



Priests of the Sacred Heart

Provincialate Offices, United States Province
7373 S. Highway 100, P.O. Box 289
Hales Corners, WI 53130-0289

General Phone: 414-425-6910
Fax: 414-425-2938

July 20, 2016

Mary Jo White, Chairman
Kara M. Stein, Commissioner
Michael S. Piwowar, Commissioner
Brent J. Fields, Secretary

Via email to: rule-comments@sec.gov

Re: File No. S7-06-16 – Business and Financial Disclosure Required by Regulation S-K

Dear Chairman, Commissioners, and Secretary:

The Priests of the Sacred Heart, US Province, appreciate and welcome the opportunity to respond to the SEC's Concept Release on *Business and Financial Disclosure Required by Regulation S-K*. We wish to express our support for the SEC's evaluation of disclosure under Regulation S-K and the establishment of enforceable SEC requirements for companies to report on sustainability issues. While we note the importance of the entirety of this complex review, we will focus our comments on Section F, *Disclosure of Information Relating to Public Policy and Sustainability Matters*, as well as *Number of Employees* under Section IV.A.5.

The Priests of the Sacred Heart are a worldwide religious order, and our United States Province includes 90 priest and brother members. Through our Justice, Peace and Reconciliation Commission and our Director of Justice, Peace and Reconciliation, our province participates in the Interfaith Center on Corporate Responsibility, a coalition of investors driven by faith and values who view the management of our investments as a catalyst for both change and economic stability with the companies where we are shareowners. We are also members of the Seventh Generation Interfaith Coalition for Responsible Investing, a regional affiliate of ICCR. Our collective assets under management total \$600 million.

The Priests of the Sacred Heart, US Province, ardently endorse disclosure of sustainability information that is material and comparable, and that affects our financial interests as shareholders, as well as our communities. We are aware that hundreds of global companies embrace the case for such disclosure as they publish useful annual sustainability reports. They understand the business and financial case for addressing these issues. However, this disclosure is done on a voluntary basis. Because the disclosure is voluntary, the reporting is inconsistent and therefore insufficient for investor needs.

We believe in the importance of disclosure of relevant and significant information that may not be deemed “material” in the short-term, but has a clear and direct impact on financial performance, and when taken together with other information, may have the potential to damage or strengthen a company’s reputation, impact its social license to operate, or affect its sales and business relationships. This information would be relevant to an investor’s assessment of the company and may at a future date be clearly within the definition of “material” information. Increased disclosure related to sustainability issues is critical to create transparency for investors regarding a company’s interactions with, and impact on, employees, communities, and customers. Frameworks and processes associated with disclosing ESG information may help a company – and society – to mitigate future risks.

Our province’s financial manager uses ESG disclosure to evaluate companies for investment, thus informing our investment strategies and stock selection decisions, and to inform our proxy voting. Through ICCR and Seventh Generation CRI, we also use existing disclosure to help us identify appropriate companies for shareholder engagement with corporate management, where we address current practices and policies that expose companies to risks. We believe that mandatory disclosure of ESG information under Regulation S-K is necessary for investors to make informed decisions. While voluntary measures have served an important role in providing increased ESG information to investors, this information is inconsistent across corporate sectors, and leaves investors with an unclear basis upon which to build our investment strategies.

Mandatory disclosure would provide more consistent, reliable, comparable, and verifiable ESG information that would allow educated investors to make more informed investment decisions across the portfolio and advance effective engagement strategies.

ICCR has responded with a much more detailed letter; we would just like to note that there are several critical pieces of information that would enable investors to better understand and assess the human rights issues and management practices of a company to inform their investment and voting decisions. Disclosure of the following would provide consistent information available to all investors:

- Whether an issuer has a Human Rights Policy that applies to direct operations and throughout its supply chain that includes prohibition of child and forced labor, and how it is auditing the human rights policy.
- Governance and Board responsibility for human rights issues.

