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:

On behalf of Oxfam America, I would like to thank the Securities and Exchange Commission ("SEC") for the opportunity to comment on the Concept Release entitled Business and Financial Disclosure required by Regulation S-K (the "Concept Release") which seeks public comment on certain business and financial disclosure requirements in Regulation S-K[1].

Oxfam America is a global organization working to right the wrongs of poverty, hunger, and injustice. We save lives, develop long-term solutions to poverty, and campaign for social change. Oxfam America seeks an honest and fair international tax system and greater transparency in corporate ownership and operations,. We understand that many of the disclosure requirements in Regulation S-K have not changed since they were first adopted and see the SEC's request for comments as a valuable opportunity to strengthen and modernize the disclosure requirements in Regulation S-K.

As the Senior Policy Advisor for Tax and Extractive Industries at Oxfam America, I am responsible for leading Oxfam America's tax policy work with a special emphasis on tax justice issues as they relate to the extractive industries. Prior to joining Oxfam, I was with the International Center for Settlement of Investment Disputes (ICSID) and the Energy and Extractive Industries Global Practice at the World Bank. I have also held positions with the International Tax Practices of KPMG and Ernst & Young in Luxembourg, where I have advised Fortune 500 multinational group on their international tax planning, mergers and acquisitions, holding and financing structures, international restructuring, repatriation planning and tax treaties issues.

[1] Business and Financial Disclosure Required by Regulation S-K, File No. S7-06-16, 81 Fed. Reg. 78, at 23916

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In order to strengthen the disclosure requirements so that they provide investors with better tools to identify risk factors and financial irregularities necessary to making informed investment and voting decisions, we would like to offer our recommendations on the following: (1) requiring registrants to disclose all subsidiaries and provide basic information about all subsidiaries rather than just significant ones; (2) requiring registrants to disclose their legal entity identifiers (LEIs) and the LEIs of their subsidiaries; (3) requiring disclosure of the number of employees for each of a registrant's subsidiaries; and (4) requiring registrants to submit basic corporate information on a country-by-country (CbC) basis (CbC Reporting).

Disclosure of subsidiaries. We respectfully recommend that registrants be required to disclose all subsidiaries and provide basic information about each subsidiary rather than just significant ones. Indeed, item 601(b)(21) requires "registrants to list all of their subsidiaries, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business"[2].

A 2009 study by the Tax Justice Network showed that out of the 100 largest companies in the UK, only 33 filed the information required by UK company law stating the names of each of their subsidiaries and the country in which they were located.[3] This deficiency would be overcome if the information were to be included in the audited financial statements of the reporting entity since no auditor would then allow that omission. Similarly, we believe that if Regulation S-K is strengthened to require registrants to list all their subsidiaries rather than just the significant ones, investors would be empowered to form opinions on the following issues:

a. Whether they wish to invest in a corporation with assets in locations they do not wish to associate with. This is of particular importance to ethical investors.

b. To what extent, if any, the registrant is dependent upon the use of subsidiary companies located in tax havens.

c. The degree of exposure to geopolitical risk that the company is likely to face simply due to its presence in certain locations.

d. The degree of reputational risk that the company might face as a consequence of its decision to trade in certain locations.

Furthermore, whilst there are occasions when a registrant trades entirely under its own name, many corporations operate under various and complex structures such as conglomerates, joint ventures and syndicates. By their nature, these structures make it hard for an investor to accurately identify the trade the registrant or its subsidiaries undertakes by location and by name. It is therefore vital that investors better understand the local economic activity undertaken by a multinational company which they might invest in. Investors must be able to assess the economic

[2] Item 601(b)(21)(i) of Regulation S-K [17 CFR 229.601(b)(21)(i)].

[3] Tax Justice Network, *Major corporations and tax haven*, March 2006, available at http://www.taxjustice.net/cms/upload/pdf/0903_Whereonearth.pdf

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activity of a company in all of its jurisdictions of operation in order to undertake proper investment appraisal of the company's activities. We therefore recommend that registrants be required to provide basic information about all subsidiaries so that investors may accurately identify and track the economic activity of the parent company and all of its subsidiaries in order to gain a detailed and comprehensive understanding of the group's operations.

Disclosing Legal Identifying Numbers. We respectfully recommend that registrants provide Legal Entity Identifiers (LEIs) for the parent entity and each of its subsidiaries, using the new international system for identifying individual business entities.

