CtW Investment Group

October 22, 2019

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: *Modernization of Regulation S-K Items 101, 103, and 105 (File No. S7-11-19)*

Dear Ms. Countryman:

I am writing on behalf of the CtW Investment Group to submit this comment in response to the U.S. Securities and Exchange Commission's (SEC or Commission) proposed rule, "Modernization of Regulation S-K Items 101, 103, and 105," (the "Proposed Rule"). We appreciate the opportunity to share our views on the Proposed Rule. Our comments below focus on proposed changes to reporting rules governing Item 101(c) in Regulation S-K regarding the Narrative Description of Business, and on human capital-related disclosures in particular. As detailed below, we strongly support:

- Retaining and enhancing mandatory employment disclosure.
- Expanded disclosure as recommended by the Investor Advisory Committee (IAC).
- Continued use of rules-based regulation, as the alternative fails to address informational asymmetries and barriers to entry.

While we recognize a role for principles-based regulation, we do not believe that role includes the full replacement of either rules-based disclosures or bright-line requirements. Instead, we support a combination of rules-based disclosures of specific numeric metrics that enable all readers of financial statements to make systematic comparisons between companies, with a more open-ended principles-based approach to narrative discussion of the idiosyncrasies and unique circumstances of particular industries and companies.

The CtW Investment Group works with pension funds sponsored by affiliates of Change to Win, a federation of unions representing over five million members, to enhance long-term shareholder value through active ownership. These funds invest over $250 billion in the global capital markets. We are also members of the Human Capital Management Coalition (HCMC), an effort among 28 institutional investors representing over $4 trillion in assets to further elevate human capital management as a critical component in company performance and in the creation of long-term value. More information about the Coalition is available at http://www.uawtrust.org/hcmc.

We appreciate the SEC's focus on ensuring investors get the information they need to make the best decisions on behalf of their beneficiaries, their clients, and – in the case of individual investors – themselves and their families. The HCMC first urged the Commission in 2017[1] to

[1] Human Capital Management Coalition. (2017) *Rulemaking Petition to Require Issuers To Disclose Information About Their Human Capital Management Policies, Practices And Performance,* as submitted to the U.S. Securities and Exchange Commission on July 6, 2017. Retrieved from https://www.sec.gov/rules/petitions/2017/petn4-711.pdf.

pursue rulemaking that would lead to stronger disclosures from issuers about their human capital management policies, practices and performance through a process that included input from investors, issuers, and other key market participants.

We offer our thoughts on specific questions in the Commission's release below:

12. Should we shift to a more principles-based approach for Item 101(c), as proposed? Would registrants find it difficult to apply the principles-based requirements?

The shift to a more principles-based approach to disclosure seems to us unwarranted based on past experience with financial disclosure, especially with respect to quantitative measures already long in use by corporate managers. For instance, while it is impossible to find publicly available annual employee turnover data for the vast majority of publicly traded companies, it is clear from our discussions with companies and from the availability of such data from proprietary sources, that it is commonplace for companies to collect and review these measures. A rules-based requirement that such data be disclosed would reduce informational asymmetries between companies and investors, information asymmetries between larger or better resourced investors and smaller, more modestly resourced investors, while also reducing barriers to entry for data and analytics providers, and likely also for investment managers. Conversely, precisely because a principles-based approach to disclosure is intended to enable companies to tailor the information they provide to their specific circumstances, there is no reason to believe that such an approach would reduce either those asymmetries or those barriers to entry.

Moreover, a wholesale shift toward principles-based disclosure would be at odds with the history and purpose of SEC regulation since 1933. The Commission has repeatedly revisited disclosure standards, and has consistently found that investor protection is best achieved by ensuring consistent, uniform, and easy-to-locate disclosure of information by adopting clear rules that specify exactly what information issuers are required to provide. Where the Commission has in the past chosen more open-ended standards – such as in the 10-K's discussion of risk factors – it has done so with respect to topics that are inherently a matter of judgement and that would be difficult-at-best to quantify. While we believe that some aspects of human capital management – such as the articulation of the issuer's strategy – would appropriately fall under a principles-based approach, there are a substantial number of quantitative measures that issuers themselves develop, use, and share privately with investment services providers. Disclosure of these quantitative measures should be subject to a rules-based regime.

13. Would the proposed principles-based requirements elicit information that is material to an investment decision? If not, how might Item 101(c) be further improved? Are there any additional disclosure topics that we should include in Item 101(c) to facilitate disclosure? Alternatively, should we exclude any of our proposed disclosure topics?

