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July 21, 2016

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

Re: SEC Concept Release: Business and Financial Disclosure Required by Regulation S-K, File Number S7-06-16

Dear Secretary Fields:

I am writing as Trustee of the New York State Common Retirement Fund (Fund or the CRF) and administrative head of the New York State and Local Retirement System (the System) in response to the invitation of the Securities and Exchange Commission (SEC or Commission) for comment on modernizing certain business and financial disclosure requirements in Regulation S-K.

The Fund holds the System's assets, valued at approximately $178.1 billion as of March 31, 2016, and I have a fiduciary duty to invest those assets prudently and for the exclusive benefit of the System's more than one million members, retirees and beneficiaries. As a long-term investor, the Fund maintains diversified investments across multiple asset classes using both active and passive investment strategies; its largest allocation is to indexed domestic equities. Consequently, the Fund holds stock in most publicly traded domestic companies and also in many non-domestic registrants.

I recognize the magnitude of the SEC's efforts in undertaking a review of the business and financial disclosure requirements set forth in Regulation S-K, and I appreciate the opportunity to share my opinions regarding relevant disclosure requirements in today's increasingly challenging investment environment. In addition to this letter, I have joined in comments in a July 20, 2016 letter provided to the SEC by Ceres, an organization of which the CRF is a member and for which I serve as a Director. I also support and incorporate the comments of the Council of Institutional Investors, of which the Fund is a member, submitted to the SEC on July 8, 2016.

My comments are directed primarily to the discussion and inquiries set out in section "F" of the Concept Release, "Disclosure of Information Relating to Public Policy and Sustainability Matters," and in particular, questions 216, 218, 219 and 223. In prior years, considerations falling under the rubric of sustainability – environmental, social and governance ("ESG") factors – were deemed collateral to or not relevant to what had traditionally been considered financial factors. There is now growing recognition among investors that sustainability issues or ESG factors can be, and often are, material to basic, primary financial analyses. The financial value of integrating these factors into the investment process is supported by academic literature and recognized by an increasing number of asset owners, asset managers and registrants.

Recently, the U.S. Department of Labor (DOL) issued its "Interpretive Bulletin Relating to the Fiduciary Standard under ERISA in Considering Economically Targeted Investments" (29 C.F.R. Part 2509.2015-01) clarifying the DOL's views regarding a plan fiduciary's consideration of "economically targeted investments" and/or ESG factors. Specifically, the DOL stated:

> An important purpose of this Interpretive Bulletin is to clarify that plan fiduciaries should appropriately consider factors that potentially influence risk and return. Environmental, social, and governance issues may have a direct relationship to the economic value of the plan's investment. In these instances, such issues are not merely collateral considerations or tie-breakers, but rather are proper components of the fiduciary's primary analysis of the economic merits of competing investment choices.

Although the Fund, as a governmental plan, is not subject to ERISA, the fiduciary standard imposed on me as Trustee is also the standard for private pension plans governed by ERISA. Therefore, my Office voluntarily looks for guidance on fiduciary matters to ERISA case law, rulings and interpretations, where relevant and appropriate.

Because ESG factors can have financial repercussions that can make them primary economic factors in decision making, they can no longer be viewed as "merely" policy or societal considerations. For many years, the Fund has recognized the utility of ESG factors in assessing the sustainability of companies. We also recognize that the relevance of particular ESG issues may differ across companies, sectors, regions and asset classes, and over time. Therefore, we incorporate into our risk return evaluation those ESG factors that are relevant to specific investment decisions and we include consideration of relevant ESG factors in our efforts to protect and enhance asset value through our shareholder resolutions and shareholder voting.

The Fund considers sustainability issues in our investment process because they can influence both risk and return. In order for the Fund to fully implement its strategy, Regulation S-K disclosure of these issues is essential. Because uniform, comprehensive reporting standards are not readily available, in many instances Fund staff must rely on a patchwork of disclosure frameworks to obtain material, relevant sustainability data. We have found certain data is available only from companies who choose to participate in a particular disclosure initiative. As a result, the Fund is left with fragmented and incomplete information. Further, voluntary reporting can actually disadvantage those companies that fully report while their peers do not. For example, a company that voluntarily reports carbon emissions data may appear to be a less attractive investment opportunity than a competitor with greater carbon emissions that declines to report voluntarily.

