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Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Comment Letter on File Number S7-11-19; Proposed Amendments to Regulation S-K.

Dear Ms. Countryman:

Willis Towers Watson's Talent & Rewards business appreciates this opportunity to provide our comments to the Securities and Exchange Commission ("Commission") on its proposed amendments to 17 CFR 229.101 ("Item 101"), ("Regulation S-K") under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). Our comments focus mainly on the proposal to amend Item 101(c)(2), "Description of the business," and particularly proposed paragraph (c)(2)(ii), as it pertains to a "registrant's human capital resources."

Willis Towers Watson is a leading global professional services company that employs approximately 45,000 people worldwide, over 14,000 of whom provide human capital consulting services to clients that include 89% of the Fortune 1000 largest publicly-traded companies in the U.S. Our Talent & Rewards ("T&R") business provides advice, data, software and products to address clients' total rewards and talent issues. Within our Rewards line of business, we address both executive compensation and broad-based rewards. Our Talent line of business offers services focused on surveying employees and designing and implementing talent management programs and processes to support the employee experience. This helps companies attract and deploy talent, engage them over time, manage their performance, develop their skills, provide them with relevant career paths, communicate with them and manage organizational change initiatives.

Summary of Our Comments:

We applaud the Commission's recognition that, for many publicly-traded companies, providing shareholders insights into deployment, management and utilization of human capital resources, depending on the circumstances, can be important to an understanding of the business as a whole, or the operation of a segment of the business. We also believe it is a key component in helping investors assess the value of a business and provide relevant information for investment decisions. We strongly support the purpose behind the proposal to include human capital resources as a listed disclosure topic under Item 101(c) and largely agree with the proposal's approach.

Our views and comments can be divided into the following subject summary:

1. **Disclosure Should be Based on Materiality:** We agree with the notion that a disclosure regarding human capital resources should be included under Item 101(c) as a listed disclosure topic, if material to an understanding of all or a portion of the registrant's business. We believe that how public companies manage their human capital can correlate with success and, depending on the circumstances, may be material.

2. **Proposed Amendment to Item 101(c)(2)(ii) Should be Reworked and Human Capital Should be Defined:** We have provided a suggested definition for the term "human capital" that is

descriptive of its function without being constricted into one that focuses simply on numerical or financial measurement. We also provide suggested changes to the language of the proposal so that the final rule will not be seen as encouraging disclosure of outcome-focused measures that we are concerned will revert to being boilerplate and unhelpful to investors.

3. **Non-exclusive Examples Should be Included:** We would encourage the Commission to adopt separate guidance that provides a non-exclusive list of examples that companies may want to consider in providing disclosure to help shareholders better understand how human capital is managed. The Commission should also be clear that the inclusion of an item on the list should not, in any way, be considered a presumption or an indication that the Commission believes the item is or is likely to be material. We detail below why some of the items in the examples listed in Questions 23 and 24, and those we have added, can be relevant to shareholders as indicators of management's focus on human capital management, while others may be less relevant to shareholders. Regardless of whether the Commission expands its list to those we suggest below, we do not believe having non-exclusive examples will compel companies to disclose all or any items within the examples if the company concludes they are not material.

4. **Disclosure Regime Should Not Promote Comparability:** Closely aligned with the prior point, we do not believe the purpose of these disclosures would be to provide information to promote comparability across different issuers – every issuer is different. This is because, as the proposed regulation notes, the way in which each company's management defines and measures human capital related objectives necessarily varies widely. Potential differences include, but are not limited to, size of the organization, number of employees, industry, location and employment model. The Commission should state affirmatively that the disclosure is not intended to promote comparability.

Detailed Discussion:

As human capital consultants, our experts are well-grounded in helping companies make the determination of how management of human capital resources can help enable the success of the organization. The sections below provide our comments on the rule and our insights on how management of human capital can be important to corporate success.

