

July 21, 2016

Mary Jo White, Chairman
Kara M. Stein, Commissioner
Michael S. Piwowar, Commissioner
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 Chairman, Commissioners, and Secretary:

Responsible Sourcing Network (RSN) appreciates and welcomes 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 and corporate responsibility 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*, and *Number of Employees* under Section IV.A.5.

Founded in 2010 as a project of the nonprofit organization As You Sow, RSN champions human rights with vulnerable communities in the mining and harvesting of raw materials found in products we use every day. RSN builds responsible supply chain coalitions of diverse stakeholders including investors, companies, and human rights advocates. Currently, RSN works with network participants to leverage their influence in the areas of conflict minerals and forced labor to create positive change for brands, consumers, and the impacted communities.

RSN contributed extensively to the rule making process of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502 on Conflict Minerals. RSN coordinated five multi-stakeholder submissions to the SEC during the rule making process.¹ The comments here do not reflect the opinion of the multi-stakeholder group, they are only the opinion of RSN staff.

We at RSN believe that many environmental and human rights issues can be resolved by increased corporate responsibility. Working with investors, corporations, and human rights activists, we support business models that reduce risk, benefit brand reputation, and protect long term shareholder value while simultaneously bringing about positive change for the environment and human rights.

¹ <http://www.sourcingnetwork.org/sec/>

RSN continues to track Dodd-Frank 1502 disclosures and will issue our third report called *Mining the Disclosures* in October, 2016 analyzing companies activities and their disclosures relating to Conflict Minerals.²

RSN ardently endorses disclosure of sustainability information that is material and comparable, and that affects the financial interests of shareholders, as well as communities. Numerous investors and organizations like the PRI, Ceres, CDP, Know the Chain, Corporate Human Rights Benchmark, and the US Forum for Sustainable and Responsible Investment (US SIF) have made articulate cases for the need for such information to meet the fiduciary obligations of investors. We are aware that hundreds of global companies embrace the case for such disclosure as they publish useful annual sustainability or corporate citizenship reports. They understand the business and financial case for addressing these issues. The value of such information is affirmed by an expanding number of global investors and companies alike, and has been an issue that RSN has raised with companies over years of engagement. However, most of the disclosures are done on a voluntary basis. Because the disclosures are voluntary, the reporting is inconsistent and therefore insufficient for investor needs.

RSN believes 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 environmental and human rights 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.

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 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.

Section F, *Disclosure of Information Relating to Public Policy and Sustainability Matters*

216. Are there specific sustainability or public policy issues [that] are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?

Disclosure of financially material sustainability information is already required under current rules. However, the resulting disclosures fail to meet investors’ needs. Disclosure of ESG information is useful

² <http://www.sourcingnetwork.org/mining-the-disclosures/>

to investors and necessary for strategic investment planning. As we have seen with Dodd-Frank 1502 reporting, disclosure allows investors to identify industry leadership in each sector, tells investors how well positioned a company is to respond to changing regulations, is essential to the evaluation of investment risks, and informs overall investment and engagement strategies. The current framework, which leaves it up to the corporation to determine when such an item is material, however, has not produced the comprehensive and comparable information that we are seeking.

ESG information is material to understanding a company's financial performance and quality of management, and helps to contextualize an investor's assessment of the company relative to the whole portfolio. ESG issues present portfolio-wide risk; issues such as climate change and human rights are relevant beyond a specific company. The ability of investors to assess the entire portfolio fits within the U.S. Supreme Court definitions of "materiality" and "a reasonable investor,"³ as it is critically important for investors to avoid risks resulting from corporate failure to address matters of ESG concern.

