority to promulgate new regulations for the public interest or the protection of investors,[21] the SEC should promulgate a new rule specifically requiring disclosures of human rights information, organized in a new reporting item for periodic reports or proxy disclosures. Interpretive guidance would facilitate mandatory reporting under existing rules by clarifying the materiality of human rights information to investors, whereas a new rule could establish clear and organized disclosure of human rights matters in a new reporting item, enabling investors to easily review this information in their capital allocation decisions.

The Legal Framework: U.S. Securities Reporting Standards

The SEC was established by the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act").[22] Its mission is to promote the public interest by protecting investors, facilitating capital formation, and maintaining fair, orderly, and efficient markets.[23] More recently, the Sarbanes-Oxley Act of 2002[24] and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[25] were passed in response to accounting scandals and securities market abuses that destabilized the domestic and global economy, further impacting the SEC's mission and mandate.[26]

The intellectual architects of the U.S. securities regulation system favored the use of transparency as a regulatory mechanism, not only to ensure accurate pricing of securities in the marketplace,[27] but also to motivate changes in business behaviors by exposing corporate conduct to public scrutiny.[28] Based on this foundational architecture, transparency became one of the primary mechanisms for implementing the investor protection and public interest purposes of U.S. securities regulations.[29] The debates within the U.S. House of Representatives on both the Securities Act and the Exchange Act clearly indicate that public disclosure of information was intended to affect the way business is performed, including in ways that increase the social responsibility of business conduct.[30]

This section will outline the legal framework of securities law in the United States. Corporate securities reporting essentially involves two steps: (1) identifying and collecting the type of information required for disclosure under securities regulations and (2) filtering that information by determining what is "material" for disclosure to the SEC, investors, and shareholders.

A. The Disclosure Provisions

Securities-issuing entities are required to publicly report information to enable investors and shareholders to make informed investment decisions and allocate capital resources efficiently. Under U.S. securities law, issuers must disclose information publicly to the SEC at the following regular intervals: (1) at the initial public issuing of securities, (2) at registration of securities, (3) at quarterly and annual periodic intervals, (4) as part of proxy solicitation disclosures for the annual shareholders meeting, and (5) at the occurrence of extraordinary events such as a tender offer, merger, or sale of the business.[31] The integrated disclosure requirements for registered securities are organized in the comprehensive Regulation S-K (or Regulation S-B for small businesses).[32] Additionally, shareholders have the authority to demand disclosures beyond those required under Regulation S-K by using their power to bring resolutions during the proxy solicitation process for annual shareholders meetings.[33] These regulations are buttressed by a number of other rules: (1) Rule 408, promulgated pursuant to the authority of the Securities Act, and Rule 12b-20 of the Exchange Act, both of which require additional disclosure of material information necessary to ensure that required disclosures are not misleading,[34] and (2) Rule 10b-5, promulgated pursuant to the authority of Section 10(b) of the Exchange Act, which establishes legal liability for those responsible for fraudulent or untrue statements or omissions in disclosures connected with the purchase or sale of securities.[35]

In order to ensure that the information disclosed in securities reports is useful to investors, issuers are only required to report information that is "material" to the users of their reports.[36] In the case of periodic securities reports, the intended users are potential investors and existing shareholders. Materiality is both an accounting and securities law concept for classifying information as significantly relevant to understanding the past, current, and future value and performance of the issuer's securities. It is judged based on factoring the quantitative and qualitative importance of the information in evaluating the issuer and in relation to the intended users of the report.[37] For securities reports, information must be disclosed that is: (1) specifically required under Regulation S-K or necessary to ensuring that required disclosures are not misleading[38] and (2) material to investors' or shareholders' decision-making processes in accurately valuing securities, in particular for the purpose of choosing to buy or sell securities.[39]

I. Regulation S-K and Periodic Disclosure of Non-Financial Information

Regulation S-K outlines the standard instructions for corporate securities disclosures required by U.S. securities regulations. These regulations inform the initial obligation to disclose specific types of information in prospectuses for the sale of new securities, in companies' periodic and extraordinary occurrences reports, and in companies' proxy statements in conjunction with their annual meeting. In addition to a company's registration statement, there are four primary categories of disclosures for periodic reporting, including descriptions of the registrant's (1) business, (2) securities, (3) financial information, and (4) management.[40] Issuers are required to provide periodic disclosures quarterly on the SEC's Form 10-Q and annually on the Form 10-K.[41]

Several provisions of Regulation S-K require descriptive disclosures that may incorporate material non-financial information. Key provisions that require discussion of non-financial information include Item 101 (description of business), Item 103 (legal proceedings), Item 303 (management's discussion and analysis), Item 307 (disclosure controls and procedures), and Item 503(c) (risk factors).[42] The SEC occasionally issues interpretive guidance releases to clarify the information issuers are expected to disclose and how the Commission staff evaluates disclosures by issuers.[43]

Description of Business, Item 101

The description of business under Item 101 should indicate general developments in the business during the previous five years, including any material changes in the mode of doing business and a forward-looking description of the plan of operation for the next reporting period.[44] Depending on the timing of the report, projections must outline the plan for the remainder of the fiscal year or for that period and an additional six-months into the next fiscal year.[45] This item includes three primary disclosures: (1) general development of business, (2) financial information about business segments, and (3) a narrative description of business.[46]

The narrative description of business requires disclosures encompassing all areas of the business operations. An issuer must disclose the principal products and services involved in the issuer's business, the status of each business segment or new product (e.g. planning, prototype, design-selection, re-engineering stages), the sources and availability of raw materials, the status and importance to the business valuation of all intellectual property, and the extent to which business segments are or may be seasonal in nature.[47] There must be a description of the principal methods of competition and positive and negative factors related to the issuer's competitive position should be reported.[48] Finally, material effects on capital expenditures from compliance with federal, state and local provisions related to environmental protection must be explained appropriately.[49]

Legal Proceedings, Item 103

Under Item 103, issuers must disclose information relating to any pending legal proceedings involving the issuer, any of its subsidiaries, or any of their property as a party to litigation where the proceedings could have a material impact on the issuer.[50] This reporting requirement is limited in scope by the qualifications that pending litigation must be other than routine litigation incidental to the business, and it must have the potential to result in damages exceeding ten percent of the issuer's current assets.[51] Where several cases based on the same legal or factual issues are pending or are being contemplated, the amount of potential damages must be calculated by aggregating the claims.[52] These limitations do not directly apply where the proceeding arises from a law or regulation for the purpose of environmental protection or where a governmental authority is a party to the proceeding and it involves potential monetary sanctions of more than $100,000.[53] In each of these cases, an issuer may only limit their reports if the proceeding's outcome is immaterial to the business or financial condition of the issuer or if the penalty where the government is a party is unlikely to be an actual fine of $100,000 or more.[54]

Management's Discussion and Analysis, Item 303

Management's Discussion and Analysis ("MD&A") under Item 303 is intended to provide a narrative description of management's views concerning the financial condition of the company and the results of business operations, with a particular emphasis on future prospects and risks.[55] This section should add value to the overall disclosures provided by the company and supply a contextual basis for investors to analyze financial information.[56] To do so, the MD&A must include reporting covering three subjects: liquidity, capital resources, and results of operations. Detailed instructions of explicit requirements in discussing each of these subjects are found in Instruction 5 to Item 303(a).[57] Essentially, the reporting requirements focus on management identifying any known trends, events, or uncertainties that will or are "reasonably likely" to result in favorable or unfavorable material effects to the issuer's liquidity, capital resources, or operating results—such as net sales, revenues, or costs from continuing operations.[58] These disclosures are intended by the SEC to be made in a meaningful, company-specific manner and should not use "boilerplate" phrasing and generalities.[59]

Disclosure Controls and Procedures, Item 307

Item 307 requires an issuer's principal executive or financial officers, or the functioning equivalent, to disclose their conclusions regarding the effectiveness of internal disclosure controls and procedures.[60] This will require a short, narrative explanation of the executives' understanding of the internal processes and an affirmation of the effectiveness of the procedures that are in place. Generally, this will require disclosure outlining the due diligence and auditing measures the company uses to identify, assess, and evaluate required categories of information in preparation of the annual, quarterly, and special reports required by securities regulations.

Risk Factors, Item 503(c)

Item 503 is specific to prospectus disclosure as initially promulgated, but is recently incorporated into Item 1A for quarterly and annual reporting. In Item 503, the issuer is required to briefly summarize their prospectus in plain English, including a distinct section captioned "Risk Factors" to discuss the most significant factors that make the offering speculative or risky.[61] This typically includes risks of changes in the competitive landscape or market demand, fluctuations in political stability or other operating conditions, climate change risks and associated cost increases, and other such unpredictable variations in the business environment that may damage capital formation or financial performance.[62] This narrative discussion is specifically required to be "concise and organized logically," with risks presented that are tailored to the specific issuer and their business.[63] It must be placed immediately following the summary section or any price-related information or directly after the cover page, if there is no summary.[64]

The risk factor discussion must explain how the risk affects the issuer and clearly express each risk factor in a sub-caption that adequately describes the risk.[65] The description of Item 503(c) in Regulation S-K specifically identifies risk factor categories in a non-exhaustive list, including lack of an operating history, lack of profitable operations in recent periods, financial position, business or proposed business, and the lack of a market for the issuer's common equity securities. The list provided is suggestive, but item 503(c) is clear that all of the most significant factors that make the offering speculative or risky must be disclosed.[66]

II. Shareholder-Demanded Disclosure Using Shareholder Resolutions, as Permitted Under Exchange Act Section 14(a), Regulating Proxy Solicitations and the SEC's General Powers Under Section 14(a)

Company-specific disclosure may also arise based on a successful shareholder resolution (also called shareholder proposals). Under state corporate law, securities owners have the power to put appropriate items on the annual meeting agenda. In Section 14(a) of the Exchange Act, the SEC is given general authority to regulate the process of soliciting proxies in conjunction with the annual meeting. In Rule 14a-8, the SEC has identified the procedural and substantive requirements for shareholders' resolutions. If a shareholder resolution asking for information from the issuer receives majority support in the proxy solicitation process, then the information may be forthcoming.[67]

Companies may seek a no-action position from the SEC staff to protect them from later SEC enforcement action if the company decides not to include certain shareholder resolutions in the company's annual proxy statement. Permissible reasons to exclude shareholder proposals are set out in Rule 14a-8, question 9.[68] Exclusion may be permissible based on the proposal violating one of the eligibility or procedural requirements of Rule 14a-8 or if it falls within one of the rule's thirteen substantive bases for exclusion.[69] If there is no basis to exclude a shareholder proposal, the issuer must include the proposal in its proxy solicitation for shareholders to consider.

Additionally, under the broad authority delegated to the SEC by Section 14(a) of the Exchange Act, the Commission is entitled to regulate the proxy solicitation process "as necessary or appropriate in the public interest or for the protection of investors."[70] It has been argued that this mandate was intentionally designed to allow the SEC to establish rules that would permit shareholders to hold companies accountable for their actions, including by promulgating proxy disclosure rules that would provide shareholders with more information about the companies' actions.[71] The challenge for any proponent of new proxy disclosure rules lies in gaining sufficient support for any proxy disclosure request in order to instigate the SEC rule-making process under section 14(a).

III. Rules 408 and 10b-5: Ensuring Completeness, Accuracy, and Responsibility in Disclosures

Supplementary provisions of the Securities and Exchange Acts buttress the specific disclosure requirements in Regulation S-K. First, Securities Act Rule 408 and Exchange Act Rule 12b-20 provide a "catch-all" requirement to disclose any further material information necessary to ensure the overall disclosures are not misleading.[72] Then, Rule 10b-5 attaches personal liability for fraud, misstatements, or omissions to the individuals responsible for preparing and certifying the disclosures as true, accurate, and complete. These provisions act to complement disclosure requirements and ensure that managers and internal reporters have incentives to ensure that the information they are disclosing is complete, accurate, and true.

According to Securities Act Rule 408 and Exchange Act Rule 12b-20, issuers are required to add any material information necessary to ensure their disclosures are not misleading. The specific language of both Rule 408 and Rule 12b-20 require "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."[73] These rules act as a "catch-all" to ensure that issuers are required to disclose any additional material information necessary to ensure that information disclosed is not misleading—in essence, to guard against half-truths.

Section 10(b) and Rule 10b-5 of the Exchange Act create liability for using deceptive or manipulative devices in connection with the purchase or sale of securities.[74] In particular, according to Rule 10b-5 (b) it is unlawful for any person to directly or indirectly "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . . . in connection with the purchase or sale of any security."[75] This liability, in relation to periodic securities disclosures, attaches to the individuals involved in preparing the statements of material fact and to those who are required to certify that the material statements of fact are true and complete—usually the Chief Executive Officer, Chief Financial Officer, or similarly empowered high-level executive. This liability applies to materially misleading statements even where there is no affirmative duty to disclose such information.[76]

In making a claim for violation of Rule 10b-5, the plaintiff must prove several elements. They must show: (1) that the defendant is subject to Rule 10b-5, (2) that there was a misrepresentation or omission, (3) of a material fact, (4) made with the intent to deceive or recklessness in the misstatement, (5) upon which the plaintiff relied, (6) in connection with either a purchase or sale of a security (7) causing (8) damages.[77] While reliance is a part of the plaintiffs' case, it may be presumed in certain cases. In omission cases, reliance may be presumed if the omission is of a material fact, and in misstatement cases there is a rebuttable presumption of reliance when the security is trading in an efficient market since the misstatement will operate as a "fraud on the market," affecting the market price.[78] Therefore, incentives are created to promote accuracy and completeness in periodic disclosures in part because the individuals responsible for preparing the information and certifying the disclosures may be personally liable for any fraudulent material inaccuracies or omissions.

B. What is "Material" for Corporate Disclosures?

The first part of the disclosure process involves collecting information based on the items specifically required under Regulation S-K, any information demanded by successful shareholder disclosure proposals, and the blanket requirements to include additional material information as necessary to ensure the disclosures are not misleading. Once this information is gathered, the issuer must determine what information is "material" and thereby subject to public disclosure and what information is immaterial and thereby not required to be disclosed publicly.[79] The second part of the disclosure process requires a subjective filtering of information related to required disclosure items through a screen of materiality, with the goal of ensuring that public disclosures are useful to investors and shareholders in assessing current and prospective corporate performance.

The Supreme Court of the United States has laid out a clear legal standard for identifying what is "material" for securities reporting. The standard is driven by the rationale behind the Securities Acts to "substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry."[80] It is tempered by the judicial concern that "a minimal standard might bring an overabundance of information within its reach,"[81] and lead management to overburden the market with disclosures that did not enable "informed decision-making."[82]

A fact is material if "there is a substantial likelihood that a reasonable investor would consider it important" and would have viewed the information "as having significantly altered the 'total mix' of information made available."[83] The Court explains that assessing whether a fact is material "requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him."[84] Whether a fact is material "depends on the significance the reasonable investor would place on the . . . information."[85]

Regarding speculative or contingent information, including much forward-looking information, Supreme Court precedent calls for companies to balance "the indicated probability the event will occur and the anticipated magnitude of the event in the light of the totality of company activity."[86] Adopting the reasoning from earlier cases, the Court expects the significance of each fact to be assessed in relation to all other available information.[87]

The SEC has provided additional guidance in recent years to assist companies with determining materiality. In Staff Accounting Bulletin No. 99 ("SAB 99"), the SEC clarifies that materiality cannot be determined based on a bright-line quantitative criterion alone and that even information that is purely qualitative could, in the context of all other available information, be material to corporate securities disclosures.[88] In particular, SAB 99 dispelled the popular rule-of-thumb that any fact which could not result in a financial impact of at least 5% on any quantitative category was not material.[89] SAB 99 provided some guidance for accountants to consider qualitative characteristics in determining materiality by listing hypothetical situations where qualitative information would be considered material by SEC staff.[90]

Materiality determinations require the accountants and managers preparing securities reports to assess the qualitative and quantitative characteristics of information to identify information that a reasonable investor would consider important enough to significantly alter the "total mix" of information available.[91] The certainty or uncertainty of a fact, trend, or event's occurrence—and the nature and scope of the impact on corporate performance of that occurrence—will all affect whether it is material.[92] These subjective determinations should be guided by balancing the purposes of securities regulation in providing sufficiently accurate, detailed, and comparable information to protect investors and ensure fair, orderly, and efficient markets against a judicious temperance to refrain from overwhelming the market with a flood of useless information.[93]

Demonstrating Materiality: Human Rights Impacts, Risk Assessments, and Procedures Are Material for Corporate Securities Disclosures to the S.E.C.

Materiality derives from the general public, international and national governments, and businesses treating a particular area or impact of business activity with heightened interest.[94] In 2010, the SEC re-evaluated the materiality of information related to climate change in light of increasing interest from the public, academics, businesses, domestic and international government, and other stakeholders.[95] In doing so, the Commission outlined the process for considering whether a topic has become popularly relevant to the level of "material" to corporate reporting. Key factors considered include: heightened public interest in recent years (including academic, government, business, investors, analysts, or the public at large); international accords and efforts to address a topic of concern on a global basis; federal regulations or state and local laws in the United States; and voluntary recognition of the current and potential effect of the category of information on companies' performance and operations by business leaders.[96] The SEC addresses these key factors by analyzing the level of interest in climate change according to three primary elements: (1) recent regulatory, legislative, and other developments; (2) the potential impact of climate change related matters on public companies; and (3) current sources of climate change-related disclosures regarding public companies.[97] Within each element, the materiality of any category of information is supported by trends of public interest, international community action, domestic legislative action, and voluntary business action expressing an acknowledgment of material significance.

This section provides evidence that the significance of human rights information to investors and the public has evolved to a level that requires its disclosure as material information in securities reports. First, recent regulatory, legislative, and other developments in the US and international spheres are presented. Second, the potential impacts of human rights-related matters on public companies are outlined using examples from recent years. Finally, current sources of human rights-related disclosures regarding public companies are outlined. This evidence supports the conclusion that human rights are material to investors. Securities regulations must recognize this materiality by providing guidance for issuers to disclose information related to human rights risks and impacts in a clear, consistent, and comparable manner in their reports to the SEC.

A. Recent Regulatory, Legislative, and Other Developments

Legislators, regulators and international policy-makers have indicated that the human rights risks and impacts arising from globalized business activities require concerted global action. Domestic legislators and regulators in the United States have adopted public policies and rules at the federal, state, and local levels that address corporate social responsibility and enhance corporate transparency relating to human rights.[98] The international community has endorsed defined roles for States and businesses in the UN's "Protect, Respect, Remedy Framework"[99] and the "Guiding Principles" for implementing this framework in the business and human rights context.[100] Furthermore, the United States government has endorsed the Guiding Principles and has been encouraged by members of civil society to develop a plan for national implementation.[101] Stakeholders in business and civil society have come together with initiatives to develop particular standards and processes for addressing human rights risks and impacts through voluntary action.[102]

I. Federal Government Regulatory Efforts

Federal legislators and administrative agencies in the United States have used their authority to promote corporate respect for human rights and to provide greater transparency to investors and the public on human rights risks and impacts related to business activities. In the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress required transparency from companies in special securities disclosures to address corruption and bribery, mine safety, and conflict minerals sourcing.[103] The SEC interpretive guidance for disclosures related to climate change[104] and to cyber-security information[105] has directed companies to disclose socially important information similar to human rights concerns under existing securities disclosure rules in Regulation S-K. Finally, the State Department issued rules requiring transparency for new investments in Burma in May 2013.[106]

Dodd-Frank Special Disclosure Provisions

In the Dodd-Frank Act of 2010, the U.S. Congress employed the mechanism of securities disclosures to require transparency regarding mine safety,[107] payments by resource extraction companies to governments,[108] and supply chain due diligence by manufacturers who source minerals from the Congo region of Africa.[109] These provisions directed the SEC to issue rules requiring issuers to disclose information related to these three activities with the apparent goals to enhance awareness about dangerous mining conditions, combat corruption in foreign governments, and eliminate funding for armed groups perpetuating conflict and human rights violations in the Congo.[110] Although Congress determined that these purposes fit within the mandate of the SEC, some observers have questioned the role of the SEC in compelling disclosures of this information and the materiality to investors.[111] Investors, meanwhile, have commented on the rule-making processes for each section and provided considerably favorable feedback as they seek access to information regarding the social and human rights impacts of business activities of issuers conducting operations in conflict-affected and weak governance areas.[112]

Section 1502 of the Dodd-Frank Act mandates that the SEC issue a rule requiring companies to determine whether certain minerals used in the production of their manufactured goods originated in the Democratic Republic of Congo (DRC) or neighboring countries and whether the trade in those minerals has financed or benefitted armed groups. The SEC rule implementing Section 1502 requires companies that file reports with the SEC to determine whether they source designated minerals from this region. If they do, and those minerals are necessary to the functionality of the manufactured goods they are used to produce, the company should be required to conduct supply chain due diligence to determine whether their mineral purchases are providing funding directly or indirectly to armed groups perpetuating conflict and violence in the DRC. [113] As part of the required disclosures, companies must describe the specific measures taken to exercise due diligence.[114] The rule follows a "comply or explain" philosophy, requiring companies to comply and show their efforts or explain their non-compliance and show what efforts they have undertaken to comply.

