Business and Financial Disclosure Required by Regulation S-K – the SEC's Concept Release and Its Implications

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An analysis by the Sustainability Accounting Standards Board

EXECUTIVE SUMMARY

On April 13, 2016, the Securities and Exchange Commission (SEC) issued **Concept Release: Business and Financial Disclosure Required by Regulation S-K**[1] ("the Concept Release). Regulation S-K Is the broad SEC regulation that sets forth non-financial statement disclosure requirements for registration statements filed under the Securities Act and reports filed under the Securities and Exchange Act.

The Concept Release was issued as part of the SEC's Disclosure Effectiveness Initiative, "a comprehensive evaluation of the Commission's disclosure requirements recommended in the staff's Report on Review of Disclosure Requirements in Regulation S-K (''S-K Study''), which was mandated by Section 108 of the Jumpstart Our Business Startups Act (''JOBS Act'')."[2]

The Concept Release covers a broad range of topics, from the general to very specific. Sustainability is by no means a major consideration; out of the Concept Release's 92 pages (as published in the Federal Register), only 4 pages discuss issues relating to disclosure of public policy and sustainability matters. Despite this, the large majority of comment letters on the Concept Release addressed sustainability issues.[3]

The analysis of comments that follows focuses on non-form comment letters in response to the Concept Release.[4]

[1] Business and Financial Disclosure Required by Regulation S-K; Concept Release ("Concept Release"), 81 Fed. Reg. 23916 (April 22, 2016). Regulation S-K was created by the Securities and Exchange Commission to "harmonize disclosure required under both the Securities Act and the Exchange Act by creating a single repository for disclosure regulation that applies to filings by registrants under both statutes."
[2] Id. at 23917
[3] During the comment period, which closed July 21,2016, the SEC received over 25,000 comment letters. Most of these were form letters calling for improved disclosures of political spending, international tax issues, and sustainability plans. 276 non-form letters were also submitted.
[4] This analysis of comment letters on the Concept Release reflects all non-form comment letters posted to the SEC website through September 12, 2016.

HISTORIC NATURE OF THE RELEASE

Sustainability issues—in particular, environmental disclosures—were last examined in detail by the SEC in the mid-1970s. At that time, questions involving environmental disclosures received considerable attention from both the Commission and the federal courts. The SEC ultimately rejected calls for significant required disclosures about environmental and social matters, concluding that the percentage of U.S. shareholders interested in such disclosures was "insignificant."

Investor interest in the disclosure of sustainability-related information in SEC filings has increased significantly over the past several decades, but disclosures remain inadequate by many accounts. Thus, the request for comments on sustainability and public policy matters in the Concept Release is of historic significance. It presents investors and issuers alike with an opportunity to communicate clearly to the SEC the need for more effective disclosure of sustainability-related information in SEC filings and the market standard through which to make such disclosures. The volume and content of sustainability-related comment letters generated by the Release to date shows strong support for addressing these needs, setting the stage for continued dialogue and possible SEC action.

SASB'S COMMENTS TO THE SEC

SASB urges the SEC to acknowledge SASB standards as an acceptable disclosure framework for use by companies preparing their SEC filings.

SASB is an independent 501(c)(3) nonprofit organization that issues sustainability accounting standards for the disclosure of material sustainability information in SEC filings. SASB's provisional standards—developed through a robust due process with significant market input—are designed to be cost-effective and work within the framework of the U.S. securities laws. They help registrants effectively disclose material sustainability-related information and comply with regulatory obligations. By issuing standards that help companies provide investors with decision-useful sustainability disclosure, SASB supports the SEC's mission to protect investors; maintain fair, orderly, and efficient markets; and, facilitate capital formation. SASB is in a period of deep engagement on its provisional standards for 79 industries and expects to codify the standards by late 2017.

SASB's comments on the Concept Release urge the SEC to acknowledge SASB standards as an acceptable disclosure framework for use by companies preparing their SEC filings.[5]

The principal points in SASB's comment letter are:

- **Today's reasonable investors use sustainability disclosures.** There has been an enormous increase in investor interest in sustainability-related information since the SEC last evaluated the requirements on disclosure of sustainability-related information. In a 2015 CFA Institute survey, seventy-three percent of institutional investors indicated that they take environmental, social and governance issues into account in their investment analysis and decisions, to help manage investment risks.[6]

- While **Regulation S-K already requires disclosure of material sustainability information**, the resulting disclosures are insufficient. More than forty percent of all 10-K disclosure on sustainability topics consists of boilerplate language. This preponderance of vague language does not help investors to understand or price risk or to evaluate performance on the topics disclosed.

[5] SASB's comment letter on the Concept Release on Business and Financial Disclosure Required by Regulation S-K is available here in its entirety.
[6] CFA Institute, ENVIRONMENTAL, SOCIAL AND GOVERNANCE SURVEY, p. 5 (June 2015), https://www.cfainstitute.org/Survey/esg_survey_report.pdf. Survey studied 1,325 institutional investors.

- **Line-item disclosure requirements are not appropriate for sustainability issues.** Sustainability issues are not material for all companies, and when they are material, they manifest in unique ways and require industry-specific metrics. Requiring generally applicable line-item disclosures would result in additional corporate reporting burden and disclosures of a large volume of information that is immaterial to investors.