The LEI system has been adopted by financial regulators, including the U.S. Commodity Futures Trading Commission (CFTC), in over 60 countries, to identify regulated entities and their parent entities. The U.S. Treasury Department has called for all U.S. regulators to use the LEI instead of the existing non-compatible identifier codes. Universal use of the LEI would allow investors to automatically match an SEC registrant's data with information filed by the same entity with regulators in other jurisdictions.

As some companies may have hundreds or thousands of subsidiaries or affiliates operating around the world, including LEIs in S-K disclosures will help investors, policymakers, regulators and law enforcement, to accurately identify and analyze a public company's global subsidiaries. In addition, the use of LEI will help readers identify financial connections between subsidiaries, which should enable regulators and investors to better understand the true nature of exposures, and distribution of risks across the financial system.

Currently, variations in company names make it nearly impossible for investors to reliably match the list of subsidiaries provided in Exhibit 21 with other data. Requiring the LEI of each subsidiary would enable investors to match every public company's subsidiaries with other records. This simple step would signify a move toward the total modernization that the disclosure system desperately needs.

The LEI will provide a unique identifying number used worldwide, at no cost to business or government beyond the initial registration fee. Without placing an unnecessary burden on registrants, the LEI system will provide benefits to investors, regulators and policy makers.

Disclosing the number of employees. We respectfully recommend disclosure of the number of employees employed by registrants and by each of a registrant's subsidiaries, on a country-by-country basis. This will provide investors with the information necessary to understanding the structure of the corporate group and its international strategy.

Information about the number of persons employed by the registrant and its subsidiaries in each country of operations can help investors assess the size and scale of a registrant's operations. Any changes in the number or type of persons employed can also indicate trends or shifts in a registrant's operations, and constitute useful information for investors to make investment and voting decisions.

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Currently, employee data information provided by registrants in most filings varies and is provided with little or no explanation. For instance, some registrants disclose the number of employees in an ad hoc manner, only disclosing employees from specific departments or country operations without a systematic approach. Also some registrants do not make a distinction in their disclosure between full time and part-time employees, or independent contractors participating in the ordinary operating activities of a registrant or a registrant's subsidiaries. Leaving the decision up to registrants to choose what information to disclose regarding the number and type of employees, could lead to a significant degree of uncertainty and variation in the data disclosed and allow for inconsistencies in reporting.

In addition, the current approach creates a legal and logical discrepancy in that the U.S. tax code currently has a detailed body of law distinguishing between "independent contractors" and "employees" for tax purposes. This approach will only serve to further muddle U.S. tax law in an area that is already highly contested. We therefore recommend registrants to disclose the number of persons retained as independent contractors as well as the number of regular employees.

Another related issue of particular significance involves entities organized or operated in tax havens. One common tax avoidance tactic is for multinationals to form shell entities in tax havens and hire corporate service providers, law firms, or financial institutions to provide the shell entities with a president, manager, or other officer. Allowing registrants to treat those hired individuals as "employees" would not only artificially inflate the company's employment figures in the jurisdiction, but also completely distort the meaning of the word "employee." The same would be true if the registrant were to hire, for example, a local, self-employed accountant to prepare the shell entity's annual financial statement, deeming that hire to be an "independent contractor." Since preparing financial paperwork could be seen as part of the shell entity's "ordinary operating activities," the registrant could conceivably claim the accountant as one of its "employees," further distorting the meaning of the word, inflating employment numbers, and creating a misleading picture of its offshore operations.

To avoid that type of misleading, contradictory, and difficult to understand employment data, S-K disclosure rules should allow registrants to count as employees only those individuals for whom the company pays payroll, social security, or other employment taxes. This would help create a consistent approach for defining "employees" versus "independent contractors," and avoid injecting new ambiguities into an area already rife with controversy.

Country-by-Country Reporting. We respectfully recommend registrants to submit basic corporate information on a country-by-country basis, including the profits or losses incurred before taxes, number of employees, stated capital, tangible assets and income tax accrued and paid. This information could be submitted by registrants as a new exhibit

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replicating the reporting prescribed by the Treasury rule requiring U.S. multinational corporations to file annual CbC reports with the IRS[4].