1. **The Standard of "Materiality" - Proposed Amendment to Item 101(c)(2), "Description of the business,"**

Before responding to the questions raised in the proposed regulations, we wanted to offer our views on the proposed regulatory language that would amend Item 101(c)(2), "Description of the business":

> *(c) Description of business.*
> *(2) Discuss the information specified in paragraphs (c)(2)(i) and (ii) of this section with respect to, and to the extent material to an understanding of, the registrant's business taken as a whole, except that, if the information is material to a particular segment, you should additionally identify that segment.*

The theme of our comments is that every company will differ in how they would view the issue of materiality, and we believe the Commission correctly has chosen to leave the decision about the need for disclosure to the companies themselves. We concur with the Commission's statement in the preamble to the proposal, that "emphasizing principles-based disclosure may allow a registrant to more effectively tailor its disclosure to provide the information about its specific business and financial condition that is material to an investment decision." The focus on being material to an investment decision for investors is the correct standard to be applied, and we agree that prior statements made by the Commission, as cited in Footnote 11 of the preamble, should be considered by companies in making this determination.[1]

We would note that establishing a "materiality" standard as a threshold for disclosure, by its nature, means that companies must have a basis for making that assessment. This naturally will encourage companies to consider how they will measure the use and deployment of their human capital resources to help make this determination, which is something that we continue to advocate for in our consultations with clients.

2. **Proposed Amendment to Item 101(c)(2)(ii) Should be Reworked and Human Capital Should be Defined**

The Commission has proposed that Item (c)(2)(ii) would be amended to provide:

> *(ii) A description of the registrant's human capital resources, including in such description any human capital measures or objectives that management focuses 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).*

If companies are ultimately required to make disclosures regarding their human capital resources, such an exercise would be a matter of first impression, as human capital resource disclosures don't exist currently in Regulation S-K. The Commission recognized that companies may need more guidance on how this determination should be made in its preamble when it asked: "Should we define human capital? If so, how?"

Our answer is yes. The definition we have developed for human capital avoids a focus on items that are traditionally thought of as measurable by human resources departments, and instead focuses broadly on the workforce as individuals and as a group. We propose defining human capital as "The knowledge, skills, competencies and other attributes in individuals or groups of individuals acquired during their life and used to produce goods, services or ideas." The focus of our definition is most decidedly worker-centric, although it can be reflected in metrics that are subject to quantification and disclosed by companies.

We are of the view that the proposed parenthetical referencing "measures or objectives that address the attraction, development, and retention of personnel" describes a fairly narrow set of outcomes that would not provide investors a useful picture about how a company manages its human capital resources. We suggest deleting it. Our concern is that companies may simply determine that, if this is the only parenthetical phrase included in the rule, these are the exclusive metrics that would need to be disclosed, so that these items would tend to be those companies deem to be material. We don't believe disclosure of these outcomes would be useful for investors, on their own, because they provide little

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[1] Footnote 11 cites to:

- *Commission Guidance Regarding Disclosure Related to Climate Change*, Release No. 33-9106 (Feb. 8, 2010) [75 FR 6290 (Feb. 8, 2010)] ("Climate Change Release") at 6292-6293 (reiterating that information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision, or, put another way, if the information would alter the total mix of available information);
- *Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers*, Release No. 33-7558 (July 29, 1998) [63 FR 41394 (Aug. 4, 1998)] at 41395 (stating that our disclosure framework requires companies to disclose material information that enables investors to make informed investment decisions).

insight into whether a company does a good job of human capital management. As noted, they are after-the-fact measures rather than being leading indicators of future results. Finally, we would observe that these terms have become boilerplate language that is used and reused in the executive compensation realm that tend not to be very revealing when companies get around to describing precisely how pay programs engender these results.

We do not believe that disclosure of certain metrics referenced in the parenthetical would be illuminating to investors. For example, measuring retention/turnover easy to quantify but conveys little qualitative information about whether that is a net positive or negative attribute for that organization – some may want increased turnover rates to show a focus on bringing in new ideas from the outside. Depending on the circumstances, a better measure could be understanding turnover versus a specified target, as well as, determination of the costs of turnover, something that is being actively measured by human resources functions.

We would say that the term "personnel" is out of favor with human resource professionals, and we would suggest instead a reference to "talent," if he Commission retains the parenthetical. Companies have many different structures by which they manage how work gets done, whether it be via employees, contractors or other gig economy workers, and some work part-time, full-time, as needed, seasonally, etc. The more inclusive term "talent" would be more relevant.