The sustainability issues that we take into consideration are either material to particular investments, systemically important, or both. I believe there should be a framework for reporting material sustainability information that has the same rigor as the current regime for financial information. Disclosure of sustainability issues that are systemically important and of industry-specific information that is material to investors should be required. In the absence of rigorous reporting requirements, investors are not assured of obtaining accurate information about various sustainability issues material to their investment and voting decisions.

In recent years, I have communicated with the SEC on several occasions to advocate for more robust disclosure surrounding various sustainability issues, in particular with respect to climate change and carbon emissions, corporate political spending and enhanced board nominee disclosure, inclusive of gender, racial and ethnic backgrounds. Enhanced disclosure on those issues continues to be important to the Fund as an institutional investor for the reasons that are discussed below. In providing my comments on these issues, I have noted the particular questions set forth in the Concept Release to which I am responding.

Climate Change and Carbon Emissions (Concept Release Questions 216, 219, and 223)

Recently, I joined with 40 other investors in a letter to SEC Chair Mary Jo White citing concern about the Commission's lack of action to improve climate risk disclosure in recent years.[1] We requested that the Commission focus on climate change and carbon asset risk as material issues, and take steps to improve disclosure by registrants on how these issues are impacting their businesses. Further, we stated "it would be helpful for the SEC to develop and provide guidance to issuers on assessing qualitative factors surrounding climate change and carbon asset risk," and asked "that the Division of Corporate Finance closely scrutinize filings by oil and gas, electric power and insurance companies, and issue comment letters when … filings fail to discuss with meaningful specificity the material risks and impacts of climate change and related matters to their businesses."

In addition, in April 2015, New York City Comptroller Scott Stringer and I wrote to Chair White expressing our concern regarding responses from fossil fuel industry companies to our requests for disclosure of physical and regulatory risks to fuel reserves due to climate change.[2] The responses demonstrated a failure to analyze the potential impact of an effective regulatory regime to reduce greenhouse gas emissions, and a failure to analyze the potential impact of a warming climate on performance under scenarios in which efforts to mitigate climate change were ineffective. Comptroller Stringer and I urged the SEC to consider enforcement and other actions to bring disclosures by companies in the fossil fuel industry into compliance with SEC requirements and guidance. We suggested at a minimum that the companies should disclose analysis of:

- Risks to fossil fuel reserves associated with greenhouse gas emission reduction policies that may be adopted by national, state and local governments. This analysis should consider regulatory initiatives proposed, and goals and commitments announced, by national and state governments as well as multi-state and international initiatives.
- Risks to company assets associated with physical risks of climate change including sea level rise and extreme weather. This analysis is particularly important if companies determine that state, national and international initiatives to limit emissions of greenhouse gases will be unsuccessful.

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[1] CERES letter to SEC, June 22, 2016, at https://www.ceres.org/files/incr-letter-to-sec/at_download/file.
[2] New York Comptrollers letter to SEC, April 2015, at https://www.osc.state.ny.us/press/releases/apr15/sec_letter0415.pdf.

- Opportunities and risks stemming from changes in the market associated with climate change mitigation policies and initiatives.

My communications with the Commission highlighted the growing realization that, in attempting to position the Fund effectively for long-term growth in the face of risks arising from climate change, we lack access to adequate information on sustainability that is material to our investment decisions.

Recent Fund efforts illustrate the importance of obtaining climate change-related data. Since taking office in 2007, I have worked to implement initiatives aimed at protecting Fund investments from the multiple risks posed by climate change. In 2015, in an attempt to more clearly quantify potential physical and regulatory risks to its investments, the Fund and its consultant, together with other project partners, participated in a study of the risk/return impact climate change could have on its portfolio. We examined key downside risks and upside opportunities, and looked at a plan of action the Fund could implement to improve the resiliency of its portfolio. The Fund committed to developing climate-aware investment strategies that are central to its long-term future. The Fund is now considering recommended strategies to mitigate climate change risk to its investments.

