Tri-State Coalition
for Responsible Investment

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July 21, 2016

Mary Jo White, Chairman
Kara M. Stein, Commissioner
Michael S. Piwowar, Commissioner
Brent J. Fields, Secretary

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to: rule-comments@sec.gov

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

Dear Chairman, Commissioners, and Secretary:

The Tri-State Coalition for Responsible Investment (Tri-State CRI) appreciates and welcomes the opportunity to respond to the SEC's Concept Release on *Business and Financial Disclosure Required by Regulation S-K*. We wish to express our support for the SEC's evaluation of disclosure under Regulation S-K and the establishment of enforceable SEC requirements for companies to report on sustainability issues. We will focus our comments on Section F, *Disclosure of Information Relating to Public Policy and Sustainability Matters*.

The Tri-State CRI (www.tricri.org), founded in 1975, is a Coalition of 40 Catholic institutional investors committed to supporting socially responsible investment practices among our members. Our Mission states "We recognize that "economic life raises social and moral questions for each of us and for society as a whole." (Economic Justice for All, US Catholic Bishops Pastoral Letter, 1986). In making decisions about managing resources and investments, we view the local and global economies not only in terms of production and distribution, but also by their effects on the environment and the dignity of the human person.

We use our resources to work for justice in and through economic structures on behalf of the earth and her people. As religious investors we take seriously our responsibility as shareholders to hold our companies accountable to social and ethical concerns. We work to raise the economic literacy of ourselves, our constituents and other stakeholders as we participate in strategies for systemic change."

In carrying out this Mission, our organization and its Members take efforts to reflect their values in the Investment Policy Statements, to engage with companies in our investment portfolios to encourage improved practices related to human rights and environmental stewardship, to hold our Investment Managers and Consultants accountable for integrating Environmental, Social, and Governance (ESG) factors into their investment decision-making, and to vote our proxies consistently with our values. We believe these steps are important not only because they advance causes we believe in, but also because they are consistent with maximizing long-term shareholder value and mitigating risks.

Tri-State CRI members focus on issues related to climate change and care of creation, Respect for human rights and dignity, water stewardship, responsible financial practices, and sustainable agriculture.

The Tri-State CRI is strongly in favor of disclosure of sustainability information that is material and comparable, and that affects our financial interests as shareholders, as well as our communities. We believe that having consistent and clear access to material sustainability information will enable us to carry out thoughtful and fully-informed investment decision-making and fulfill our missions to consider Environmental, Social, and Governance issues in our investment approach. A growing field of investors and organizations, including the Interfaith Center on Corporate Responsibility, UN Principles for Responsible Investing (PRI), Ceres, CDP, and the US Forum for Sustainable and Responsible Investment (US SIF), have made the case for disclosure of such information to meet the fiduciary obligations of investors. We are aware that hundreds of global companies embrace the case for such disclosure as they publish relevant and useful sustainability reports. We have witnessed the growth of this practice over the past 40 years and believe it has enabled us to tailor our investment approach and engagement strategies to the companies facing the most material risks.

However, a significant challenge for our Membership and their financial managers has been the inconsistency of information. Most disclosure is done on a voluntary basis, with varying levels of detail and at intermittent intervals. This makes it difficult to compare peers and assess progress over time.

The Tri-State CRI believes in the importance of disclosure of relevant and significant information that may not be deemed "material" in the short-term, but has a clear and direct impact on financial performance, and when taken together with other information, may have the potential to damage or strengthen a company's reputation, impact its social license to operate, or affect its sales and business relationships. Specifically, there may be long term risks that require short-term planning and decision-making, and investors do not currently have sufficient information to understand how a company may be planning for management of long-term risks. This is especially evident related to climate risk, where near-term decisions may impact each company's, and cumulatively, society's ability to limit global average temperature increase to two degrees Celsius (2°C), as scientists have identified is necessary to mitigate the worst impacts of climate change. Therefore, disclosure of information related to long-term risks would be relevant to an investor's assessment of the company and may at a future date be clearly within the definition of "material" information. In addition to the current climate change scenario, there are several examples where this has manifested with respect to our engagement with companies in the past. For example, members of the Tri-Stat CRI were among the first to put global climate change on the agenda with U.S. corporations long before the issue of Carbon Asset Risk came to the foreground of investor concerns. We were also engaging with the largest U.S. banks about their risky financial practices, and if they had they been addressed and disclosed, the impacts of the 2008 financial crisis may not have been as dire. We are able to identify these issues by connecting with communities that are impacted by corporations as well as bringing in relevant social science and advocacy literature to inform our perspective on the risks facing corporations. However, it would be beneficial for corporations to undertake these same assessments and disclose information that would enable the entire investor community to understand how they perceive a risk and the steps they are taking to address it. This would have positive benefits for investment performance as well as society.

The Tri-State CRI uses ESG disclosure to evaluate companies for investment, thus informing our investment strategies and stock selection decisions. Our organization also has a proxy voting service through which we vote several thousand proxies on behalf of institutional investors each year. In order to carry out rigorous and thorough voting, we carefully review all corporate disclosure to inform our voting decisions. Availability of consistent and thorough information on sustainability issues would enable us to carry out this work more efficiently, effectively, and to make informed decisions on each proposal.