Section 1503 of the Dodd-Frank Act calls for the SEC to require specific periodic disclosure by issuers operating coal or other mines of information detailing health and safety violations or a pattern of such violations in their operations.[115] The SEC rule implementing this disclosure is based on the Federal Mine Safety and Health Act of 1977 (Mine Safety Act) and expands the level of detailed information about mine safety issues that must be publicly disclosed.[116] This rule requires issuers to report the receipt of certain notices from the Mine Safety and Health Administration (MSHA) on current report disclosure Form 8-K, which must be filed within four business days of specific material events to provide an update to quarterly or annual reports.[117] Further, the rule requires that quarterly and annual reports include aggregated totals for: (1) health and safety violations, orders, or citations under the Mine Safety Act; (2) the potential costs of proposed assessments from the MSHA under the Mine Safety Act; and (3) mining-related fatalities during the reporting period.[118]

Finally, Section 1504 authorizes the SEC to demand resource extraction companies disclose any and all payments made to domestic or foreign government officials. Under this requirement, companies are expected to submit information to the SEC in interactive data format, detailing: (1) total amounts of payments by category, (2) the business segment that made the payments, (3) the government that received the payments, (4) the country in which they are located, and (5) the project of the issuer to which the payments relate.[119] The SEC is given authority to require any other information considered "necessary or appropriate in the public interest or for the protection of investors."[120] This rule may be limited by a *de minimus* exemption, allowing companies to refrain from disclosing very minimal payments, but the statute indicates the Commission should be guided in its rulemaking by the guidelines set out in the Extractive Industries Transparency

Initiative—a voluntary international multi-stakeholder initiative for extractive companies and governments to publish payments made and received related to resource extraction projects.[121]

Critics of these specialized disclosure requirements argue that they go beyond the scope of the SEC's authority by targeting public policy goals unrelated to investor protection, market efficiency, or capital formation.[122] They argue that the original purpose of the SEC is being manipulated for federal policy-making goals because the SEC is the only regulatory body capable of commanding regulatory compliance across all industries.[123] However, these criticisms appear to fail to consider the legislative mandate to the SEC to regulate "as necessary or appropriate in the public interest or for the protection of investors," as in Section 14(a) of the 1934 Act.[124] These criticisms also fail to consider the legislative history describing the original intended purposes of federal securities regulation, which have been argued to include establishing greater social responsibility in corporate conduct.[125] Congress has the authority to mandate rulemaking on specific items where it is deemed in the public interest.[126] Further, investor groups have actively advocated for the materiality of the information to be disclosed under these provisions for their decision-making processes.[127]

SEC Guidance on Climate Change and Cyber-Security

The SEC has recently been engaged in clarifying the disclosure requirements of non-financial information related to climate change and cyber-security in securities reports. Each of these releases has indicated how existing securities regulations may require disclosure of information related to climate change or cyber-security matters where they are material to the issuer or any of its business segments.[128] Both discuss how the costs of compliance with laws and regulations to prevent and mitigate risks related to climate change or cyber-security may result in material expenses necessary to report in financial disclosures. Further, both detail how the description of business, legal proceedings, MD&A, and risk factors items in Regulation S-K may compel issuers to address cyber-security or climate change risks or incidents.[129] The climate change guidance identifies specific provisions in Regulation S-K that have been enacted during the past four decades of rulemaking and interpretive guidance on disclosures related to environmental protection or climate change matters.[130] The cyber-security guidance also details how the disclosure controls and procedures section may require disclosure of the effectiveness of cyber-security measures or any deficiencies that could render them ineffective.[131]

State Department Responsible Investment in Burma Reporting Standards

The U.S. Department of State recently released their Responsible Investment Reporting Requirements for all U.S. businesses investing more than US$500,000 in Burma, effective May

23, 2013.[132] Companies must publicly provide summaries or copies of the policies and procedures relating to operational impacts on human rights, community and stakeholder engagement in Burma, and grievance processes.[133] They must outline their human rights, worker rights, anti-corruption, and environmental due diligence policies and procedures, including those related to risk and impact assessments.[134] Further, they must report to the State Department their policies and procedures relating to security service provision and military communications.[135]

Foreign Corrupt Practices Act

Congress has been involved in regulating corporate conduct in transactions and business activities abroad at least since 1977, when it passed the Foreign Corrupt Practices Act[136] (FCPA), prohibiting the use of bribery to foreign government officials to assist in obtaining or retaining business.[137] The prohibition of promises, offers, or payments of bribes to foreign officials applies anywhere in the world and extends to public companies and their officers, directors, employees, stockholders, and agents—including consultants, distributors, joint-venture partners, and others.[138] The FCPA also requires that issuers (1) make and keep books and records that accurately reflect the corporation's transactions and (2) put in place a system of internal accounting controls to adequately oversee and account for corporate assets and transactions.[139] These records and internal controls help the issuer identify, prevent, mitigate, and remedy any offending conduct.

II. State and Local Government Regulations or Laws

States have the primary legislative authority to regulate corporate governance and liability in U.S. law. Several states have engaged their legislative authority or are considering laws to address human rights risks and impacts arising from business activities. In 2011, California became the first state to pass a law preventing companies under scrutiny for ineffective compliance with the Dodd-Frank conflict minerals supply chain reporting requirements from eligibility to bid on state procurement contracts.[140] Maryland passed a similar law in 2012, and Massachusetts is presently considering legislation to follow suit.[141] Additionally, California has enacted the Transparency in Supply Chains Act of 2010, requiring transparency related to corporate efforts to monitor supply chains to combat slavery or human trafficking.[142] Through these laws, legislators in California, Maryland, and Massachusetts are clearly indicating that they are interested in holding corporations accountable for their conduct abroad, including the direct or indirect financing of conflict and crimes against humanity in their supply chains for mineral resources.

III. International Community Actions to Address Business and Human Rights Concerns on a Global Basis

The international community has taken actions at several levels to address business and human rights concerns on a global basis. The United Nations has engaged stakeholders and developed frameworks for global action through defined roles of governments and businesses in upholding human rights, standards for responsible and principled investing, and guiding principles for businesses to implement their responsibilities to respect human rights.[143] International organizations such as the Organization for Economic Co-operation and Development ("OECD") and the International Organization for Standardization ("ISO") have also released guidelines for businesses to implement their social and human rights responsibilities that incorporate and expand upon the standards of the Guiding Principles.[144] The European Union is currently preparing legislation to require corporations to publicly disclose information related to human rights and other non-financial social and environmental impacts of business activities.[145] Additionally, businesses, governments and civil society groups have come together voluntarily in multi-stakeholder initiatives ("MSIs") to address particular concerns and create best practices approaches in the form of standards and mechanisms to protect against adverse human rights risks and impacts of business activities.[146] Each of these international mechanisms will be discussed in turn.

UN Frameworks and International Standards

The United Nations has progressed from voluntary multi-stakeholder initiatives—such as the UN Global Compact[147]—to consultative approaches seeking to develop international standards that can be incorporated into domestic laws and that follow the "Protect, Respect Remedy" Framework[148] and the Guiding Principles for Business and Human Rights.[149] These frameworks provide a "common global platform for action" for governments and businesses to act to prevent and remedy adverse human rights risks and impacts related to business activities and operations.[150] The OECD has provided insight and standards with its Guidelines for Multinational Enterprises (OECD Guidelines),[151] and the ISO has introduced direction with its Standard 26000 for "Social Responsibility."[152]

The UN Global Compact was launched in July 2000 as a "platform for the development, implementation, and disclosure of responsible and sustainable corporate policies and practices."[153] It is a voluntary initiative which calls on corporations and interested stakeholders to join the Compact and commit to embracing, supporting, and enacting—within their spheres of influence—its Ten Principles, covering human rights, labor, environment, and anti-corruption standards.[154] The Ten Principles are derived from the Universal Declaration of Human Rights, the International Labour Organization's Declaration of Fundamental Principles and Rights at

Work, the Rio Declaration on Environment and Development, and the UN Convention Against Corruption.[155] Since its inception, it has grown to contain over 10,000 corporate participants and to include stakeholders from over 130 countries.[156]

Building from the "Protect, Respect, Remedy" framework that was passed in 2008, the UN Special Representative on Business and Human Rights developed the Guiding Principles on Business and Human Rights.[157] The Guiding Principles provide a "common global platform for action, on which cumulative progress can be built" towards realizing the protection of, and respect for, human rights through State and business actions.[158] They are a series of 31 practical principles to guide the implementation of the State duty to protect human rights, the business responsibility to respect human rights, and the provision of access to remedy for human rights abuses and violations.[159] Businesses are encouraged to apply these principles appropriately according to their size, complexity, and operating contexts to ensure that they are respecting human rights.[160]

In particular, the Guiding Principles call for businesses to adopt policies and build a corporate culture that respects human rights. They are advised to do this by implementing human rights due diligence processes to identify, prevent, mitigate, and account for how they address adverse human rights impacts arising from their business.[161] This due diligence should include "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."[162] Businesses are advised to engage with stakeholders throughout the process and to be prepared to communicate their human rights impacts externally when concerns are raised or when risks of severe human rights impacts are identified.[163]

Additionally, the UN has developed widely accepted Principles for Responsible Investing ("UN PRI"). These principles were launched in 2006 and now have almost 1200 investor signatories, with assets under management standing at more than $34 trillion—or more than 15% of the world's investable assets.[164] The rapid growth of the UN PRI shows that investors—in particular large, institutional investors—are quickly integrating responsible investment policies and criteria into their decision-making calculus. The UN PRI emphatically believes that environmental, social, and governance issues are materially relevant to investors and, although it recognizes the limitations of available research data, it is firm in its confidence that these issues are financially significant.[165]

The OECD Guidelines for Multinational Enterprises ("OECD Guidelines") provide a set of non-binding principles and standards for responsible business conduct in the global context that follow applicable local laws and internationally recognized standards.[166] These standards are implemented through the National Contact Points (NCPs) mechanism, which are government agencies tasked with promoting the OECD Guidelines and assisting MNEs and their stakeholders in implementing the standards.[167]

Under the Guidelines, MNEs are required to disclose material information regarding their: (1) policies and codes of conduct; (2) performance in relation to those statements and codes; (3) internal audit, risk management, and legal compliance systems; and (4) relationships with workers and other stakeholders.[168] The "Commentary on Disclosure" indicates that the purpose of transparency should be to address the increasingly sophisticated public demands for information, including social, environmental, and risk reporting.[169] The 2011 edition of the Guidelines aligns its human rights standards with the UN Framework and Guiding Principles.[170] They require companies to "respect human rights" through: (1) policy commitments; (2) actions to prevent or mitigate adverse human rights impacts directly linked to their operations, products, or services; (3) carry out human rights due diligence appropriate to their circumstances, and (4) empower legitimate processes for the remediation of human rights impacts where they are implicated.[171]

The OECD has developed sector-specific standards in the Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High Risk Areas[172] (OECD Due Diligence Guidance). The OECD Due Diligence Guidance provides a five-step process for companies to conduct due diligence, undertake risk assessments, mitigate and monitor risks in the supply chain, and participate in audit programs for external, independent assurance.[173] Finally, the process requires annual disclosure of risk assessment reports, detailed descriptions of how due diligence processes have been reviewed and verified, and what steps are taken to regularly monitor changing circumstances of supply chains.[174]

The ISO has developed a standard to reflect consensus, state-of-the-art standard best practice for social responsibility to assist organizations in contributing to sustainable development.[175] Through a holistic approach that incorporates seven core subjects, the ISO 26000 standard provides practical guidance on how to adopt principles of social responsibility, recognize that responsibility, and engage with stakeholders to integrate that responsibility throughout an organization.[176] For human rights, ISO 26000 guides organizations to implement due diligence, monitor and mitigate risks, avoid complicity, and support the resolution of grievances.[177] It describes these issues in relation to broad categorization of human rights, including civil, political, economic, social, cultural, and labor rights.[178]

European Union Legislation

The European Commission (EC) has recently proposed a directive on non-financial disclosure requirements that would, in part, require corporations to report publicly their respect for human rights. The proposed standards would require companies to report relevant and material information on policies, results, risks, and risk management efforts pertaining to respect for human rights, as well as other environmental, social, and governance issues.[179] The proposal is currently awaiting a vote in the European Parliament, after which it would come into force in 18 months. At that time, EU member-state governments would be required to begin the process of implementing the standards into national domestic law. The actual standards of non-financial disclosure required regarding specific types of information may vary from State-to-State but the EU directive will provide the basic requirements.

Multi-Stakeholder Initiatives (MSIs)

There are a number of MSIs developed through business and civil society leadership to address sector-specific or issue-specific concerns relating to the intersection of business and human rights. Through these platforms, stakeholders have worked together to formulate strategies and exchange feedback to develop operational approaches to address adverse human rights risks and impacts. Examples of MSIs include the Extractives Industry Transparency Initiative ("EITI") and the Global Network Initiative ("GNI").

The EITI is a global standard to promote revenue transparency and accountability in the extractive sector.[180] It requires companies to report payments to governments and governments to disclose their receipts of payments to the EITI multi-stakeholder oversight group, which verifies and reconciles tax and royalty payments from resource extraction operations. A multi-stakeholder group representing business, civil society, and governments oversees the process and communicates the EITI Report findings.[181] The goal is that, by requiring both sides to transparently report their exchange, the independent verification will prevent under-reporting and combat corruption and bribery in resource rich countries with poor governance, which can often contribute to conflict and a high risk of human rights violations.[182] Governments are required to apply to be a member of EITI and must effectively implement all aspects of the EITI requirements in order to become a member.[183] Failure to effectively implement the requirements can result in EITI suspending operations, as recently occurred in the DRC.[184]

The GNI is a sector-specific, multi-stakeholder initiative for the information and communications technology ("ICT") industry that requires participating companies to implement its Principles on Freedom of Expression and Privacy to protect and advance the enjoyment of these human rights globally.[185] Implementation of the Principles includes a Governance, Accountability, and Learning process that requires participating companies to submit to independent compliance monitoring and transparent reporting that outlines compliance activities, results of independent assessments, impacts on freedom of expression and privacy, and the path forward.[186]

Recent legislative, regulatory, and other developments clearly indicate that policy-makers at the federal, state, and international levels are increasingly interested in taking action to address adverse human rights risks and impacts related to globalized business activities. Domestic legislators have enacted transparency requirements to address public interest in eliminating direct or indirect support for corrupt governance, violent conflict, and human trafficking. International organizations have been engaged in creating consensus and global standards for business responsibilities related to human rights and have gathered global support for concerted action to implement those principles. Business and civil society actors have engaged with the international community to take direct action on specific concerns and in specific contexts through practical operational frameworks. Altogether, these recent developments indicate the increasing materiality of human rights-related matters to corporate activities.

B. Potential Impact of Human Rights-Related Matters on Public Companies

The "business case" for disclosure of human rights information rests on growing evidence that human rights performance has a real impact on long-term corporate value.[187] As investors learn how companies predict, mitigate, and manage risks and impacts, capital should be allocated efficiently to businesses with stronger capacities to overcome challenges. Therefore, in an efficient market, the potential direct and indirect impacts of human rights-related matters are material to investor decision-making.

Direct impacts—such as capital costs related to compliance with laws and regulations, financial penalties for non-compliance, or damages related to liability for abuses or violations—are material risks that affect the future corporate outlook. Indirect impacts—such as the market effects of rising supply chain costs, increasing prices of raw materials, or changes in the competitive advantage based on varying capability to attract and retain workers, customers, clients, or users—could materially affect corporate performance. Finally, political effects—arising from human rights risks and impacts connected to business activities, operations, or relationships—may have a material impact on business and the social license to operate.

I. Direct Impacts

Dealing with human rights-related matters directly impacts corporate performance through additional costs, changes in operating conditions, and unpredictable delays in production and revenue generation.[188] Investors are materially interested in the potential and actual costs that a company faces related to human rights risks and impacts because these directly impact corporate financial performance and securities valuations.[189] Where new laws or regulations add compliance requirements, there are costs associated with complying. Where a company is implicated in human rights abuses or violations, they will face costs in mitigating the impacts, additional expenses in public relations, and potentially for litigation, mediation, or some other grievance or remediation process. Where human rights abuses or violations occur in one operating context, a company may face extra costs in re-assuring its stakeholders that its other operations are not subject to the risk of similar incidents. Based on the potential for these direct impacts—where a human rights risk or change in political environment resulting in stronger human rights regulation is a possibility—the expected direct costs of those eventualities are material to investors' valuations of securities.[190]

II. Indirect Impacts

The indirect costs related to human rights risks are more difficult to predict and are much more costly to business. These can arise in the form of reputational damage, changes in consumer preferences that alter the definition of competitive advantages in the marketplace, or unexpected changes in local upstream conditions that cause price and cost fluctuations in the supply chain. Other indirect impacts may occur, and each of these is material to corporate performance as a result of human rights risks or impacts.

One of the most powerful costs from implication with human rights risks or impacts related to business activities is the reputational cost.[191] This affects relationships with consumers or clients,[192] employees and recruits,[193] and investors and shareholders[194] who prefer to disassociate from operations that are complicit with adverse human rights outcomes.

If human rights risks and impacts are discovered by one actor in a particular sector, the ripple effect can re-define competitive advantage by changing public perception of the consequences of their consumer decisions.[195] This can radically alter the landscape for strategy to gain market share and consumer confidence and leave companies unprepared to show that they respect human rights risks at the back of the pack. As was witnessed with the growth of the fair trade coffee campaign, the major chain coffee shops faced pressure from consumers to carry fair trade coffee, reflecting their new understanding of the indirect costs of their purchasing decisions.[196] Some consumers were no longer satisfied with their previous criteria for coffee and instead chose to shop based on ethical supply chain practices of coffee merchants.

Finally, human rights risks in the supply chain can result in sudden changes to supply costs or prices for raw materials where conditions deteriorate or where regulation gets stronger to improve conditions. As conditions improve and regulations get stronger in countries where low labor standards keep supply chain costs low, the increase in costs will necessarily be passed up the supply chain and increase costs on the end-producer.[197] If conditions in supply chains change rapidly, for better or for worse, the resulting impact on manufacturing costs or raw materials prices may have a material impact on corporate performance.

III. Political Effects That Could Have a Material Impact on Business and Operations

Companies that are implicated in human rights abuses or violations may face greater scrutiny from government licensing agencies, and popular pressure could force the government to revoke or deny business licenses necessary to operate within the country.[198] This is a particular risk for major foreign multinational enterprises engaged in high-risk activities such as resource extraction, where public relations are strained by the nature of exporting natural resources from the land for a limited return to local populations.[199] Where society becomes passionately inflamed against a company that is complicit with human rights abuses, the government may have no choice but to follow the revocation of the social license to operate with a revocation or denial of the official business license to operate.[200] Alternative scenarios could include changes in government, resulting in the nationalization of particular industries or a rapid descent into civil conflict.[201]

C. Current Sources of Human Rights-Related Disclosure Regarding Public Companies

Business managers and accountants have voluntarily recognized the materiality of human rights-related information in some cases and have generally recognized the value of reporting social sustainability information informally as a public relations practice.[202] Auditing firms have directly recognized that human rights and other environmental, social and governance factors are material to investors and that businesses should investigate, assess, and disclose their risks and impacts where these are material to business performance.[203] Market analysts are gathering information on businesses' social and human rights records and risks,[204] and investment news services are providing analysis to the market in recognition of the materiality of these factors to decision-making.[205]

Voluntary disclosures by business and marketplace aggregation and publication of environmental, social, and governance factors show that this information is material to investment decision-making. The SEC considers the availability and current sources of disclosures in determining whether information is material. First, the SEC considers whether shareholders are demanding the information from public companies through the shareholder proxy proposal process. Second, it considers whether institutional investors or other groups are petitioning the SEC for interpretive advice for disclosing the information. Finally, it evaluates the existing public disclosures available through alternative sources.

