November 2, 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. S7-15-16 - Disclosure Update and Simplification

Dear Chairman, Commissioners, and Secretary:

United Church Funds appreciates and welcomes the opportunity to respond to the SEC's File No. S7-15-16, *Disclosure Update and Simplification*. 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 on *Business and Financial Disclosure Required by Regulation S-K* (July 21, 2016). The timing could not have afforded the SEC the opportunity to review, consider and integrate appropriate feedback into the proposed rule.

Below we wish to submit our views regarding 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. While we note the importance of the entirety of this complex review, we will focus our comments on Section F, *Disclosure of Information Relating to Public Policy and Sustainability Matters*, as well as *Number of Employees* under Section IV.A.5.

United Church Funds is an investment services provider to more than 1,000 churches and entities of the United Church of Christ. As an institutional investor on behalf of many endowments, we structure our portfolios to align with our clients' faith beliefs and their expectations of investing in perpetuity.

United Church Funds has long believed that a company's longterm positioning relative to the environment, the communities in which it operates, and the health of its governance procedures lend to the creation of value. As such, United Church Funds is a signatory of the United Nations' Principles for Responsible Investment, a member of US SIF, and a founding member of the Interfaith Center on Corporate Responsibility.

United Church Funds ardently endorses disclosure of sustainability information that is material and comparable, and that affects our financial interests as shareholders, as well as our communities. Numerous investors and organizations like the PRI, Ceres, CDP, and the US

Forum for Sustainable and Responsible Investment (US SIF) have made articulate cases for the need for such information to meet our fiduciary obligations as investors. We are aware that hundreds of global companies embrace the case for such disclosure as they publish useful annual sustainability reports. They understand the business and financial case for addressing these issues. The value of such information is affirmed by an expanding number of global investors and companies alike, and has been an issue that United Church Funds has raised with companies over decades of engagement. However, this disclosure is done on a voluntary basis. Because the disclosure is voluntary, the reporting is inconsistent and therefore insufficient for investor needs.

United Church Funds 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. This information 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. There are several examples where this has manifested with respect to our engagement with companies, including: United Church Funds concerns over abusive and risky practices in the financial services industry leading up to the 2008 financial crisis and subsequent economic recession; early concerns raised in the 1990s around climate change impacts; urging companies to recognize the need to address public health threats, from global health risks of antibiotics in meat supply chains, which is now an issue that companies must address in their product development, to the unaffordability of basic life-saving medicines; and to address risks around water sustainability, which is now seen as a significant risk for corporations. In short, increased disclosure related to sustainability issues is critical to create transparency for investors regarding a company's interactions with, and impact on, employees, communities, and customers. Frameworks and processes associated with disclosing ESG information may help a company – and society – to mitigate future risks.

United Church Funds uses ESG disclosure to evaluate companies for investment, thus informing our investment strategies and stock selection decisions, and to inform our proxy voting. We also use existing disclosure to help us identify appropriate companies for shareholder engagement with corporate management, where we address current practices and policies that expose companies to risks. We believe that mandatory disclosure of ESG information under Regulation S-K is necessary for investors to make informed decisions. While voluntary measures have served an important role in providing increased ESG information to investors, this information is inconsistent across corporate sectors, and leaves investors with an unclear basis upon which to build our investment strategies.

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 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.

United Church Funds has requested disclosure of meaningful sustainability information for more than 40 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 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 convince 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.

For example, with respect to GHG emissions data, we have found that several companies in the same industry will use different calculation methods and reporting platforms (i.e. CDP and individual company reports), which make the information that is available difficult to understand, and make it difficult to assess how one company is managing the risk of GHG emissions against another. 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, and 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

[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

through engagement, as well as to better enable United Church Funds 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 will help 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, United Church Funds recommends that the SEC should require at least some subset of information of all companies, to enhance the practices and performance of all issuers in this area. Additionally, we want to see that the ESG information provided is verified externally, which would ensure best practice reporting.