- **To evaluate sustainability performance, an industry lens is needed.** Sustainability issues impact financial performance in specific ways that vary by topic and industry. As such, investors need guidance on which sustainability issues are likely material to which industries, and they need industry-specific metrics by which to evaluate and compare performance in the context of industry characteristics and value drivers.

- **Effective sustainability disclosure requires a market standard.** A market standard for the industry-specific disclosure of sustainability-related information would provide a market-informed process that allows for future evolution of investor needs and issuers' business models more efficiently than governmentally-mandated, universal line-item disclosure.

SASB, through extensive research, analysis, and due process, issues standards for 79 industries, consistent with the definition of "materiality" under the federal securities laws. SASB standards enable companies to make better disclosures on material sustainability-related information to investors consistent with existing SEC requirements, without the need for new SEC rulemaking. SASB standards are designed to be cost-effective for issuers and decision-useful for analysts and investors, providing the ability to compare and benchmark performance, which is essential for informing investment decisions.

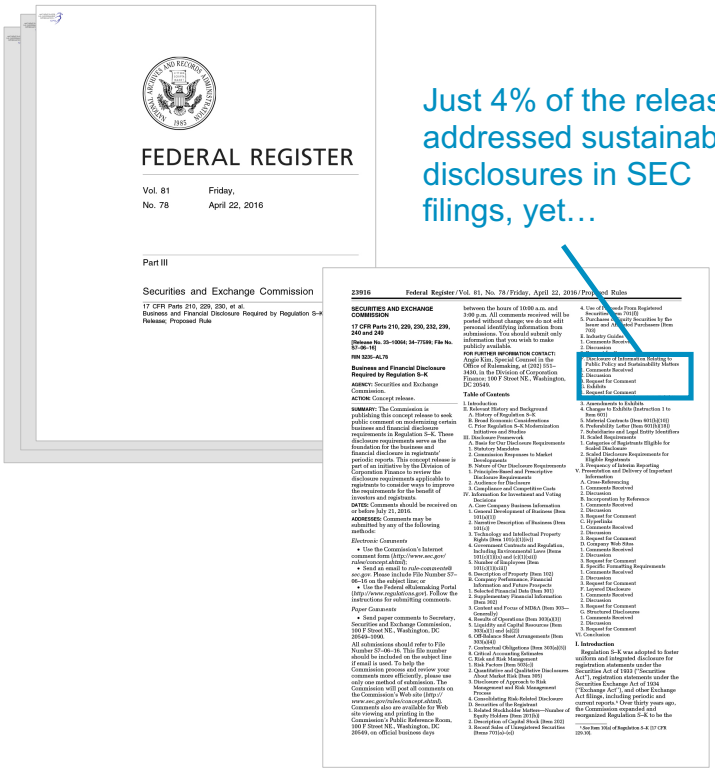
Two-thirds of non-form comment letters discuss sustainability disclosures in SEC filings.

THE MARKET RESPONSE

Support for Improved Disclosure of Sustainability-related Information in SEC Filings

The SEC received over 276 non-form comment letters[7] in response to the Concept Release, with a strong showing of support for improved disclosure of sustainability-related information in SEC filings. Two-thirds of comment letters address sustainability-related concerns. Most of these letters support improved sustainability-related disclosures in SEC filings; for many commenters this was the only matter of concern. This groundswell of interest in sustainability means that, in the words of one of Wall Street's leading law firms, "the sustainability topic is clearly on the table at this point, and the Commission will sooner or later have to–and should–address it."[8]

[7] See supra note 3.
[8] Sullivan & Cromwell LLP, *Business and Financial Disclosure Required by Regulation S-K – File No. S7-06-16*, Comment letter to the Securities and Exchange Commission, (August 9, 2016) https://www.sec.gov/comments/s7-06-16/s70616-354.pdf.