Shareholder engagement with portfolio companies is also an important strategy of our members to reduce risks of the companies in their portfolios. In order to determine which companies to engage on each issue and understand how each company manages risks related to water, human rights, etc. we use existing disclosure to help us assess companies and their management strategies.

We believe that mandatory line-item disclosure of ESG information under Regulation S-K is necessary for investors to make informed decisions. Mandatory disclosure would provide more consistent, reliable, comparable, and verifiable ESG information that would allow educated investors to make more informed investment decisions across the portfolio, inform proxy voting decisions, and advance effective engagement strategies.

Section F, *Disclosure of Information Relating to Public Policy and Sustainability Matters*

216. Are there specific sustainability or public policy issues [that] are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?

Disclosure of financially material sustainability information is already required under current rules. However, the resulting disclosures fail to meet investors' needs. Disclosure of ESG information is useful to investors and necessary for strategic investment planning. Disclosure allows investors to identify industry leadership in each sector, tells investors how well positioned a company is to respond to changing regulations, is essential to the evaluation of investment risks, and informs overall investment and engagement strategies. The current framework, which leaves it up to the corporation to determine when such an item is material, however, has not produced the comprehensive and comparable information that we are seeking.

ESG information is material to understanding a company's financial performance and quality of management, and helps to contextualize an investor's assessment of the company relative to the whole portfolio. ESG issues present portfolio-wide risk; issues such as climate change and human rights are relevant beyond a specific company. The ability of investors to assess the entire portfolio fits within the U.S. Supreme Court definitions of "materiality" and "a reasonable investor,"[1] as it is critically important for investors to avoid risks resulting from corporate failure to address matters of ESG concern.

The Tri-State CRI has joined colleagues in requesting disclosure of meaningful sustainability information for over 20 years. We are pleased to see that hundreds of companies are now providing some sustainability reporting. Shareholder requests for more responsible policies and practices around a variety of ESG issues have been the subject of 1,177 shareholder resolutions by our colleagues who are ICCR members between 2011 and 2016.[2] Companies have begun to respond to the request for this information from investors, as it has become increasingly clear to shareholders that evaluating corporate risk management around sustainability issues is critical. This increase in ESG disclosure follows the recent trend of increasing investor support for ESG disclosure in shareholder resolutions. For example, a 2016 shareholder resolution on sustainability reporting at CLARCOR, Inc. received a 60.8% vote.[3] As a second example, a 2016 shareholder resolution on reporting of methane emissions management at WPX Energy, Inc. received a 50.8% vote.[4] While shareholders currently use the resolution process to encourage companies to disclose more and better ESG information, our time would be better spent meeting with companies on performance improvements and risk mitigation strategies – rather than basic requests for commonplace sustainability reporting that we expect to now see across all sizes of companies.

When we began asking companies for greenhouse gas emissions data in the early 2000's, there was not a platform for them to disclose this information, and we were pleased to see the CDP emerge as an essential resource. However, this disclosure may be more appropriately housed within publicly available financial disclosures so that all

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[1] TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438 (1976)
[2] ICCR, 2016 Proxy Resolutions and Voting Guide
[3] Walden Asset Management, Walden's ESG Reporting Resolution at CLARCOR Earns Majority Support
[4] Ceres, WPX Energy Methane Emissions Management

investors can access the information, rather than needing to sign up for CDP. In addition, the CDP data may not always be comparable for different companies, where we often see companies in the same industry using different calculation methods, only providing partial responses to CDP, or describing a goal in a way that can lead to misinterpretation. An additional example exists related to management of water risk throughout corporate supply chains. While some companies publicly disclose a water management policy that applies to their operations and supply chain; others will only have a policy that applies to their operations, ignoring the part of their operations (supply chain) where there is known to be the greatest water risk; meanwhile others will include only sparse information in a Supplier Code of Conduct that is difficult to locate within their public website. Instead of making the case company by company through engagement, as well as to better enable the investor members of the Tri-State CRI to make use of the information, it is preferable to require a clear disclosure format, consistent expectations, and guidance on how companies should implement it.

Corporate approaches to ESG issues and risks relate directly to value. Corporations that recognize the need to address ESG concerns are better positioned to anticipate changes and adapt most effectively.[5] A company's ability to define and measure its progress helps investors consistently analyze portfolios, creating a more robust investment strategy. Instead of this more robust disclosure and associated strategic thinking being relevant to only a small subset of companies that have received pressure from investors or their customers to provide this information, Tri-State CRI recommends that the SEC should require some disclosure from all companies related to sustainability, to enhance the practices and performance of all issuers in this area. Additionally, we encourage requirements that the ESG information provided is verified externally.

Disclosure of ESG information demonstrates how well positioned a company is to respond to changing regulation and/or its context. The Tri-State CRI is also concerned about the systemic and societal impacts of corporate policies, which helps us to evaluate risk more holistically.

The Tri-State CRI has identified a number of very relevant and important topics that should be disclosed in mandatory SEC filings. While we appreciate the work being done by some companies to provide some reporting, we believe that, as ESG evaluation has become common practice by large asset managers, mandatory disclosure would strengthen investor knowledge and decision making. On a larger scale, global stock exchanges have begun to use sustainability as a listing requirement.[6]

The SEC could facilitate meaningful disclosure on ESG information by ensuring that there is mandatory disclosure with consistent, accurate, and reliable reporting by companies on these important and material items for investors.