I. Increasing Calls for Human Rights-Related Disclosure by Shareholders of Public Companies

Shareholder resolution proposal powers have been a primary tool to engage corporations in dialogue relating to human rights policies and practices for decades, and resolutions have frequently been advanced where dialogue has been unsuccessful. In 2013 alone, thirteen of the biggest corporations in America faced shareholder resolutions relating to human rights.[206] Many social-issue proposals brought by shareholders are withdrawn prior to the annual meeting because an agreement is reached with the company.[207] The majority of human rights proposals over the past four decades have been filed by institutional investors, such as the Interfaith Center on Corporate Responsibility (ICCR), the California Public Employees Retirement System,[208] or the New York State Common Retirement Fund.[209]

Shareholder proposals—and even just the potential to bring proposals—have been a useful tool for engaging corporations in dialogue to enhance their transparency regarding human rights issues, although few have achieved majority support as Boards routinely advocate voting against any social disclosure proposals.[210] The As You Sow Foundation has used shareholder advocacy to lead or participate in hundreds of shareholder dialogues and resolutions to impact policies and practices at companies, including Chevron, ExxonMobil, Dell, HP, PepsiCo, Starbucks, Target, Home Depot, and Walt Disney.[211] As You Sow generally operates by building coalitions with shareholder allies and engaging companies in proactive dialogue—resorting to active resolution proposals where dialogue alone is not enough to spur companies to action.[212] Other groups, such as Investors Against Genocide, advocate similar tactics for institutional investors to bring companies to align with their principles for responsible investment and have successfully promoted a shareholder resolution at ING Emerging Countries Fund to a wide 59.8% passing margin.[213] Additionally, shareholder activism by the New York State Comptroller has recently resulted in settlement agreements that require companies to disclose human rights risks and impacts related to their business activities.[214]

The New York State Comptroller also acts as trustee of the New York State Common Retirement Fund and has incorporated social and human rights considerations into investment decisions and long-term valuations in recent years.[215] Similar actions have been taken by institutional pension funds, such as the American Federation of State, County, and Municipal Employees (AFSCME) Pension Plan, which has sought to protect and enhance the economic value of its long-term investments by proposing heightened accountability and transparency by management to shareholders on issues including human rights risks arising out of companies' operations.[216] The U.S. Presbyterian Church also recently proposed that Caterpillar review and amend its human rights policies to conform more closely to international human rights and humanitarian standards.[217]

II. Petitions for Interpretive Advice Submitted to the SEC by Large Institutional Investors or Other Investor Groups

The SEC has only a few petitions on record that it has received from a large institutional or other investor group, demanding interpretive advice regarding disclosure relating to human rights matters.[218] However, this does not mean that investors are not interested in these issues. In fact, investor interest in human rights and other social impacts related to business activities has increased dramatically in recent years.

The socially responsible investment (SRI) industry has expanded in the United States, from controlling assets worth $639 billion in 1995 to $3.74 trillion in 2012.[219] This expansion is mirrored internationally by the wide acceptance of the UN PRIs, which now command assets of over $32 trillion—approximately 15% of the global market for securities—after launching in 2006 with signatories managing only $4 trillion in assets. SRI has grown to command significant market share and several large institutional investor groups, including pension funds and mutual funds. Even Goldman Sachs has developed its own fund based in sustainability metrics, known as GS Sustain.[220]

EIRIS Conflict Risk Network is a prime example of a coalition of almost 80 institutional investors, financial service providers, and other stakeholders calling upon corporate actors to fulfill their responsibility to respect human rights and to take steps that support peace and stability in areas affected by genocide and mass atrocities, such as Sudan and Burma.[221] The Network leverages the investment power of more than $6 trillion in assets under management in this mission to advocate for the corporate fulfillment of the responsibility to respect human rights in conflict environments, and coordinates groundbreaking research methods for the implementation of responsible investment policies relating to these challenging locations.[222] In May 2013, the Network became a part of EIRIS—a leading global provider of research into corporate environmental, social, and governance performance.[223]

This is reflected in other components of investment valuation, such as the change in metrics used to evaluate corporate market value. In 1975, tangible assets accounted for up to 80% of the valuation assessment for corporate securities' market value. In 2005, tangible assets accounted for only 20% of that valuation assessment, as intangible assets—including risk management, intellectual property, human and social capital—have come to be used to calculate 80% of the market valuation equation for corporations.[224]

III. Existing Public Disclosures Available Through Other Sources

Businesses, traditional financial accounting firms, and marketplace analyst research services have recognized that human rights-related matters are material to investors. Businesses have demonstrated this through voluntary disclosures in securities reports and participation in social sustainability reporting systems or social auditing frameworks.[225] Over the past few years, financial accounting firms have expressed the materiality of human rights to investors in several reports from Deloitte, Ernst & Young, and others that have engaged in research collaborations with business schools and institutional investor groups.[226] Finally, market analysts and research companies have developed indices for measuring social impacts, including human rights risks and impacts, of business activities and offer these for investors who are seeking to apply the information in their decisions.

Voluntary Reporting in Periodic SEC Securities Disclosures

Many businesses are already voluntarily disclosing information regarding human rights-related matters,[227] and both accounting and law firms have published their acknowledgment that these matters are material to investors.[228] Certain companies, including Coca-Cola, have already begun to report human rights risks under their "Risk Factors" disclosures in item 1A of their annual Form 10-K securities reports to the SEC.[229] As companies proceed to identify, monitor, and address human rights risks and impacts in their activities, the acknowledged materiality of these matters by accounting firms may result in those firms and in-house corporate auditors deciding to report human rights-related matters when they pass the in-house materiality filter for significant relevance to investors and shareholders.

In their 2012 annual report, Coca-Cola specifically details concerns that negative publicity related to human rights, even if unwarranted, could damage their brand image and corporate reputation and cause the business to suffer.[230] This risk factor disclosure rests on Coke's recognition that their success "depends on our ability to maintain the brand image" and "maintain our corporate reputation."[231] Coke addresses their responsibility to respect human rights under the Guiding Principles and acknowledges that—based on their Human Rights Statement, including a Workplace Rights Policy and Supplier Guiding Principles—any allegations of a failure to respect internationally accepted human rights could have a significant impact on their corporate reputation.[232] They conclude that the reputational harm attached to any allegations of human rights violations, even if untrue, could significantly impact corporate reputation and long-term financial results.[233]

The analysis provided by Coca-Cola of the risks related to human rights violations, or even untrue allegations, to long-term financial results are consistent with the views emerging from accounting and auditing firms acknowledging that human rights issues are material to investors. Deloitte has proposed that environmental, social, and governance information, including information related to human rights matters, are material where disclosure informs an understanding of changes in company valuation.[234] They indicate that the materiality filter should capture these topics by considering how stakeholder actions related to reported information regarding topics such as human rights risks and impacts—including boycott, activism, divestiture, seeking employment, or changing purchasing habits—yield potential impacts for company valuations within a relevant time frame.[235]

Ernst & Young, in collaboration with the Boston College Center for Corporate Citizenship, has also recently identified the benefits of corporate transparency for financial performance. Their research shows that informally reporting social sustainability performance has demonstrated direct benefits to the corporate balance sheet—a conclusion that implies information such as human rights risks and impacts are material to corporate performance.[236] The conclusions of both Deloitte and Ernst & Young's research shows that traditional accounting firms are finding that non-financial information, such as human rights risks and impacts, may be material to investors as they impact corporate performance financially or, in the alternative, lead to intangible advantages to reputation and image.[237]

Voluntary Informal Social Sustainability or Responsibility Reporting

There has been a proliferation of voluntary social sustainability reporting frameworks, and a significant majority of businesses are participating by voluntarily releasing informal corporate social responsibility or sustainability reports. The Global Reporting Initiative (GRI)[238] and the International Integrated Reporting Council (IIRC)[239] are the most popular frameworks, and the Sustainability Accounting Standards Board (SASB)[240] is also developing human rights and sector-specific disclosure standards to guide companies. Companies have subscribed to these standards in order to grant their reports a level of credibility, but most of the standards have still allowed companies considerable discretion in reporting details. These standards have made more information available, but the quality, comparability, and usefulness of the information varies across sectors and between businesses. Therefore, informal voluntary sustainability reports have been useful in making some information available to investors, but they have failed to allow investors to clearly understand, evaluate, and compare how different companies are identifying, reviewing, mitigating, and remedying human rights risks and abuses.[241]

The GRI was initiated in 1990 and the first reporting standard was announced in 2000, providing companies with a framework for reporting on sustainability topics. The standard has evolved over time, with the fourth "G4" guidelines released in May 2013.[242] The guidelines have been designed to harmonize with existing sustainability standards, including the OECD Guidelines for Multi-National Enterprises (MNEs), ISO 26000, and the UN Global Compact. In 2011-2012, more than 3900 companies participated in GRI certification training.[243]

Under the G4 Guidelines, companies may prepare a sustainability report "in accordance" with the standard by reporting only the "Core" elements or by preparing a "Comprehensive" report, including additional "Standard Disclosures" and more extensive performance analysis of identified material "Aspects."[244] The determination of aspects of the GRI reporting standard that are material to the specific company is instrumental in determining what disclosures are made under the standard, since only aspects that are material to the company must be reported under the GRI standard.[245] Under the G4 guidelines, material aspects are those that: (1) "reflect the organization's significant economic, environmental, and social impacts" or (2) "substantively influence the assessments and decisions of stakeholders."[246]

The IIRC is an international standard for integrated corporate reporting that is currently piloting a program to result in communication by companies about how their "strategy, governance, performance and prospects lead to the creation of value over the short, medium, and long term."[247] The integrated reports are intended to target investors and decision-makers in capital markets by communicating the full range of factors that materially affect the issuer's ability to create value over time.[248] The IIRC envisions its standard as building on financial and other reporting to evolve corporate reporting to consider all aspects that interested stakeholders find relevant in capital allocation decisions.[249] These integrated reports will identify the factors that the organization believes are most important for their value creation over time and will provide additional details including financial statements and sustainability reports.[250] In that way, it complements and works with the GRI standards to incorporate sustainability reports alongside financial statements to reflect the integrated information that is material to investors.

The SASB is a standards organization that is developing sector-specific accounting standards related to material issues in those sectors for corporate reporting of non-financial information. SASB aims to provide relevant, useful, applicable, cost-effective, comparable, complete, directional, and auditable standards to improve the quality of corporate reporting for investors.[251] In developing their standards, they seek to support the convergence of international accounting standards and support the shift to integrated reporting of material sustainability issues in SEC reports such as the Form 10-K.[252] They are in the process of developing standards related to accounting and reporting human rights issues in order to continue towards meeting their vision where industry-specific standards enable companies to compete and improve performance on sustainability issues—such as respect for human rights—so that investors can capitalize the most sustainable companies.[253]

Marketplace Information Analysis and Investor Analytical Services

The marketplace has naturally organized to provide analytical services, information aggregation, and dedicated news categories to sustainability and human rights matters relating to business activities. Investor analytics and research database firms have been providing and refining indices and collections of information relating to environmental, social, and governance business practices, including human rights, for years. Investor-focused news services are dedicating web pages to reporting social impacts of business and sustainability issues.[254]

The MSCI risk and investment analytics firm produces indices for its clients related to environmental, social, and governance analysis and is related to socially-responsible investment criteria.[255] MSCI has consolidated many of the competing databases and indices under its umbrella with the KLD Research & Analytics, RiskMetrics, and Barra analytical methods offered to clients as part of their investment support tools.[256] These tools can be customized to meet particular investors' interests in analyzing performance related to specific categories, including human rights. Goldman Sachs has developed its own analytical approach to sustainability metrics, and incorporated it into a sustainable and principled investment fund.[257]

Bloomberg, the investment news provider, has a dedicated category for sustainability news, where human rights matters related to business activities are reported regularly.[258] Bloomberg has maintained a database that integrates sustainability into its market analytics since 2008 and has expanded its commitment to providing investors transparent information on these issues by offering a sustainability section in its news services since 2010.[259] However, the fact that this information is being provided by the information services marketplace does not mean that it is equally reliable, comparable, or useful to investors—SEC action to specifically require human rights disclosures could vastly improve the quality of information available to investors and stakeholders.[260]

The problem with these marketplace information and analytical resources for investors is that they are relying on incomplete, inconsistent, and sometimes incomparable information from companies. The data deficiency holds back the measurement of financial impacts from socially responsible corporate policies and processes and prevents investors from adequately incorporating this information into their decision-making process.[261] Although business, institutional investment funds, and marketplace information services providers have recognized that this information significantly alters the total mix of information available to investors, there is no standardized practice for delivering useful, objective data.[262]

The availability of current sources of human rights-related disclosure shows that businesses, accounting firms, civil society, news services, and other stakeholders expect investors to be interested in human rights for making capital allocation decisions. As shareholders and investors are demanding increasingly detailed and sophisticated disclosures related to human rights matters using shareholder resolutions, information providers are filling the gap in available information as best they can. Investors are demanding information by adhering to international standards of socially responsible investment principles and criteria. Businesses are voluntarily disclosing information by including it in existing items of their SEC formal reports or by informally providing public sustainability or corporate social responsibility reports. International standards for these sustainability reports have developed in order to guide companies to report material information in a clear, useful manner. Finally, marketplace information analysis providers, major investment and brokerage houses, and business news publications are including sustainability and human rights information prominently in their metrics and news services.

Unfortunately, this information is not consistent, comparable, or reliable across industries and even individual businesses—making it less useful to investors.[263]

Reporting Material Human Rights Information to the S.E.C.

Broad human rights disclosure allows shareholders to access comparable information about corporate activities and to more adequately assess risks to their portfolio companies.[264] This section outlines the two steps involved in implementing securities disclosure in the context of this type of broad human rights disclosure: (1) assessing business-related human rights risks and impacts through human rights due diligence and disclosure of such processes and (2) disclosing material human rights risks and impacts.

Under the second step of broad human rights disclosure, this section proposes two ways in which the SEC should act to require companies to disclose material human rights information under Regulation S-K. First, the SEC should issue interpretive guidance, clarifying the responsibilities of issuers to disclose material human rights risks, impacts, and due diligence processes and results under existing Regulation S-K reporting items. Second, the SEC should engage in a comprehensive rulemaking process to develop rules for disclosing human rights risks, impacts, and due diligence processes and results in a distinct reporting item. Engaging in either or both of these approaches will allow the SEC to enable investors to access key information that addresses management's integrity and a corporation's capacity to manage risks and create long-term, sustainable value through respect for human rights in business activities and relationships. Any clarification from the SEC, whether in the former of interpretive guidance or a new rule, should clearly extend disclosures to include the activities of a company's subsidiaries, contractors, and business partners, in line with the standards of the UN Guiding Principles and the OECD Guidelines for MNEs.[265]

A. Assessing Human Rights Risks and Impacts Related to Business Activities: Human Rights Due Diligence

The first step in securities disclosure always involves gathering, reviewing, and assessing information that fits within specifically required disclosure items. In this case, human rights risks and impacts related to business activities can arise from a variety of sources and may develop from supply chain or other business relationships, as well as directly in principal business operations. In order for issuers to effectively identify, review, mitigate, and report human rights risks and impacts related to their activities, they should conduct human rights due diligence.[266]

Generally, human rights due diligence should involve several steps to: (1) identify risks and impacts, (2) review and integrate findings, (3) track responses and mitigate potential impacts, (4) remedy any existing adverse impacts, and (5) communicate to stakeholders how impacts are addressed.[267] The UN Guiding Principles, in Principles 17-20, provide a flexible framework for issuers to adapt based on their size, complexity, risk environment, and operational context.[268] By referencing these existing and developing standards, companies can provide clarity to investors while having the flexibility to adapt best practices (or not) as they emerge over time. Sector specific guides—like the OECD Due Diligence Guidance, which is geared towards supply chain due diligence in conflict-affected and high-risk areas—also provide a framework for human rights due diligence that could be used as an illustration by the SEC, while leaving the exact parameters of due diligences processes, if any, to issuers.[269]

B. Disclosing Material Human Rights Risks and Impacts

The second step for making securities disclosures is filtering and appropriately organizing the gathered information in material disclosures to allow investors and shareholders to understand corporate performance and prospects. The material information must be disclosed and organized in reports according to required disclosure items. In this case, material human rights information could be required to be disclosed based on: (1) existing securities regulation disclosure items or (2) the implementation of a new rule providing for a new item sub-heading for human rights-related risks and impacts.

I. Interpretive Guidance on Existing Securities Reporting Item Requirements for Human Rights-Related Matters

Material human rights risk and impacts should already be being disclosed by issuers under existing requirements in Regulation S-K, but the SEC should clarify these requirements using an interpretive guidance for human rights-related matters. Following the approach recently used to clarify reporting requirements for climate change matters and cyber-security information, the SEC should identify how issuers are required to disclose material human rights information under existing rules.[270] In particular, the description of business (Item 101), legal proceedings (Item 103), reporting of disclosure controls and procedures (Item 307), MD&A (Item 303), and risk factors (Item 503(c)) may already require disclosure of material human rights information.

Human rights risks and impacts are relevant to disclosures under item 101, the description of business, because they are a significant element of operating contexts where they exist. Further, any policies and processes in place to identify, assess, mitigate, and remedy human rights risks and impacts will be relevant to investors' understanding of an issuer's risks management strategies and capacities. These should be outlined and described in detail, and any known or potential risks should be disclosed in the description of business as part of the description of the plan of operation for the next period.

Legal proceedings related to human rights risks and impacts should be disclosed under item 103. The SEC should clarify that legal proceedings involving allegations of human rights abuses or violations are not "ordinary routine litigation incidental to the business" and thus are material to investors. As has been suggested by Coca-Cola and stakeholder research, even untrue allegations of human rights violations can have a material impact on corporate reputation and long-term value.[271] Similar to legal proceedings related to climate change, there is sufficient evidence to support disclosure of legal proceedings implicating a corporation or any subsidiary or business segment in human rights violations at a lower standard of materiality than is generally required for item 103 disclosures.[272]

Further, as management is required to provide a narrative perspective of business performance, including trends, uncertainties, and future prospects, there should be some discussion of human rights risks and impacts in the MD&A under item 303. Any known or uncertain trends relating to human rights risks and impacts should be described and management should provide a narrative explanation of how the issuer is prepared to identify, prevent, and mitigate potential or existing occurrences.

Human rights due diligence policies and procedures should be disclosed as part of the item 307 reporting of disclosure controls and procedures.[273] These reports should include: (1) the concrete steps taken to identify risks to human rights; (2) the results of the company's inquiry, including risks and impacts identified; and (3) steps actually taken to mitigate the risks and prevent human rights abuses. This would require senior management to assess and take responsibility for the effectiveness of these internal controls and procedures and vouch for the resulting human rights disclosures.

The direct and indirect effects to securities valuations, corporate reputation, and competitive advantage related to human rights risks and impacts should result in material disclosures under item 503(c) as risk factors for corporate performance. Coca-Cola has led the way with their recognition that the potential for damage to their reputation and resulting stakeholder actions could significantly affect their bottom line.[274] It is clear from the consistent findings of research on the impact of sustainability reporting that social responsibility issues, including human rights, are important sources of risk and potential value.[275] The SEC should clarify that issuers need to be assessing their human rights risks and impacts to identify risk factors for disclosure under item 503(c) that could affect corporate performance.

II. The Development of a New Rule for Human Rights Reporting

The SEC may engage in rulemaking related to required disclosures where it is mandated by Congress under existing securities laws (such as the Exchange Act or Dodd-Frank Act[276]), according to a fresh congressional mandate, or following rule-making petitions proposed by the public.[277] According to Section 14(a) of the Securities Act, Congress has delegated broad authority to the SEC to engage in rulemaking relating to proxy solicitations "as necessary or appropriate in the public interest, or for the protection of investors."[278] As this paper has documented, human rights risks and impacts are a matter of domestic and global public interest, and are relevant to corporate performance and the protection of investors. Interested stakeholders should petition the SEC to promulgate a new mandatory disclosure rule related to human rights in periodic disclosures, including through annual proxy disclosures and through updates in periodic disclosures regarding material changes.

In developing a new rule, the SEC should consider how to incorporate disclosures of human rights-related matters in order to provide clear, consistent, and comparable information between issuers. Certain sectors will, due to the nature and context of their operations, be more prone to risks and impacts related to human rights. Disclosure of their policies and processes for identifying, tracking, mitigating, and remedying those risks and impacts are materially relevant to investors' understanding of management's integrity, and capability to manage risks.

A new rule—and the rulemaking process—could investigate the value of consolidating human rights risk and impact disclosures under one item heading or sub-heading. This "Human Rights Due Diligence" section would provide transparent and accountable disclosure of all material information and allow stakeholders to engage the corporation to improve or assist with issues related to human rights. Finally, this rule could be used to meet part of the U.S. government's duty to protect human rights-related to business activities, under the UN Guiding Principles, which it has already endorsed. This would require, at minimum, that the rule include a disclosure of the issuer's human rights policies and details of the human rights due diligence process and results.

Conclusion

Heightened interest from the public, policy-makers, academics, investors, and businesses indicate that information relating to human rights matters is in fact material to investor decision-making. Domestic and international legislative and policy action have built—and continue to build—a global consensus around the need to tackle the adverse social and human rights impacts of globalized business activities. Investors are increasingly demanding corporate transparency through shareholder resolutions and endorsement of responsible investment principles. In turn, businesses are recognizing the importance of their performance relating to social responsibility issues and are publishing both formal and informal reports to gain positive publicity and investor support for their efforts in meeting these changing global standards. At the same time, marketplace information analysts and investor support service providers are gathering and integrating available information into useful analyses for investors' capital allocation decisions.

The UN Guiding Principles provide a set of foundational benchmarks for building human rights considerations into internal auditing and risk mitigation processes through human rights due diligence and reporting. Since the United States government has endorsed the Guiding Principles, it should examine implementation of these Principles through its own existing laws and regulations. Furthermore, the OECD Guidelines for MNEs and ISO 26000 have entrenched and expanded upon the Guiding Principles to formulate best practices standards for corporations around the world to tackle the challenges of business impacts relating to human rights. These systems have developed as legislators, civil society, and businesses have converged on a common understanding of the responsibility for businesses to respect human rights. The implementation of the responsibility to respect human rights demands that corporations conduct human rights due diligence to investigate their operations for adverse human rights risks and impacts and communicate those findings to stakeholders and the public.

