October 1, 2018

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

Dear Mr. Fields:

Enclosed is a petition for a rulemaking on environmental, social, and governance (ESG) disclosure authored by Osler Chair in Business Law Cynthia A. Williams, Osgoode Hall Law School, and Saul A. Fox Distinguished Professor of Business Law Jill E. Fisch, University of Pennsylvania Law School, and signed by investors and associated organizations representing more than $5 trillion in assets under management including the California Public Employees' Retirement System (CalPERS), New York State Comptroller Thomas P. DiNapoli, Illinois State Treasurer Michael W. Frerichs, Connecticut State Treasurer Denise L. Nappier, Oregon State Treasurer Tobias Read, and the U.N. Principles for Responsible Investment.

The enclosed rulemaking petition:

- Calls for the Commission to initiate notice and comment rulemaking to develop a comprehensive framework requiring issuers to disclose identified environmental, social, and governance (ESG) aspects of each public-reporting company's operations;
- Lays out the statutory authority for the SEC to require ESG disclosure;
- Discusses the clear materiality of ESG issues;
- Highlights large asset managers' existing calls for standardized ESG disclosure;
- Discusses the importance of such standardized ESG disclosure for companies and the competitive position of the U.S. capital markets; and
- Points to the existing rulemaking petitions, investor proposals, and stakeholder engagements on human capital management, climate, tax, human rights, gender pay ratios, and political spending, and highlights how these efforts suggest, in aggregate, that it is time for the SEC to bring coherence to this area.

If the Commission or Staff have any questions, or if we can be of assistance in any way, please contact either **Osler Chair in Business Law Cynthia A. Williams**, Osgoode Hall Law School, who can be reached at (416) 736-5545, or by electronic mail at cwilliams@osgoode.yorku.ca; or **Saul A. Fox Distinguished Professor of Business Law Jill E. Fisch**, University of Pennsylvania Law School, who can be reached at (215) 746-3454, or by electronic mail at jfisch@law.upenn.edu.

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100 F Street, Northeast
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Dear Mr. Fields,

We respectfully submit this petition for rulemaking pursuant to Rule 192(a) of the Securities and Exchange Commission's (SEC) Rule of Practice.[1]

Today, investors, including retail investors, are demanding and using a wide range of information designed to understand the long-term performance and risk management strategies of public-reporting companies. In response to changing business norms and pressure from investors, most of America's largest public companies are attempting to provide additional information to meet these changing needs and to address worldwide investor preferences and regulatory requirements. Without adequate standards, more and more public companies are voluntarily producing "sustainability reports" designed to explain how they are creating long-term value. There are substantial problems with the nature, timing, and extent of these voluntary disclosures, however. Thus, we respectfully ask the Commission to engage in notice and comment rule-making to develop a comprehensive framework for clearer, more consistent, more complete, and more easily comparable information relevant to companies' long-term risks and performance. Such a framework would better inform investors, and would provide clarity to America's public companies on providing relevant, auditable, and decision-useful information to investors.

Introduction

In 2014, the Commission solicited public comments to its "Disclosure Effectiveness" initiative, which sought to evaluate and potentially reform corporate disclosure requirements. Over 9,835 commenters have responded to that initiative.[2] As part of that initiative, the 2016 Concept Release on Business and Financial Disclosure Required by Regulation S-K ("Concept Release")[3] solicited public opinions on the frequency and format of current disclosure, company accounting practices and standards, and the substantive issues about which information should be disclosed. In that Concept Release, the SEC asked a number of questions about whether it should require disclosure of sustainability matters, which it defined as "encompass[ing] a range of topics, including climate change, resource scarcity, corporate social responsibility, and good

[1] Rule 192. Rulemaking: Issuance, Amendment and Repeal of Rules, Rule 192(a), *By Petition*, *available at* https://www.sec.gov/about/rules-of-practice-2016.pdf.
[2] *See* Tyler Gellasch, *Joint Report: Towards a Sustainable Economy: A review of Comments to the SEC's Disclosure Effectiveness Concept Release*, 14 (Sept. 2016), [hereinafter "Gellasch Joint Report"], *available at:* https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5866d3c0725e25a97292ae03/1483133890503/Sustainable-Economy-report-final.pdf.
[3] Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064; 34-77599; File No. S7-06-16, April 16, 2016, *available at* https://www.sec.gov/rules/concept/2016/33-10064.pdf [hereinafter "Concept Release"].

corporate citizenship. These topics are characterized broadly as ESG [Environmental, Social, and Governance] concerns."[4]

The SEC received over 26,500 comments in response to the 2016 Concept Release, making it one of only seven major proposals by the SEC since 2008 to garner more than 25,000 comments.[5] As noted in a report reviewing comments to the Concept Release, "the overwhelming response to the Concept Release seems to reflect an enormous pent up demand by disclosure recipients for more and better disclosure" generally.[6] The Concept Release also provided the first formal opportunity since the mid-1970s for both reporting companies and disclosure recipients to convey their views to the SEC concerning what additional environmental or social information should be disclosed to complement the governance disclosure already required.

An analysis of the comments submitted in response to the Concept Release, a significant majority of which supported better ESG disclosure, can be found in the report referenced in footnote 2. Across the board, commenters noted how they were using those disclosures to understand companies' potential long-term performance and risks. The response to the Concept Release strongly suggests that it is time for the Commission to engage in a rulemaking process to develop a framework for public reporting companies to use to disclose specific, much higher-quality ESG information than is currently being produced pursuant either to voluntary initiatives or current SEC requirements.

We briefly set out six arguments supporting this petition:

(1) The SEC has clear statutory authority to require disclosure of ESG information, and doing so will promote market efficiency, protect the competitive position of American public companies and the U.S. capital markets, and enhance capital formation;

(2) ESG information is material to a broad range of investors today;

(3) Companies struggle to provide investors with ESG information that is relevant, reliable, and decision-useful;

(4) Companies' voluntary ESG disclosure is episodic, incomplete, incomparable, and inconsistent, and ESG disclosure in required SEC filings is similarly inadequate;

(5) Commission rulemaking will reduce the current burden on public companies and provide a level playing field for the many American companies engaging in voluntary ESG disclosure; and

(6) Petitions and stakeholder engagement seeking different kinds of ESG information suggest, in aggregate, that it is time for the SEC to regulate in this area.

