Congress of the United States

Washington, DC 20510

July 21, 2016

The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Concept Release: Business and Financial Disclosure Required by Regulation S-K (File No. S7-06-16)

Dear Chair White:

As part of your ongoing efforts to modernize business and financial disclosures, we urge you to require large, public companies to include country-by-country reporting of certain key financial, tax, and operational data in their annual reports. We believe investors and the public should know when multi-national corporations use legal loopholes and other gimmicks to shift their earnings offshore and avoid potentially billions of dollars of taxes.

Profit shifting and aggressive tax planning by large companies is substantial. For example, in 2010, U.S.-based companies reported total profits in Bermuda of more than 15 times the country's Gross Domestic Product (GDP), a clear indication that a large share of those alleged profits were actually the result of bookkeeping gimmicks, not real economic activity in that country. Data shows similar profit shifting to other tax havens, including Luxembourg, the Bahamas, the British Virgin Islands, and the Cayman Islands, where companies report profits well in excess of a country's GDP. In total, Professor Kimberly Clausing has estimated that offshore profit shifting by large companies has resulted in as much as $100 billion in reduced tax federal tax payments each year.[1]

Despite the aggregate indications of substantial profit shifting by large corporations, without public country-by-country reporting by individual firms, right now investors and the public are generally unable to assess the extent to which profit shifting presents a risk at any particular company. For example, in recent litigation over the valuation of computer manufacturer Dell Inc., the Delaware Chancery Court which heard the case relied on two experts who disagreed about the appropriate company valuation by billions of dollars – in significant part because of disputes over the company's expected tax rates on offshore income. Little of the data used in settling this multi-billion dollar valuation dispute was provided in the company's public filings; instead investors only became aware of the nature of the company's tax practices after discovery and litigation unveiled previously private tax information.

[1] Kimberly A. Clausing, *Profit shifting and U.S. corporate tax policy reform*, WASHINGTON CENTER FOR EQUITABLE GROWTH (May 2010), *available at* http://equitablegrowth.org/report/profit-shifting-and-u-s-corporate-tax-policy-reform/

In addition, knowing where a company's assets are located is key to assessing risks. For example, this year, McDonald's offices in Paris have been raided as a part of the tax investigations, and according to reports, French authorities are seeking to recover as much as $300 million in taxes. Furthermore, one company alone – Apple – may be forced to repay $19 billion in tax subsidies as a result of the European Union's ongoing state aid cases, which have targeted countries that provide tax subsidies to companies in violation of European Union trade rules. These are just two examples of situations where without country specific information, investors will be unable to assess how a foreign country's tax system and changes in policy may impact a company's bottom line.

Investors have spoken out in favor of enhanced tax disclosures. For example, last year, more than 100 institutional investors raised corporate tax practices in reports to Principles of Responsible Investment, a United Nations investor initiative. Others have raised similar concerns with profit shifting in general or specific tax avoidance practices like corporate inversions.

Finally, we note that much of the world is moving in the direction of public country-by-country reporting by large companies. Establishing a framework for public country-by-country reporting now will allow the United States to play a leadership role in determining how and when such reporting will take place. Without U.S. leadership on this issue, foreign subsidiaries of U.S companies face the risk of being drawn into an inefficient patchwork of international disclosure systems. For example, in Europe, banks have been required to provide public country-by-country reports since 2013, and the European Commission recently proposed requiring public country-by-country reporting by all large companies. Plus, country-by-country reporting will have relatively little additional burden for large companies, as most will already be required to make private country-by-country reports to the Internal Revenue Service or international tax authorities beginning next year.

Thank you for your efforts to promote a market environment that is worthy of the public's trust. We look forward to working with you to further strengthen our economy by requiring large companies to report key financial, tax, and operational data on a country-by-country basis.

Sincerely,

Al Franken
U.S. Senator

Sheldon Whitehouse
U.S. Senator

Edward J. Markey
U.S. Senator

Bernard Sanders
U.S. Senator

Lloyd Doggett
Member of Congress

Janice D. Schakowsky
Member of Congress

Mark Pocan
Member of Congress

Gwen Moore
Member of Congress

Rosa L. DeLauro
Member of Congress

Keith Ellison
Member of Congress

Raúl M. Grijalva
Member of Congress

Michael E. Capuano
Member of Congress

David N. Cicilline
Member of Congress