In order to promote orderly, efficient capital markets and protect investors from misleading or inaccurate information that affects the value of the securities on the market (such as in stand-alone social reports), the SEC should act to require issuers to disclose their human rights due diligence processes and findings regarding risks and impacts related to their business activities. Under existing securities regulations, issuers may have an obligation to disclose human rights risks and impacts related to their operations, and the SEC should provide interpretive guidance clarifying those items where material human rights issues should be reported. Based on the heightened interest from the public, legislators, the international community, and voluntary business disclosures, the SEC should provide interpretive guidance and engage in a comprehensive rulemaking process to establish clear, consistent, and comparable disclosure requirements that will allow investors to effectively consider the human rights risks and impacts connected to investment in certain companies. This information is highly important as it significantly alters the total mix of available information to investors. It should therefore be provided in a manner that adequately allows investors to usefully decide how to allocate their resources.

Endnotes

[1] The United States does have several statutes that apply certain laws and standards to U.S. companies in their activities abroad. These include the Foreign Corrupt Practices Act, Pub. L. 95-213 (1977), the Torture Victim Protection Act, Pub. L. 102-256 (1991), and the Trafficking Victims Protection Reauthorization Act, H.R. 7311 (2008). The Alien Tort Claims Act, 28 U.S.C. § 1350 (2013) has been used in recent decades to hold companies liable for violations of the law of nations committed abroad.

[2] Many human rights violations resulting from business activities occur in challenging political environments, where conflict or other high-risk factors have limited the capacity or willingness of the State to effectively establish the rule of law or to operate a functioning judiciary.

[3] Profits are at an all-time high for the world's largest, most powerful corporations. *See* Henry Blodget, *Corporate Profits Just Hit an All-Time High, Wages Just Hit an All-Time Low*, BUS. INSIDER (June 22, 2013), http://www.businessinsider.com/corporate-profits-just-hit-an-all-time-high-wages-just-hit-an-all-time-low-2012-6. The example of the lack of enforcement for clear violations of law and regulation by financial institutions in the "too big to fail" category highlights this phenomenon in the context of the 2008/09 financial system collapse. *See, e.g*., Peter Schroeder, *Holder: Big Banks' Size Complicates Prosecution Efforts*, HILL (June 3, 2013), http://thehill.com/blogs/on-the-money/banking-financial-institutions/286583-holder-big-banks-size-complicates-prosecution-efforts.

[4] *E.g*., Andrew North, *Dhaka Rana Plaza Collapse: Pressure Tells on Retailers and Government*, BBC NEWS ASIA (May 14, 2013), http://www.bbc.co.uk/news/world-asia-22525431; *Bangladesh Accord on Fired and Building Safety released*, IndustriALL Global Union (May 15, 2013), http://www.industriall-union.org/bangladesh-accord-on-fire-and-building-safety-released.

[5] *E.g*., United Nations, *Principles for Responsible Investment*, http://www.unpri.org/ (last visited July 18, 2013).

[6] Human Rights Council, *Report of the Special Representative to the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/URC/17/31 (Mar. 21, 2011), *available at* http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf [hereinafter Guiding Principles].

[7] Chris Power & Arun Devnath, *Bangladesh's Tazreen Fire is Followed by Further Garment Factory Blazes*, BLOOMBERG BUS. WEEK (Dec. 27, 2012), http://www.businessweek.com/articles/2012-12-27/after-the-tazreen-fire-in-bangladesh-more-fires-in-garment-factories; Declan Walsh & Steven Greenhouse, *The Human Price: Certified Safe, a Factory in Karachi Still Quickly Burned*, N.Y. TIMES (Dec. 7, 2012), http://www.nytimes.com/2012/12/08/world/asia/pakistan-factory-fire-shows-flaws-in-monitoring.html?pagewanted=all.

[8] Julfikar Ali Manik & Jim Yardley, *Building Collapse in Bangladesh Leaves Scores Dead*, N.Y. TIMES (Apr. 24, 2013), http://www.nytimes.com/2013/04/25/world/asia/bangladesh-building-collapse.html?smid=fb-nytimes&WT.z_sma=WO_BBC_20130424&_r=0; *Disaster in Bangladesh: Rags in the Ruins*, ECONOMIST (May 4, 2013), http://www.economist.com/news/asia/21577124-tragedy-shows-need-radical-improvement-building-standards-rags-ruins; Dan Viederman, *Supply Chains and Forced Labour After Rana Plaza: Lessons Learned*, GUARDIAN (May 30, 2013), http://www.guardian.co.uk/global-development-professionals-network/2013/may/30/rana-plaza-bangladesh-forced-labour-supply-chains.

[9] *See* Rebecca Greenfield, *Apple is Breaking Up with Foxconn for a New iPhone Builder with Labor Problems*, ATLANTIC WIRE (May 29, 2013), http://www.theatlanticwire.com/technology/2013/05/apples-foxconn-pegatron/65706/; Christina Bonnington, *Probe Finds 'Serious and Pressing' Violations at Foxconn Plants*, WIRED.COM: GADGET LAB (May 29, 2012), http://www.wired.com/gadgetlab/2012/03/apple-foxconn-audits/.

[10] *E.g.*, *Papua New Guinea: Serious Abuses at Barrick Gold Mine*, HUMAN RIGHTS WATCH (Feb. 1, 2011), http://www.hrw.org/news/2011/02/01/papua-new-guinea-serious-abuses-barrick-gold-mine.
[11] *See* FREE THE SLAVES, *Congo's Mining Slaves: Enslavement at South Kivu Mining Site* (2013), *available at* https://www.freetheslaves.net/Congo.
[12] *E.g.*, *Pinera Blasts Environmental Licensing for Giant Pascua-Lama Gold Mine Project*, MERCOPRESS (June 8, 2013), http://en.mercopress.com/2013/06/08/pinera-blasts-environmental-licensing-for-giant-pascua-lama-gold-mine-project; Julie Gordon, *Barrick Gold to Submit Water Plan for Pascua Lama to Chile Authorities Soon*, GLOBE & MAIL (June 5, 2013), http://www.theglobeandmail.com/report-on-business/international-business/latin-american-business/barrick-gold-to-submit-water-plan-for-pascua-lama-to-chile-authorities-soon/article12360914/; Alexandra Ulmer & Fabian Cambero, *Barrick's Pascua-Lama Gold Project Frozen for at Least 1-2 Years: Chile Regulator*, REUTERS (May 30, 2013), http://www.reuters.com/article/2013/05/31/us-chile-pascualama-regulator-idUSBRE94T14X20130531.
[13] *E.g.*, CONE COMMUNICATIONS/ECHO, 2013 GLOBAL CSR SURVEY 25, *available at* http://www.conecomm.com/2013-global-csr-study-report (last visited July 18, 2013) (citing results that 55% of respondents have boycotted and refused to purchase products from companies they know to have behaved irresponsibly); Jayne O'Donnell, *Survey: Most Would Boycott Irresponsible Company*, USA TODAY (May 21, 2013), http://www.usatoday.com/story/money/business/2013/05/21/consumers-boycott-companies-bad-behavior-gap-protests/2343619/; *Boycotts List*, ETHICAL CONSUMER (Mar. 25, 2013), http://www.ethicalconsumer.org/boycotts/boycottslist.aspx.
[14] *See* RAINFOREST ALLIANCE, http://www.rainforest-alliance.org/ (last visited July 24, 2013) (certifying products as responsibly mitigating their impact on the rainforest).
[15] *E.g.*, FAIR TRADE USA, http://www.fairtradeusa.org/ (last visited July 24, 2013) (assuring consumers "that the farmers and workers behind the product got a better deal . . . [and] that their purchases are socially and environmentally responsible").
[16] U.S. SOCIAL INVESTMENT FORUM FOUNDATION, EXECUTIVE SUMMARY: REPORT ON SUSTAINABLE AND RESPONSIBLE INVESTING TRENDS IN THE UNITED STATES (2012) at 11, *available at* http://www.ussif.org/files/Publications/12_Trends_Exec_Summary.pdf.
[17] *See PRI Fact Sheet*, UN Principles for Responsible Investment (May 2013), http://www.unpri.org/news/pri-fact-sheet/ (last visited July 18, 2013).
[18] *See* Margaret Levi & April Linton, *Fair Trade: A Cup at a Time?*, 31 POL. & SOC'Y 407, 424 (2003) (highlighting the success of activists who, in the early 1990s, challenged Starbucks to stop buying from plantatiations where workers were not paid fair wages); DOUGLAS HOLT & DOUGLAS CAMERON, CULTURAL STRATEGY: USING INNOVATIVE IDEOLOGIES TO BUILD BREAKTHROUGH BRANDS 104-05 (2010) (citing the pressure exerted on Starbucks by Transfair USA before Starbuck's decision to purchase a small percentage of fair trade coffee, to which customers responded positively); Colleen Haight, *The Problem with Fair Trade Coffee*, 9 STAN. SOC. INNOVATION REV. 74, 77 (2011) (discussing Whole Foods Market's evolution from initially rejecting the fair trade model based on concern over the quality of fair trade coffee to more recently purchasing fair trade coffee due to customers' demands).
[19] Conflict Risk Network, *CRN Letter to the Burman Human Rights Officer on Title of Information Collection: Reporting Requirements on Responsible Investment in Burma* (Oct. 4, 2012), *available at* http://crn.eiris.org/files/Burma%20Reporting%20Requirements%20-%20Investor%20Comment_4%20Oct%202012.pdf/.
[20] *See* Cynthia Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARV. L. REV. 1197, 1211-35 (1999) (discussing the brain trust relied upon by President Roosevelt and the legislative drafters in forming the SEC, its purposes, philosophical foundation, and design).
[21] U.S. Securities & Exchange Comm'n, *Rulmaking: How It Works*, http://www.sec.gov/answers/rulemaking.htm (last visited July 26, 2013) [hereinafter *Rulemaking: How It Works*].

[22] *See* Securities Act of 1933, Pub. L. 112-106 (2012); Securities Exchange Act of 1934, Pub. L. 112-158 (2012).
[23] *See id*.; Trust Indenture Act of 1939, Pub. L. 111-229 (2010); Investment Company Act of 1940, Pub. L. 112-90 (2012); Investment Advisers Act of 1940, Pub. L. 112-90 (2012).
[24] Sarbanes Oxley Act of 2002, 116 Stat. 745 (2002).
[25] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 §§1502-04, 15 U.S.C. §78a et seq. (2013) [hereinafter Dodd-Frank Act].
[26] *See* Steven J. Markovich, *The Dodd-Frank Act*, COUNSEL ON FOREIGN RELATIONS (July 23, 2012), http://www.cfr.org/united-states/dodd-frank-act/p28735; Donald C. Langevoort, *The Social Construction of Sarbanes-Oxley*, 105 MICH. L. REV. 1817 (2007), *available at* http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1136&context=facpub; Allison Fass, *One Year Later: The Impact of Sarbanes-Oxley*, FORBES.COM (July 22, 2003), http://www.forbes.com/2003/07/22/cz_af_0722sarbanes.html.
[27] *See* Edmund W. Kitch, *The Theory and Practice of Securities Disclosure*, 61 BROOK. L. REV. 763, 764-65 (1995).
[28] *See* Williams, *supra* note 20, at 1211-35 (discussing the writings of Louis D. Brandeis, Adolf A. Berle, and Gardiner C. Means that champion disclosure as a regulatory method "to bring to bear public pressure to change the actions and attitudes of corporate managers, bankers, and other insiders" and their roles in influencing President Roosevelt, as well as Representative Rayburn and Senator Fletcher, the key drafters of the Securities Act (1933) and the Securities and Exchange Act (1934)).
[29] *See id*. at 1228.
[30] *See id*. at 1234 (discussing the House Committee Reports and introductory statements of Representative Rayburn and the general tone of the debate—which was overwhelmingly positive, with the only criticism being that the bill perhaps did not go far enough to regulate corporate conduct—and attesting to the belief of legislators that they had a right to demand that the people who run businesses operate according to clean, fair, and honorable standards) (citing the statement of Rep. Rayburn of the House Commerce Committee, 77 Cong. Rec. 2910-55, 2919 (1933)); *id*. at 1241 (citing the statement of Sen. Fletcher, 78 Cong. Rec. 8161 (1934)), where he re-introduced the second draft of the Securities and Exchange Act of 1934, where he identified the "cardinal principles [he] conceived to be, first, restoring as a rule of moral and economic conduct, a sense of fiduciary obligation; and, second, establishing social responsibility, as distinguished from individual gain, as the goal").
[31] Securities Exchange Act of 1934, *supra* note 22, §§12-15.
[32] 17 C.F.R. § 229 (2012); *see* Securities Exchange Act of 1934, *supra* note 22, §§12-15.
[33] *See* 17 C.F.R. § 240.14a-1 (2012).
[34] 17 C.F.R. § 230.408 (2012).
[35] 17 C.F.R. § 240.10b-5 (2012); 15 U.S.C. § 78j (2013).
[36] *See* 17 C.F.R. § 229 (2012).
[37] *See* SIMON ZADEK & MIRA MERME, ACCOUNTABILITY, REDEFINING MATERIALITY: PRACTICE AND PUBLIC POLICY FOR EFFECTIVE CORPORATE REPORTING, 12-13 (July 2003), *available at* http://www.accountability.org/images/content/0/8/085/Redefining%20Materiality%20-%20Full%20Report.pdf.
[38] *See* 17 C.F.R. § 229 (2012); 17 C.F.R. § 230.408 (2012).
[39] *See* Basic, Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976).
[40] 17 C.F.R. § 229 (2012).
[41] U.S. SECURITIES & EXCHANGE COMM'N, FORM 10-Q, OMB NO. 3235-0070, *available at* http://www.sec.gov/about/forms/form10-q.pdf; U.S. SECURITIES & EXCHANGE COMM'N, FORM 10-K, OMB NO. 3235-0063, *available at* http://www.sec.gov/about/forms/form10-k.pdf. Foreign private issuers must file an annual report using Form 20-F, which requires essentially the same information. *See* U.S.

SECURITIES & EXCHANGE COMM'N, FORM 20-F, OMB NO. 3235-0288, *available at* http://www.sec.gov/about/forms/form20-f.pdf.

[42] 17 C.F.R. § 229 (2012).

[43] *E.g*., U.S. SECURITIES & EXCHANGE COMM'N, COMPLIANCE AND DISCLOSURE INTERPRETATIONS: REGULATION S-K (2013), *available at* www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm; U.S. SECURITIES & EXCHANGE COMM'N, INTERPRETATION: COMMISSION GUIDANCE REGARDING MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS, SECURITIES ACT, RELEASE NO. 33-8350 (Dec. 19, 2003), *available at* http://www.sec.gov/rules/interp/33-8350.htm [hereinafter Securities & Exchange Comm'n, Release No. 33-8350].

[44] 17 C.F.R. § 229.101 (2012).

[45] 17 C.F.R. § 229.101(a)(2)(iii)(B) (2012).

[46] 17 C.F.R. § 229.101 (2012).

[47] 17 C.F.R. § 229.101(c) (2012).

[48] 17 C.F.R. § 229.101(c)(x) (2012).

[49] 17 C.F.R. § 229.101(c)(xii) (2012).

[50] *See* 17 C.F.R. § 229.103 (2012).

[51] *See* 17 C.F.R. § 229.103 (2012); 17 C.F.R. § 229.103, Instr. 2 (2012).

[52] *See* 17 C.F.R. § 229.103, Instr. 2 (2012).

[53] 17 C.F.R. § 229.103, Instr. 5 (2012).

[54] 17 C.F.R. § 229.103, Instr. 5 (2012).

[55] *See* U.S. SECURITIES & EXCHANGE COMM'N, INTERPRETATION: COMMISSION GUIDANCE REGARDING MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS; CERTAIN INVESTMENT COMPANY DISCLOSURES, RELEASE NO. 33-6835 (May 18, 1989), *available at* http://www.sec.gov/rules/interp/33-6835.htm.

[56] *See* Securities & Exchange Comm'n, Release No. 33-8350 (Dec. 19, 2003), *supra* note 43.

[57] 17 C.F.R. § 229.303a, Instr. 5 (2012).

[58] *See generally, id*.

[59] *See* Securities & Exchange Comm'n, Release No. 33-6835 (May 18, 1989); Securities & Exchange Comm'n, Release No. 33-8350 (Dec. 19, 2003), *supra* note 43; *see also* John D. Moore, *SEC Calls for a Clearer View From Management*, 23 INT'L FIN. L. REV. 25, 26-7 (2004).

[60] 17 C.F.R. § 229.307 (2012).

[61] 17 C.F.R. § 229.503 (2012).

[62] *See, e.g*., DEERE & CO., ANNUAL REPORT (FORM 10-K), at 11-16 (2012), *available at* http://www.deere.com/en_US/docs/Corporate/investor_relations/pdf/financialdata/reports/2013/10kreport2012.pdf.

[63] 17 C.F.R. § 229.503(c) (2012).

[64] *Id*.

[65] *Id*.

[66] *Id*.

[67] 17 C.F.R. § 240.14a-8 (2013).

[68] *Id*.

[69] *See* 17 C.F.R. § 240.14a-8(f)-(i) (2013) (identifying the reasons why an issuer may be permitted to exclude a proxy disclosure request, including: eligibility or procedural deficiencies, impropriety under state law, violation of law, violation of proxy rules, personal grievance or special interest, irrelevance (measured by the proxy request relating to something that accounts for less than 5% of the companies' total assets at the end of the last fiscal year), absence of power/authority, overriding management functions, director elections, conflict with company's proposal, substantial implementation having been achieved already, duplication of request, resubmission of significantly unpopular proposal over time, or relation to a specific amount of dividends.); David M. Lynn, *The Dodd-Frank Act's Specialized*

Corporate Disclosure: Using the Securities Laws to Address Public Policy Issues, 6 J. BUS. & TECH. L. 327 (2011), *available at* http://digitalcommons.law.umaryland.edu/jbtl/vol6/iss2/3.
[70] *See* Exchange Act §14(a); 15 U.S.C. §78n (2013).
[71] *See generally*, Williams, *supra* note 20.
[72] *See* 17 C.F.R. §230.408 (2012); 17 C.F.R. §240.12b-20 (2012).
[73] *See* 17 C.F.R. §240.12b-20 (2013).
[74] *See* 17 C.F.R. §240.10b-5 (2013).
[75] 17 C.F.R. §240.10b-5(b) (2013); 15 U.S.C. 78j (2013).
[76] *See* Rachel Cherington, *Securities Laws and Corporate Social Responsibility: Toward An Expanded Use of Rule 10b-5*, 25 U. PA. J. INT'L. ECON. L. 1439, 1449 (2004).
[77] *See id*. at 1449-50.
[78] *See id*. at 1451 (citing SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 862 (2d Cir. 1968)). For omission cases, *see* Affiliated Ute Citizens of Utah v. U.S., 406 U.S. 128, 153-54 (1972). For misstatement and fraud-on-the market cases, *see* Basic Inc. v. Levinson, 485 U.S. at 246-47.
[79] *See* American Petroleum Institute et al. v. Securities & Exchange Comm'n et al., Civil Action No. 12-1668 (JDB) (D.C. Dist. 2013) (noting how the judge identified that there are exceptions under 78m, n, etc., where the SEC may make exemptions for requiring all disclosures made to the agency be public and identifying the bases for that); *see also* Basic Inc., 485 U.S. at 231-32 (highlighting the Court's "materiality requirement" requiring the disclosure of the seemingly immaterial fact if there was a substantial likelihood that the omitted fact would have been viered by the reasonable invester as having significantly altered the totality of all information made available).
[80] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963) (cited in Basic, Inc., 485 U.S. at 234.).
[81] TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976).
[82] *Id*.
[83] *Id*. at 449 (defining the "total mix" standard of materiality in the context of a controversy relating to proxy statement disclosure under section 14a-9 of securities law); *see also* Basic, Inc. v. Levinson, 485 U.S. 224, 231-32 (1988) (adopting the *TSC Industries* "total mix" standard of materiality for the section 10(b) and Rule 10(b)5 context of securities law).
[84] TSC Industries, Inc., 426 U.S. at 450; *see also* Basic, Inc., 485 U.S. at 236.
[85] Basic, Inc., 485 U.S. at 238.
[86] *Id*. at 238 (citing SEC v. Texas Gulf Sulphur Co., 401 F.2d at 849 (2d Cir. 1968)).
[87] *Id*. at 236 (citing TSC Industries, Inc., 426 U.S. at 450).
[88] SEC Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45 (1999).
[89] *Id*.
[90] *Id*.
[91] *See* Basic, Inc., 485 U.S. at 231-32; TSC Industries, Inc., 426 U.S. at 449-50.
[92] *See id*; *see also* Troy A. Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. U. L. Q. 417 (2003).
[93] *See* Basic, Inc., 485 U.S. at 231-32; TSC Industries, Inc., 426 U.S. at 448-49.
[94] *See* Lucian A. Bebchuck & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, Discussion Paper No. 728, *prepared for publication in* 101 GEO. L.J. 923, 928-29 (2013); *see also* TSC Industries, Inc., 426 U.S. at 449.
[95] Securities & Exchange Comm'n, Commission Guidance Regarding Disclosure Related to Climate Change (Jan. 27, 2010), Release Nos. 33-9106; 34-61469; FR-82, *available at* http://www.sec.gov/rules/interp/2010/33-9106.pdf [hereinafter Climate Change Guidance (2010)].
[96] *See id*. at 1-2.
[97] *See id*. at 3-7.