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[4] *See id.* at 206.
[5] *Id.*
[6] *See* Joint Report, *supra* note 2, at 10.

1. *The SEC has Clear Statutory Authority to Require Disclosure of ESG Information*

As acknowledged by the SEC in its Concept Release, its statutory authority over disclosure is broad. Congress, in both the Securities Act and the Exchange Act, "authorize[d] the Commission to promulgate rules for registrant disclosure 'as necessary or appropriate in the public interest or for the protection of investors.'"[7] In an early defense of its power to require disclosure of corporate governance information such as the committee structure and composition of boards of directors—disclosure now considered standard, but which was controversial when the requirements were first promulgated—the SEC was explicit about the broad scope of its power over disclosure:

> The legislative history of the federal securities laws reflects a recognition that disclosure, by providing corporate owners with meaningful information about the way in which their corporations are managed, may promote the accountability of corporate managers. . . . Accordingly, although the Commission's objective in adopting these rules is to provide additional information relevant to an informed voting decision, it recognizes that disclosure may, depending on determinations made by a company's management, directors and shareholders, influence corporate conduct. This sort of impact is clearly consistent with the basic philosophy of the federal securities laws.[8]

In 1996, Congress added Section 2(b) to the Securities Act of 1933, and Section 23(a)(2) to the Securities and Exchange Act of 1934. These parallel sections provide that:

> Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[9]

These statutory policy goals underscore the SEC's authority to require disclosure of better, more easily comparable, and consistently presented ESG information. Generally, the SEC seeks to protect investors through requirements for issuers to disclose material information at specified times.[10] Thus, the investor protection aspect of the SEC's statutory authority will be discussed in Part Two, below, in conjunction with the discussion of the materiality of ESG information. Here we discuss why requiring issuers to disclose specified ESG information would promote market efficiency, competition, and capital formation.

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[7] Concept Release, *supra* note 3, at 22-23 & fn. 50, *citing* Sections 7, 10, and 19(a) of the Securities Act of 1933, 15 U.S.C. §§ 77g(a)(10), 77j, and 77s(a); and Sections 3(b), 12, 13, 14, 15(d), and 23(a) of the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78c(b), 78l, 78m(a), 78n(a), 78o(d), and 78w(a).

[8] Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Exchange Act Release No. 15,384, 16 Docket 348, 350 (Dec. 6, 1978).

[9] Securities Act of 1933, §2(b), 15 U.S.C.§ 77b(b); Securities and Exchange Act of 1934, § 23(a)(2), 15 U.S.C. §78w(a)(2)(2012).

[10] *See* Concept Release, *supra* note 3, at 23 (stating that "our disclosure rules are intended not only to protect investors but also to facilitate capital formation and maintain fair, orderly and efficient capital markets.").

A. Promoting Efficient Capital Markets

The concept of "efficient capital markets" includes informational efficiency (market mechanisms able to process new information quickly and with broad distribution)[11] and allocative efficiency (distributing capital resources to their highest value use at the lowest cost and risk).[12] Disclosure is obviously relevant to both efficiency goals, the latter being particularly relevant to the discussion of the need for better sustainability disclosure. As Mark Carney, Governor of the Bank of England and Chair of the Financial Stability Board, said with respect to climate change, with "consistent, comparable, reliable, and clear disclosure" of firms' forward-looking strategies, both "markets and governments" can better manage the transition to a low-carbon future by supporting the allocation of capital to its risk-adjusted highest-value use in that transition.[13] Climate change is not a purely environmental issue, of course: It is also an issue that poses material risks and opportunities to companies in most industries. The Sustainability Accounting Standards Board ("SASB")'s conclusion, developed in conjunction with industry leaders, is that 72 of 79 industries, representing 93% of U.S. capital market valuations, are vulnerable to material financial implications from climate change.[14] The point is that without consistent, comparable, reliable, and complete information, capital markets are constrained in promoting allocational efficiency as many industries embark on the transition to a low-carbon economy. Similarly, other substantial social and economic challenges in the United States, such as increasingly precarious work environments, rising economic inequality, or the security of private information, can be better perceived by investors and assets allocated to high-performance workplaces and firms with better human capital management and cybersecurity arrangements if investors are provided with clear and comparable information about these matters.

Requiring firms to disclose more ESG information is thus consistent with the SEC's authority to promote market efficiency, and within its broad mandate "to promulgate rules for registrant disclosure as necessary or appropriate in the public interest or for the protection of investors."[15]

B. Ensuring the global competitiveness of America's public companies and the U.S. capital markets

The SEC will also be ensuring the competitiveness of U.S. capital markets and America's public companies by requiring more ESG disclosure. Many other developed countries have already promulgated such requirements, shaping the expectations of global investors. A 2016 study by the U.N. PRI (Principles for Responsible Investment) and MSCI (a global data and investment research provider) identified 300 policy initiatives promoting sustainable finance in the world's 50 largest economies, of which 200 were corporate reporting requirements covering

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[11] *See* Edmund W. Kitch, *The Theory and Practice of Securities Disclosure*, 61 BROOK L.REV. 763, 764–65 (1995).
[12] *See* Alicia J. Davis, *A Requiem for the Retail Investor?*, 95 VA. L. REV. 1105, 1116 (2009) (recognizing that "[p]ublic markets perform a vital economic role, since accurate share prices lead to the efficient allocation of capital.").
[13] Mark Carney, Governor, *Breaking the tragedy of the horizon: Climate change and financial stability,* Bank of England 14 (Sept. 29, 2015), *available at* http://www.BankofEngland.co.uk/publications/Pages/speeches/2015/844.asp#.
[14] Sustainability Accounting Standards Board, *Climate Risk—Technical Bulletin,* SASB Library 2017, *available at* https://library.sasb.org/climate-risk-technical-bulletin/.
[15] Concept Release, *supra* note 3, at 22.

environmental, social, and governance factors.[16] According to a 2015 report by the Initiative for Responsible Investment of the Hauser Institute for Civil Society at the Kennedy School, Harvard University, 23 countries have enacted legislation within the last 15 years to require public companies to issue reports including environmental and/or social information.[17]

