21 December, 2019

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 Workforce Disclosure Initiative (WDI), to provide comments on the Securities and Exchange Commission's proposed amendments to Regulation S-K items 101, 103, and 105. We welcome the opportunity to provide comments on this important issue.

WDI is a project managed by ShareAction. ShareAction is a UK-based responsible investment NGO.

The WDI is supported by a growing signatory group of 138 investor signatories with over $14 trillion in assets under management. The investor group includes many of the largest asset managers and asset owners in the world, including 20 US institutional investors. The WDI exists to meet investor demand for human capital information.[1] The WDI sends an annual request for data to globally listed firms. Together the signatory group represents a community of investors who have to date been underserved by current levels of corporate disclosure on human capital despite it being critical to informed decision making.

(#12, #13) We commend the Commission for the timely review of the rules and in particular for its addition of human capital related disclosures. As the Commission states, the intended purpose of the review is "to improve these disclosures for investors, and to simplify compliance efforts for registrants. Specifically, the proposed amendments are intended to improve the readability of disclosure documents, as well as discourage repetition and disclosure of information that is not material."

With this in mind, we express concern about the principles-based approach which would allow companies significant flexibility in the information they select for disclosure. We also raise concerns over the use of a subjective materiality threshold for determining disclosure since the Commission already requires registrants to report material information. Removing the rules based approach could have the effect of reducing the amount of information that is disclosed and available to investors. Given the opportunity, many companies continue to exclude certain material human capital topics from their public disclosure such as the number of employees and turnover. It is therefore problematic to rely on a registrant's management to evaluate the significance of this information given the current poor state of disclosure on human capital topics.[2]

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[1] It should be noted that the WDI does not use the term 'human capital' and instead employs the term 'workforce' to denote all the people working within a company's direct operations and supply chain, who are involved in the delivery of the company's business activities and therefore responsible in some way for its success. We also consider the term 'workforce' more conducive for understanding the impacts of policies and practices on workers themselves.

[2] Bernstein, A., Beeferman, L., Corporate Disclosure of Human Capital Metrics, Pensions and Capital Stewardship Project Labor and Worklife Program, Harvard Law School, (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3134164

The WDI has demonstrated that despite significant investor support for improved disclosure on a number of human capital topics, U.S. companies lag behind their UK and European counterparts in human capital disclosure. In 2019 the WDI team actively engaged with 390 companies, of which 118 submitted a workforce disclosure.[3] Of the 107 U.S. companies the WDI approached, just 10 (9%) disclosed human capital information. In contrast, of the 181 European companies approached, 90 companies (50%) disclosed some human capital information. This suggests that in the U.S., current management approaches toward human capital are not commensurate with the materiality of the topic. In addition, we have found companies under-report information on material issues such as governance of workforce issues[4] or diversity and inclusion.[5] We have also found that in general, companies lack robust processes in place to identify and manage workforce risks and opportunities. For instance, companies that report talent retention as a risk often then report little or no information on turnover, training and development.[6] We therefore consider it essential that companies are required to report human capital information to evidence their effective management of these risks and opportunities. A principles based approach risks entrenching existing deficient management and disclosure practices, and exposes investors to risks in the absence of important information needed to make informed investment decisions.

While we agree that every company will differ in its overall business and financial circumstances, and that registrants should be able to tailor disclosure to provide information about specific business and financial conditions – we do not consider a prescriptive approach as prohibiting the disclosure of such information. Indeed, a *combination of the two approaches* can serve to provide investors with a more complete picture of a company's human capital management approach; prescriptive measures would contribute toward institutionalising the disclosure of a set of core material human capital topics and create a level playing field for registrants, while principles based measures would allow registrants the opportunity to provide more nuanced and context specific disclosure.

Prescriptive line-item requirements also offer the advantage of providing comparable and consistent data. This is important in the context of enabling investors to make efficient, well-informed and accurate assessments of their holdings across their portfolios. Investor signatories to the WDI seek information in a consistent and comparable format precisely because the current nature of corporate reporting is left to the discretion of management and as a result produces highly varied, inconsistent and unbalanced reporting. Investor signatories to the WDI value the framework's use of a combination of prescriptive quantitative metrics alongside qualitative narrative metrics which enables investors to quickly access the information they need for decision making.[7] Effective investment decision making requires access to both types of information; one without the other would result in an incomplete or inaccurate representation of a company's approach to human capital. A principles based approach alone would undermine the Commission's goal to "to improve these disclosures for investors… and improve the readability of discloser documents."

