October 31, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NW
Washington D.C. 20549-1090

Re: *Comment for the Governance Disclosures Section of Regulation S-K*

We write to submit this letter and the attached July 21st letter to comment on the Governance Disclosures Section of Regulation S-K. The July 21st letter focused on the need for Diversity Governance indicators ("DGI") in an effort spearheaded by Attorney Cyrus Mehri. The letter was submitted by Working Ideal on behalf of itself, Amalgamated Bank, Boston Common Asset Management, the National Women's Law Center and Sleigh Strategies LLC. CtW Investment Group and Public Citizen also join in support of the DGI.

The DGI initiative promotes disclosure of common metrics for companies of greater than 5000 employees as to ensuring diversity in the board and in the workplace. DGI also calls on boards of directors to support diverse candidate pools in the search process and to appoint board level committees on human capital management that would include diversity issues.

We urge the SEC to develop amendments to Regulation S-K that include new disclosure requirements on three Diversity Governance Indicators for publicly-traded companies in the United States employing 5000 or more people:

(1) **Board Diversity:** Disclosure of the specific recruitment and outreach actions taken to expand board diversity and the results, including whether or not candidate slates used to select individuals for open Board positions meet the standard set by the "Rooney Rule" (meaningful interviews with highly qualified candidates that would expand the board's existing gender, racial and ethnic diversity, and any other perspectives important to business growth not currently represented).

(2) **Leadership and Workforce Diversity and Pay Equity:** Greater transparency on core diversity metrics and pay equity practices, including the gender, race, and ethnicity of the highest paid employees on a percentage basis, companywide EE0-1 representation data, disclosure of pay equity audit programs and pay transparency policies, and corporate performance on diversity metrics over time.

(3) **Human Capital Leadership:** Whether any human capital subcommittee of the Board of Directors exists to oversee and drive sustainable change and strategically invest in the employees that constitute a company's most important asset – and if so, the members of

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that subcommittee.

We appreciate your consideration.

Cyrus Mehri

Cyrus Mehri and Pam Coukos

About CtW Investment Group:

The CtW Investment Group works with union sponsored pension funds - as well as public pension funds in which members of CtW affiliates participate, and other funds and interested groups – to enhance long-term shareholder returns through active ownership. These funds have $250 billion in assets under management. CtW's active ownership programs aim to ensure, for example, independent and accountable directors, reasonable executive compensation, and sound environmental, human resource and other business policies.

About Public Citizen:

Public Citizen serves as the people's voice in the nation's capital. Since our founding in 1971, we have delved into an array of areas, but our work on each issue shares an overarching goal: To ensure that all citizens are represented in the halls of power.

For four decades, we have proudly championed citizen interests before Congress, the executive branch agencies and the courts. We have successfully challenged the abusive practices of the pharmaceutical, nuclear and automobile industries, and many others. We are leading the charge against undemocratic trade agreements that advance the interests of mega-corporations at the expense of citizens worldwide.

WORKING IDEAL

July 21, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.W.
Washington, DC 20549-1090

Re: *Business and Financial Disclosure Required by Regulation S-K,* File No. S7-06-16

On behalf of Amalgamated Bank, Boston Common Asset Management, the National Women's Law Center, Sleigh Strategy, LLC, and Working IDEAL, we are submitting these comments on the April 22, 2016, Concept Release on *Business and Financial Disclosure Required by Regulation S-K.*[1] We write in support of expanding the existing required disclosures to cover indicators of a company's commitment to senior management and Board diversity, employee diversity and pay equity, and strategic human capital leadership. We welcome the opportunity to provide input to the Commission as it considers how to update the existing required disclosures to reflect changing economic conditions and market practices.

We believe increased disclosure related to diversity practices and human capital investments will substantially assist shareholders in making informed investment and voting decisions. Investors increasingly consider the Environmental, Social and Governance (ESG) practices of publicly traded companies as highly material information related to profitability, risk management, customer and stakeholder relationships, efficiency and quality. This includes information about diversity governance, metrics, and practices. Existing disclosures are far too limited to provide investors the information they need. Revisions to Regulation S-K provide a unique opportunity to address these shortcomings.

We urge the SEC to develop amendments to Regulation S-K that include new disclosure requirements on three Diversity Governance Indicators for publicly-traded companies in the United States employing 5000 or more people:

(1) **Board Diversity:** Disclosure of the specific recruitment and outreach actions taken to expand board diversity and the results, including whether or not candidate slates used

[1] U.S. Securities and Exchange Commission Concept Release, *Business and Financial Disclosure Required By Regulation S-K*, 81 FR 23915 (April 22, 2016), Release No. 33-10064, 34-77599, File No. S7-06-16, RIN 3235-AL78, available at https://federalregister.gov/a/2016-09056.

to select individuals for open Board positions meet the standard set by the "Rooney Rule" (meaningful interviews with highly qualified candidates that would expand the board's existing gender, racial and ethnic diversity, and any other perspectives important to business growth not currently represented).

(2) **Leadership and Workforce Diversity and Pay Equity:** Greater transparency on core diversity metrics and pay equity practices, including the gender, race, and ethnicity of the highest paid employees on a percentage basis, companywide EEO-1 representation data, disclosure of pay equity audit programs and pay transparency policies, and corporate performance on diversity metrics over time.

(3) **Human Capital Leadership:** Whether any human capital subcommittee of the Board of Directors exists to oversee and drive sustainable change and strategically invest in the employees that constitute a company's most important asset – and if so, the members of that subcommittee.

Strong investments in human capital, and particularly in support of diversity and inclusion, serve as a leading indicator of fairness and equal opportunity in the workplace, which in turn can have positive impacts on quality, efficiency, recruitment and retention, and sustainable long-term financial performance. These three complementary disclosures would provide material information to investors and other stakeholders on practices that can increase shareholder value. Our comments set forth in detail why these specific disclosures are meaningful indicators that will aid investors in fairly assessing a company's financial success.

