CLEAN YIELD
ASSET MANAGEMENT

July 14, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: Disclosure Effectiveness Review, File Number S7-06-16

Dear Mr. Fields:

Clean Yield Asset Management ("Clean Yield") is a registered investment advisory firm based in Norwich, Vermont catering primarily to high net worth individuals and families. Our clientele is national, and we have a strong presence in the New England region. Our current assets under management are approximately $300 million.

We welcome the opportunity to comment on the Concept Release No. 33-10064, which solicits input on how to improve business and financial disclosures stipulated in Regulation S-K. We appreciate the SEC's work on sustainability disclosure, including the 2010 Interpretive Guidance on climate risk disclosure. We believe the Commission should prioritize work on these issues, in order to ensure that registrants disclose known sustainability impacts and developments that may have material impact upon financial condition or operating performance.

The growing shareholder demand for corporate environmental, social and governance (ESG) performance indicators makes this section of the Release especially timely and necessary. Clean Yield strongly supports the establishment of enforceable SEC requirements for company reporting on sustainability issues.

Our comments below are directed to the questions posed in Section V, subsection F, concerning "Disclosure of Information Relating to Public Policy and Sustainability Matters."

About Clean Yield Asset Management

Clean Yield takes a long-term approach to investing, favoring high-quality holdings and diversified portfolios to limit risk.

In addition to evaluating potential investments on their financial characteristics and prospects, we integrate ESG information into portfolio decisions for all client accounts. We eliminate from client portfolios companies that are materially engaged in nuclear power, fossil fuel extraction and refining, genetically modified seed production, gambling, tobacco, weapons manufacturing, hydraulic fracturing, human rights abuses, and other activities that are socially harmful. We also avoid U.S. Treasury securities because of the weapons expenditures that they fund.

We seek to invest in companies with positive environmental and social records, strong employee relations throughout the supply chain, and a demonstrable commitment to diversity and the advancement of women.

We frequently engage with companies on a wide range of social and environmental sustainability challenges, from corporate political contributions to climate change. Our aim in these engagements is to solicit more information on how companies are managing ESG risk and opportunities, and to encourage best ESG practices where they are lacking. When necessary, Clean Yield also takes more proactive means, such as filing shareholder proposals or engaging in public policy debates, to promote these ends.

Most of our clients opt to have us vote their corporate proxies on their behalf based on our guidelines, which can be found on our web site (www.cleanyield.com) alongside more information about our investment approach.

The Limitations of Current Corporate ESG reporting

Currently, investors who seek to integrate ESG concerns into our investment decision-making must go to great lengths to gather such research to determine which ESG information is material from a financial perspective; which companies are ESG leaders; and even simply to determine, in some circumstances, whether certain companies fail our basic ESG screens. For any given company that is a prospective addition to our client portfolios, our research includes the study of the company's regulatory filings; sustainability report or GRI report (if available) and other reporting protocols[1]; numerous media sources; and many other sources. In addition, we purchase corporate ESG profiles from an ESG research firm. Together, all of this information aids us in determining basic suitability and our proxy votes.

Despite the availability of general and specific reporting frameworks, many developed with extensive stakeholder consultation, because this reporting is voluntary, it is frequently impossible to construct a consistent, apples-to-apples comparison of corporate

[1] Examples include the CDP carbon, water and forestry surveys; annual progress reports required by certain sustainable supply chain frameworks such as the Roundtable on Sustainable Palm Oil; and third party, industry-specific research prepared by NGOs such as Oxfam's "Behind the Brands" series, the Access to Medicines Index, and the CPA-Zicklin Index of Corporate Political Accountability and Disclosure.

performance even on issues whose materiality is widely agreed-upon, such as climate and energy concerns or workplace diversity.

Additionally, compiling an ESG profile for small- and mid-cap is typically far more difficult than for large caps. Mandatory reporting requirements would transform this situation. It may be appropriate to exempt small- and mid-cap companies from certain reporting requirements, but only after careful and studied consideration.

Regardless of company size, these data gaps frequently compel ESG investors to engage with their portfolio companies, which can be helpful and illuminating, but which can also lead to the filing of shareholder proposals when companies are unresponsive. While shareholder proposals can often lead to constructive engagement that result in their withdrawals, they can also be an adversarial, time-consuming and expensive process for both investors and corporations.