FEDERAL REGISTER

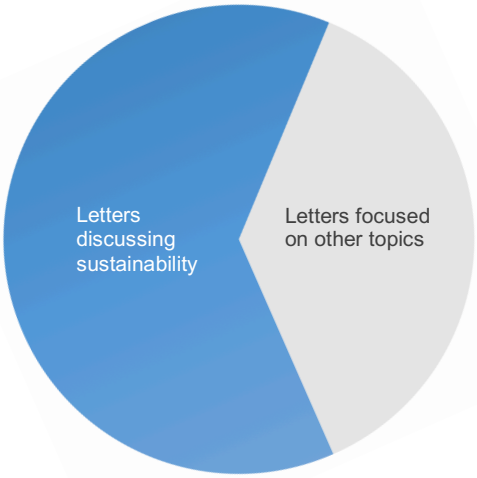
Vol. 81 Friday,
No. 78 April 22, 2016

Part III

Securities and Exchange Commission

17 CFR Parts 210, 229, 230, et al.
Business and Financial Disclosure Required by Regulation S-K; Release; Proposed Rule

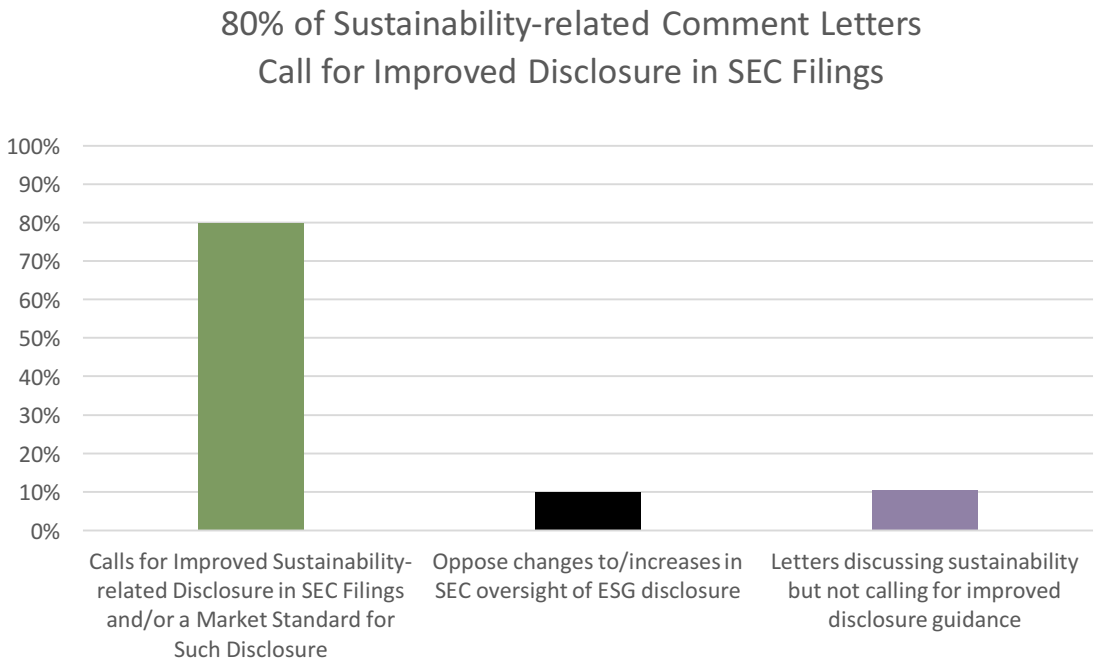
Just 4% of the release addressed sustainability disclosures in SEC filings, yet…



…2/3 of non-form comment letters discuss sustainability disclosures

Eighty percent of sustainability-related comment letters call for improved disclosure of sustainability information in SEC filings.

Strong support for the Commission to address sustainability-related disclosure effectiveness is evident in comments submitted to-date. *Eighty percent of sustainability-related letters call for improved disclosure of sustainability-related information in SEC filings,* with only ten percent of letters opposing SEC action on this.[9]



[9] If the form letter comment letters were included in this statistical analysis, the percentage of support for better sustainability disclosure would be much higher, since these letters also urged additional disclosures of non-financial statement information that some persons might consider to be sustainability-related (that is, political spending and international tax obligations).

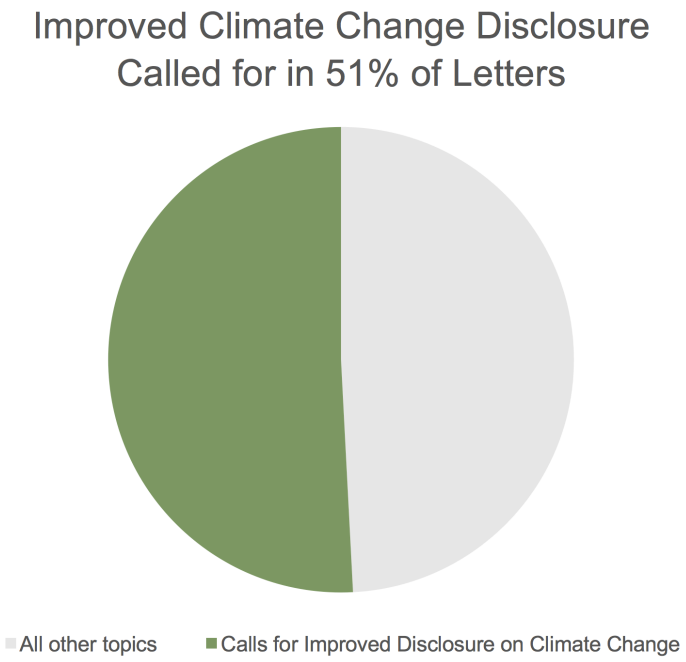
Investor Support

The call for SEC action is loud, as is the investor voice urging action. Thirty-seven percent of sustainability-related comment letters to date were submitted by asset owners and asset managers.

Issue Analysis

Fifty-one percent of sustainability-related comment letters call for improved climate change disclosure in SEC filings.