In addition to these reporting initiatives, seven stock exchanges require social and/or environmental disclosure as part of their listing requirements: Australia's ASX, Brazil's Bovespa, India's Securities and Exchange Board, the Bursa Malaysia, Oslo's Børs, the Johannesburg Stock Exchange, and the London Stock Exchange.[18]

Moreover, seven countries have enacted policies following those of the U.K. and Sweden, which since 2000 have required public pension funds to disclose the extent to which the fund incorporates social and environmental information into their investment decisions.[19] Regulations such as these support the trend of increasing institutional investor demand for high-quality ESG data, as discussed below. Currently the European Union is developing a taxonomy of environmentally sustainable activities, as well as developing benchmarks for low-carbon investment strategies, and regulatory guidance to improve corporate disclosure of climate-related information.[20] To the extent that US companies fail to disclose information which global investors are being encouraged, and in some cases required, to consider, they will be at a disadvantage in attracting capital from some of the world's largest financial markets. This highlights that US corporate reporting standards will soon become outdated if they are not revised to incorporate global developments regarding the materiality and disclosure of ESG information.

C. Facilitating Capital Formation

Additionally, promulgating a regulatory framework for the disclosure of ESG information would promote capital formation. By providing more information to investors, giving better information about risks and opportunities, and standardizing what is currently an uncoordinated and irregular universe of ESG disclosures, the SEC would act to increase confidence in the capital markets. This confidence may well mobilize sources of capital from investors who are currently unwilling to invest given knowledge gaps or information asymmetries. Particularly retail investors, who are important as long-term investors and investors in small and medium enterprises, may be emboldened by a clearer sense of the social and environmental aspects of

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[16] PRI and MSCI, *Global Guide to Responsible Investment Regulation,* 2016, *available at* https://www.unpri.org/page/responsible-investment-regulation.

[17] *See* Initiative for Responsible Investment, *Corporate Social Responsibility Disclosure Efforts by National Governments and Stock Exchanges* (March 12, 2015), *available at* http://hausercenter.org/iri/wp-content/uploads/2011/08/CR-3-12-15.pdf. These countries include Argentina, China, Denmark, the EU, Ecuador, Finland, France, Germany Greece, Hungary, India, Indonesia, Ireland (specific to state-supported financial institutions after the 2008 financial crisis), Italy, Japan, Malaysia, The Netherlands, Norway, South Africa, Spain, Sweden, Taiwan, and the U.K.

[18] *See id.*

[19] *See* Initiative for Responsible Investment report, *supra* note 63. These countries include Australia, Belgium, Canada, France, Germany, Italy, and Japan.

[20] Technical Expert Group on Sustainable Finance (TEG), *State-of-play, July 2018*, *available at* https://ec.europa.eu/info/publications/sustainable-finance-technical-expert-group_en.

companies' activities as a guide to companies' longer-term risks and opportunities.[21] As we highlight below, the value of assets under management based on ESG-influenced guidelines has grown considerably in the past two decades. We ask the SEC to act to facilitate the provision of information to this rapidly growing sector. In so doing, additional capital may become available to support America's enterprises, particularly its smaller and medium-sized enterprises.

2. *ESG Information is Material and Decision Useful*

In advancing its over-arching goals of investor protection and promoting market efficiency, the SEC has relied upon the concept of materiality to determine what information issuers should be required to disclose and in what format.[22] As defined by the U.S. Supreme Court in *TSC v. Northway,* material information is information that a "reasonable shareholder would consider important in deciding how to vote."[23] As the Court said, "[p]ut another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[24] Thus, what is material depends on reasonable investors' perceptions of what information is already available in the market, and how any new or omitted information changes those perceptions of the quality of management, when voting or engaging with management, or the value of a company or its shares, when investing or selling.

In promulgating disclosure regulations under Regulation S-K, the SEC has predominantly, but not exclusively, sought to require the disclosure of information it construes as financially material.[25] Recent investment industry analyses are confirming the financial materiality of much ESG information. For instance, a June, 2017, Bank of America Merrill Lynch study highlighted by the Sustainability Accounting Standards Board found sustainability factors to be "strong indicators of future volatility, earnings risk, price declines, and bankruptcies."[26] Also in June of 2017, Allianz Global Investors produced a research report with similar findings, concluding that the heightened transparency of ESG disclosure lowered companies' cost of capital by reducing the "investment risk premium" that sophisticated investors would require.[27] In September of 2017, Nordea Equity Research published an analytic research report concluding that there is "solid evidence that ESG matters, both for operational and share price performance."[28] Goldman Sachs concluded in April of 2018 that "integrating ESG factors allows for greater insight into

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[21] *See* Davis, *supra* note 12, at 116-1120 for evidence on the importance of retail investors to small and medium enterprises, versus institutional investors which predominantly invest in large-capitalization companies; and for evidence of retail investors generally longer holding periods for shares of stock.
[22] Concept Release, *supra* note 3, at 33-34.
[23] 426 U.S. 438, 449 (1976).
[24] *Id.*
[25] *See* Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARV. L. REV. 1197, 1264-66 (1999) (discussing SEC's requirements for public companies to disclose certain corporate governance information without a showing of economic materiality).
[26] Bank of American Merrill Lynch, *Equity Strategy Focus Point—ESG Part II: A Deeper Dive* (June 15, 2017), *cited in* Sustainability Accounting Standards Board (SASB), *The State of Disclosure Report 2017* (December 2017).
[27] Allianz Global Investors, *ESG matters, Part 2: Added value or a mere marketing tool?What does ESG mean for investments?,* (June 2017).
[28] Nordea Equity Research, *Strategy & Quant: Cracking the ESG Code,* 5 Sept. 2017, *available at:* https://nordeamarkets.com/wp-content/uploads/2017/09/Strategy-and-quant_executive-summary_050917.pdf.

intangible factors such as culture, operational excellence and risk that can improve investment outcomes."[29]

