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, 2016 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;

- come 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 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 gkalman@thefactcoalition.org.

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

July 21, 2016

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

Re: File No. S7-06-16, Business and Financial Disclosure Required by Regulation S-K

Dear Mr. Fields:

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

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

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

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

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

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

b. To what extent, if any, the registrant is dependent upon the use of subsidiaries companies in tax haven locations.

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

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

Furthermore, whilst there are occasions when a registrant trade entirely under its own name, many corporations operates under various and complex structure such as conglomerates, joint ventures, syndicates which by nature make it hard for an investor to identify accurately the trade the registrant or its subsidiaries undertakes by location and by name. It is therefore vital for investors to being able to identify the multinational corporation which they might invest with the local economic activity it undertakes in their home jurisdiction and abroad if they are to undertake proper investment appraisal of its activities in the location with which they might not be particularly familiar with. We therefore recommend that registrants be required to provide basic information about all subsidiaries to enable users of disclosure to accurately identify and track each of them.

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

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

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

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

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

Disclosing the number of employees. We respectfully recommend disclosure of the number of employees at registrants and for each of a registrant's subsidiaries, on a country-by-country basis, to provide investors with the information necessary to understand the structure of the registrant and its international strategy.

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

Currently, employees' data information provided by registrants in most filings varies and is provided with little or no breakout. For instance, some registrants disclose the number of employees only for specific departments or countries without a systematic approach. Also some registrants do not make in their disclosure a distinction between full time and part-time employees, or independent contractors participating in the ordinary operating activities of a registrant or a registrant's subsidiaries. By leaving it up to registrants to choose what information to disclose when it comes to their number and type of employees, could lead to a significant degree of uncertainty into the data and allow widely varying approaches to a factor that could have a significant impact on employment totals.

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

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

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

Country-by-Country Reporting. We respectfully recommend registrants to submit basic corporate information on a country-by-country basis, including the profits or losses incurred before taxes, number of employee, stated capital, tangible assets and income tax accrued and paid. These elements could be submitted by registrants as a new exhibit replicating the reporting prescribed by the Treasury rule requiring U.S. multinational corporations to file annual CbC reports with the IRS.

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

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

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

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

b. The risk that this diversity creates for the company

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

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

e. The profit earned by a group in each location as a proportion of third-party and intragroup sales, both indicating in turn the risk of a transfer pricing challenges arising, particularly if the group is making significant use of tax haven or its ratios of profit to sales are high in low tax jurisdictions and low in high tax jurisdictions.

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

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

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

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

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

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

In summary, it is suggested that country-by-country reporting data will supply the following benefits to investors in multinational corporations:

a. increase profitability because less time will be put into tax management and more;

b. into making profit;

c. Reduced risk;

d. Greater confidence in the governance of the enterprise;

e. Enhanced ability to predict future earnings;

f. Better valuation of the company;

g. Greater stability of earnings.

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

Sincerely,

Tatu Y. Ilunga
Senior Policy Advisor
Oxfam America