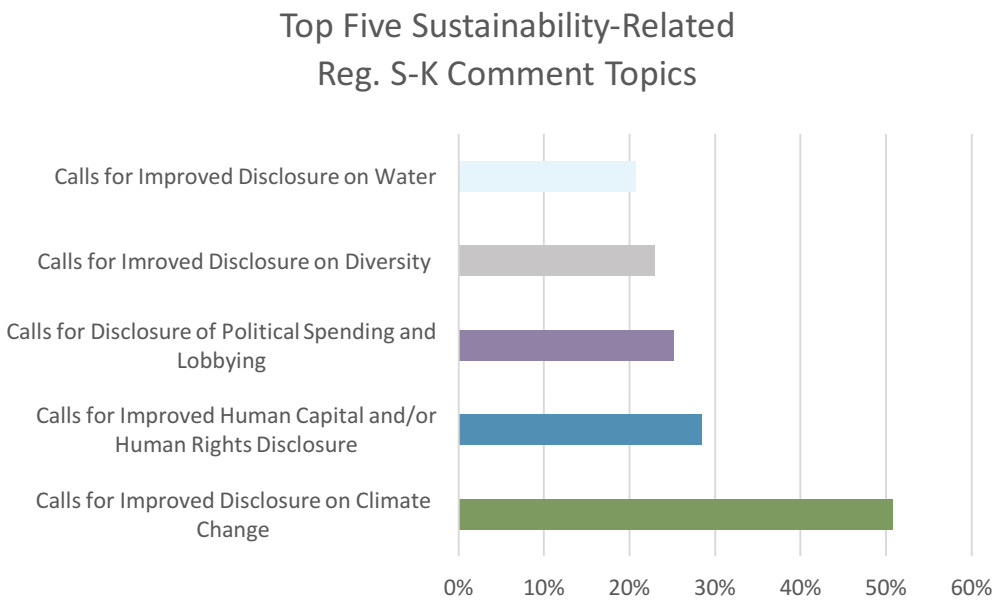
Climate change tops the list of sustainability-related issues highlighted among comment letters. Despite the Commission's 2010 Guidance Regarding Disclosure Related to Climate Change,[10] the majority of sustainability-related comment letters on the Regulation S-K Concept Release indicate that disclosure on this topic continues to be inadequate and does not meet investor needs.



In addition to climate change, sustainability-related areas of interest noted in comments to the SEC include a vast array of issues, including but not limited to: land tenure rights; water (access to, stewardship of); political spending and lobbying; gender pay equity; diversity; human rights; human capital management; international tax payments; sustainable palm oil; forestry, and; supply chain management.[11]

[10] Securities and Exchange Commission, FR-82, Commission Guidance Regarding Disclosure Related to Climate Change, p. 3 (Feb. 2, 2010), https://www.sec.gov/rules/interp/2010/33-9106.pdf.
[11] It should be noted that SASB has not concluded that all of these issues likely constitute material information across all industries. For example, political spending and lobbying expenditures is not a disclosure topic that SASB has found to be a material sustainability-related matter.

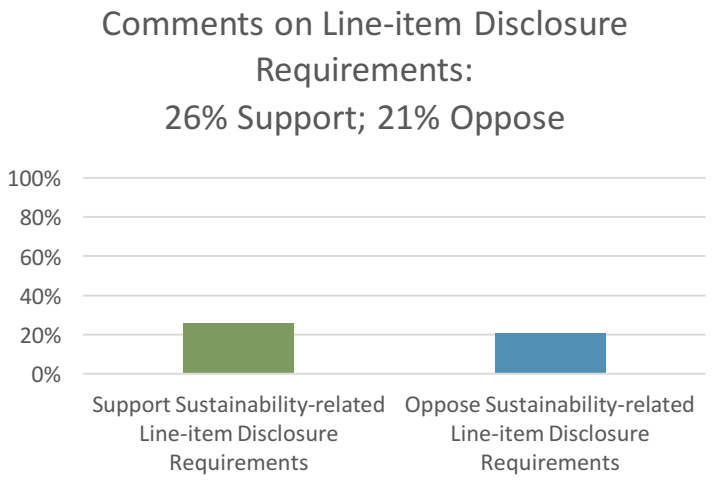
A wide range of sustainability-related topics were delineated as key areas of interest in Concept Release comments.



THE QUESTION OF SUSTAINABILITY-RELATED LINE-ITEM DISCLOSURE REQUIREMENTS

Analysis of responses to inquiry on sustainability-related line-item disclosure shows a considerable difference of views.

The SEC raised a number of questions in the Concept Release related to line-item requirements for sustainability-related disclosures, including whether such requirements would cause registrants to disclose immaterial information and possibly "obscure information that is important to an understanding of a registrant's business and financial condition."[12]



Analysis of responses to this inquiry shows a considerable difference of views. Twenty-six percent of sustainability-related comments supported line-item requirements, while twenty-one percent opposed them. In some cases (even within the same letter), the utility of line-item disclosures was juxtaposed with the shortfalls of such requirements–that is, the likely proliferation of boilerplate disclosure language.

