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VIA SEC Internet Comment Form (https://www.sec.gov/rules/proposed.shtml)

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

October 22, 2019

Re: File Number S7-11-19
Modernization of Regulation S-K Items 101, 103, and 105
(Release Nos. 33-10668; 34-86614)

Dear Ms. Countryman:

We appreciate the opportunity to respond to the request by the U.S. Securities and Exchange Commission (the "SEC" or "Commission") for comments regarding the above-referenced release (the "Proposing Release"). The Proposing Release sets forth amendments to modernize the description of business, legal proceedings, and risk factor disclosures that registrants are required to make pursuant to Regulation S-K. The proposed amendments are intended to, among other things, improve disclosures for investors, and simplify compliance efforts for registrants. We endorse these goals and respectfully offer certain comments and suggestions to support the Commission's intentions. Our comments are limited to Item 101(c) on human capital disclosure.

We agree that additional disclosure on how effectively human capital is managed is important to investors given the tremendous value of an organization's workforce. Based on learnings from over 25 years of helping organizations develop and implement evidence-based workforce strategies, we also believe that a principles-based approach to human capital reporting would be preferable to a one-size-fits-all approach. Encouraging reporting on human capital management, while giving companies the flexibility to articulate the objectives and measures they use to ensure human capital is being effectively managed, would be the best way to give investors the information they need to inform their investment decisions.

Mercer has extensive experience designing and implementing executive and director compensation programs and assisting public companies with their proxy disclosures. Our Career business services also include consulting and expertise in workforce strategies and analytics, broad-based rewards, HR transformation, talent strategy, communication, and mobility, as well as a full range of best-in-class information and technology solutions. Our workforce analytics consultants include a mix of labor economists, industrial-organizational psychologists, statisticians, and data scientists with over 200 years of combined experience consulting to organizations on their most complex human capital issues. Mercer is a full-service HR consulting firm with more than 23,000 employees based in 44 countries and operating in over 130 countries. Mercer is a business of Marsh & McLennan Companies (NYSE: MMC), the leading global professional services firm in the areas of risk, strategy and people. With 75,000 colleagues and annualized revenue approaching $17 billion through its market-leading companies, including Marsh, Guy Carpenter and Oliver Wyman, Marsh & McLennan helps clients navigate an increasingly dynamic and complex environment.

Mercer's Recommendations

Here are our recommendations in response to the SEC's specific requests for comment with respect to Item 101(c) of the Proposing Release:

I. 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?

We believe disclosure regarding human capital resources, including any material human capital measures or objectives that management focuses on in managing the business, should be included under Item 101(c) as a listed disclosure topic. Although "human capital" has a clear definition in economics, there is no standard method to assess "human capital management." We urge the Commission to resist defining what is considered effective human capital management because it is a complex concept and there are many factors that influence HCM that vary with the industry and organization.

In economics, human capital is typically defined as the collective skills, experience and knowledge that resides in an organization's workforce and drives productive labor. Since human capital is an asset, it follows that HCM is a form of asset management: a plan for securing, managing and motivating a workforce capable of achieving business goals. To be effective, HCM practices should produce the right workforce for the business and manage it in ways that optimize its economic productivity. (See "*Play to Your Strengths,*" Mercer, October 3, 2003, pages 75-76.)

There is a growing recognition of the business impact of effective HCM in organizations. In our experience as consultants, organizations that get HCM "right" produce significantly higher value for shareholders than those that don't. Thus, shareholders have an interest in ensuring that organizations have the right workforce in place and are managing the workforce effectively. But what constitutes “getting it right” is quite complex, given that effective HCM is more about alignment and “best fit” than about “best practice.” (Douglas W. Dwyer, *Plant-Level Productivity and the Market Value of a Firm*, Mercer white paper, January 2001.)

The evolution of big data and advanced workforce analytics is making it possible for organizations to apply the same kind of quantitative discipline to the management of their workforces as they do for financial, physical, and other assets. This increases the opportunity for businesses to secure sustainable competitive advantage from their human capital. It also puts at risk the economic value of organizations that don’t.

In today’s economy, an organization’s human capital is a valuable asset, often the single largest and most important investment the organization makes. The effectiveness with which that asset is assembled and managed is central to creating value for shareholders and mitigating significant business risks. Decisions about HCM are a critical part of good governance, and information about a company’s methods and processes for evaluating the effectiveness of these decisions is material information for investors.

