FACTCOALITION
Financial Accountability & Corporate Transparency

October 3, 2016

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

Re: File Number S7-15-16

Dear Mr. Secretary:

We appreciate the opportunity to provide comments on the Securities and Exchange Commission's (SEC) proposed "Disclosure Update and Simplification" rule.

The stated purpose of the rule is "…to facilitate the disclosure of information to investors, while simplifying compliance efforts, without significantly altering the total mix of information provided to investors."[i] While we appreciate the goal of the proposal, the following comments raise a number of significant concerns about how the proposal specifically addresses or, in some cases, fails to address the stated interests of investors. We also share our views on the questions pertaining to income tax disclosures in an ever-changing global economy.

Financial Accountability and Corporate Transparency (FACT) Coalition

Founded in 2011, the Financial Accountability and Corporate Transparency (FACT) Coalition[ii] is a nonpartisan coalition of more than 100 state, national and international organizations working toward a fair tax system that addresses the challenges of a global economy and promotes policies to combat the harmful impacts of corrupt financial practices.

The Stated Interests of Investors

In April 2016, the SEC issued a Concept Release[iii] to gather feedback from stakeholders on the value of the SEC's current disclosure requirements and what, if anything, should be changed, updated, included or removed. The request for information covered a wide variety of topics including the timing and frequency of filings, accounting practices and substantive issues involving sustainability among others. There was significant interest in the Concept Release. According to one outside analysis[iv] – in which The FACT Coalition participated -- as of August 16, 2016, 26,512 comments were filed – significantly more than all but six of 161 major rulemakings since 2008. For comparison purposes, we note that the median number of comments filed in response to SEC rulemakings in that period is forty-five. By any measure, the response demonstrates heightened interest in this topic.

The analysis, also found:

> *"Support [for broad or increased disclosures] came from a wide range of sources: institutional investment managers, individual investors, public pension funds, research analysts, public*

> *interest advocates, individual members of the public, academics, trade associations, standards setting organizations, accountants, members of Congress, and even other government entities. Overall, these commenters tended to be the recipients of companies' disclosures, those the SEC is institutionally charged to protect.*
>
> *A handful of commenters called for "streamlining" or eliminating disclosures. These commenters were a small handful of companies, professional services providers or associations representing companies. Not representative of the growing consensus around sustainable corporate practices, these commenters were notable for their connections to a small handful of industries, such as oil and gas, chemicals, financial services, and insurance. These commenters generally tend to be the parties making the disclosures or their representatives."*

A full copy of the analysis is attached.

Any fair reading of the responses would lead to the conclusion that investors and consumers of the disclosure information were not burdened by 'information overload.' Rather, they almost universally called for increased disclosure to better assess emerging risks – in some instances, risks that may not have existed in a previous rule writing era. The comments represent important and thoughtful insights from stakeholders and consumers of the information that deserve serious consideration.

The proposed Disclosure Update and Simplification rule was issued on July 13, 2016, eight days prior to the close of the comment period for the Concept Release (July 21, 2016). The timing could not have afforded the SEC the opportunity to review, consider and integrate appropriate feedback into the proposed rule.

We strongly urge the SEC to review the comments in response to the Concept Release and consider the concerns of the constituencies that use the information before rulemaking in this area moves further ahead.

Additional Income Tax Disclosures

The proposed rule specifically asks if, "additional income tax disclosures that would be useful to investors?" Also noted in the proposed rule: "Rule 4-08(h) requires disclosure of the amount of domestic and foreign pre-tax income and income tax expense." This is insufficient to provide investors with the information needed to properly assess investment risk.

On July 6, 2016, The FACT Coalition submitted detailed comments in response to the Concept Release[v] demonstrating the need for additional disclosure of tax strategies of multinational corporations. A copy of those comments is also attached for inclusion in the record.

We will not repeat the entirety of our comment but will highlight briefly three issues that present a powerful case for greater disclosure of international tax strategies used by multinational corporations. In a couple of areas there is additional information that has come to light since we filed our comments on the Concept Release.

1. ***The Rise of Offshore Profits***

We noted the growth in offshore profits among U.S. multinational issuers. In our comment we wrote:

> *"The role played by international tax strategies and rates on the operations and earnings of many U.S. corporations is enormous and growing. In large part, this trend is due to many large U.S. issuers' increasing reliance on offshore earnings, cash balances, and tax benefits. For example, a recent report by Citizens For Tax Justice found that offshore earnings held by U.S. corporations had in 2015 reached an eye-popping total of $2.4 trillion."*

On September 29, 2016, the Joint Committee on Taxation released an updated estimate of U.S. corporate profits held offshore. This latest estimate is $2.6 trillion[vi] -- $200 Billion more than the number we cited and $300 billion more than an earlier estimate from the IRS.

The importance to investors is that, despite increased scrutiny from policymakers and tax authorities both domestic and foreign, companies are increasing their offshore holdings. At the same time, there is reason to believe that they are not adequately disclosing information for investors about the risk of potential tax liabilities. Whether the withholding of information is willful secrecy or poor judgement in assessing risk, the result is that the current rules do not provide the information necessary for investors to properly assess risk and make informed decisions.

2. *Apple's $14.5 Billion Miscalculation, Company Dismissed Earlier SEC Inquiry*

On August 30, 2016, the European Commission announced that it had "concluded that Ireland granted undue tax benefits" to Apple and that Ireland must collect approximately $14.5 billion dollars from the company.[vii]

A recent review of Apple's SEC filings suggests that the potential tax liability from $215 billion in profits held offshore were not adequately disclosed. Even after a 2013 hearing held by the Senate Permanent Subcommittee on Investigations found that the company paid no taxes to any national government on $30 billion of profit, there was little in Apple's disclosures to investors about their tax strategy beyond generic, boilerplate language.

The SEC itself found the information uncovered in the hearing enough of a concern that the Commission wrote a letter to the company asking for additional information. In the June 13, 2013 letter[viii], the SEC wrote of Apple's general statement of risk in their filings:

> *"These appear to be risks that could apply to any registrant with international operations. Please tell us what consideration you have given to including a more tailored discussion of any specific risks associated with your current tax structure, including any agreements or arrangements that provide material tax benefits*."

On the following page of the same letter, the SEC requests information on a country-by-country basis:

> *"To the extent that a material amount of such funds are held in certain countries, **tell us the names and tax rates of such countries."** (emphasis added)*

In 2013, the Commission made this formal request of Apple recognizing the material nature of the information, disaggregated by country. The materiality of the information, given the continued growth in Apple's offshore funds, is undeniably greater today.

In their response[ix], Apple wrote that they believed the risk was sufficiently described:

> *"…the Company's existing risk factor disclosure specifically explains that its future effective tax rates are subject to "changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, or changes in tax laws or their interpretation."*

Apple did agree to better describe in future disclosures its offshore holdings and tax liabilities but then went on to provide draft language. "[F]ilings," they wrote, "[would be] substantially similar to the following":

> *"If the Company's effective tax rates were to increase, or if the ultimate determination of the Company's taxes owed in the U.S. or foreign jurisdictions is for an amount in excess of amounts previously accrued, the Company's operating results, cash flows, and financial condition could be adversely affected."*

This exchange demonstrates two critically important points when considering new rules for disclosing international tax information to investors. First, the SEC already recognizes that country by country reporting by multinationals of certain profit and tax information can be material to investors. Second, the current rules do not require sufficient disclosure and management is unlikely to voluntarily disclose the information, beyond generic statements, necessary for investors to properly assess risk.

3. *Dell's $28 billion Discrepancy in Valuation*

In 2013 shareholders of Dell, Inc. approved a management buyout agreement from an investor group led by Michael Dell. A subset of shareholders dissented from the sale, arguing that the share price was too low.

A resulting lawsuit led to the hiring of two highly respected valuation experts to estimate the company's worth. The court found, the "two highly distinguished scholars of valuation science, applying similar valuation principles, thus generated opinions that differed by 126%, or approximately $28 billion. This is a recurring problem."[x] The discrepancy, in large part, was due to the differing estimates of how to appraise the value of the company's offshore profits given potential tax liabilities.

Central to investors' interests is the value of the company and the returns they receive upon selling their interests. If potential tax liability for offshore profits is either not disclosed or disclosed in a cursory or cryptic manner, investors may wrongly assume a company has engaged is low-risk tax strategies. Without proper information, they cannot credibly assess risk.

4. *Improve Disclosure*

Aggregated foreign disclosures are of little use to investors who want to assess the risk associated with aggressive tax strategies. As the international community steps up scrutiny of low-tax and no-tax jurisdictions, country-by-country disclosure of revenue, profit and tax information is essential.

The specific information, disaggregated by country, that is important to disclose to investors includes:

- profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.

As to the question of burdens on issuers and impediments to disaggregating this information by jurisdiction, it should be noted that the IRS recently finalized a rule[xi] to require country by country reporting of revenues, profits, taxes paid and certain operations by larger multinational corporations. The European Union has also established new country by country reporting requirements for larger firms doing business in any of the member nations.[xii]

Increasingly, tax authorities have access to the information. Company management already has access to the information. They only ones without access to the information are those putting their money at risk.

There can be little doubt that the growing use of offshore tax strategies, the international response to rein in aggressive tax avoidance and the potential tax liability for corporations engaged in these practices makes the information material for investors. The SEC has already recognized this to be true in the case of Apple. As such, the Commission should take immediate steps to require disclosure of this critically important information.

Thank you for your consideration of our comments. For additional information please contact Gary Kalman at [redacted].

Sincerely,

The FACT Coalition

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[i] Securities and Exchange Commission (SEC) Proposed Rule on Disclosure Update and Simplification, [Release No. 33-10110; File No. S7-15-16]

[ii] For more information and a list of member groups, see website thefactcoalition.org

[iii] SEC , Business and Financial Disclosure Required by Regulation S-K, https://www.sec.gov/rules/concept.shtml, April 2016

[iv] Toward a Sustainable Economy: A Review of Comments to the SEC's Disclosure Effectiveness Concept Release, September 2016

[v] SEC, Comments on Business and Financial Disclosure Required by Regulation S-K, Financial Accountability and Corporate Transparency (FACT) Coalition Comments, July 6, 2016
[vi] Letter to House Ways and Means Chairman Brady and Ranking Member Neal from the Joint Committee on Taxation, September 29, 2016
[vii] Press Release: State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion, European Commission, August 30, 2016
[viii] Letter from SEC to Peter Oppenheimer, Senior VP and Chief Financial Officer, Apple, Inc., June 13, 2013
[ix] Letter from Apple's Senior VP and CFO Peter Oppenheimer to the SEC, June 24, 2013
[x] Decision in In Re Appraisal DFC Global Corp Consolidated C.A. No. 10107-CB, In the Court of Chancery in the State of Delaware, July 8, 2016
[xi] IRS Bulletin 2016-29, Country by Country Reporting, July 18, 2016
xii EY Global Tax Alert, ECOFIN formally adopts directive on country-by-country reporting in the EU, May 25, 2016

FACTCOALITION
Financial Accountability & Corporate Transparency

July 6, 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 share with you some of our views on the Securities and Exchange Commission's recent concept release regarding disclosures required by Regulation S-K. The Concept Release, which is part of the SEC's broader "Disclosure Effectiveness" project, explores a wide range of topics, from what types of disclosures public companies should make, to the best formats for those disclosures. Improving disclosures for investors and the public is a critical objective for the SEC, and we applaud you in undertaking this effort.

In this letter, we wish to express our views on the standard that the Commission should use to evaluate substantive disclosures covering a range of issues of interest to investors and public. We will particularly focus our comments on two specific areas: disclosures of international tax-related issues and subsidiaries.

Financial Accountability and Corporate Transparency (FACT) Coalition

Founded in 2011, the Financial Accountability and Corporate Transparency (FACT) Coalition is a non-partisan coalition of more than 100 state, national and international organizations working toward a fair and honest tax system that addresses the challenges of a global economy and promotes policies to combat the harmful impacts of corrupt financial practices.[1]

Standard for Disclosures

With the adoption of the federal securities laws in the aftermath of the Great Crash of 1929,[2] Congress required large public companies to make comprehensive disclosures about their business, management, finances and

[1] For a complete list of our members and supporters, please see our website at http://thefactcoalition.org/about/coalition-members-and-supporters/.