Within the investment industry, the demand for ESG information is widespread and growing. A revolution in perspective has taken place since the Commission's 1975 finding that what was then known as "ethical investing" was not important or significant because of its application to an estimated less than 1% of stock and bond portfolios.[2] As noted in the Concept Release (p. 211), investors as prominent as BlackRock, the world's largest asset manager, are heeding the considerable and growing evidence that ESG considerations are tied to corporate operational excellence and financial outperformance.[3] About 80% of global institutional investors surveyed by PwC in 2014 had considered sustainability information in their investment decisions in the previous year.[4] In 2015, EY found that 59% of investors consider corporate social responsibility reports to be essential or important to investment decisions.[5] According to US SIF, $6.57 trillion in U.S.-domiciled assets apply various ESG criteria in their investment analysis and portfolio selection -- nearly 18% the total assets under management invested.[6]

Due to this high demand for ESG and demonstrated relevance to portfolio performance, we believe the markets will function more efficiently when consistent and high quality ESG information is readily available to all investors.

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[2] Commission Conclusions and Rule Making Proposals, Securities Act Release No. 5627, Exchange Act Release No. 11773, [1965-1976 Transfer Binder] Fed . Sec . L . Rep (CCH) ¶ 80, 820 at 85,719-720 (Oct . 14, 1975).

[3] "In 2015, Deutsche Asset & Wealth Management and Hamburg University published an article titled *ESG and Financial Performance: Aggregated Evidence From More Than 2,000 Empirical Studies*. The team conducted a meta-analysis of over 2,000 empirical studies since the 1970s, making it the most comprehensive review of academic research on this topic. They found that the majority of studies show positive findings between ESG and corporate financial performance (CFP)." US SIF, "Performance & SRI" at http://www.ussif.org/performance.

[4] PwC, *Sustainability Goes Mainstream: Insights Into Investor Views*, p. 2.

[5] EY, *Tomorrow's Investment Rules 2.0*, p. 6.

[6] US SIF, "SRI Basics" at http://www.ussif.org/sribasics.

<u>Response to Specific Questions Posed in the Concept Release</u>

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

The sustainability and public policy areas with a direct impact on our proxy voting and investment decisions are climate and energy; other air, land and water pollution impacts; chemical usage and disposal policies; sustainable agriculture; sourcing from sustainable supply chains; corporate workplace, diversity and labor policies; political spending and lobbying; and corporate tax strategies and policies.

Organizations such as CDP, GRI, SASB, and UN PRI have emerged as the market leaders in this field, having developed quantitative performance indicators illuminating corporate footprints in a number of the above areas, with multi-stakeholder input. Yet no single standard, reporting protocol or framework constitutes a single repository for the ESG information that investors are seeking.

The leading frameworks cover many of the ESG basics, and each has their strengths, weaknesses, specific foci and biases. As explained above, we therefore also rely on a number of additional benchmarking tools to compile a more complete ESG profile of companies. Some cross-cut all sectors (e.g., CPA-Zicklin Index; Human Rights Campaign's Corporate Equality Index; political spending databases from the Center for Responsive Politics and the Institute for Money in State Politics) and some are industry-specific (e.g., Investor Environmental Health Network's benchmarking reports on hydrofracking activities; the annual reports on progress from the Roundtable for Sustainable Palm Oil; data and analyses from the Carbon Tracker Initiative). Sources such as these are important in assessing company ESG preparedness, and for this reason we urge the Commission to explicitly set a floor for sustainability reporting rather than a ceiling.

Comply or explain

Given the great diversity of schemes and indicators available, in our view it would be premature for the Commission to designate any one framework or protocol as singularly suitable to fulfill a registrant's sustainability reporting obligations under a mandatory reporting mandate. Rather, we urge the Commission continue this consultative process to identify selected material environmental and social impact indicators identified by the above frameworks and others to determine what should be required reporting for registrants. Except where registrants are exempted from certain requirements due to

thresholds, investors would benefit from a "comply or explain" approach mandating that registrants either provide answers or explain when the information will become available. (At the least, registrants should be required to publish a sustainability report with a GRI Index.) The Commission might also establish a limited grace period for some sustainability indicators, frameworks or protocols.

Materiality

As the determination of which ESG indicators, frameworks and protocols is undertaken by the Commission, it would also be appropriate to consider not just material impacts upon the registrant of sustainability challenges, but the system-wide sustainability impacts of certain activities undertaken by companies. For example, at the company level, profits obtained by shifting corporate taxes to lower-rate jurisdictions may or may not be financially large enough to be material to the investment decisions of all investors (given that views on materiality differ between investors). However, investors use filings not just to evaluate whether to invest in a particular registrant, but to analyze the characteristics and investment appeal of its industry as well. In the case of foreign taxes, we use tax disclosure data – where it is available -- to attempt to evaluate the aggregate impacts on national treasuries of the widespread uptake of tax avoidance strategies.[7]

The same is true regarding political contributions. A given corporation's political spending activities may or may not rise to the level of financial materiality at the company level,[8] but the impact of *Citizens United v. the Federal Election Commission* has been to elevate the importance of large donors in politics. Public awareness of this shift has arguably destabilized American politics to a considerable degree. Accordingly, corporations with large "political footprints" are courting high reputation and brand risk, which can be material to investors even if the precise impacts of events such as boycotts or bad publicity are inestimable on operations and finances.