- Data from an independent Human Rights Risk Assessment to define the primary human rights challenges to inform the company's approach to human rights issues in its operations and value chain.
- Existence and effectiveness of Remediation and Grievance mechanisms.
- The company's approach to stakeholder engagement.
- Reporting on traceability, purchasing practices, recruitment, worker voice, and monitoring.¹

Climate Change

Climate change also poses material financial risk to investors, and over the past several years it has been increasingly recognized by the financial community as an area of investor concern.

Disclosure of the following would provide consistent information available to all investors related to climate change:

- Climate change policy and Governance of climate change issues.
- Greenhouse Gas emission reduction targets for scope 1, 2, and 3 emissions and progress against these targets.
- Energy efficiency of operations and products.
- For relevant companies in the oil and gas industry, stress testing and scenario planning for alignment with the 2 degree objective adopted in Paris.
- How climate change strategies are connected to a company's public policy agenda and activities.
- Renewable energy procurement targets.

Water

Water has been declared a human right by the United Nations. The Earth is challenged by the supply and demand imbalance, the lack of good substitutes, and political controversies surrounding the issue. Corporations have a critically important role to play in addressing the freshwater crisis as their agricultural and industrial consumption increases and water stress becomes a more prominent issue due to climate change and competing interests.

Beyond the obvious social impact to affected communities, water issues pose a range of risks to business – from higher costs to major business disruptions stemming from supply chain interruptions and a possible loss of license to operate. It is imperative that companies publicly disclose ways in which they seek to identify and assess water use in

¹ Know the Chain, [ICT Benchmark: Themes Key Findings](#)

core businesses and key suppliers, and how they incorporate these findings into business decisions and a water stewardship policy.

Disclosure of the following would provide consistent information available to all investors related to water management:

- Identification and assessment of water use in core businesses and key suppliers.
- Assessment of water availability, issues, challenges, and levels of sustainable use around business operations.
- Performance measured against baselines and goals.
- Data on water for operations and supply chain, especially in water stressed or scarce areas (including seasonal or periodic water stress or scarcity). Report in the context of local climate, ecology, human population, economy (agriculture, industry, service) and define the term “local” and the “watershed” area(s) covered.

Food

Given the fragility of the current food system and the need to feed an ever-growing global population, it is incumbent on all companies in the food supply chain (producers, processors, and distributors) to ensure that their policies and practices do not further contribute to the growing crisis, but instead advance innovative solutions that will help create a more sustainable and resilient food system. The industrialization of agriculture, intended to help feed the Earth’s growing population, has had unintended environmental and social consequences. Food operations powered by fossil fuels to produce and ship foods around the world, the overuse of artificial fertilizers and pesticides, and the enormous quantities of animal waste and other “externalities” are fouling the soil, air, and water – to the detriment of both communities and other businesses relying on uncontaminated resources for their operations.

Companies need to be publicly transparent on the food security implications of land and water use along the value chain. Further, consumers and public health and government officials are increasingly alarmed about the public health risks associated with obesity which is particularly acute in emerging markets and, increasingly, among young people. As consumer demand builds for healthier alternatives and growth in these segments continues to outpace the category, long-term investors will be attracted to those companies best able to capitalize on these emerging market trends.

Disclosure of the following would provide consistent information available to all investors related to food:

- For relevant sectors: sustainable agriculture policies, applicable across the value chain, that demonstrate how the company business model is consistent with long-term environmental and social sustainability.
- Acknowledge that agricultural land needs to be managed sustainably.

- Up-to-date and complete information on their policies, practices and performance on an ongoing basis, integrating a clear narrative about how addressing nutrition issues is benefitting their business.

Political Spending and Lobbying

As the SEC is well aware, over 1.2 million petitions and letters have been submitted to the agency urging mandatory disclosure by companies of their political spending. This is an issue of huge public importance and we wish to add our support for such specific disclosure.