[98] *E.g*., Dodd-Frank Act, *supra* note 25; California Transparency in Supply Chains Act, S.B. No. 657 (2010), *available at* http://www.state.gov/documents/organization/164934.pdf; Maryland H.B. 425, Procurement – Required Disclosure – Conflict Minerals Originated in the Democratic Republic of the Congo (May 2, 2012), *available at* http://www.srz.com/files/upload/Conflict_Minerals_Resource_Center/Text_of_Maryland_House_Bill_425_on_Conflict_Minerals.pdf [hereinafter Maryland Conflict Minerals Bill].
[99] Human Rights Council, *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, John Ruggie*, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008), *available at* http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf [hereinafter PRR Framework].
[100] Guiding Principles, *supra* note 6.
[101] International Corporate Accountability Roundtable, *ICAR Coalition Letter to President Obama on Implementation of the UN Guiding Principles* (July 24, 2013), *available at* http://accountabilityroundtable.org/analysis/icar-coalition-letter-to-president-obama-on-implementation-of-the-un-guiding-principles/.
[102] *E.g*., EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI), http://eiti.org (last visited July 25, 2013); GLOBAL NETWORK INITIATIVE (GNI), http://globalnetworkinitiative.org (last visited July 25, 2013); ELECTRONIC INDUSTRY CITIZENSHIP COALITION (EICC), http://www.eicc.info (last visited July 25, 2013); RESPONSIBLE JEWELLERY COUNCIL (RJC), http://www.responsiblejewellery.com (last visited July 25, 2013); CONFLICT-FREE SMELTER INITIATIVE (CFSI), http://www.conflictfreesmelter.org (last visited July 25, 2013); VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, http://www.voluntaryprinciples.org (last visited July 25, 2013) [hereinafter VOLUNTARY PRINCIPLES].
[103] Dodd-Frank Act, *supra* note 25, §§1502-04; 15 U.S.C. §78(a), et seq. (2013).
[104] *See* Climate Change Guidance (2010), *supra* note 95.
[105] SECURITIES & EXCHANGE COMM'N, DIVISION OF CORPORATE FINANCE, CF DISCLOSURE GUIDANCE: TOPIC NO. 2 CYBERSECURITY (2011), *available at* http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm [hereinafter Cyber-Security Guidance].
[106] U.S. DEPT. OF STATE, RESPONSIBLE INVESTMENT IN BURMA REPORTING REQUIREMENTS, OMB NO. 1405-0209, *ailable at* http://www.humanrights.gov/wp-content/uploads/2013/05/Responsible-Investment-Reporting-Requirements-Final.pdf.
[107] Dodd-Frank Act, *supra* note 25, §1503; 17 C.F.R. §§229.104, 239, 249 (2013).
[108] Dodd-Frank Act, *supra* note 25, §1504; 17 U.S.C. §78m(q) (2013).
[109] Dodd-Frank Act, *supra* note 25, §1502; 15 U.S.C. §78m(p) (2013).
[110] *See* Dodd-Frank Act, *supra* note 25, §§1502-04; 15 U.S.C. §78(a), et seq. (2013); Lynn, *supra* note 69, at 330 (discussing the intent of Congress to advance the purposes identified).
[111] *See* Lynn, *supra* note 69, at 330.
[112] *See Reinforcing the Investor Case: Conflict Minerals and Revenue Transparency*, CALVERT INVESTMENTS (Feb. 21, 2012), http://www.calvert.com/newsArticle.html?article=19119; Boston Common Asset Management et al., *Comment on Rulemaking Related to Dodd-Frank Act Conflict Minerals Section 1502* (Feb. 1, 2012), *available at* http://www.sec.gov/comments/s7-40-10/s74010-475.pdf.
[113] 17 C.F.R. §240, §249b (2012); Conflict Minerals, Exchange Act Release No. 34-67716 (Aug. 22, 2012), *available at* http://www.sec.gov/rules/final/2012/34-67716.pdf; *see also* OECD PUBLISHING, OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS FROM CONFLICT-AFFECTED AND HIGH RISK AREAS (2011) [hereinafter OECD Due Diligence Guidance].

[114] Dodd-Frank Act, *supra* note 25, at §1502; 15 U.S.C. §78m(p)(1)(A)(i) (2013) (requiring companies to conduct supply chain due diligence in accordance with the standards to be established by the Comptroller of the United States and the rules promulgated by the SEC in consultation with the Secretary of State).
[115] Dodd-Frank Act, *supra* note 25, at §1503; 17 C.F.R. §§229.104, 239, 249 (2013).
[116] Securities & Exchange Comm'n, Mine Safety Disclosure, Securities Act Release No. 9,164, Exchange Act Release No. 63,548, 75 Fed. Reg. 245, 80,374 (proposed Dec. 22, 2010); Mine Safety Disclosure, 17 C.F.R. §§229.104, 239, 249; Federal Mine Safety and Health Act (1977); 30 U.S.C. §801 *et seq*. (2012).
[117] *See* Mine Safety Disclosure, 17 C.F.R. §229.104 (2012); Securities & Exchange Comm'n (Form 8-K), Current Report, *available at* http://www.sec.gov/about/forms/form8-k.pdf.
[118] Dodd-Frank Act, *supra* note 25, §1503; 15 C.F.R. §229.104, 239, 249 (2013).
[119] Dodd-Frank Act, *supra* note 25, §1504(q)(2)(A); 17 U.S.C. §78m(q) (2013); Securities & Exchange Comm'n, Disclosure of Payments by Resource Extraction Issuers, Release No. 34-67717 (Nov. 13, 2012), *available at* http://www.sec.gov/rules/final/2012/34-67717.pdf.
[120] *Id*.
[121] *See id*.; EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI) FACT SHEET, http://eiti.org/files/EITI-fact-sheet-English.pdf (last visited July 25, 2013).
[122] *See*, *e.g*., Lynn, *supra* note 69, at 337.
[123] *See id*.
[124] *See* Galit A. Sarfaty, *Human Rights Meets Securities Regulation,* 53 VA. J. INT'L L. (forthcoming 2013).
[125] *See* Williams, *supra* note 20, at 1234, 1241 (citing legislative history of House and Senate debates, as well as the intellectual foundation of the securities regulation system in the United States as based in theories that transparency will motivate fair and honest conduct in corporate behavior and encourage social responsibility by requiring public disclosures).
[126] *See* Dodd-Frank Act, *supra* note 25; 15 U.S.C. §78(a) *et seq*. (2013); Lynn, *supra* note 69, at 337.
[127] *Calvert Awaits Dodd-Frank Rules on Conflict Minerals and Extractive Revenue Payments*, CALVERT INVESTMENTS (Aug. 21, 2012), http://www.calvert.com/newsArticle.html?article=19803; *Materiality of Disclosure Required by the Energy Security Through Transparency Act*, CALVERT INVESTMENTS (Apr. 2010), http://www.calvert.com/NRC/literature/documents/10003.pdf.
[128] Climate Change Guidance, *supra* note 95; Cyber-Security Guidance, *supra* note 105.
[129] *See* Climate Change Guidance, *supra* note 95, at 12-20; Cyber-Security Guidance, *supra* note 105, at 2-6.
[130] *See* Climate Change Guidance, *supra* note 95, at 10.
[131] *See* Cyber-Security Guidance, *supra* note 105, at 2-5.
[132] U.S. DEPT. OF STATE, *supra* note 106.
[133] *Id*.
[134] *Id*.
[135] *Id*.
[136] *See* 15 U.S.C. § 78dd (2012).
[137] *See Foreign Corrupt Practices Act: An Overview*, U.S. DEPT. OF JUSTICE, http://www.justice.gov/criminal/fraud/fcpa/ (last visited June 24, 2013).
[138] *See Spotlight on Foreign Corrupt Practices Act*, SECURITIES & EXCHANGE COMM'N, http://www.sec.gov/spotlight/fcpa.shtml (last visited June 24, 2013).
[139] *See id*.; *Foreign Corrupt Practices Act: An Overview*, *supra* note 137.
[140] California S.B. No. 861 (2011), *available at* http://accountabilityroundtable.org/wp-content/uploads/2011/10/sb_861_bill_20111009_chaptered.pdf; *see* Corrine Hauth, *Gov. Brown Signs California's Conflict Minerals Bill,* ENOUGH PROJECT (Oct. 14, 2011), http://www.enoughproject.org/blogs/gov-brown-signs-ca-conflict-minerals-bill; *see also*, *Conflict Minerals Provision of Dodd-Frank*, KPMG LLP (June 1, 2012),

http://www.kpmginstitutes.com/government-institute/insights/2012/conflict-minerals-provision-dodd-frank.aspx.
[141] *See* Maryland Conflict Minerals Bill, *supra* note 98; B.H. 2898, 188th Leg. (Ma. 2013), *available at* https://malegislature.gov/Bills/188/House/H2898.
[142] *See* California Transparency in Supply Chains Act of 2010, *supra* note 98.
[143] *E.g*., PRR Framework, *supra* note 99.
[144] *See OECD Guidelines for Multinational Enterprises*, OECD Publishing (2011), *available at* http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm [hereinafter OECD Guidelines]; *ISO 26000 – Social Responsibility*, ISO (2010), *available at* http://www.iso.org/iso/home/standards/iso26000.htm [hereinafter ISO 26000].
[145] *See* EUROPEAN COMM'N, PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVES 78/660/EEC AND 83/349/EEC AS REGARDS DISCLOSURE OF NON-FINANCIAL AND DIVERSITY INFORMATION BY CERTAIN LARGE COMPANIES AND GROUPS 207 (2013), *available at* http://ec.europa.eu/internal_market/accounting/docs/non-financial-reporting/com_2013_207_en.pdf [hereinafter European Commission Proposal]; *see also* EUROPEAN COMM'N, MEMO: DISCLOSURE OF NON-FINANCIAL AND DIVERSITY INFORMATION BY CERTAIN LARGE COMPANIES AND GROUPS (PROPOSAL TO AMEND ACCOUNTING DIRECTIVES) – FREQUENTLY ASKED QUESTIONS (2013), *available at* http://europa.eu/rapid/press-release_MEMO-13-336_en.htm [hereinafter European Commission Memo]. The European Union adopted a resolution May 23, 2013 that reinstated Burma/Myanmar's access to generalized tariff prefences, which included provisions that call on large European companies doing business in Burma/Myanmar to report on their human rights due diligence policies and proecures and calling on the European Commission to monitor the commitments made by European businesses in light of corporate social responsibility principles. *See Resolution on Reinstatement of Burma/Myanmar's Access to Generalized Tariff Preferences*, EUR. PARL. DOC. B7-0198 (2013).
[146] *E.g*., ELECTRONIC INDUSTRY CITIZENSHIP COALITION, http://eicc.org (last visited July 25, 2013); GLOBAL E-SUSTAINABILITY INITIATIVE (GESI), http://gesi.org (last visited July 25, 2013); GLOBAL NETWORK INITIATIVE, http://globalnetworkinitiative.org (last visited July 25, 2013); RESPONSIBLE JEWELLERY COUNCIL, http://www.responsiblejewellery.com (last visited July 25, 2013); VOLUNTARY PRINCIPLES, *supra* note 102.
[147] UN GLOBAL COMPACT, http://www.unglobalcompact.org/AboutTheGC/index.html (last visited July 18, 2013).
[148] PRR Framework, *supra* note 99.
[149] Guiding Principles, *supra* note 6.
[150] *See id*. at Introduction.
[151] OECD Guidelines, *supra* note 144.
[152] ISO 26000, *supra* note 144.
[153] UN Global Compact, *Corporate Sustainability in The World Economy*, http://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf (last visited June 14, 2013).
[154] *See* UN Global Compact, *The Ten Principles*, http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html (last visited June 14, 2013).
[155] *See id*.
[156] UN Global Compact, *Overview of the UN Global Compact,* http://www.unglobalcompact.org/AboutTheGC/index.html (last visited June 14, 2013).
[157] *See* Guiding Principles, *supra* note 6.
[158] *See id*. at 5.
[159] *See generally, id*.
[160] *See generally, id*.

[161] *Id*. at Principle 17.
[162] *Id*. at Principles 17-20.
[163] *Id*. at Principle 21.
[164] *See PRI Fact Sheet*, *supra* note 17.
[165] *See Responsible Investment and Investment Performance*, PRI: PRINCIPLES FOR RESPONSIBLE INVESTMENT, http://www.unpri.org/viewer/?file=wp-content/uploads/5.Responsibleinvestmentandinvestmentperformance.pdf (last visited July 14, 2013).
[166] *See* OECD Guidelines, *supra* note 144.
[167] *See id*.
[168] *Id*. at 28.
[169] *See id*. at 28-29.
[170] *Id*. at 31 (Commentary on Human Rights).
[171] *Id*. at 31.
[172] OECD Due Diligence Guidance, *supra* note 113.
[173] *Id*.; *see also*, *Due Diligence Guidance: Towards Conflict-Free Mineral Supply Chains,* OECD (2012), *available at* http://www.oecd.org/daf/inv/mne/EasytoUseGuide_English.pdf.
[174] OECD Due Diligence Guidance, *supra* note 113; *see also*, *Due Diligence Guidance: Towards Conflict-Free Mineral Supply Chains, supra* note 173.
[175] *See Discovering ISO 26000*, ISO 26000 (2010), *available at* http://www.iso.org/iso/discovering_iso_26000.pdf.
[176] *See id*. at 4-10.
[177] *See id*. at 6.
[178] *See id*. at 6.
[179] *See* European Commission Proposal, *supra* note 145; *see also*, European Commission Memo, *supra* note 145.
[180] EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE, http://eiti.org/eiti (last visited July 26, 2013).
[181] *See id*.
[182] *Id*.
[183] *EITI Requirements*, EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, http://eiti.org/eiti/requirements (last visited July 26, 2013).
[184] *Democratic Republic of the Congo Temporarily Suspended*, Extractive Industries Transparency Initiative (Apr. 18, 2013), http://eiti.org/news/democratic-republic-congo-temporarily-suspended.
[185] *Implementation Guidelines,* GLOBAL NETWORK INITIATIVE, http://globalnetworkinitiative.org/implementationguidelines/index.php (last visited July 26, 2013); *Principles on Freedom of Expression and Privacy,* GLOBAL NETWORK INITIATIVE, http://globalnetworkinitiative.org/principles/index.php (last visited July 26, 2013).
[186] *Governance, Accountability, & Learning Framework,* GLOBAL NETWORK INITIATIVE, http://globalnetworkinitiative.org/governanceframework/index.php (last visited July 26, 2013); *Implementation Guidelines,* GLOBAL NETWORK INITIATIVE, http://globalnetworkinitiative.org/principles/index.php (last visited July 26, 2013); *Principles on Freedom of Expression and Privacy,* GLOBAL NETWORK INITIATIVE, http://globalnetworkinitiative.org/principles/index.php (last visited July 26, 2013).
[187] *See Value of Sustainability Reporting*, ERNST & YOUNG & BOSTON COLL. CTR. FOR CORPORATE CITIZENSHIP (May 2013), http://www.ey.com/Publication/vwLUAssets/ACM_BC/$FILE/1304-1061668_ACM_BC_Corporate_Center.pdf; *Corporate Citizenship: Profiting from a Sustainable Business,* ECONOMIST INTELLIGENCE UNIT (2008), *available at* http://graphics.eiu.com/upload/Corporate_Citizens.pdf.
[188] *See* ISO 26000, *supra* note 144.

[189] *See Value of Sustainability Reporting, supra* note 187; *Ocean Tomo's Intangible Asset Market Value Study: Components of S&P 500 Market Value*, OCEAN TOMO LLC (June 15, 2010), http://www.oceantomo.com/media/newsreleases/Intangible-Asset-Market-Value-Study; *Corporate Citizenship: Profiting from a Sustainable Business,* ECONOMIST INTELLIGENCE UNIT (2008), *available at* http://graphics.eiu.com/upload/Corporate_Citizens.pdf.
[190] *See Disclosure of Long-Term Business Value: What Matters*, DELOITTE (March 2012), *available at* http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_scc_materialitypov_032812.pdf.
[191] *See Value of Sustainability Reporting*, *supra* note 187, at 14; *Disclosure of Long-Term Business Value: What Matters*, *supra* note 190, at 2.
[192] *See Value of Sustainability Reporting, supra* note 187; European Commission Memo, *supra* note 145.
[193] *See Value of Sustainability Reporting*, *supra* note 187; European Commission Memo, *supra* note 145.
[194] *E.g*., *PRI Fact Sheet*, *supra* note 17 (noting how investor members apply PRI standards in their investment analysis and decision-making processes, and into ownership policies and practices).
[195] *See Disclosure of Long-Term Business Value: What Matters*, *supra* note 190.
[196] *See* Levi & Linton, *supra* note 18, at 424; HOLT & CAMERON, *supra* note 18, at 104-105; Haight, *supra* note 18, at 77.
[197] *See* Emily Jane Fox, *Bangladesh: Cheap Clothes Lead to Danger and Tragedy*, CNN MONEY (Apr. 29, 2013), http://money.cnn.com/2013/04/29/news/companies/bangladesh-factory-collapse/index.html; Brian Montopoli, *Bangladesh Factory Disaster: How Culpable are Western Companies*, CBS NEWS (Apr. 26, 2013), http://www.cbsnews.com/8301-202_162-57581673/bangladesh-factory-disaster-how-culpable-are-western-companies/.
[198] *See* Jennifer Howard-Grenville, Jennifer Nash & Cary Coglianese, *Constructing the License to Operate: Internal Factors and Their Influence on Corporate Environmental Decisions*, 30 LAW & POL'Y 73 (2008); Sarfaty, *supra* note 124.
[199] *See Dominican Republic Political Leaders Hail New Pact with Barrick Gold*, DOMINICAN TODAY (May 10, 2013), http://www.dominicantoday.com/dr/economy/2013/5/10/47572/Dominican-Republic-political-leaders-hail-new-pact-with-Barrick-Gold; Alistair MacDonald, *Barrick Signs Tax Deal with Dominican Republic*, WALL ST. J. (May 8, 2013), http://online.wsj.com/article/SB10001424127887324744104578471512084586422.html; *Pact: Dominican Republic Gets 51%; Barrick Gold Corp. 49%*, DOMINICAN TODAY (May 8, 2013), http://www.dominicantoday.com/dr/economy/2013/5/8/47558/Pact-Dominican-Republic-gets-51-Barrick-Gold-Corp-49; Adam Williams, *Dominican Republic Rejects $4 Billion Barrick Mine Deal*, BLOOMBERG (Feb. 27, 2013), http://www.bloomberg.com/news/2013-02-27/dominican-republic-rejects-barrick-contract-on-4-billion-mine.html; *Police Block Barrick Mine Entrance as Protests Continue*, DOMINICAN TODAY (Oct. 3, 2012), http://www.dominicantoday.com/dr/local/2012/10/3/45311/Police-block-Barrick-mine-entrance-as-protests-continue.
[200] *See* Howard-Grenville, Nash & Coglianese, *supra* note 198.
[201] *E.g*., Jacey Fortin, *Whatever Happened to Libyan Oil? For Western Oil Giants, The Crude is Sweet But China and Russia May Get the Biggest Taste*, INT'L BUS. TIMES (May 24, 2013), http://www.ibtimes.com/whatever-happened-libyan-oil-western-oil-giants-crude-sweet-china-russia-may-get-biggest-taste#.
[202] *E.g*., COCA-COLA CO., ANNUAL REPORT (FORM 10-K), at 17 (2012), *available at* http://www.coca-colacompany.com/annual-review/2012/pdf/form_10K_2012.pdf.
[203] *E.g*., *Value of Sustainability Reporting*, *supra* note 187; *Disclosure of Long-Term Business Value: What Matters*, *supra* note 190; Robert G. Eccles, George Serafeim & Michael P. Krzus, *Market Interest in Nonfinancial Information*, 24 J. APP. CORP. FIN. 113 (Fall 2011), *available at* http://onlinelibrary.wiley.com/doi/10.1111/j.1745-6622.2011.00357.x/abstract.