[2] Securities Act of 1933, P.L. 114-94, December 4, 2015, *available at* http://legcounsel.house.gov/Comps/Securities%20Act%20Of%201933.pdf and Securities Exchange Act of 1934, P.L. 112-158, August 10, 2012 ("Exchange Act"), *available at* https://www.sec.gov/about/laws/sea34.pdf.

operations,[3] while also establishing the SEC to, amongst other things, "promulgate rules for registrant disclosure as necessary or appropriate in the public interest or for the protection of investors."[4]

Over the subsequent eight decades, two largely overlapping standards for what public US companies must disclose have developed. First, the federal securities laws require companies to disclose information that a "reasonable investor" could conclude may "significantly alter" the "total mix" of information.[5] The principles-based legal standard for what must be disclosed has been relatively the same for decades.[6]

Second, the SEC has adopted further requirements for companies to make specific disclosures, much of which is now captured in Regulation S-K. In theory, these disclosures should be relatively close to the disclosures called for by the "reasonable investor." In reality, while investors and the public have increasingly sought more and better information from U.S. corporate issuers of securities, the SEC's specific disclosure requirements set forth in Regulation S-K have not kept pace.

Today, more than ever before, investors and the public care about a number of issues that are un- or under-addressed by the existing regulatory framework. These areas range from executive compensation, worker training, corporate stock buybacks, sustainability efforts, and political spending, to, most importantly for our current purposes, international tax practices and subsidiaries.

The SEC should update its specific disclosure requirements to better reflect the reality that "reasonable investors" want to know more about how their companies' operate. Unquestionably, and as outlined below, information regarding a corporation's tax practices and subsidiaries, is extremely important to both sophisticated and retail investors. This information can better assist them in ascertaining the value of their holdings, assess numerous types of risks to their companies, and assess the judgment and integrity of corporate management. This information is also critical for supporting the public interest in the collection of taxes.[7]

The SEC should revise its specific disclosure requirements outlined in Regulation S-K, as well as offer guidance, calling for U.S. corporate issuers to disclose more information about these two basic, yet critically important, topics.

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[3] In general, the Securities Act of 1933 sets for the information that must be disclosed in the public offering of securities, while the Exchange Act of 1934 sets forth ongoing reporting requirements for publicly held companies.

[4] Concept Release, 81 Fed. Reg. 23921 (Apr. 22, 2016). The SEC's mission has been established as the obligation to "protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation." Securities and Exchange Commission, "The Role of the SEC", *available at* https://investor.gov/introduction-markets/role-sec.

[5] See *Basic Inc.* v. *Levinson*, 485 U. S. 224 (1988).

[6] This standard was recently reinforced by the Supreme Court. See *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011).

[7] See, Exchange Act, Section 2, (finding that "Necessity for Regulation Provided by this Title: SEC. 2. For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, … in order to protect … the ***Federal taxing power***")(emphasis added).

International Tax Strategies

<u>*Background on International Tax Landscape*</u>

Increasing Corporate Reliance on Offshore Tax Strategies and Offshore Profits

The role played by international tax strategies and rates on the operations and earnings of many U.S. corporations is enormous and growing. In large part, this trend is due to many large U.S. issuers' increasing reliance on offshore earnings, cash balances, and tax benefits. For example, a recent report by Citizens For Tax Justice found that offshore earnings held by U.S. corporations had in 2015 reached an eye-popping total of $2.4 trillion.[8]

Offshore profits and their attendant tax rates can have profound impacts on even the largest U.S. issuers. For example, in 2010, GE claimed a U.S. profit of just over $4 billion. The company's tax refund that year was $3.2 billion, largely based on the company's ability to shift profits overseas to lower tax jurisdictions.[9]

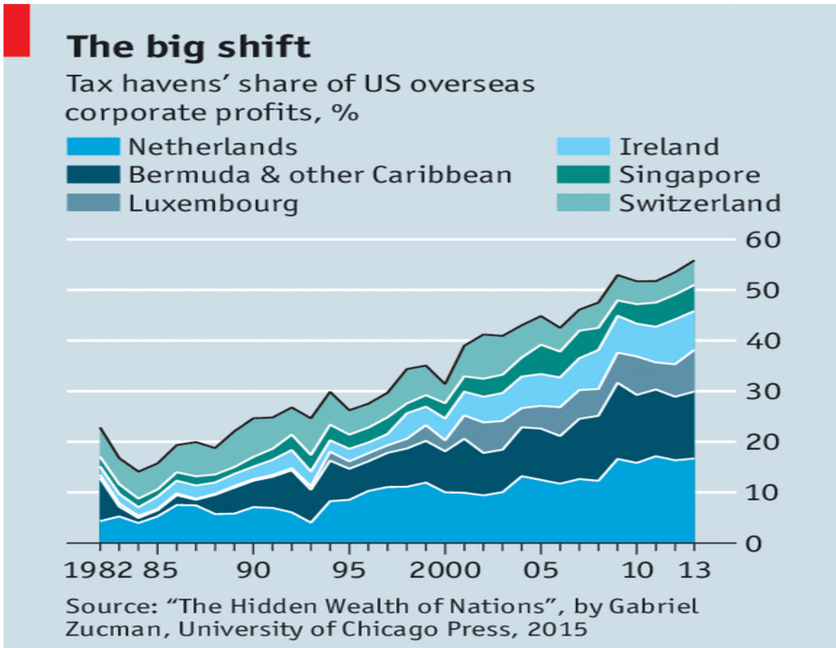
Apple is another U.S. company that is profoundly impacted by its offshore earnings and tax strategies. In 2013, the U.S. Senate Permanent Subcommittee on Investigations held a hearing examining Apple's aggressive offshore tax strategies. The Senate learned, for example, how Apple had established an offshore subsidiary that reported receiving dividends totaling $30 billion over four years, but paid no corporate income taxes on those dividends to any national government anywhere in the world. The Subcommittee also found that a lower-tier Apple subsidiary in Ireland received a total of $74 billion in "sales" income over the same four years, but paid almost no taxes on that income.[10] Since 2013, Apple's dependency upon its offshore earnings and tax strategies has become even more pronounced. In 2015, the company reported $53 billion in profits, and accumulated earnings of $200 billion which it is holding offshore, much of it in tax havens.

In fact, as shown below, U.S. corporations' reliance on tax havens has increased dramatically in recent years.

[8] 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.

[9] Matt Gardner, *GE Just Lost a Tax Break – and Congress Will Probably Fix That*, Tax Justice Blog, Jan. 7, 2014, *available at* http://www.taxjusticeblog.org/archive/2014/01/ge_just_lost_a_tax_break_-_and.php#.V2wvbzkrKu4.

[10] 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.



Economist.com

Governments Around the World Are Cracking Down

Amidst the rise of offshore profits, complex offshore tax strategies, and lowering effective tax rates, governments around the globe have begun to crack down on perceived abuses to increase corporate tax collections and reverse revenue losses. According to the Organization of Economic Co-operation and Development (OECD), worldwide "[r]evenue losses from [some offshore tax strategies] are conservatively estimated at USD 100-240 billion annually."[11] The United States is one of the big revenue losers. A 2016 academic study estimated that offshore profit shifting had likely cost U.S. taxpayers between $77 and $111 billion in corporate tax revenues from 1983 to 2012, with tax revenue losses increasing substantially in recent years.[12]

To combat this legal tax avoidance, but also tax evasion (which isn't included in the estimates above), tax authorities around the world have been investigating the tax practices of many of the largest U.S. issuers, and imposing significant revisions to past, current, and potential future tax liabilities. Just last year, Chevron was hit with a $269 million tax assessment by the Australian government. This *preceded* reports that the U.S. energy giant had paid a mere $248 Australian dollars in taxes on $1.7 billion Australian dollars in profits (less than

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[11] Press Release, All interested countries and jurisdictions to be invited to join global efforts led by the OECD and G20 to close international tax loopholes, OECD, Feb. 23, 2016, *available at* http://www.oecd.org/tax/all-interested-countries-and-jurisdictions-to-be-invited-to-join-global-efforts-led-by-the-oecd-and-g20-to-close-international-tax-loopholes.htm.
[12] Kimberly, Clausing, "The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond," Jan. 11, 2016, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685442.

1/10,000 of a percent).[13] Similarly, Google, Starbucks and Amazon have each faced withering scrutiny by European authorities following revelations of extremely low tax payments to governments. For example, in 2011, Amazon, had sales in the UK of 3.35 billion pounds, yet reported a "tax expense" of 1.8 million.[14] In May 2016, the Paris offices of Google were raided by tax officials, amid reports that the French government is seeking tax payments of 1.6 billion euro (about $1.8 billion).[15]

U.S. tax authorities are also investigating offshore tax abuses by large U.S. issuers. Caterpillar has reported, for example, that the IRS is seeking significant additional tax payments[16] and prosecutors are investigating its offshore tax practices.[17] Yet, its disclosures do not arm investors or the public with sufficient information about which to assess the potential risks involved. Instead, they serve merely as a "heads up" notice that the company may face enormous tax risks—without articulating any of the details as to why or how much is really involved. For that information, investors and the public need to look elsewhere, such as Congressional hearings and press reports.[18]

Hewlett-Packard has also been investigated for its use of serial short-term loans financed with its offshore profits to run its U.S. operations, without paying any tax on the repatriated funds.[19] And it has fought the IRS in a number of international tax-related matters, including its use of derivatives sold by AIG's infamous Financial Products Group to generate foreign tax credits and capital losses.[20]

While many other companies that have been reported as being under investigation, their SEC filings do not

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[13] See Heath Aston, *Chevron hits out at 'tax dodger' claims at fiery Senate inquiry*, The Sydney Morning Hearald, Nov. 18, 2015, *available at* http://www.smh.com.au/business/the-economy/chevron-hits-out-at-tax-dodger-claims-at-fiery-senate-inquiry-20151118-gl21v8.html#ixzz4B1ifEtpD.

[14] Vanessa Barford and Gerry Holt, *Google, Starbucks, Amazon: The Rise of 'Tax Shaming'*, BBC News, May 21, 2013, *available at* http://www.bbc.com/news/magazine-20560359.

[15] Chris Arnold, *Google's Paris Offices Raided In Tax Investigation*, NPR, May 24, 2016, available at http://www.npr.org/sections/thetwo-way/2016/05/24/479297435/googles-paris-offices-searched-in-tax-investigation.

[16] Caterpillar Inc., 10-K, Exhibit 13, at A-30 (Feb. 17, 2015) (fiscal year ending Dec. 31, 2014), *available at* https://www.sec.gov/Archives/edgar/data/18230/000001823015000061/cat_exx13x12312014.htm.

[17] Caterpillar Inc., 10-K, 21 (Feb. 17, 2015) (fiscal year ending Dec. 31, 2014), *available at* https://www.sec.gov/Archives/edgar/data/18230/000001823015000061/cat_10-kx12312014.htm.

[18] *Caterpillar's Offshore Tax Strategy*, hearing before U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 113-408, Apr. 1, 2014, *available at* https://www.gpo.gov/fdsys/pkg/CHRG-113shrg89523/pdf/CHRG-113shrg89523.pdf; see also Shruti Date Singh and Richard Rubin, *Caterpillar Faces IRS Penalties, More Taxes on Swiss Parts Unit*, Bloomberg, Feb. 18, 2015, *available at* http://www.bloomberg.com/news/articles/2015-02-18/caterpillar-faces-irs-penalties-more-taxes-on-swiss-parts-unit.

[19] "Offshore Profit Shifting and the U.S. Tax Code – Part 1 (Microsoft and Hewlett-Packard)," hearing before U.S. Senate Permanent Subcommittee on Investigations S. Hrg. 112-781, Sept. 20, 2012, *available at* https://www.gpo.gov/fdsys/pkg/CHRG-112shrg76071/pdf/CHRG-112shrg76071.pdf (reflecting billions of dollars in income that the company claimed was "permanently reinvested" abroad was, in fact, lent back to U.S. affiliates for use in the U.S.).

[20] See, e.g., Lynnley Browning, *HP loses $190 million tax case against IRS, Reuters*, May 15, 2012, *available at* http://www.reuters.com/article/us-hp-tax-idUSBRE84E0L820120515.

appear to reflect the investigations, or provide only cursory information that is inadequate to assess the risks.

Tax authorities around the world are also looking to change the rules.

In 2013, the Organization of Economic Co-Operation and Development (OECD), which includes the United States, expressed concerns that "National tax laws have not kept pace with the globalisation of corporations and the digital economy, leaving gaps that can be exploited by multi-national corporations to artificially reduce their taxes."[21] At the request of G-20 leaders, in 2015, the OECD released 15 detailed Action Plans to combat international tax strategies—many of which are used by large U.S. corporate issuers. As part of its efforts, the OECD has worked diligently with G-20 finance officials, including the U.S. Treasury Secretary, to develop consensus on how to tighten international tax treaties and agreements to stop abusive tax practices, and they are currently expanding their efforts.