RSN is pleased to see that hundreds of companies are now providing some ESG reporting. Shareholder requests for more responsible policies and practices around a variety of ESG issues have been the subject of 1,177 shareholder resolutions by ICCR members between 2011 and 2016.⁴ Companies have begun to respond to the request for this information from investors, as it has become increasingly clear to shareholders that evaluating corporate risk management around sustainability issues is critical. This increase in ESG disclosure follows the recent trend of increasing investor support for ESG disclosure in shareholder resolutions. For example, a 2016 shareholder resolution on sustainability reporting at CLARCOR, Inc. received a 60.8% vote.⁵ As a second example, a 2016 shareholder resolution on reporting of methane emissions management at WPX Energy, Inc. received a 50.8% vote.⁶ While shareholders currently use the resolution process to convince companies to disclose more and better ESG information, our time would be better spent meeting with companies on performance improvements and risk mitigation strategies – rather than basic requests for commonplace sustainability reporting that we expect to now see across all sizes of companies.

For example, with respect to GHG emissions data, we have found that several companies in the same industry will use different calculation methods and reporting platforms (i.e. CDP and individual company reports), which make the information that is available difficult to understand, and make it difficult to assess how one company is managing the risk of GHG emissions against another. An additional example exists related to management of water risk throughout corporate supply chains. While some companies publicly disclose a water management policy that applies to their operations and supply chain, others will only have a policy that applies to their operations, and others will include only sparse information in a Supplier Code of Conduct that is difficult to locate within their public website. Instead of making the case company by company through engagement, as well as to better enable RSN to make use of the information, it is preferable to require a clear disclosure format, consistent expectations, and guidance on how companies should implement it.

Corporate approaches to ESG issues and risks relate directly to value. Corporations that recognize the need to address ESG concerns are better positioned to anticipate changes and adapt most effectively.⁷ A

³ [TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438 \(1976\)](#)

⁴ ICCR, [2016 Proxy Resolutions and Voting Guide](#)

⁵ Walden Asset Management, [Walden's ESG Reporting Resolution at CLARCOR Earns Majority Support](#)

⁶ Ceres, [WPX Energy Methane Emissions Management](#)

⁷ ICCR, [Social Sustainability Resource Guide: Building Sustainable Communities through Multi-Party Collaboration](#)

company's ability to define and measure its progress will help investors consistently analyze portfolios, creating a more robust investment strategy. Instead of this more robust disclosure and associated strategic thinking being relevant to only a small subset of companies that have received pressure from investors or their customers to provide this information, RSN recommends that the SEC should require at least some subset of information of all companies, to enhance the practices and performance of all issuers in this area. Additionally, we want to see that the ESG information provided is verified externally, which would ensure best practice reporting.

Disclosure of ESG information demonstrates how well positioned a company is to respond to changing regulation and/or its context. RSN is also concerned about the external impact of corporate policies, which helps us to evaluate systemic risk. We look to the impact of corporate activity on society, particularly workers and local communities, as well as on the environment and the impacts to natural resources.

While RSN appreciates the work being done by some companies to provide verification of some reporting, we believe that, as ESG evaluation has become common practice by large asset managers, mandatory disclosure would strengthen investor knowledge and decision making. On a larger scale, global stock exchanges have begun to use sustainability as a listing requirement.⁸

The SEC could create meaningful disclosure on ESG information by ensuring that there is mandatory disclosure with consistent, accurate, and reliable reporting by companies on these important and material items for investors.

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?

RSN recognizes that hundreds of companies are providing sustainability reporting to differing degrees on their websites. A significant reason that companies are now reporting on ESG issues is the history of active engagement by investors.

Available information related to ESG performance and disclosure on company websites is insufficient for investor needs. While listing this information on company websites can be helpful, this type of voluntary disclosure is inconsistent, is provided with varying frequency, and is often very difficult to find. Additionally, information companies provide in corporate sustainability websites and online reports is information intended for all stakeholder audiences. We appreciate this information, but seek mandatory reporting of information that is necessary for investor decisions. We agree with CDP's statement to the SEC that if information is deemed necessary or appropriate to protect investors, then this material ESG data should be included in a company's annual report and 10-K filings.⁹ This would ensure that investors

⁸ Ceres, [Stock Exchanges and Sustainability](#)

⁹ [Response from CDP to: Concept Release: Business and Financial Disclosure Required by Regulation S-K](#)

have access to regularly reported data in a more consistent and easy-to-find way. Sustainability reports that are filed on corporate websites are not comparable, are inconsistent, are not audited, and are therefore unreliable. As just a few illustrative examples of the challenges, some reports are only several pages long, while others are over a hundred pages; some are formatted as an online web platform, while others are a well-indexed report; some include information on climate change management and scenario planning, while others focus on corporate philanthropy and employee wellness initiatives. While all this information is valuable to a certain audience, having the most relevant information available to investors in a simple format at the same location would be ideal and most efficient.

