

United States Senate

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RULES AND ADMINISTRATION

October 22, 2019

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

United States File Number S7-11-19

Dear Chairman Clayton,

I applaud the Securities and Exchange Commission's (Commission's) recent actions on the Modernization of Regulation S-K, particularly with regard to Item 101, and welcome the opportunity to comment on an issue that has long been a focus of mine. Human capital is among a company's most valuable assets. It is critical to a firm's ability to innovate, adapt, and compete as companies in the United States transition to a 21st-century knowledge-based economy. As the proposed rule notes, "intangible assets [including human capital] represent an essential resource for many companies."

Beyond the value that human capital holds for a company itself, shareholders increasingly expect public companies to disclose material issues affecting a businesses' financial performance – such as investments in human capital and worker training. These disclosures are relevant and important to shareholders, not only in order to better understand risks to company performance, but also to understand potential long-term systemic risks to the economy. You have also raised the issue of the importance of human capital disclosures to shareholders, most recently in May 2019 at the Investment Company Institute, stating, "If I am an investor looking at businesses today, I want to know what you are doing with your human talent, how you are growing your human talent, how you are accessing new talent, how you are retaining existing talent . . ." ¹

The route that the Commission has taken with the proposed rule is encouraging, however, I believe the more appropriate route should be a principles-based approach that incorporates some prescriptive elements. As the Commission notes, the current human capital element in Item 101(c) "dates back to a time when companies relied significantly on plant, property, and equipment to drive value."² With regard to the Commission's proposed amendments, I could not agree more that Item 101(c) should be modernized to include human capital resources, measures, and objectives as a disclosure topic. Further, I recognize the value that a principles-based approach holds for human capital management disclosures. Setting objectives and letting

¹ See Thompson Reuters, *Chairman Clayton: Companies Should Provide More Disclosure on Human Capital Management* (May 6, 2019), <https://tax.thomsonreuters.com/news/chairman-clayton-companies-should-provide-more-disclosure-on-human-capital-management/>.

² See page 48 of the proposed rule, <https://www.sec.gov/rules/proposed/2019/33-10668.pdf>.

management judge what information best satisfies the disclosure requirements for the registrant is beneficial, but cannot be the entire picture. Human capital management, and the metrics used to measure it, differs from one industry to the next and even among companies within the same industry. A purely prescriptive approach may miss important subjective information, but a purely principles-based approach would fall short by losing the benefits of increased consistency and comparability for investors.

I understand that you have expressed concerns about the value of mandating certain metrics as disclosure items across all industries,³ but I encourage the Commission to consider the value of quantitative information that is of a high value to investors across a variety of industries. Specific disclosures make it easier to compare registrants, which is important to potential investors. You have commented on the importance of comparability yourself, for instance in February 2019 during a phone call with Investor Advisory Committee Members: “for human capital, I believe it is important that the metrics allow for period to period comparability for the company.”⁴ There are certain disclosure items, such as whether workers are full-time or contractors, turnover rates, and spending on employee training opportunities, that can provide universal value across all industries. I recognize the risk that prescriptive metrics can pose – that companies may “manage to the metric,” as the SEC Investment Advisory Committee put it. However, I encourage the Commission to engage with investors, registrants, and experts further to learn more about metrics that may serve useful purposes while minimizing unintended consequences.

With regard to the utility of non-exclusive examples, I believe that the Commission should provide these to registrants. Principles-based disclosure can lack direction. Examples will be especially useful for registrants when disclosing on new human capital management metrics.

I believe the addition of more human capital management disclosure requirements to Regulation S-K furthers the Commission’s mission to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.” Thank you for your attention to this critical matter.

Sincerely,



Mark R. Warner
United States Senator

³ See Thompson Reuters, *Chairman Clayton: Companies Should Provide More Disclosure on Human Capital Management* (May 6, 2019), <https://tax.thomsonreuters.com/news/chairman-clayton-companies-should-provide-more-disclosure-on-human-capital-management/>.

⁴ See *Remarks for Telephone Call with SEC Investor Advisory Committee Members* (February 6, 2019), <https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-call-020619>.