Further, the European Commission has begun invalidating some tax arrangements as "illegal state aid" that disadvantages other corporations, and demanding additional tax assessments. The European community has begun to condemn secret sweetheart tax deals between individual countries and specific multinationals—some of which are publicly traded U.S. corporations.[22]

The United States Treasury Department is contributing to the revision of offshore tax rules. Earlier this year, the Treasury Department revised its rules to remove potential benefits from so-called corporate "inversions," which has already dramatically impacted corporate valuations and merger activity. For example, Pfizer's years-long efforts to engage in a so-called corporate inversion strategy (which had progressed to a formal proposed merger with Dutch-based Allergan) were immediately abandoned once the U.S. Treasury Department revised tax rules that the strategy was intended to exploit.[23] The impacts were immediately felt by the companies involved and throughout the markets.[24]

Further, bipartisan legislation and several budget proposals seek to close what are perceived as corporate tax loopholes. Just one of those proposals, calling for the aggregation of foreign tax credits, would eliminate corporate tax benefits estimated at over $50 billion.

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[21] Press Release, Closing tax gaps - OECD launches Action Plan on Base Erosion and Profit Shifting, OECD, July 19, 2013, *available at* http://www.oecd.org/tax/closing-tax-gaps-oecd-launches-action-plan-on-base-erosion-and-profit-shifting.htm.

[22] *See, e.g.*, Renae Merle, Why McDonalds and Google are in trouble in Europe, Washington Post, May 31, 2016, *available at* https://www.washingtonpost.com/business/economy/why-mcdonalds-and-google-are-in-trouble-in-europe/2016/05/31/78d091c0-2417-11e6-aa84-42391ba52c91_story.html.

[23] See David Crow and Andrew Ward, *Pfizer chief's long quest for tax inversion ends in failure*, Financial Times, Apr. 6, 2016, *available at* https://next.ft.com/content/bc90afe6-fc10-11e5-a31a-7930bacb3f5f.

[24] Allergan's stock declined sharply following the issuance of the new rules. Rachel Graf, *Allergan (AGN) Stock Tanks on Tax Inversion Rules, Jim Cramer: 'Screaming Buy' Below $220*, The Street, Apr. 5, 2016, *available at* https://www.thestreet.com/story/13518623/1/allergan-agn-stock-tanks-as-tax-inversion-rules-threaten-pfizer-merger.html.

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Disappointingly, none of these events are clearly reflected or discussed in any of the affected U.S. companies' disclosures.[25]

Increasing Importance to Investors

When Congress adopted the federal securities laws in the 1930s, it specifically recognized the important role of disclosures in valuing securities and promoting the effective collection of tax.[26] In recent years, taxes, and particularly international taxes, have become increasingly critical in gauging a corporation's value, profitability, and risks—core areas of interest for the SEC.

Investors Need Additional International Tax Information to Perform Even Basic Valuations

International tax strategies play an increasingly central role in valuing some of the largest US companies. One recent high-profile case involving the valuation of Dell Corporation demonstrates the key role that certain international tax information can play.[27]

The key dispute in the case involved valuing the company in connection with a potential management buyout. The court found that "two highly distinguished scholars of valuation science, applying similar valuation principles, thus generated opinions that differed by 126%, or approximately $28 billion. This is a recurring problem."[28] One of the key drivers of the difference between the two valuations was the scholars' assumptions and findings regarding the company's tax rates on its offshore earnings.[29] One expert concluded that the company would have to pay $2.24 billion in taxes on its offshore income, even though it was characterized as indefinitely deferred.[30] The other expert determined that, because the company had never paid high rates on its offshore income, and was extremely unlikely to do so in the future, the company warranted a higher valuation.[31]

Almost none of the information needed to resolve the valuation dispute was previously disclosed to investors or the public. After comprehensive discovery and analysis by offshore tax experts, one valuation expert determined his valuation on a projection that Dell would have an ongoing future effective tax rate of slightly over 35%, while the other projected a future tax rate of just 21%.[32] Their disagreement over the corporation's

[25] Some companies appear to have vague discussions of the potential risks associated with changes in U.S. or foreign tax laws, but these disclosures provide insufficient information to assess the impacts on the issuers of these changes.
[26] See Exchange Act, Sec. 2.
[27] *In re Appraisal of Dell Inc.*, C.A. No. 9322, 105 (Del. Ch. May 11, 2016), *available at* http://www.potteranderson.com/media/experience/706_Appraisal%20of%20Dell%205%2011%2016.pdf.
[28] *Dell*, 99-100.
[29] *Dell.*, 105.
[30] *Dell Inc.*, 110. Under existing law, corporations are able to avoid U.S. taxation on foreign income if the income is categorized as indefinitely invested abroad. So this is what many U.S. corporations do. This hyper-technical accounting determination does not necessarily always line up with the actual practices of the firms, however.
[31] *Dell Inc.*, 110.
[32] *Dell Inc.*, 105. The Court ultimately sided with the expert who projected the lower rate. *Id*.

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appropriate tax rate produced valuations that differed by billions of dollars, demonstrating investors' desperate need for improved disclosures on offshore profits, effective tax rates, potential tax liabilities, and related risks.

International Tax Strategies Pose Unique Opportunities for Financial Manipulation

The current disclosure obligations for companies allows management complete control over nearly all aspects of the determination of what to disclose, and provides no ability for investors to verify the accuracy of the financials related by the company. Essentially, a company may disclose some information related to its offshore assets and taxes, but that information—if any—is often so piecemeal that investors cannot reasonably determine if the judgments are accurate.

There is reason for investors to be concerned. Because company management can elect what is "permanently reinvested" overseas, and the impacts of that election is often dramatic on a company's tax bill (as could numerous other tax-related decisions), tax strategies provide ripe opportunities for corporate management to manipulate earnings.[33] Far from a theoretical concern, the academic research suggests this already occurs.[34] For example, a 2004 paper found evidence that firms that had missed earnings targets manipulated overseas income to make up shortfalls in future periods.[35]

The SEC has even appeared to at least somewhat recognize this concern, as evidenced by its reported efforts to examine Disney's decision to reclassify its tax risks, which had dramatic impacts on its earnings. As it was reported by Bloomberg,

> In 2013, Disney nearly tripled to $1.5 billion the amount of foreign earnings exempt from U.S. taxes from a year earlier. Part of that was revenue from 2012. In a Feb. 2014 letter to Disney, the SEC questioned why the company had reclassified earnings from an earlier year and why the overall tax rate had declined even though the company had earned less money in lower-tax countries. In its reply, Disney said it made the moves because it needed more money for its media business, theme parks and resorts outside of the U.S. The company also said the decision to reclassify earnings from a prior year was appropriate under accounting rules. The regulator hasn't sought additional answers from the company. The media company announced a similar move Feb.3, when it again raised the amount of income it holds abroad. The move helped to lower its tax rate for the fiscal first quarter of

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[33] Donohoe, M., McGill, G., and Outslay, E. *Through the looking glass darkly: what can we learn about a U.S. multinational corporation's international operations from its financial statement disclosures?* National Tax Journal 65 (4), 2012, *available at* http://www.ntanet.org/NTJ/65/4/ntj-v65n04p961-84-through-glass-darkly-what.pdf.
[34] Linda K. Krull, *Permanently Reinvested Foreign Earnings, Taxes, and Earnings Management*, The Accounting Review, Vol. 79, 745-767, July 2004, *available at* https://www.jstor.org/stable/3203277?seq=1#page_scan_tab_contents.

[35] Linda Krull (2004).

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> 2015 to 33.3 percent from 35.2 percent a year earlier. ***Once again, Disney didn't explain to investors why it made the move***. (emphasis added).[36]

Further, a senior SEC official in the SEC's Division of Corporation Finance recently stated that companies' international tax disclosures "are not sufficient and certainly cannot be called transparent is that many of the items included in that foreign tax line are subject to different trends and uncertainties."[37] We agree with this SEC staffer's assertion, which is why we propose below that the SEC should mandate that U.S. issuers disclose certain key information.

Leading Research Analysts Focus on US Companies' International Tax Strategies and Risks

Leading research analysts are also increasingly focused on the implications of offshore tax issues for U.S. corporations.

Many analysts are focusing on international tax strategies in their stock recommendations. For example, a recent research report by Equity Research analysts at Credit Suisse found that for many major U.S. companies, including Mattel, HP, Xerox, and Western Union, potential offshore tax liabilities represented over 10 percent of the company's total market capitalization.[38] These analysts also found that for a whopping 68 U.S. issuers, their estimated foreign tax liabilities exceeded 5% of the companies' market capitalization.[39] Similarly, in May 2016, analysts at Goldman Sachs sent out a newsletter urging clients to ""Buy stocks with high US sales and high effective tax rates and avoid firms with high foreign sales and low tax rates." This analysis and investment advice is presumably based on perceived risks associated with aggressive corporate tax practices subject to enforcement actions and tax policy changes at home and abroad.

Unfortunately, the facts that could best inform this analysis are generally not disclosed by issuers today, even though they would unquestionably "significantly alter" the "total mix" of information. As one analyst from Macquarie Capital USA put it, "there is very little transparency in tax," which "happens to be one of the most opaque areas of accounting."[40]

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[36] Dave Michaels and Alan Katz, *Foreign Tax Surprise Like Disney's Have SEC Seeking Sunlight*, Bloomberg, Mar. 5, 2015, *available at* http://www.bloomberg.com/news/articles/2015-03-05/foreign-tax-surprises-like-disney-s-have-sec-seeking-sunlight.).

[37] Statement of Nili Shah, Deputy Chief Accountant, Division of Corporation Finance (reported by Dave Michaels and Alan Katz, *Foreign Tax Surprise Like Disney's Have SEC Seeking Sunlight*, Bloomberg, Mar. 5, 2015, *available at* http://www.bloomberg.com/news/articles/2015-03-05/foreign-tax-surprises-like-disney-s-have-sec-seeking-sunlight.).

[38] 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.

[39] David Zion, Ravi Gomatam, and Ron Graziano.

[40] Statement of Tim Nollen, an analyst at Macquarie Capital USA (reported in Dave Michaels and Alan Katz, Foreign Tax Surprise Like Disney's Have SEC Seeking Sunlight, Bloomberg, Mar. 5, 2015, *available at* http://www.bloomberg.com/news/articles/2015-03-05/foreign-tax-surprises-like-disney-s-have-sec-seeking-sunlight.).

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Investors Want to Assess U.S. Companies' Use of Funds Impacted by International Tax Strategies

Separate and apart from the valuation concerns and risk assessments identified above, investors are increasingly seeking information about how U.S. companies are using their offshore funds. Many large U.S. multinational corporations are stating that their offshore profits are "permanently reinvested" abroad, but the form of reinvestment of these billions of offshore dollars is in cash or cash equivalent instruments (with low returns).

Thus, while aggressive international tax strategies may allow companies to avoid payment of U.S. taxes on their income, the cost associated with those strategies may be that the income earned is then not put to its most productive uses, but is instead parked in extremely low yielding investments like U.S. treasury securities. Some investors have begun to openly question whether this result is beneficial to investors or the company.[41] Here's how one investor put it:

> Some multinationals have more than 50% of their assets 'permanently reinvested' offshore. According to a Wall Street Journal investigation, however, 93% of the money Microsoft has officially 'offshore' was invested in U.S. assets, like Treasuries. Arguably, this is not a productive use of 50% of one of the world's largest company's assets, and may represent significant opportunity costs to investors.[42]

Currently, Regulation S-K does not specifically require registrants to disclose how a company's offshore funds are invested, even when those funds represent a material portion of the company's assets. As a result, investors are not well-positioned to assess whether stockpiling what may amount to tens of billions of dollars in extremely low yielding securities or cash equivalent instruments is a wise allocation of the company's capital, which might otherwise be used for acquisitions, employee training, or capital investments to drive the company's business forward. This information should be provided to investors.

A related issue is whether the funds that a corporation declares to be offshore for tax purposes are, in fact, held outside of the United States. Many companies deposit their "offshore" earnings with foreign banks and direct those banks to keep the funds in the form of U.S. dollars. To do so, foreign banks typically deposit the corporate funds in U.S. dollar accounts opened by those foreign bank at U.S. financial institutions. The funds are then typically invested in certificates of deposit, U.S. treasuries, or other secure capital instruments located in the United States. Investigations have determined that, on average, U.S. corporations keep nearly 50% of their "offshore" funds in U.S. dollars, U.S. bank accounts, and U.S. investments; at some corporations, the figure exceeds 75%.[43]

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[41] Adam Kanzer, before the Independent Commission for the Reform of International Corporate Taxation, Mar. 18, 2015, *available at* http://www.icrict.org/wp-content/uploads/2015/04/Adam-KANZER-statement.pdf (Kanzer Statement).

