Shareholder Value Advisors

July 29, 2022

Honorable Gary Gensler, Chair
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File 4-787 Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance

Dear Chair Gensler:

I am writing in support of the rulemaking petition submitted by the Working Group on Human Capital Accounting Disclosure petition on June 7, 2022.

I am the President of Shareholder Value Advisors Inc., a consulting firm that helps companies improve shareholder value through better performance measurement, incentive compensation and valuation analysis. I'm the author of *EVA and Value-Based Management* (with Professor David Young of INSEAD) and many articles on measuring pay for performance and improving pay design. A short bio is included with this letter.

I have many years of experience developing incentive plans that create labor-capital partnerships by giving the incentive plan participants a fixed share of any increase (or decrease) in the joint value added of labor and capital. The fixed share interest gives employees a strong incentive to improve the joint value added of labor and capital, and hence, a strong incentive to boost investor value added. These incentive plans typically defer part of the employee share in an at-risk "bonus bank", and hence, also give employees a strong incentive to remain with the company. While labor-capital partnerships can be a powerful tool to align labor and capital interests and improve the well-being of both employees and investors, the current state of compensation cost disclosure makes it extremely difficult for investors, directors and employees to analyze peer companies as labor-capital partnerships and benchmark employee sharing in the joint value added of labor and capital. In my experience, the difficulty of benchmarking employee sharing makes investors, directors and employees feel that incentive plan labor-capital partnerships are not practical and defensible and greatly reduces their interest in creating incentive plan partnerships that build value for both investors and employees.

The Working Group's petition says that "…only fifteen percent of…firms even disclose their labor costs…investors typically cannot even determine total workforce costs" and argues that "…workforce costs should be…disclosed". **I strongly support the Working Group's view and proposal**.

I would also like to recommend an enhancement to the Working Group's proposed grid disclosure, i.e., a reconciliation of financial statement compensation expense to total employee compensation cost reported on a basis consistent with the proxy statement disclosure of executive officer pay. In a ruling dated December 16, 2009, the SEC changed the required reporting of equity compensation for the Summary Compensation

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Table from the dollar amount recognized for financial statement purposes for the fiscal year to the aggregate grant date fair value of stock and option awards granted in the fiscal year. The rationale for the change was that the aggregate grant value fair value reflects current year compensation committee decisions and is more informative for proxy voting and investment decisions. Disclosure of total employee compensation cost on a basis consistent with proxy statement disclosure of executive pay will allow investors, directors and employees to calculate and benchmark the executive officer share of aggregate employee value added. This will help investors, directors and employees ensure that incentive plan labor-capital partnerships provide fair sharing between executive officers and other employees, as well as fair sharing between investors and employees.

Sincerely,

Stephen F. O'Byrne
President

[redacted]

Stephen F. O'Byrne **President**	**Direct Dial:** [redacted]
	Email: [redacted]

Steve O'Byrne is President and co-founder of Shareholder Value Advisors Inc., a consulting firm that helps companies increase shareholder value through better performance measurement, incentive compensation and valuation analysis. His publications include:

- *EVA and Value Based Management* (with Professor David Young of INSEAD), McGraw-Hill (2001)
- "Employee Value Added: A New Measure of Gain-Sharing between Labor and Capital" (with Shivaram Rajgopal) in the *Journal of Applied Corporate Finance* (Spring 2022)
- "Measuring and Improving Pay for Performance" in the *Handbook of Board Governance* (2nd edition, Wiley 2020)
- "Say on Pay: It is Needed? Does It Work?" in the *Journal of Applied Corporate Finance* (Winter 2018)
- "A Better Way to Measure Operating Performance" in the *Journal of Applied Corporate Finance* (Winter 2016)
- "The Alignment Gap Between Creating Value, Performance Measurement and Long-Term Incentive Design" (with Mark Van Clieaf) IRRC Institute 2014
- "Three Versions of Perfect Pay for Performance" in the *Journal of Applied Corporate Finance* (Winter 2014)
- "What Investors Need to Know About Executive Pay" (with David Young) in the *Journal of Investing* (Spring 2010)
- "Why Executive Pay is Failing" (with David Young) in the *Harvard Business Review* (June 2006)
- "Executive Compensation" in the *Handbook of Modern Finance* (1997)

Prior to co-founding Shareholder Value Advisors in 1998, Mr. O'Byrne was head of the compensation consulting practice at Stern Stewart & Co. (1992-1998) and a Principal in the executive compensation consulting practice at Towers Perrin. Prior to joining Towers Perrin in 1979, he worked in the tax department at Price Waterhouse and taught mathematics at Loyola University of Chicago. Mr. O'Byrne holds a B.A. degree in political science from the University of Chicago, an M.S. in Mathematics from Northwestern University and a J.D. from the University of Chicago.

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