These industry studies are consistent with, and indeed rely upon, a number of influential academic studies that have analyzed the over 2,000 research studies also showing the economic materiality of ESG information. Two such studies are of particular note. Deutsch Asset & Wealth Management, in conjunction with researchers from the University of Hamburg, analyzed 2,250 individual studies of the relationship between ESG data and corporate financial performance. From this analysis, the researchers concluded that improvements in ESG performance generally lead to improvements in financial performance.[30] A comprehensive review published in 2015 of empirical studies found that 90% of studies show that sound sustainability standards lower firms' cost of capital; 80% of studies show that companies' stock price performance is positively influenced by good sustainability practices; and 88% of studies show that better E, S, or G practices result in better operational performance.[31]

In addition, the SEC has promulgated disclosure requirements for the production of qualitatively material information. For instance, it has required disclosure concerning corporate governance, such as statistics on board members' attendance at meetings, and information on the committee structure of the board of directors, with the stated purpose of encouraging the board to be more active and independent in monitoring management's actions.[32] It has required extensive disclosure of executive compensation, starting in the early 1990s, as a response to public frustration with the levels of executive compensation.[33] Indeed, with respect to illegal actions by members of management or the company, the SEC has established an almost *per se* materiality standard even where the economic consequences of management's illegal actions were trivial.[34] This qualitative approach to the materiality of information concerning the honesty of management or its approach to law compliance, among other matters, was the basis for the SEC's Division of Corporation Finance and the Office of the Chief Accountant to reject

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[29] Goldman Sachs Equity Research, *GS Sustain ESG Series: A Revolution Rising-From Low Chatter to Loud Roar [Redacted]*, 23 April 2018 (analyzing earnings call transcripts, social media, asset manager initiatives, and rising assets under management utilizing ESG screens to conclude that "the ESG Revolution is just beginning, as the logical, empirical and anecdotal evidence for its importance continue to mount.").

[30] Deutsche Asset & Wealth Management, *ESG and Corporate Financial Performance: Mapping the Global Landscape*, December, 2015, *available at* https://institutional.deutscheam.com/content/_media/K15090_Academic_Insights_UK_EMEA_RZ_Online_151201_Final_(2).pdf.

[31] *See* Gordon L. Clark, Andreas Feiner & Michael Viehs, *From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance* (2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508281. This report is an excellent resource because it analyzes the empirical literature on the financial effects of sustainability initiatives by type of initiative (E, S or G) and by various financial measures of interest (cost of debt capital; cost of equity capital; operating performance; and effect on stock prices).

[32] *See* Williams, *supra* note 24, at 1265 & fn. 359, *citing* Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Exchange Act Release No. 15,384, 16 Docket 348 (Dec. 6, 1978).

[33] *See id.* at 1266 & fn. 363, *citing* Executive Compensation Disclosure, Securities Act Release No. 6962, Exchange Act Release No. 31,327, 52 SEC Docket 1961 (Nov. 4, 1992).

[34] *See id.* at 1265 & fn. 361, *citing* Division of Corporation Finance's Views and Comments on Disclosure Relating to the Making of Illegal Campaign Contributions by Public Companies and/or their Officers and Directors, Securities Act Release No. 5466, Exchange Act Release No. 10673, 3 SEC Docket 647 (Mar. 19, 1974); *In re* Franchard Corp., 42 S.E.C. 163, 172 (1964) (Cary, Chair)(stating that the integrity of management "is always a material factor.").

quantitative benchmarks as the sole determinant to assess materiality in preparing financial statements.[35]

The Commission has often developed new disclosure requirements in response to increased investor interest in emerging systemic environmental or social risks, such as its 2011 guidance on disclosure of risks related to cybersecurity.[36] We thus conclude that the SEC properly recognizes that there can be material information which is not yet required to be reflected in financial statements but which may be decision-relevant to investors. As stated by Alan Beller, former Director of the Division of Corporation Finance, "[i]n today's rapidly changing business landscape, investors often look beyond financial statement to understand how companies create long-term value. Financial reporting today has not kept pace with both company managers and investors' interest in broader categories of information that are also material to operations and financial performance." [37] The touchstone is the "reasonable investor," and what information the reasonable investor relies upon in voting, investing, and engagement with portfolio companies.

Today, investors with $68.4 trillion of capital are committed to incorporating ESG factors in their investing and voting decisions as part of the U.N. PRI.[38] Institutions, pension funds, sovereign wealth funds, and mutual funds with $95 trillion of invested capital support the Carbon Disclosure Project's ("CDP") annual survey of global companies regarding their greenhouse gas emissions and strategies for addressing climate change.[39] According to a recent Ernst & Young report, "investor interest in non-financial information spans across all sectors," and 61.5% of investors consider non-financial information relevant to their investments overall.[40]

Global assets under management utilizing sustainability screens, ESG factors, and comparable SRI corporate engagement strategies were valued at $22.89 trillion at the start of 2016, comprising 26% of all professionally managed assets globally.[41] Moreover, U.S.-domiciled assets using SRI strategies in 2016 were valued at $8.72 trillion, comprising more than 21% of the assets under professional management in the U.S. in that year.[42] These latter data starkly contrast with the facts when the SEC last considered the issue of expanded social and environmental disclosure in comprehensive fashion, between 1971 and 1975. Then, there were two active "ethical funds" in the United States, which by 1975 collectively held only $18.6 million assets under management, or 0.0005% of mutual fund assets.[43]

The data in the last two paragraphs indicate that substantial assets under management are

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[35] *See* SEC Staff Accounting Bulletin 99-Materiality (Aug. 12, 1999).

[36] Securities & Exchange Comm'n, *Commission Guidance Regarding Disclosure Related to Topic No. 2 Cybersecurity* (Oct. 13, 2011), *available at* http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.

[37] Alan Beller, Foreword to SASB's Inaugural Annual State of Disclosure Report, December 1, 2016, *available at* https://www.sasb.org/blog-alan-beller-pens-forward-inaugural-annual-state-disclosure-report.

[38] *See PRI-11 year growth of AO, all signatories (Asset Owners, Investment Managers and service providers) and respective AUM,* Excel sheet available for download at *About the PRI*, U.N. Principles for Responsible Investment, http://www.unpri.org/about.

[39] *Catalyzing business and government action,* Carbon Disclosure project, https://www.cdp.net/en-US/Pages/About-Us.aspx.