[42] Kanzer Statement (citing Kate Linebaugh, *Firms Keep Stockpiles of 'Foreign' Cash in U.S.*, Wall St. Journal, Jan. 22, 2013, *available at* http://www.wsj.com/articles/SB10001424127887323301104578255663224471212).

[43] Offshore Funds Located Onshore, Addendum to Repatriating Offshore Funds, Majority Staff Report by the U.S. Senate Permanent Subcommittee on Investigations, Comm. on Homeland Sec. and Gov't Affairs, 112 Cong., Dec. 14, 2011, *available at* https://www.hsgac.senate.gov/subcommittees/investigations/issues/tax-havens-and-abusive-tax-schemes.

That information is of interest to investors and the public in part because investments in U.S. dollars are more likely to retain their value, and cash deposited in U.S. banks is more likely to be more secure. For that reason, S-K disclosures should require registrants to disclose what percentage of their funds treated as "offshore" for tax purposes are actually being held within the United States.

Investors are Increasingly Focusing on Public Policy Considerations Related to Corporations' Tax Strategies and Practices

Aside from needing this information to make basic investment decisions based on purely short-term financial considerations, investors are also increasingly concerned with how their companies' tax strategies long-term social and economic impacts.

The shareholder advisory service ISS has reported that its "institutional investor clients have shown significant interest in the public policy debate swirling around inversions and other tax avoidance strategies."[44] Similarly, an organization of investors managing more than $45 trillion in assets found that over 100 of its members viewed tax as a significant concern.[45] As it's Managing Director articulated, "[Investors] are worried about the legal and regulatory environment and the risk of tax evasion, and they are starting to engage with the companies they invest in."[46]

Far from just expressing concerns, investors are working together to revise how they factor international taxes into their investment decision processes. For example, in November 2014, 45 union-affiliated organizations from 19 countries called upon pension funds to incorporate tax risks as a core part of responsible investment policies.

In the US, members of the Council of Institutional Investors have expressed concerns with aggressive international tax strategies and corporate inversions based on broad policy concerns, as has the Church of England abroad.[47] Thus, international tax strategies are now part of the investment-making decisions for many large investors. Again, the disclosures made by many U.S. corporate issuers, are simply inadequate for them to make sufficiently informed decisions.

Investors Are Engaging in Efforts to Obtain Additional Information From U.S. Corporations About Their Tax Strategies

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[44] Statement of Pat McGurn, ISS (reported in in Madison Marriage, *Investor Complacency over Tax Avoidance Wanes*, Financial Times, Nov. 16, 2014, *available at* https://next.ft.com/content/fe8e7fcc-6b2f-11e4-be68-00144feabdc0).

[45] Engagement Guidance on Corporate Tax Responsibility, UN Principles for Responsible Investment, at 5, 2015.

[46] Statement by Fiona Reynolds (reported in Madison Marriage, *Investor Complacency over Tax Avoidance Wanes*, Financial Times, Nov. 16, 2014, *available at* https://next.ft.com/content/fe8e7fcc-6b2f-11e4-be68-00144feabdc0).

[47] The Church of England's Investment Advisory Group has argued that "companies should eschew aggressive tax planning, aggressive tax avoidance and abusive tax arrangements for both ethical and business risk reasons." See Madison Marriage, *Investor Complacency over Tax Avoidance Wanes*, Financial Times, Nov. 16, 2014, *available at* https://next.ft.com/content/fe8e7fcc-6b2f-11e4-be68-00144feabdc0).

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Investors have engaged in numerous initiatives to improve companies' disclosures, including:

- Engaging with companies to improve their disclosures;[48]
- Working through the 14a-8 process to require individual companies to enhance disclosures;
- Proposing new exchange listing standards that would required disclosure of key environment, social, and governance (ESG) factors, one of which related to "tax strategy/tax avoidance";[49] and
- Proposing revised disclosure obligations.

These efforts have involved dozens of organizations around the globe.[50] Unfortunately, these efforts have resulted in only limited improvements. Particularly disappointingly, due to the SEC staff's strained interpretations and the limitations of the 14a-8 process, the 14a-8 efforts have been largely thwarted.[51] Collectively, these efforts have yielded no broad-based reforms or enhancements for investors. Investors and the public still don't have what they want or need.

Investors Need Country-by-Country Reporting

As described above, current SEC reporting by US issuers is wholly inadequate to determine a company's tax practices, actual and projected tax liabilities, and potential tax problems. Existing tax disclosures can be used to hide actual tax payments, exaggerate US or other country-specific tax rates, and overstate tax assets. It also impedes accurate assessments of the value of public companies.

As a practical matter, tax practices, liabilities, and risks can be assessed only on a country-by-country basis, because taxes are assessed by individual jurisdictions. Yet current U.S. tax-related disclosures appear primarily in the footnotes to a corporation's financial statement, and provide only limited disclosures – provisions made for U.S. federal taxes, U.S. state taxes, and "foreign" taxes. The current structure provides tax data on the United

[48] For example, the United Nations Principles on Responsible Investment, with more than 1,300 signatories managing $45 trillion, has created an initiative to provide guidance for investors on how to engage with investee companies on corporate tax issues. See, e.g., Engagement Guidance on Corporate Tax Responsibility, UN- Principles for Responsible Investment, 2015, *summary available at* http://i.emlfiles1.com/cmpdoc/2/0/5/9/7/files/334837_pri_tax-guidance-2015_summary_final.pdf.

[49] In March 2014, investors with assets totaling more than $10 trillion called upon stock exchanges to propose listing standards for ESG issues. *Recommendations for Stock Exchange Requirements on Corporate Sustainability Reporting*, Ceres/Investor Network on Climate Risk, Mar. 2014, *available at* http://www.ceres.org/resources/reports/investor-listing- standards-proposal-recommendations-for-stock-exchange-requirements-on-corporate-sustainability-reporting.

[50] The UN Principles for Responsible Investment has assembled a catalogue of tax-related disclosure efforts for investors' reference, which includes materials prepared by accounting firms, investor groups, public advocates, and international bodies. This resource center, which we strongly encourage the SEC to review and evaluate, is available at https://www.unpri.org/page/pri_website_base.tax-resources.

[51] For example, in 2011, the SEC issued a no-action letter to Lazard Ltd., effectively permitting the company to exclude a proposal to "annually assess the risks created by the actions Lazard takes to avoid or minimize U.S. federal, state, and local income taxes, and that it provide a report to shareholders on the assessment." In granting Lazard's request, the SEC noted that the proposal relates to "decisions concerning the company's tax expenses and sources of financing." *Lazard Ltd. No-Action Letter,* Feb. 16, 2011, *available at* http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2011/afscme021611-14a8.pdf.

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States versus the rest of the world combined. The data on foreign taxes is particularly unhelpful given that different corporations operate in different countries which vary widely in their tax rates, credits, and deductions, not to mention their tax enforcement. A combined foreign tax rate is of little practical value. In addition, it obscures rather than illuminates a corporation's tax risks in individual countries. For example, if a corporation maintains significant operations in one country, then a raid by that country's tax officials would matter more to investors than if the raid took place elsewhere.

In addition, some countries base taxes on where a corporation or its subsidiaries are incorporated, while others according to where corporate management and control take place. Some countries are considering proposals to apportion corporate profits. Thus, it should be no surprise that corporations themselves recognize this importance, and determine their effective tax rates and other information based on a jurisdiction-by-jurisdiction basis.[52] Investors need country-by-country data to evaluate each corporation's existing and potential tax liabilities and risks.

Importantly, the United States is not the only country faced with this problem. Abroad, foreign governments recognize the need to improve their companies' disclosures. The European Union, for example, is requiring member countries to begin disclosing cross-border tax deals with multinationals, and is considering proposals to require country-by-country reporting among the 28 member nations and designated tax havens.

To better inform investors, the SEC should revise its international tax disclosure framework to specifically require multinational corporations to disclose, on an annual, country-by-country basis:

- profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.

Much of this information is likely already collected by corporations internally for business, payroll, and tax purposes, and so would not require much additional effort to report publicly. Some of it may already be included in a corporation's existing Regulation S-K-mandated disclosures.

Each of the listed factors would provide basic data about a corporation's operations. None involves proprietary data. As proof, some financial institutions and corporations in the extractive industries already provide most of

[52] *See, e.g.*, Hewlett-Packard Company, Form 10-K, Dec. 17, 2014, 50, *available at* http://h30261.www3.hp.com/~/media/Files/H/HP-IR/documents/reports/2015/hp-10-k-as-filed.PDF, (fiscal year 2014) (explaining that HP considers "future market growth, forecasted earnings, future taxable income, the mix of earnings in the jurisdictions in which we operate and prudent and feasible tax planning strategies" when assessing its valuation).

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the information in their E.U. public filings with no ill economic effects. The European Union further appears to be moving towards expanding those same public disclosures to all of its corporations.

Large U.S. multinational corporations will soon be required to provide similar information in non-public, country-by-country filings with the IRS. Rather than create a patchwork of SEC and IRS disclosure requirements for various industries and corporations, the SEC should require the same information for all publicly traded corporations.

It is only with a full appreciation of basic facts about a corporation's operations at a country-by-country level that an investor can meaningfully assess that corporation's international tax practices, liabilities, and risks. As a practical matter, the relevant information could be easily introduced as a slightly-revised version of various Items of Regulation S-K (most easily, Items 101 and 102).

Investors and the Public Deserve Additional Explanations of Tax Disclosures

In addition to country-by-country reporting, investors and the public would have much greater ability to understand international taxes if the SEC further specified in modest rules changes or, if appropriate, guidance that U.S. corporate issuers should:

- provide their U.S. and foreign effective tax rates and explain any effective tax rate that is significantly lower than the statutory rate in the countries in which they do business;
- use the company's weighted average statutory rate based on geographic revenue mix instead of home country statutory rate in the tax rate reconciliation schedule (which would help explain the likely effective tax rate, especially as worldwide rules change);
- explain any large or increasing Unrecognized Tax Benefit balance;
- disclose for all non-de minimis intracompany debt transactions, the countries where the debt is held, the amount of the debt, and the average interest rate "paid" by the relevant subsidiary on that debt;
- disclose and explain any material tax incentives or benefits provided by a foreign jurisdiction, including the estimated tax savings, any conditions attached to the incentive or benefit, and the likelihood that the incentive or benefit may be lost; and
- disclose of any legal proceedings by foreign governments related to taxes paid to any such government, regardless of whether such matter is material to the financial position of the corporation.[53]

[53] We note that item 103 directs companies to disclose "any material legal proceedings." Importantly, the SEC has recognized that materiality in this context may is broader than just what may be "material" to the financials of the company. For example, the SEC directs companies to disclose government actions involving environmental laws that the company "reasonably" believes may result in penalties of $100,000 or more. C.F.R. 229.103, Instructions to Item 103, para. 5.

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Each of these disclosures would enable investors to identify significant offshore tax-related risks. Depending upon the substance of the disclosures, each could provide information to investors that would "significantly alter" the "total mix" of information about the company. For example, we note that the first four items would likely have had a dramatic impact on resolving the valuation discrepancies at issue in the Dell case described above.

Collectively, the SEC should revise Items 101, 102, 103, and 303 of Regulation S-K, as well as the instructions to them, to more effectively capture this critical information for investors.