We note that our comments are particularly responsive to Section IV.F. of the Concept Release and questions 216-223 on business and financial disclosures related to sustainability and public policy. However, pursuant to the Commission's additional invitation in the Concept Release to provide broad input on future directions for Regulation S-K -- including "any other disclosure topics" -- we also address governance disclosures, particularly those related to board member and nominee diversity under Item 407.

Diversity is Good for Business and Material to Investors

Existing research and examples set by leading companies demonstrates that diversity is good for business. A diverse workforce and equitable employment practices, as well as other investments in human capital, are linked to a broad array of benefits, ranging from increased innovation, to decreased cost and risk, to expanding the customer base, to stronger financial performance. For this reason, investors are increasingly interested in understanding a company's commitment to diversity and inclusion.

Diversity Programs and Human Capital Investments Can Yield Stronger Economic Performance

Corporate commitments to diversity and human capital investments are important to successful execution of core business strategies. There are particular positive impacts when

Board of Director membership includes a range of perspectives and backgrounds, including diversity based on gender, race and ethnicity. The Chair of the Commission recently spoke to stakeholders about the clear benefits of Board diversity, based both on her own observations and research findings:[2]

> As a former member of a public company board and its audit committee, I have seen first-hand what the research is telling us – boards with diverse members function better and are correlated with better company performance. This is precisely why investors have – and should have – an interest in diversity disclosure about board members and nominees.

Our own experience and our knowledge of both research findings and practical examples mirrors that of the chair. Diverse Boards and leadership, and overall workforce diversity, supports successful business performance.

For many years, leading companies have recognized the value of human capital – and investments in employees. Social scientists have studied so-called "high performance" organizations, and identified the benefits of treating workers as an essential capital resource in terms of firm performance and shareholder value. From reducing costly turnover to increasing productivity and quality, investing in the workforce through strategic human capital management can pay meaningful dividends.[3] Numerous studies document the relationship between strategic human capital management and corporate profitability.[4] We concur with the UAW Trust's view, in commenting on this Concept Release, that employees are a key corporate asset and that investors need more and better information about human capital to make informed decisions.[5]

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[2] Mary Jo White, Chair of the Securities and Exchange Commission, *Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP and Sustainability,* Keynote Address to International Corporate Governance Network (June 27, 2016), available at https://www.sec.gov/news/speech/chair-white-icgn-speech.html.

[3] *See, e.g.,* Eileen Appelbaum, *Manufacturing Advantage: Why High Performance Work Systems Pay* Off (2000); Haig R. Nalbantian and Anne Szostak, *How Fleet Bank Fought Employee Flight*. Harvard Business Review (April 2004), available at https://hbr.org/2004/04/how-fleet-bank-fought-employee-flight. As companies and HR professionals have become more aware of this relationship, there is increased interest in developing and implementing human capital analytics. *See, e.g.,* Mark L. Frigo and Mark C. Uberhardt, *Human Capital Management: The Central Element of All Risk*, People + Strategy (Winter 2016), available at http://uawtrust.org/AdminCenter/Library.Files/Media/501/About%20the%20Trust/HCM%20Summit/CentralElementofAllRisk_PeopleStrategy.pdf.

[4] Aaron Bernstein and Larry Beeferman, *The Materiality of Human Capital to Corporate Financial Performance*, IRRC Institute and Harvard Law School Labor and Worklife Program Working Paper (April 2015), available at http://www.law.harvard.edu/programs/lwp/pensions/publications/FINAL%20Human%20Capital%20Materiality%20April%2023%202015.pdf (summarizing this research and concluding there is sufficient evidence of materiality to justify taking human capital into account in an investment analysis); Andrew Chamberlain, *Does Company Culture Pay Off?* Glassdoor Research Report (2015), available at https://glassdoor.app.box.com/s/49y1ulkftvbpsbqjgeo1zh3lvijbb9uo (study of large publicly held companies between 2009 and 2014 showed those highly rated by employees outperformed S&P 500 benchmark, while those with low employee satisfaction underperformed).

[5] Meredith Miller, *UAW Trust Letter to SEC on Business and Financial Disclosures Required By Regulation S-K,* File No. S7-06-16 (July 15, 2016), available at https://www.sec.gov/comments/s7-06-16/s70616-130.pdf.

Further, increased workforce diversity in particular can convey substantial benefits and can serve as a competitive advantage. For example, several studies have linked gender diversity and increased innovation.[6] A widely cited study of racial diversity in the banking industry found that it conferred a positive competitive advantage, particularly in organizations pursuing a growth strategy.[7] Other research supports the link between diverse work teams and better outcomes, including improved decision-making, and higher productivity.[8] In short, building a diverse and talented workforce and a positive workplace culture can lead to increased innovation, quality improvements and higher efficiency and productivity.[9]

Inclusion, pay equity and other indicia of equal opportunity also benefit the bottom line by improving recruitment and retention of the diverse talent that companies need to thrive in a global economy and an increasingly multicultural United States. Equal opportunity and workplace inclusion improves the efficiency of labor markets, and economic studies have found that expanding the workforce to include previously under-represented groups generates billions of dollars in positive impact on the national and global economy.[10] Diversity can bring in

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[6] *See, e.g.,* Cristina Díaz-García, Angela González-Moreno, Francisco Jose Sáez-Martínez. *Gender diversity within R&D teams: Its impact on radicalness of innovation.* Innovation: Management, Policy & Practice (2012) (study of R&D teams found a relationship between increased gender diversity and a greater likelihood of "radical innovation"); Sylvia Ann Hewlett, Melinda Marshall and Laura Sherbin, *How Diversity Can Drive Innovation,* Harvard Business Review (Dec. 2013), available at https://hbr.org/2013/12/how-diversity-can-drive-innovation;

[7] Orlando C. Richard, *Racial Diversity, Business Strategy, and Firm Performance: A Resource-Based View*, Academy of Management Journal (April 1, 2000).