[40] *Id.* at 18.

[41] *See* Global Sustainable Investment Alliance, *The Global Sustainable Investment Review 2016* 3, 7-8, *available at* http://www.gsi-alliance.org/wp-content/uploads/2017/03/GSIA_Review_2016.pdf.

[42] *Sustainable and Impact Investing in the United States: Overview,* US SIF, http://www.ussif.org/files/Infographics/Overview%20Infographic.pdf (last visited Nov. 9, 2017).

[43] *See* Williams, *supra* note 24, at 1267 (citing SEC data).

using what ESG data is available, clearly demonstrating that investors consider this information material.[44] And yet, as discussed below, leading U.S. asset managers and executives emphasize that the poor quality of ESG data does not meet investors' needs, and support regulatory mandates to require companies to produce better ESG data.

3. *Companies struggle to provide investors with ESG information that is relevant, reliable, and decision-useful*

Over the last twenty-five years, voluntary disclosure of ESG information, and voluntary frameworks for that disclosure, have proliferated to meet the demands for information from investors, consumers, and civil society. The most comprehensive source of data on ESG reporting is that done by KPMG in the Netherlands. KPMG published its first ESG report in 1993, and its most recent report in 2017. In 1993, 12% of the top 100 companies in the OECD countries (excluding Japan) published an environmental or social report.[45] By 2017, 83% of the top 100 companies in the Americas publish a corporate responsibility report, as do 77% of top 100 companies in Europe and 78% in Asia.[46] Of the largest 250 companies globally, reporting rates are 93%.[47] The Global Reporting Initiative's (GRI) voluntary, multi-stakeholder framework for ESG reporting has emerged as the clear global benchmark: 75% of the Global 250 use GRI as the basis for their corporate responsibility reporting.[48] Of particular note, 67% of the Global 250 now have their reports "assured," most often by the major accontancy firms.[49]

Although 75% of the Global 250 use GRI as the basis for reporting, academic studies of reporting according to GRI have found serious problems with the quality of the information being disclosed. One study comparing GRI reports in the automotive industry concluded that "the information . . . is of limited practical use . . .Thus, quantitative data are not always gathered systematically and reported completely, while qualitative information appears unbalanced."[50] Markus Milne, Amanda Ball, and Rob Gray surveyed the existing literature on GRI as a preeminent example of triple bottom line reporting, and concluded in 2013 that "the quality—and especially the *completeness*—of many triple bottom line reports are not high. . . With a few notable exceptions, the reports cover few stakeholders, cherry pick elements of news, and generally ignore the major social issues that arise from corporate activity…."[51] Other studies have observed similar problems, particularly with the lack of comparability of the information

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[44] For further evidence of investors' views on the materiality of ESG data, *see* Jill E. Fisch, *Making Sustainability Disclosure Sustainable,* GEO. L. J. (forthcoming 2018), *available at* https://ssrn.com/abstract=3233053.

[45] *See* Ans Kolk, *A Decade of Sustainability Reporting: Developments and Significance*, 3 INT'L J. ENVIR. & SUSTAINABLE DEVELOPMENT 51, 52 Figure 1 (2004). KPMG has changed the format of the report since its original 1993 report, so direct comparisons are not possible between the Global 250 in 1993 and the Global 250 in 2017.

[46] KPMG, The KPMG Survey of CR Reporting 2017, at 11, available *at* https://home.kpmg.com/content/dam/kpmg/campaigns/csr/pdf/CSR_Reporting_2017.pdf.

[47] *Id.*

[48] *See id.* at 28. The Global Reporting Initiative is now in its fourth iteration. It has been developed by, and is used by, thousands of companies, governments, and non-profit entities around the world to report on the economic, environmental, social and governance effects of entities' actions. *See* Global Reporting Initiative, *available at* http://www.globalreporting.org.

[49] *See* KPMG 2017 Report, *supra* note 42, at 26.

[50] Klaus Dingwerth & Margot Eichinger, *Tamed Transparency: How Information Disclosure under the Global Reporting Initiative fails to Empower,* 10:3 GLOBAL ENV. POL. 74, 88 (2010).

[51] Markus J. Milne, Amanda Ball & Rob Gray, *Wither Ecology? The Triple Bottom Line, the Global Reporting Initiative, and the Institutionalization of Corporate Sustainability Reporting,* 188 (1) J. BUS. ETHICS 1 (2013).

being reported.[52] These conclusions should not be taken as a criticism of GRI *per se*, or of companies' efforts to provide expanded ESG information. Rather, these conclusions are an indication of the weaknesses of voluntary disclosure: without a regulatory mandate, the information being produced is often incomplete, lacks consistency, and is not comparable between companies. In contrast, when ESG disclosure becomes mandatory, standards become clearer and reporting becomes more consistent and comparable.[53] In analogous circumstances, the SEC has recognized the importance of standardized disclosure frameworks for financial information, expressing concerns about the use of non-GAAP accounting, concluding that information being disclosed without adherence to the standardized disclosure framework of U.S. GAAP may be confusing and even deceptive.[54]

4. ***Companies' Voluntary Disclosure is Insufficient to Meet Investors' Needs***

Given these problems with the quality of voluntary ESG disclosure, notwithstanding the efforts of public companies to meet investors' needs, a wide range of capital market participants have come out in favor of required ESG disclosure. In response to the Concept Release, the SEC received comments from asset managers, institutional investors, individual investors, foundation executives, and public pension funds, among others. These users of corporate disclosure "overwhelmingly expressed support" for more required ESG disclosure.[55] BlackRock, the world's largest asset manager, with assets under management of $6.317 trillion as of March 31, 2018, has recognized the strategic value of ESG information:

> Environmental, social, and governance issues are integral to our investment stewardship activities, as the majority of our clients are saving for long-term goals. It is over the long-term that ESG factors – ranging from climate change to diversity to board effectiveness – have real and quantifiable financial impacts. Our risk analysis extends across all sectors and geographies, helping us identify companies lagging behind peers on ESG issues.[56]

And yet, BlackRock asserts that current reporting practices are insufficient for the kinds of in-depth investment analysis that it seeks with its ESG integration, making it "difficult to identify investment decision-useful data." As a result, it has advocated for public policy

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[52] *See* David Levy, Halina S. Brown, & Martin de Jong, *The Contested Politics of Corporate Governance: The Case of the Global Reporting Initiative,* 49 BUS. & SOC'Y 88 (2010); *see also* Carl-Johan Hedberg & Fredrik von Malmborg, *The Global Reporting Initiative and Corporate Sustainability Reporting in Swedish Companies,* 10 CORP. SOC. RESP. & ENVTL. MGMT. 153 (2003).