[204] *E.g.*, *Introducing GS Sustain,* GOLDMAN SACHS (June 22, 2007), *available at* http://www.unglobalcompact.org/docs/news_events/8.1/Goldman_sustain.pdf; *Case Study: UBS Investment Research: Global ESG Analyzer,* UBS (2012), http://www.ubs.com/global/en/about_ubs/corporate_responsibility/cr_in_banking/esg-Analyzer.html.
[205] *E.g.*, *Introducing GS Sustain*, *supra* note 204; MSCI, ESG INDICES, http://www.msci.com/products/indices/esg/ (last visited June 14, 2013).
[206] *See* Proxy Monitor, *Score Card 2013*, http://www.proxymonitor.org/ScoreCard2013.aspx (last visited July 26, 2013).
[207] *See* Carolyn Mathiasen & Heidi Welsh, *Social Policy Shareholder Resolutions in 2006: Issues, Votes and Views of Institutional Investors*, SOCIAL ISSUES SERVICE: ISS (March 2007).
[208] *See California Public Employees' Retirement System,* CALPERS, http://www.calpers.ca.gov/ (last visited July 26, 2013).
[209] *See* Adam M. Kanzer, *Chapter 5: Putting Human Rights on the Agenda: The Use of Shareholder Proposals to Address Corporate Human Rights Performance, in* FINANCE FOR A BETTER WORLD (Henri-Claude de Bettignies & Francois Lepineux eds., Palgrave 2009), *available at* http://www.domini.com/common/pdf/finance_for_a_better_world_kanzer.pdf (unedited 2008).
[210] *See* Proxy Monitor, Score Card 2013, *supra* note 206; Kanzer, *supra* note 209.
[211] *See About As You Sow*, AS YOU SOW, http://www.asyousow.org/about/ (last visited June 24, 2013); *Human Rights*, AS YOU SOW, http://www.asyousow.org/human_rights/index.shtml (last visited June 24, 2013).
[212] *See id*.
[213] *See Proxy Win: Genocide-Free Investing Wins Vote at ING,* INVESTORS AGAINST GENOCIDE (June 29, 2012), http://www.investorsagainstgenocide.org/successes/proxy-win-at-ing/; *see also*, *Our Mission*, INVESTORS AGAINST GENOCIDE, http://www.investorsagainstgenocide.org/about/about-us/ (last visited July 26, 2013).
[214] Press Release, Office of the New York State Comptroller, Thomas P. DiNapoli, *DiNapoli Reaches Agreement with Ralph Lauren to Report on Labor Practices, Environmental Impacts* (May 27, 2013), http://www.osc.state.ny.us/press/releases/may13/052813.htm; Press Release, Office of the New York State Comptroller, Thomas P. DiNapoli, *Best Buy and Bed Bath & Beyond Agree to Promote Sustainable Business Practices with Suppliers* (Mar. 29, 2013), http://www.osc.state.ny.us/press/releases/mar13/032913.htm; Press Release, Office of the New York State Comptroller, Thomas P. DiNapoli, *SEC Action Puts Caterpillar Resolution on Sudan Up for Shareholder Vote* (Mar. 21, 2013), http://www.osc.state.ny.us/press/releases/mar13/032113.htm.
[215] *See id*.
[216] *See* Press Release, AFSCME, *Too Big to Fail and Imperial CEOs Targeted as AFSCME Employees Pension Plan Announces 2013 Shareholder Proposals* (Feb. 14, 2013), http://www.afscme.org/news/press-room/press-releases/2013/too-big-to-fail-and-imperial-ceos-targeted-as-afscme-employees-pension-plan-announces-2013-shareholder-proposals.
[217] *See Re: Caterpillar Inc., Incoming Letter Dated Jan. 30, 2013*, SEC Division of Corp. Finance (Mar. 25, 2013), *available at* http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2013/afscme032513-14a8.pdf.
[218] *E.g*., U.S. SECURITIES & EXCHANGE COMM'N, Rulemaking Petition No. 4-642 (2009), Requesting Mandatory Environmental, Social, and Governance Disclosures (July 21, 2009), *available at* http://www.sec.gov/rules/petitions/2009/petn4-642.pdf; U.S. SECURITIES & EXCHANGE COMM'N, Rulemaking Petition No. 4-525 (2006), Requesting for Rulemaking to Provide American Depository Receipt Owners with Certain Traditional Shareholder Rights When Foreign Corporations Advocate on Significant U.S. Social Policy Issues or Have Significant U.S. Social Impacts (Aug. 30, 2006), *available at* http://www.sec.gov/rules/petitions/2006/petn4-525.pdf.
[219] U.S. Social Investment Forum Foundation, *supra* note 16, at 11.

[220] *See Introducing GS Sustain*, *supra* note 204.
[221] *See* Press Release, EIRIS, *Conflict Risk Network Joins EIRIS* (May 15, 2013), http://www.eiris.org/media/press-release/conflict-risk-network-joins-eiris/.
[222] *See About Us,* EIRIS, http://www.eiris.org/about-us/ (last visited July 26, 2013).
[223] EIRIS CRN, http://www.eiris.org/about-us/eiris-crn/ (last visited July 26, 2013).
[224] OCEAN TOMO LLC, *supra* note 189.
[225] *See*, *e.g*., COCA-COLA CO., *supra* note 202, at 17; *Value of Sustainability Reporting*, *supra* note 187, at 6 (noting that GRI Reporting Framework based sustainability reports numbered over 3000 in 2011, showing the voluntary rise in self-reporting on sustainability and social impacts by businesses).
[226] *Value of Sustainability Reporting*, *supra* note 187; *Disclosure of Long-Term Business Value: What Matters*, *supra* note 190.
[227] *See* COCA-COLA CO., *supra* note 202, at 17.
[228] *See Disclosure of Long-Term Business Value: What Matters*, *supra* note 190; *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment,* FRESHFIELDS BRUCKHAUS DERINGER (Oct. 2005), *available at* http://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf.
[229] *See* COCA-COLA CO., *supra* note 202, at 17.
[230] *Id*.
[231] *Id*.
[232] *See id*. at 17-18.
[233] *See id*. at 18.
[234] *See Disclosure of Long-Term Business Value: What Matters*, *supra* note 190, at 10.
[235] *See id*. at 10.
[236] *See Value of Sustainability Reporting*, *supra* note 187, at 12.
[237] *See Value of Sustainability Reporting*, *supra* note 187, at 10-11. For an example of an organization of shareholders lobbying for a corporation to adopt and disclose its country selection guidelines for investment, *see* Letter from the International Brotherhood of Teamsters to John Watson, Chairman and CEO of Chevron Corporation (Feb. 23, 2012), *available at* http://business-humanrights.org/media/documents/chevron-post-dialogue-shareholder-letter-23-feb-2012.pdf.
[238] GLOBAL REPORTING INITIATIVE (GRI), https://www.globalreporting.org/ (last visited July 26, 2013).
[239] INT'L INTEGRATED REPORTING COUNCIL (IIRC), http://www.theiirc.org/ (last visited July 26, 2013).
[240] SUSTAINABILITY ACCOUNTING STANDARDS BOARD (SASB), http://www.sasb.org (last visited July 26, 2013).
[241] *See generally* Aaron Bernstein, *Incorporating Labor and Human Rights Risk into Investment Decisions, Pensions and Capital Stewardship Project Labor and Worklife Program*, HARV. L. SCH., Occ. Paper Series, No.2 (Sept. 2008), *available at* http://www.law.harvard.edu/programs/lwp/pensions/publications/occpapers/occasional_paper2.pdf.
[242] *See* G4 Sustainability Reporting Guidelines, GRI (May 2013), *available at* https://www.globalreporting.org/resourcelibrary/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf.
[243] *See* GRI ANNUAL REPORT 2011/2012, at 41 (2012), *available at* https://www.globalreporting.org/resourcelibrary/GRI-Annual-Report-2011-2012.pdf.
[244] *See* G4 Sustainability Reporting Guidelines, *supra* note 242, at 11.
[245] *See id*. at 12.
[246] *See id*. at 17.
[247] *About <IR>*, IIRC, http://www.theiirc.org/about/ (last visited July 26, 2013).
[248] *See id*.
[249] *See id*.
[250] *See id*.

[251] *See Principles*, SASB, http://www.sasb.org/approach/principles/ (last visited June 15, 2013).
[252] *See id*.
[253] *See Vision and Mission*, SASB, http://www.sasb.org/sasb/vision-mission/ (last visited July 10, 2013).
[254] *See Sustainability*, BLOOMBERG.COM, http://www.bloomberg.com/sustainability/ (last visited July 18, 2013).
[255] *See e.g*., *Fact Sheet: Human Rights Custom Index on MSCI ACWI (USD)*, May 31, 2013, http://www.msci.com/resources/factsheets/index_fact_sheet/human-rights-custom-index-on-msci-acwi.pdf.
[256] MSCI, http://www.msci.com (last visited June 14, 2013).
[257] *See Introducing GS Sustain*, *supra* note 204.
[258] *Sustainability*, *supra* note 254.
[259] *Id*.
[260] *See* Bernstein, *supra* note 241, at 13-22.
[261] *See id*. at 13-22.
[262] *See id*. at 22-30.
[263] *See* Bernstein, *supra* note 241, at 13-22.
[264] *Id*. at 45.
[265] *See* Guiding Principles, *supra* note 6, at Principle 17; OECD Guidelines, *supra* note 144, at 31.
[266] *See* Guiding Principles, *supra* note 6, at Principle 17.
[267] *Id*., at Principle 17; *see also* OECD Due Diligence Guidance, *supra* note 113, at 31.
[268] *See* Guiding Principles, *supra* note 6, at Principles 17-21.
[269] *See* Guiding Principles, *supra* note 6, at Principle 17; OECD Due Diligence Guidance, *supra* note 113, at 31.
[270] *See* Sarfaty, *supra* note 124.
[271] *See* COCA-COLA CO., *supra* note 202, at 17.
[272] *See* 17 C.F.R. §229.103 (2012) (regarding climate change legal proceedings as requiring disclosure that might otherwise not be required for legal proceedings on other issues).
[273] 17 C.F.R. §229.307 (2012).
[274] *See* COCA-COLA CO., *supra* note 202, at 17; *see also Disclosure of Long-Term Business Value: What Matters*, *supra* note 190, at 10.
[275] *See Value of Sustainability Reporting*, *supra* note 187, at 12-15; *Disclosure of Long-Term Business Value: What Matters*, *supra* note 190, at 8.
[276] *See Rulemaking: How It Works*, *supra* note 21.
[277] *See* SEC, Petitions for Rulemaking Submitted to the SEC, http://www.sec.gov/rules/petitions.shtml (last visited July 18, 2013).
[278] Securities Act (1933) §14(a) (2012); Williams, *supra* note 20.

ANNEX II: ANNEX TO ICAR LETTER TO SEC ON BUSINESS AND FINANCIAL DISCLOSURE REQUIRED BY REGULATION S-K[1]

File No: S7-06-16

I. MATERIALITY DEFINITION AND PUBLIC POLICY/SUSTAINABILITY ADDITIONS TO REGULATION S-K

6. Should we revise our principles-based rules to use a consistent disclosure threshold? If so, should a materiality standard be used or should a different standard, such as an "objectives-oriented" approach or any other approach be used? If materiality should be used, should the current definition be retained? Should we consider a different definition of materiality for disclosure purposes? If so, how should it be defined?

ICAR believes that the current definition of materiality is appropriate to address the evolving needs of investors in decision-making. The SEC's mandate is "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation[.]"[2] This mission is achieved by requiring the disclosure of information that is "in the public interest or for the protection of investors" and which investors find to affect their investment and voting decisions.[3] The SEC's current materiality standard enables evolving conceptions of materiality to become part of the SEC's mandated disclosure for companies listed on the U.S. stock exchange.

This flexibility is illustrated through ICAR's 2014 report, *Knowing and Showing: Using U.S. Securities Law to Compel Human Rights Disclosure*, which demonstrates that human rights policies, practices, and impacts have become material in relation to SEC disclosure. Information is material to investment interests if a reasonable investor would consider the information important enough to significantly alter the "total mix" of information available.[4] Materiality is derived from a list of factors including: heightened public interest in recent years, international accords and efforts to address the topic, federal regulations or state and local laws in the United States, and voluntary recognition of the current and potential effects of the information on

[1] ICAR acknowledges the expert guidance of Professor Cynthia A. Williams, Osler Chair in Business Law, Osgoode Hall Law School, York University, Toronto, Canada, in the development and production of this submission.
[2] U.S. Securities and Exchange Commission, *What We Do*, SEC.GOV http://www.sec.gov/about/whatwedo.html (last visited June 10, 2016).
[3] 15 U.S.C. §78m at (f)(5); *see* Securities Act of 1933, Pub. L. 112-106 (2012); Securities Exchange Act of 1934, Pub. L. 112-158 (2012).
[4] Basic, Inc. v. Levinson, 485 U.S. 224 (1988) at 231-32; TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438 (1976) at 448-50.

companies' performance and operations.[5] Under the SEC's current definition of materiality, human rights information, including company policies, practices, and impacts, should be disclosed because it has become popularly relevant to the level of material to corporate reporting.[6]

In support of the materiality of human rights, a 2006 study consulting investors on their view of the effects of Economic, Social, and Governance (ESG) factors on "main-stream investment considerations" (i.e. economic risk/return considerations) found that 26% of respondents felt that human rights were "very important" to economic risk/return considerations.[7] This study demonstrates that human rights have become increasingly important to investment decision-making. Furthermore, Bloomberg's 2015 Materiality Assessment stated that human rights have a "medium-level" impact on investment decisions.[8] Additionally, as outlined in *Knowing and Showing* a number of recent regulatory, legislative, and other developments at the state, federal, and international level also support the materiality of human rights policies, practices, and impacts.[9] These developments include the U.S. government's endorsement of the United Nation's Guiding Principles on Business and Human Rights (UNGPs),[10] the enactment of the Transparency in Supply Chains Act in California, and the adoption of similar acts in other states that seek to combat slavery and human trafficking by mandating the disclosure of monitoring efforts.[11] Similarly, actions within the international community to address human rights concerns in business are becoming more prevalent, for example the European Union's adoption of national requirements on non-financial reporting regarding mandatory human rights risks disclosure.[12]

The flexibility of the SEC's current conceptualization of materiality allows it to adapt to changing investor needs. As such, this definition should be retained.

---

[5] CYNTHIA WILLIAMS ET AL., "KNOWING AND SHOWING" USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE (Oct. 2013) at 16, *available at* http://icar.ngo/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report4.pdf [hereinafter ICAR, Knowing and Showing].
[6] ICAR, Knowing and Showing at 16-32.
[7] Mercer Investment Consulting, Perspectives on Responsible Investment: A Survey of US Pension Plans, Foundations and Endowments, and Other Long-Term Savings Pools at 9 (2006), http://www.yooyahcloud.com/MOSSCOMMUNICATIONS/uDTNA/Perspectives_on_Responsible_Investment_Mercer_Survey1.pdf [hereinafter, Mercer, Perspective on Responsible Investment].
[8] Bloomberg LLP, *Materiality Assessment: Impact Report Update 2015* (2015) at 2, http://www.bbhub.io/sustainability/sites/6/2016/04/15_0321_Materiality_Assessment.pdf.
[9] *See,* ICAR, Knowing and Showing at 16-25.
[10] Specifically, the UNGPs highlight that "[f]inancial reporting requirements should clarify that human rights impacts in some instances may be 'material' or 'significant' to the economic performance of the business enterprise." Human Rights Committee, United Nations Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31 at I(B) ¶ 3 (Mar. 21, 2011) [hereinafter UNGPs].
[11] ICAR, Knowing and Showing, at 17-20.
[12] European Commission Statement/14/29, Disclosure of non-financial information by certain large companies: European Parliament and Council reach agreement on Commission proposal to improve (Feb. 26, 2014) http://europa.eu/rapid/press-release_STATEMENT-14-29_en.htm?locale=en; *EU Requirements on companies' non-financial reporting (2014),* BUSINESS-HUMANRIGHTS.ORG (2014) http://business-humanrights.org/en/eu-requirements-on-companies-non-financial-reporting-2014.

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

Yes, human rights issues are important to informed voting and investment decisions because of the substantial financial risks that have been observed when companies fail to take proper account of human rights issues. For example, Chevron, as the owner of Texaco, inherited a large toxic waste dumping scandal, which caused massive environmental destruction and adverse health effects on local populations. This could cost Chevron $9.5 billion in damages and cleanup costs.[13] Similarly, pharmaceutical company Pfizer agreed in an out of court settlement to pay a total of USD $75 million to victims of an experimental drug in Nigeria which led to the deaths of eleven children.[14] These are just a few of many examples where companies have felt the financial consequences of being involved in human rights abuses.

Materiality derives from "the general public, international and national governments, and businesses treating a particular area or impact of business activity with heightened interest."[15] In *Knowing and Showing,* ICAR outlined a number of developments over recent years that demonstrate how human rights issues have become material, as discussed in the answer to question 6 above. The SEC has already provided for some human rights disclosure in its promulgation of Regulation S-K's § 78m on conflict minerals, in response to the Dodd-Frank Act,[16] and in certain disclosure guidance relating to climate change[17] and cyber-security information.[18] The SEC should require disclosure of human rights policies, practices, and impacts. In order to elicit meaningful human rights disclosure for investment purposes, the SEC

---

[13] *CHEVRON CORP*, AMNESTY INTERNATIONAL, http://www.amnestyusa.org/our-work/issues/business-and-human-rights/oil-gas-and-mining-industries/chevron-corp (last visited July 6, 2016); *Texaco/Chevron Lawsuits (re Ecuador)*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, https://business-humanrights.org/en/texacochevron-lawsuits-re-ecuador (last visited July 6, 2016); Canadian Centre for International Justice (CCIJ), Chevron (Ecuador) *available at* http://www.ccij.ca/cases/chevron-2/ (last visited July 7, 2016) (stating that in September 2016, the Supreme Court of Canada agreed to allow the case to continue under Canadian jurisdiction to allow the Ecuadorian villagers to sustain the 9.5 billion judgment against Chevron from the Ecuadorian court).

[14] Donald G. McNeil Jr., *Nigerians Receive First Payments for Children Who Died in 996 Meningitis Drug Trial* THE NEW YORK TIMES (Aug. 11, 2011), http://www.nytimes.com/2011/08/12/world/africa/12nigeria.html; *Pfizer: Nigeria drug trial victims get compensation* BBC.COM (Aug. 11, 2011) http://www.bbc.com/news/world-africa-14493277.

[15] *See,* ICAR, Knowing and Showing at 16, citing Lucian A. Bebchuck & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending,* Discussion Paper No. 728, *prepared for publication* in 101 GEO.L.J. 923, 928-29 (2013); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

[16] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, §§1502-04; 15 U.S.C. §78(a), et seq. (2013) [hereinafter The Dodd-Frank Act].

[17] Securities & Exchange Comm'n, Commission Guidance Regarding Disclosure Related to Climate Change (Jan. 27, 2010), Release Nos. 33-9106; 34-61469; FR-82, http://www.sec.gov/rules/interp/2010/33-9106.pdf [hereinafter Climate Change Guidance (2010)].

[18] Securities & Exchange Comm'n, Division of Corporate Finance, CF Disclosure Guidance: Topic No. 2 Cybersecurity (2011), http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm [hereinafter Cyber-Security Guidance].

could rely upon existing human rights reporting frameworks, including those produced by the Global Reporting Initiative (GRI),[19] the Sustainability Accounting Standards Board (SASB),[20] and specifically, the UNGP Reporting Framework.[21] These frameworks have garnered significant corporate and investor support. For example, six global companies and over eighty investors representing over $4.25 trillion dollars in assets under management support the UNGP Reporting Framework.[22] Furthermore, large U.S. listed multinational companies such as Microsoft and Newmont Mining are beginning to utilize the UNGP Reporting Framework to guide their annual voluntary reports.[23] Additionally, 78% of reporting companies and 82% of the Global 250 companies use the GRI's G4 standards as the basis for their corporate responsibility reporting, making them the largest voluntary reporting initiative in the world.[24]

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

Line-item disclosure would serve investor interests, and would not require disclosure of non-material information if these requirements are carefully crafted. Line-item disclosure allows the SEC to identify specifically what ought to be disclosed in relation to a certain subject or topic. These line-item requirements in Regulation S-K are often then filtered through the lens of "materiality" to ensure that only information that is important to the decision-making processes of investors in relation to the line-item is disclosed. The SEC's materiality standard is flexible enough to allow for companies to disclose only material information, even where line-item disclosure frameworks are relevant.

Information relating to human rights policies, practices, and impacts are material for investor decision-making. Poor human rights policies and practices that lead to negative human rights impacts can directly affect the financial stability of a corporation. For example, non-compliance with national and international human rights law can lead to financial penalties levied by the State, liability for human rights abuse, and litigation associated with damages from corporate

---

[19] The Global Reporting Initiative (GRI) & The Roberts Environmental Center, *Reporting on Human Rights* (2015), https://www.globalreporting.org/resourcelibrary/Reporting-On-Human-Rights.pdf.

[20] *About SASB*, THE SUSTAINABILITY ACCOUNTING STANDARDS BOARD (SASB) http://www.sasb.org/sasb/ (last visited May 19, 2016).

[21] Shift & Mazars, *UN Guiding Principles Reporting Framework with implementation guidance* (2015), http://www.ungpreporting.org/reporting-framework/.

[22] *FAQ*, UN GUIDING PRINCIPLES REPORTING FRAMEWORK http://www.ungpreporting.org/resources/faq/ (last visited July 8, 2016).

