

Congress of the United States
Washington, DC 20515

May 19, 2020

The Honorable Jay Clayton
Chairman
Securities & Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dear Chairman Clayton,

We appreciate the Securities and Exchange Commission's (SEC's) efforts to help stabilize markets and protect investors in the face of the extraordinary economic disruption caused by the onset of the COVID-19 pandemic. During these deeply uncertain times, companies and workers face a rapidly evolving set of economic, health, and workforce challenges unimaginable only a few months ago. Now, more than ever, investors and the public should have access to comprehensive, timely, and comparable information related to companies' human capital management practices. Indeed, the current COVID-19 pandemic is a vivid example of why human capital management reporting is so critical to carrying out the SEC's mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

Over the past several months, companies across the country have taken extreme actions to adapt and respond to the evolving workforce challenges presented by COVID-19. Facing extraordinary operational and financial challenges, different industries and businesses are attempting to weather the crisis in unique ways. JUST Capital, for example, has been tracking the responses of the S&P's 100 largest public companies to their workers and finds wide variation in the policies implemented as well as their disclosure.¹ Through different responses to their workforce, from layoffs to workplace safety to paid leave, COVID-19 is exposing the myriad ways that company human capital management practices pose operational and reputational risks for short and long-term performance.

To standardize what companies disclose to the public, we urge you to provide the guidance necessary to ensure timely and accurate delivery of critical human capital management information to investors. This includes, among other things: remuneration across the workforce; employee engagement and sick leave information; investment in training, especially with regard to health and safety preparedness; identification of workforce safety hazards and levels of risk; administrative controls; such as cleaning practices, varying work schedules; and protective equipment for workers, such as masks and gloves. These issues will be important in determining if companies will be able to open and remain open, a critical issue for investors as well as for the economy as a whole.

We also urge you to quickly move forward with finalizing the proposed modernizations to Regulation S-K's human capital management reporting requirements with the following improvements. Investors and the public should have much-needed, fundamental human capital information to assess a

¹ JUST Capital. 2020. "The COVID-19 Corporate Response Tracker: How America's Largest Employers Are Treating Stakeholders Amid the Coronavirus Crisis." Report. Retrieved: <https://justcapital.com/reports/the-covid-19-corporate-response-tracker-how-americas-largest-employers-are-treating-stakeholders-amid-the-coronavirus-crisis/>

company's ongoing performance now and in the future. Finalized metrics should include quantitative disclosure items with a high value across industries, such as total employees, total wages, whether workers are full-time or contractors, turnover and promotion rates, violations of workplace safety regulations, and spending on employee training opportunities. Disclosure of these critical workforce metrics will better enable investors to assess the impact of future health or economic crises on the company's workforce, which are material to company performance, investment and voting decisions.

In fact, disclosure of human capital management policies should be part of a whole-of-government economic recovery strategy. You have noted in the past on calls with SEC Investor Advisory Committee members that "human capital and intellectual property often represent an essential resource and driver of performance for many companies."² We agree. Using asset management industry measurement standards such as risk-adjusted returns and means excess returns, researchers find that the S&P 500 firms disclosing their human capital costs are disproportionately the highest performing firms.³ This same research finds that intensity of human capital reporting is correlated with greater firm financial performance, a focus on long-term value creation, and a higher return on investment from talent.⁴ The estimated overarching benefits to the economy would vastly outweigh the costs of disclosure.

The onset of the COVID-19 pandemic is a reminder that investors and the public are well served by a robust human capital management disclosure regime. As the founder of the Coalition for Inclusive Capitalism recently noted in the *Financial Times*, U.S. financial markets had no form of standardized financial accounting before 1929.⁵ Just as GAAP was urgently adopted after the Great Depression, we strongly believe standardized, comparable metrics of human capital disclosure requirements in the context of this pandemic are critical for investors to accurately measure company performance both now and in the future, which furthers the SEC's mission to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."

Thank you for your continued work during these challenging times. We look forward to working with you on this critical matter.

Sincerely,



Mark R. Warner
United States Senator



Cynthia Axne
Member of Congress

² Chairman Clayton, Jay. February 6, 2019. Remarks for Telephone Call with SEC Investor Advisory Committee Members.

³ Hesketh, Anthony. March 21, 2019. Letter to the SEC Investor Advisory Committee.

⁴ Ibid.

⁵ Forester de Rothschild, Lynn. April 29, 2020. "Companies that tap US relief packages must be more transparent." *Financial Times*. Retrieved: <https://www.ft.com/content/0ffcba84-892b-11ea-a109-483c62d17528>