[53] *See generally,* Jody Grewal, Edward J. Riedl & George Serafeim, *Market Reactions to Mandatory Nonfinancial Disclosure,* at 27 (Harvard Business School Working Paper, No. 16-025, 2015), http://www.ssrn.com/abstract=2657712 (stating that "firms having high ESG disclosure and stronger governance performance will be able to institute the [EU Directive on non-financial reporting] more efficiently and cost-effectively" because the reporting is mandatory, thus creating consistency).

[54] *See* Chair Mary Jo White, *Keynote Address at the 2015 AICPA National Conference: "Maintaining High-Quality, Reliable Financial Reporting: A Shared and Weighty Responsibility,"* Dec. 9, 2015, *available at* http://www.sec.gov/news/speech/keynote-2015-aicpa-white.html; U.S. Securities and Exchange Commission, *Non-GAAP Financial Measures*, Oct. 17, 2017, *available at* https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm.

[55] Gellasch Joint Report, *supra* note 2, at 17.

[56] *See* BlackRock, *Viewpoint, Exploring ESG: A Practitioners Perspective* (June 2016)*, available at* http://www.blackrock.com/corporate/en-fi/literature/whitepaper/viewpoint-exploring-esg-a-practitioners-perspective-june-2016.pdf.

changes to require companies to disclose such information, assuming appropriate safe harbors are also provided.[57]

BlackRock is not alone among substantial asset owners and asset managers advocating for better ESG disclosure in required securities filings. As discussed in Section Four, below, the Human Capital Management Coalition, a group of 25 institutional investors representing $2.8 trillion in assets, has submitted a rulemaking petition to the Commission urging the adoption of standards that would require listed companies to disclose information on human capital management policies, practices, and performance.[58] In July 2017, 390 investors representing more than $22 trillion in assets wrote to G20 heads of state, calling on governments to "evolve the financial frameworks required to improve the availability, reliability and comparability of climate-related information."[59]

Bloomberg, another global company that sells capital markets data, has reached conclusions similar to those of BlackRock about the quality of ESG data. Since 2009, Bloomberg has incorporated ESG data into the data that it sells to dealers, brokers, and investors around the world.[60] Even so, its CEO Michael Bloomberg has said this:

> [F]or the most part, the sustainability information that is disclosed by corporations today is not useful for investors or other decision-makers. . . .To help address this issue, I became chair of the Sustainability Accounting Standards Board (SASB) in 2014, and last year [2015], I agreed to build on that work by chairing the new Task Force on Climate-Related Financial Disclosures (TCFD)….The market cannot accurately value companies, and investors cannot efficiently allocate capital, without comparable, reliable and useful data on increasingly relevant climate-related issues….[61]

The Task Force on Climate-Related Financial Disclosure (TCFD) was constituted by the Financial Stability Board, under the auspices of the G20.[62] It has now released its final recommendations for a framework of climate-relevant financial disclosure, focusing on four aspects of a company's operations in respect of climate change: Governance, Strategy, Risk Management, and Metrics & Targets.[63] Among what the TCFD calls its "key recommendations" is that climate-related financial disclosures should be included in required financial filings, thus that this type of reporting should be mandatory.[64]

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[57] *Id.*at 1.
[58] http://uawtrust.org/hcmc.
[59] https://www.ceres.org/news-center/press-releases/over-200-global-investors-urge-g7-stand-paris-agreement-and-drive-its.
[60] *See* Bloomberg, *Impact Report Update 2015* 2, (2015), *available at* http://www.bbhub.io/sustainability/sites/6/2016/04/16_0404_Impact_report.pdf.
[61] *Id.*
[62] The Task Force, chaired by Michael R. Bloomberg, was established by the FSB in December 2015 pursuant to a request from Bank of England Governor Mark Carney "to develop a set of voluntary disclosure recommendations for use by companies in providing information to investors, lenders and insurance underwriters about their climate-related financial risks." *See* https://www.fsb-tcfd.org/news/#.
[63] *See* Recommendations of the Task Force on Climate-related Financial Disclosures, June 2017, at iii, *available at* https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf [hereinafter "Task Force Report"].
[64] *Id.*

Notwithstanding the problems with the quality of voluntarily produced ESG information in the markets, the substantial growth in voluntary sustainability disclosure globally is important for a number of reasons. First, companies are responding to investors who are increasingly aware of the relevance of ESG data to a full evaluation of company strategies, risks, and opportunities. This investor awareness shows the materiality of this information, particularly to shareholders with a long-term orientation. Second, to produce sustainability reports companies have developed internal procedures to collect and evaluate the kinds of information that an SEC framework would likely require, thus showing that costs to companies should not be an impediment. While not all companies have embarked on sustainability reporting, therefore adoption will include some additional costs to some companies, the SEC is well-positioned to provide "on-ramps" or differentiated requirements for smaller companies, as it has done historically. Third, and perhaps most important, twenty-five years of development of voluntary sustainability disclosure has not led to the production of consistent, comparable, highly-reliable ESG information in the market, notwithstanding the voluntary, multi-stakeholder development of a framework for disclosure (GRI) that is being used by 75% of the world's largest companies. SEC leadership providing a mandate for ESG disclosure in the world's largest, and arguably most important, capital market can significantly contribute to solving this problem.

