



April 14, 2022

Via E-Mail

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Petition for Rulemaking: Russia & Belarus Business Disclosure

Dear Ms. Countryman,

Pursuant to Rule 192(a) of the U.S. Securities and Exchange Commission’s (“Commission”) Rules of Practice, the Ukrainian American Bar Association and the other signatories (collectively “Petitioner”) respectfully request that the Commission enact a rule requiring issuers to disclose their business dealings in and with the Russian Federation (“Russia”) and the Republic of Belarus (“Belarus”). Such disclosure shall include, but not be limited to: sales to Russia (direct and indirect), purchases from Russia (direct and indirect), ownership of assets in Russia, and stakes in entities registered in Russia. Issuers should conduct reasonable due diligence about their customers and suppliers to ensure that their disclosures include amounts of indirect sales and purchases to and from Russia that can be reasonably ascertained through diligence of respective supply chains.

Background

Eight years ago, Russia invaded the sovereign territory of Ukraine, commencing an unprovoked war unprecedented since World War II. It annexed Ukraine’s Crimean Peninsula, occupied the country’s eastern territory, and since then has been waging war against both Ukrainian military and civilian population. On February 24, 2022, together with the assistance of Belarus, Russia expanded that war with a broader military invasion into the sovereign state of Ukraine in an effort to conquer it.¹ Russia’s hostility began as a violation of international law and rapidly escalated into a humanitarian crisis. Indeed, the U.S. government has officially declared that the Russian military has

¹ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/> (President Biden’s remarks on Russia’s attack on Ukraine).

perpetrated war crimes in Ukraine.² On March 15, 2022, the U.S. Senate unanimously passed a resolution condemning Russia's violence, including war crimes, crimes against humanity, and systemic human rights abuses.³ The United Nations Human Rights Office has expressed its concerns and published warnings about Russian actions in Ukraine.⁴ The International Court of Justice ruled on March 16, 2022, that Russia must "immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine."⁵ The International Criminal Court ("ICC") in The Hague has opened a formal investigation into alleged war crimes perpetrated by the Russian Armed Forces in Ukraine. To-date, over 40 countries referred the war crime matter to the ICC with allegations, including targeting of critical civilian infrastructure, indiscriminate use of firepower targeting the civilian population, targeting of evacuation echelons, deliberate blocking and targeting of humanitarian corridors, and use of thermobaric weapons and cluster munitions.⁶ Russia has paid no heed and only accelerated its malevolent attacks.

For its part, the US has spearheaded a global swell of economic sanctions against Russia and its ally Belarus in response to Russian aggression. These sanctions have included comprehensive sanctions against the Donetsk and Luhansk regions of Ukraine as well as a variety of list-based sanctions. Specifically, the US has imposed blocking measures against the majority of large Russian banks and a number of Belarusian banks, effectively precluding such banks from dealing in US dollars. The US and its allies have also targeted numerous individuals and entities closely tied to Vladimir Putin as well as many companies with ties to the Russian military sector. The response of issuers has varied with many choosing to continue business in and with Russia.⁷ During the first weeks of Russia's expanded war many issuers took a variety of steps in relation to their business in or with Russia that included announcements of intent to divest and exit the Russian market (announced by very few issuers), suspension of business with and in Russia, or scaling down of business in Russia (vast majority of issuers were in this group).

These varying stances of issuers regarding their business in Russia and the choice of many to continue operating in and doing business with Russia makes information about such activities of vital importance to investors. This information is vital because it provides disclosure to investors regarding the risks and costs of continuing to operate in a heavily sanctioned market ruled by a government moving to nationalize industry. Disclosure will also enable investors and regulators to ensure issuers are meeting the ever more complex sanctions rules regarding operations in the Russian market. Likewise, issuers are concerned that Russia may apply its own counter-sanctions against issuers that do not continue fully their operations within Russia. This proposed disclosure would help investors better understand the cost of doing business in Russia.

² <https://www.npr.org/2022/03/23/1088284715/u-s-officially-declares-that-russian-forces-have-committed-war-crimes-in-ukraine>

³ <https://www.congress.gov/bill/117th-congress/senate-resolution/546/text>

⁴ <https://www.ohchr.org/en/statements/2022/03/ukraine-high-commissioner-cites-new-and-dangerous-threats-human-rights>

⁵ <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

⁶ <https://www.icc-cpi.int/ukraine>
<https://news.un.org/en/story/2022/03/1113292>

⁷ <https://som.yale.edu/story/2022/over-600-companies-have-withdrawn-russia-some-remain>

The new rulemaking should apply not only to Russia but also to all other jurisdictions that are assisting Russia in its war against Ukraine, including Belarus, which is also subject to sanctions for its involvement in such war.