3. **Non-exclusive Examples Should be Included**

We would encourage the Commission to adopt guidance that provides a non-exclusive list of examples of the types of measures or objectives that companies may want to consider disclosing that can help shareholders better understand how human capital is managed. The Commission should also be clear that the inclusion of an item on the list in the guidance should not, in any way, be considered a presumption or an indication that the Commission believes the item is or is likely to be material. Companies should be free not to disclose any, or all, of these measures if they conclude the items are not material. With those statements included in the final rule, we don't believe that providing specific examples would potentially result in disclosure that is immaterial and not tailored to a registrant's specific business.

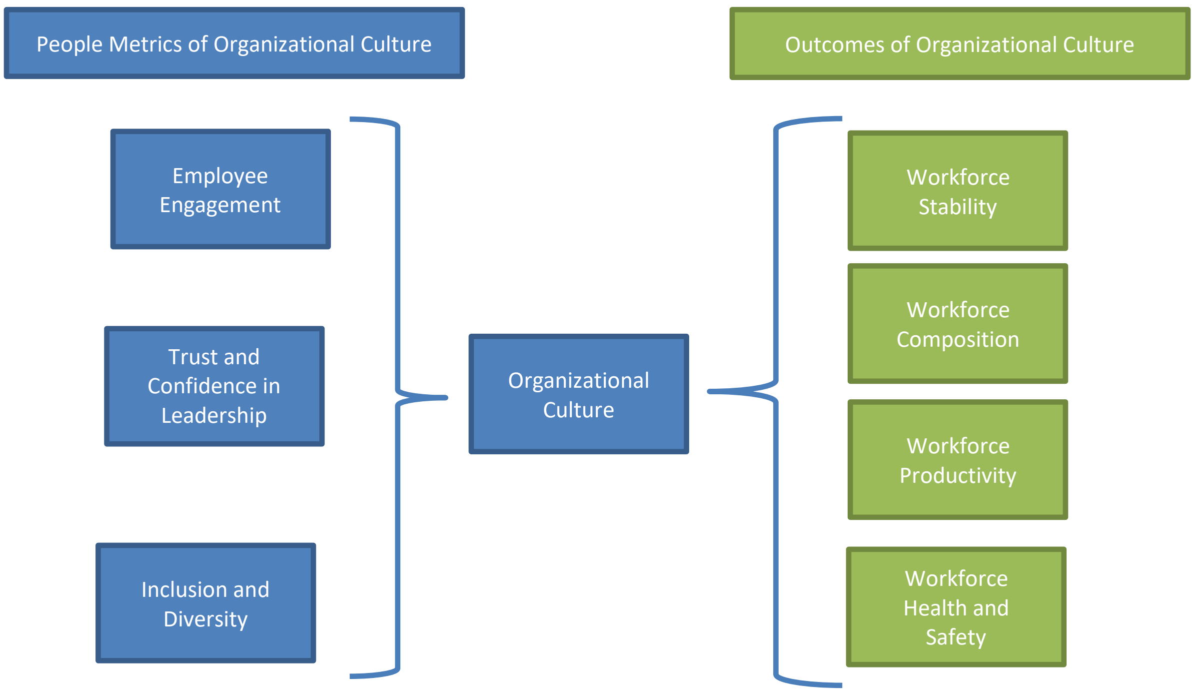
We recognize the fact that the Commission asked two questions regarding potential non-exclusive examples (Questions 22 and 23) that would be appropriate for companies to disclose about its human capital management that reflect public input it has received from two sources: the "Human Capital Rulemaking Petition" and letters[2] and the "Recommendation of the Investor Advisory Committee Human Capital Management Disclosure."[3] Each of these sources has provided the Commission with guidance on how these groups would think about human capital as a resource, each with a different set of recommendations.

In line with our discussion above, we don't agree that the best way for investors to understand management of their human capital resource is solely through granular disclosure of items that can be measured numerically. We view these measures as organizational outcomes that are influenced by how talent experiences the organization's every day culture.

[2] Rulemaking petition to require registrants to disclose information about their human capital management policies, practices and performance, File No. 4-711 (July 6, 2017), available at https://www.sec.gov/rules/petitions/2017/petn4-711.pdf and related comments available at https://www.sec.gov/comments/4-711/4-711.htm.
[3] The Investor Advisory Committee recently recommended that the SEC take measures to improve the disclosure of a registrant's human capital management. *Recommendation of the Investor Advisory Committee Human Capital Management Disclosure* (March 28, 2019), available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf.