5. *Commission rulemaking will reduce the current burden on public companies and provide a level playing field for the many American companies engaging in voluntary ESG disclosure*

In addition to benefiting investors, rulemaking regarding ESG disclosure would benefit America's public companies by providing clarity to them about what, when and how to disclose material sustainability information. Today companies are burdened with meeting a range of investor expectations for sustainability information without clear standards about how to do so. A number of promising frameworks have been promulgated over the previous decade or decades, many of which have been mentioned in this petition: GRI, SASB, CDP, and now TCFD being the most prominent. And yet, because there isn't clear guidance and an authoritative standard in the U. S. for all public reporting companies to use, different companies are using different frameworks and multiple mechanisms to disclose sustainability information. Thus, investors are still dissatisfied with the comparability of sustainability information, even between companies in the same industry.[65]

That ESG disclosure requirements could actually reduce burdens on America's public companies was well-stated in the CFA Institute's Comment Letter to the Concept Release:

> Many issuers already provide lengthy sustainability or ESG reports to their investors, so many issuers will not face a new and burdensome cost by collecting, verifying and disclosing ESG information. Costs may be saved if instead of producing large sustainability reports that cover a broad range of sustainability information, issuers can instead focus on only collecting, verifying and disclosing information concerning the factors that are material to them and their investors.[66]

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[65] *See* PwC, *Sustainability Disclosures: Is your company meeting investor expectations?* (July 2015), *cited in* Jean Rogers, SASB Comment Letter to the SEC's April, 2016 Concept Release, July 1, 2016, at 7 fn.20 (79% of investors polled said they were dissatisfied with the comparability of sustainability information between companies).

[66] CFA Institute Comment Letter to the Concept Release, October 6, 2016, at 19. The CFA Institute is a global, not-for-profit professional association of over 137,000 investment analysts, advisers, portfolio managers, and other

Such rulemaking would also act to create a level playing field between companies. Today, sustainability information is being provided by some but not all companies, in formats that differ, using different mechanisms for disclosure (sustainability reports, company websites, SEC filings), and different timing. As recognized in an analysis of sustainability reporting by PwC in 2016, this has created a situation where information is not comparable between companies in the same industry and sector; where "an increasing volume of information is being provided without linkage to a company's core strategy," and where there are no clear standards all companies within the same industry are using.[67] Such standards could well encompass a mix of required elements, based on industry and sector; information about firms' governance of sustainability issues across industries; and principles-based elements to act as a materiality back-stop. By providing clarity to issuers on what sustainability disclosure is required, the SEC would create comparability between firms in the same industry, thus promoting a level playing field between companies. Comparability will allow actual sustainability leaders to be recognized as such, with attendant financial benefits such as increased investment and a lower cost of capital.[68]

6. *Various ESG-related Petitions and Stakeholder Engagements with the SEC Suggest, in Aggregate, that it is Time for the SEC to Act to Bring Coherence to this Area*

In recent years, there have been a number of significant petitions and other investor proposals seeking expanded disclosure of ESG information. These initiatives give evidence of the views of investors and capital markets professionals that more needs to be done to meet investors' needs for consistent, comparable, and high-quality ESG data. Moreover, stakeholders have used additional opportunities created by the SEC to support for broader ESG disclosure. A sampling of such petitions, investor proposals, and stakeholder engagements includes:

Climate Risk Disclosure: In 2007 and 2009, Ceres filed petitions to the SEC calling for better guidance to companies on how to disclose risks and opportunities from climate change. In 2010, the SEC responded by issuing such guidance.[69] Analysis indicates that the guidance has not been successful in producing consistent, comparable, high-quality information concerning climate change risks and opportunities, however.[70] The Framework and Technical Guidance published

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investment professionals in more than 157 countries. On the question of the SEC requiring sustainability disclosure, the CFA Institute concluded that "[i]t is imperative that the SEC develop disclosure requirements that require companies to disclose material sustainability information while allowing issuers the flexibility to disclose that which is germane to their industry/sector . . . " Thus the Institute supported differentiated sustainability disclosure according to industry and sector, along with a general requirement for companies to disclose the corporate governance arrangements for sustainability issues. *Id.*

[67] PwC, *Point of View: Sustainability reporting and disclosure: What does the future look like? (July 2016),* at 1, *available at* . https://www.pwc.com/us/en/cfodirect/publications/point-of-view/sustainability-reporting-disclosure-transparency-future.html.

[68] *See, e.g.,* Clark et al., *supra* note 29 (summarizing empirical literature through 2015, and finding that 90% of studies show lowered cost of capital for firms with sound sustainability practices; 88% of studies show that better E,S, or G practices (the latter specific to sustainability) result in better operational performance; and 80% of studies show stock market out-performance for firms with good sustainability practices.

[69] Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106; 34-61469; FR-82, Feb. 8, 2010, U.S. SECURITIES AND EXCHANGE COMMISSION, *available at* https://www.sec.gov/rules/interp/2010/33-9106.pdf.

[70] *See, e.g.,* Robert Repetto, *It's Time the SEC Enforced Its Climate Disclosure Rules*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT (IISD)(Mar. 23, 2016), *available at* https://www.iisd.org/blog/it-s-time-sec-enforced-its-climate-disclosure-rules.

by the FSB's Task Force on Climate-Related Financial Disclosure (TCFD), mentioned above, would be an industry-developed (operating companies, investors, insurance companies, and accounting) platform for the SEC to use as a starting point in promulgating its own Framework for comprehensive ESG disclosure.

ESG Disclosure: On July 21, 2009, the U.S. Social Investment Forum (USSIF) requested that the SEC promulgate a new, annual requirement for ESG disclosure, modeled on the framework of the Global Reporting Initiative (GRI). GRI sets out a general framework for disclosure of information applicable to all companies, and then industry-specific requirements relevant to the social, environmental, and governance concerns applicable to each specific industry. The USSIF petition also asked the SEC to issue interpretive guidance to clarify that companies are required to disclose short and long-term sustainability risks in the Management Discussion and Analysis section of their 10-K.