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[5] ICCR, Social Sustainability Resource Guide: Building Sustainable Communities through Multi-Party Collaboration

[6] Ceres, Stock Exchanges and Sustainability

218. Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their websites. Corporate sustainability reports may also be available in databases aggregating such reports. Why do some registrants choose to provide sustainability information outside of their Commission filings? Is the information provided on company websites sufficient to address investor needs? What are the advantages and disadvantages of registrants providing such disclosure on their websites? How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting? If we permitted registrants to use information on their websites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?

The Tri-State CRI recognizes and appreciates that hundreds of companies provide sustainability reporting of differing quality on their websites. A significant reason that companies are now reporting on ESG issues is the history of active engagement by investors asking for this information.

However, the available information related to ESG performance and disclosure on company websites is insufficient for investor needs. This type of voluntary disclosure is inconsistent, is provided with varying frequency, is not easily searchable, is often unaudited, and is often very difficult to find. Investors have had to spend significant amounts of time and financial resources to get the level of disclosure that currently exists. We agree with CDP's statement to the SEC that if information is deemed necessary or appropriate to protect investors, then this material ESG data should be included in a company's annual report and 10-K filings.[7] This would ensure that investors have access to regularly reported data in a more consistent and easy-to-find way. As just a few illustrative examples of the challenges, some reports are only several pages long, while others are over a hundred pages; some are formatted as an online web platform, while others are a well-indexed report; some include information on climate change management and scenario planning, while others focus on corporate philanthropy and employee wellness initiatives. While all this information is valuable to a certain audience, having the most relevant information available to investors in a simple format at the same location would be ideal and most efficient.

The result is that there is hidden risk for investors due to this inadequate and uneven disclosure. ESG information is critical for investors to understand what they own and to implement their priorities in their investment decision-making.

We urge the SEC to establish mandatory disclosure requirements, and that those requirements are made through annual filings in a consistent and comparable manner. We believe such disclosures should be a combination of qualitative and quantitative reporting, so that companies have clearer expectations for metrics regarding certain types of risk, and so that they have narrative discussion to explain in more detail to investors the risks and opportunities of an ESG factor that may impact the business.

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[7] Response from CDP to: Concept Release: Business and Financial Disclosure Required by Regulation S-K

219. In an effort to coordinate ESG disclosures, several organizations have published or are working on sustainability reporting frameworks. Currently, some registrants use these frameworks and provide voluntary ESG disclosures. If we propose line-item disclosure requirements on sustainability or public policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?

There are currently several voluntary reporting mechanisms that are each gathering some information which is helpful to investors when evaluating ESG risks. These include the Sustainability Accounting Standards Board (SASB), CDP, and the Global Reporting Initiative (GRI). There is an emerging framework related to human rights performance, the UN Guiding Principles Reporting Framework, and we encourage the SEC to monitor this process. The Tri-State CRI appreciates the extensive work done by these organizations over the years in creating standards and appropriate public platforms for meaningful disclosure of vital ESG information and each of them have contributed to advancing disclosure and recognition of sustainability issues among corporations. However, each of these frameworks have weaknesses. First, not all companies choose to disclose through these frameworks because they are voluntary. Second, the information may be incomplete and fail to address the most material concerns. For example, some companies may respond to only partial sections of a disclosure questionnaire, leaving out portions of the answers that may be most material or relevant to investor concerns, and therefore the response has limited value. Third, the information is difficult to compare across frameworks. Fourth, there may be issues or pieces of data that the Tri-State CRI considers material, for example related to labor rights, that have not been identified by SASB in some of its the sector level materiality frameworks, so the information may not be comprehensive. Fifth, the information provided may be limited in scope. For example, while CDP disclosure is valuable for specific indictors on climate, water, and forestry, the voluntary corporate reporting results are not consistently comprehensive across issues and it lacks relevant social metrics that we believe are material. Sixth, disclosure information may not be publicly available to all interested stakeholders, creating additional costs or barriers to access which may contribute to unequal advantages among investors. Seventh, the information is often not audited or verified and may at times be inconsistent with information available in financial disclosures.

The Tri-State CRI therefore urges the SEC to build further expertise related to the information that is material around a variety of subject areas and across industries, and to consider each of these reporting standards in order to draw from them and create a consistent mandatory reporting mechanism that provides investors with the critical information they need to evaluate a full spectrum of ESG risks.

220. Are there sustainability or public policy issues for which line-item disclosure requirements would be consistent with the Commission's rulemaking authority and our mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation, as described in Section III.A.1 of this release? If so, how could we address the evolving nature of such issues and keep our disclosure requirements current?

The Tri-State CRI urges the SEC to adopt a policy where line-item disclosure of material information across sectors is required, but is also flexible so that requirements can be amended as risks evolve within corporate sectors. We also recommend that the Commission develop a process for regularly gathering ESG disclosure views from both companies and investors to identify emerging issues and track the evolution of disclosure needs in this space as it relates to the most material risks.

The Tri-State CRI works across a variety of ESG issue areas. With our 40 years of experience working with companies across the ESG spectrum, there are a number of key indicators that we would suggest across the following areas:

Human Rights

Information about the human rights risks present in a company's operations and supply chain, as well as the governance and management of those risks, is relevant information for an investor in assessing a company's performance and management approach in both the short- and long-term. Poor management of human rights risks can lead to significant reputational, regulatory, and litigation risk for a company and can have a material impact on financial performance.[8] The adoption of the UN Guiding Principles on Business and Human Rights (UNGP) in 2011 has made it clear that there is a role for business to play in respecting human rights.[9] Information about how a company is meeting its expectations under the UNGP would be relevant for investors, particularly in industries where there are known risks and violations related to working conditions, labor rights, race and gender discrimination, forced labor and modern day slavery, and business impacts on local communities throughout the global supply chain.