The following diagram depicts how companies we have worked with think about understanding their organization's culture, with the left side reflecting measurable contributions to culture, while the right side reflects what the Commission and commenters have described as measurable outcomes that result from that culture. This isn't to be viewed as a balanced scale, however. Nor should this diagram be viewed as the exclusive manner by which these analyses are conducted.

Each portion of the diagram could provide items for a non-exclusive list of examples for companies to consider.



I. **People Metrics to Measure the Employee Experience:**

As we work with companies, many are interested in obtaining a better understanding of their corporate culture, as this can often help them understand their success in managing human capital resources. We've noted above there are several metrics by which companies can make assessments of their corporate culture, which we discuss below. These metrics, which are granular and sometimes subjective, may not be material to a particular company's investors; our point is not to argue that they are. However, some companies may view them as helpful to understanding and improving human capital management. As a result, our view is that they could be helpful to include in the Commission's list of non-exclusive examples.

A. **Employee Engagement:**

Willis Towers Watson has been studying employee engagement — and the organizational elements that drive it — for decades, and we work with organizations across industries and around the world to measure and improve it. This is an item that was noted by the Commission in the preamble to the proposal, and we recommend it be included in any non-exclusive list contained in Commission guidance.

In our most recent publication on this issue,[4] we discuss the fact that companies can readily correlate high employee engagement with better financial metrics. For example, in a three-year study of 41 global companies, we found that operating margins improved nearly 4% on average in organizations with high employee engagement levels and declined about 2% in those with low engagement levels. These results have been corroborated by other studies.

Because of evidence like this, measuring engagement has become more prevalent in how organizations are managing their human capital priorities. The engagement metric appears on business scorecards in many organizations as a measure of human capital performance. Numerous companies use increases in engagement as specific goals for the CEO and his or her direct reports. While high levels of employee engagement can directly correlate to better financial results for companies in a "steady state," those that face fluctuating economic trends, as well as changes in their business operations, staffing models, leadership and the like may find their employees are ineffective despite being engaged.

The above discussion illustrates that whether this item is material for a particular company will depend on their circumstances. So that how and whether that company would report on employee engagement naturally should be up to them.

B. **Trust and Confidence in Leadership**

Our position is that perceptions about company leadership can impact the long-term stability of an organization. While questions about confidence in leadership can be an important factor in determining high levels of "employee engagement,"[5] we view this as a separate category that can reflect leadership's role in cultivating and curating organizational culture. Talent perceptions on the following issues help companies assess trust and confidence in leadership:

- Do they view management as behaving ethically and that they cultivate an ethical culture?
- Does management promote a culture of safety?
- Do leaders trust workers (i.e., are workers empowered to: (a) challenge ideas, (b) make suggestions, (c) solve problems at the lower level, etc.)?
- Does management exhibit good communications skills (listening and sharing)?

Unfortunately, employees give their senior leaders low marks on many of these questions.[6] Roughly half or fewer say that senior leaders at their organization are doing a good or very good job of growing the business (52%), managing costs (47%) or developing future leaders (39%). Among the next generation of leaders, just 46% say that senior managers are doing a good or very good job of developing future leaders.

Less than half of employees report that the senior leadership in their organization has a sincere interest in employee wellbeing (44%) or that they have trust and confidence in the job being done by the senior leadership of their organization (48%). Only half report that they believe the information they receive from senior leadership. We conclude that many employees are not ready to follow their current leaders and do not have great confidence in the next generation of leaders.

Companies that perform surveys of worker perceptions in this area can help leaders become more effective in connecting people to the organization's priorities and in creating organizational cultures that

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[4] Willis Tower Watson Perspective, *The power of three: Taking engagement to new heights*, (May 7, 2019) https://www.willistowerswatson.com/-/media/WTW/Insights/2016/02/willis-towers-watson-the-power-of-three.pdf

[5] 2016 Global Talent Management and Rewards and Global Workforce Studies, https://www.willistowerswatson.com/en-US/Insights/2016/09/employers-look-to-modernize-the-employee-value-proposition

[6] Supra

are more collaborative, transparent and productive. The results of these studies may be material to company investors.