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[3] In 2019, the WDI invited 750 globally listed firms to provide human capital disclosure. Due to capacity limitations, the WDI team actively followed up with 390 companies.

[4] Workforce Disclosure Initiative, 2018 Findings Report, 2018, https://shareaction.org/wp-content/uploads/2019/03/WDI-2018-Findings-Digital.pdf, p.11 and Workforce Disclosure Initiative, Pilot Year Report, 2017, https://shareaction.org/wp-content/uploads/2018/04/WDI-Pilot-Year-Report.pdf, p.31

[5] Workforce Disclosure Initiative, 2018 Findings Report, 2018, https://shareaction.org/wp-content/uploads/2019/03/WDI-2018-Findings-Digital.pdf p.8

[6] Workforce Disclosure Initiative, 2018 Findings Report, 2018, https://shareaction.org/wp-content/uploads/2019/03/WDI-2018-Findings-Digital.pdf, p.7 and Workforce Disclosure Initiative, Pilot Year Report, 2017, https://shareaction.org/wp-content/uploads/2018/04/WDI-Pilot-Year-Report.pdf, p.45

[7] As one investor signatory to the WDI states, "Investor appetite for ESG data is growing, and for social data in particular. We want to access reliable, relevant and comparable data on companies' workforce, their suppliers and sub-contractors, and the WDI offers a great opportunity for us to access this data." See https://shareaction.org/wdi/.

(#22, #23, #24) As the Commission acknowledges, companies no longer rely solely on tangible assets to derive value. Intangible assets such as human capital are increasingly an important resource and driver of performance, and so it follows a significant source of risk if poorly managed. We consider this to be true for *all* businesses, irrespective of industry and size. As such, we believe that all companies should disclose a core set of human capital measures as part of their S-K filings.

The WDI requests disclosure on a universally-applicable set of indicators from companies across all sectors and business types.[8] It requests information on human capital topics including employees, contingent workers, the supply chain and human rights. The WDI framework is intended to provide investors with a holistic understanding of how a company is managing its workforce. It recognises that human capital risks occur in all aspects of the company's business from the direct operations to those less visible and further down the value chain. These risks are more pronounced in the context of rising outsourcing and an increasingly fissured workplace.[9] Based on our experience we know that it is useful, indeed critical, to ask companies to report on specific human capital metrics in order to prompt an internal process of assessment and reflection that may not take place otherwise. In the three years since the WDI began requesting workforce disclosure, we have seen companies across all sectors and industries steadily improve their disclosure of human capital information and generate benefits from doing so, such as gaining deeper insight into the management of human capital, and identifying cost efficiencies across departments which are ultimately beneficial to the long term health of the company. We have seen for instance, improvements in the way companies report information regarding the company's workforce strategy including workforce risks and opportunities, and how these relate to the company's wider business strategy.[10]

We therefore consider a prescriptive approach an important tool for encouraging companies to disclose information on a core set of measures, and thereby assisting companies to confront the changing nature of value creation and indeed, the world of work itself.

We support *enhancing* the existing requirement to disclose the number of employees rather than removing it. This information is of even greater importance today given registrants' growing reliance on intangible assets, as the Commission acknowledges. The WDI supports the suggested measures set out by the Human Capital Management Coalition (HCMC) Petition and nine categories proposed in its 2017 petition.[11] (It is worth noting, for the purposes of information, that 11 of the WDI's investor signatories are also members of the HCMC). The WDI framework provides specific measures which align with those proposed by the HCMC, and recommends that companies are required to disclose quantitative and qualitative information on composition, stability, development and welfare of personnel since these are material issues for all businesses. We also suggest companies are required to disclose information on their direct operations, specifically the geographic locations of employees, the percentage of full-time vs. part-time employees, the use of temporary employees and independent contractors, employee diversity, employee average tenure and turnover rates, unionization rates. The WDI would also support the disclosure of more granular information on the supply chain.