Investors have had to spend significant amounts of time and money to get the level of disclosure that currently exists. Companies are providing some information on websites, through sustainability or citizenship reports or other voluntary disclosure, but this information is not easily searchable and investors cannot benchmark companies on the basis of varied disclosure. The result is that there is hidden risk for investors due to this inadequate and uneven disclosure. ESG information is critical for investors to understand what they own and to implement their priorities in their investment decision-making.

We urge the SEC to establish mandatory disclosure requirements, and that those requirements are made through annual filings in a consistent and comparable manner. We believe such disclosures should be a combination of qualitative and quantitative reporting, so that companies have clearer expectations for metrics regarding certain types of risk, and so that they have narrative discussion to explain in more detail to investors the risks and opportunities of an ESG factor that may impact the business.

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?

There are currently several voluntary reporting mechanisms that are each gathering some information which is helpful to investors when evaluating ESG risks. From the Sustainability Accounting Standards Board (SASB), CDP, and the Global Reporting Initiative (GRI), RSN appreciates the extensive work done by these organizations over the years in creating standards for meaningful disclosure of vital ESG information. However, because each reporting standard is voluntary, each has weaknesses. Not all companies choose to disclose through these frameworks. In addition, some companies may respond to only partial sections of a disclosure questionnaire, leaving out portions of the answers that may be most material or relevant to investor concerns, and therefore the response has limited value. While investors appreciate knowing which reporting standards companies are working with, as well as the information in them, without specific mandatory standards, the information is difficult to compare. For example, while the SASB tool is valuable for sector specific guidance, it has a narrower definition of materiality that might not capture issues of systemic risk which RSN considers to be important. While the CDP is valuable for specific indicators on climate, water, and forestry, the voluntary corporate reporting results are not consistently comprehensive across issues. RSN urges the SEC to build further expertise in the information that is material around a variety of subject areas and across industries, and to consider each of these reporting standards in order to draw from them and create a consistent mandatory reporting mechanism that provides investors with the critical information they need to evaluate a full spectrum of ESG risks. SEC guidance or rules should encourage companies to disclose the reference standards or programs utilized.

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?

RSN urges the SEC to adopt a policy where line-item disclosure of material information across sectors is required, but is also flexible so that requirements can be amended as risks evolve within corporate sectors. We also recommend that the Commission develop a process for regularly gathering ESG disclosure views from both companies and investors to identify emerging issues and track the evolution of disclosure needs in this space.

RSN works on ESG issues that are related to human rights in corporate supply chains. RSN has listed below a number of key indicators that we would suggest become mandatory or improved across the following areas:

Human Rights

Information about the human rights risks present in a company’s operations and supply chain, as well as the management of those risks, is relevant information for an investor in assessing a company’s performance and management approach in both the short- and long-term. Poor management of human rights risks can lead to significant reputational, regulatory, and litigation risk for a company and can have a material impact on financial performance.¹⁰ The adoption of the UN Guiding Principles on Business and Human Rights (UNGP) in 2011 has made it clear that there is a role for business to play in respecting human rights.¹¹ Information about how a company is meeting its expectations under the UNGP would be relevant for investors, particularly in industries where there are known risks and violations related to working conditions, labor rights, race and gender discrimination, forced labor and modern day slavery, and business impacts on local communities throughout the global supply chain.

There are tools that are evolving to assess and benchmark companies on their human rights policies, practices, and disclosure, including the UNGP Reporting Framework,¹² the Corporate Human Rights Benchmark,¹³ and Know the Chain.¹⁴ However, these tools rely on information that is publicly disclosed by companies, and because there are not clear standards, this information is inconsistently provided or is of varying quality, not comparable, and does not always include reliable data.

