World Business Council for Sustainable Development
Maison de la Paix
Chemin Eugene Rigot 2
1211
Geneva
Switzerland

21 July 2018

Dear Sir / Madam

**Response to Concept Release: Business and Financial Disclosure Required by Regulation S-K**

The World Business Council for Sustainable Development (WBCSD) welcomes the opportunity to respond to your consultation on the proposed changes to the *Business and Financial Disclosure Required by Regulation S-K*.

We strongly support your consideration of improving sustainability and public policy issues disclosure requirements for the benefit of investors, the public and issuers alike. We also strongly support your consideration for improving Risk and Risk Management disclosure as this is closely related to many sustainability related issues and opportunities.

The World Business Council for Sustainable Development (WBCSD) is a CEO-led organization of forward-thinking companies that galvanizes the global business community to create a sustainable future for business, society and the environment. Through its members over the past 20 years, the Council applies its respected thought leadership and effective advocacy to generate constructive solutions and take shared action to drive business action on sustainability in the coming decade and beyond. The WBCSD aims to be the leading voice of business that will support companies in scaling up true value-added business solutions and in creating the conditions where more sustainable companies will succeed and be recognized. Members work together across sectors, geographies and value chains to explore, develop and scale up business solutions to address the world's most pressing sustainability challenges. Through our work to change the rules of the game and drive measurable impact, WBCSD is emerging as the leading and most compelling sustainable development business voice with multilateral institutions such as the United Nations, World Bank, UNFCCC, as well as with global platforms like the UN Climate Summit and COP negotiations.

The pressing challenges facing humanity and the planet, it is no longer sufficient for business to be measured and evaluated on its management and usage of financial capital only. The impacts and dependencies between business and natural and social capital are equally essential for an understanding of corporate performance and therefore a more future proofed disclosure regime is vital for effective investor decision making.

The WBCSD response to your consultation has been developed by staff familiar and with a working knowledge of existing SEC disclosure requirements and with input from two consultations with some of our SEC Registered members in the USA in June 2017.

Our responses to those consultation questions we are competent to comment upon are below. However, we have the following overarching comments we wish to emphasis.

- WBCSD considers sustainability to include environmental and social topics. *Businesses cannot succeed in societies that* fail and therefore it is not sufficient to view sustainability in only terms for natural capital;
- Various voluntary reporting frameworks exist however given the SEC's role and remit, we suggest that they consider only those frameworks materials that focus on mainstream reporting and in particular the investor. The Sustainable Accounting Standards Board's (SASB) standards and provides sufficient structure to support mainstream reporting whilst the Carbon Disclosures Standards Board (CDSB) provides a useful framework for mainstream disclosure. Other frameworks, standards and guidelines could offer insights and lessons learnt.
- Experience from the EU indicates that some may lobby that inclusion of sustainability related information into mainstream reports such as Form 10K and 20F will incur additional costs but it is our view that this is over emphasized as a barrier. Credible disclosure that facilitates and enhances investor confidence and provides for better decision making is vital.
- The concepts of Materiality and Boundary (legal ownership) are significant issues that need to be addressed when considering both sustainability and risk disclosure and again the work of SASB has advanced this considerably.

Please do not hesitate to contact us if we can be of further assistance

With best regards,

**Prof. Dr. Rodney Irwin**
**Managing Director**
**Redefining Value & Education**

**[e:]** [redacted]
**[c:]** [redacted]

**WBCSD responses to specific consultation questions**

**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?**

The Commission should require registrants to describe their risk management process. At a minimum, registrants should describe the governance and oversight of the risk management process including the ownership of both the function and the management of risks and what established risk management frameworks, such as COSO ERM[1] or ISO 31000[2] are being used. The role that the Board and officers of the company actively play in the risk management process, the risk appetite of the board and officers. Risks management by definition is a preventative discipline but it cannot be expected to be robust enough to address all eventualities therefore the disclosures on the Risk Management process should provide the user of the disclosed information with 1) how potential risks are identified, 2) how risks are assessed, 3) how risks that are assessed as significant and therefore require attention are managed (transferred to others such as insurers, activities terminated to remove or reduce exposure, managed by corrective action(s)). Disclosure should also be clear on which risks are to be tolerated and the basis for this action.

Registrants should be required to have a risk management process and if not in place they should 1) explain why not and when it will be effective and 2) how in the absence of this process they are managing risks.