Disclosure of ESG information demonstrates how well positioned a company is to respond to changing regulation and/or its context. United Church Funds is also concerned about the external impact of corporate policies, which helps us to evaluate systemic risk. We look to the impact of corporate activity on society, particularly local communities, as well as on the environment and the impacts to natural resources.

United Church Funds 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 verification of 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 create 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.

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?

United Church Funds recognizes that hundreds of companies are providing sustainability reporting to differing degrees on their websites. A significant reason that companies are now reporting on ESG issues is the history of active engagement by investors.

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

[6] Ceres, Stock Exchanges and Sustainability

Available information related to ESG performance and disclosure on company websites is insufficient for investor needs. While listing this information on company websites can be helpful, this type of voluntary disclosure is inconsistent, is provided with varying frequency, and is often very difficult to find. Additionally, information companies provide in corporate sustainability websites and online reports is information intended for all stakeholder audiences. We appreciate this information, but seek mandatory reporting of information that is necessary for investor decisions. 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. Sustainability reports that are filed on corporate websites are not comparable, are inconsistent, are not audited, and are therefore unreliable. 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.

Investors have had to spend significant amounts of time and money to get the level of disclosure that currently exists. Companies are providing some information on websites, through sustainability reports or other voluntary disclosure, but this information is not easily searchable and investors cannot benchmark companies on the basis of varied disclosure. 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.

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. From the Sustainability Accounting Standards Board (SASB), CDP, and the Global Reporting Initiative (GRI), United Church Funds appreciates the extensive work done by these organizations over the years in creating standards for meaningful disclosure of vital ESG information. However, because each reporting standard is voluntary, each has weaknesses. Not all companies choose to disclose through these frameworks. In addition, 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. While investors

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

appreciate knowing which reporting standards companies are working with, as well as the information in them, without specific mandatory standards, the information is difficult to compare. For example, while the SASB tool is valuable for sector specific guidance, it has a narrower definition of materiality that might not capture issues of systemic risk which United Church Funds considers to be important. While the CDP is valuable for specific indictors on climate, water, and forestry, the voluntary corporate reporting results are not consistently comprehensive across issues. United Church Funds urges the SEC to build further expertise in 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. SEC guidance or rules should encourage companies to disclose the reference standards or programs utilized.

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?

United Church Funds 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.

United Church Funds works across a variety of ESG issue areas. With United Church Funds' decades of experience 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 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

[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

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.

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 carbon constrained 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:

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11 Business & Human Rights Resource Centre, Corporate Human Rights Benchmark
12 Know the Chain.org
13 Know the Chain, ICT Benchmark: Themes Key Findings
14 ICCR, 2016 Proxy Resolutions and Voting Guide

- Climate change policy and Governance of climate change issues.
- Greenhouse Gas emission reduction targets for scope 1, 2, and 3 emissions and progress against these targets.
- Energy efficiency of operations and products.
- For relevant companies in the oil and gas industry, stress testing and scenario planning for alignment with the 2 degree objective adopted in Paris.
- 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. 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 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:

- Identification and assessment of water use in core businesses and key suppliers.
- Assessment of water availability, issues, challenges, and levels of sustainable use around business operations.
- Performance measured against baselines and goals.
- Data on water for operations and supply chain, especially in water stressed or scarce areas (including seasonal or periodic water stress or scarcity). Report in the context of local climate, ecology, human population, economy (agriculture, industry, service) and define the term "local" and the "watershed" area(s) covered.

Food

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. Further, consumers and public health and government officials are increasingly alarmed about the public health risks associated with obesity which is particularly acute in emerging markets and, increasingly, among young people. As consumer demand builds for healthier alternatives and growth in these segments continues to outpace the category, long-term investors will be attracted to those companies best able to capitalize on these emerging market trends.

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

- 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.
- Acknowledge that agricultural land needs to be managed sustainably.
- Up-to-date and complete information on their policies, practices and performance on an ongoing basis, integrating a clear narrative about how addressing nutrition issues is benefitting their business.

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 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.[15] 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.

