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March 20, 2019

Chair Jay Clayton
Commissioners
Securities and Exchange Commission
c/o Brent J. Fields
100 F Street NE
Washington, D.C. 20549-1090
*Via email to: rule-comments@sec.gov*

**Re: Quarterly Reports, File No. 33-10588**

Dear Commissioners,

On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comment in response to the Securities and Exchange Commission's (SEC, Commission) request for comment on "earnings releases and quarterly reports." Specifically, the Commission asks for public comment on "how we can enhance, or at a minimum maintain, the investor protection attributes of periodic disclosures while reducing administrative and other burdens on reporting companies associated with quarterly reporting." Generally, we oppose a move to decrease frequency of reporting and advocate for increased disclosures for investors.

**Frequency of Reporting**

Under requirements of the Securities Exchange Act of 1934 ("Exchange Act"), registered firms must file quarterly reports on what is known as Form 10Q. This requirement began in 1970. These forms include interim financial statements and other disclosures. Moreover, the reports may include reference to information in the annual report as a means of reducing duplication.

The SEC's current exploration of disclosure alternatives follows a comment from President Trump who questioned the value of quarterly reporting. Trump referenced former Pepsi CEO Indra Nooyi, who lamented the focus on short-term results.[1]

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[1] Owusu, Tony. *Outgoing PepsiCo CEO Clarifies Position on Frequency of Financial Reports*. THESTREET (Aug. 17, 2018.) https://www.thestreet.com/politics/outgoing-pepsico-ceo-clarifies-position-on-frequency-of-earnings-reports-14686696

In some nations, reporting requirements call for less frequent disclosures. Studies show problems with these regimes. Less frequent disclosure can lead to greater pricing sensitivity at the time of these disclosures, according to one analysis.[2] Investors are effectively surprised, and revalue the company substantially. That means investors are exchanging their shares at inaccurate prices. More frequent reporting can also lead to reduced costs of capital, as investors are more confident and require a lower risk premium.[3] (As an analogy-- a home buyer will pay more for a house known to be free of termites than one where inspectors have made no such finding.)

More broadly, we are concerned with what appears to be a recurring theme at the SEC to reduce disclosure. The only voices supporting such a reduction are corporations. Investors, by contrast, continue to seek greater disclosure. For example, shareholders filed resolutions at 80 companies in 2018 calling for greater disclosure of political spending. More than 1.2 million citizens have signed a petition calling on the SEC to require political spending disclosure. More than 26,500 individuals submitted comments in response to its 2016 Concept Release on Business and Financial Disclosure Required by Regulation S-K and the overwhelming majority supported more and better disclosure in general.[4] Finally, investors representing more than $5 trillion in assets under management filed a new petition in October 2018 for greater disclosure regarding environment, social and governance issues. (File Number 4-730), generating more than 3,300 comments to date.[5] Blackrock, the largest asset manager in the world, supports quarterly reporting.[6] Again, the investing public seeks greater disclosure, not less.

We recognize the problem of short-termism, of "quarterly capitalism," and the failure by managers to adopt a long-term perspective needed to grow the economy sustainably. We believe this problem stems not from the frequency of reporting, but from the structure of compensation. Consider what happened to the added income generated by the Trump corporate tax cut measure. Instead of resulting in greater investment or better wages for employees, the most conspicuous expenditures came through buybacks. In turn, these buybacks benefitted managers whose compensation turned on the value of stock options. Compensation pegged to short term stock prices is determined by boards of directors. Should a company wish to adopt a long-term perspective, these boards should structure compensation accordingly, rather than push for decreased disclosures for investors.

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[2] Arif, Salman and De George, Emmanuel T., *Does Financial Reporting Frequency Affect Investors' Reliance on Alternative Sources of Information? Evidence from Earnings Information Spillovers Around the World* KELLEY SCHOOL OF BUSINESS*.* (January 1, 2018)

[3] Lewis Krauskopf, *Kill Quarterly Reporting,* REUTERS (August 17, 2018) https://www.reuters.com/article/us-usa-sec-trump-investors-analysis/kill-quarterly-reporting-some-investors-ring-alarm-bells-idUSKBN1L2227

[4] Tyler Gellasch, *Toward a Sustainable Economy*, AFL-CIO, PUBLIC CITIZEN AND OTHERS (September 2016) https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5866d3c0725e25a97292ae03/1483133890503/Sustainable-Economy-report-final.pd

[5] Letter to SEC from petitioners, SECURITIES AND EXCHANGE COMMISSION (October 1, 2018) https://www.sec.gov/rules/petitions/2018/petn4-730.pdf

[6] Larry Fink, open letter, Business Insider (February 2, 2016) https://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016

**Earnings releases**

The SEC also asks for comment about the advisability of promoting earnings statements in lieu of formal quarterly reporting. Many firms that are required to file quarterly 10Q reports also volunteer earnings releases, though they are not required by statute or SEC rule. Firms also routinely conduct public calls with analysis (and others who wish to audit them). The SEC doesn't regulate the format of these voluntary communications.

Because of this lack of SEC oversight, some firms have published information in an earnings release that departs substantially from what is released in the formal, SEC-reviewed documents. For example, one firm with $1 billion in annual revenue posted annual income in 2017 through an earnings release of $17.3 million. In its SEC report published later, however, it listed just $2.9 million in profits. Much of the disparity related to income taxes. After the company's first release, investors bid up the stock price by 22 percent. In another case, a firm issued an earnings release with better results than in the subsequent 10Q report because the latter included reserves for litigation costs.[7]

These episodes do not constitute a violation of securities laws because the full information is provided in the SEC documents. Yet, these discrepancies deceive investors. As the SEC considers reducing quarterly reporting where firms issue earnings releases, however, we think these episodes illustrate how firms may provide incomplete or misleading information. At the very least, the SEC should require that earnings releases provide the same bottom line figure as a 10Q report.

We thank the Commission for its attention to disclosure issues, though we hope in the future to be commenting in support of proposals to increase, rather than decrease them. For questions, please contact Bartlett Naylor [redacted].

Sincerely,

Public Citizen

[7] Matt Kelly, *Update on Semiannual Reporting,* RADICAL COMPLIANCE (February 6, 2019) http://www.radicalcompliance.com/2019/02/06/update-semiannual-reporting-zilch/