The proposed principles-based requirements alone are unlikely to yield the more robust human capital information investors need to make well-informed investment decisions. A "hybrid" approach would be more appropriate, where the SEC establishes a limited set of well-defined, baseline disclosure standards for information that is of particular interest to investors and universally-applicable across issuers, regardless of industry or business strategy. Some examples of these metrics include the number of full time, part time and contingent workers; workforce costs; workforce diversity; and employee turnover (or comparable workforce stability metric).

Moreover, as noted above, it is clear that many publicly traded companies share a wide variety of different data points – including the results of workforce surveys - with research firms and investment managers, but without disclosing this information so that it is available to all readers of financial statements. Beyond the mandatory disclosure of the items listed above, the SEC should require companies to disclose information they share with service providers on a "most favored nation" basis: if a company chooses to share workforce metrics or survey results with proprietary data providers, it must make the same data available to the investing public generally. A rule to this effect would extend the existing principle behind Regulation FD to a broader range of communications with outside parties seeking to sell services to shareholders and other investors and readers of financial statements. While such service providers should be free to compete on the basis of their analytic capacity, none should have a competitive advantage based on privileged access to company data.

21. Should disclosure regarding human capital resources, including any material human capital measures or objectives that management focuses on in managing the business, be included under Item 101(c) as a listed disclosure topic, as proposed? Should we define human capital? If so, how?

Yes, disclosure of human capital resources should include material human capital management measures or objectives that management focuses on in managing the business. All human capital-related disclosures, including the baseline metrics we propose above as well as other information material to a company's operations, should be provided in a way that helps investors understand the workforce strategy and how it relates to the company's business strategy. This discussion should also include risks and opportunities related to the workforce strategy. The HCMC put together a set of high-level questions investors are asking re: HCM strategy, targets, and benchmarking for boards and senior executive management that may be instructive (http://uawtrust.org/AdminCenter/Library.Files/Media/501/About%20Us/HCMCoalition/HCMC%20PMD%20Qs%20Attachment%20-%20Sept%202018.pdf). Additionally, we believe that the SEC should provide a basic definition of human capital. The HCMC provided the following definition of human capital in its 2017 rulemaking petition:

> "There is broad agreement that human capital encompasses the knowledge, motivation, skills and experience of a company's workforce, as well as its alignment with the company's mission and values."[2]

24. Should we retain an explicit requirement for registrants to disclose the number of their employees? Alternatively, should we permit registrants to disclose a range of the number of its employees and/or a range for certain types of employees?

We strongly believe that the SEC should enhance, and not remove the requirement that registrants disclose the number of their employees. We are not sure that the Commission understands how important and useful this seemingly minor data point is: in our analysis of

[2] Human Capital Management Coalition. (2017) *Rulemaking Petition to Require Issuers To Disclose Information About Their Human Capital Management Policies, Practices And Performance,* as submitted to the U.S. Securities and Exchange Commission on July 6, 2017. Retrieved from https://www.sec.gov/rules/petitions/2017/petn4-711.pdf.

company performance, we routinely use reported numbers of employees as the denominator in various calculations through which we seek to better understand productivity growth, compensation, and capital allocation at publicly traded companies. If the Commission were to remove this required disclosure, we could no longer be certain that we would be able continue using these measures, undermining our ability to assess company performance and make informed investment decisions.

The enhancements we would recommend are those endorsed by the IAC in March 2019: a breakdown that includes full time, part time, and contingent workers. These additional categories are clearly material, as both part time and contingent employees have very different implications for future revenues and costs. We would also support an enhancement that would report the number or percentage of employees who the issuer classifies as managerial or supervisory employees, as opposed to non-supervisory or production workers. This data would greatly enhance the ability of investors to evaluate the efficiency of alternative approaches to operations and company organization; we note that while it is common for both executives and activists to cite bloated administrative structures as a barrier to performance, absent consistent disclosure of the managerial/production breakdown these critiques and their related proposals are very difficult to evaluate. Together with the enhancements recommended by the IAC, these additional disclosures would materially improve investors ability to understand issuers' operations and to make informed investment decisions.
As a final point, this data – like other baseline workforce composition data – need not be burdensome to collect: many U.S. public companies already track basic workforce data like headcount, hours, managerial status, and labor costs for administrative purposes such as processing payroll and complying with mandatory DOL reporting requirements. Human resources analytic tools are commonly utilized to assist with data collection, and firms could leverage the human resources tools and services they already use to satisfy new human capital reporting requirements. In sum, we believe the human capital data is readily available, and issuers can disclose it with minimal additional cost with large benefits for the investing public.

Thank you for the opportunity to share our thoughts on the proposed rule. We are happy to answer any questions or provide additional information that may be useful to the Commission on these issues.

Sincerely,

Dieter Waizenegger
Executive Director, CtW Investment Group