[8] Adam Galinsy, et al, *Maximizing the Gains and Minimizing the Pains of Diversity: A Policy Perspective,* Perspectives on Psychological Science (2015), available at http://groups.psych.northwestern.edu/spcl/documents/PerspectivesonPsychologicalScience-2015-Galinsky-742-8.pdf (summarizing research); Katherine W. Phillips, *How Diversity Makes Us Smarter*, Scientific American (2014), available at http://www.scientificamerican.com/article/how-diversity-makes-us-smarter/ (same); Vivian Hunt, Dennis Layton, Sarah Prince, *Diversity Matters,* McKinsey (2015), available at http://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters (same); Lauren Foster, *The Business Case for Diversity,* CFA Institute (2015), available at https://blogs.cfainstitute.org/investor/2015/06/30/women-in-investment-management-the-business-case-for-diversity/; Catalyst, *Why Diversity Matters* (2013), available at http://www.catalyst.org/system/files/why_diversity_matters_catalyst_0.pdf.

[9] While some studies have found a more mixed or complex relationship between diversity and corporate success, substantial evidence supports the benefits of diversity for business, and the best current thinking is focused on how to manage diversity to maximize its positive impact. Galinsky, *supra* note 8; *see also* Michele E. A. Jayne and Robert L. Dipboye, *Leveraging Diversity to Improve Business Performance: Research Findings and Recommendations for Organizations*, Human Resource Management (Winter 2004), available at http://www02.utm.edu/staff/mikem/documents/Diversity.pdf; Iris Bohnet, *What Work: Gender Equality by* Design (2016); *infra* notes 49-51.

[10] Heidi Hartmann, Jeffrey Hayes and Jennifer Clark, *How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy*, Institute for Women's Policy Research Briefing Paper #C411 (2014), available at http://www.iwpr.org/publications/pubs/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy; (equal pay for women adds over $400 billion to national economy); Chiang-Tai Hseih, et al, *The Allocation of Talent and U.S. Economic Growth,* NBER Working Paper (2013), available at http://www.nber.org/papers/w18693 (increasing equal employment opportunity explains 15-20% of wage growth since 1960); McKinsey & Company, *How Advancing Women's Equality Can Add $12 Trillion to Global Growth*

historically underutilized talent, which can then raise overall employee performance.[11] Increasing diversity in leadership can have broader positive impacts on organizational diversity, leading to stronger companywide results.[12]

Further, when companies fail to provide meaningful workplace inclusion, equal opportunities to get hired, or fair pay and advancement on the job, it can prove costly. Workers today have access to far more information about pay and opportunities, thanks to a plethora of websites like Glassdoor and Payscale, and robust social media networks. Talented workers can move to other better and more equitable opportunities, adding unnecessary training and transition costs. Disruptions in the workforce can also affect production output and quality. And failing to support inclusion and equity can mean losing the diverse workforce a company has worked hard to build, forgoing all the economic benefits and higher performance that diversity can bring.

For these reasons, companies often affirmatively seek and promote reputations for diversity and inclusion as competitive advantage -- to build their brand, expand the customer base and increase sales and profits. An inclusive workplace culture and strong commitments to diversity and equity are particularly important to attract and retain a new generation of U.S. workers, who are the most diverse in history.[13] Companies also view diverse talent as a significant benefit in a global economy and an increasingly racially and ethnically diverse United States.[14] Reaching this customer base successfully requires employing people with a wide range of perspectives.

Given these clear workplace benefits, it is not surprising that studies have linked increased diversity and other investments in human capital with stronger financial performance. This

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(2015), available at http://www.mckinsey.com/global-themes/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth.

[11] For example, female brokers have been historically locked out of equal opportunities at Wall Street firms despite strong female performance. Janice F. Madden, *Performance-Support Bias and the Gender Pay Gap among Stockbrokers*, Gender & Society (2012), available at http://repository.upenn.edu/cgi/viewcontent.cgi?article=1034&context=psc_working_papers; indeed, funds managed by women displayed more stability in volatile market conditions. Angela Luongo, *Fund-Management Gender Composition: The Impact on Risk and Performance of Mutual Funds and Hedge Funds*, Fordham Business Student Research Journal (2011), available at http://fordham.bepress.com/cgi/viewcontent.cgi?article=1009&context=bsrj.

[12] Lisa Nishii, Anne Gotte, Jana Raver, *Upper Echelon Theory Revisited: The Relationship Between Upper Echelon Diversity, the Adoption of Diversity Practices, and Organizational Performance*, Cornell University Center for Advanced Human Resources Studies Working Paper No. 07-04 (Jan. 15, 2007), available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1462&context=cahrswp.

[13] U.S. Bureau of the Census American Community Survey data, published in White House Council of Economic Advisers, *15 Economic Facts About Millennials,* (Oct. 2014), available at https://www.whitehouse.gov/sites/default/files/docs/millennials_report.pdf.

[14] A large number of major U.S. corporations made this point about business needs in the global economy and the critical importance of increased diversity in the highly skilled workforce, when asking the Supreme Court to preserve affirmative action remedies in education. *Grutter v. Bollinger,* 539 U.S. 306 (2003).

includes studies showing Board and management diversity is linked to better returns.[15] Investment fund researchers have found that gender diversity on Boards and senior leadership, and even more generally in the workforce, is correlated with higher valuations, better financial results and/or less volatility.[16] While researchers continue studying the parameters of this relationship, substantial evidence supports the materiality of this information to investors.

Finally, having strong diversity performance and proactive practices designed to foster greater diversity and inclusion can reduce risk. Companies with weak diversity records may be more likely to have poor outcomes when sued for discrimination, or may be more vulnerable to government compliance actions that can impose substantial costs. In 2015, the U.S. Equal Employment Opportunity Commission reported obtaining over $525 million in damages on behalf of employees and applicants with employment discrimination claims, including nearly 300 systemic cases.[17] Under the Obama Administration, the U.S. Department of Labor's Office of Federal Contract Compliance Programs has resolved over 500 cases of discrimination by federal contractors, obtaining over $65 million in back pay.[18] These outcomes are not only costly in terms of the money paid out directly, but also have negative impacts on brand and workplace morale.

