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Bureau of Democracy, Human Rights, and Labor
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Information Collection Title: Reporting Requirements for Responsible Investment in Burma

To Whom It May Concern:

The International Corporate Accountability Roundtable (ICAR) is a coalition of leading human rights, environmental, development, and labor organizations working to ensure corporations respect human rights throughout their global operations.

In 2013, under President Obama's leadership, the U.S. government established the "Reporting Requirements on Responsible Investment in Burma," a framework for corporate engagement that seeks to promote human rights and encourage transparency and oversight in Burma. We, along with our member organizations, supported the implementation of the Reporting Requirements, and **we write today to urge an extension of this critical framework.**

We believe that the Reporting Requirements, albeit imperfect, are an essential means to advance U.S. policy goals in Burma, which the U.S. federal government has identified as "support[ing] political reform . . . towards the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law."¹ The Reporting Requirements allow the U.S. Department of State (DOS) to collect information that might not otherwise be available and that is essential in assessing whether new investments in Burma support or undermine U.S. policy goals. The DOS may also use the information collected via the Reporting Requirements as a basis to assist U.S. companies in addressing the adverse human rights impacts of their business operations in Burma. In addition, the transparency promoted by the Reporting Requirements allows civil society groups to more effectively monitor and engage with companies operating in Burma, which in turn further ensures accountability and promotes responsible business practices.

These functions were essential when the U.S. government first eased its sanctions on business investments in Burma in 2012, and they remain critical today. Even though there has been

¹ 60-Day Notice of Proposed Information Collection: Reporting Requirements for Responsible Investment in Burma, 80 Fed. Reg. 73867, 73868 (Nov. 25, 2015).

significant progress in terms of political reform in Burma, human rights abuses remain rife throughout the country, particularly in remaining conflict areas and with regard to ethnic minorities such as Muslim communities in Burma's Rakhine State.² As such, there is a particular need to ensure that U.S. investments do not exacerbate ongoing human rights abuses, either by directly or indirectly financing individuals and entities responsible for such abuses or by otherwise benefiting from activities linked to rights violations in the country.

As such, **it is critical to renew the Reporting Requirements after their current term lapses on May 31, 2016. It is also essential that the renewal period be utilized as an opportunity to extend and strengthen the overall framework.** This will ensure that the Reporting Requirements are effectively updated in light of the serious and ongoing human rights concerns that remain in Burma, as well as lessons learned during the first term of the Reporting Requirements. In doing so, ICAR strongly urges DOS to extend and amend the Reporting Requirement as follows:

1. Mandate human rights due diligence for companies operating in Burma, and require those seeking to enter Burma to publicly disclose both their human rights due diligence policies and their actual practices;
2. Make clear that the reporting requirements extend to the activities of a company's subsidiaries, contractors, and business partners, and supplement references to "investment" with other trade relations such as those of a company with its suppliers, contractors, and subcontractors;
3. Require companies to prepare a single public report, as opposed to the current rule's allowance of two versions (one for the U.S. government and the other for the public), and require the report to cover the full range of issues outlined in items 1 through 11 in the Requirement Requirements;
4. Ensure effective compliance with the Reporting Requirements by clearly stating the consequences for failure to report or failure to do so fully and accurately; and
5. Further enforce the Reporting Requirements by conducting spot checks or auditing, and report violators to the U.S. Department of Treasury's Office of Foreign Assets Control.

Extended and strengthened as recommended above, the Reporting Requirements would not unduly burden businesses. Instead, mandatory and detailed non-financial reporting can lead to clear benefits to companies. Such disclosure requires businesses to know the human rights impacts of their operations, which in turn informs the company's own policies, processes, and thinking and thereby improves human rights outcomes for businesses.³ Indeed, research conducted by accounting firms Deloitte and Ernst & Young has confirmed such tangible benefits for companies that disclose non-financial information related to human rights and sustainability and further revealed that this information can also help investors understand issues related to corporate reputation and risk.⁴ Recognizing this demand, leading financial information providers

² U.S. Department of State, Burma 2014 Human Rights Report 1-2 (2014), available at <http://photos.state.gov/libraries/burma/895/pdf/BURMA2014HUMANRIGHTSREPORT.pdf>.

³ Amol Mehra & Sara Blackwell, *The Rise of Non-Financial Disclosure: Reporting on Respect for Human Rights*, BUSINESS & HUMAN RIGHTS: FROM PRINCIPLES TO PRACTICE (Vol. 1, Issue 1, forthcoming April 2016).

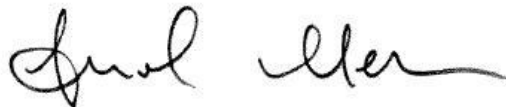
⁴ See *Value of Sustainability Reporting*, ERNST & YOUNG & BOSTON COLL. CTR. FOR CORPORATE CITIZENSHIP (May 2013), available at [http://www.ey.com/Publication/vwLUAssets/ACM_BC/\\$FILE/1304-](http://www.ey.com/Publication/vwLUAssets/ACM_BC/$FILE/1304-)

such as Bloomberg and Thompson Reuters have sought to incorporate human rights and sustainability information into their own analytics and reporting.⁵

In addition, extended and strengthened Reporting Requirements would align with and further contribute to the positive trend towards increased non-financial reporting that is currently taking place, both domestically and internationally. In the United States, this trend is illustrated by the passage of Section 1502 of the Dodd Frank Wall Street Reform and Consumer Protection Act (pertaining to conflict minerals sourced from the Democratic Republic of Congo and surrounding areas), increased enforcement of the Foreign Corrupt Practices Act, and the reporting obligations created through Executive Orders pertaining to government procurement. In Europe, a recent directive enacted by the European Commission similarly mandates EU companies of a certain size to disclose information regarding policies, risks, and outcomes related to human rights, sustainability, and anti-corruption practices.⁶ International institutions have also sought to develop substantive and procedural standards for disclosures related to human rights and sustainability, including through the OECD's Guidelines on Multinational Enterprises.⁷

We urge you today to extend, and strengthen, the Reporting Requirements on Responsible Investment in Burma. The Reporting Requirements further U.S. policy in Burma, are consistent with a useful domestic and global trend to improve human rights worldwide, and bring tangible value to companies and investors.

Sincerely,



Amol Mehra, Esq.
Director
International Corporate Accountability Roundtable
amol@icar.ngo

1061668_ACM_BC_Corporate_Center.pdf; *Disclosure of Long-Term Business Value: What Matters*, DELOITTE (March 2012), available at http://www.deloitte.com/assets/DcomUnitedStates/Local%20Assets/Documents/us_scc_materialitypov_032812.pdf.

⁵ THE INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE (ICAR), "KNOWING AND SHOWING": USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE 22, available at <http://icar.ngo/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report4.pdf>.

⁶ European Commission, *Non Financial Reporting*, http://ec.europa.eu/finance/accounting/non-financial_reporting/index_en.htm.

⁷ ICAR, *supra* note 4, at 21.