AFL-CIO
AMERICA'S UNIONS

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October 31, 2016

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

Dear Mr. Fields:

Re: File Number S7-15-16 -- Disclosure Update and Simplification

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), and Americans for Financial Reform (AFR), I am writing provide comments on the Securities and Exchange Commission's proposed rule titled "Disclosure Update and Simplification." For the reasons below, we urge the Commission to withdraw the proposed rule and reconsider its provisions to ensure that any changes to the Commission's disclosure rules do not narrow the scope of information that is provided to investors.

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions representing 12.5 million members. Union-sponsored and Taft-Hartley pension and employee benefit plans hold more than $646 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in single-employer and public pension plans. AFR is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. AFR includes consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

If adopted, the Commission's proposed rule will eliminate certain disclosure requirements that purportedly are redundant, overlapping, outdated or superseded by other disclosure requirements. As a general matter, we note that repetitive disclosures are not a significant concern for investors. Investors focus on disclosures that they believe are material. But because investment strategies differ, investors will disagree on which disclosures are material. On the other hand, it will be

[1] A list of AFR member organizations is available at http://ourfinancialsecurity.org/about/our-coalition/.

of great concern to investors if material information is no longer disclosed. The overwhelming consensus of investors is that more information should be disclosed, not less.[2]

While the proposed rule is presented as a technical revision to the Commission's disclosure requirements, we are concerned that such revisions may have unintended consequences. In particular, we are concerned that eliminating Commission disclosure rules because they are duplicated by Financial Accounting Standards Board ("FASB") requirements will lead to less disclosure. FASB has proposed to redefine its definition of materiality according to a narrow legal standard, and this definitional change will result in a reduction in the overall level of disclosure that will be required under U.S. GAAP.

Specifically, FASB proposes to redefine materiality as a legal concept as stated by the U.S. Supreme Court's antifraud definition of materiality. FASB's proposed definition shifts the determination of material information that "could influence decisions that users make" to a "substantial likelihood" that the disclosure will "significantly alter the total mix of information." This legal definition sets the minimum floor for disclosure to avoid committing fraud; it should not be used as a guide for identifying the optimal amount of required disclosure. A copy of the AFL-CIO's comment letter to FASB detailing our opposition to this proposed change is attached.[3]

Legal and regulatory proceedings in particular are of great interest to investors because they can significantly impact a company's business model in ways that go far beyond the materiality of any contingent monetary liabilities. For example, the dollar amount of the Wells Fargo $185 million settlement with the CFPB for the alleged systematic opening of fraudulent accounts may not have been material to investors. But the existence of such a regulatory proceeding had material implications for Wells Fargo's cross-selling business strategy as evidenced by Wells Fargo's subsequent stock market value drop by almost $20 billion after the settlement was announced.

In our view, neither Regulation S-K Item 103 nor U.S. GAAP require the disclosure of sufficient information on pending legal and regulatory proceedings. To help

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[2] *See e.g.* Letter from SEC Investor Advisory Committee to the Division of Corporation Finance, Securities and Exchange Commission (June 15, 2016), available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-approved-letter-reg-sk-comment-letter-062016.pdf ("While recognizing substantial opportunities for improvement, the IAC is of the view that the current degree, quality and frequency of disclosure for U.S. issuers overall is appropriate and a source of strength for the U.S. capital markets.").

[3] Letter from Heather Slavkin Corzo, Office of Investment Director, AFL-CIO to Susan Cosper, Technical Director, Financial Accounting Standards Board (December 7, 2015), *available at* http://www.aflcio.org/content/download/175390/4167006/FASB_letter_on_Conceptual_Framework_for_Financial_Reporting_12-7-15.pdf.

remedy this information deficiency, we support the greater use of bright line disclosure rules such as those required by Item 103 for environmental matters. We also favor preserving Item 103's disclosure requirements for low-probability but high magnitude liabilities because these contingencies are significant risk factors for investors. Finally, disclosure of the venue, parties, and date of material legal proceedings is necessary to enable investors to conduct their own independent research.

We also believe that investors need more detailed disclosure of corporate income tax liabilities, not less. We support the incremental disclosure that Regulation S-X Rule 4-08(h) provides in addition to the U.S. GAAP requirements, including disclosure of the amount of domestic and foreign pre-tax income and income tax expense. In addition, investors would benefit from requiring the disaggregation of foreign amounts of income tax paid and the effective tax rate on a country-by-country basis. Enhanced disclosure of foreign tax liabilities on a country-by-country basis will allow investors to better assess the tax avoidance strategies employed by multinational companies.

The elimination of purportedly outdated or superseded rules also risks reducing disclosure. For example, the proposed rule will eliminate the equity compensation plan information table that is required under Regulation S-K Item 201(d). While the stock exchanges now require that all equity compensation plans be approved by shareholders, we note that this table also requires disclosure of the number of shares available for future issuance. This information on a company's equity compensation plan burn rate and remaining runway is material for shareholders. Moreover, eliminating proxy statement disclosure that is also contained in the financial statement notes will make this information less prominent for investors when casting proxy votes.

Finally, we are concerned that the Commission's proposed rulemaking contemplates the elimination of various bright line disclosure rules. For example, the Commission proposes eliminating bright line rules for the separate reporting of repurchase agreements, disclosure of material restrictions on dividends, and the names of major customers. We caution that eliminating bright line rules in favor of a more principles-based disclosure requirement will diminish comparability of companies who may decide differently as to whether and how information must be disclosed. For this reason, disclosure requirements should include bright line rules where appropriate.