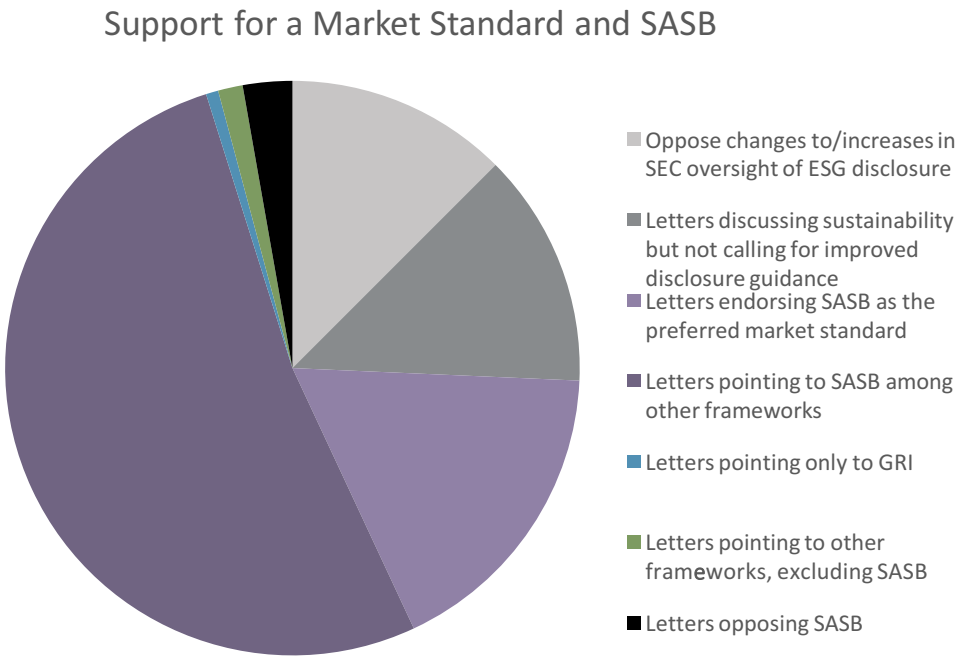
[12] Business and Financial Disclosure Required by Regulation S-K; Concept Release ("Concept Release"), 81 Fed. Reg. 23916 (April 22, 2016) at 23972.

SUPPORT FOR A MARKET STANDARD AND SASB

Comments show strong support for SASB as a framework to which the SEC can refer as it examines this issue.

Fifty-one percent of sustainability-focused comment letters pointed to existing frameworks that can be resources to the SEC as it examines this issue, including SASB, CDP, the International Integrated Reporting Council (IIRC), and the Global Reporting Initiative (GRI).

Comments to the SEC show strong support for SASB. Seventeen percent of comment letters supporting improved sustainability-related SEC disclosures point specifically to SASB as the only framework to which the SEC should look as it contemplates establishing or acknowledging guidelines for such disclosures. Collectively, sixty-eight percent of comment letters seeking such action from the SEC support SASB's framework.[13]



IMPLICATIONS

Comments on the Concept Release have sent a strong signal to the SEC that times have changed–investors want and need better disclosure of material sustainability-related information in SEC filings.

It is unclear what, if anything, the SEC will do in response to comments received on the Concept Release. While concept releases can be the first step on the path to rule making, there is no certainty that rule making will ensue on these matters. Moreover, as SASB and others noted in their comment letters, existing SEC rules, in particular item 303, Management's Discussion and Analysis, already require disclosure of material information. Material sustainability-related information is no exception to those rules.

Inherent in the Disclosure Effectiveness Project is an opportunity for the SEC to address key sustainability reporting issues, including: mounting investor demand for material sustainability-related information and dissatisfaction with the same; information asymmetry related to selective disclosure; biased disclosure ("cherry picking") in voluntary sustainability

[13] Refer to Appendix A

reports; proliferation of boilerplate language in existing sustainability-related disclosures; and the challenge of enforcement in the absence of a market standard.

As Chair White noted in recent public remarks, "(t)here is . . . more work and thinking to be done on sustainability reporting at the SEC, and by companies and investors, including on whether, when, where, and how to provide disclosure and what precisely should be provided."[14] Comments to the SEC on the Concept Release show unprecedented support, if not a demand, for SEC action.

In the meantime, SASB urges investors to begin or continue to engage with issuers on these issues.[15] Engagement with the SEC on this topic remains important. Although the official deadline for submitting comments to the SEC on the Concept Release has passed, as of early September, 2016, comments were still being accepted and can be submitted here.

We also encourage investors and issuers to remain or become involved in SASB's ongoing standards setting and codification processes. SASB is currently conducting an implementation review of the provisional standards, including stakeholder consultation regarding the content of the provisional standards. Ensuring that SASB standards are decision-useful for investors and cost-effective for issuers to implement is the focus of ongoing stakeholder consultation.

SASB invites the public to direct questions to and/or schedule consultations with SASB's sector analysts. General comments may be submitted to comments@sasb.org.

[14] Mary Jo White, U.S. Securities and Exchange Commission, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability (*June 27,2016), https://www.sec.gov/news/speech/chair-white-icgn-speech.html.

[15] SASB recently published the Engagement Guide for Asset Owners and Managers which can be downloaded here. The Guide's industry-specific questions facilitate a more complete and robust assessment of long term risks and value creation and help focus the conversation on sustainability-related trends and uncertainties likely to affect the financial condition or operating performance of a company. The Guide can be downloaded here.

APPENDIX A: COMMENT LETTER HIGHLIGHTS

The following are highlights from of a sampling of comment letters on *the Concept Release: Business and Financial Disclosure Required by Regulation S-K*.

Highlights include letters from prominent members of the legal, issuer, and investment communities, as well as other stakeholders. These excerpts present a range of views on sustainability-related matters and line-item requirements.

The full text of all comment letters received is available here on the SEC's website.