A significant body of scholarly research has demonstrated strong empirical links between HCM and business performance, including shareholder value. Mercer research has uncovered an important channel through which HCM can affect shareholder value — workforce productivity. (Douglas W. Dwyer, *Plant-Level Productivity and the Market Value of a Firm*, Mercer white paper, January 2001.) Statistically analyzing 20 years of census data on manufacturing establishments in the United States, our research found that, all else being equal, companies that consistently maintain superior workforce productivity in comparison to their peers also achieve higher market value. In effect, sustained premium workforce productivity becomes an intangible asset.

In analyzing the running record of productivity and performance data of client organizations, we have found that effective HCM is often a major driver of persistent productivity advantages. For example, in a US regional bank, from 10% to more than 40% of the variation in branch productivity and performance was attributable to human capital factors, depending on the performance measure tracked. By far, the greatest predictor of branch success was the tenure of employees in the front-line jobs. We estimated that each additional year of average tenure across the branches was worth $40 million to the bottom line (see “Play to Your Strengths,” Mercer, October 3, 2003, chapter 3, pages 64-67).

Of course, the relative magnitude of HCM’s impact varies across industries and companies. But seldom is the impact negligible. Moreover, even small increases in workforce productivity, if sustained, can generate substantial value to the firm.

The HCM information commonly available to investors today is often inadequate for them to make an investment decision about this important asset. Therefore, we support providing additional disclosure on how companies measure whether they have secured the right workforce to achieve their business objectives and whether they are managing that workforce effectively. Advanced workforce analytics and easily accessible workforce data are enabling the growth of HCM as an asset management discipline. We believe that organizations should keep investors apprised of their human capital assets and how they are managed to enhance performance and mitigate risk. Additional human capital disclosure can lead the way to enhanced transparency about workforce management for investors and help organizations maximize the contribution of the human capital asset to shareholder value.

Mercer's recommendation: *The final rule should require additional disclosure on human capital given its importance as a company asset and that proper management of this asset can have a significant impact on shareholder value. Although "human capital" has a clear definition in economics, there is no standard method to assess "human capital management." So, we urge the Commission to resist defining effective HCM because it is a complex concept and there are many factors that influence HCM that vary with the industry and organization.*

II. With respect to human capital resource disclosure, should we provide non-exclusive examples of the types of measures or objectives that management may focus on in managing the business, such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the attraction, development, and retention of personnel, as proposed? Would providing specific examples potentially result in disclosure that is immaterial and not tailored to a registrant's specific business? Would not including such examples result in a failure to elicit information that is material and in some cases comparable across different issuers?

We believe that providing specific examples of the types of measures or objectives that companies focus on in managing their business, such as those that address the attraction, development, and retention of personnel, as proposed, could result in disclosure that is potentially misleading and is less valuable to investors because it is not tailored to a company's specific business or industry. Also, companies and investors might view these examples as required disclosure for all companies even if it is not appropriate for a particular industry or business, which could result in disclosure that is irrelevant and potentially misleading.

We believe that there is a potential risk that one-size-fits-all metrics could be misinterpreted by investors because of the highly contextual nature of HCM. For example, streamlined organizational layers and relatively large managerial spans of control may signal operational efficiency in one business, but represent weak supervision and inadequate opportunities for career advancement and learning in another, thereby hurting business performance. Similarly, reliance on incentive compensation plans may signal the application of "pay for performance" in one company but in another may represent an inefficient mechanism to shift business risk from shareholders to employees, upending established principles of effective risk management and weakening performance incentives.

Even the most basic standardized human capital metrics can be misinterpreted. For example, high or rising voluntary turnover can be a signal of serious problems in talent management. On the other hand, in times of business transformation, higher turnover may be precisely what's needed to speed adaptation of the organization's workforce to new business requirements. Without it, the organization will be unable to deliver on its strategy without exploding its labor costs. Focusing on voluntary turnover without regard to the business context in which it is taking place can be dangerously misleading.

Great care should be taken when comparing and interpreting human capital metrics across companies. Reporting requirements that fail to recognize the hazards of human capital disclosure mandates and that don't permit tailoring and contextualization of published metrics can do more harm than good. (See "Governance Challenges 2018: Board-Shareholder Engagement in the New Investor Environment", NACD 2018.)