**170. Should we require registrants also to describe their assessment of any risk management process? If so, how often should such disclosure be required.**

Registrants should be required to describe fully their assessment of the risk management process in the annual filing (From 10-K or 20-F). For registrants that are required to file additional returns during the year then it should be a requirement to confirm in quarterly filings that the risk management process and disclosure remain effective and to the best of their knowledge, up to date and complete. For both questions 169 and 170, the EU Transparency Directive[3] serves as a comparable disclosure regime and could provide useful and practical guidance to the SEC's discussions.

**171. Should we require registrants with complex risk management approaches or processes to provide only an enterprise-level description, or is a more granular description appropriate for these registrants?**

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[1] http://coso.org/-ERM.htm

[2] http://www.ferma.eu/risk-management/standards/iso-standard/

[3] http://ec.europa.eu/finance/company-reporting/transparency-directive/index_en.htm

The disclosures relating to risk management approaches need to be comprehensive enough to allow the user of the report to understand and from an opinion on the effectiveness of the process to identify and assess those risks that could influence the reader's investment decisions or other opinions of the company. Therefore, if the reader's best interests are better served by a more granular approach, for example, in businesses with multiple geographic, segmental or diverse activities such as businesses with manufacturing, financial services, health care et al divisions, then such as granular approach should be considered. The users' needs should be the driver of disclosure.

**172. Should we require registrants to disclose when risk tolerance limits or other fundamental aspects of its risk management approach are waived or changed, including any assumptions or relevant changes in business strategy that underlies the new limits or policies?**

The SEC should require registrants to disclose risk tolerance limits and if these are changed or breeched this should also be disclosed with appropriate narrative. All assumptions in the risk management process should be disclosed and the rational and evidence if available should be disclosed to support any assumptions made.

**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?**

All risks if material should be disclosed and actions take to mitigate or remediate should be provided for the user of the information in enough detail for them to evaluate and make informed decisions.

**174. How could we facilitate a more integrated discussion of risk exposure and risk mitigation? Should we require registrants to disclose management's view of how material risk exposures are related and how risk mitigation actions are connected?**

Risks are the consequences of known or unknown events that a business fails to address either due to a lack of time, absence or too little resilience within the organisation, lack of knowledge over the sources of the risk exposure etc. Risks are rarely isolated and the interactions of risks and the impacts and dependences that other business activities have on risk events should be mapped out and understood.

**175. To the extent we require disclosure of risk management and risk management processes, should we move the disclosure about the extent of a board of directors' oversight of risk from Item 407(h) to this new requirement? Similarly, should we move compensation risk disclosure to this new requirement, or should we otherwise provide an option for compensation risk disclosure to be given in the risk management discussion rather than in the compensation discussion?**

There is no need to move the disclosure about the extent of a board of directors' oversight of risk from Item 407(h). However, the obligations outlined in any new risk disclosure requirements should be crossed referenced to Item 407(h).

**177. Would additional disclosure about risk mitigation inhibit investors' ability to fully appreciate the significance of the risk? Would requiring a registrant to explain how it addresses a disclosed risk discourage registrants from disclosing generic or insignificant risks? Alternatively, would registrants provide boilerplate disclosure about how they address less meaningful risks, thereby resulting in even longer risk factor disclosure?**

Risk factors that are not supported by comparable and reliable information such as performance data are very difficult of investors to understand and use in their investment decisions. Investors need to be able to discern performance on a risk or group of interrelated risks in an industry or sector context.

Registrants already are using boilerplate disclosures in their risk factors section making this section unusable for making informed decisions. In other jurisdictions the US approach to Risk Disclosure is known as boiler plate and for creating safe harbour conditions thus providing protection of the entity at the expense of transparency.

**178. Should we require registrants to address mitigation or management of each risk factor as part of the risk management discussion? If so, should we also clarify that, although references to the general risk management discussion will not satisfy this requirement, cross-references to appropriate portions of MD&A or the financial statements will, if disclosure otherwise would be redundant?**

The SEC should require registrants to address mitigation or management of each risk factor as part of the risk management discussion if management is able to manage or mitigate the risk. Risks can be addressed by management in one or in a combination of four ways. They can choose to treat the exposure through improved controls, investment etc. They can choose to transfer the risk to another organisation such via an insurance vehicle, they can choose to terminate activities that generate the risk or they can choose to tolerate the risk on the basis that the risk is considered worth taking due to the value creation that acceptance of the risk generates. Investors would benefit if they understood how a company was addressing the risk or if the company was aware of the risk but tolerates the exposure. Cross referencing to the MD&A should be encouraged if doing so helps the report user gain a clear understanding of the company and its risks / strategy.