Furthermore, these tools are unable to assess all companies, and are therefore of limited value to investors with a diversified portfolio. Therefore, it would be beneficial to require mandatory disclosure of several key elements related to management of human rights issues. The experience from the mandatory disclosure related to conflict minerals demonstrates that requirements for further disclosure encourage

¹⁰ See e.g. The Wall Street Journal, [Accused of Labor Trafficking, Oil-Rig Repairer Files for Bankruptcy](#)

¹¹ UN, [Guiding Principles on Business and Human Rights](#)

¹² [UN Guiding Principles Reporting Framework](#)

¹³ Business & Human Rights Resource Centre, [Corporate Human Rights Benchmark](#)

¹⁴ [Know the Chain.org](#)

companies to better understand their risks and develop the internal infrastructure, policies, and practices to mitigate those risks.

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:

- Governance and Board responsibility for human rights issues.
- The company's approach to stakeholder engagement.
- Implementation of a due diligence system to identify and address human rights abuses that is consistent with the OECD's Responsible Business Guidelines for Multi-National Enterprises.¹⁵ It should include the following:
 - 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.
 - 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.
 - Reporting on traceability, purchasing practices, recruitment, worker voice, and monitoring.¹⁶
- Contribution to making a positive impact in the communities and lives of the stakeholders who have been negatively impacted by human rights abuses related to the companies' business activities.

Indigenous Rights and Community Relations

RSN network stakeholders that invest in extractives industries urge these companies to address the concerns of local communities and indigenous populations. The need to respect the rights of indigenous peoples and local communities relevant to natural resource extraction comes from more than a community need; there are clear financial risks. When communities do not give companies a social license to operate, it has significant financial implications, as has been seen with the Newmont Mining Minas Conga location in Peru. As stated by Professor John Ruggie, "for a world-class mining operation...there's a cost somewhere between \$20 million to \$30 million a week for operational disruptions by communities" and the time it takes to bring oil and gas projects online has "doubled over the course of the previous decade, creating substantial cost inflation."¹⁷

A 2011 study by Environmental Resources Management of delays associated with a sample of 190 of the world's largest oil and gas projects (as ranked by Goldman Sachs) found that 73% of project delays were due to "above-ground" or non-technical risk, including stakeholder resistance.¹⁸ In 2014, Ernst and Young elevated the "social license to operate" to the third place on its list of the greatest business risks to the

¹⁵ [OECD MNE Guidelines](#)

¹⁶ Know the Chain, [ICT Benchmark: Themes Key Findings](#)

¹⁷ Business-Ethics.com, [Business and Human Rights: Interview with John Ruggie](#)

¹⁸ BSR, [Commercial Value From Sustainable Local Benefits in the Extractive Industries: Local Content](#)

mining industry, citing that “the frequency and number of projects being delayed or stopped due to community and environmental activists continues to rise.”¹⁹

In 2013 a dispute between Southwestern Energy and the Elsipogtog First Nation in Canada resulted in a blockade that halted exploration activities for several weeks, and ended in violent confrontation with police that made international headlines. An injunction filed by Southwestern Energy to dismantle the blockade cited losses of \$60,000 a day.²⁰ However, this number is likely an underestimation of the actual cost to investors because it only factored in the costs of rental equipment that was unusable during the blockade. It did not factor legal fees, lost productivity, staff and executive leadership time, or the public relations expenditure needed in response to the surge in bad press. It also did not account for the fact that hydraulic fracturing was later banned in New Brunswick, rendering its \$37 million investment in the province stranded until further notice.

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.
- 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.

Conflict Minerals

While disclosure on conflict minerals is required under the Dodd-Frank Act, additional requirements from the SEC are necessary for investors to accurately review extractives companies in their portfolios. Over 1200 companies have now reported to the SEC regarding their sourcing of conflict minerals – tin, tantalum, tungsten, and gold – for three years in a row. Companies have reported on the advantages they have seen to increasing transparency in their supply chains, having a clearer understanding on the origin of their raw materials, and looking at their human rights risks.