Disclosure of International Subsidiaries

A second issue of concern involves corporate subsidiaries. Regulation S-K currently requires companies to disclose a list of subsidiaries of the registrant.[54] However, that list currently only needs to include subsidiaries that are "significant," as defined by Regulation S-X. As the SEC's own Investor Advisory Committee noted "[d]isclosure documents may not, therefore, provide a complete understanding of a company's structure and leaves open the possibility of undisclosed pockets of meaningful firm-specific and systemic risk."[55]

The use of corporate subsidiaries has sky-rocketed in recent years. At the same time, the use of offshore subsidiaries in complex international tax strategies is also very high. For example, the vast majority of Fortune 500 companies have at least one subsidiary in a country identified as a tax haven.[56]

Today, some issuers fail to disclose (or fully identify) subsidiaries that control billions of dollars. For example, a study by American for Tax Fairness found that US issuer, Walmart, had 78 previously unknown subsidiaries in tax havens.[57] According to the study, Walmart owns at least $76 billion in assets through subsidiaries domiciled in the tax havens of Luxembourg ($64.2 billion) and the Netherlands ($12.4 billion), accounting for a stunning 90 percent of the assets in Walmart's International division ($85 billion) or 37 percent of its total assets ($205 billion).[58]

Because the SEC doesn't require full disclosure of all subsidiaries, investors and the public have no way of really knowing how many subsidiaries there are, or the risks associated with them. Interestingly, unlike the SEC, entities that are regulated by the Federal Reserve Board of Governors do have to make more meaningful disclosures about their respective subsidiaries. One recent study by Citizens for Tax Justice found that, for 27 firms regulated by the SEC and Federal Reserve Board of Governors, they reported 7 times more subsidiaries to

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[54] Reg S-K, Item 601(b)(21).
[55] Letter from the SEC Investor Advisory Committee to Division of Corporation Finance, SEC, 4, June 15, 2015, *available at* https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-approved-letter-reg-sk-comment-letter-062016.pdf.
[56] *Offshore Shell Games: The Use of Offshore Tax Havens by Fortune 500 Companies*, U.S. Public Interest Research Group and Citizens for Tax Justice, 1, Oct. 2015, *available at* http://ctj.org/pdf/offshoreshell2015.pdf.
[57] 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.
[58] Americans for Tax Fairness, *The Walmart Web: How the World's Biggest Corporation Secretly Uses Tax Havens to Dodge Taxes*.

the Federal Reserve than in their SEC filings.[59] If their primary regulator thinks these disclosures are important, it should not be unreasonable for an investor to think so to. Unfortunately, for firms that are not regulated by the Federal Reserve, investors have almost no ability to collect any of this information.

Perversely, as the importance of information about offshore activities and taxes has increased, the amount of disclosures has decreased. Today, investors are actually receiving less information than they used to.

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, even though most of those subsidiaries appeared to be active a year later.[60] Similarly, after Citizens for Tax Justice highlighted Nike's numerous subsidiaries in Bermuda in a report in 2013, the following year, half of those subsidiaries disappeared from its SEC filing.[61]

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

Public companies should disclose all of their subsidiaries, rather than just "significant" ones, providing the name, location, Legal Entity Identifier number,[62] and relation to the parent entity. This information is critical for investors 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.

The SEC should stop corporations from hiding the billion-dollar balls and require basic disclosures of all foreign affiliates of U.S. corporations. Stopping this abuse would require a simple change to Item 601 of Regulation S-K.

Conclusion

For markets to function properly, it is critically important for investors and the public to be armed with sufficient information to meaningfully assess the business operations, management, and risks of U.S. public companies. As multinational corporations have increasingly relied upon complex, international tax strategies to effect their

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[59] Citizens for Tax Justice, *Lax SEC Reporting Requirements Allow Companies to Omit Over 85 Percent of Their Tax Haven Subsidiaries*, June 30, 2016, *available at* http://ctj.org/ctjreports/2016/06/lax_sec_reporting_requirements_allow_companies_to_omit_over_85_percent_of_their_tax_haven_subsidiari.php#.V3V7PTkrLjA. This report further found that eight leading US financial firms reported a whopping 2594 subsidiaries in tax havens to the Federal Reserve, but only 272 to the SEC. *Id.*

[60] 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.

[61] Matt Gardner, *Nike's Disappearing Tax Haven Subsidiaries: Lost at the Beach?*, Citizens for Tax Justice Blog, July 28, 2014, *available at* http://www.taxjusticeblog.org/archive/2014/07/nikes_disappearing_tax-haven_s.php#.V3A42VJiO8U.

[62] The legal entity identifier (LEI) is a unique number assigned to distinct legal entities. Efforts have been underway for years to promulgate a global LEI system, and the SEC has helped move those efforts along. Now is a time to further push those efforts forward.

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bottom lines, the SEC's disclosure framework has not kept pace. It's time for the SEC's disclosure rules to catch up. We urge you to more actively engage investors on these issues and update the specific disclosure requirements without delay.

Sincerely,

The FACT Coalition

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Arizona Public Interest Research Group

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California Fair Share
California/Venezuela Region – Religious Sisters of Charity
California Public Interest Research Group
Main Street Alliance of California

Colorado
Colorado Fair Share
Colorado Main Street Alliance
Colorado Public Interest Research Group

Connecticut
Connecticut Fair Share
Connecticut Public Interest Research Group

Delaware
Delaware Americans for Democratic Action (Delaware ADA)

Florida
Florida Fair Share
Florida Public Interest Research Group
Main Street Alliance of Florida

Georgia
Georgia Fair Share
Georgia Public Interest Research Group

Idaho
Idaho Main Street Alliance

Illinois
Citizen Action / Illinois
Illinois Fair Share
Illinois Public Interest Research Group

Iowa
Iowa Citizen Action Network
Iowa Citizens for Community Improvement
Iowa Fair Share
Iowa Farmers Union
Iowa Main Street Alliance
Move to Amend – Iowa Chapter

Kentucky
Kentucky Fair Share

Minnesota
Main Street Alliance of Minnesota
Minnesota Fair Share

Maine
Maine Small Business Coalition

Maryland
Maryland Fair Share
Maryland Public Interest Research Group

Massachusetts
Massachusetts Fair Share
Massachusetts Public Interest Research Group

Michigan
Michigan Fair Share
Michigan Public Interest Research Group

Missouri
Missouri Public Interest Research Group

Montana
Montana Fair Share
Montana Small Business Alliance

Nevada
Nevada Fair Share

New Hampshire
New Hampshire Fair Share

New Hampshire Public Interest Research Group

New Jersey
New Jersey Main Street Alliance
New Jersey Public Interest Research Group

New Mexico
New Mexico Public Interest Research Group

North Carolina
Fair Share in North Carolina
North Carolina Public Interest Research Group

North Dakota
North Dakota Fair Share

Ohio
Ohio Fair Share
Ohio Public Interest Research Group
Main Street Alliance of Ohio

Oregon
Jubilee Oregon
Main Street Alliance of Oregon
Oregon Fair Share
Oregon State Public Interest Research Group

Pennsylvania
Pennsylvania Fair Share
Pennsylvania Public Interest Research Group
SEIU Local 668, Pittsburgh, PA
UFCW Local 23, Western PA

South Carolina
South Carolina Small Business Chamber of Commerce

Texas
Texas Fair Share
Texas Public Interest Research Group

Vermont
Main Street Alliance of Vermont

Virginia
Virginia Fair Share
Main Street Alliance of Virginia

Washington (State)
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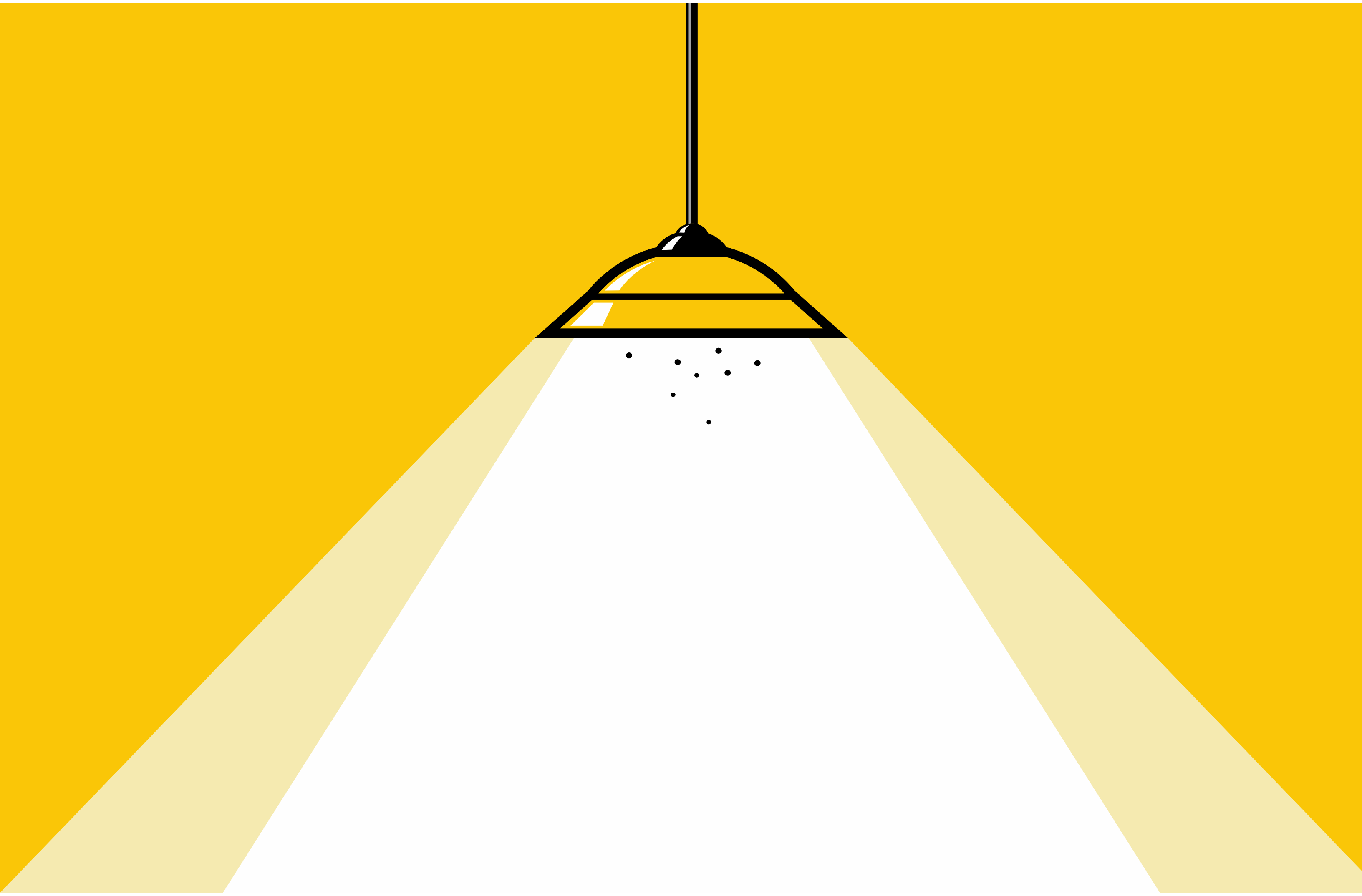

Towards a Sustainable Economy

A Review of Comments to the SEC's Disclosure Effectiveness Concept Release

September 2016

ABOUT THE REPORT

This Joint Report is written by Tyler Gellasch and is published by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), Americans for Financial Reform, Center for American Progress (CAP), Ceres, the Financial Accountability and Corporate Transparency (FACT) Coalition, the International Corporate Accountability Roundtable (ICAR), the Patriotic Millionaires, Public Citizen, and US SIF: The Forum for Sustainable and Responsible Investment.

Each of the organizations has detailed thoughts on how the SEC should best improve its rules on these key issues for investors. For more in-depth analyses of particular substantive disclosures, we encourage readers to contact each organization directly.

In addition, the author and publishing organizations would like to thank Andrew Schwartz and Gregg Gelzinis of CAP for their invaluable assistance in the preparation of this Joint Report.

AFL-CIO

AMERICA'S UNIONS

ABOUT THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions, representing 12.5 million union members. Union-sponsored and Taft-Hartley pension and benefit plans hold more than $647 billion in assets. Union members also participate in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. For more information, visit www.aflcio.org.

AFR Americans for Financial Reform

ABOUT AMERICANS FOR FINANCIAL REFORM

Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system — one that serves the economy and the nation as a whole. For more information, visit www.ourfinancialsecurity.org.

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ABOUT THE CENTER FOR AMERICAN PROGRESS

The Center for American Progress is an independent nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country. For more information, visit www.americanprogress.org.

ABOUT CERES

Ceres is a non-profit organization that is mobilizing many of the world's largest investors and companies to take stronger action on climate change, water scarcity and other global sustainability challenges. Ceres coordinates the Investor Network on Climate Risk, a group of over 120 institutional investors managing over $14 trillion assets focused on the business risks and opportunities of climate change. Ceres also engages with 100-plus companies, many of them Fortune 500 firms, committed to sustainable business practices and the urgency for strong climate and clean energy policies. For more information, visit www.ceres.org.