**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?**

No individual or company can be certain about anything in the context of business. Therefore, the SEC should require registrants to disclose their known uncertainties about their risk management and associated policies however this should not be a green card to make all risk disclosures uncertain. The registrant should be required to state why there is known uncertainty and what actions are being taken, if any, to close the uncertainty gap.

**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?**

Risk is such as pervasive feature of doing business that a consolidated discussion of the risks facing the business and risk management actions including all legal proceedings in a single section of the filing. The information that should be included at a minimum is a description of the risk policy and appetite of the business, how risks are identified and assessed, the outcome of the assessment, ownership for monitoring and remediation (if remediation is possible) supported by progress being made to remediate. In other sections of the filing such as the MD&A, risks can also be referred and referenced to the risk section for fuller disclosure.

The Committee of the Sponsoring Organizations' of the Treadway Commission (COSO) Enterprise Risk Management (ERM) Framework provides a useful template against which to structure disclosure (risks organized by strategic, operational, legal / regulatory and financial). A consolidate risk section should also cross reference to the board of directors' oversight of risk from Item 407(h)

**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?**

As outline in our response to question 180, the consolidation or risk information in one location would facilitate investor understanding of the risk profile, mitigation plans and exposures facing the business without searching the full document to find references to information pertinent to investor decision making.

**182. How would a consolidation of risk-related disclosure affect the cost of preparing a filing, if at all?**

We do not believe that the cost of consolidation of risk related disclosure would have a significant impact on the cost of preparing a filing.

**216: Are there specific sustainability or public policy issues [that] are important to informed voting and investment decisions? If so, what are they?**

The work of the Sustainable Accounting Standards Board since 2013 and that of the Global Reporting Initiative since 2000 has confirmed that there are specific sustainability or public policy issues that are important to informed voting and investment decision.

However, the key issue in sustainability disclosure is how these issues are defined and if they are considered to be material. The perceived materiality of these issue will influence the type of investor who will be prepared to engage actively with companies around those issues. However it is recognized that short-term thinking has resulted in some investors believing that sustainability related issues do not directly impact the current or short term financial performance of a company. However, disclosure can be a qualitative indicators of emerging risk, physical or regulatory, such as potential for carbon or water tax or cap-and-trade regulation. Similar issues exist in other sustainability-related topics, including in water and drivers of deforestation.

Examples of sustainability related disclosures that may pass a materiality threshold test are

- Product and consumer safety including recalls (automotive, food and beverage, aeronautical sectors).
- Access to natural capital such as fresh and cooling water, forest products, crops, (food and beverage, paper and packaging, energy utilities etc.).
- Carbon rich assets such as known oil and gas reserves, coal deposits etc that could be impaired if climate change policies require them to be untapped (Oil, Gas and Extractive Industries).
- Employee and subcontractor safety and the safety of communities close to business operations (mining, energy production, garment manufacture, chemicals, etc.).

- Vulnerability of critical production or revenue generating sites such as those situated in areas prone to adverse or severe weather events, rising water levels, flooding as the result of climate change.

The mainstream investor group includes many institutions who are not generally recognized as being engaged with sustainability issues, but have one or more teams who are responsible for looking at non-financial factors and may have specific funds with an ESG mandate. Issues for these investors include getting sign-off from senior management to become publicly involved in external programs and internal conflict between ESG teams and portfolio managers who may not regard ESG factors as being material.

The SEC should ensure that an industry specific approach is taken with regards to sustainability issues and risks. However from a disclosure We suggest the following eight factors offered by CDSB in partnership with ACCA in their publication "Getting lost in the right direction"[4] are required to ensure that reporting elicits meaningful disclosures:

1. A clear **objective** for the reporting activity so that reporting organisations know why they are reporting;
2. A **requirement** to provide information set by an appropriate authority;
3. Clear **content** elements so that the reporting organisation knows what to report
4. A **standard** for complying with the content requirements and for setting suitable criteria/principles for conducting assurance activities so that the reporting organisation knows how to report (such as the qualitative characteristics of decision-useful financial information prescribed by FASB);
5. A **system** for supplying, storing and analysing information so that reporting organisations know where to report information and users know where to find it (such as EDGAR);
6. An **assurance** process for ensuring that assertions comply with the standard used to prepare them and that they do not include any material misstatements;
7. A **review** process so that users of information can feed back views to preparers and standard setters about whether they are getting what they need; and
8. Flexibility and system capacity to include qualitative elements that are deemed appropriate by the disclosing entity.