In addition, we would encourage clear guidelines for disclosure of information on corporate lobbying directly and through third parties. Again, the specific questions that a company should address are stipulated in the standard lobbying disclosure resolution including a summary of primary lobbying priorities, summary of expenditures federally and in states where the companies lobby, whether the company engages on grassroots lobbying, Trade Associations a company is a member of, payments made to the Association and the percent spent on lobbying, and whether the company is a member of any organization which compiles model legislation for lobbying.

We believe a company's political spending and lobbying activities can certainly affect the company's brand or reputation. Examples include the controversy about specific companies lobbying against action on climate change, for higher drug prices, or against public health measures like anti-smoking laws.

Disclosure of the following would provide consistent information available to all investors related to political spending and lobbying:

- Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, or (b) influence the general public, or any segment thereof, with respect to an election or referendum and which includes a description of the decision making process and oversight by management and the Board for making payments.
- Disclosure of monetary and non-monetary contributions and expenditures (direct and indirect), including the amount of payment and recipient.
- Policies and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
- Disclosure of payments used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
- Any membership in and payments to any tax-exempt organization that writes and endorses model legislation.

- Include a description of the decision making process and oversight by management and the Board for payments for lobbying communications and to tax-exempt organizations.

Board Diversity, Non-Discrimination, and Pay Equity

The Priests of the Sacred Heart support the strengthening of the existing proxy rules to require companies to disclose the gender and racial composition of their nominees for directors and their plans to achieve greater gender and racial diversity among their leadership groups. We believe this proposal is entirely consistent with the interests of investors.

Workplace discrimination and unequal pay is not just a social issue but a critical business issue that can affect the performance of the businesses in which we invest. Unfair social practices within companies can lead to negative outcomes including damaged reputations, limited internal competition, poor morale, higher turnover, not to mention the risk of legal violations and lawsuits.² As a result, investors are becoming increasingly interested in these issues.

Disclosure of the following³ would provide consistent information available to all investors related to diversity and pay equity:

- The inclusion of women and minority candidates in every pool from which board nominees are chosen.
- Plans to advance board diversity.
- An assessment of challenges experienced and progress achieved.
- Disclosure of pay ratios by gender, race, and ethnicity on an annual basis.

Indigenous Rights and Community Relations

Disclosure of the following would provide consistent information available to all investors related to indigenous peoples and community relations:

- Policies and practices for obtaining community support and, where required by the UN Declaration on the Rights of Indigenous Peoples, Free Prior and Informed Consent from Indigenous Peoples.
- Project-level assessments of negative social and environmental impacts to communities, with specific attention given to Indigenous Peoples, women, and other vulnerable groups.

² Vivek Wadhwa, Bloomberg News, [The True Cost of Discrimination](#)

³ The first two disclosure indicators listed are reflected in 2016 shareholder resolutions filed with Cabot Oil & Gas Corporation, Cognizant Technology Solutions Corp, Discovery Communications, Inc., and Stifel Financial. See ICCR, [2016 Proxy Resolutions and Voting Guide](#)

- Steps being taken in relevant industries (such as trucking and extractives) to monitor and reduce human trafficking and violence against women that may be directly or indirectly caused by their operations.

Taxes

Aggressive corporate tax planning can create earnings risk, damage corporate reputation and brand value, and cause significant harm to local and national economies. As practiced by large multinational companies, we believe that aggressive tax strategies have become a key systemic risk that can impact the profitability of a company and have broader impacts on portfolio returns. Current rules do not provide investors the information we need to evaluate and address these substantial risks.