Corporations are required to disclose some, but not all, of their political spending activity. The hidden (or "dark money") consists of contributions to trade associations and 501(c)4 groups that can act as conduits to hidden recipients. The absence of this data prevents investors from monitoring associated risk to brand and reputation. In recent years, investors have succeeded in persuading over 150 leading corporations to adopt better disclosure, oversight and governance of political contributions, but consistent and comparable data across the board is still lacking for numerous corporations. Accordingly,

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[7] For example, the U.S. Treasury loses about $90 billion a year due to the deferral of taxes on offshore profits, according to *Chartbook: Offshore Corporate Taxes, Corporate Profits & the Competitiveness of the U.S. Tax System*, p. 3 (American for Tax Fairness, September 2015).

[8] Some have argued that political spending is material to shareholder value. See Professor John C. Coates IV, "Corporate Politics, Governance, and Value Before and After Citizens United," Harvard Law School, 7/6/12, *Journal of Empirical Legal Studies* at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2128608; and Professor Michael Hadani, SEC comment to file 4-637 submitted 10/13/2011, https://www.sec.gov/comments/4-637/4637-8.pdf.

we support a Commission rule to require the disclosure of all corporate political spending, both direct and indirect.

More transparency in these areas can also serve as an alert system to investors. Clean Yield takes a skeptical view of companies that appear to unduly rely on tax avoidance or the aggressive pursuit of more favorable regulation via political spending and lobbying, viewing these tactics as a possible indicator that management may have low confidence in the competitiveness of its products and services in the marketplace.

Another example of the systemic spillover impacts of corporate activity concerns wage-setting. Some large-scale minimum-wage employers may be overly reliant on government social safety nets to a degree that results in lower employee moral and turnover, and that unsustainably burdens taxpayers.[9] An example of an indicator that might capture this element of risk could be for employers to disclose the ratio of their workforce (full-time and part-time) that receives government assistance.

Principles-Based v. Prescriptive Disclosures

Meaningful sustainability disclosure would combine qualitative, principles-based narrative and context as well as prescriptive and quantitative indicators. Many of the most important sustainability issues would be better served by requiring quantitative indicators of external and internal impact as well as descriptive narratives. Whether to apply thresholds for reporting is a matter for consideration on an issue-by-issue basis.

Crowding filings with full explanatory text for each issue or indicator might be avoided by allowing registrants to link to fuller explanatory information located externally. As noted above, an example could be a line item prescriptive disclosure requirement to include the GRI index.

In general, some indicators may require limited narrative, but because there is great variability of subject matter, a blanket approach of principles-based "versus" prescriptive indicators would be counterproductive to investors' interests.

A risk inherent in a principles-only framework is the possibility of a resulting patchwork of inconsistent, non-comparable disclosures. This is characteristic of responses to the 2010 climate change guidance and the Commission's lack of enforcement.

Registrants should be required to indicate whether and to what level their disclosed sustainability data has been audited.

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[9] "How low-wage employers cost taxpayers $153B a year," CBS Moneywatch, April 13, 2015.

Due to the complexity of these issues, we encourage the Commission to heed the input of the non-investing public as well as investors and businesses.

Question 217 asks: *Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant's business and financial condition? Why or why not?*

Some line-item disclosures may not reflect a significant impact on financial outcomes or valuation of the individual disclosing registrant, yet they remain material and important for disclosure as a line item applicable to all registrants because they are broadly of interest to investors, regardless of impact on the individual firm's valuation. An example would be the disclosure of political contributions (see above).

To the second question, the very reason we are pressing for enhanced disclosure on sustainability and public policy issues is that we expect that properly contextualized and carefully selected sustainability-related performance indicators will add to, rather than obscure, a holistic understanding of a registrant's business and financial condition. Consider as an example the ongoing transition from the global economy's current reliance on fossil fuels to lower-carbon sources. The economic implications of this historic shift cut across all industries. Investors, whether they label themselves "ESG investors" or not, will seek to distinguish between those companies that are poised to benefit from this transition and those that are not. Some investors, particularly long term, universal owners with broad positions in the market, have established programs to press the latter group of companies to take action to avoid future climate-related losses. More consistent and comparable data points across companies should enhance stock selection.

We have addressed one of the questions in **Question 218** (*Is the information provided on company websites sufficient to address investor needs?*) in our remarks above.