Legal Voices

Davis Polk & Wardwell LLP
"Although these types of issues are often considered by registrants' boards and management as part of broader strategy and business profile reviews, they are not in most cases material to an understanding of a registrant's operating results and financial performance, and, accordingly, are not appropriate for inclusion in periodic and current reports. Instead, there are a variety of avenues through which companies can, and do, communicate how they are addressing social and other non-financial issues. For example, many public companies publish corporate sustainability reports and provide extensive corporate responsibility information on their websites. We believe that, to be effective, periodic reports should remain focused on the information that is material to an understanding of a registrant's operating results and financial performance. As we mentioned above in our discussion of the "reasonable" investor, we do not think the Commission should assume that just because some investors request specific information on these non-financial topics, and some companies voluntarily provide it, that this provides a conclusive justification for requiring these disclosures in Commission filings."

"…the sustainability topic is clearly on the table at this point, and the Commission will sooner or later have to–and should–address it."

Sullivan & Cromwell
"The comment letter submitted by the Sustainability Accounting Standards Board ("SASB") sets out a cogent analysis of existing disclosure practices with respect to sustainability, the lack of current guidance, and how disclosure standards might be developed in the context of the Commission's materiality-based disclosure system. Development of prescribed industry-specific disclosure metrics (as suggested by SASB) strikes us as an extremely ambitious goal, and we do not think the Commission should take up SASB's suggestion to simply outsource the job to SASB; among other things, whatever "due process" SASB has done to date, the usual notice-and-comment public debate at Commission level would be essential to any development of specific prescriptive guidance in this area. At the same time, as reflected in a wide range of comment letters and elsewhere, the sustainability topic is clearly on the table at this point, and the Commission will sooner or later have to–and should–address it. We think that SASB's work to date and its ongoing efforts could represent an important contribution to the Commission's development of disclosure standards in this area, but that development of those standards would still be an enormous task for the Commission. This is the sort of challenge toward which the Commission should be concentrating its resources."

Wilson Sonsini Goodrich & Rosati
"In our view, the materiality standard, which has long been the foundation of the SEC's approach to determining requisite disclosure, remains the best approach for calibrating ESG disclosure requirements on a company-by-company basis, and any specifically mandated additional disclosures should be narrowly tailored on an industry-by-industry basis. We believe this approach furthers the goals of the S-K Study and the FAST Act to emphasize a principles- based approach to disclosure requirements, a company-by-company approach emphasizing the dissemination of material information to investors and reduction in boilerplate language and static requirements."

Investor Voices

BMO Global Asset Management
"We prefer an industry lens be applied to sustainability disclosure and point the Commission to work undertaken by the Sustainability Accounting Standards Board as an example in this regard."

"Sustainability related information provided today by registrants via stand‐alone reports is not sufficient. The information generally does not apply a materiality lens and importantly is not comparable across issuers. Without a robust and standardized data set of material sustainability‐related information, it can be a burdensome process to incorporate sustainability related risks and opportunities into financial analysis and modeling. And without full and comparable data, the results of integrated analysis are incomplete. We are also concerned with "cherry picking" of information, as issuers are more likely to disclose positive information in a system of voluntary self‐reporting. We also cannot be certain that information will be provided annually or that metrics will be the same year on year. Providers of sustainability related information have made strides to estimate and fill data gaps in the market. However, sustainability related disclosure requirements mandated by the SEC would provide investors with a much more reliable, standardized data set."

Breckinridge Capital Advisors
"The Sustainability Accounting Standards Board (SASB) has thrust the materiality of ESG from an investor perspective into the forefront. By identifying and systematizing material ESG factors across key industries and sectors, SASB aims to establish greater alignment between companies and investors. This, in turn, ensures a higher quality of ESG reporting, with an emphasis on quality versus quantity of ESG information and metrics."

"We prefer an industry lens be applied to sustainability disclosure and point the Commission to work undertaken by the Sustainability Accounting Standards Board as an example in this regard."

CalPERS
"Sustainability Accounting Standards Board (SASB) metrics were designed specifically to be integrated into a company's 10-K. The standards offer an evolving framework that captures 79 industries."

CalSTRS
"As a long-term investor, CalSTRS needs to know which sustainability issues would be considered material, what the potential impacts from that issue are to a specific industry, and what specific metrics can be used to can be used to measure risk exposure and risk exposure to peers when evaluating company performance…. the Sustainability Accounting Standards Board (SASB) developed standards for 11 sectors which include 79 industries. SASB Standards identify sustainability topics at an industry level which may constitute material information—depending on a company's specific operating context—for a company within that industry. SASB Standards are intended to provide guidance to company management, which is ultimately responsible for determining which information is material and should therefore be included in its Form 10-K or 20-F and other periodic SEC filings as appropriate."

Council of Institutional Investors
"CII's members look to registrants' disclosure documents for information about the full range of material risks facing registrants, including environmental, social and governance ("ESG") risks. These risks have assumed greater importance in recent years from the perspective of mainstream investors.… More broadly, evidence is emerging associating ESG factors with improved corporate performance. Despite these factors, the Council has found that disclosures on ESG risks too often consist of boilerplate risk identification without adequate discussion of how those risks apply to the individual registrant. As with risk factors more generally, most registrants' disclosure relating to ESG risks provides no basis for investors to understand the scope of the risks or the likelihood of their coming to fruition. More structured risk factor disclosure, such as an executive summary setting forth the most important factors

or an ordering of factors based on magnitude or likelihood, would be useful to enable investors to cut through these disclosures."