ABOUT FINANCIAL ACCOUNTABILITY AND CORPORATE TRANSPARENCY (FACT) COALITION

Founded in 2011, the *Financial Accountability and Corporate Transparency (FACT) Coalition* is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promotes policies to combat the harmful impacts of corrupt financial practices. More information about the coalition can be found on the FACT Coalition website at www.thefactcoalition.org.

ABOUT INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE (ICAR)

The International Corporate Accountability Roundtable (ICAR) is a civil society organization working to ensure that governments create, implement, and enforce laws and policies to protect against business-related human rights abuses. For more information, visit www.icar.ngo.

ABOUT PATRIOTIC MILLIONAIRES

The Patriotic Millionaires is a group of high-net worth Americans who are committed to building a more prosperous, stable, and inclusive nation. The diverse membership individuals includes entrepreneurs, chief executives, philanthropic leaders, activists, tech innovators, and academics. From Wall Street to Silicon Valley and everywhere in between, the group works at local, state, and national levels to advocate for practical economic policies that will benefit all Americans. For more information, visit www.patrioticmillionaires.org.

ABOUT PUBLIC CITIZEN

Public Citizen's mission is to fight on behalf of all Americans to make sure government works for the people. We accept no government or corporate money and have 400,000 members and supporters nationwide. Since our founding in 1971, we have delved into an array of areas, but our work on each issue shares an overarching goal: to ensure that all citizens are represented in the halls of power. For four decades, we have proudly championed citizen interests before Congress, the executive branch agencies and the courts, working on a range of issues, from transparency, to financial reform, to healthcare, to civil justice, to climate change and more. Public Citizen also co-chairs the Corporate Reform Coalition, an organization made up of more than 85 investors, academics, securities experts, and NGOs focused on ensuring that the Securities and Exchange Commission (SEC) promulgates the most demanded rulemaking in its history, the requirement that public companies disclose their political spending. For more information, visit www.citizen.org.

ABOUT US SIF: THE FORUM FOR SUSTAINABLE AND RESPONSIBLE INVESTMENT

The Forum for Sustainable and Responsible Investment is the leading voice advancing sustainable, responsible and impact investing across all asset classes. Our mission is to rapidly shift investment practices towards sustainability, focusing on long-term investment and the generation of positive social and environmental impacts. US SIF seeks to ensure that environmental, social and governance impacts are meaningfully assessed in all investment decisions to result in a more sustainable and equitable society, including well-functioning financial markets, which depend on accurate information. US SIF's 300+ members collectively represent more than $3 trillion in assets under management or advisement and include money managers/mutual funds; foundations and other asset owners; research, data and index providers; financial planners, advisors and investment consultants; community development institutions and non-profit organizations. For more information, see www.ussif.org.

Contents

Executive Summary 7

Background on Companies' Disclosure Requirements 12

"Disclosure Overload", "Disclosure Effectiveness", and the Concept Release 13

Comment Summary on Selected Issues 15

The Two Camps: Those Who Read Disclosures Versus Those Who Make Them 16

What Should (or Should Not Be) Disclosed 21

Conclusion 23

Executive Summary

Investors, the public, and regulators must be informed and empowered to address the great challenges facing our companies, our country, and the world. Information and transparency are essential.

The federal securities laws administered by the Securities and Exchange Commission (SEC) have brought a level of transparency to U.S. public markets for over eighty years. Yet, our world has changed in that time. Whether these issues are climate change, human rights, tax, political spending, or workforce matters; investors and the public are increasingly demanding transparency on a wider range of environmental, social, and governance (ESG) issues than ever before. Fortunately, modern technologies permit stakeholders to process far more information than ever before. Yet despite this demand for more information, and the increased capabilities of investors to utilize it, the SEC has nevertheless declined to meaningfully update its ESG disclosure requirements for decades.[1]

Change is occurring, though. On the one hand, an array of private efforts to obtain additional information on ESG matters, combined with a growing desire among some corporations to engage in sustainable and responsible practices, has resulted in diverse new channels for the dissemination of ESG information.[2] Albeit, this information is not standardized, balanced, complete, even sometimes reliable. Yet these trends show that some corporations have already put in processes to collect and disseminate a range of ESG disclosures.

At the same time, increasing investor interest, growing business complexity, more active public pressure, and other factors have spurred a growth in the volume of disclosure documents. Annual filings that were once dozens of pages may now be hundreds of pages long. Some of this growth relates to ESG issues. But much of the new volume of disclosure has not resulted in more or better information. Instead, many disclosures lack specificity, metrics,

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[1] The primary rule for most companies' disclosure obligations, Regulation S-K, was adopted in 1982. Adoption of Integrated Disclosure System, Securities and Exchange Commission, 47 Fed. Reg. 11380 (Mar. 16, 1982).

[2] See, for example, Governance and Accountability Institute, Inc., *Eighty One Percent (81%) of the S&P 500 Index Companies Published Corporate Sustainability Reports in 2015*, Mar. 15, 2016, available at http://www.ga-institute.com/nc/issue-master-system/news-details/article/flash-report-eighty-one-percent-81-of-the-sp-500-index-companies-published-corporate-sustainabi.html; CDP, CDP Climate Report 2015: The mainstreaming of low-carbon on Wall Street, Nov. 2015, available at https://www.cdp.net/en/research/global-reports/global-climate-change-report-2015. See also Michael Porter and Michael Kramer, "Creating Shared Value," *Harvard Business Review*, Jan.-Feb. 2011, available at https://hbr.org/2011/01/the-big-idea-creating-shared-value.

and standards, and are not readily comparable across companies, much less industries. Boilerplate language is common.[3]

Unsurprisingly, all sides are frustrated. Companies and their service providers highlight the costs of sprawling disclosure documents and question the utility of them. Investors and the public simultaneously highlight how the patchwork of disclosures means they are still not receiving the information they need.

We can all do better.

Investors and the public would benefit from more and better disclosures to make informed decisions. Companies and their service providers would appreciate a standardized process with a more level playing field. Stakeholders on all sides have pressed the SEC to step into the void.

After taking the helm of the SEC in 2013, Chair Mary Jo White began what has subsequently come to be called the "Disclosure Effectiveness" Initiative to identify and reform corporate disclosure requirements. Since early 2014, the SEC has openly sought public comments on what it should do, and over 9,835 commenters have responded with their thoughts.[4]

Two years after it formally kicked off its "Disclosure Effectiveness" review, on April 13, 2016, the SEC issued a Concept Release on whether and how it should change its core disclosure rules.[5] In that Concept Release, the SEC asked for public feedback on the frequency and formats of companies' disclosures, accounting practices and standards, and the substantive areas that should be disclosed, including a section on sustainability. This report briefly walks through the purpose of the Concept Release and the public response to it.

The overwhelming response to the Concept Release seems to reflect an enormous pent up demand by disclosure recipients for more and better disclosure. As of August 16, 2016, the SEC

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[3] Letter from Stephen P. Percoco, Lark Research, Inc. to Brent J. Fields, SEC, July 24, 2016, ("Few people have the time to read all of those pages, but it is also true that because many of those pages are boilerplate, regular readers of those reports usually need not read all of those pages. Consequently, there are few calls from professional security analysts to cut pages from SEC filings."), available at https://www.sec.gov/comments/s7-06-16/s70616-317.pdf; see also Letter from Sustainability Accounting Standards Board (SASB) to Brent J. Fields, SEC, July 1, 2016, ("More than 40 percent of all 10-K disclosure on sustainability topics consists of boilerplate language."), available at https://www.sec.gov/comments/s7-06-16/s70616-25.pdf.
[4] SEC, Comments on Disclosure Effectiveness, available at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.
[5] Business and Financial Disclosure Required by Regulation S-K, Securities and Exchange Commission, 81 Fed. Reg. 23915, (Apr. 22, 2016) (hereinafter, the "Concept Release").

had received 26,512 comments in response to its Concept Release.[6] By way of comparison, of the 161 major proposals by the SEC since 2008, only six (less than 4 percent) have received more than 25,000 comments.[7] In fact, the median number of comments received during this period was just forty-five. The existence of this broad public engagement, including through two public campaigns, is meaningful in showing significant public interest in what many might consider an obscure regulatory topic.[8]

Commenters expressed clear support for expanded and enhanced disclosures. Support came from a wide range of sources: institutional investment managers, individual investors, public pension funds, research analysts, public interest advocates, individual members of the public, academics, trade associations, standards setting organizations, accountants, members of Congress, and even other government entities. Overall, these commenters tended to be the recipients of companies' disclosures, those the SEC is institutionally charged to protect.

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[6] Numerical calculations in this report were arrived at through a review of the publicly available comments listed on the SEC's website by the author, with research assistance provided by the Center for American Progress and input from the sponsoring organizations. Comments were subjectively characterized thereafter as for or against expanded or improved disclosures of particular issues based on the author's best interpretation of the text of the letters.

[7] For the purposes of this Report, we have identified major proposals as rule proposals, Concept Releases, and interim final rules. We have excluded all rule filings by self-regulatory organizations, which total more than 1200 filings per year.

[8] While some may seek to undermine or dismiss these comments due to their more generalized nature, we do not. Rather, the fact that a topic as obscure and complex to investors and the public as SEC disclosure rules garnered significant interest demonstrates the power of these issues. Each individual comment, including those filed through public campaigns, represents a person's commitment of time, energy, and even reputation. These commenters care enough about these matters to seek to have their voice be heard by a governmental body. The SEC should not simply listen to only commenters who have extremely technical expertise or sufficient wealth to afford sophisticated legal counsel on these matters. That said, we also note similar submissions were not just a result of the public interest campaigns. Significant portions of submissions from various trade associations in opposition to certain disclosure enhancements similarly appear to borrow heavily from one another. While the number of comments on an issue is important to keep in mind, that should also not be the only focus. Rather, the SEC should also note the types of comments, as well as the perspectives being brought by the various commenters. As demonstrated below, when viewed through this lens, a clear pattern emerges. Users of disclosures tended to want more and better disclosures while a handful of companies who are responsible for making disclosures and their service providers and representatives offered resistance.

A handful of commenters called for "streamlining" or eliminating disclosures. These commenters were a small handful of companies,[9] professional services providers[10] or associations representing companies.[11] Not representative of the growing consensus around sustainable corporate practices, these commenters were notable for their connections to a small handful of industries, such as oil and gas, chemicals, financial services, and insurance. These commenters generally tend to be the parties making the disclosures or their representatives.[12]

Some of the most-discussed substantive areas raised by commenters included disclosures related to:

- taxes, which were discussed in 26,287 comments;
- environmental/climate change, which were discussed in 10,113 comments;
- political spending, which was discussed in 9,994 comments;
- human capital and workforce issues, which were discussed in 48 comments;
- human rights, which was discussed in 46 comments; and
- financial stability risks, in particular from derivatives, which were discussed in 20 comments.

Clearly, these issues were important to commenters. In this report, a wide range of organizations focused on empowering investors, improving the economy, and advancing the public interest come together with those thousands of commenters to call on the SEC to modernize its rules. Investors, the public, and regulators need more information about what their companies are doing, and standardization is critical. By modernizing its rules, the SEC can

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[9] See, e.g., Letter from Exxon Mobil Corporation to Brent J. Fields, SEC, Aug. 9, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-355.pdf (hereinafter, "Exxon Mobil Letter"); Letter from PNC Financial Services Group to Brent J. Fields, SEC, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-227.pdf.

[10] Letter from Davis Polk & Wardwell, LLP, to Brent J. Fields, SEC, July 22, 2016, ("[W]e work regularly with registrants of all sizes and business complexity, often beginning prior to their initial public offerings and continuing long after they have become large accelerated filers. We are often on the front line helping management understand and comply with their disclosure obligations."), available at https://www.sec.gov/comments/s7-06-16/s70616-313.pdf (hereinafter, "Davis Polk Letter").

[11] See, e.g., Letter from American Petroleum Institute to Brent J. Fields, SEC, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-203.pdf.

[12] One notable exception was a letter from fourteen States Attorneys General, who sent a comment urging the SEC to "reject the invitation to allow itself to be used as a tool to promote such special interests." Letter from the Attorneys General of 14 states, to Brent J. Fields, SEC, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-289.pdf (hereinafter, "States Attorneys General Letter"). Notably, all of the Attorneys General who sent the letter are separately suing the federal government to stop the implementation of Environmental Protection Agency rules.

better fulfill its mission and mandate through better aligning the financial markets incentives with the long-term public interest on which our economy, our country, and our world depend.