The consistent disclosures that companies have submitted to the SEC over the last three years have allowed investors to start tracking companies’ progress in improving their activities to address the risk that minerals used in manufacturing may support conflict in the DRC. Reports such as Responsible Sourcing Network’s reports (2014, 2015) *Mining the Disclosures: An Investor Guide to Conflict Minerals Reporting*²¹ have offered investors an analysis of individual companies’ and industrial sectors’ performance, have ranked companies, and have pointed out best practices.

Several lessons have been learned from the implementation and evaluation of reporting under 1502.

¹⁹ EY, [Business risks facing mining and metals 2015](#)

²⁰ Al Jazeera America, [Shale gas company loses bid to halt Canada protests](#)

²¹ Responsible Sourcing Network, [Mining the Disclosures](#)

The mandatory aspect of this reporting has led to new companies and new industries putting standardized programs and procedures in place, which has a greater impact on suppliers.

However, a company does not have to establish that it conducted a “good faith” Reasonable Country of Origin Inquiry (RCOI), it only needs to assert it. There needs to be more accountability about how companies decide whether they should be reporting. Allowing companies who may conduct a less thorough RCOI to skip out on more comprehensive reporting incentivizes risky behavior, and as a result punishes companies who are more transparent.

Expanding disclosure requirements to include other high-risk metals and geographic locations could follow the model of conflict minerals. Linking Section 1502 implicitly to the OECD Guidance has led many companies and sectors to participate in the OECD process. Currently, the OECD is working on guidance on a list of high-risk minerals that goes far beyond 3TG. Having the OECD Due Diligence Guidance as the de facto framework has been hugely useful. Frameworks are constantly being revised and updated. The OECD guidance itself does not limit reporting to a specific geographic region, mineral, or issue, and increasingly conversations among leading conflict minerals stakeholders have turned to other DRC-related human rights risks, as well as other minerals that are involved in such risk.

- The five steps of the OECD have turned out to be the one of the most substantial aspects of the Conflict Minerals rule and the most relevant to investor questions.
- Also critical is the requirement to list facilities. More clarity is needed for companies, including what information should be provided.
- Companies have expressed confusion as to whether these should be all POSSIBLE facilities or ACTUAL, CONFIRMED facilities in their supply chain, and most stakeholders agree that it should be all possible facilities.
- Companies should be required to summarize the total number of facilities that are compliant with a due diligence scheme.
- Less critical or useful to investors has been specific labels a company may use such as “DRC Conflict Free” or “undeterminable” to its report. In fact such labels may obscure critical due diligence and responsible sourcing issues.
- Rather than tying an audit to a label, there is no reason that a company should not simply be required to conduct an independent private sector audit on a mandatory due diligence report. Furthermore, an audit should not result in less transparency from companies, which is currently the case in the Conflict Minerals rule.

59. As outsourcing and subcontracting have become more prevalent in the last few decades, what, if any, additional information about a registrant’s outsourcing or subcontracting arrangements should we require? Would this information be most useful in the context of the description of the registrant’s business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management? What would be the challenges of requiring disclosure of this information?

From conflict minerals, we have learned that before the link between investment decisions and human rights impact can be made, the first task is to tackle traceability challenges. Having companies specify what product or product category contain which materials, or country of origin, in a relevant disclosure should be required.

Disclosure for investors about a company's outsourcing and subcontracting is vital in understanding a company's risks related to supply chain operations. Supply chain risks related to labor and human rights violations, as well as environmental impacts, are increasingly recognized by investors as material to the long-term health and sustainability of a company. Investors believe that the most profitable companies over the long-term will be those which are creating transparent, ethical, and accountable corporate cultures reflected by improved disclosure and reporting, especially on the issue of worker rights in their supply chains.

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.

Thank you for your consideration of our input.

Sincerely,



Patricia Jurewicz
Director
Responsible Sourcing Network,
a project of As You Sow