

July 21, 2016

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

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

Dear Mr. Fields,

We appreciate the opportunity to comment on the Securities and Exchange Commission "[Concept Release](#)" regarding disclosures required by Regulation S-K.

The Concept Release, which is part of the SEC's broader "[Disclosure Effectiveness](#)" project, poses questions on a wide range of topics, from what types of disclosures public companies should make, to the forms in which they should make them.

This letter focuses on the set of questions related the disclosure of offshore activities, and the disclosure of all subsidiaries.

Background:

Companies that sell securities to the public in the US are required to make numerous disclosures upon offering securities for sale and in subsequent annual filings (10-K), quarterly filings (10-Q), and filings when anything significant happens (8-K). The substance of disclosures, in many circumstances, is set forth in the SEC's Regulation S-K. Reg S-K can be viewed as setting the baseline for corporate issuers' disclosures to investors and the public.

The requirements currently set forth in Reg S-K are woefully out-of-date for today's world, and insufficient to provide investors and the public with the information they want about several areas of a corporation's financial practices, operational practices, and risks. Recognizing these obvious shortcomings, and in an interest to streamline various other disclosures, the SEC has issued this Concept Release.

Concerns: Standard of Disclosure

The law requires companies to disclose information when there is "a substantial likelihood that the...fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." Today, more than ever before, investors and the public care about a plethora of issues. Investors, in particular, have clamored for enhanced disclosures by companies in a number of key respects. For example, investors and others have called for specific disclosure enhancements regarding executive compensation, worker training, international tax concerns, corporate stock buybacks, sustainability efforts, and political spending, amongst many other areas.

I. International Tax Liabilities

In recent years, taxes, and particularly international taxes, have become increasingly critical to corporate profitability and valuations. At the same time, the international tax world is changing dramatically—posing key opportunities and risks for companies and investors. Investors and the public need to know where their companies are operating, where they are booking their income, and where they face potential significant international tax risks.

The impacts of international tax changes on U.S corporate issuers are enormous, in large part due to the increasing role of international tax strategies and amounts of profits involved. For example, a recent report by Citizens for Tax Justice found that profits held offshore were \$2.4 trillion in 2015. And just looking at twenty-eight corporations, offshore holdings increased by \$200 billion between 2014 and 2015.ⁱ

The SEC's disclosures should be put into the overall context of a worldwide crackdown on corporate international tax avoidance and evasion. The European Union, the UK Treasury, the French government, the Australian government, and others are leading efforts to force companies to pay more in taxes. The companies involved in US or foreign government investigations, some of which have paid fines already, include Chevron, Google, Apple, Amazon, HP, and Starbucks.

The OECD has an initiative to cut down on techniques used to shift income away from tax authorities. It's easy to see why. For example, Apple has an offshore subsidiary that reported net income of \$30 billion, but paid no corporate income taxes to any national government anywhere in the world for years. It also had an Irish affiliate that received \$74 billion in "sales" income over just a few years, on which it paid almost no taxes.⁷ Changes in tax policy – either foreign or domestic - will have material consequences for shareholders.ⁱⁱ

Wall Street research analysts recently found that a whole slew of major companies, including Mattel, HP, Xerox, Western Union, their potential offshore tax liabilities represent over 10 percent of their total market caps.ⁱⁱⁱ Further, these analysts found that for a whopping 68 U.S. issuers, the estimated foreign tax liabilities exceeded 5% of the companies' market capitalization.^{iv} And that is for the companies that elect to make such disclosures. Most, such as GE and Apple, do not specifically disclose the huge risks they may face based on changes in law or policies either domestically or abroad.

To inform investors and the public, we urge the SEC adopt a model wherein disclosures should include, at a minimum, on a country by country basis, information on employees, capital investments, revenues, profits, tax rates, and taxes paid.

II. Affiliated Entity Disclosures

Currently, investors and the public do not have the information needed to understand how companies are structured and operate, including whether they are operating in high risk jurisdictions, may have actual or potential tax liabilities, or may be engaged in other types of unknown or ill-understood corporate activities.

For example, one study found that Walmart had 78 previously unknown subsidiaries in tax havens.¹⁰ According to the study, Walmart owns at least \$76 billion in assets through shell companies domiciled in the tax havens of Luxembourg and the Netherlands, accounting for a stunning 90 percent of the assets in Walmart's International division or 37 percent of its total assets.^v

Perversely, as the importance of information about offshore activities has increased, the amount of disclosures has decreased. Today, investors are actually receiving less information than they used to. For example, one academic study looking at the subsidiaries disclosed by Google and Oracle found that 98 and 99 percent of these companies' subsidiaries disappeared from exhibit 21 between 2009 and 2010.^{vi}

These large U.S. corporate issuers thought these subsidiaries were important enough to disclose one year, but as the worldwide scrutiny on tax havens and liabilities increased, these leading U.S. corporations decided that the disclosures were no longer important. This is a failure for investors and public policy.

We urge the SEC to require disclosure of all corporate subsidiaries, providing the name, location, identifier (LEI number), and relation to the parent entity.

For more information, please contact Jacob Wills at jwills@thefactcoalition.org.

Thank you for the opportunity to comment on the proposal.

Sincerely,

American Sustainable Business Council

Citizens for Tax Justice

FACT Coalition

Fair Share

Global Financial Integrity

Main Street Alliance

ⁱ Citizens for Tax Justice, *Fortune 500 Companies Hold a Record \$2.4 Trillion Offshore*, Mar. 3, 2016, available at <http://ctj.org/pdf/pre0316.pdf>.

ⁱⁱ Offshore Profit Shifting and the U.S. Tax Code: Part 2 (Apple, Inc.), before the Permanent

Subcommittee on Investigations, May 21, 2013, available at <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/offshore-profit-shifting-and-the-us-tax-code-part-2>.

iii David Zion, Ravi Gomatam, and Ron Graziano, Credit Suisse, *Parking A-Lot Overseas*, Mar. 17, 2015, available at https://doc.research-and-analytics.csfb.com/docView?language=ENG&format=PDF&source_id=em&document_id=1045617491&serialid=jHde13PmaivwZHRANjglDIKxoEiA4WVARdLQREk1A7g%3D.

iv David Zion, Ravi Gomatam, and Ron Graziano.

v Americans for Tax Fairness, *The Walmart Web: How the World's Biggest Corporation Secretly Uses Tax Havens to Dodge Taxes*, June 2015, available at <http://www.americansfortaxfairness.org/files/TheWalmartWeb-June-2015-FINAL1.pdf>.

vi Jeffrey Gramlich and Janie Whiteacre-Poe, *Disappearing Subsidiaries: The Cases of Google and Oracle*, Mar. 6, 2013, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2229576.