C. **Overall Inclusion & Diversity**

Our position is that inclusive and diverse company cultures are often more innovative, collaborative, transparent and productive. In fact, our research of the 41 high-performing companies demonstrates that when employees have a voice and feel included, it can be a key differentiator of high performance.

- Diversity is the full range of differences and similarities of talent in an organization — both visible and invisible. These can be differences in thinking, communication styles, race, gender and gender expression, ethnicity, religion, sexual orientation, disability, generation and national cultures. We know from our most recent research[7] that diversity is and will continue to be a top priority for employers. In fact, 89% of organizations will focus on efforts to improve the balance of gender, race, ethnicity, sexual orientation, disability, veteran status and other employee demographics in the coming three years.

- Inclusion is a behavior — as a leader or manager, it's about recognizing and valuing the different perspectives and backgrounds that each individual brings to the table and also providing an equal experience at work for everyone. Our research[8] identified the importance of psychological safety and wellbeing, both contributing to an inclusive workplace.

    - 79% of senior executives believe their organizations encourage employees to speak up, compared to only 51% of employees who feel the same.
    - 86% of senior leaders believe they have a sincere interest in their employee's wellbeing, compared to only 50% of employees who believe senior leaders have an interest in their wellbeing.

Organizations are taking steps to close these gaps between leadership and worker perceptions to help create more inclusive workplaces because employees are generally more likely to stay at a company and approve of senior leaders when they view a company as inclusive, which leads to higher productivity. Our view is that diversity brings in new perspectives that drive innovation by celebrating the strengths and differences of each talented individual.

And, an inclusive environment can bring together strong teams that perform at a higher level because they work better together. Our research demonstrates a correlation where employees who believe their company supports diversity and equal opportunity are more likely to hold leaders in the company in high regard and be more engaged in their day-to-day work.[9] In addition, organizations expect to nearly double their inclusion efforts to improve elements like psychological safety (e.g. *People can speak up without fear of negative consequences*) in the next three years (91%) compared to their efforts over the last three years (50%).[10]

Key methods by which diversity and inclusion can be measured include:

- Gender and Ethnic representation overall and in leadership roles
- Recruiting and career progression that reflects an increasingly diverse pipeline and organization
- Psychological safety measures (safe to speak up at work)

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[7] 2019 Willis Towers Watson Workplace Dignity Survey
[8] Supra and 2019 Willis Towers Watson Global Benefit Attitudes Survey
[9] Supra at Footnote 5.
[10] Supra at Footnote 7.

- Emphasis on Minority partners

II. Organizational Outcomes That are a Consequence of Culture

In this section, we will discuss our views on those measurable organizational outcomes that we would encourage the Commission to consider including in its non-exclusive examples. We concur that the categories of information outlined in the Human Capital Rulemaking petition, summarized in a footnote to the proposed rule,[11] should be considered by the Commission for any non-exclusive list. However, as we discuss below, we would encourage the Commission to emphasize that these disclosures should be inwardly focused for companies, and that any disclosure should clarify that these disclosures will be different for every company.

We discuss each of those that are important in the following, where we also discuss those we would advise the Commission to remove from the final rule:

a. **Workforce Stability (rather than Turnover)**: We believe workforce stability may be important to organizations, both from its negative impact on culture and its financial cost. Voluntary and involuntary turnover rates are one aspect of what is being measured, although the ultimate metric that may be more important is the cost of turnover to the company, which will be measured differently and can vary significantly for each company. Some companies may measure this replacement costs by tallying costs of lost productivity, hiring cost and training costs as a percentage of annual compensation.[12]

   For example, our most recent research reflects that, at the senior manager/executive level, the cost of turnover equals 74% of annual compensation. Given that 31% of senior level managers are at risk of turnover, the total value at risk due to senior managers' turnover is 23% of the total annual compensation. This value varies by job level and by organization — companies farther along on the modernization journey exhibit characteristics that can lower these costs — yet for some organizations it represents a significant level of productivity and financial value at risk.

b. **Workforce Development (rather than Hours of Training):** We believe an example that focuses solely on a numerical depiction of hours of training will not help to illuminate investors on whether the company does a good or bad job on workforce development. This is only one minor indicator of how skills are being developed by the organization. Workforce development is a better concept to disclose, with a major subset being Career Development and Advancement.