Investors Increasingly View Diversity Governance Information as Material

The investor community continues to raise the profile of these issues -- through new indexes and measures of corporate gender diversity, and proposals in the United States and globally that expand traditional financial disclosures to include human capital investment. Leaders in the movement to adopt Environmental, Social and Governance (ESG) measures believe that informing investors of a company's commitment to social responsibility is highly material information, and there is good evidence that supports the materiality of diversity and human

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[15] *See e.g.*, Niclas L. Erhardt, James D. Werbel and Charles B. Shrader, *Board of Directors Diversity and Firm Financial Performance,* Corporate Governance, An International Review (2003), available at http://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1005&context=management_pubs; Catalyst, *supra* note 8 (summarizing studies showing link between gender board and senior management diversity and stronger firm financial performance).

[16] Julie Dawson, Richard Kersley and Stefano Natella, *The CS Gender 3000: Women in Senior Management* (2014), Credit Suisse Research Institute, available at https://www.calpers.ca.gov/docs/diversity-forum-credit-suisse-report-2015.pdf (review of 3000 publicly held companies across the globe finds gender diversity on boards and in senior management is correlated with higher corporate valuations and stronger firm financial performance); Morgan Stanley, *Why It Pays to Invest in Gender Diversity* (May 11, 2016), available at http://www.morganstanley.com/ideas/gender-diversity-investment-framework (ranking of 1600 global stocks found those in the top third in terms of the percentage of women in the workforce generated higher equity returns); Linda-Eling Lee, et al, *Women on Boards: Global Trends in Gender Diversity on Corporate Boards*, MSCI ESG Research (November 2015), available at https://www.msci.com/www/research-paper/research-insight-women-on/0263428390 (companies with stronger female leadership generated higher returns on equity and higher valuation).

[17] U.S. Equal Employment Opportunity Commission, *Fiscal Year 2015 Performance and Accountability Report* (Nov. 2015), available at http://www.eeoc.gov/eeoc/plan/upload/2015par.pdf.

[18] Patricia Shiu, Director of OFCCP, *OFCCP at 50: A Progress Report*, U.S. Department of Labor Blog (Sept. 24, 2015), available at http://blog.dol.gov/2015/09/24/ofccp-at-50-a-progress-report/.

capital disclosures.[19] Recent Department of Labor guidance reflects the understanding that in some contexts, ESG factors may impact risk and return and be legitimate considerations for fiduciaries determining the "economic merits" of an investment choice; further, even in cases where ESG factors are not economically superior, they may be an important relevant element in investment choices between alternatives with similar financial returns.[20] This "Triple Bottom Line" approach supports increased investment in companies with high performance human capital and it will also move our nation toward greater social and economic progress.

New investment vehicles focus specifically on companies with stronger diversity performance, particular in terms of gender diversity.[21] Morgan Stanley explains the benefits of its gender equity fund by pointing to evidence that increased gender diversity in the workforce leads to stronger financial performance, including better returns on investment and less volatility.[22] Barclays has an option to target investment to women-led firms,[23] while Bloomberg has consulted with third party experts including the National Women's Law Center to develop an index to rate companies on gender equity for investment purposes.[24] State Street Global Advisors has developed a Gender Diversity Index that includes companies with the highest levels of female leadership relative to their sector.[25]

There are also private certification standards -- for example, EDGE is a global gender equity in the workplace certification standard that considers the level of women in leadership, pay equity and inclusive policies and culture.[26] Publications such as Working Mother, Diversity, Inc. and Great Places to Work also rate companies on human capital, diversity and inclusion, identifying the highest performers in annual lists.[27]

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[19] Bernstein and Beeferman, *supra* note 4; *see also* Cyrus Mehri, Andrea Giampetro-Meyer and Michael B. Runnels, *One Nation, Indivisible: The Use of Diversity Report Cards to Promote Transparency, Accountability, and Workplace Fairness,* Fordham Journal of Corporate and Financial Law (2004), available at http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1167&context=jcfl; Note, *Should the SEC Expand Nonfinancial Disclosure Requirements?* Harvard Law Review (2002).

[20] U.S. Department of Labor, Employee Benefits Security Administration, *Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering Economically Targeted Investments,*80 FR 65135 (October 26, 2015),RIN 1210-AB73, available at https://www.federalregister.gov/articles/2015/10/26/2015-27146/interpretive-bulletin-relating-to-the-fiduciary-standard-under-erisa-in-considering-economically.

[21] Jenna McGregor, *Barclays Joins the Bet on Women-Led Firms,* Washington Post (July 9, 2014), available at https://www.washingtonpost.com/news/on-leadership/wp/2014/07/09/barclays-joins-the-bet-on-women-led-firms/.

[22] Morgan Stanley, *supra* note 16.

[23] Michal Leibel, *Barclays Launches Women in Leadership Index and ETNs,* Reuters (July 9, 2014), available at http://www.reuters.com/article/wealth-index-women-idUSL2N0PK29J20140710.

[24]Bloomberg, *Bloomberg Financial Services Gender Equality Index,* available at http://www.bbhub.io/professional/sites/4/BFGEI_Overview.pdf.

[25] *State Street Global Advisors Launches Gender Diversity ETF to Help Investors Seek a Return on Gender Equity,* Business Wire, available at http://www.businesswire.com/news/home/20160307005890/en/State-Street-Global-Advisors-Launches-Gender-Diversity.

[26] EDGE Global Business Certification Standard for Gender Equality, *see* http://www.edge-cert.org/our-impact/how-edge-creates-change-2/.