There are tools that are evolving to assess and benchmark companies on their human rights policies, practices, and disclosure, including the UNGP Reporting Framework,[10] the Corporate Human Rights Benchmark,[11] and Know the Chain.[12] However, these tools rely on information that is publicly disclosed by companies, and because there are not clear standards, this information is inconsistently provided or is of varying quality, not comparable, and does not always include reliable data.

Furthermore, these tools are unable to assess all companies, and are therefore of limited value to investors with a diversified portfolio. Therefore, it would be beneficial to require mandatory disclosure of several key elements related to management of human rights issues. The experience from the mandatory disclosure related to conflict minerals demonstrates that requirements for further disclosure encourage companies to better understand their risks and develop the internal infrastructure, policies, and practices to mitigate those risks.

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[8] See e.g. The Wall Street Journal, Accused of Labor Trafficking, Oil-Rig Repairer Files for Bankruptcy

[9] UN, Guiding Principles on Business and Human Rights

[10] UN Guiding Principles Reporting Framework

[11] Business & Human Rights Resource Centre, Corporate Human Rights Benchmark

[12] Know the Chain.org

There are several critical pieces of information that would enable investors to better understand and assess the human rights issues and management practices of a company to inform their investment and voting decisions. Disclosure of the following would provide consistent information available to all investors:

- Whether an issuer has a Human Rights Policy that applies to direct operations and throughout its supply chain that includes prohibition of child and forced labor, and how it is auditing the human rights policy.
- Governance and Board responsibility for human rights issues.
- Data from an independent Human Rights Risk Assessment to define the primary human rights challenges to inform the company's approach to human rights issues in its operations and value chain.
- Existence and effectiveness of Remediation and Grievance mechanisms.
- The company's approach to stakeholder engagement.
- Reporting on traceability, purchasing practices, recruitment, worker voice, and monitoring.[13]

Climate Change

Climate change poses material financial risk to investors, and over the past several years it has been increasingly recognized by the financial community as an area of investor concern. This has been demonstrated by the broad investor action in support of the Paris Climate Agreement, the 52 shareholder proposals filed by ICCR members in 2016,[14] and the number of investor statements about climate change. The Paris Climate Agreement, adopted in Paris in December 2015 by 195 countries, included a commitment to limit global average temperature increases to 2°C or less above pre-industrial levels. Countries have made initial commitments in line with this aspirational goal and will be increasing their regulatory efforts to further align with the 2 degree target. Companies must be prepared to operate in a low-carbon economy and additional disclosure about their strategies to do so is necessary.

Disclosure of the following would provide consistent information available to all investors related to climate change:

- Climate change policy and Governance of climate change issues, including related to climate-competency of board members.
- Greenhouse Gas emission reduction targets for scope 1, 2, and 3 emissions and progress against these targets; how these targets align to "Science Based Targets" and emerging understanding of the reductions needed to limit global average temperature increase to 2°C.
- Energy efficiency of operations and products.
- For relevant companies, stress testing and scenario planning for alignment with the 2 degree objective adopted in Paris.

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[13] Know the Chain, ICT Benchmark: Themes Key Findings
[14] ICCR, 2016 Proxy Resolutions and Voting Guide

- For companies in the oil and gas sector, relevant information to assess the carbon intensity of proven reserves. This may include information about the individual energy factors and greenhouse gas emissions of different oils.[15]
- How climate change strategies are connected to a company's public policy agenda and activities.
- Renewable energy procurement targets.

Water

Water has been declared a human right by the United Nations. The Earth is challenged by the supply and demand imbalance, the lack of good substitutes, and political controversies surrounding the issue. Water risks may be physical, regulatory, or based on stakeholders. Corporations have a critically important role to play in addressing the freshwater crisis as their agricultural and industrial consumption increases and water stress becomes a more prominent issue due to climate change and competing interests. Presently, agricultural and industrial water use account for 70 and 22 percent of total water use respectively. Apart from the stresses on water supply generated by industrial use, declining water quality due to agricultural runoff, industrial wastewater, improper disposal of human waste, and many other issues are contributing to the acute water crises around the world that the World Economic Forum has identified as a top global risk in its most recent 2016 Risk Report. Affected communities, civil society, investors, consumers, and the general public are increasingly engaged in issues of water sustainability.

Beyond the obvious social impact to affected communities, water issues pose a range of risks to business – from higher costs to major business disruptions stemming from supply chain interruptions and a possible loss of social license to operate. It is imperative that companies publicly disclose ways in which they seek to identify and assess water use in core businesses and key suppliers, and how they incorporate these findings into business decisions and a water stewardship policy. This process helps businesses and institutional investors to better understand the risks and opportunities associated with water scarcity and other water-related issues. Disclosure facilitates a company's journey towards water stewardship and water mapping, delivering insight that enables companies to take intelligent action to manage this critical resource. Further, disclosure communicates and builds trust with shareholders, clients, communities, and the public audience.

