October 22, 2019

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: File No. S-11-19 Proposed Rule

Dear Secretary Countryman,

This comment is submitted in fulfillment of the practice component for the Administrative Law course at the University of Missouri School of Law. The comment will address changes to Items 101(a) and 101(c), as well as some of the previous comments thereto.

Item 101(a)

This comment believes a materiality-based approach is a welcome update to Item 101(a), and an essential element of the Commission's apparent desire to move to a more principals-based disclosure model. In particular, the proposed changes to Item 101(a)(1) closely track what many issuers already report in their proxy statement (14A). Consolidating this information with required hyperlinks to material incorporated by reference pursuant to this Proposal will result in a more organized and efficient picture for the investing public.

Some comments have expressed concern that this change, as well as the proposed changes to Item 105, will result in less disclosure and thus harm investors. These concerns, however earnest, do not accurately reflect either the incentive structure at work in the disclosure process or the actions that filers take in response to these incentives. For instance, Rule 175 creates a safe harbor from liability for a variety of "forward-looking statements." Because of the potentially wide application of the safe harbor, it makes sense for filers to throw everything, often including the kitchen sink, into their risk factors and other sections potentially covered by this rule.

Consequently, many issuers avail themselves of the exemption from liability provided by Rule 175 to the greatest extent possible. Many of the proposed changes appear to recognize and validate this disclosure process, which many issuers already use. Moreover, this process demonstrably results in more disclosure – not less. Additionally, the organizational changes referenced in Item 101(a), as well as in Item 105, will undoubtedly present investors with the same material information in a far more efficient format.

Finally, as Note 13 of the Proposing Release observes, management's materiality determinations may be challenged by the Commission or in the courts. With respect to the courts in particular, Note 13 reminds earlier commenters that the investing public retains a powerful tool for recourse if management omits information that is later found material in litigation.

However, this comment does second the concerns raised by Mr. Roos of UnitedHealth Group that the statement on Page 19 limiting required business strategy disclosure to changes affecting a "previously disclosed" business strategy would result in disparate treatment among filers. Of particular concern is the fact that the Proposal would apply to filers who voluntarily disclosed their business strategy without notice that they may subsequently be required to continue making such disclosures. Simply because a previously disclosed business strategy did not contain sensitive or proprietary information does not necessarily mean that subsequent changes to the strategy will be similarly situated. Over the long term, this uncertainty could chill business strategy disclosure.

Item 101(c)

This Comment is in favor of the proposal to add human capital disclosure to the list of required disclosures; after all, many companies already include facets of this information in some form or another with environmental, societal, and corporate governance ("ESG") disclosures. Standardizing disclosures that are already broadly occurring can only aid the investing public and reduce the chance that an incomplete disclosure may expose both investors and filers to greater potential risk. However, this comment notes that "measures" and "objectives" in proposed paragraph (c)(2)(ii) are not identical; allowing filers to choose one or the other would likely not meaningfully alter current ESG disclosures. Based on previously received comments, it appears likely that many issuers would focus on their objectives alone, rather than the concrete information that the requirement could elicit by replacing "or" with "and" in the "measures or objectives" phrase.

Thank you very much for your time. The process of thinking critically about the benefits and drawbacks of a proposed rule has been challenging and rewarding. I appreciate the opportunity to weigh in with this comment.

Sincerely,

William Dunker
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University of Missouri School of Law