ATTORNEY GENERAL OF COLORADO
Cynthia H. Coffman

July 29, 2016

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

Re: Business and Financial Disclosure Required by Regulation S-K—File Number S7-06-16

Dear Secretary Fields:

Last week, a group of my fellow Attorneys General brought to my attention Commission Concept Release No. 33-10064 for Business and Financial Disclosure Required by Regulation S-K ("Release"). I am aware that the comment period for that Concept Release closed on July 21. I nevertheless feel compelled to write separately to express my concerns regarding a portion of your proposal.

As a general matter, I support the Commission's efforts to modernize disclosure requirements for the benefit of investors and registrants. But I have serious reservations regarding the Commission's request for comment on mandatory disclosure of environmental, social, or governance ("ESG")[1] information. Expanding mandatory disclosure of ESG information would deviate from the SEC's role as the nation's dispassionate regulator of market information, suggesting that the SEC is willing to favor some "policy-driven disclosure requirements"[2] over others, regardless of whether the disclosure provides information that meets the Commission's traditional standard of materiality.

Existing guidelines already require disclosure of environmental issues that are material to financial performance.[3] Therefore, to the extent the Commission proposes to require additional disclosure of ESG information, it seeks to expand disclosure requirements to include information that would not be considered "material" based on the Commission's

[1] Release at pp. 212-15.
[2] Release at p. 212
[3] Securities and Exchange Commission, "Commission Guidance Regarding Disclosure Related to Climate Change," February 8, 2010 (https://www.sec.gov/rules/interp/2010/33-9106.pdf).

own definition.[4] The purpose of disclosure is to provide investors with information they need to make informed investment and voting decisions.[5] More specifically, disclosure is intended to facilitate the following: increased accuracy of share prices, decreased fraud, increased oversight of managers, integrity in the securities markets, heightened investor confidence, coordination of registrants and increased accessibility of information to investors.[6] The mandatory disclosure of immaterial ESG information does not appear aimed at serving these outcomes; it instead appears driven by a willingness to use the securities laws to "address societal issues"[7]—something far beyond the mission and expertise of the SEC.

When the Commission engages in rulemaking, it is statutorily required to consider whether its regulatory actions will promote efficiency, competition and capital formation.[8] The Fixing America's Surface Transportation ("FAST") Act tasked the Commission with studying Regulation S-K in an effort to modernize and simplify disclosure requirements of *material* information, including exploring methods for discouraging repetition and the disclosure of *immaterial* information.[9] Requiring disclosure of immaterial ESG information will not protect investors or promote efficiency. If the Commission mandates disclosure of ESG information that is not material, it will stray from its nonpartisan investor-protection mission and act in a manner inconsistent with its statutory charge. For these reasons, I urge you not to adopt such a requirement.

Sincerely,

Cynthia H. Coffman

CYNTHIA H. COFFMAN
Colorado Attorney General

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[4] When used to qualify a requirement for the furnishing of information as to any subject, the term "material" limits the information required to "those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered." 17 CFR 240.12b-2; *see also TSC Industries v. Northway*, 426 U.S. 449 (1976).
[5] Release at p. 13.
[6] *Id.* at pp. 13-14.
[7] Release at p. 212.
[8] 15 U.S.C. § 78c(f); *see also* 15 U.S.C. § 77b(b).
[9] Pub. L. No. 114-94, 129 Stat. 1312 (2015).

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