[23] *Early Adopter Company Newmont Publishes First Report Using Reporting Framework*, UN GUIDING PRINCIPLES REPORTING FRAMEWORK http://www.ungpreporting.org/early-adopter-company-newmont-publishes-first-report-using-reporting-framework/ (last visited July 11, 2016); Microsoft, *Microsoft 2015 Citizenship Report*, (2015) at 11, https://www.microsoft.com/about/csr/transparencyhub/citizenship-reporting/; Newmont, *Beyond the Mine: Our 2015 Social and Environmental Performance*, overview, at pp. 12, http://sustainabilityreport.newmont.com/2015/_pdf2print/pdfs/newmont-beyond-the-mine-sustainability-report-2015.pdf.

[24] KPMG International, *KPMG Survey of Corporate Social Responsibility Reporting 2013,* (2013) at 10, https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/corporate-responsibility/Documents/corporate-responsibility-reporting-survey-2013-exec-summary.pdf [hereinafter KPMG Survey 2013].

activities.[25] For example, in 1984 a toxic fume release at a Union Carbide factory in Bhopal, India killed between 7,000 and 10,000 people, marking it as one of "the world's worst industrial disasters."[26] Union Carbide employees were later found criminally negligent by the Indian Supreme Court and ordered to pay millions in damages to both the victims and for environmental cleanup.[27]

Additionally, inadequate human rights policies and practices can cause financial instability in a number of other ways. For example, they can cause indirect impacts on a company's reputation,[28] affecting relationships with consumers, clients,[29] employees, recruits,[30] investors, and shareholders,[31] all of whom might prefer to disassociate from operations that are complicit with adverse human rights outcomes. One such example occurred in the 1990s when Nike was accused of using child labor in its Chinese factories, paying workers less than minimum wage in Indonesia, and egregious violations of labor rights in Vietnam.[32] Since then, Nike has been further implicated in labor violations, especially in Bangladesh and other Asian countries, directly leading to significant financial repercussions due to continued public protest of Nike's practices and related drop in sales.[33] Similarly, the potential deterioration of relationships between corporations and emerging governments that a company's adverse human rights impacts may cause, or the effects a corporation has on local communities, may also have a material impact on its business by undermining or eliminating the company's social license to operate.[34]

---

[25] *See* ICAR, Knowing and Showing at 25; Ernst & Young LLP & Boston Coll. Ctr. for Corporate Citizenship, *Value of Sustainability Reporting* (2013) at 2, http://modulas.kauri.be/Uploads/Documents/doc_2260_thevalueofsustainabilityrepsummary.pdf [hereinafter E&Y, Value of Sustainability Reporting]; *see generally* Economist Intelligence Unit, *Corporate Citizenship: Profiting from a Sustainable Business* (2008), http://graphics.eiu.com/upload/Corporate_Citizens.pdf (supporting non-financial disclosure and corporate citizenship as promoting financial benefits for corporations) [hereinafter EIU, Profiting from Sustainable Business].

[26] Salil Shetty, *Thirty years on from Bhopal disaster: Still fighting for justice*, AMNESTY INTERNATIONAL (Dec. 2, 2015, 12:00 AM) https://www.amnesty.org/en/latest/news/2014/12/thirty-years-bhopal-disaster-still-fighting-justice/.

[27] Alan Taylor, *Bhopal: The World's Worst Industrial Disaster, 30 years later,* THE ATLANTIC (Dec. 2, 2014) http://www.theatlantic.com/photo/2014/12/bhopal-the-worlds-worst-industrial-disaster-30-years-later/100864/.

[28] *See* E&Y, Value of Sustainability at 22; EIU, Profiting from Sustainable Business at 17.

[29] *See* Eric J. Hespenheide & Dr. Dinah A. Koehler, *Disclosure of Long-Term Business Value: What Matters?*, DELOITTE UNIVERSITY PRESS (2012) at 11, http://d27n205l7rookf.cloudfront.net/wp-content/uploads/2013/07/DUP150_Reporting_What_Matters.pdf [hereinafter Hespenheide, Long Term Business Value].

[30] *See* E&Y, Value of Sustainability Reporting at 12; *See* Directive 2014/95/EU, of the European Parliament and of The Council of 12 Oct. 2014 as regards disclosure of non-financial and diversity information by certain large undertakings and groups, 2014 O.J. (L 330) 1, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN [hereinafter European Commission Proposal on Non-Financial Reporting].

[31] *See PRI Fact Sheet*, UN PRINCIPLES FOR RESPONSIBLE INVESTMENT (2013), http://www.unpri.org/news/pri-fact-sheet/ (last visited May 18, 2016).

[32] Max Nisen, *How Nike Solved Its Sweatshop Problem*, BUSINESSINSIDER (May 9, 2013, 10:00 PM) http://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5.

[33] Shelly Banjo, *Inside Nike's Struggle to Balance Cost and Worker Safety in Bangladesh,* THE WALL STREET JOURNAL (Apr. 21, 2014 10:38 PM) http://www.wsj.com/articles/SB10001424052702303873604579493502231397942 (citing a loss of $100 million to pull soccer balls made with child labor, and causing the company to cease operations for 18 months until it could fix the labor issues in its factory); Max Nisen, *supra* note 32.

[34] *See* ICAR, Knowing and Showing, at 25; Jennifer Howard-Grenville, Jennifer Nash & Cary Coglianese,

Thus, because information about a company's human rights policies, practices, and impacts can directly correlate to financial instability, such information is material to investors.

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

Registrants are starting to provide human rights information in their sustainability reports because some investors consider human rights risks an important part of an investment decision. According to an Ernst & Young report, 61.5% of investors across all sectors consider non-financial information relevant to their investments overall.[35] In relation to human rights information, almost twenty percent of investors would rule out an investment immediately if there were significant human rights risks associated with the investment, and 63.2% would reconsider the investment for the same reasons.[36]

Furthermore, investors have lined up behind human rights reporting frameworks, including the UNGP Reporting Framework, which has garnered the support of six global companies and over eighty investors representing over $4.25 trillion dollars in assets under management.[37] Additionally, U.S.-listed multinational companies such as Microsoft and Newmont are beginning to utilize the UNGP Reporting Framework to guide their annual voluntary reports.[38]

However, while voluntary human rights information disclosed on company websites is beneficial to investors, it is not sufficient to address investor needs. This voluntary information is (1) not

---

Constructing the License to Operate: Internal Factors and Their Influence on Corporate Environmental Decisions, 30 LAW & POL'Y 73 (2008); Galit A. Sarfaty, *Human Rights Meets Securities Regulation*, 53 VA. J. INT'L L. 97, 101-102 (2013).

[35] Ernst & Young LLP, *Tomorrow's Investment Rules 2.0,* (2015) at 18, http://www.ey.com/Publication/vwLUAssets/EY-tomorrows-investment-rules-2/$FILE/EY-tomorrows-investment-rules-2.0.pdf [hereinafter Tomorrow's Investment Rules]..

[36] *Id.,* at 16.

[37] *FAQ*, UN GUIDING PRINCIPLES REPORTING FRAMEWORK http://www.ungpreporting.org/resources/faq/ (last visited July 8, 2016).

[38] *Early Adopter Company Newmont Publishes First Report Using Reporting Framework*, UN GUIDING PRINCIPLES REPORTING FRAMEWORK http://www.ungpreporting.org/early-adopter-company-newmont-publishes-first-report-using-reporting-framework/ (last visited July 11, 2016); Microsoft, *Microsoft 2015 Citizenship Report*, (2015) at 11, https://www.microsoft.com/about/csr/transparencyhub/citizenship-reporting/; Newmont, *Beyond the Mine: Our 2015 Social and Environmental Performance*, overview, at pp. 12, http://sustainabilityreport.newmont.com/2015/_pdf2print/pdfs/newmont-beyond-the-mine-sustainability-report-2015.pdf.

consistent enough to compare across sectors or otherwise[39] and (2) not robust enough in terms of quality, with a distinct lack of standard practice and auditing among companies. Given these shortcomings, voluntary disclosure of sustainability information does not fully advance the SEC's mission "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[40]

When reporting becomes mandatory, standards become clearer and reporting becomes more consistent and comparable.[41] For example, a recent empirical study found that mandatory mine safety disclosure required by the Dodd-Frank Act has decreased mining related citations by 11% and mining injuries by 13%.[42] The need for mandatory reporting is further supported in Weil et al.'s article on regulatory disclosure policies, which states that, "the use of government authority to mandate the disclosure of information has taken a legitimate place beside the use of such authority to mandate minimum standards and to impose taxes, trading regimes, or other financial incentives." The article concluded that mandatory disclosure leads to more transparent and congruent disclosure.[43]As such, in order to support investors' interests in receiving consistent and comparable disclosure to facilitate their decision-making processes, disclosure must be mandatory rather than voluntary.

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

There are a number of existing frameworks on human rights reporting that the SEC should consider in proposing a new line-item disclosure requirement on human rights issues. The SEC should look to the GRI's G4 social responsibility reporting framework,[44] SASB's social responsibility reporting framework,[45] and particularly the UNGP Reporting Framework[46] to

---

[39] *See* Cynthia A. Williams, *The Global Reporting Initiative, Transnational Corporate Accountability, and Global Regulatory Counter-Currents*, 1 U.C. IRVINE J. OF INT'L, TRANSNAT'L, & COMP. L. (forthcoming 2016) [hereinafter Williams, The GRI].

[40] U.S. Securities and Exchange Commission, *What We Do*, SEC.GOV http://www.sec.gov/about/whatwedo.html (last visited June 10, 2016).

[41] *See generally,* Jody Grewal, Edward J. Riedl & George Serafeim, *Market Reactions to Mandatory Nonfinancial Disclosure,* at 27 (Harvard Business School Working Paper, No. 16-025, 2015), http://www.ssrn.com/abstract=2657712 (stating that "firms having high ESG disclosure and stronger governance performance will be able to institute the [EU Directive on non-financial reporting] more efficiently and cost-effectively" because the reporting is mandatory, thus creating consistency).

[42] *See* Hans B. Christensen, et al, *The Real Effects of Mandatory Dissemination of Non-Financial Information Through Financial Reports*, at 16 (Chicago Booth Research Paper No. 16-05, 2016) http://www.ssrn.com/abstract=2680296.

[43] David Weil, et al., *The effectiveness of regulatory disclosure policies* 25 J. POL'Y ANALYSIS AND MGMT. 1, 175 (2006); Williams, *The GRI* at IV(A) (discussing the need for mandatory reporting to enforce regulatory goals and support financial operational effects).

[44] *See generally,* The Global Reporting Initiative (GRI) & The Roberts Environmental Center, *Reporting on Human Rights* (2015), https://www.globalreporting.org/resourcelibrary/Reporting-On-Human-Rights.pdf.

[45] *About SASB*, THE SUSTAINABILITY ACCOUNTING STANDARDS BOARD (SASB) http://www.sasb.org/sasb/ (last visited May 19, 2016).

determine what standards should be used for SEC non-financial disclosure on human rights issues. Each of these frameworks provides for company disclosure on human rights based practices, policies, and impacts in varying degrees.

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

Yes, line-item disclosure requirements in relation to registrants' human rights policies, practices, and impacts are in line with the Commission's rulemaking authority and mission because human rights issues have direct, indirect, and political impacts on a business' ability to sustain capital formation on a long-term basis, and these requirements would be consistent with the SEC's mission to protect investors.

In the *Knowing and Showing* report, ICAR demonstrates how human rights information has become material to investor decision-making, thus meriting the creation of a specific line-item disclosure requirement in Regulation S-K.[47] For example, the report details recent regulatory, legislative, and other developments in U.S. public policy as well as international policies that evidence an increasing public concern for protecting human rights.[48] Further substantiating these claims, investment groups have also demonstrated that human rights have direct and indirect impacts on a business's ability to sustain capital formation on a long-term basis, thus making these interests material to investors.[49]

Additionally, BlackRock Investment's *The Price of Climate Change* report states, "ESG factors cannot be divorced from financial analysis. . . Companies that score high on ESG measures tend to quickly adapt to changing environmental and social trends, use resources efficiently, have engaged (and, therefore, productive) employees, and face lower risks of regulatory fines or reputational damage."[50] Similarly, Clark, Feiner, and Viehs's report on how sustainability and ESG compliance drive financial performance suggests that: (1) "companies with strong sustainability scores show better operational performance and are less risky; (2) investment strategies that incorporate Environmental, Social and Governmental (ESG) issues outperform comparable non-ESG strategies; and (3) active ownership creates value for companies and investors."[51] Ultimately, the report finds that "it is in the best economic interests for corporate managers and investors to incorporate [ESG] considerations into decision-making processes"

---

[46] Shift & Mazars, *UN Guiding Principles Reporting Framework with implementation guidance* (2015), http://www.ungpreporting.org/reporting-framework/.
[47] ICAR, Knowing and Showing, at 16-25.
[48] *Id.,* at 16-25.
[49] *See* E&Y, Value of Sustainability Reporting at 9; EIU, Profiting from Sustainable Business at 18-19.
[50] Tomorrow's Investment Rules, at 7.
[51] Gordon Clark et al, *From the stockholder to the stakeholder: How sustainability can drive financial outperformance*, UNIVERSITY OF OXFORD & ARABESQUE PARTNERS, at 10 (2015) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508281&download=yes [hereinafter Clark, From Stockholder to Stakeholder].

because they support long-term capital gains.[52] Additional studies have also shown that ESG disclosure certainly does not adversely affect shareholders,[53] and a 2013 KPMG International Survey of Corporate Social Responsibility Reporting study found that reporting ESG information enhances the financial value of companies.[54] Furthermore, a 2012 study by Deutsche Bank found that companies with higher ratings for ESG reporting have a lower cost of debt and equity and the higher the ratings of their ESG information, the more likely those companies are to outperform in the market medium.[55]

Given the SEC's authority to engage in rulemaking on specific issues where it is deemed in the public interest, and the significant evidence that human rights are material to investors' interests, the SEC should mandate disclosure on human rights on policies, practices, and impacts for corporations through a line-item in Regulation S-K.

221. What, if any, challenges would registrants face in preparing and providing this information? What would be the additional costs of complying with sustainability or public policy line-item disclosure requirements, including the administrative and compliance costs of preparing and disseminating disclosures, beyond the costs associated with current levels of disclosure? Please quantify costs and expected changes in costs where possible.

There is strong evidence to suggest that the cost of compliance with ESG requirements would be outweighed by both the direct and indirect financial benefits of reporting on such information. Studies show that complying with sustainability and public policy regulations and adding these elements into a company's non-financial disclosure actually increases the long-term capital of businesses.[56] Both the Clark, Feiner, and Viehs's report, and the Blackrock report cited above support the conclusion that reporting on ESG information is in the best economic interest of corporations.[57] Specifically, Clark, Feiner, and Vieh state that, "the social dimension of sustainability, if well managed, generally has a positive influence on corporate financial performance."[58]

Companies who report on their human rights policies, practices, and impacts are better able to mitigate and prevent these costly risks. For example, companies are better able to mitigate risks if they are aware there is a high probability of community resistance or recorded incidences of

---

[52] *Id*.

[53] Ioannis Ioannou & George Serafeim, *The consequences of mandatory corporate sustainability reporting: evidence from four countries* (Harvard Business School Research, Working Paper No. 11-100, 2014) at 30, http://tinyurl.com/jht6g2q (finding that the economic effects of mandatory disclosure regulations are positive for companies that report on ESG information).

[54] KPMG Survey 2013, at 14.

[55] Mark Fulton et al., *Sustainable Investing: Establishing Long-Term Value and Performance*, DB CLIMATE CHANGE ADVISORS, DEUTSCHE BANK GROUP (2012) at 29 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222740.

[56] *See* Tomorrow's Investment Rules, at 15 ("many investors believe that ESG can have a neutral or even positive effect on portfolio returns").

[57] BlackRock Investment Institute, *The Price of Climate Change* (Oct. 2015) at 6, https://www.blackrock.com/corporate/en-us/literature/whitepaper/bii-pricing-climate-risk-us.pdf; *See generally* Clark, From Stockholder to Stakeholder (regarding support for ESG disclosure because of its material important to investors).

[58] Clark, From Stockholder to Stakeholder at 32.

previous human rights abuse.[59] Similarly, addressing human rights risks pre-emptively can create positive implications for a company's reputation; failure to do so can negatively affect consumers' opinions of a company, resulting in financial losses.[60] Finally, if companies and investors have knowledge about the risks of human rights related litigation or liability, they can determine whether or not such risks outweigh their expected profits and can mitigate the potential harm that may stem from negative business impacts on human rights.[61]

Additionally, multiple studies show that positive CSR performance, specifically involving social issues, produces high equity for investors in the long-term. El Ghoul has found that "firms with better CSR scores exhibit cheaper equity financing" and that additional findings "suggest that investment in improving responsible employee relations, environmental policies, and product strategies contributes substantially to reducing firms' cost of equity."[62] Hillman and Keim's work also supports the theory that "effective stakeholder management leads to improved financial performance."[63] Thus, there is ample evidence to suggest that the additional costs associated with disclosing ESG and CSR information do not outweigh the benefits companies receive from reporting this information.

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

No registrant should be exempt or subject to scaled disclosure requirements in relation to human rights related disclosures. Businesses, no matter the size or industry sector, can affect human rights and are impacted by human rights in return. In fact, "SMEs account for approximately 90% of businesses" worldwide and therefore their impacts on human rights are potentially greater overall than those of the Fortune 500.[64]

Under the UNGPs, all businesses have a responsibility to respect human rights.[65] The U.S.

---

[59] *See e.g.*, Daniel Franks, *Avoiding mine-community conflict: from dialogue to shared futures*, PROCEEDINGS OF THE FIRST INTERNATIONAL SEMINAR ON ENVIRONMENTAL ISSUES IN THE MINING INDUSTRY, SANTIAGO, CHILE. (2009) http://www.csrm.uq.edu.au/docs/Franks_Avoiding%20Conflict_2009.pdf ("Environmental and social conflict in the extractive resource industries can lead to significant costs for both companies and community. On the company side a conflict can lead to delays or rejections of government approval, damaged infrastructure, lost reputation, and in extreme cases shutdown" referring to Barrick's Gold's shutdown of the Pascua Lama mine in Chile and Argentina in 2013; The Canadian Press, *Chile court suspends work at Barrick Gold mine,* CBCNEWS.COM (Apr. 10, 2013, 6:03 PM) http://www.cbc.ca/news/business/chile-court-suspends-work-at-barrick-gold-mine-1.1308102.

[60] *See* Hespenheide, Long Term Business Value at 14; E&Y, Value of Sustainability Reporting at 12.

[61] According to Ernst & Young's 2015 report (Tomorrow's Investment Rules), this is why many companies voluntarily provide ESG reports, "because the company and its investors, obviously, realize it can impact production, which can impact sales, which impacts the value of the stock" and they wish to mitigate those risks.

[62] Sadok El Ghoul et al, *Does corporate social responsibility affect the cost of capital?,*35 J. BANKING & FIN., 9, 2388 (2011).

[63] Amy J. Hillman & Gerald D. Keim. *Shareholder value, stakeholder management, and social issues: what's the bottom line?*,22 STRATEGIC MGMT. J. 2, 128 (2001).

[64] *Our sustainable future relies on SMEs embracing new reporting practices*, GRI (May 4, 2016), https://www.globalreporting.org/information/news-and-press-center/Pages/Our-sustainable-future-relies-on-SMEs-embracing-new-reporting-practices.aspx.

[65] *See generally,* Human Rights Committee, United Nations Guiding Principles on Business and Human Rights,

government has openly endorsed this framework by implementing additional reporting standards at both the state and federal level,[66] while civil society has encouraged the creation of initiatives and plans for national implementation.[67] The United Nations Office of the High Commissioner for Human Rights' interpretive guide for corporate implementation of the UNGP framework includes human rights due diligence as one of five fundamental principles for implementation.[68] This guide, along with the UNGPs and existing human rights due diligence frameworks, supports the idea that due diligence should not be limited by or based on the size of a company.[69]

Additionally, reporting of this nature is feasible for companies of all sizes. For example, smaller companies are increasingly reporting on due diligence under the GRI's G4.[70] In 2014, the GRI published its guide for SMEs, *Ready to Report?*, which introduces sustainability and social reporting for SMEs and supports using sustainability reporting among SMEs because it provides both internal and external benefits to these smaller companies.[71] While SMEs accounted for only 10% of all reports in 2014, since the publication of the GRI report, sustainability reporting by SMEs has increased and is expected to continue to do so.[72]

U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) http://www.businesshumanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf.

[66] *See e.g.,* Dodd-Frank Act of 2010 §§1502-04, 15 U.S.C. §78a et seq. (2013); California Transparency in Supply Chains Act, S.B. No. 657 (2010), http://www.state.gov/documents/organization/164934.pdf; Maryland H.B. 425, Procurement – Required Disclosure – Conflict Minerals Originated in the Democratic Republic of the Congo (May 2, 2012), http://www.srz.com/files/upload/Conflict_Minerals_Resource_Center/Text_of_Maryland_House_Bill_425_on_Conflict_Minerals.pdf.

[67] International Corporate Accountability Roundtable, *ICAR Coalition Letter to President Obama on Implementation of the UN Guiding Principles* (July 24, 2013), http://accountabilityroundtable.org/analysis/icar-coalition-letter-to-president-obama-on-implementationof-the-un-guiding-principles/.