Question 218 also asks, *How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting? If we permitted registrants to use information on their Web sites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?*

Integrated reporting is critical to investors because sustainability issues can pose material financial and governance risks like other financial, business and competitive issues, and should be evaluated alongside those issues. Understanding of the financial effects of sustainability issues is enhanced when they are reported in an integrated fashion rather than solely in a separate sustainability or CSR report.

The lack of integrated reporting in SEC filings has significantly impeded investor and corporate understanding of the financial risks of sustainability matters, because it has

slowed the consideration and integration of these matters into decision making processes by investors and other critical market participants. The SEC disclosure system currently does a poor job of capturing material sustainability risks and disclosing their financial impact on the company's performance. Requiring integrated reporting by registrants would help to address this failure.

We caution against allowing registrants to use sustainability information on their websites or in voluntary sustainability reports to satisfy any SEC disclosure requirements, due to the wide variation of information that companies currently disclose in their voluntary reporting. This would negatively affect the comparability and consistency of data that is reported; prevent corporate accountability for what is reported; limit the ability of SEC Corporation Finance staff to scrutinize sustainability risk disclosure; and limit the Commission's ability to enforce material risk disclosure requirements and take enforcement action against incomplete or misleading disclosures.

Question 219 asks, *If we propose line-item disclosure requirements on sustainability or public policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?*

We urge the Commission to consider line-item requirements as a potential means of organizing sustainability disclosures. Frameworks that deserve serious consideration include the GRI, SASB, CDP, the IIRC (International Integrated Reporting Coalition). We also recommend review of industry-specific climate risk disclosure guidance developed by Ceres, the Institutional Investors Group on Climate Change and the Investors Group on Climate Change.

Some line items might apply to all registrants (e.g., linkage to company sustainability reports or reports prepared in accordance with any of the above frameworks) and others might apply to certain industries (see below for suggested line-item disclosures for fossil fuel companies) or only to companies that meet specific criteria or thresholds. Because even broadly inclusive protocols do not address every ESG concern that investors have demonstrated intense interest in (e.g., the GRI framework lacks specificity regarding political contributions disclosure), we encourage the Commission to err on the side of inclusion rather than exclusion of multiple recommended or required frameworks.

Question 223 asks *whether existing disclosure requirements are adequate to elicit the information that would permit investors to evaluate material climate change risk; and if not, what additional disclosure requirements or guidance would be appropriate to elicit that information?*

If the SEC's 2010 interpretative guidance on climate change-related disclosure was better enforced, it would help investors assess material climate change risk. However, as an analysis by the investor environmental group Ceres has shown, staff have issued very few comment letters regarding the inadequacy of current disclosures and have not pursued enforcement actions for failure to meet disclosure requirements, despite a very active

financial risk and disclosure enforcement agenda.[10] As a result, many companies in key sectors affected by material climate risks are largely ignoring the guidance. The guidance should be better enforced, by staff trained to evaluate the completeness and robustness of registrants' responses.

We encourage the Commission to consider requiring additional disclosures such as:

- Targets (if any) for greenhouse gas emissions reduction, energy efficiency of operations and products, and commitments to purchase renewable energy for operations. Such metrics should be given narrative context by registrants to enhance their usefulness.

- For the fossil fuel sector, description of how the registrant plans to transition its business model to long term declining market demand for its product.

- In addition, we urge the Commission to consider recommendations made by the Carbon Tracker Initiative in its February 13, 2015 letter to the Commission responding to the Disclosure Effectiveness Review's initial call for comments. CTI called on the Commission to consider the following disclosures for fossil fuel companies:

    - Future capital expenditure plans and the carbon content of reserves and discussion of "how much [product] demand fits in a [global] low-carbon budget, what share of that budget will a company command, and which company projects will fit within it? In other words, how will these trends likely to impact [sic] the company's financial condition?"

    - "How low-carbon scenarios would impact commodity demand and price and include the knock-on effects of those shifts on future capital expenditure plans, liquidity and reserves valuations, if any….the Commission could improve disclosure by ensuring that registrants also make quantitative disclosures when reasonably available."

    - The break-even points of new capital expenditures, so investors can "understand how far up the cost curve companies are reaching, and, as a consequence, how much exposure those companies have to reduced demand and price scenarios."

    - Carbon content of reserves and resources.

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[10] *Cool Response: The SEC & Corporate Climate Change Reporting*, Ceres, February 2014.

We offer the above suggestions in the spirit of improving the Commission's ability to live up to its mandate – to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation – in the context of a changing world, and an evolving market environment for sustainability disclosures.

Thank you for your consideration of our input.

Sincerely,

Shelley Alpern
Director of Social Research & Shareholder Advocacy
Clean Yield Asset Management