Disclosure of the following would provide consistent information available to all investors related to water management:

- Exposure to geographic risks and where in the company's operations that risk exists.
- Identification and assessment of water use in core businesses and key suppliers.
- Percentage of revenue or operations exposed to water risk.

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[15] See Know Your Oil, Carnegie Endowment for International Peace, http://carnegieendowment.org/2015/03/11/know-your-oil-creating-global-oil-climate-index/i3v1

- Assessment of water availability, issues, challenges, and levels of sustainable use around business operations.
- Performance measured against baselines and goals.
- Governance of water risk at the Board level and ties to incentives

Food and Sustainable Agriculture

Given the fragility of the current food system and the need to feed an ever-growing global population, it is incumbent on all companies in the food supply chain (producers, processors, and distributors) to ensure that their policies and practices do not further contribute to the growing crisis, but instead advance innovative solutions that will help create a more sustainable and resilient food system. The industrialization of agriculture, intended to help feed the Earth's growing population, has had unintended environmental and social consequences. Food operations powered by fossil fuels to produce and ship foods around the world, the overuse of artificial fertilizers and pesticides, and the enormous quantities of animal waste and other "externalities" are fouling the soil, air, and water – to the detriment of both communities and other businesses relying on uncontaminated resources for their operations. Companies then need to be publicly transparent on the food security implications of land and water use along the value chain.

Disclosure of the following would provide consistent information available to all investors related to food:

- Risk assessment related to agricultural sourcing issues.
- For relevant sectors: sustainable agriculture policies, applicable across the value chain, that demonstrate how the company business model is consistent with long-term environmental and social sustainability (e.g. related to farming practices, pesticide use, community relations, and GHG emissions).
- Time-bound goals and targets to source key agricultural inputs sustainably and progress against these goals.
- Governance of agricultural sustainability issues at the Board level.

Financial Practices

During the recent financial crisis, large U.S. financial institutions experienced serious business ethics flaws and undertook excessive risk-taking practices that resulted in significant economic impact to the companies and damaged their reputations with shareholders and society. The Tri-State CRI believes that transparency and strong board oversight of risk management are essential to maintaining a good reputation and subsequently are material to influencing shareholder value and society at large. We believe that good risk management and oversight of employee ethics in business practices are long-term investments that can positively impact shareholder value and can help rebuild society's trust in the financial sector.

Today, large financial institutions play a central role in the capital markets as they provide significant financial capital that facilitates global commerce and helps pursue economic growth. This special function elevates the social responsibility of the financial institutions as important economic agents in society and the global economy. The practices and products of financial institutions should not only support long-term value creation for shareholders, but should also support the common good. In practice, this includes business operations that facilitate the efficient deployment of funds to productive uses in the real economy as well as supporting overall market stability.

While regulation of the sector has increased, we still believe it would be beneficial to support consistent disclosure on some of the practices that led to the financial crisis. Disclosure of the following would provide consistent information available to all investors related to risk management among financial institutions:

- Governance of risk management and ethics at the institution.
- Policies and practices related to stakeholder engagement.
- Comprehensive approach to risk management related to the institution's social purpose, for example related to credit risk, market risk, operational risk, liquidity risk, and reputational risk.
- Lending portfolio exposure to climate risk.

Political Spending and Lobbying

Another vitally important issue upon which we urge disclosure is on a company's political spending and lobbying activities. While laws require full disclosure of Political Action Committee (PAC) contributions gathered by companies from employees, there is no requirement to make parallel disclosure of expenditures using company funds. Disclosure of lobbying and political spending would allow shareholders to evaluate whether these expenditures are consistent with a company's expressed goals and are in the best interests of the company and shareholders.

As the SEC is well aware, over 1.2 million petitions and letters have been submitted to the agency urging mandatory disclosure by companies of their political spending. This is an issue of huge public importance and we wish to add our support for such specific disclosure. Understanding the importance of such disclosure, approximately 160 companies have volunteered to publish such information, given the clear relevance to investors and the public alike.[16] Specific details regarding questions to be addressed are outlined in the standard shareholder proposal seeking disclosure on direct or indirect expenditures to affect election of candidates.

In addition, we encourage clear guidelines for disclosure of information on corporate lobbying directly and through third parties. Again, the specific questions that a company should address are stipulated in the standard lobbing disclosure resolution including a summary of primary lobbying priorities, summary of expenditures federally and in states where the companies lobby, whether the company engages on grassroots lobbying, Trade Associations a company is a member of, payments made to the Association and the percent spent on lobbying, and whether the company is a member of any organization which compiles model legislation for lobbying.

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[16] PoliticalAccountability.net

We believe a company's political spending and lobbying activities can certainly affect the company's brand or reputation. Examples include the controversy about specific companies lobbying against action on climate change, for higher drug prices, or against public health measures like anti-smoking laws.

Disclosure of the following would provide consistent information available to all investors related to political spending and lobbying:

- Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, or (b) influence the general public, or any segment thereof, with respect to an election or referendum and which includes a description of the decision making process and oversight by management and the Board for making payments.
- Disclosure of monetary and non-monetary contributions and expenditures (direct and indirect), including the amount of payment and recipient.
- Policies and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
- Disclosure of payments used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
- Any membership in and payments to any tax-exempt organization that writes and endorses model legislation.
- Include a description of the decision making process and oversight by management and the Board for payments for lobbying communications and to tax-exempt organizations.