In the same way that FASB supports the SEC's requirements on the delivery of financial statements and COSO IC Framework supports the SEC's requirements on internal controls, the SEC should prescribe the requirement for its registrants (or a subset thereof) to deliver sustainability information, but rely on others like SASB to prepare content and standards to elicit information according to SEC specified criteria.

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4 http://www.accaglobal.com/content/dam/ACCA_Global/Technical/sus/ACCA_CDSB%20Mapping%20the%20sustainability%20landscape_Lost%20in%20the%20right%20direction.pdf

**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 requirements may not be appropriate for sustainability issues.

If materiality refers to information that is specific to the reporting entity's performance and condition based on past events and known liabilities, then sustainability and public policy matters might not always be deemed material to reasonable investors according to current SEC and FASB definitions (the latter which is currently under review).

That said certain sustainability and public policy issues **are** material at entity-specific level according to **current** definitions of materiality and that they should be disclosed under S-K Regulations as **currently** drafted. However, even where sustainability and public policy issues are not material at entity-specific level, we contend that line item requirements for disclosure will enable investors to anticipate and prepare for future effects of those issues as noted below.

International public policy pronouncements on climate change (such as the COP-21 Paris Agreement) and sustainable development goals (SDGs) define international targets and confirm that the private sector will be required to contribute to those targets. The targets are clear but the speed and timing of required behavioral change is uncertain. Research on the transition to a low carbon economy favors a slow and gradual transition towards the desired outcomes rather than a so-called "hard landing"[5]. We contend that similar principles apply to other sustainability issues that are global and present systemic risk implications. Global, systemic risks by definition do not always manifest themselves at entity-specific level, but can nevertheless cause shocks to companies, financial institutions and markets through direct impacts or gradual contagion through markets.

The SEC should issue directions on the circumstances in which companies should report on sustainability issues under existing S-K Regulations where one or more of those issues represents a material risk to the reporting entity.

**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?**

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[5] Reports of the Advisory Scientific Committee No 6 February 2016: Too late, too sudden: Transition to a low carbon economy and systemic risk. A report of the group of the European Systemic Risk Board Advisory Scientific Committee. Available at: https://www.esrb.europa.eu/pub/pdf/asc/Reports_ASC_6_1602.pdf

There are currently multiple channels through which registrant can choose to report on sustainability such as standalone sustainability reports, so-called integrated reports, mainstream corporate filings such as the Annual Report in Europe or via the company's website or not at all. Dedicated reporting channels have also been developed that aggregate responses, such as CDP's online reporting.

The outcome of this choice within existing reporting mechanisms has led to

- A lack of standard guidance on the placement of information;
- A lack of agreement on the circumstances in which ESG risks and impacts are material for mainstream reporting purposes;
- An uncoordinated decisions on where to report information being made in multiple corporate disciplines including legal, communications, health and safety, compliance, governance and finance.

Existing reporting vehicles are problematic to investors for the following reasons

- Information for investment or other material decisions may be **difficult to find** without considerable effort, if found it will most likely be **not structured or labeled in a consistent way** and language choices could lead to further confusion;
- There is often **too much** information much of which is not material for investors
- Much of the data that is presented as sustainability performance **is not always prepared with same rigor** as would be required if included in a mainstream filing
- The WBCSD's annual review of our members resporting also confirmed that not all disclosures are **balanced** and therefore **inherent bias**
- **Assurance**, if sought, on this information is based on the reporters agreed procedures with the assurance provider and the latter's reports are difficult to understand and gather value from.
- **Lack of comparability**. Organizations in the same industry might agree on the same issues for disclosure but that does not mean that they disclose the same information or metrics making comparability between businesses in the same sector impossible or only with considerable effort and cost.

The WBCSD believes that in many sectors the same issues are material to investors and are in the public interest and need to be managed in a professional and robust manner and disclosed in the most appropriate reporting vehicle that provided reliable information in a cost and effective manner.

Therefore, for investors, sustainability reports, websites and other non-mainstream reporting vehicles are not suitable for the reasons outlined above.

**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?**

Given the SEC's role and remit, we suggest that they consider only those frameworks materials that:

1. focus on mainstream reporting, that is the package of information that includes audited financial statements, management commentary, risk and governance disclosures prepared for compliance purposes. Frameworks that seek to elicit information primarily for investors through mainstream reporting channels include the International Integrated Reporting Framework, the CDSB Framework and SASB's provisional standards; and
2. provide sufficient structure to support mainstream reporting. The work of SASB and CDSB could support the SEC in this regard.
3. explain how any requirements the SEC introduce will relate to existing reporting provisions. For example, the US Environmental Protection Agency already requires greenhouse gas reporting[6], which may be a component of sustainability reporting – even a required line-item. In this case, the Commission could provide guidance on whether and how the facility level information used for reporting to the EPA could be aggregated to provide consolidated GHG emissions, re-used or cross-referenced to the EPA disclosure to satisfy potential SEC requirements.
4. ensure that SEC requirements result in registrants providing decision-useful information for investors.