[27] *See, e.g.*Diversity Inc. *Top 50 Companies for Diversity 2016, http://www.diversityinc.com/the-diversityinc-top-50-companies-for-diversity-2016 /;* Working Mother Best Companies, *http://www.workingmother.com/best-*

And global standards are emerging, including diversity metrics in the Global Reporting Initiative and a new United Nations effort to include ESG measures in listing criteria for stock exchanges around the world.[28]

However, these existing options are not sufficient. The private certification programs and funds use different criteria and there is often limited transparency into the underlying ratings or scores. The global reporting processes do not cover all of the information that may be material to U.S. investors. The existence of these programs does document significant stakeholder interest in corporate diversity performance, but the private market and voluntary certification and reporting systems clearly do not provide enough information for investors to use in assessing companies effectively. The time has come for consistent reporting by all large publicly-traded companies operating in the United States.

Despite These Clear Benefits and Salience, Progress Is Slow

Even though diversity can positively affect the bottom line, and is becoming increasingly salient to investors, progress in corporate board and senior management diversity continues to lag. Women hold only about 20% of the board seats of S&P 500 companies.[29] Even among new board seats filled in 2015, men made up over 70% of the new appointments to boards at Fortune 500 companies, meaning progress to increase the representation of women remains very slow. For people of color, already substantially underrepresented on boards, the pace of change continues to lag even further. Latinos represent only a tiny share (4%) of new appointments, while African-Americans are only receiving 9% of new appointments -- below parity with their share of the population and further delaying parity.[30] Asian-American representation of new board selections has declined from 5.3 % in 2014 to 4.8% in 2015. And although women make up half of management and professional positions, they represent a far smaller share of senior positions, including only 4% of S&P 500 CEOs according to the latest Catalyst statistics.[31] At least one study has concluded that at the current pace of change, it will take 100 years – a full century - for women to achieve parity at senior levels of U.S. corporations.[32]

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companies; Great Places to Work, *Fortune 100 Best Companies to Work For*, *https://clients.greatplacetowork.com/list-calendar/fortune-100-best-companies-to-work-for*.

[28] Global Reporting Initiative, https://www.globalreporting.org/Pages/default.aspx; United Nations Sustainable Stock Indexes Initiative, http://www.sseinitiative.org/about/.

[29] Catalyst, *Statistical Overview of Women in the Workforce* (2016), available at http://www.catalyst.org/knowledge/statistical-overview-women-workforce.

[30] Elixabeth Olson, *Barriers to Board Positions Persist for Minorities and Women, Report Shows*, New York Times (May 16, 2016), available at http://www.nytimes.com/2016/05/17/business/dealbook/corporate-boards-minorities-women.html.

[31] Catalyst, *supra* note 29.

[32] LeanIn.org and McKinsey & Company, *Women in the Workplace* (2015), available at http://womenintheworkplace.com/ui/pdfs/Women_in_the_Workplace_2015.pdf?v=5.

Pay equity has become a significant public policy issue, since decades after women entered the workforce in substantial numbers, a substantial gender pay gap remains. Women working full time all year make about 79 cents on average, for each dollar earned by men, while many women of color face an even larger pay gap compared with white men.[33] A recent study of men and women hired by the same company for the same position found men getting higher salary offers seven times out of ten.[34] And there is no easy explanation, not when women's educational attainment meets or exceeds that of men, when men earn more even within female dominated occupations, and when pay gaps exist even for full time work.[35]

In light of how important it is that companies recognize and capitalize on diversity and how uneven our progress remains, investors need clear and consistent sources of information regarding how one company's diversity record compares to another. Companies with strong diversity performance have a distinct competitive advantage in their industries, making this information highly material. Our organizations are seeking disclosures of Diversity Governance Indicators, including specific actions on human capital, board diversity and transparency, to provide that kind of information.

Existing Disclosures Are Not Adequate

In the April 2016 Concept Release, the Commission specifically requested comments on disclosures related to "Sustainability and Public Policy" in Section F and noted the increasing investor interest and concern regarding ESG matters and the limited current disclosures in this area. As the Commission considers whether and how to "modernize" the S-K disclosure regulations, the evolution in market practices and economic conditions warrants expanding the traditional disclosures to go beyond existing business and financial disclosures. Information on diversity and human capital can be highly material to financial performance and should be included in this expansion.

Indeed, despite their materiality, existing required disclosures include almost no practices or indicators related to Board and leadership diversity, workplace inclusion or pay equity. As the Commission explained in the Concept Release, because existing ESG disclosures are largely voluntary, information is presented inconsistently, or may be difficult for investors to obtain on their own. Many of the tools that have been developed (including funds, indexes, or certification systems) lack transparency, are based on proprietary criteria, and do not necessarily use comparable measures for inclusion. These limitations hinder the ability of investors to take this information fully and fairly into account.

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[33] U.S. Bureau of the Census, *Income and Poverty in the United States 2014* (2015), available at https://www.census.gov/library/publications/2015/demo/p60-252.html.

[34] Hired.com, *Women, Work and the State of Wage Inequality* (2016), available at https://hired.com/gender-wage-gap.

[35] White House Council of Economic Advisers, *The State of the Gender Pay Gap*, Issue Brief (June 2016), available at https://www.whitehouse.gov/sites/default/files/page/files/20160614_gender_pay_gap_issue_brief_cea.pdf.

The Commission's experience with Board diversity disclosure is an instructive example. Since 2009, the SEC has required companies to disclose certain information about board nominees under Item 407(c)(2)(vi) of Regulation S-K.[36] However, this disclosure only requires a generic description about "whether, and if so how, the nominating committee (or the board) considers diversity" as well as disclosure about any specific policy for doing so. While a good first step, evidence suggests that this language is not specific enough to advance its underlying purposes.