Enhanced disclosure on corporate tax practices should allow investors to understand how corporate boards identify tax related risks and respond to government and other stakeholders' expectations. It should also allow investors to identify a potential aggressive approach to tax planning. At a minimum, this requires companies to disclose meaningful information on the following areas:

- Corporate tax policy and principles, governance and oversight frameworks, and management systems for tax-related risks.
- What drives the gap between effective tax rate shown on income statement and the weighted average statutory rate based on the firm's geographic sales mix.
- Explanation of the difference between the foreign effective tax rate and the average statutory rate of the countries where companies do business, particularly the key tax strategies employed and the risks of those strategies, including regulatory risks; currently, this figure is not explained within the tax footnote. Currently, companies are not required to disclose their foreign effective tax rate. This would also be an important indicator to signal to investors whether a company is engaged in aggressive tax avoidance in other countries.
- An overview of what is driving unrecognized tax benefit (UTB) changes; UTBs display the tax positions being taken by companies that management believes are less than 50% likely to be upheld by a tax authority.
- Disclosure on intracompany debt, including the countries where the debt is held, the amount of intracompany debt, and the average interest rate paid by other subsidiaries on that debt. This would allow investors to evaluate whether multinationals are shifting profits between subsidiaries in order to avoid tax, or for appropriate business purposes.
- The most financially material tax incentives across jurisdictions; information on expiries of all incentives, investment requirements and commentary regarding the likelihood that such incentives will not be renewed should be provided.

It is impossible for an investor to understand a company's tax strategy without understanding its global structure, including the business nature of existing subsidiaries, as well as the overall approach to the use of secrecy jurisdictions, or "tax havens." Currently, however, a number of large companies are failing to disclose their subsidiaries, presumably

because they do not deem them to be “significant” under the SEC’s current rules. We would recommend that the SEC eliminate the significance test for subsidiaries, and simply require companies to disclose all subsidiaries.

We also support the FACT Coalition’s call for the following company disclosure, on an annual, country-by-country basis:

- Profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.⁴

Conflict Minerals

Disclosure of the following would provide consistent information available to all investors related to minerals/raw materials sourcing:

- A strong policy and an effective system to implement it.
- An assessment of identified risks in the chain of custody of minerals/raw materials.
- A due diligence report on steps taken to manage risk.
- A report on progress toward meeting established goals to source conflict-free (ethical and sustainable) minerals/raw materials.

CONCLUSION

To summarize our answers to *Section F* of the *Comment Release*, we agree with ICCR that:

1. Disclosure of material ESG information should be required as it is useful to investors.
2. Material ESG data should be included in corporate Annual Reports and 10-K filings to address the insufficiency and inconsistency of voluntary reporting.
3. Line-item disclosure of material information across sectors should be required, but should be flexible so that it can be amended as risks evolve within corporate sectors.
4. Voluntary reporting frameworks provide information on many companies but without providing consistency across companies and sectors, and without providing the checks on accuracy and completeness that are inherent in securities filings.

⁴ The Fact Coalition, [FACT Comments to SEC on Concept Release Urge Public Country-by-Country Reporting](#)

To summarize our answers to *Section IV.A.5* of the *Comment Release*, we agree with ICCR that:

1. Disclosure of material information pertaining to worker recruitment practices and the types of workers employed directly or by the suppliers (migrant, contract, temporary) should be required as it is useful to investors.
2. Reporting the exact number of employees is essential to the understanding of material risk that companies may face with potential labor and human rights violations. A narrow range for a number of contractors or subcontractors may be acceptable in lieu of the exact number only when accompanied by a full disclosure of why the exact number is not available.
3. Companies should be required to disclose additional information related to hiring practices, benefits, and grievance mechanisms to ensure that investors have accurate information about company's material risk.
4. Disclosure for investors about a company's outsourcing and subcontracting is vital in understanding a company's risks related to supply chain operations.

We wish to thank the SEC for this opportunity to comment on the important topic of sustainability disclosure. We urge the SEC to act and develop mandatory reporting on ESG issues as described above. We would welcome the opportunity to discuss this matter with you further at your earliest convenience.

Sincerely,

Mark Peters
Director of Justice, Peace and Reconciliation
Priests of the Sacred Heart, US Province