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[15] PoliticalAccountability.net

In addition, we would 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.

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

United Church Funds supports the strengthening of the existing proxy 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. We believe this proposal is entirely consistent with the interests of investors.

As Chair White stated clearly in an address at ICGN in June 2016, broadening diversity on company boards is an important priority. At present, under 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 add 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. Unfair 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.[16] 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 racial, ethnic, and gender representation of boards or senior managements within firms which are the areas of diversity that are most lacking.

As a network of investors with investments spanning a multitude of countries, cultures, and languages, we are ourselves committed to fostering a diverse and inclusive work environment. We believe diversity enriches our efforts and aligns with our desire to consider the full range of social justice, environmental, and corporate governance factors that influence the long-term performance of our investments.

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.

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. Similarly, 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.

We believe the proposed SEC rule should include information about the company's policy on board diversity, as well as steps taken to implement a diverse board in terms of gender and race. In addition, we believe there should be disclosure on 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. Investors have asked companies to ensure the Charter of their Nominating Committee includes an affirmation of a diverse board.

Disclosure of the following[17] would provide consistent information available to all investors related to diversity and pay equity:

- The inclusion of women and minority candidates in every pool from which board nominees are chosen.

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

[17] The first two disclosure indicators listed are reflected in 2016 shareholder resolutions filed with Cabot Oil & Gas Corporation, Cognizant Technology Solutions Corp, Discovery Communications, Inc., and Stifel Financial. See ICCR, 2016 Proxy Resolutions and Voting Guide

- 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

United Church Funds' members who invest in extractives industries urge these companies to address the concerns of local communities and indigenous populations. 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."[18]

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.[19] 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."[20]

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.[21] 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 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.

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

- 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.

Taxes

Aggressive corporate tax planning can create earnings risk, damage corporate reputation and brand value, and cause significant harm to local and national economies. As practiced by large multinational companies, we believe that aggressive tax strategies have become a key systemic risk that can impact the profitability of a company and have broader impacts on portfolio returns. Current rules do not provide investors the information we need to evaluate and address these substantial risks.

In 2013, PRI convened a group of global investors to explore the issue of corporate tax planning and produce a guide on how to engage with companies on this topic. We would commend this report to your attention, to gain a better understanding of the range of concerns raised by investors.[22] We would also commend to the Commission's attention the comment letter submitted by the FACT Coalition, a coalition of tax-justice organizations.[23] The recommendations below are drawn from this letter and the PRI's comment letter.

Enhanced disclosure on corporate tax practices should allow investors to understand how corporate boards identify tax related risks and respond to government and other stakeholders' expectations. It should also allow investors to identify a potential aggressive approach to tax planning. At a minimum, this requires companies to disclose meaningful information on the following areas:

- Corporate tax policy and principles, governance and oversight frameworks, and management systems for tax-related risks.
- What drives the gap between effective tax rate shown on income statement and the weighted average statutory rate based on the firm's geographic sales mix.
- Explanation of the difference between the foreign effective tax rate and the average statutory rate of the countries where companies do business, particularly the key tax strategies employed and the risks of those strategies, including regulatory risks; currently, this figure is not explained within the tax footnote. Currently, companies are not required to disclose their foreign effective tax rate. This would also be an important indicator to signal to investors whether a company is engaged in aggressive tax avoidance in other countries.
- An overview of what is driving unrecognized tax benefit (UTB) changes; UTBs display the tax positions being taken by companies that management believes are less than 50% likely to be upheld by a tax authority.
- Disclosure on intracompany debt, including the countries where the debt is held, the amount of intracompany debt, and the average interest rate paid by other subsidiaries on that debt. This would allow investors to evaluate whether multinationals are shifting profits between subsidiaries in order to avoid tax, or for appropriate business purposes.
- The most financially material tax incentives across jurisdictions; information on expiries of all incentives, investment requirements and commentary regarding the likelihood that such incentives will not be renewed should be provided.