**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?**

As the SEC's disclosure rules are intended to facilitate fair, orderly and efficient capital markets, the WBCSD considers it to be consistent with the SEC's role to address sustainability issues that threaten markets and financial stability. Over its history, the SEC has already introduced provisions on corporate responsibility, accountability, executive compensation, governance and other specialized disclosures, including some that are not overtly financial in nature. The WBCSD believes that the introduction of sustainability reporting requirements would also serve the purpose of protecting investors and the public interest and facilitating fair, orderly and efficient capital markets.

Other precedents exist. The Financial Stability Board's (FSB) literature on the creation of the Task Force on Climate Related Financial Disclosures[7] (TCFD) states that it is designed to help financial market participants to understand their sustainability-related risks and understand how better to manage those risks.

Other rich sources of information already exist as already noted and in particular the work of SASB and their provisional standards could be adopted by the SEC as an acceptable and appropriate disclosure mechanism.

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[6] US Environmental Protection Agency, Greenhouse Gas Reporting Program. Available online at https://www.epa.gov/ghgreporting

[7] https://www.fsb-tcfd.org/

**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.**

To address the challenge of fragmented local, regional and national approaches, we recommend that the Commission seeks alignment with other reporting provisions in use globally. A knowledge platform being developed by us at the World Business Council for Sustainable Development in partnership with CDSB and EcoDesk (and funded by the Gordon and Betty Moore Foundation), which will be publicly available as a beta version in December 2016. The platform, known as the Reporting Exchange (reportingexchange.com)[8], tracks and records international sustainability reporting provisions (both voluntary and mandatory) and could be used by the SEC to develop requirements that are as consistent as possible with existing practice and therefore less costly for reporting companies to implement.

During the debate in Europe when the EC was discussing the proposed EU Non-Financial Reporting Directive much of the dissent from business associations centered on costs as a barrier to disclosure of ESG information. Disclosure should never be avoided due to costs and businesses should be able to measure and report their performance in a cost-effective way. International precedence and guidance such as Cost-benefit analysis for EU Non-Financial Reporting Directive: http://ec.europa.eu/finance/accounting/docs/non-financial-reporting/com_2013_207-study_en.pdf

**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?**

All companies have the potential to affect or be affected by sustainability issues therefore the WBCSD does not recommend that the SEC scale disclosure requirements for SRC's. Every registrant, regardless of size, employee numbers etc. is required to file either Form 10-K or Form 20-F. That said, requirements should be proportionate in the context of the objective of reporting and staggered implementation approach.

It is important that the Commission sets a roadmap in order to prepare SRCs for this.

[8] www.reportingexchange.com

**223. In 2010, the Commission published an interpretive release to assist registrants in applying existing disclosure requirements to climate change matters. As part of the Disclosure Effectiveness Initiative, we received a number of comment letters suggesting that current climate change-related disclosures are insufficient. Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk? Why or why not? If not, what additional disclosure requirements or guidance would be appropriate to elicit that information?"**

It is our belief that the SEC's "Guidance Regarding Disclosure related to Climate Change" has attracted poor compliance for many and somewhat complex reasons with a lack of explanation about how climate and sustainability reporting fit into the mainstream reporting model. We have observed that legal counsel in particular do not understand how this fits with the mainstream disclosure model with concerns that disclosure may open the entity to litigation.

The Financial Stability Board's (FSB) Task Force on Climate Related Disclosure (TCFD)[9] is investigating and will report to the G20 on this topic by the end of 2016. It is hoped that this will advance the corporate reporting (and investor use) of risks associated with the transition to a low-carbon economy and help remove real or perceived barriers to current disclosures.

**333. Should we require registrants to provide additional disclosures in a structured format? If so, which disclosures? For example, are there categories of information in Parts I and II of Form 10-K or in Form 10-Q that investors would want to receive as structured data?**

If the SEC goes ahead with the implementation of sustainability related disclosure in 10-K and 20-F filings, the SEC should require registrants to provide this in the same format as other financial data in order to aid the comparability and consistency of the reported information.

[9] https://www.fsb-tcfd.org/