One of the resulting strategies was the launch in January 2016 of a proprietary \$2 billion Risk Aware Low Emissions index ("RALE") in the Fund's global equities portfolio. The RALE is benchmarked against the Russell 1000 and excludes or reduces investments in companies that are large contributors to carbon emissions, while increasing investments in companies with lower emissions and comparable returns. Recognizing the need to protect the Fund's earnings, the RALE is constructed with a target tracking error of only 25 basis points from the benchmark. This groundbreaking equity strategy will reduce the Fund's carbon footprint for the \$2 billion portfolio by an estimated 70 percent compared to the portfolio of companies in the Russell 1000, without adding risk to the Fund's investments or sacrificing returns.

The methodology for reducing carbon emissions in the RALE utilized emissions data collected by the CDP (formerly the Carbon Disclosure Project) to identify the Russell 1000 companies with the highest levels of carbon emissions per dollar of market capitalization. CDP only had data for approximately 30 percent of the companies in the Russell 1000; however, that data reported 60 percent of the market capital of the index. The companies that did not report emissions data to CDP were given the same weights assigned to them in the Russell 1000. An integral part of this investment strategy is active engagement by the Fund's Corporate Governance staff with companies with high carbon emissions to encourage their emissions reporting, management and reduction efforts. Our experience with the RALE underscores the materiality of ESG data to our decisions relating to a multibillion dollar investment of Fund assets – specifically, the need for line-item disclosure concerning greenhouse gas emissions. Successful expansion or replication of this type of investment strategy by the Fund will require enhanced availability of reliable, comparable data.

As I have noted in my correspondence with the SEC, we have been disappointed by the disclosure from registrants generally in the face of the SEC's 2010 guidance and by company-specific responses to shareholders' direct requests for increased disclosure. Because climate risks are systemic in nature, we believe the Commission's focus on climate change and carbon asset risk as a material sustainable issue and accompanying guidance for robust S-K disclosure is integral to our ability to continue to make informed climate risk-aware investments. To this end, I again reference the letter submitted to you by Ceres to which I am a co-signatory, a link to which is provided at footnote 4.

Political Spending (Concept Release Question 216)

The United States Supreme Court's 2010 decision in *Citizens United v. FEC*, 130 S.Ct. 876, 558 U.S. 310, removed certain statutory constraints on the ability of corporations to expend corporate funds to make political contributions. In justifying the rejection of the restrictions on corporate political spending, Justice Anthony Kennedy, writing for the majority, explained "prompt disclosure of expenditures can provide shareholders ... with the information needed to hold corporations and elected officials accountable.... Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits" (*Citizens United*, 558 U.S. at 370-71).

The Court clearly anticipated that shareholders would be privy to information sufficient to inform them whether corporate political contributions were made for the purpose of furthering the long-term business interest of the company and its shareholders' investments. Unfortunately, however, there is no uniform reporting framework that fully discloses such expenditures. As a result, the Fund and other investors must work on a company-by-company basis to request such information. Since 2010, the CRF has sponsored well over 100 shareholder resolutions urging portfolio companies to fully disclose all direct and indirect political spending of corporate assets designed to influence the political process. Seeking corporate political spending information on a company-by-company basis, however, is an inefficient means by which to gather information for a systemic issue.

In 2012, I wrote to ask the Commission to adopt a new rule to require companies to disclose corporate political expenditures in order to enable shareholders to evaluate the potential risks to which companies may be exposed as a result of their political spending.[3] Specifically, I urged required disclosure of:

- Monetary and non-monetary contributions and expenditures used to participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office, and expenditures used in any attempt to influence the public with respect to elections or referendums;
- The title of the person or persons in the company who are responsible for making the decisions to make political contributions or expenditures; and
- Corporate payments made to trade associations and other organizations that made independent expenditures that were used for political purposes. In addition, candidates supported by trade associations and other organizations should be disclosed, along with the amounts spent by the recipient organizations.