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[22] The report is available at: https://www.unpri.org/download_report/8531

[23] The Fact Coalition, FACT Comments to SEC on Concept Release Urge Public Country-by-Country Reporting

It is impossible for an investor to understand a company's tax strategy without understanding its global structure, including the business nature of existing subsidiaries, as well as the overall approach to the use of secrecy jurisdictions, or "tax havens." Currently, however, a number of large companies are failing to disclose their subsidiaries, presumably because they do not deem them to be "significant" under the SEC's current rules. We would recommend that the SEC eliminate the significance test for subsidiaries, and simply require companies to disclose all subsidiaries. The information would provide more insight on corporate tax practices and would be valuable for investors. We also recommend that the SEC's disclosure requirements be aligned with evolving international standards on country by country reporting (e.g. the OECD-Base Erosion and Profit Shifting project and relevant template for Country by Country reports).

We also support the FACT Coalition's call for the following company disclosure, on an annual, country-by-country basis:

- Profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.[24]

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 1200 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 DRC. Reports such as Responsible Sourcing Network's reports (2014, 2015) *Mining the Disclosures: An Investor Guide to Conflict Minerals Reporting*[25] 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

[24] The Fact Coalition, FACT Comments to SEC on Concept Release Urge Public Country-by-Country Reporting

[25] Responsible Sourcing Network, Mining the Disclosures

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.

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 are somewhat helpful to investors in assisting them to evaluate material climate change risks. However, to realize their full potential, they must be fully enforced by SEC staff with expertise in the materiality of climate impacts. Unfortunately, current rules have not produced sufficient information for investors to evaluate climate risks. While United Church Funds 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 have 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.

In some cases, line item disclosure rules that apply to industry sectors may be useful here. Many investors are long-term shareowners, and hold companies representing the breadth of the economy. Interested in reducing climate risks in their portfolios, they 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.

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, and where relevant, newly coined “Scope 4” emissions (avoided 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, electric power, 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, rules regarding disclosure of 2-degree scenario planning results and methodologies may be needed.

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 a disclosure 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. As one example, for investors concerned about a company's risk with human trafficking, such additional information should include: what is the protocol for hiring workers? Is the company using agents, recruiters, labor brokers or other third party contractors to recruit workers? If a third party is used for hiring, is a third party licensed in the location it operates? Does the company ban fees charged for employment? Does the company provide written contracts in the employee's language? Does the company prohibit retention of any work documents including passports? What is included in the benefit package for the migrant workers? Is there adequate health coverage? What are the grievance mechanisms for such workers?

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

59. As outsourcing and subcontracting have become more prevalent in the last few decades, what, if any, additional information about a registrant's outsourcing or subcontracting arrangements should we require? Would this information be most useful in the context of the description of the registrant's business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management? What would be the challenges of requiring disclosure of this information?

Disclosure for investors about a company's outsourcing and subcontracting is vital in understanding a company's risks related to supply chain operations. Supply chain risks related to labor and human rights violations, as well as environmental impacts, are increasingly recognized by investors as material to the long-term health and sustainability of a company. Investors believe that the most profitable companies over the long-term will be those which are creating transparent, ethical, and accountable corporate cultures reflected by improved disclosure and reporting, especially on the issue of worker rights in their supply chains.

CONCLUSION

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

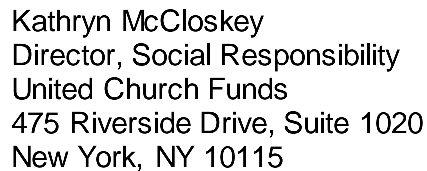
1. Disclosure of material ESG information should be required as it is useful to investors.
2. Material ESG data should be included in corporate Annual Reports and 10-K filings to address the insufficiency and inconsistency of voluntary reporting.
3. Line-item disclosure of material information across sectors should be required, but should be flexible so that it can be amended as risks evolve within corporate sectors.
4. Voluntary reporting frameworks provide information on many companies but without providing consistency across companies and sectors, and without providing 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 would welcome the opportunity to discuss this matter with you further at your earliest convenience.

Sincerely,



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