Mercer's recommendation: *Rather than mandate a specific set of measures or objectives, such as those that address the attraction, development, and retention of personnel, as proposed, we recommend that the final rule require disclosure of the specific measures and processes a company uses to ensure human capital is being effectively managed. This would enable companies to tailor the measures to their business and industry and allow investors to gauge whether management is pursuing a disciplined asset management approach to human capital to maximize economic value and identify and mitigate human capital risks that is appropriate for their situation.*

III. With respect to human capital resource disclosure, should we include other non-exclusive examples of measures or objectives that may be material, such as the number and types of employees, including the number of full-time, part-time, seasonal and temporary workers, to the extent disclosure of such information would be material to an understanding of the registrant's business? Could other examples include, depending on the nature of the registrant's business and workforce: measures with respect to the stability of the workforce, such as voluntary and involuntary turnover rates; measures regarding average hours of training per employee per year; information regarding human capital trends, such as competitive conditions and internal rates of hiring and promotion; measures regarding worker productivity; and the progress that management has made

with respect to any objectives it has set regarding its human capital resources? Would providing specific examples potentially result in disclosure that is immaterial and not tailored to a registrant's specific business? Would not including such examples result in a failure to elicit information that is material and in some cases comparable across different issuers?

We support enhanced human capital reporting but recommend principles-based disclosure that does not include specific examples of measures or objectives that may be material. As noted above, companies and investors might view these examples as mandated disclosure even if it is not appropriate for all companies, which could result in disclosure that is irrelevant and potentially misleading.

Given the value of the human capital asset, investors should be informed about what an organization is doing with respect to HCM. And as rapid technological change and business transformation creates the need for workforce transformation, business leaders must think ahead about what the change involves and how they can best achieve it. Investors need to know that a solid, evidence-based workforce strategy is in place. However, because of the highly contextual nature of HCM, what is best for one organization may be ineffective for another. Therefore, requiring disclosure of a simple, standardized set of human capital metrics could actually be counterproductive to the Commission's intent. We recommend the SEC adopt a system of human capital reporting that recognizes these differences and avoids a one-size-fits-all approach.

What would be best, in our opinion, is a reporting mandate that requires organizations to articulate the process by which they are determining their workforce strategy, how they know and determine that their workforce strategy is the right one for their business, and what kinds of data they are relying on to inform their strategy and monitor its effectiveness. Such an approach would serve the interests of investors while avoiding the serious pitfalls of standardized metrics.

Human capital reporting should provide information that investors can use to determine whether the organization is securing the right workforce — the right mix of skills, capabilities, and experience — and whether it is managing that workforce in a way that drives productivity. Investors need some knowledge about the methods and processes companies use to ensure human capital is being effectively managed as an asset.

Critical disclosures about a company's methods and processes for workforce optimization and risk mitigation might include the following:

1. Does the organization have in place an explicit workforce strategy that defines the talent requirements necessary to achieve strategic goals and a set of mutually reinforcing management practices to ensure this talent is secured and productively managed?

2. What are the core elements of this workforce strategy?

3. On what is this workforce strategy based? Specifically, what kind of quantitative and qualitative information is management relying on to inform its workforce decisions?

4. What measures are in place to track whether the strategy is being executed effectively and hold executives and line leaders accountable for results?

5. Does the organization have in place a disciplined workforce planning process to identify looming talent gaps and other risks associated with business or technological change?

6. On what data sources and methods does the workforce planning process rely to identify and measure potential talent gaps? Specifically, how does the organization forecast future talent needs? How does it assess the ability of the internal or external talent supply to meet those talent needs?

7. Does the organization have a plan to mitigate any risks identified?

Mercer's recommendation: *We recommend the Commission not include other non-exclusive examples of measures or objectives that may be material to an understanding of a company's business. Instead the final rule should require companies to explain the process they use to determine their workforce strategy, how they know it is right for their business, and the types of data they rely on to monitor its effectiveness.*

IV. 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 believe requiring companies to disclose the number of employees as a range is sufficient to help investors understand a company's human capital asset. We do not believe that the specificity of disclosing the exact number of a company's employees is necessarily material to investors. In today's economy, employees are increasingly mobile and there is significant variety in the status of employees. Companies rely on part-time workers, consultants, and independent contractors, which may make year-over-year comparisons difficult and comparisons among companies meaningless.

Mercer's recommendation: *The final rule should allow companies to disclose a range of the number of workers in lieu of an exact number.*

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Thank you for the opportunity to comment on the Proposing Release. Let us know if you have any questions or comments.

Regards,

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