[3] New York State Comptroller letter to the SEC, February 2, 2012, at https://www.sec.gov/comments/4-637/4637-239.pdf.

As to the last point, I noted it was particularly important that a rule by the Commission provide for full disclosure of company payments to trade associations and other organizations that are used for political purposes.

I acknowledge the constraints that the United States Congress has imposed for the current fiscal year on the SEC's ability to "finalize, issue, or implement any rule, regulations, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations." I urge, however, that once the SEC is no longer so constrained, the Commissioners move forward to impose uniform reporting requirements as outlined in my 2012 letter to provide shareholders with the material information they need to determine whether corporate political spending is advancing corporate profitability and, as a result, enhancing our investments.

Board Diversity (Concept Release Question 216)

I also believe board diversity is a material sustainability issue. Just last year, I was one of nine institutional investors who submitted a "Petition For Amendment of Proxy Rule Regarding Board Nominee Disclosure – Chart/Matrix Approach."[4] The petition asked the Commission to require new disclosures related to nominees for corporate board seats in order to provide investors with necessary information to evaluate the nominees' gender, racial, and ethnic diversity, as well as their mix of skills, experiences, and attributes needed to fulfill the corporation's mission.

I firmly believe that diversity at the board level can help reduce workplace discrimination and improve employee recruiting, retention, and productivity. Further, diversity can help manage risk by avoiding "groupthink" in that board members who possess a variety of viewpoints may raise different ideas and encourage a full airing of dissenting views. As a result, our investments are enhanced.

The CRF has set expectations for its portfolio companies that they draw from a wide range of viewpoints, backgrounds, skills, and experiences for both their management and their boards. The Fund has worked directly with other investors to focus on companies in the S&P 500 and the Russell 1000 to increase board diversity. Currently, corporations are required to identify the minimum skills, experiences and attributes all board candidates and nominees are expected to possess. Additionally, however, investors need uniform disclosure in chart or matrix format as requested in our Petition concerning information on the gender, race and ethnicity of board nominees.

Website Reporting of Sustainability Information (Concept Release Question 218)

We believe material sustainability information must be reported in SEC filings in a uniform fashion, standardized by industry. This delivery will allow investors to benchmark a company's performance against its peers. It also will eliminate the need for time-consuming searches investors currently must undertake to find sustainability information that can appear in a

[4] Letter to SEC, March 31, 2015, at https://www.sec.gov/rules/petitions/2015/petn4-682.pdf.

variety of documents and, once found, may not be easy to aggregate given differing reporting formats. Finally, it will benefit companies by permitting a fair comparison among peers.

Corporations use their websites to communicate with a wide audience – consumers, the communities in which they are doing business, employees and others. Further, websites often are used as a marketing tool. As such, their content may be insufficient for investors. Investors should be able to obtain material sustainability information in SEC filings whose content must be certified by company officers.

Sustainability Reporting Frameworks (Concept Release Question 219)

There are a number of sustainability reporting frameworks and sources of industry-specific guidance that the Fund uses. Examples include the Global Reporting Initiative, the International Integrated Reporting Framework, the Sustainability Accounting Standards Board, the Climate Disclosure Standards Board, Ceres, the Institutional Investor Group on Climate Change, CDP and the Investor Environmental Health Network. In our experience, all of these reporting frameworks provide information that has been of value to the Fund in assessing business performance and in informing investment decisions. However, it is not clear that any one framework captures the entire range of issues that have a material impact on business performance. We urge the Commission to consider the information these frameworks and industry-specific guidance provide in its effort to develop reporting standards.

Conclusion

The goal of the reporting required by Regulation S-K is to insure that investors have ready access to complete and accurate information upon which investment and voting decisions can be made. Currently, as discussed above, reporting requirements fall short of what is needed. I urge the Commission to implement reporting requirements that will assure uniform, comprehensive disclosure of material sustainability issues.

Thank you for the opportunity to provide comments on these important issues.

Sincerely,

Thomas P. DiNapoli
New York State Comptroller