Background on Companies' Disclosure Requirements

The federal securities laws and the SEC exist, in large part, to ensure that investors, the public, and regulators have the information they need about how companies are structured, how they operate, and what they do. As such, the antifraud provisions of the federal securities laws demand complete and accurate disclosure of information that would "significantly alter" the "total mix" of information for a "reasonable investor."[13]

The SEC has adopted specific rules to flesh out this obligation which require companies to disclose selected information when they sell shares to the public and in quarterly, annual, and episodic reports thereafter. Regulation S-K, which was adopted in 1982, provides the general framework for these disclosures.[14] It requires basic disclosures about the business' property, legal proceedings against it, its financial condition, its owners and management, its governance, and other facts. Regulation S-K has not been revised significantly in years.

[13] *TSC Industries Inc., v. Northway, Inc.*, 426 U.S. 438 (1976).
[14] Adoption of Integrated Disclosure System, Securities and Exchange Commission, 47 Fed. Reg. 11380 (Mar. 16, 1982).

"Disclosure Overload", "Disclosure Effectiveness", and the Concept Release

Shortly after taking leadership of the SEC, Chair Mary Jo White began efforts with the SEC to review and overhaul the agency's disclosure requirements for companies. In a speech to corporate directors in late 2013, Chair White explained that, as a former corporate director herself, she believed that the agency should peel back companies' disclosure obligations and reduce "information overload"[15] for investors. As Chair White put it:

> I am raising the question here and internally at the SEC as to whether investors need and are optimally served by the detailed and lengthy disclosures about all of the topics that companies currently provide in the reports they are required to prepare and file with us.
>
> When disclosure gets to be "too much" or strays from its core purpose, it could lead to what some have called "information overload" – a phenomenon in which ever-increasing amounts of disclosure make it difficult for an investor to wade through the volume of information she receives to ferret out the information that is most relevant.[16]

A few months later, the SEC formally announced its "Disclosure Effectiveness" Initiative and began seeking public comments on its corporate disclosure rules. Since early 2014, over 9,835 commenters have responded with their thoughts.[17]

On April 13, 2016, the SEC issued the Concept Release outlining several potential disclosure reforms. The Concept Release, while ostensibly limited to just the business and financial disclosure elements of Regulation S-K, is nevertheless quite lengthy, composed of 341 pages and 340 enumerated questions.[18] Comments were ostensibly due within sixty days, but are still trickling in.

The Concept Release covers everything from companies' accounting practices to substantive disclosures on a wide swath of areas, including international taxes, corporate structuring, human resources practices, environmental and climate issues, and corporate stock buybacks.

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[15] Speech before the National Association of Corporate Directors, The Path Forward on Disclosure, Chair Mary Jo White, Oct. 15, 2013, available at https://www.sec.gov/News/Speech/Detail/Speech/1370539878806.
[16] *Ibid.*
[17] Comments on Disclosure Effectiveness, SEC, available at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml.
[18] Concept Release.

Although it includes a section on sustainability, it strangely does not specifically address executive compensation or political spending disclosures (except for acknowledging in a footnote that more comments have come in on the petition calling for political disclosures than received in agency history, 1.2 million). Nevertheless, many commenters sought to address those issues.

Because the Concept Release is not a rule proposal, there is no immediate action pending. At the same time, the "Disclosure Effectiveness" project, and the Concept Release in particular, have provided the first formal opportunity in years for both disclosing parties and disclosure recipients to publicly offer their broad views on what should be disclosed and how. While the Concept Release covers most disclosure issues, several other proposed rulemakings arising out of the SEC's "Disclosure Effectiveness" initiative are currently pending.[19]

[19] For example, on July 13, 2016, the SEC proposed to reduce and eliminate a number of specific disclosure requirements, largely based on the assumption that those requirements would be captured by rules promulgated by the Financial Accounting Standards Board (FASB). Disclosure Update and Simplification, SEC, 81 Fed. Reg. 51608 (Aug. 4, 2016), available at https://www.gpo.gov/fdsys/pkg/FR-2016-08-04/pdf/2016-16964.pdf. In addition, FASB is actively engaged in its own "Disclosure Effectiveness" project that would change the accounting definition of materiality and make several other significant changes to what would need to be disclosed in the financial statements. See generally, Disclosure Framework, FASB, available at http://www.fasb.org/cs/ContentServer?c=Page&pagename=FASB%2FPage%2FBridgePage&cid=1176163875549.

Comment Summary on Selected Issues

In response to its Concept Release, the SEC received 26,512 comments. In addition to 348 unique posted comments, the public also weighed in more broadly in response to two distinct public campaigns. As a result of one public interest campaign, 9,859 individual members of the public submitted copies of one form letter expressing support for enhanced disclosures on taxes, political spending, and environmental/climate sustainability issues.[20] As a result of a separate public interest campaign, another 16,302 individual members of the public submitted copies of another form letter expressing support for enhanced international tax disclosures.[21] Taking these campaigns into account, more than 99 percent of commenters supported expanding ESG disclosures.

With 26,512 comments, the Concept Release garnered more public comments than all but 5 of the 161 major proposals issued by the SEC since 2008.[22] This does not even count the thousands of rules changes filed by self-regulatory organizations (e.g., FINRA) for which the SEC solicits input each year — more than 90 percent of which receive no comments all.

Interestingly, four of those other five major proposals that received more comments related to enhancing disclosures for key areas, such as extraction payments to governments and executive compensation, while the fifth regarded the implementation of the so-called Volcker Rule, one of the highest profile parts of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In fact, during this period that covers rulemakings for the Dodd-Frank Act and the Jumpstart Our Business Startups (JOBS) Act, the median number of total comments received by the SEC was just 45. Clearly, this Concept Release struck a chord with the both investors and the public.

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[20] See Public Citizen, "Tell the SEC Disclosure is Critical", available at https://action.citizen.org/p/dia/action/public/index.sjs?action_KEY=13225.
[21] See Americans for Tax Fairness, "Demand Transparency from Tax Dodgers," available at https://actionnetwork.org/petitions/demand-transparency-from-tax-dodgers?clear_id=true&referrer=&source=email-we-can-win-this.
[22] We determined "major proposals" to include all proposed rules, interim final rules, and concept releases. Calculations were made based on comments posted to the SEC's website.

The Two Camps: Those Who Read Disclosures Versus Those Who Make Them

Generally speaking, the comments can be broken down into two buckets: (1) arguments for expanded and enhanced disclosures (such as by providing tax reporting on a country-by-country basis), and (2) arguments for "streamlining" or reducing perceived burdensome disclosures (such as by narrowing the definition of "materiality" or providing greater "flexibility" for companies).[23]

Comments overwhelmingly expressed support for more or better disclosures in one or more areas. Commenters identifying themselves as institutional investment managers,[24] public pension funds or trustees,[25] private pension funds and trustees,[26] religious investors,[27]

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[23] Several disclosure recipients and disclosure makers expressed objections to many companies' use of "boilerplate" disclosures. See, e.g., Letter from Andrew Friedman, AJF Financial Services, Inc. to SEC, June 3, 2016, ("Boiler plate Disclosure will not suffice, nor is it trustworthy."), available at https://www.sec.gov/comments/s7-06-16/s70616-16.pdf; see also, Letter from Tom Quaadman, U.S. Chamber of Commerce, to Brent J. Fields, SEC, July 20, 2016, ("[T]he SEC should use this opportunity to encourage registrants to eliminate boilerplate, immaterial information."), available at https://www.sec.gov/comments/s7-06-16/s70616-173.pdf, (hereinafter, "Chamber of Commerce Letter"),

[24] See, e.g., Letter from British Columbia Investment Management Corporation to Brent J. Fields, SEC, July 21, 2016, (managing 121 billion Canadian dollars), available at https://www.sec.gov/comments/s7-06-16/s70616-288.pdf.

[25] See, e.g., Letter from Thomas DiNapoli, New York State Comptroller, to Brent J. Fields, SEC, July 21, 2016, (overseeing $178 billion), available at https://www.sec.gov/comments/s7-06-16/s70616-205.pdf (hereinafter, "NYS Comptroller Letter"); Letter from California Public Employees Retirement System, to Brent J. Fields, SEC, July 21, 2016, (managing $295 billion), available at https://www.sec.gov/comments/s7-06-16/s70616-267.pdf, (hereinafter, "CalPERS Letter").

[26] See, e.g., Letter from UAW Retiree Medical Benefits Trust to Brent J. Fields, SEC, July 15, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-130.pdf.

[27] See, e.g., Letter from Wespath Investment Management to Brent J. Fields, SEC, July 21, 2016, (managing $20 billion in pension assets for The United Methodist Church), available at https://www.sec.gov/comments/s7-06-16/s70616-272.pdf; see also Letter from Priests of the Sacred Heart, US Province, to SEC, July 2, 2016 (representing religious groups investing $600 million), available at https://www.sec.gov/comments/s7-06-16/s70616-177.pdf.

professional investment advisers,[28] research analysts,[29] public interest advocates,[30] individual members of the public,[31] academics,[32] individual policy experts,[33] broad-based investor organizations,[34] investor organizations dedicated to improving disclosures,[35] standards setting organizations,[36] accountants,[37] and members of Congress[38] generally supported expanded and enhanced disclosures. These parties are typically recipients of disclosures.

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[28] See, e.g., Letter from Trillium Asset Management to Brent J. Fields, SEC, July 21, 2016, (managing over $2 billion) available at https://www.sec.gov/comments/s7-06-16/s70616-276.pdf.

[29] See, e.g., Letter from MSCI ESG Research Inc. to SEC, July 21, 2016, (noting that it works with 47 of the top 50 global asset managers), available at https://www.sec.gov/comments/s7-06-16/s70616-285.pdf; see also Letter from Cornerstone Capital Group to Brent J. Fields, SEC, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-308.pdf.

[30] See, e.g., Letter from Consumer Federation of America to Brent J. Fields, SEC, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-318.pdf; see also Letter from Americans for Financial Reform to Brent J. Fields, SEC, Aug. 10, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-358.pdf; see also Letter from the Financial Accountability and Corporate Transparency Coalition to Brent J. Fields, SEC, July 6, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-28.pdf, (hereinafter, "FACT Coalition Letter").

[31] See, e.g., Letter from John McCarter to SEC, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-281.htm; see also, Letter from Paul Linzmeyer to SEC, July 19, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-162.pdf.

[32] See, e.g., Letter from Tom C.W. Lin to Brent J. Fields, SEC, July 18, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-146.pdf; see also Letter from Dr. Janice Denoncour to SEC, July 31, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-346.pdf.

[33] See, e.g., Letter from Elise J. Bean to Brent J. Fields, SEC, July 6, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-32.pdf.

[34] See, e.g., Letter from Council of Institutional Investors, to Brent J. Fields, SEC, July 8, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-49.pdf, (hereinafter, "CII Letter").

[35] See, e.g., Letter from CERES to Brent J. Fields, SEC, July 20, 2016, (representing asset owners and investment managers with more than $*1.15 trillion* in assets under management), available at https://www.sec.gov/comments/s7-06-16/s70616-174.pdf; Letter from US SIF: The Forum for Sustainable and Responsible Investment to Brent J. Fields, SEC, July 14, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-107.pdf (hereinafter "US SIF Letter"); see also Letter from the Corporate Reform Coalition, to SEC, July 18, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-142.pdf.

[36] Letter from Sustainability Accounting Standards Board to Brent J. Fields, SEC, July 1, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-25.pdf.

[37] See, e.g., Letter from the American Institute of Certified Public Accountants to SEC, July 20, 2016, (arguing that any new disclosure requirements be subject to auditor assurance obligations), available at https://www.sec.gov/comments/s7-06-16/s70616-194.pdf.

[38] See, e.g., Letter from Sen. Al Franken et al, to Mary Jo White, SEC, July 20, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-342.pdf; see also Letter from Matt Cartwright, et al, to Mary Jo. White, SEC, July 20, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-175.pdf.

Several of these commenters explained that they use environmental, social, and governance (ESG)-related information to make investment decisions, and need more information than the SEC currently requires.[39]

Although investors have made these demands for years,[40] recent interest likely reflects the dramatic increases in number, size, and diversity of investors concerned with ESG issues: from 2012 to 2014, professionally managed assets engaged in one or more socially responsible investing (SRI) strategies grew from $3.74 trillion to $6.57 trillion to account for more than one out of every six dollars under professional management in the United States.[41] But that is just a fraction of the total number of investors who have expressed their interest in more and better disclosures. In fact, more than 1,500 investors from around the world (managing more than $60 trillion in assets) have signed onto the Principles for Responsible Investment.[42]

Not surprisingly, comments from investors and investor organizations did not reflect the opinion that they were somehow "overburdened."[43] In fact, investors and investor organizations generally asserted the opposite.