Board Diversity, Non-Discrimination, and Pay Equity

Tri-State CRI supports the strengthening of the existing disclosure rules to require companies to disclose the gender and racial composition of their nominees for directors and their plans to achieve greater gender and racial diversity among their leadership groups. As an institution that votes proxies, we consider ethnic and gender diversity of the Boards of thousands of companies each year. In order to understand the gender and ethnic composition of the Board, we are often required to do burdensome and time-consuming research to find demographic information about each of the Board members. Having ready access to this information consistently across companies would greatly facilitate our work and improve the efficiency and effectiveness of our proxy voting services.

As Chair White stated clearly in an address at the International Corporate Governance Network (ICGN) in June 2016, broadening diversity on company boards is an important priority. At present, fewer than 20% of board seats in S&P 500 companies are held by women. Investors and women's organizations have joined together under the umbrella of the Thirty Percent Coalition and have pressed companies with no or inadequate diversity to nominate women and people of color to their boards. They have done this through letters, discussions with management and boards, and the filing of shareholder resolutions.

Workplace discrimination and unequal pay is not just a social issue but a critical business issue that can affect the performance of the businesses in which we invest. There is evidence suggesting that diversity on the Board contributes to improved corporate performance.[17] Specifically, Catalyst found that "companies with the most women board directors outperformed those with the least on return on sales (ROS) by 16 percent and return on invested capital (ROIC) by 26 percent." In addition, "a racially diverse workforce was positively associated with more customers, increased sales revenue, greater relative profits, and greater market share." Having a diverse set of skills, experience, and backgrounds on boards is, in our view, an essential component of good corporate governance and long-term business success. Unequal social practices within companies can lead to negative outcomes including damaged reputations, limited internal competition, poor morale, higher turnover, not to mention the risk of legal violations and lawsuits.[18] As a result, investors are becoming increasingly interested in these issues.

An earlier requirement in 2009 from the SEC for companies to report on board diversity did not define the term and as a result, companies created their own definitions. Many companies chose to define diversity on their boards as consisting of members with different professional experience or even those hailing from different geographic regions. Though this is no doubt a form of diversity, very little progress has been made on increasing the areas where diversity is most lacking, specifically racial, ethnic, and gender representation of boards or senior managements within firms.

With regard to greater information on pay gaps by gender and race, the SEC has already mandated disclosure of the pay gap between public company executives and their workforce as part of the implementation of the Dodd-Frank Act. Collecting and disclosing pay data across gender, race, and ethnicity would significantly increase investor confidence in the commitment of firms to address the issue. The requirement that companies disclose this data is a critical first step in addressing the significant pay gap by gender and race. Investors and the companies themselves must first understand the extent of this problem before attempting to formulate solutions.

The disclosure of the pay gap analysis by gender, race, and ethnicity will allow investors to understand the extent of the problem across industries and sectors. Data collected across sectors will also allow companies that are outperforming on these metrics to self-identify and to be rewarded by the marketplace.

Disclosure of the following would provide consistent information available to all investors related to diversity and pay equity:

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[17] Why Diversity Matters, Catalyst, July 2013, http://www.catalyst.org/system/files/why_diversity_matters_catalyst_0.pdf

[18] Vivek Wadhwa, Bloomberg News, The True Cost of Discrimination

- The company's policy on board diversity, as well as steps taken to implement a diverse board in terms of gender and race.
- Information about race, gender, and ethnic diversity of each of the board nominees.
- How the company instructs its search firm or search committee to provide a diverse candidate pool and successes or challenges the company has faced in the last year in meeting those goals. Plans to advance board diversity.
- An assessment of challenges experienced and progress achieved.
- Disclosure of pay ratios by gender, race, and ethnicity on an annual basis.

Indigenous Rights and Community Relations

The Tri-State CRI's members who invest in extractives industries urge these companies to address the concerns of local communities and indigenous populations near their operations. The need to respect the rights of indigenous peoples and local communities relevant to natural resource extraction comes from more than a community need; there are clear financial risks. When communities do not give companies a social license to operate, it has significant financial implications, as has been seen with the Newmont Mining Minas Conga location in Peru. As stated by Professor John Ruggie, "for a world-class mining operation…there's a cost somewhere between $20 million to $30 million a week for operational disruptions by communities" and the time it takes to bring oil and gas projects online has "doubled over the course of the previous decade, creating substantial cost inflation."[19]

A 2011 study by Environmental Resources Management of delays associated with a sample of 190 of the world's largest oil and gas projects (as ranked by Goldman Sachs) found that 73% of project delays were due to "above-ground" or non-technical risk, including stakeholder resistance.[20] In 2014, Ernst and Young elevated the "social license to operate" to the third place on its list of the greatest business risks to the mining industry, citing that "the frequency and number of projects being delayed or stopped due to community and environmental activists continues to rise."[21]

In 2013 a dispute between Southwestern Energy and the Elsipogtog First Nation in Canada resulted in a blockade that halted exploration activities for several weeks, and ended in violent confrontation with police that made international headlines. An injunction filed by Southwestern Energy to dismantle the blockade cited losses of $60,000 a day.[22] However, this number is likely an underestimation of the actual cost to investors because it only factored in the costs of rental equipment that was unusable during the blockade. It did not factor legal fees, lost productivity, staff and executive leadership time, or the public relations expenditure needed in response to the surge in bad press. It also did not account for the fact that hydraulic fracturing was later

[19] Business-Ethics.com, Business and Human Rights: Interview with John Ruggie
[20] BSR, Commercial Value From Sustainable Local Benefits in the Extractive Industries: Local Content
[21] EY, Business risks facing mining and metals 2015
[22] Al Jazeera America, Shale gas company loses bid to halt Canada protests

banned in New Brunswick, rendering its $37 million investment in the province stranded until further notice.