[68] United Nations Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, HR/PUB/12/02 (2012) at 9.

[69] United Nations Office of the High Commissioner for Human Rights, *Implementing the United Nations "Protect, Respect and Remedy" Framework,* HR/PUB/11/04 (2011) at 1 ("These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.")

[70] *Small business, sustainability reporting: It can be done*, GRI (Dec. 5, 2012) https://www.globalreporting.org/information/news-and-press-center/Pages/Small-business,-sustainability-reporting-It-can-be-done.aspx (reporting that small businesses in Spain using sustainability and social responsibility reporting generally support the practice despite the challenges); Paul Thompson, *The Sustainability Imperative for Small Business* INT'L FED'N ACCT. (Aug. 22, 2014), https://www.ifac.org/global-knowledge-gateway/sustainability/discussion/sustainability-imperative-small-business ("[small and medium sized entities] that integrate sustainability into their core business strategy can benefit from lower costs, reduced risk, and new opportunities").

[71] *Ready to Report?: Introducing sustainability reporting for SMEs*, GRI (2014) at 5-6, https://www.globalreporting.org/resourcelibrary/Ready-to-Report-SME-booklet-online.pdf.

[72] *Our sustainable future relies on SMEs embracing new reporting practices*, GRI (May 4, 2016), https://www.globalreporting.org/information/news-and-press-center/Pages/Our-sustainable-future-relies-on-SMEs-embracing-new-reporting-practices.aspx.

II. SPECIFIC QUESTIONS IN RELATION TO REGULATION S-K LINE ITEMS

ITEM 101(c)

31. Do the disclosure requirements in Item 101(c) continue to provide useful information to investors? How could we improve Item 101(c)'s requirements?

Yes, the currently listed disclosure requirements under 101(c) continue to provide material information for investors. Item 101(c) can be improved, however, by adding a requirement for registrants to provide a description of any human rights policies and practices they have in place.[73] Moreover, policies and practices in place under business operations that identify, assess, mitigate, and remedy operational risks are relevant to an investors' understanding of an issuer's risks management strategies under this Item. Business strategies for the management of material risks, including human rights risks, should be outlined and described in detail because these risks can have profound impacts on the ability to form capital.[74]

32. How could we update Item 101(c) to better reflect changes in the way businesses operate? Are there particular categories or types of registrants for which these disclosure requirements are more or less relevant?

In order to better reflect changes in the way businesses operate today, Item 101(c) should require disclosure of human rights policies, practices, and impacts. Companies that are implicated in human rights abuses or violations often face large costs associated with mitigating the impacts of those violations and repairing their corporate image, which is important for investors in understanding the way a company's operations can affect capital formation.[75] Companies may also face costs related to litigation, mediation, or other grievance or remediation processes to remedy their human rights violations.[76] For example, Shell's implication in a 2008 oil spill in Ogoniland, Nigeria which caused both environmental and community damage and led to Shell paying £55 million in damages after court action in 2014.[77] In order to provide investors with a complete view of the potential costs related to adverse human rights impacts, the disclosure of human rights policies, practices, and impacts should be required under Item 101(c) as this information contributes to an understanding of how a company's business operations can affect human rights and thus pose a risk to financial valuation of a company.

[73] Tomorrow's Investment Rules, at 18; ICAR Knowing and Showing, at 25-27.
[74] *See* ICAR, Knowing and Showing, direct and indirect impacts section; *see also* answer to question 217.
[75] E&Y, Value of Sustainability Reporting at 3.
[76] *Ocean Tomo's Intangible Asset Market Value Study: Components of S&P 500 Market Value*, OCEAN TOMO LLC (June 15, 2010), http://www.oceantomo.com/media/newsreleases/Intangible-Asset-Market-Value-Study.
[77] *Corporations*, AMNESTY INTERNATIONAL https://www.amnesty.org/en/what-we-do/corporate-accountability/ (last visited July 7, 2016).

33. Are there additional line-item disclosure requirements about a registrant's business that would improve the quality and consistency of disclosure? Are there any categories of information that certain registrants voluntarily provide, and are not required to disclose under Item 101(c), that we should include in Item 101(c)? What would be the benefits and challenges of requiring disclosure of additional categories of information?

Adding human rights practices, including due diligence, as a line-item under Item 101(c)(iii) would improve the quality and consistency of disclosure for investment purposes. This requirement would increase the quality of disclosure because businesses would be required to investigate human rights issues throughout their supply chains more thoroughly, and to more readily identify risks to the company in relation to these issues. Additionally, this requirement would also increase the consistency of reporting as mandatory reporting would streamline similar information already being provided through alternative and voluntary due diligence frameworks, and bring the SEC in line with the U.S. government's commitments to multilateral initiatives, including the OECD Guidelines for Multinational Enterprises and the UNGPs.[78] As discussed in the response to question 218, mandatory disclosure requirements increase both the quality and consistency of disclosures.[79]

40. What types of investors or audiences are most likely to value the information required by Item 101(c)? Would an alternative format or presentation of the information improve the value of such disclosure to a particular type of investor or audience? If so, what type of format or presentation?

In relation to the disclosure of human rights related information required by Item 101(c), a large percentage of investors, not only those engaged in socially responsible investment (SRI), are interested in and would value this information.[80] Originally labeled as "ethical investment" in the United States during the 1970s, SRI began as a fringe activity primarily for religiously minded investors who were interested in the ethics of investment as it related to alcohol, drugs, and tobacco.[81] Over the last twenty to thirty years, these concerns developed in relation to other issues, such as apartheid, the environment, and human rights.[82] In 2013, approximately one asset dollar of every ten under management in the United States was invested according to SRI standards.[83] Although SRI was once a fringe activity, today it is considered a mainstream

[78] *See OECD Guidelines for Multinational Enterprises*, OECD PUBLISHING (2011), http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm; Human Rights Committee, United Nations Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) http://www.businesshumanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf.
[79] Daniel Berliner & Aseem Prakash, *The United Nations global compact: An institutionalist perspective*, 122 J. BUS. ETHICS 2, 220 (2014), http://link.springer.com/article/10.1007/s10551-014-2217-5 (citing NGOs such as Human Rights Watch, Amnesty International and Greenpeace have criticized the UN Global Compact because it lacks credibility and enforcement of consistent disclosure because the reporting is not legally binding).
[80] *See* answers to questions 6, 216, and 217 for further evidence of the materiality of human rights information to investors.
[81] Russell Sparkes & Christopher J. Cowton, *The maturing of socially responsible investment: A review of the developing link with corporate social responsibility* 52 J. BUS. ETHICS 1, 46-7 (2004).
[82] *Id*. at 47-8.
[83] Chang Hoon Oh, Jae-Heum Park, & Pervez N. Ghauri. *Doing right, investing right: Socially responsible investing and shareholder activism in the financial sector* 56 BUS. HORIZONS 6, 703-714 (2013) [hereinafter Oh, Doing right].

investment philosophy for investors across the world.[84]

In fact, a recent study by Eccles, et al. shows that "reporting of nonfinancial information by companies is increasing, and the market [including all types of investors] is increasingly interested in ESG information."[85] Overall, the article supports the hypothesis that the more transparent companies are with non-financial, ESG-related information, the less risk involved for all types of investors, and the greater the expected financial performance.[86] The same study found that human rights policies were ranked twelfth out of a set of twenty social issues of interest for U.S. investors.[87] This data shows that human rights are of material interest generally to investors when included under the umbrella of ESG reporting. In fact, ESG disclosure overall was of the highest importance to all investors for inclusion in corporate reports, no matter the sector.[88]

Additionally, a 2006 study consulting investors on their view of the effects of ESG factors on "main-stream investment considerations" (i.e. economic risk/return considerations) found that 26% of respondents felt that human rights were "very important" to economic risk/return considerations.[89] This study demonstrates that human rights have become increasingly important to investment decision-making over the past decade. In 2015, Bloomberg LLP stated that the number of companies reporting on ESG has risen from 7,150 reporting companies in 2013 to 12,078 in 2015.[90] Furthermore, Bloomberg's 2015 Materiality Assessment stated that human rights have a "medium-level" impact on investment decisions.[91] Thus, it is fair to conclude that there is support for non-financial ESG disclosure among many types of investors, and human rights disclosure specifically, because this information is understood to be important in evaluating the risks of potential investments.

---

[84] *See generally*, Oh, Doing right (stating that SRI investment policies are increasingly becoming part of investment decisions generally); Terrence Guay, et al., *Non-Governmental Organizations, Shareholder Activism, and Socially Responsible Investments: Ethical, Strategic, and Governance Implications* 52 J. BUS. ETHICS 1, 125-139 (2004) (connecting CSR strategies to the mainstreaming of SRIs throughout the world); Gunther Capelle-Blancard & Stéphanie Monjon *Trends in the Literature on Socially Responsible Investment: Looking for the Keys Under the Lamppost* 21 BUS. ETHICS: A EUR. REV. 3, 239-250 (2012) (examining the popularity of SRIs generally in the media in Europe).
[85] Robert G. Eccles et al, *Market interest in nonfinancial information*, 23 J. APPLIED CORP. FIN. 4, 117 (2011) [hereinafter Eccles, Market Interest].
[86] *Id*., Eccles, Market Interest at 118.
[87] *Id.* at 122.
[88] *Id.* at 126.
[89] Mercer, Perspectives on Responsible Investment at 9.
[90] *Bloomberg Impact Report Update 2015,* BLOOMBERG LLP, at 12 (2015), https://www.bbhub.io/sustainability/sites/6/2016/04/16_0404_Impact_Report.pdf#page=11.
[91] *Materiality Assessment: Impact Report Update 2015,* BLOOMBERG LLP, at 2 (2015), http://www.bbhub.io/sustainability/sites/6/2016/04/15_0321_Materiality_Assessment.pdf.

ITEM 103

180. Should we require registrants to provide a consolidated discussion of risk and risk management, including legal proceedings, in a single section of a filing? If so, what information should be included? How should this information be presented?

Yes. This section should include an assessment of human rights risks and risk management procedures, such as human rights due diligence, and a list of all material legal proceedings regarding human rights. The SEC should issue interpretive guidance regarding corporate disclosure of material human rights policies, practices, and impacts under Regulation S-K. ICAR's *Knowing and Showing* report provides further guidance on the process of creating a consolidated discussion of human rights risks and risk management procedures, as well as suggestions on what information to include.[92]

181. How could investors benefit from a consolidated discussion of risk factors, legal proceedings and other quantitative and qualitative information about market risk and risk management? What would be the challenges of requiring such a presentation?

Investors will benefit from a consolidated discussion of these issues, specifically in relation to human rights, because this information correlates both directly and indirectly to a corporation's ability to attract capital.[93] Ernst & Young have identified the benefits of market risk factors, including human rights risks and impacts, as being connected to financial performance.[94] Their research demonstrates that reporting a corporation's social performance directly correlates to the creation of benefits for the corporate balance sheet.[95] This conclusion further implies that information such as human rights policies, practices, and impacts are material to corporate performance. The conclusions of research by Hespenheide and Ernst & Young also demonstrate that traditional accounting and investment firms are finding that non-financial information, such as human rights risks and impacts, "may be material to investors as they impact corporate performance financially or, in the alternative, lead to intangible advantages to reputation and image."[96] Thus, investors would benefit from a consolidated discussion of human rights risk

---

[92] ICAR, Knowing and Showing, at 35-38.
[93] *Id.* at 25-27. *See generally* Hespenheide, Long Term Business Value; E&Y, Tomorrow's Investment Rules (supporting the materiality of human rights to investment interests). Ernst & Young have also identified the benefits of market risk factors, including human rights risks and impacts, as being connected to financial performance. Their research demonstrates that reporting a corporation's social performance directly correlates to benefits to the corporate balance sheet. This conclusion further implies that information such as human rights risks and impacts are material to corporate performance. The conclusions of research by Hespenheide and Ernst & Young also demonstrate that traditional accounting and investment firms are finding that non-financial information, such as human rights risks and impacts, "may be material to investors as they impact corporate performance financially or, in the alternative, lead to intangible advantages to reputation and image." (ICAR, Knowing and Showing) Thus, investors would benefit from a consolidated discussion of human rights risk factors, lists of legal proceedings, and other market risk information regarding human rights, which is best presented as a distinct reporting item for the SEC's purposes.
[94] *See* E&Y, Value of Sustainability Reporting, at 12.
[95] Id.
[96] *See Id.* at 10-11; For an example of an organization of shareholders lobbying for a corporation to adopt and disclose its country selection guidelines for investment, *see also* Letter from the International Brotherhood of Teamsters, General President and General Secretary-Treasurers James O. Hoffa & C. Thomas Keegel, respectively, to John Watson, Chairman and CEO of Chevron Corporation (Feb. 23, 2012),

factors, lists of legal proceedings, and other market risk information regarding human rights, which is best presented as a distinct reporting item for the purposes of the SEC.

ITEM 303

88. What requirements in Item 303 are important to investors? How could Item 303 be improved?

Key human rights performance indicators are material to investors and should be included under Item 303. In order to improve Item 303, the SEC should provide guidance to companies on assessing key human rights performance indicators, and should rely upon existing standards such as the Investor Responsibility Research Center Institute's (IRRC Institute) "Key Performance Indicators for Investors to Assess Labor and Human Rights Risks,"[97] the U.N. Office of the High Commissioner for Human Rights' "Human Rights Indicators,"[98] and the International Alert's "Voluntary Principles on Security and Human Rights: Performance Indicators" in creating this guidance.[99] Each of these frameworks provides evaluation criteria that aid in developing human rights indicators and indicators that can aid corporations in developing criteria for human rights risks throughout their operations. These frameworks also encourage stakeholder consultations in order to develop criteria to prevent, investigate, and mitigate human rights risks and harms associated with corporate activities.

94. What types of investors or audiences are most likely to value the information required by Item 303 and does the audience for disclosure vary across the different parts of Item 303 disclosure? If so, how? Would the manner of presentation affect how various types of investors benefit from Item 303 disclosure?

Item 303's disclosure requirements, as relating to key human rights indicators, would be valuable to a range of investors, as indicated above in our answer to question 40, and to an array of interested stakeholders.[100] This information could be provided in a single, electronically accessible location with hyperlinks to relevant sources.

---

http://businesshumanrights.org/media/documents/chevron-post-dialogue-shareholder-letter-23-feb-2012.pdf; Hespenheide, Long Term Business Value at 6.

[97] See IRRC Institute, The Fair Labor Association & The Pensions and Capital Stewardship Project at Harvard Law School, Key Performance Indicators for Investors to Assess Labor & Human Rights Risks Faced by Global Corporations in Supply Chains (2012) available at http://irrcinstitute.org/reports/key-performance-indicators-for-investors-to-assess-labor-human-rights-risks-faced-by-global-corporations-in-supply-chains/.

[98] OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012), http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

[99] International Alert, *Voluntary Principles on Security and Human Rights: Performance Indicators* (2008), http://www.international-alert.org/sites/default/files/publications/VoluntaryPrinciplesOnSecurityHumanRights.pdf.

[100] *See* answer to question 40 for further details.

ITEM 503(C)

146. Should we require registrants to discuss the probability of occurrence and the effect on performance for each risk factor? If so, how could we modify our disclosure requirements to best provide this information to investors? For example, should we require registrants to describe their assessment of risks?

Yes. ICAR recommends that the SEC examine specifically the UNGP Reporting Framework,[101] the Danish Institute for Human Rights' *Human rights impact assessment guidance and toolbox*,[102] and the GRI's G4 framework[103] for further guidance on how to discuss the probability of occurrence for human rights risks when drafting guidance on this topic.

ITEM 305

169. Should we require registrants to describe their risk management processes? If so, what level of detail would be appropriate? If a registrant has no formal risk management approach or process, should we require it to describe how it monitors and evaluates risk?

Yes, specifically in relation to human rights risks, because having registrants describe their risk management processes is likely to provide useful information that investors can use to evaluate the quality of management (e.g. how proactive management is at addressing these risks) and the magnitude of particular risks in particular investments.[104] Reporting on formal risk management should include all existing procedures, legal processes, and grievance mechanisms available to the company regarding human rights. If a company has no form of risk management, then it should be required to disclose how it monitors and evaluates risk.

In order to garner more meaningful disclosure regarding human rights due diligence and risk management procedures, the SEC should also provide guidance to all registrants with or without formal risk management approaches, so that they can adequately provide this material information to investors. The SEC should look to existing guidance from the OECD, UNGP Reporting Framework, GRI, and the International Organization for Standardization (ISO) for guidance on creating comprehensive risk management disclosure requirements.[105]

---

[101] Shift & Mazars, *UN Guiding Principles Reporting Framework with implementation guidance* (2015), http://www.ungpreporting.org/reporting-framework/.

[102] The Danish Institute for Human Rights, *Human rights impact assessment guidance and toolbox* (2014), http://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox.

[103] *See* GRI & The Roberts Environmental Center, *Reporting on Human Rights* (2015), https://www.globalreporting.org/resourcelibrary/Reporting-On-Human-Rights.pdf (more specifically, see the GRI G4 Guidelines).

[104] *See* answer to question 32 (regarding the effects of human rights risks on companies).

[105] *See OECD Guidelines for Multinational Enterprises*, OECD PUBLISHING (2011), http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm; Human Rights Committee, United Nations Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011); The Global Reporting Initiative (GRI) & The Roberts Environmental Center, *Reporting on Human Rights* (2015), https://www.globalreporting.org/resourcelibrary/Reporting-On-Human-Rights.pdf.; *Guidance on social responsibility*, International Organization for Standardization (2010) http://www.iso.org/iso/home/standards/iso26000.htm.

173. Should we require registrants to identify, if material, other "primary risk exposures" not already addressed and to disclose actions taken to manage those risks?

Yes, specifically in relation to primary risk exposures for human rights issues,[106] because the potential for human rights violations increases financial risks. A recent study by the Association of Chartered Certified Accountants (ACCA) found that when companies know they are at a higher risk for negative human rights impacts, they demonstrate better management responses to human rights risks, thus largely avoiding involvement in these negative impacts.[107] The positive effects of mitigating or preventing human rights risks protects the company financially and promotes the SEC's mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

179. Should we require registrants to disclose their known uncertainties about their risk management and risk management policies and how these might affect the registrant?

Yes, this information should be disclosed in relation to known uncertainties regarding human rights risks and risk management policies. Although companies cannot immediately recognize all human rights risks inherent in their operations, disclosure of these uncertainties are important to investment decisions because of the negative financial impacts these potential risks pose. Recent national and international regulatory and legislative efforts, such as portions of the Dodd-Frank Act,[108] the Foreign Corrupt Practices Act,[109] and the State Department's Responsible Investment in Burma Reporting Standards, reflect this concern.[110] Additionally, the UN has released a multitude of frameworks and international standards on human rights risk assessments, impacts, and reporting standards,[111] the European Union has made human rights risks and policy reporting mandatory for all member States, and the United Kingdom requires business of a certain size to disclose due diligence steps taken annually to ensure the lack of slavery and trafficking in supply chains.[112]

---

[106] For more information, see response to question 220.
[107] Association of Chartered Certified Accountants (ACCA), Net Balance Foundation, & CAER, *Disclosure on managing human rights risks* (2011) at 14, http://www.accaglobal.com/content/dam/acca/global/PDF-technical/sustainability-reporting/tech-tp-dmhr.pdf.
[108] Dodd-Frank Act at §78(m)(p)(A)(i), (ii) et seq. (2013).
[109] *See Foreign Corrupt Practices Act: An Overview,* U.S. DEPT. OF JUSTICE, http://www.justice.gov/criminal/fraud/fcpa/ (last visited June 24, 2016).
[110] *Responsible Investment Reporting Requirements*, U.S. DEPT. OF STATE, OMB No. 1405-0209, http://www.humanrights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf (last visited July 8, 2016).
[111] Human Rights Council, *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, John Ruggie*, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008), http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf; *OECD Guidelines for Multinational Enterprises,* OECD PUBLISHING (2011), http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm; Human Rights Committee, United Nations Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011); UN Guiding Principles Reporting Framework, *UN Guiding Principles Reporting Framework* (2015), http://www.ungpreporting.org/wp-content/uploads/2015/03/UNGPReportingFramework_Feb2015.pdf.
[112] European Commission Statement/14/29, Disclosure of non-financial information by certain large companies: European Parliament and Council reach agreement on Commission proposal to improve (Feb. 26, 2014) http://europa.eu/rapid/press-release_STATEMENT-14-29_en.htm?locale=en; Modern Slavery Act, 2015, 30, Part 6 Transparency in Supply Chains, etc. (Eng.).

The SEC's release on climate change highlights a few specific situations where the known uncertain consequences of climate change may trigger disclosure requirements.[113] This release supports the idea that known uncertainties can present enough risk to make such information material to investor decision-making. Similarly, the SEC should also require that registrants disclose known uncertainties about risk management for human rights due to the materiality of such information.

[113] Securities & Exchange Comm'n, Commission Guidance Regarding Disclosure Related to Climate Change (Jan. 27, 2010), Release Nos. 33-9106; 34-61469; FR-82, at 1-2, http://www.sec.gov/rules/interp/2010/33-9106.pdf.