Hermes Investment Management
"We have had the opportunity to read SASB's response to the consultation and believe that the organisation has contributed through its work to a thoughtful approach that the SEC should consider adopting. We agree with its approach to supplement quantitative metrics with qualitative analysis because the assessment and management of ESG factors cannot be distilled into numbers in a spreadsheet."

Investor Environmental Health Network
"In some areas of the Concept Release there is a sense that current rules, or potential rules regarding sustainability, would result in too much disclosure of "immaterial" information. We believe this is based on a distorted understanding of investor interest and audiences for reporting. For instance, if the definition of materiality is based on determination of whether a "reasonable investor" would want access to the information in the total mix of information, one next needs to consider what range of investors are "reasonable" investors. In light of the growing portion of the investment marketplace which makes investing decisions based on a company's impact on society as well as its impact on financial returns, the definition of materiality for purposes of a sustainability question seems to turn on whether the interest of an investor whose focus includes impact on society is among those "reasonable" investors to consider.[26]" (Footnote 26 references SASB, as follows: "In contrast, the SASB has taken an unfortunate turn in a different direction on this question, focusing solely on whether a sustainability issue would affect the company's and should not be adopted by the Securities and Exchange Commission."

"We have had the opportunity to read SASB's response to the consultation and believe that the organisation has contributed through its work to a thoughtful approach that the SEC should consider adopting."

Investor Network on Climate Risk
"Each of the leading voluntary sustainability disclosure frameworks include useful elements that SEC staff should consider when enforcing existing rules and guidance, issuing interpretive guidance or proposing new line-item disclosure requirements. We recommend that SEC staff review the sustainability and climate-related reporting frameworks developed by the Global Reporting Initiative (GRI), CDP, and the UN Guiding Principles Reporting Framework for reporting on human rights issues, and the sector-specific climate risk management and disclosure guides developed by members of the Global Investor Coalition on Climate Change (Ceres/INCR, IIGCC and IGCC), which cover oil and gas and mining companies' reporting on carbon asset risks, and electric power and automotive companies' climate risk disclosure. We also recommend staff review the frameworks focused on financial reporting developed by the Climate Disclosure Standards Board (CDSB), the Sustainability Accounting Standards Board (SASB), and the International Integrated Reporting Coalition (IIRC)."

MacArthur Foundation
"We recognize that social and environmental risks can vary significantly from sector to sector. The MacArthur Foundation supports reporting standards that focus on the primary, material risks for each sector and supports standardized measures. One such standard gaining increasing acceptance is the approach of the Sustainability Accounting Standards Board {SASB}. We believe this is an approach that the SEC' should seriously consider as a standard."

Michael R. Bloomberg
"(T)he Sustainability Accounting Standards Board (SASB), which I chair, has been working with companies and regulators to develop sector-specific standards - anchored in U.S. securities law - to help issuers measure and compare their own sustainability practices and also comply with SEC regulations, including Regulation S-K. On July 21, 2016, SASB submitted comments on the S-K Release. I strongly support those comments and encourage

the SEC to acknowledge SASB's standards as appropriate for use by companies preparing their SEC filings to comply with Regulation S-K in a cost-effective manner."

MSCI
"(T)here are a number of publicly available reporting frameworks available for the SEC to recommend as guidance for issuers, with the SASB accounting metrics being the most directly focused on investor relevant metrics."

Norges Bank Investment Management
"Sustainability information on company websites usually addresses multiple stakeholders, and as such, it could obscure information specifically relevant to shareholders…. If the Commission were to adopt specific disclosure requirements involving sustainability or public policy issues, the Commission could use a sector-based approach to elicit meaningful disclosure on these issues. The Commission and its staff could assess the existing sector-based guidelines by Sustainability Accounting Standards Board (SASB) and Global Reporting Initiative (GRI)."

Pension Consulting Alliance (PCA)
"PCA recommends that the SEC reference SASB standards as a way for companies to comply with ESG disclosure requirement under U.S. securities law and that the SEC rely on SASB as a standard setter to keep SEC ESG disclosure requirements current as issues evolve over time. PCA finds great value in SASB standards because SASB strives to:

"…there are a number of publicly available reporting frameworks available for the SEC to recommend as guidance for issuers, with the SASB accounting metrics being the most directly focused on investor relevant metrics."

• Develop standards that are explicitly designed to be material to investors;
• Target only material risks based on definition of materiality under U.S. law;
• Provide standards in a decision-useful format for investors;
• Offer quantified metrics for approximately 80% of the standards;
• Deliver industry-specific standards; and
• Maintain a transparent standards development and review process grounded in public comment and input from all stakeholders."

Pension Investment Association of Canada
"Investors require standardized information that links sustainability or ESG factors to the company's business strategy and operations. The Commission and issuers should consider leveraging the Sustainability Accounting Standards Board's industry standards to aid issuers in determining what ESG factors are likely to be material to their industry. The promotion of standardized industry-specific metrics would allow for comparison of peer performance and benchmarking within an industry. It may also reduce the reporting burden on issuers given SASB's focus on industry-relevant sustainability metrics. As such, investors will be able to make more informed investment decisions."