Disclosure of the following would provide consistent information available to all investors related to indigenous peoples and community relations:

- Policies and practices for obtaining community support and, where required by the UN Declaration on the Rights of Indigenous Peoples, Free Prior and Informed Consent from Indigenous Peoples.
- Project-level assessments of negative social and environmental impacts to communities, with specific attention given to Indigenous Peoples, women, and other vulnerable groups.
- Steps being taken in relevant industries (such as trucking and extractives) to monitor and reduce human trafficking and violence against women that may be directly or indirectly caused by their operations.

Conflict Minerals

While disclosure on conflict minerals is required under the Dodd-Frank Act, additional requirements from the SEC are necessary for investors to accurately review extractives companies in their portfolios. Over 1,200 companies have now reported to the SEC regarding their sourcing of conflict minerals – tin, tantalum, tungsten, and gold – for three years in a row. Companies have reported on the advantages they have seen to increasing transparency in their supply chains, having a clearer understanding on the origin of their raw materials, and looking at their human rights risks.

The consistent disclosures that companies have submitted to the SEC over the last three years have allowed investors to start tracking companies' progress in improving their activities to address the risk that minerals used in manufacturing may support conflict in the Democratic Republic of Congo (DRC). Reports such as Responsible Sourcing Network's reports (2014, 2015) *Mining the Disclosures: An Investor Guide to Conflict Minerals Reporting*[23] have offered investors an analysis of individual companies' and industrial sectors' performance, have ranked companies, and have pointed out best practices.

Several lessons have been learned from the implementation and evaluation of reporting under 1502. Having the OECD Due Diligence Guidance as the de facto framework has been hugely useful. Frameworks are constantly being revised and updated. The OECD guidance itself does not limit reporting to a specific geographic region, mineral, or issue, and increasingly conversations among leading conflict minerals stakeholders have turned to other DRC-related human rights risks, as well as other minerals that are involved in such risk. The mandatory aspect of this reporting has led to new companies and new industries putting standardized programs and procedures in place, which has a greater impact on suppliers.

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[23] Responsible Sourcing Network, Mining the Disclosures

However, a company does not have to establish that it conducted a "good faith" Reasonable Country of Origin Inquiry (RCOI), it only needs to assert it. There needs to be more accountability about how companies decide whether they should be reporting. Allowing companies who may conduct a less thorough RCOI to skip out on more comprehensive reporting incentivizes risky behavior, and as a result punishes companies who are more transparent.

Disclosure of the following would provide consistent information available to all investors related to minerals/raw materials sourcing:

- A strong policy and an effective system to implement it.
- An assessment of identified risks in the chain of custody of minerals/raw materials.
- A due diligence report on steps taken to manage risk.
- A report on progress toward meeting established goals to source conflict-free (ethical and sustainable) minerals/raw materials.

223. In 2010, the Commission published an interpretive release to assist registrants in applying existing disclosure requirements to climate change matters. As part of the Disclosure Effectiveness Initiative, we received a number of comment letters suggesting that current climate change-related disclosures are insufficient. Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk? Why or why not? If not, what additional disclosure requirements or guidance would be appropriate to elicit that information?

Existing disclosure requirements in the 2010 guidance have been somewhat helpful to investors in assisting them to evaluate material climate change risks. However, we have two concerns related to the disclosure guidance. First, to realize its full potential, the guidance must be fully enforced by SEC staff with expertise in the materiality of climate impacts. Second, we believe disclosure of additional information is necessary in order to fully understand a company's climate risk and response to that risk.

Unfortunately, current rules have not produced sufficient information for investors to evaluate climate risks in a meaningful way. While the Tri-State CRI appreciates the SEC's 2010 interpretive guidance on climate change-related disclosure, its potential to elicit information essential for investors has been largely unrealized. We are concerned that even in the midst of increasing regulatory and policy action on climate change, staff has issued very few comment letters regarding the inadequacy of current disclosures and have not pursued enforcement actions for failure to meet disclosure requirements, despite a very active financial risk and disclosure enforcement agenda. Such actions would ensure that companies were updating their disclosures to reflect the evolving material risks associated with climate change.

As it relates to the breadth of the information identified in the guidance, there may be some cases, where line item disclosure rules that apply to industry sectors may be useful. Many investors are long-term shareowners, and hold companies that span various sectors of the economy. Interested in reducing climate risks in their portfolios, investors seek disclosure that enables them to evaluate climate-related risk in exposed industry sectors. Also, with such broad holdings, these investors are interested in reducing GHG emissions throughout the economy to reduce systemic risks from climate impacts that are accruing to the portfolio. For example, rules regarding the disclosure of GHG reduction targets, progress against these targets, the energy efficiency of operations and products, and climate-related initiatives would be useful.