For these reasons, we urge the Commission to withdraw the proposed rule for further review. The Commission should carefully study the economic impacts on investors before moving forward with any rulemaking to eliminate existing disclosure rules. We share Commissioner Kara Stein's concern that the technical subject matter of the proposed rule "fails to provide a bonafide opportunity for a wide variety of commenters to truly access and understand what is being proposed."[4] We also question the value of moving forward with this rulemaking at a time that there are still outstanding investor protection rules that are required to be adopted by the Dodd-Frank Act. Finally, promulgating this proposed rule before reviewing the comments on the Commission's Concept Release concerning Reg S-K and disclosure raises questions as to the Commission's commitment to full transparency and public consultation on these issues.

We appreciate the opportunity to comment on this proposed rulemaking. If we can be of further assistance, please contact Brandon Rees at (202) 637-5152.

Sincerely,

HSC

Heather Slavkin Corzo, Director
Office of Investment

Marcus Stanley

Marcus Stanley, Policy Director
Americans for Financial Reform

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Enclosure

[4] Statement on the Disclosure Update and Simplification Proposing Release, Kara Stein, Commissioner, Securities and Exchange Commission (July 13, 2016), *available at* https://www.sec.gov/news/statement/stein-statement-open-meeting-071316-disclosure-update.html.

American Federation of Labor and Congress of Industrial Organizations

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December 7, 2015

Sent via electronic mail: director@fasb.org

Ms. Susan M. Cosper
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 2015-300 on Conceptual Framework for Financial Reporting and No. 2015-310 on Notes to Financial Statements (Topic 235)

Dear Ms. Cosper:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to comment on the Financial Accounting Standards Board's ("FASB") Exposure Drafts on Conceptual Framework for Financial Reporting ("Conceptual Framework"), and Notes to Financial Statements (Topic 235) ("Notes"), on materiality, dated September 24, 2015. We are deeply troubled by FASB's proposals to redefine materiality and we believe the proposals should be withdrawn.

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 plans hold $587 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. The retirement savings of America's working families depend, in part, on companies making effective disclosures to investors.

The existing FASB definition of materiality states that "Information is material if omitting it or misstating it could influence decisions that users make on the basis of the financial information of a specific reporting entity." (Chapter 3, *Qualitative Characteristics of Useful Financial Information*, FASB Concepts Statement No. 8). In the Conceptual Framework, FASB proposes to replace this definition to state:

> Materiality is a legal concept. In the United States, a legal concept may be established or changed through legislative, executive or judicial action.

In the Conceptual Framework, FASB observes the U.S. Supreme Court's antifraud definition of materiality — "information is material if there is a substantial likelihood that the omitted or misstated item would have been viewed by a reasonable resource provider as having significantly altered the total mix of information."

In the Notes exposure draft, FASB explains that adopting a legal definition of materiality is intended to "improve the effectiveness of disclosures in the notes to financial statements." Specifically, FASB states the new definition of materiality would promote "discretion," and could reduce or eliminate "irrelevant disclosures." The notes to the financial statements provide important context for the numbers provided by companies in their financial statements, so any changes to the definition of materiality for notes disclosure will have a major impact on financial reporting.

We strongly oppose redefining materiality based on a legal definition rather than as an accounting concept that has long been familiar to investors. A legal definition of materiality will unacceptably narrow the amount of information that is required to be disclosed. The proposed legal definition shifts the determination of materiality from information that "could influence decisions that users make" to a "substantial likelihood" that the disclosure will "significantly alter the total mix of information." In other words, information that could influence the decisions of investors would no longer need to be disclosed unless it has a high probability of having a significant impact.

We are also concerned that the proposed legal definition of materiality will insert the subjective opinions of attorneys into the disclosure decision-making process. At present, the preparers of financial statements and their auditors determine whether information is material and should be disclosed. In close questions of whether information is material, the current definition of materiality encourages disclosure. Under the new standard, lawyers will be the ultimate arbiters of what must be included in financial statements. Accordingly, the definition of materiality will be subject to significant uncertainty given that different courts may issue varying decisions.

In our opinion, the proposed legal definition of materiality appears intended to benefit the preparers of financial statements without regard for the costs imposed on the users of financial statements. If adopted, financial statement preparers will have far greater latitude to avoid making disclosures. They may cherry pick the information they choose to disclose, opting to disclose favorable information, while omitting information which may be unfavorable. Providing less information in financial statements does not make the remaining disclosure more effective. To the contrary, investors are clamoring for more, not less, information in financial statements.

We are troubled by the manner in which FASB prepared the exposure drafts, apparently without seeking input from investors. FASB has stated that the proposals originated from the concerns of unidentified “stakeholders.” According to FASB’s website, it does not appear that FASB’s own Investor Advisory Committee has met in recent years. We also note that FASB’s Investor Advisory Committee does not include any representatives of beneficial asset owners such as pension plans. At a minimum, FASB should slow down and set up a panel of investors to solicit their views.

In conclusion, we urge FASB to withdraw the proposals and seek more input from users of financial statements. Thank you for taking the AFL-CIO’s views into consideration regarding this matter. If the AFL-CIO can be of further assistance, please contact Brandon Rees at [redacted] or [redacted].

Sincerely,

Heather Slavkin Corzo, Director
Office of Investment

HSC/sdw
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