The Commission's decision will also have far reaching implications both for investors and registrants: With regard investors; we have found through our engagement activities with companies that while many companies collect human capital information, they do not to report it, citing a lack of significant

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[8] The 2019 WDI framework is available here online: https://shareaction.org/wdi/company-resources/ https://shareaction.org/wp-content/uploads/2019/07/2019-WDI-Survey_UPDATED_02.10.2019.xlsx

[9] Weil, D., The Fissured Workplace, (2017), https://www.hup.harvard.edu/catalog.php?isbn=9780674975446&content=reviews

[10] Workforce Disclosure Initiative, 2018 Findings Report, 2018, https://shareaction.org/wp-content/uploads/2019/03/WDI-2018-Findings-Digital.pdf p.7

[11] The Human Capital Management Coalition, Rulemaking petition to require issuers to disclose information about their human capital management policies, practices and performance, (2017), p16. https://www.sec.gov/rules/petitions/2017/petn4-711.pdf

investor demand as the reason. On the contrary, investor demand for human capital information is high and is set to continue to grow – as demonstrated by the investor support for the WDI and the HCMC, and recent legislative changes which require investors to consider non-financial topics such as human capital in their company evaluations.[12] A mandatory requirement by the Commission to disclose human capital information would send a clear signal to the market of the need for this type of disclosure. With regard registrants, the SEC has the opportunity to support U.S. companies keep pace with the evolving corporate disclosure regulation in other markets. This is important both for firms operating in overseas markets as well as for those seeking to gain a competitive advantage. For instance, in the UK public companies are required to disclose the average number of persons employed by the company in the financial year, as part of their annual company accounts;[13] from 2020 under the new Corporate Governance Code companies will be required to report on a number of human capital topics with an emphasis on how the Board considers employee stakeholder voice in corporate governance structures.[14] The UK's Financial Reporting Council (FRC) is also conducting a review into workforce reporting in light of investor demand and a findings report is due in the new year.[15] In Europe, the Non-Financial Reporting Directive (NFR Directive) requires companies operating in EU member states to disclose among other things, information on employee matters, board diversity and human rights.

The Commission notes that many changes have occurred in the capital markets since the Regulation's adoption, including the mix of businesses and their modes of operation. It is also true that there have been significant transformations in society in the last 30 years which have brought about systemic risks associated with inequality and inequity in the U.S. The way companies manage, develop and treat their workers has direct impacts on the wider economy. These changes present material risks and opportunities to the way businesses operate.[16] Economic analyses have shown inequality acts as a drag on the wider economy which has implications for investors with long term investment horizons. The Commission should increase the requirements for disclosure on topics known to contribute to systemic risks such as inequality, rather than endorsing a solely voluntary principles based approach.

[12] UNEP, "EU policy makers achieve political agreement on investor disclosures and ESG", 2019, https://www.unepfi.org/news/industries/investment/eu-policy-makers-achieve-political-agreement-on-investor-disclosures-and-esg/; Financial Conduct Authority, "PS19/13: Improving shareholder engagement and increasing transparency around stewardship", 2019, https://www.fca.org.uk/publications/policy-statements/ps19-13-improving-shareholder-engagement-and-increasing-transparency-around-stewardship

[13] Companies Act 2006, Section 411-I, http://www.legislation.gov.uk/ukpga/2006/46/section/411/2011-09-01

[14] Financial Reporting Council, UK Corporate Governance Code, 2018, https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code

[15] "Investors want to understand the way in which the Board engages with the topic of the workforce, including the inherent risks and opportunities. Such reporting can, for example, outline how frequently the Board considers related issues or if there is a Board or senior manager with responsibility for considering workforce issues. Investors also call for more basic data about the workforce, including the number of people under direct employment, as well as contractors and other elements of the workforce …-how much is invested in training and development initiatives and the levels of staff turnover...-Many investors feel that they are not given enough detail to understand where a company's risks and opportunities in relation to the workforce may lie. Investor expectation is that a baseline level of data will allow them to begin to understand the challenges a company may face, which may then support more strategic information being provided, or other KPIs being monitored around the workforce as a strategic asset." See 'Workforce Reporting', Annual Review of Corporate Reporting 2018/2019, Financial Reporting Council, 2019, p.29 https://www.frc.org.uk/getattachment/b3b6cd43-7ade-4790-959e-3b84d59a7253/Developments-in-Corporate-Reporting-2019-Final.pdf

[16] Principles for Responsible Investment (PRI), Why and how investors can respond to income inequality, 2018, https://www.unpri.org/academic-research/why-and-how-investors-can-respond-to-income-inequality/3777.article#Public_policy_760481

In summary, we support enhanced human capital disclosure and support use of a hybrid approach that utilises both prescriptive rules-based and principles-based disclosure.

The WDI is happy to provide for further elaboration on the above points. Please contact the team below:

Martin Buttle – Head of Good Work - [redacted]
Vaidehee Sachdev – Senior Research Manager - [redacted]
James Coldwell – Investor Engagement Manager - [redacted]

Thank you for your consideration of these important matters and for the opportunity to share our perspective.

Yours sincerely

Martin Buttle, Head of Good Work, ShareAction