As stated above, other disclosures that provide investors with more critical tools of the management of such issues include:

- Climate competency of directors – both existing and those running for election.
- Executive compensation that may be tied to reducing climate risks or developing opportunities.
- Disclosure of Scope 1, 2, and 3 greenhouse gas emissions.
- Year over year performance of greenhouse gas emissions, their reductions, and energy efficiency rates.

In some cases, industry specific rules may be appropriate. For instance, many investors are concerned that the business plans of oil and gas, utilities, and coal companies pose financial risks in the short- and long-term because they do not sufficiently factor in the ongoing transition to a low carbon global economy. In this case, line-item disclosure requirements regarding disclosure of scenario planning for how a company plans to align its operations with the Paris Climate Agreement commitment to limiting global average temperature increases to 2°C haare essential.

Section IV.A.5: *Number of Employees*

56. Should we require registrants to distinguish among their total number of persons employed, such as by distinguishing between:

- **full-time and part-time or seasonal employees;**
- **employees and independent contractors; or**
- **domestic and foreign employees?**

Why or why not?

It is important to require registrants to distinguish between the types of workers employed. Prevalence of migrant workers (domestic or foreign) might indicate a higher risk for violations of human and labor rights – namely, forced or bonded labor, exploitation, overtime violations, discrimination, deductions from wages related to the migrant status, or other scenarios that lead to exploitation of a worker's vulnerable status. In addition, where a company employs a higher number of migrant workers, particularly foreign migrant workers, we see a higher rate of workplace accidents due to improper or insufficient training related to language barriers, as well as other related health and safety issues.

Additionally, investors may flag when rates of temporary or contract workers rise substantially, indicating high turnover, possible lack of training and experience, and lost institutional knowledge in the enterprise.

57. Rather than requiring registrants to disclose the number of employees or independent contractors, should we require or permit registrants to provide a range? Why? Should we allow for different ranges based on the size of the registrant? Would reporting a range rather than a specific number reduce the costs of producing this disclosure?

Companies should be required to report the exact number of employees in the different categories and by region or core business segment. Enabling companies to report ranges would deprive investors of accurate information about material risk that companies may face with potential labor and human rights violations. Ranges would also make company to company comparisons less accurate and valuable. However, a range for a number of contractors or subcontractors may be acceptable only if the exact number is not known by the registrant. The acceptable estimate should be a narrow range accompanied by disclosure about why the exact number is not available.

58. Should we require disclosure of additional information about a registrant's employees or employment practices? What would be the challenges of requiring disclosure of any additional information, and what would be the benefits to investors?

Companies should be required to disclose additional information about their employment practices, to ensure that investors have accurate information about a company's material risk. This is an issue about which we engage with several companies across a variety of sectors including food and beverage, automotive, electronic, and agriculture because there have been documented risks related to exploitation of workers which pose a significant legal and reputational risk. In addition, there is emerging regulation of this issue in the United States through Executive Order 13627 and implementing Federal Acquisition Regulation on Combatting Trafficking in Person. A company may face risks related to human trafficking and labor abuses, and additional disclosure would enable the investor community to understand how it is managing these risks, which may present not only reputational risk, but also regulatory, financial, and litigation risk. Therefore, disclosure should be required for the following items:

- The protocol for hiring workers;
- Whether a company uses intermediaries such as labor brokers, agents, recruiters, or other third party contractors to recruit workers;
- Whether the third party is licensed; whether an employer bans the charging of recruitment fees or reimburses fees if they are charged;
- Whether an employer provides all employees with a written contract in a language they can understand;
- Whether an employer has a policy prohibiting the retention of any identity documents including passports; and
- Whether employees have access to a grievance mechanism.

Companies should also be required to disclose information about pay equity by gender, race, and ethnicity, as described above.

CONCLUSION

To summarize our answers to *Section F* of the *Comment Release*, it is our view that:

1. Disclosure of material ESG information should be required as it is useful to investors.
2. Material ESG data should be included in corporate Annual Reports and 10-K filings to address the insufficiency and inconsistency of voluntary reporting.
3. Line-item disclosure of material information across sectors should be required, but should be flexible so that it can be amended as risks evolve within corporate sectors. Specific elements of suggested line-item disclosures related to different areas of risk (e.g. human rights, climate change, etc.) are necessary.
4. Voluntary reporting frameworks provide information on many companies; however these do not provide the checks on accuracy and completeness that are inherent in securities filings.

To summarize our answers to *Section IV.A.5* of the *Comment Release*, it is our view that:

1. Disclosure of material information pertaining to worker recruitment practices and the types of workers employed directly or by the suppliers (migrant, contract, temporary) should be required as it is useful to investors.
2. Reporting the exact number of employees is essential to the understanding of material risk that companies may face with potential labor and human rights violations. A narrow range for a number of contractors or subcontractors may be acceptable in lieu of the exact number only when accompanied by a full disclosure of why the exact number is not available.
3. Companies should be required to disclose additional information related to hiring practices, benefits, and grievance mechanisms to ensure that investors have accurate information about company's material risk.
4. Disclosure for investors about a company's outsourcing and subcontracting is vital in understanding a company's risks related to supply chain operations.

We wish to thank the SEC for this opportunity to comment on the important topic of sustainability disclosure. We urge the SEC to act and develop mandatory reporting on ESG issues as described above. We welcome the opportunity to discuss this matter with you further at your earliest convenience.

Sincerely,

Sister Patricia Daly, OP
Executive Director

Mary Beth Gallagher
Associate Director