> *"Although much has been made of information overload we do not believe any investors are worse off for access to too much information."*
> —Legal & General Investment Management[44]

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[39] See, e.g., NYS Comptroller Letter ("The Fund considers sustainability issues in our investment process because they can influence both risk and return."); see also, Letter from California State Teachers Retirement System (CalSTRS), to Brent J. Fields, SEC, July 21, 2016 ("Sustainability disclosures are necessary for CalSTRS in our consideration of ESG risks and opportunities within our portfolio companies and in determining initial and continued capital allocation decisions. CalSTRS utilizes a company's sustainability disclosures in our assessment of management quality, efficiency and whether boards have fully assessed and mitigated ESG risks, as well as taken opportunities of possible rewards, which may be applicable to a company's industry."), available at https://www.sec.gov/comments/s7-06-16/s70616-226.pdf.

[40] Letter from US SIF (formerly the Sustainable Investment Forum) to SEC Chair Mary Schapiro, July 21, 2009, available at http://www.ussif.org/files/Public_Policy/Comment_Letters/SIF_SEC_ESG_Disclosure_Policy_Letter_and_Submission%2008142009.pdf.

[41] Additional information can be found in the US SIF Foundation's Report on US Sustainable, Responsible and Impact Investing Trends 2014.

[42] United Nations: Principles for Responsible Investment, to SEC, July 19, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-149.pdf.

[43] Contrast, Exxon Mobil Letter, ("[E]xcessive disclosure can overload investors with immaterial information that can render more material information difficult to find and evaluate.").

[44] Letter from Legal & General Investment Management to Brent J. Fields, SEC, at 1, July 20, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-184.pdf.

"The Fund considers sustainability issues in our investment process because they can influence both risk and return."
—New York State Comptroller

Several commenters focused on the Supreme Court's definition of "materiality" as information that a "reasonable investor" would think "significantly alter[s]" the "total mix" of information available.[45] These commenters argued that investors and the public have come to seek more and better information from companies that is material to them as "reasonable investors", and the SEC should therefore require the disclosure of the information they seek.[46]

On the other end of the spectrum, commenters arguing to reduce disclosures (such as by limiting them to only financially "material" information) or to relieve the perceived burdens, tended to be companies[47] and their service providers[48] or representatives.[49] These commenters argued that current disclosures are overwhelming the disclosure recipients[50] or that disclosure obligations should be narrowed (such as by tying disclosures to a narrow definition of "materiality").[51]

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[45] See, e.g., Letter from American Federation of Labor and Congress of Industrial Organizations to Brent J. Fields, SEC, at 7, July 21, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-305.pdf, (hereinafter, "AFL-CIO Letter"); see also FACT Coalition Letter.
[46] See, e.g., AFL-CIO Letter, at 7.
[47] See, e.g., Exxon Mobil Letter, at 1.
[48] See, e.g., Davis Polk Letter, ("[W]e work regularly with registrants of all sizes and business complexity, often beginning prior to their initial public offerings and continuing long after they have become large accelerated filers. We are often on the front line helping management understand and comply with their disclosure obligations."); see also Letter from Wachtell, Lipton, Rosen & Katz to Brent J. Fields, SEC, May 16, 2016, available at https://www.sec.gov/comments/s7-06-16/s70616-9.pdf (hereinafter, "Wachtell Lipton Rosen & Katz Letter").
[49] See, e.g., Letter from Tom Quaadman, U.S. Chamber of Commerce, to Brent J. Fields, SEC, July 20, 2016, ("Excessive disclosure, however, imposes unnecessary costs on organizations and, ultimately, on shareholders and customers. It also has the tendency to overload investors, especially retail investors, with extraneous information that can confuse or obfuscate material information."), available at https://www.sec.gov/comments/s7-06-16/s70616-173.pdf.
[50] See, e.g., Exxon Mobil Letter, at 1, ("Excessive disclosure, however, imposes costs on us that ultimately are borne by both shareholders and those who use our products. In addition, excessive disclosure can overload investors with immaterial information that can render more material information difficult to find and evaluate."); Wachtell, Lipton, Rosen & Katz Letter, ("Such overdisclosure not only burdens corporate resources—at the expense of all shareholders—but often buries shareholders in an avalanche of information that ultimately limits the practical utility of Exchange Act filings."); see also Chamber of Commerce Letter.
[51] See, e.g., Sullivan & Cromwell, LLP, to Brent J. Fields, Aug. 9, 2016, ("We think that the best and most efficient way the Commission could drive improvement in the overall quality of registrants' disclosure

"[E]xcessive disclosure can overload investors with immaterial information that can render more material information difficult to find and evaluate."
—Exxon Mobil Corporation

"Such overdisclosure not only burdens corporate resources—at the expense of all shareholders—but often buries shareholders in an avalanche of information that ultimately limits the practical utility of Exchange Act filings."
—Wachtell, Lipton, Rosen & Katz

Further, many of these commenters expressed the view that the substantive areas about which disclosure is frequently sought were "not material," and thus should be excluded from the SEC's requirements.[52] One prominent law firm went so far as to assert that the SEC should "confirm" its view that "'materiality' is an economic standard, relating solely to matters that could ultimately be thought to bear on firm value and thus the value of the issuer's securities."[53] Several of these commenters suggested that the SEC should not cater to "certain investors" or "special interests" when crafting its disclosure requirements.[54]

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would be to (1) subject all of Regulation S-K line-item disclosure requirements to an over-arching materiality standard…"), available at https://www.sec.gov/comments/s7-06-16/s70616-354.pdf (hereinafter, "Sullivan & Cromwell Letter").

[52] See. e.g., Davis Polk Letter ("For example, we are mindful that some parties seek information in areas of corporate sustainability, including issues such as conflict minerals, environmental matters and climate change, workforce diversity and labor conditions, among others. Although these types of issues are often considered by registrants' boards and management as part of broader strategy and business profile reviews, *they are not in most cases material to an understanding of a registrant's operating results and financial performance, and, accordingly, are not appropriate for inclusion in periodic and current reports.*") (emphasis added).

[53] Sullivan & Cromwell Letter.

[54] See, e.g., Letter from the Business Roundtable to Brent J. Fields, SEC, at 4-5, ("The Commission has, in our judgment, historically resisted disclosure requirements that are relevant only to a small subset of investors, recognizing that it would be impossible, and in any case undesirable, to require disclosures sufficient to satisfy discrete interests of every investor group. We urge the Commission to continue this measured approach as it considers a number of specialized disclosure additions submitted for public comment in the Concept Release. … [D]isclosures [mandated by Congress in the Dodd-Frank Act] are designed to promote laudable societal goals but are largely unrelated to the investing and proxy voting decisions of the investing public. The use of securities disclosures for non-investment goals obscures material information in periodic reports and often delivers only speculative improvements on the societal issue."), available at https://www.sec.gov/comments/s7-06-16/s70616-208.pdf; see also, States

What Should (or Should Not Be) Disclosed

With 350 distinct letters submitted by more than 26,000 separate commenters, the responses to the Concept Release demonstrate both substantive depth and broad support for enhancing disclosures in multiple areas. We focused on the following areas: (i) international tax practices or corporate structuring; (ii) environmental or climate change; (iii) political spending; (iv) human capital or employee training, compensation, or rights; (v) human rights; and (vi) financial stability.

Taxes and Corporate Structuring

In recent years, corporate structures and international tax planning strategies have had increasingly dramatic impacts on companies, their shareholders, and governments. As the public and governments have increasingly focused on these issues, so have investors.

Taxes and corporate structuring disclosures were the single most commented on area of the Concept Release, where 99 percent of all comments received raised the issue, and nearly all of them expressed clear support for expanded disclosures. This issue was raised in both of the public interest campaign letters, as well as in more than 120 other unique comments. Not a single commenter clearly objected to expanded tax disclosures.

Environmental, Climate and other ESG Issues

Addressing climate change is a global imperative. Companies, investors, the public, and governments are all wrestling with how to adapt and move forward. To do that, investors and the public need to know what their companies are (and are not) doing to address this new reality.

With 10,113 comments on climate, environmental, and other ESG disclosures, this was a priority for investors. Here, 10,070 commenters expressed clear support for enhanced disclosures, while just 43 commenters expressed oppositional or more ambiguous views. As with the other enhanced disclosures generally, supporters covered a wide swath of investors and the public. Again, opponents tended to be a small number of companies, their service providers, and their representatives.[55]

Attorneys General Letter, ("[T]he Commission should reject the invitation to allow itself to be used as a tool to promote such special interests.").

[55] But see, State Attorney Generals Letter.

Political Spending

Following the Supreme Court's decision in *Citizens United*,[56] the public has become increasingly concerned with companies' political spending. Investors want to make sure that their companies' funds are being used in manners that are prudent, and consistent with their beliefs.[57] With 9,994 comments on political spending disclosures, this was clearly a hot-button issue for investors. Here, 9,984 commenters expressed clear support for enhanced disclosures, while just 10 commenters expressed opposition or raised the issue in a neutral manner.

As with enhanced tax disclosures, supporters for increased disclosure on political spending covered a wide swath of investors and the public. On the other hand, the clear opponents to enhanced disclosures included just one company, and six industry organizations.

Human Capital

The development, utilization, and compensation of the human capital — that is, the workers — of a company may be one of the most important factors in its long-term success. And while this issue did not garner the broad public support of either of the public interest campaigns, professional investors clearly expressed their strong support for enhancing human capital disclosures. Some of the recommended disclosures related to the number of employees and independent contractors, as well as the categories of workers, and information related to outsourcing.[58]

With 48 unique comments raising the issue, this area received about the same amount of comments as the median SEC proposal since 2008. Of these comments, 34 expressed clear support for enhanced disclosures, most of which were from investors and investor-based organizations. The eight comments that clearly opposed enhanced disclosures were filed by one company, two law firms, and five trade groups.

Human Rights

Human rights are a key area of interest for many investors given the substantial financial and reputational risks that can be incurred when companies fail to appropriately manage human rights concerns. In recent years, many companies have responded to investors' increased demands for more and better human rights information by dramatically increasing their

[56] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).
[57] See, e.g., Richard Valdmanis and Grant Smith, *U.S. companies tout climate policies, fund climate skeptics*, Reuters, Sept. 6, 2016, available at http://www.reuters.com/article/us-usa-election-climate-donations-idUSKCN11C0ED.
[58] See, e.g., US SIF Letter.

voluntary human rights reporting.[59] Some 46 unique comments raised the issue of human rights reporting, and while some other commenters expressed opposition to ESG issues generally, there was no direct opposition to enhanced disclosure of human rights policies, practices, or impacts.

Financial Stability

In the aftermath of the financial crisis of 2008-2009, companies, investors, the public, and regulators all learned a great deal about the risks to our economy and well-being from an unstable financial sector. During the crisis and the recession that followed, companies incurred billions of dollars in losses as derivatives risks manifested themselves in ways never before disclosed to investors. Investors and the public have since pressed for enhanced disclosures of derivatives risks, to limited avail.

These issues were raised by 20 commenters, with some limited opposition to expanded or enhanced derivatives disclosures coming from a financial services firm, an accounting firm, and a financial services trade association. That said, some commenters recommended targeting any enhanced disclosures on particularly impacted industries, such as financial firms, as opposed to all issuers.

Conclusion

The challenges facing our world require active partnerships of investors and regulators, markets and communities, and workers and executives. Those companies and executives that want to do the right thing face an unlevel playing field and additional risks from going it alone.

Unfortunately, the SEC's current disclosure obligations fail to ensure that these stakeholders have the information they need about what companies are — or are not — doing. This creates misaligned incentives for all involved. Now that the SEC is considering modernizing its rules, the demand is clear: Investors and the public overwhelmingly seek more and better disclosures on a range of topics so that they can better support the long-term sustainability of our economy. It's time for the SEC to act.

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[59] For example, 78 percent of reporting companies and 82 percent of the Global 250 companies use the Global Reporting Initiative's G4 reporting standards as the basis for their corporate responsibility reporting and six global companies and over eighty investors representing over $4.25 trillion in assets under management support the UN Guiding Principles Reporting Framework. KPMG, *KPMG Survey of Corporate Social Responsibility Reporting 2013*, (2013) at 10, http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/corporate-responsibility/Documents/corporate-responsibility-reporting-survey-2013-exec-summary.pdf; UN Guiding Principles Reporting Framework, *FAQ*, http://www.ungpreporting.org/resources/faq/ at Q6.