First, it is difficult for shareholders to even identify the extent to which existing board members and/or nominees represent a diverse set of perspectives, particularly when it comes to gender, race and ethnicity. In 2015, a group of state public pension funds called on the SEC to expand the existing disclosures under Item 407(c)(2)(vi) of Regulation S-K, to specifically include the race, gender and ethnicity of nominees presented in a proxy statement for the election of directors. In their petition, the funds noted the challenge of identifying directors or nominees by considering names or photographs, even when that information is included.[37]

Because the current rules do not require companies to disclose any specific information, or to disclose it any particular form, companies can and do interpret "diversity" inconsistently – and in some cases contrary to the general understanding of Board diversity. A recent study of the S&P 100 proxy statements filed in the first four years after the SEC adopted this rule demonstrates that in the absence of a specific definition of diversity, companies primarily choose to define and disclose diversity as diversity of experience, rather than diversity of identity (such as race, ethnicity or gender).[38] It is clear that leaving the definition of diversity solely up to individual companies is a poor approach.

A Blue Ribbon Commission of the National Association of Corporate Boards recently issued a call to action on Board diversity, given the slow progress of an issue that is "first and foremost a business issue – a means to competitiveness":

> The benefits of board diversity, both tangible and intangible, range from greater understanding of customers and employees to the value of having multiple perspectives around the table. Yet . . . board diversity has lagged behind the increased diversity we see today in all other facets of society . . . In light of new global trends and business imperatives, the need for diversity of experience and perspective has become an unmistakable mandate. This issue is too important to be delegated entirely to management; it belongs to the board, which has a major role in unlocking the potential of the organization and its leaders . . . corporations will not be able to build or maintain a successful enterprise that yields sustainable long-term shareholder value, without bringing a greater variety of perspectives into the boardroom.[39]

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[36] 17 C.F.R. Sec. 229.407(c)(2)(vi).

[37] Anne Simpson, et al, *Petition for Amendment of Proxy Rule Regarding Board Nominee Disclosure – Chart/Matrix Approach* (March 31, 2015), available at https://www.sec.gov/rules/petitions/2015/petn4-682.pdf.

[38] Aaron Dihr, *Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity* (2015).

[39] National Association of Corporate Directors, *The Diverse Board, Moving from Interest to Action,* Report of the NACD Blue Ribbon Commission (2012), available at https://www.nacdonline.org/files/PDF/NACD_BRC_BoardDiversity%20(Watermark).pdf.

When the Chair spoke about the need to improve Item 407 disclosure, she similarly reported that despite these benefits, progress on Board diversity continues to lag.[40] Moreover, companies have failed to provide meaningful disclosures under the existing disclosure regime. She identified examples set by companies providing clear disclosure of Board member and nominee demographic diversity and how that information aids investors. We echo the view of the Chair that the existing rule is inadequate and should be changed. For this reason, although the Concept Release focuses on Business and Financial Disclosure, rather than Governance, we have included our view about what modifications would make Board diversity disclosures more useful and consistent.

Disclosures of Diversity Governance Indicators Provide Material Information to Investors

We urge the SEC to expand the disclosure requirements of Regulation S-K to mandate that companies answer the following questions related to Board diversity, leadership and workforce diversity, pay equity and transparency, and strategic human capital leadership. These Diversity Governance indicators are particularly meaningful in assessing diversity as it relates to financial performance – as indicated by research findings and the increasing adoption of these types of reforms by leading companies. For these reasons, they will be highly material to investors and a significant improvement on current disclosure requirements.

Proposed Disclosures on Diversity Governance Indicators

1. **Does the company use diverse slates and recruitment programs to diversify its Board of Directors membership -- and what are the results?**
    - Does the company apply a diverse candidate slate requirement (aka "Rooney Rule") when filling new Board of Directors positions?
    - In developing these diverse slates, has the company conducted in-person interviews with multiple highly qualified candidates that would expand the board's existing gender, racial and ethnic diversity – as well as any other perspectives not currently represented?
    - Has the company strengthened its recruitment and outreach to expand the pool of individuals considered and nominated for Board positions, and set clear goals to identify highly qualified individuals with under-represented perspectives?
    - How do current Board members and nominees identify, including gender, race and ethnicity specifically?

[40] Mary Jo White, *supra* note 2.

2. **What are the company's results on key measures of diversity performance and pay equity practices?**
   - How do the top 200 highest compensated individuals identify (by gender, race, ethnicity, and if available, by disability and sexual orientation) in a single summary chart?
   - What is the overall companywide representation data that was provided to the EEOC in the most recent EEO-1 report?
   - Does your company conduct regular pay equity audits for race, gender or any other disparities, and does your company disclose the results and any action plans internally or externally?
   - Does your company have a written policy allowing workers to ask about, disclose or discuss pay with each other without negative consequences?
   - What is your company's performance on its own diversity metrics over time? Are there any other measures or metrics that provide additional important context to understand the required disclosures?

3. **Does the company have a human capital Board subcommittee to oversee and drive strategic change?**
   - Is there a formal Human Capital Subcommittee of the Board of Directors (or does this role exist in another subcommittee) that would increase Board engagement, provide leadership, and monitor progress, and if so, who are its members?
   - Does this subcommittee require management to keep and share robust diversity and other human capital measures and analytics?
   - Does this subcommittee deploy independent resources that provide external perspectives and credible expertise?
   - Does this subcommittee undertake regular company-wide reviews of human capital opportunities and vulnerabilities?

Benefits of the Diversity Governance Indicators

These recommendations reflect steps leading companies are already taking and the track record of reforms like the "Rooney Rule" in increasing diversity and fair competition without highly prescriptive mandates. In recognition of the benefits to their financial success, public brand and society at larger, major companies are already adopting diverse slate requirements, programs to expand board diversity and accountability, and greater disclosure of diversity and pay equity performance. These approaches establish processes that reduce bias and in-group favoritism, and increase consistency, transparency and accountability, which research shows can increase the effectiveness of diversity programs and improve equality of opportunity. These indicators reflect how much one company can derive a competitive advantage from its diversity performance and structures. Finally, these recommendations are based on our experience and reflect practical, low-cost and easy to implement strategies that provide highly salient information to investors.