   Based on our research, career advancement opportunities are among the top three drivers of attraction and retention globally. Yet over half of employees (54%) say that career advancement opportunities have remained the same over the past 12 months. Only 43% of employees think that their organization does a good job of providing advancement opportunities. In fact, over 40% of employees think they need to leave their organization to advance their careers.[13]

c. **Worker Productivity:** Companies can find worker productivity is something that is extremely difficult to measure, so that the default tends to be the use of measures like return on cost of workforce, profit/revenue/value added per employee. Our view is that productivity is an aspect of

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[11] *See* Human Capital Rulemaking Petition, *supra* note 183 (suggesting that the key categories of information are: workforce demographics; workforce stability; workforce composition; workforce skills and capabilities; workforce culture and empowerment; workforce health and safety; workforce productivity; human rights commitments and their implementation; workforce compensation and incentives).

[12] See page 7 of Footnote 8, supra

[13] Supra at page 20.

the employee experience that also can be measured qualitatively, as something separate than financial performance. An example that notes the different manner by which productivity can be measured, and might be disclosed if material, aligns with the approach we see companies using in our consulting engagements.

d. **Worker Health and Safety:** We agree these measures can be important to track for many organizations, so much so that, in some cases, we see these items being used as performance metrics in executive pay programs. We noted earlier that to properly assess employee engagement, a measure of sustainable engagement would be the extent to which a company provides workers a healthful environment that help sustain high energy levels. This goes beyond simply providing for worker safety, with the focus being on workers' sense of wellbeing on the job, influenced by establishing clear priorities, effective teams, respectful colleagues and a balance between performance expectations and job pressures. Positive wellbeing generates energy and supports sustained effort. Core dimensions of wellbeing include emotional, physical, social and financial employee perceptions.

e. **Number and Types of Employees:** We agree that a disclosure of the number and types of employees, including the number of full-time, part-time, seasonal and temporary workers, should be encouraged only where its disclosure is material to an understanding of the company's business. Our view is that in the normal course of business, it may be the case such disclosure would not be material. In contrast, investors may find this disclosure helpful when a company is in the throes of a big layoff or some sort of technology-driven change in their business that changes their worker levels in significant and material ways.

f. **Human Capital Trends:** We don't believe that a disclosure that would compare human capital costs to those at competitors would be useful because there is no uniform standard by which these are measured. We would be concerned this causes misleading discussions about how a company may appear to have lower recruiting costs, for example, when this data likely is not comparable. As a leading researcher in this field, we can attest to how difficult it can be to benchmark your human capital costs against the competition.

4. **Disclosure Regime Should Not Promote Comparability:**

We do not believe the purpose of these disclosures would be to provide information to promote comparability across different issuers – every issuer is different. This is because, as the proposed regulations notes, how each company's management defines and measures human capital related objectives necessarily varies widely.

The Commission should articulate this concept in the final regulations, consistent with that adopted when the Commission finalized the CEO Pay Ratio regulations in 2015.[14] Investors should not be encouraged to make investment decisions based simply on comparisons of statistical measures like headcount or turnover rates that are not put into the proper context, so we would ask the Commission to avoid finalizing a rule that promotes discloses to be used as simple benchmarking exercise.

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[14] Consistent with this understanding of the Congressional purpose of Section 953(b), we believe the final pay ratio rule should be designed to allow shareholders to better understand and assess a particular registrant's compensation practices and pay ratio disclosures rather than to facilitate a comparison of this information from one registrant to another. As we noted in the Proposing Release, we do not believe that precise conformity or comparability of the pay ratio across companies is necessarily achievable given the variety of factors that could cause the ratio to differ. Consequently, we believe the primary benefit of the pay ratio disclosure is to provide shareholders with a company-specific metric that they can use to evaluate the PEO's compensation within the context of their company. **Release Nos. 33–9877; 34–75610, 80 Federal Register 159, page 50106**

Conclusion:

We would like the thank the Commission for its proposal to expand Regulation S-K so that companies are encouraged to consider whether disclosures of human capital resources are material to investors. Please contact Steve Seelig at [redacted] if you have any questions or need further information regarding the substance of our comments.

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