US National Advisory Board on Impact Investing
"As a movement of committed impact investors representing asset owners and managers (foundations, investors, and entrepreneurs alike) with a focus on positive social and environmental impact, we ask that the Securities and Exchange Commission consider requiring standard sustainability and materiality reporting. The Sustainability Accounting and Standards Board (SASB) offers one such platform to utilize a robust and comprehensive set of standards backed by years of effort and supported by a range of key stakeholders. The number of stakeholders that stand in support of SASB is a testament both to the sense of urgency in needing these standards as well as the diverse range of interested parties."

Walden Asset Management
"We agree with comments made by other investors that sustainability information as disclosed to date generally has not been "investment-grade", nor has it been material (as defined under U.S. securities laws). What is necessary is industry- specific, comparable, complete, auditable, and reliable disclosure. Walden believes that materiality is an appropriate concept to guide such disclosure. We believe that the recently developed

framework by the Sustainable Accounting Standards Board (SASB) is a helpful framework for identifying material issues. We also note that reasonable investors disagree on the materiality of specific types of information and not all issues considered material by some investors are captured in the SASB framework."

Issuer Voices

U.S. Chamber of Commerce Center for Capital Market Competitiveness
"We do not believe that SEC-mandated disclosures should be used to further social, cultural or political motivations that the federal securities laws were not designed to advance. The SEC disclosure regime should not be an avenue for special interest activists to impose their agenda on shareholders at large. The difficulties associated with implementation of the "conflict minerals" rule, for example, should be a cautionary tale for all. The objective of many calling for new public company ESG disclosures is primarily to obtain some social impact or environment that makes it more difficult for businesses to innovate, compete, and grow. The Commission should instead test its disclosure regime against the concept of materiality and its tripartite mission to protect investors, facilitate orderly markets, and promote capital formation. If a piece of information does not fit within that rubric, it should not become a mandated disclosure… While the agency's eighty-plus years as a capital markets regulator does well position it to address emerging and persistent issues in that arena, the SEC understandably struggles when asked to craft disclosures that are designed to achieve goals other than protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation… Likewise, the SEC's expertise is not implicated simply because disclosure is involved. The SEC's expertise is only implicated when the goals of the disclosure are within the scope of the SEC's mission. The CCMC believes that goals outside the SEC's mission should be left to other governmental bodies, civil society organizations, and the private sector to address by means other than the federal securities laws. Thus, we believe the SEC should tread lightly when it comes to compelling so-called sustainability disclosure."

"We do not believe that SEC-mandated disclosures should be used to further social, cultural or political motivations that the federal securities laws were not designed to advance…. Thus, we believe the SEC should tread lightly when it comes to compelling so-called sustainability disclosure."

Exxon Mobil
"The existing definition of 'material' together with a principles-based disclosure regime, form a resilient basis upon which the SEC should consider any proposed change to disclosure regulations. As an example, sustainability-related information that is material under securities laws is already required to be disclosed, thus no expansion of requirements is necessary. Indeed, similar to how the SEC views restatements of financial statements, and as noted in the concept release, '...Commission staff has expressed the view that materiality determinations cannot be reduced to a numerical formula and evaluations of materiality require both quantitative and qualitative considerations.' No prescriptive, line-item set of requirements could ever comprehend the variety of specific facts and circumstances that inform the relative materiality of a given sustainability-related measure to the spectrum of issuers. Should the SEC ultimately decide to require adoption of a disclosure "framework" in this area, we urge the Commission to ensure such a framework reflects input from a wide cross-section of stakeholder representatives, has been developed in a transparent manner, and is not biased toward a particular political, social, or policy viewpoint."

Other Voices

American Institute of CPAs (AICPA)
"The Sustainability Accounting Standards Board (SASB), has attempted to address this issue by developing voluntary sustainability accounting standards (based on the SEC definition of materiality) which take an industry-based approach based on a 10-sector classification system which subdivides into 79 different industries. . . A comparison for SASB guidance from industry to industry clearly suggests that a standard, mandating specific line-item disclosures would be ineffective. However, recommending that companies base their disclosures on a framework such as the SASB's or Global Reporting Initiative's GRI

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framework could potentially produce effective disclosures in that registrants would report on the matters that are material to their industry and business model and would not need to report on other, non-material matters."

California Department of Insurance
"Specifically, the standard should contain disclosure topics, performance metrics appropriate for each topic, technical protocol(s) for each metric, industry-specific activity metrics that can assist analysts to evaluate sustainability-related performance, and guidance on which, how and where in SEC filings disclosures should be included. The Commission could revise its requirements to incorporate these detailed standards by rulemaking or it could recognize standards set by appropriate outside organizations in an interpretive release. One such outside organization is the Sustainability Accounting Standards Board (SASB}, an independent 501 (c)(3) nonprofit organization that issues sustainability accounting standards for the disclosure of material sustainability information in SEC filings. SASB has issued Standards for 79 industries, including Financial Sector - Insurance, consistent with the definition of "materiality" under the federal securities laws."

United States Environmental Protection Agency
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