We appreciate that in its comment, the UAW Trust states its support of our Diversity Governance Indicators initiative, including disclosure of common metrics, and calls on boards of directors to use diverse candidate pools in the search process and establish board-level committees on human capital that include diversity issues.

Applying the Rooney Rule to Board Nominee Selection

The "Rooney Rule," named after Pittsburg Steelers Owner Dan Rooney, provides a clear way to increase diversity in hiring and level the playing field while preserving flexibility and fairness. The rule focuses on candidate diversity rather than just measuring hiring outcomes. An employer applying this Rule requires diverse candidate slates, and in-person interviews with diverse and highly qualified candidates, before selecting the best-qualified candidate. The process forces hiring officials to broaden their horizons and can bring more qualified candidates into contention, generating better outcomes without the need to resort to goals or quotas.[41]

Although the concept of requiring diverse candidate slates was adopted by the Coca-Cola Company in 2001, it gained substantial public attention (and its popular name) after the NFL adopted this rule a year later.[42] The League agreed to implement diverse candidate slate interviewing procedures and to require that every team searching for a head coach interview at least one person of color before hiring. A few years later, the League extended the rule to apply to searches for general managers.

Under this comprehensive diversity program the NFL has reached historical numbers of black head coaches and front office personnel. During the twelve years before the Rooney Rule's enactment, the NFL had four head coaches of color and one general manager of color. During the twelve years after enactment, the NFL featured 16 head coaches of color (two of whom have held two different head coaching positions) and eight general managers of color. Just as notably, those head coaches and general managers of color have, on the whole, experienced success. During the twelve years before the Rooney Rule's enactment, no head coach of color and only one general manager of color had led a club to the Super Bowl, whereas during the twelve years after enactment, 10 head coaches and general managers of color led their club to the Super Bowl -- two of whom did so twice. Similarly, after Coca-Cola agreed to implement a "diverse candidate slate requirement" for filling senior leadership positions, among other

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[41] By contrast, some European countries have adopted either binding or non-binding targets of 30 to 40 percent female representation on corporate boards. Alison Smale and Claire Cain Miller, *Germany Sets Gender Quota in Boardrooms*, New York Times (March 6, 2015), available at http://www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporate-boards.html.

[42] This decision was in response to a study identifying the dearth of African-American Head Coaches entitled *Black Coaches in the NFL: Superior Performance and Inferior Opportunities. See generally* Jeremi Duru, *Advancing the Ball: Race, Reformation and the Quest for Equal Coaching Opportunity in the NFL* (2011).

reforms in the wake of a major race discrimination lawsuit, the company experienced a substantial increase in diversity in senior management positions.[43]

Since then, a number of major companies have adopted diverse slate requirements. For example, Xerox recently adopted "Rooney Rule" diverse slate requirements for filling open management positions, and other tech companies have applied the Rooney Rule even more broadly.[44] At least one company, Gentex, has adopted a policy that formally includes diversity considerations when developing candidate slates for board positions,[45] while Agree Realty included language in a recent proxy statement about its effort to ensure diversity in the pool of qualified candidates for Board positions.[46]

Business leaders increasingly recognize that the path to improved Board diversity is to address diversifying candidate slates. The NACD Blue Ribbon Commission report recommended "expand[ing] horizons for seeking candidates" by setting specific targets for under-represented perspectives such as gender, and expanding the pool of talent when developing nominee candidate slates. The NACD also recommended providing detailed disclosures in the proxy statement about the process used to select nominees.[47] The Business Roundtable has endorsed "a framework . . . which asks the nominating or governance committee to consider women and/or minority candidates for each open board seat."[48]

The Rooney Rule is particularly well-suited to expanding Board diversity and can form the basis for a clear, simple and low-cost disclosure standard. Asking companies to disclose whether they interviewed and considered a diverse pool of candidates before identifying the nominees that shareholders vote on may be more meaningful than simply asking companies to report on the demographic make-up of individual Board members or nominees. Any individual may be chosen based on a wide range of criteria and may bring a wealth of broad experience that benefits the Board and company. But if the underlying process fails to regularly recruit and seriously consider highly qualified diverse individuals, that is material information about the Board's commitment to leadership diversity that investors should be able to know and take into account. Conversely, companies that demonstrate a robust commitment to diversity from the

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[43] Alexis Herman, et al, *Ingram v. The Coca-Cola Company: Fifth Annual Report of the Task Force*, Case No. 1-98-CV-3679 (RWS), U.S. District Court for the Northern District of Georgia (Dec. 1, 2006), available at http://www.findjustice.com.php5-21.dfw1-2.websitetestlink.com/wp-content/uploads/2011/04/2006_Task_Force_Report.pdf.

[44] Xerox, *"Wilson Rule" Diversity Policy Announced at White House Demo Day* (2015), available at http://www.news.xerox.com/news/xerox-wilson-rule-diversity-policy-announced-at-white-house-demo-day; Zoe Henry, *White House Demo Day Aims to Promote Diversity in Entreprenuership*, Inc. (Aug. 5. 2015), available at http://www.inc.com/zoe-henry/white-house-demo-day-diversity-initiatives.html.

[45] Gentex Corporation, *Selection Process for Board Candidates* (Feb. 2016), available at http://ir.gentex.com/CorporateGovernance.

[46] Agree Realty Corporation Proxy Statement (2016), available at https://www.sec.gov/Archives/edgar/data/917251/000114420416088930/v432346_def14a.htm.

[47] *See supra* note 39.

[48] John Hayes, *Driving Diversity in the Boardroom*, Medium.com (2016), available at https://medium.com/business-roundtable/driving-diversity-in-the-boardroom-19b371e42d0a#.eyacj4pz2.

top may have a competitive advantage within their industries, information that investors should have access to.