Gender pay ratios: On February 1, 2016, Pax Ellevate Management LLC, investment adviser to the Pax Ellevate Global Women's Index Fund submitted a petition to the Commission requesting that it require public companies to disclose gender pay ratios on an annual basis. Petitioners stated that "[w]e believe that pay equity is a useful and material indicator of well-managed, well-governed companies, and conversely, that companies exhibiting significant gender pay disparities may bear disproportionate risk, and that investors therefore may benefit from having such information."[71]

Human Capital Management: On July 6, 2017, the Human Capital Management Coalition, a group of institutional investors with $2.8 trillion in assets, submitted a petition to the Commission requesting that it "adopt new rules, or amend existing rules, to require issuers to disclose information about their human capital management policies, practices and performance."[72] The Coalition seeks this expanded disclosure so that "(1) investors can adequately assess a company's business, risks and prospects; (2) investors can more "efficiently direct capital to its highest value use, thus lowering the cost of capital for well-managed companies; (3) companies can stop responding to a myriad of voluntary questionnaires seeking this information; and (4) investors can pursue long-term investing strategies in order "to stabilize and improve our markets and to effect the efficient allocation of capital."

Human Rights: The human rights policies, practices, and impacts of filers are material to many investors.[73] The SEC has already provided for some human rights disclosure regarding conflict minerals under 17 CFR §240.13p-1, in response to the Dodd-Frank Act, and in certain guidance on disclosure relating to climate change[74] and cyber-security information.[75] General guidance on disclosure of human rights policies, practices, and impacts is lacking, however.

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[71] *See* Pax Ellevate Petition, February 1, 2016, *available at* https://www.sec.gov/rules/petitions/2016/petn4-696.pdf.
[72] *See* Human Capital Management Coalition Petition, July 6, 2017, available *at* https://www.sec.gov/rules/petitions/2017/petn4-711.pdf.
[73] *See, e.g.,* CYNTHIA WILLIAMS ET AL., "KNOWING AND SHOWING" USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE (Oct. 2013) at 16, *available at* http://icar.ngo/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report4.pdf.
[74] Securities & Exchange Comm'n, Commission Guidance Regarding Disclosure Related to Climate Change (Jan. 27, 2010), Release Nos. 33-9106; 34-61469; FR-82, http://www.sec.gov/rules/interp/2010/33-9106.pdf [hereinafter Climate Change Guidance (2010)].
[75] Securities & Exchange Comm'n, Division of Corporate Finance, CF Disclosure Guidance: Topic No. 2 Cybersecurity (2011), http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm [hereinafter Cyber-

In responding to the 2016 Concept Release, a number of stakeholders provided comments on the value of increased disclosure about a number of human rights issues. These comments highlighted the need for better information about the impacts of companies on the human rights of affected communities, but also discussed human rights impacts related to the environment, climate change, human capital, and workforce issues. Over 10,000 commenters raised issues within these different substantive areas.[76] Additionally, in relation to Conflict Minerals rule, when Acting Chairman Piwowar announced the SEC's reconsideration of the rule's implementation in January 2017, the Commission received over 11,500 comments in support of the rule—demonstrating strong stakeholder interest in its continued use.[77]

Political Spending Disclosure: On August 3, 2011, the Committee on Disclosure of Corporate Political Spending (ten academics at leading law schools whose teaching and research focus on corporate and securities law), petitioned the Commission to develop rules to require public companies to "disclose to shareholders the use of corporate resources for political activities."[78] Recognizing that the U.S. Supreme Court in *Citizens United v. FEC,* 130 S. Ct. 876 (2010), noted shareholder mechanisms to hold management to account for its use of corporate funds to support political candidates, the petitioners argued that for that mechanism to work, "shareholders must have information about the company's political speech."[79] To date, this petition has garnered more than 1.2 million comments of support, the most in the agency's history.[80]

Tax Disclosure: In its April 2016 Concept Release the SEC asked about what, if anything, should be changed, updated, included or removed regarding tax disclosure. The Comment Letter submitted by the Financial Accountability and Corporate Transparency (FACT) Coalition emphasized that the role played by international tax strategies and rates on the operations and earnings of many U.S. corporations is important and growing. The letter highlighted the risks to investors created by these at best uncertain and often legally problematic strategies. Given the scope of fines and risks arising from tax jurisdictions around the world, investors need more information to be able to evaluate the scope of tax risks tht the company is running. Moreover, the new tax law in the U.S. moves the U.S. to a territorial tax system, which will open up further uncertainties and risks related to how and where revenues are booked.

The IRS recently finalized a rule to require country-by-country reporting of revenues, profits, taxes paid and certain operations by larger multinational corporations. The European Union has also established new country-by-country reporting requirements for larger firms doing business in any of the member nations. Increasingly, tax authorities have access to this material information, as do company managers, yet investors do not. The growing use of offshore tax

Security Guidance].

[76] Gellasch Joint Report, *supra* note 2, at 10.

[77] *Comments on the Statement on the Commission's Conflict Minerals Rule,* U.S. SECURITIES AND EXCHANGE COMMISSION, *available at* https://www.sec.gov/comments/statement-013117/statement013117.htm (last visited Jan. 25, 2018).

[78] *See* Committee on Disclosure of Corporate Political Spending Petition, August 3, 2011, *available at* https://www.sec.gov/rules/petitions/2011/petn4-637.pdf.

[79] *Id.* at 7.

[80] *See* Comments on Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities, *available at* https://www.sec.gov/rules/petitions/2017/petn4-711.pdf (viewed November 20, 2017),

strategies, the international response to rein in aggressive tax avoidance, and the potential tax liability for corporations engaged in these practices makes this information material for investors.

These petitions, in conjunction with the large numbers of comments in support of expanded sustainability disclosure in response to the SEC's Concept Release, clearly show that investors and capital market professionals think the time has come for the SEC to act to develop a mandatory rule for clearer, consistent, comparable, high-quality ESG disclosure by all companies subject to SEC public-reporting requirements.

Conclusion

We respectfully request the Commission to promptly initiate rulemaking to develop mandatory rules for public companies to disclose high-quality, comparable, decision-useful environmental, social, and governance information. If the Commission or Staff have any questions, or if we can be of assistance in any way, please contact either **Osler Chair in Business Law Cynthia A. Williams**, Osgoode Hall Law School, who can be reached at (416) 736-5545, or by electronic mail at cwilliams@osgoode.yorku.ca; or **Saul A. Fox Distinguished Professor of Business Law Jill E. Fisch**, University of Pennsylvania Law School, who can be reached at (215) 746-3454, or by electronic mail at jfisch@law.upenn.edu.

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