The United States and its international partners agreed to begin collecting hard data on where multinationals are conducting business, declaring profits or losses, and paying taxes as a first step towards countering multinational corporate tax dodging through profit-shifting. Countries collaborated on a set of internationally agreed upon standards and guidelines, under the aegis of the Base Erosion and Profit Shifting Initiative, which, among other things, requires the parent of multinational companies to report certain business and financial data to their home countries on a country-by-country basis. This information, collected in so-called CbC Reports, would then be shared among tax authorities so that governments could build a better factual foundation for analyzing multinational tax practices. Because multinational profit-shifting and tax avoidance necessarily involves more than one country, it is not a problem that the United States or any other country can understand or solve alone. Moreover, as home to many of the large multinationals engaging in questionable profit-shifting and tax practices, U.S. implementation of its global commitment to collect CbC Reports from American multinationals is critical to tackling both the U.S. and global tax problem.

Today, no one in the United States has reliable CbC information about large U.S. multinationals detailing where they operate, how many employees they have, the size of their capital investments, the amount of their profits or losses, or the taxes they pay. The information to be collected in the CbC Reports will, for the first time, provide accurate, timely economic, business, and tax information that could play an invaluable role in designing effective and efficient U.S. policy. However, the proposed rule does not require these companies to make this information public, therefore hampering accountability efforts by external stakeholders. The rule makes CbC Reports confidential to the IRS and, in time and under specific circumstances, tax authorities in foreign jurisdictions. We strongly recommend that CbC Reports be made publicly available either by the U.S. Government or by the reporting entities as a statutory requirement.

The publication of a profit and loss account for each jurisdiction in which a registrant has a subsidiary will be key to investors as this data, including data on sales and purchases undertaken on an intra-group basis, will allow an investor to appraise the following:

a. The geographic diversity of the external sales of the company

b. The risk that this diversity creates for the company

c. The risk that the internal sales supply chains create for the company

d. The approximate directions of flow of goods and services through the group as a result of intragroup trading

e. The profit earned by a group in each location as a proportion of third-party and intra-group sales, indicating the risk of a transfer pricing challenge arising from tax authorities,

[4] See Country-by-Country Reporting, Treasury final rule, 81 Fed. Reg. 126 (6/30/2016), at 42482, and Form 8975

particularly if the group is making significant use of tax havens or if its ratios of profit to sales are high in low tax jurisdictions and low in high tax jurisdictions.

f. The locations in which an MNC employs its labor, the degree of risk that this might give rise to, and any issues or stresses likely to arise as a result of significant variations in average pay by location, particularly when compared to other similar undertakings.

g. The flow of finance charges within the group, and the particular impact that these might have on an intra-group basis with regard to the re-allocation of profits between jurisdictions, giving rise to risk of transfer pricing or thin capitalization challenge from tax authorities, prejudicing the potential quality of future earnings.

h. The rate of return on capital employed by jurisdiction, suggesting whether or not assets are efficiently allocated by group management to the locations in which the MNC trades.

i. Consistent, comparative data between companies allows this analysis to be replicated between MNCs, adding to the basis for assessment of activity by location and the effectiveness of the management of each corporation in allocating resources.

Data on payments made by multinational corporations to the governments that host their upstream activities is of considerable importance to investors, because the proper governance of such payments and the elimination of illicit flows is critical to the maintenance of low risk, long-term, stable earnings from these jurisdictions, whose own well-being is dependent upon receipt of such funds in a controlled, accountable and managed fashion. As such this data is vital to the proper appraisal of the degree of cooperation the company is offering in the elimination of illicit financial flows while assessing the contribution made to the countries who host its activities. This is fundamental to the maintenance of the critical long-term relationships that underpin success.

For all the reasons noted, country-by-country disclosure is vital to investors who wish to properly appraise the activities of the multinational corporations to which they loan funds or in which they hold equity stakes.

In summary, it is suggested that CbC reporting data will provide the following benefits to investors in multinational corporations:

a. Increase profitability since less time will be put into tax management and more into making profit;

b. Reduced risk;

c. Greater confidence in the governance of the enterprise;

d. Enhanced ability to predict future earnings;

e. Better valuation of the company;

f. Greater stability of earnings.

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Thank you for this opportunity to comment on the Concept Release. Please contact Tatu Y. Ilunga at Oxfam America with any questions you may have.

Sincerely,

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Senior Policy Advisor
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