Rationale for a New Rulemaking

Business in or with Russia is material information for investors regardless of the quantum of such business activity. Investors in the securities issued in the US use a number of quantitative and qualitative considerations in making their investment decisions. Even if the business in or with Russia is deemed immaterial by issuers based on monetary or other quantification, we posit that business with or in Russia represents material qualitative information and will enable shareholders and investors to:

- 1) Understand the exposure of issuers to costs and reputational risks associated with operating in or trading with a country ruled by an unpredictable authoritarian regime subject to numerous and growing international sanctions. Business operations by issuers in Russia may be subject to sanctions already put in place by the US and/or other nations or any future sanctions that are currently being considered and may be imposed on Russia if it does not cease its war against Ukraine. Further, foreign businesses can be nationalized or expropriated by Russia, including for support of its military needs, and suffer the consequences of capital controls, which have already been imposed by Russia.⁸
- 2) Ensure that their investments are in no way associated with or contributing to the financing of war by issuers and are not in violation of imposed sanctions. Any activity by issuers results in taxes paid to the Russian treasury and partially finances Russia's war counter to the sanctions imposed by the US government. That taxable activity can be in the form of operations in the country (direct tax payments) or trade with Russian businesses (which in addition to direct tax revenue in the form of import duties also create value-add in Russia, or possibly enable economic sectors ultimately enabling Russian military operations). Simply put, there is no bright line delineating any economic activity in and with Russia from the war perpetrated by its military. Financing of war crimes, directly or indirectly, has no materiality thresholds. Thus, it is critical for investors to understand issuers' participation in and dealing with the Russian economy that ultimately finances Russian military.
- 3) Understand exposure of issuers to boycotts by customers, employees and investors stemming from their persistent engagement in business within or with Russia.
- 4) Understand exposure of issuers to risks that employees of its Russian operations face given the increasingly authoritarian and brutal nature of the regime.⁹
- 5) Assess quality of issuer management and Boards of Directors, including their ability to make rational long-term decisions, and their ability to follow announced business strategy, values and codes of conduct.

⁸ <https://fortune.com/2022/03/15/russia-planes-foreign-owned-leasing-putin-confiscate-theft/>

⁹ <https://appleinsider.com/articles/22/03/12/russian-agents-threatened-apple-and-google-employees-over-protest-vote-apps>

- 6) Obtain factual information that would enable shareholders to exercise their rights, for example, to submit shareholder proposals and/or engage with issuers about their ongoing business in and with Russia.

Disclosure requirements will also shape incentives and help protect human rights and lives. We believe that disclosure requirements may compel some issuers to discontinue business in and with Russia, which is associated with multiple business and reputational risks and increased costs due to sanctions, currency, and logistical constraints. The petition is about material disclosures, not moral and values-based decisions or enforcement. Importantly, this proposal does not require issuers to become moral arbiters or make decisions based on morality and values, although a movement of modern businesses taking a position on environmental, social and governance issues (“ESG”) has been gaining steady traction. Investors are increasingly expecting businesses to play an active role in broader society and be responsible corporate citizens for the betterment of the world, as evidenced by strong growth in the volume of assets employing ESG-centric investment strategies. However, we understand that such topics are outside of the Commission’s purview at the moment, and thus we are grounding our petition in the need to provide investors with material information for the assessment of systemic financial, business, and reputational risks stemming from investing in securities of issuers engaged in business in and/or with Russia.

Mandating disclosures to dissuade US companies from engaging in business with or in sanctioned countries is not unprecedented or a departure from the Commission’s current regulatory scheme. As an effort to increase sanctions against Iran for the country’s pursuit of a nuclear program and human rights abuses, Congress passed the Iran Threat Reduction and Syria Human Rights Act of 2012 (“the Act”).¹⁰ Under the Act, Congress amended the Securities Act of 1934 to require public issuers to disclose whether the company or any of its affiliates have knowingly engaged in certain activities or transactions related to Iran.¹¹ Similar to our proposed disclosures, the Iran disclosures ensure shareholders and investors are able to make informed investment decisions considering an issuer’s relationship with a sanctioned foreign state. Additionally, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Congress directed the Commission to require issuers to disclose their usage of conflict minerals, including tin, gold, tantalum, or tungsten, in their products.¹² Congress enacted this portion of the Dodd-Frank Act in response to the trade of conflict minerals by armed rebels engaging in conflict in the Democratic Republic of Congo and adjoining countries.¹³ Both the conflict minerals and Iran disclosures, allow investors to make the decision to not financially support governments and organizations engaging in sanctionable behaviors by choosing to not invest or purchase products or services from those companies. To this end, we will also be petitioning the US Congress to pass legislation requiring issuers to disclose any dealings in and with Russia with an objective of discouraging such activity by raising its cost and publicity.

¹⁰ <https://www.congress.gov/bill/112th-congress/house-bill/1905/text>

¹¹ [https://1.next.westlaw.com/Document/Id24906bd1c9611e38578f7ccc38dcbee/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default](https://1.next.westlaw.com/Document/Id24906bd1c9611e38578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default)

¹² <https://www.congress.gov/bill/111th-congress/house-bill/4173/text>

¹³ <https://www.sec.gov/rules/final/2012/34-67716.pdf>

The Petitioner

Ukrainian American Bar Association is a national bar association created in 1977 whose members are U.S. attorneys, judges, and law students of Ukrainian descent and those American attorneys with an interest in Ukrainian matters.

Razom, Inc. is a New-York-based 501(c)(3) charitable organization, which organizes and collaborates with partners on projects aimed at supporting Ukraine.

Natalie Jaresko is a global business leader and a former Minister of Finance of Ukraine (2014-2016).

Thank you for your consideration of this matter. We would welcome an opportunity to discuss this petition with you. Please feel free to contact us at info@uaba.org.

Sincerely,

Ukrainian American Bar Association (www.uaba.org)

By: Victoria Kulik

Name: Victoria Kulik

Title: President

Razom, Inc. (www.razomforukraine.org)

By: DC

Name: Dora Chomiak

Title: President

Natalie Jaresko

Natalie A. Jaresko

Former Minister of Finance of Ukraine