FACTCOALITION
Financial Accountability & Corporate Transparency

November 15, 2018

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

**Re: File Number 4-730**

Dear Mr. Secretary,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we write to urge the U.S. Securities and Exchange Commission (SEC) to develop comprehensive disclosure reporting requirements for environmental, social and governance issues for publicly traded companies.

We support the petition (File Number 4-730) as an important step in protecting markets and investors and providing critical information in the development of public policy.

The Financial Accountability and Corporate Transparency (FACT) Coalition is a non-partisan alliance of **more than 100 state, national, and international organizations** working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

The Coalition's specific area of concern involves increased disclosure of international corporate tax practices. Globalization has made it easier for multinational corporations (MNCs) to shift profits and book revenues in offshore jurisdictions as a method to minimize their tax liability. In the past, it was argued that the amounts of money were relatively modest and, therefore, of little risk to investors. That is no longer true today.

Prior to the 2017 tax law, estimates pegged offshore profits of U.S. companies at $2.6 trillion with a deferred tax liability of more than $700 billion. Using data from the Bureau of Economic Analysis (BEA), Professor Kim Clausing recently found that revenue losses from annual profit shifting grew from just under $20 billion in 2000 to nearly $120 billion in 2015. Some examples include:

- Apple alone accumulated more than $200 billion offshore with a deferred tax liability greater than its annual worldwide profits.
- Shareholders of Dell Corporation found themselves in court after negotiations involving a potential management buyout broke down over a dispute on the value of the company. Respected valuation experts produced value estimates that differed by $28 billion -- 126% percent. The main difference was around the amount of deferred tax liability on profits held offshore. Few data points are more fundamental to investors than the actual value of a company.
- At this writing, Facebook is in a dispute with the IRS over its tax avoidance measures that could claim as much as 50% of its annual profits.

As governments around the world begin to crack down on aggressive offshore tax avoidance, numerous companies find themselves in the crosshairs of tax authorities. Apple, Amazon, Caterpillar, Facebook, Google, Hewlett-Packard, McDonalds, Microsoft, Shell, and Starbucks have all faced penalties or are in disputes with tax authorities over their aggressive tax avoidance practices.

The new tax law will do little to change the risk factors for investors. While Congress eliminated deferral of taxes for profits booked offshore, the new 50% (or greater) discount on the overseas rate creates a powerful new incentive to move money overseas.

Investors want more information about these risks and current information is inadequate. The vacuous disclosures commonly inform investors that the MNC operates in many countries and laws could change. They may also include language explaining that they make inter-company transfers and some tax authorities may disagree with their methods. There is little to no information about whether their foreign profits are booked in countries like Germany (likely in line with operations) or in the Cayman Islands (a well-known tax haven). The difference is material to assessing risk.

For these reasons, we support the petition's call for country by country reporting of certain revenue, profit, tax and other information for MNEs. At a minimum, to effectively identify and appreciate the impacts of international tax-related information on a company's performance and valuation, investors need, on a country-by-country basis:

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

In addition to country-by-country reporting, investors would have a much greater ability to understand a company's international tax strategy and risk profile if U.S. regulators further specified in modest rules changes or, if appropriate, guidance that public companies should:

- divide their domestic U.S. income tax current, deferred, and cash paid into Federal and State;
- explain any effective tax rate that is significantly lower than the statutory rate in the countries in which they do business;
- use the company's weighted average statutory rate based on geographic revenue mix instead of home country statutory rate in the tax rate reconciliation schedule (which would help explain the likely effective tax rate, especially as worldwide rules change);
- explain any large or increasing Unrecognized Tax Benefit (UTB) balance and delineate the cost of specific significant benefits in the UTB reconciliation;

- disclose for all non-de minimis intracompany debt transactions, the countries where the debt is held, the amount of the debt, and the average interest rate "paid" by the relevant subsidiary on that debt;
- disclose and explain any material tax incentives or benefits provided by a foreign jurisdiction, including the estimated tax savings, any conditions attached to the incentive or benefit, and the likelihood that the incentive or benefit may be lost; and
- disclose any legal proceedings by foreign governments related to taxes paid to any such government, regardless of whether such matter is material to the financial position of the corporation.

Collectively, these enhanced disclosures are essential for investors to effectively value and assess the risks related to the public companies in which they have invested.

Larger companies, companies with annual revenues above $850 million, already report much of this information to the IRS. That means that corporate executives and tax authorities have this information. It seems that the only direct stakeholders without access to this information are the ones putting their money at risk.

Thank you for your consideration of our comments. If you have any questions or would like additional information, please contact me or a member of the FACT Coalition staff.

Sincerely,

**Gary Kalman**
Executive Director