Diversity and Pay Equity Metrics

The second set of disclosures concerns specific markers of workforce and leadership diversity and equity. Using metrics and establishing transparent systems with meaningful accountability mechanism are essential tools for improving equal opportunity in the workplace.[49] Measuring and reporting on progress helps interrupt common biases and in-group favoritism by making outcomes more visible.[50] Research shows that accountability and transparency are often more successful strategies than mandates or diversity training programs, and collecting data and reviewing results is particularly critical.[51] At the same time, disclosure benefits should be balanced against reporting burdens and revealing potentially sensitive information about individuals. Our proposed disclosures would maximize these benefits while limiting burdens and potential harm.

For example, in providing disclosure of the demographics of the "top 200" highest compensated individuals, we recommend using existing information companies already report to the government. Corporate EEO-1 reports, filed regularly with the U.S. Equal Employment Opportunity Commission, include workforce demographic data by gender, race and ethnicity reported in 10 broad occupational categories, and are typically reported both by individual establishment and in a single companywide report. We recommend using this information to compile a simple summary chart listing the number of people in each race or ethnicity category by sex, and we also propose requiring disclosure of the full companywide report. These reports are not public information, but some companies are now voluntarily disclosing their EEO-1 reports in response to stakeholder inquiries. According to the site Open Diversity Data, more than a dozen major tech employers including Apple, Cisco and Google have voluntarily released EEO-1 data, and more have provided other disclosures of their diversity data and measures.[52]

In addition, although companies have traditionally resisted any discussion or disclosure related to their pay practices, a culture of increased transparency and accountability is emerging – tracking the broader evolution in information sharing of a younger generation of workers. The rise of websites such as Glassdoor, Payscale, and others has encouraged employees to share more information about pay.

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[49] Frank Dobbin, Alexandra Kalev and Erin Kelly, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies,* American Sociological Review (2006); Bohnet, *supra* note 9; Jayne and Dipbouie, *supra* note 9.

[50] Barbara Reskin, *The Proximate Cause of Employment Discrimination,* Contemporary Sociology (2000); Joel Nadler, et al, *Aversive Discrimination in Employment Interviews: Reducing Effects of Sexual Orientation Bias with Accountability,* Psychology of Sexual Orientation and Gender Diversity (2014); Christine Jolls and Cass Sunstein, *Debiasing Through Law,* Journal of Legal Studies (2006).

[51] Bonet, *supra* note 9; Frank Dobbin and Alexandra Kalev, *Why Diversity Programs Fail, And What Works Better,* Harvard Business Review (July-August 2016).

[52]http://opendiversitydata.org/.

New legal requirements adopted in 2015 that apply to federal contractors, and broader recognition of existing rules under the National Labor Relations Act, establish that workers are legally permitted to talk about their pay, and ask about the pay of others, without fear of reprisal.[53] Research shows that pay secrecy policies and practices can result in a range of negative outcomes for a company, including performance, morale, and retention.[54] Pay secrecy also may increase the risk of discrimination and liability by limiting information and accountability. Knowing whether a company has an appropriate policy that complies with the law on pay transparency is another indicator of productivity and risk that can be provided at little cost.

Consistent with this increased interest in transparency, and rising government and private enforcement, more companies are also now making pay equity audits a regular practice. In June of 2016, the White House asked companies to sign an "Equal Pay Pledge," committing to conduct regular, companywide pay equity audits that included an assessment of pay differences across occupations and the potential impact of hiring, promotion and other practices on gender pay equity. As of June, 2016, twenty-eight companies have publicly signed the pledge.[55] In addition, more than 100 employers have joined the Boston Women's Compact, a voluntary commitment to work toward closing the gender pay gap, through self-assessment and other best practices.[56] And a few major employers have gone further, and even released the results of their pay equity audits: Recently Amazon, Microsoft, Salesforce and the Gap have publicly disclosed their findings and plans.[57] Funds have also considered pay equity material information. For example, investment funds have commented positively on a recent EEOC proposal to collect employer pay data, and have used shareholder resolutions to press companies to commit to regular audits.[58]

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[53] U.S. Department of Labor Office of Federal Contract Compliance Programs, *Government Contractors Prohibitions Against Pay Secrecy Policies and Actions, Final Rule*, 80 FR 54934 (Sept. 11, 2015), available at https://www.gpo.gov/fdsys/pkg/FR-2015-09-11/pdf/2015-22547.pdf; Tom Driesbach, *Pay Secrecy Policies at Work: Often Illegal, and Misunderstood,* NPR (April 13, 2014), available at http://www.npr.org/2014/04/13/301989789/pay-secrecy-policies-at-work-often-illegal-and-misunderstood.

[54] OFCCP Pay Transparency Final Rule, *supra* (citing studies).

[55] *White House Equal Pay Pledge,* available at https://www.whitehouse.gov/webform/white-house-equal-pay-pledge; *White House Fact Sheet: Government, Businesses and Organizations Announce $50 Million in Commitments to Support Women and Girls* (June 13, 2016), available at https://www.whitehouse.gov/the-press-office/2016/06/13/fact-sheet-government-businesses-and-organizations-announce-50-million.

[56] City of Boston, Boston Women's Compact, http://www.cityofboston.gov/women/workforce/compact.asp.

[57] Diversity at Amazon, https://www.amazon.com/b/ref=tb_surl_diversity/?node=10080092011); Salesforce, *Equality at Salesforce: The Equal Pay Assessment Update* (March 8. 2016), available at https://www.salesforce.com/blog/2016/03/equality-at-salesforce-equal-pay.html; Cora Lewis, *These Companies are Eliminating Their Gender Pay Gaps,* Buzzfeed (March 14, 2016), available at https://www.buzzfeed.com/coralewis/companies-are-eliminating-their-gender-pay-gaps?utm_term=.ek1l5WEXv#.nkGVy6reK.

[58] Lisa Hayles, Boston Common Asset Management Comment to U.S. EEOC on Proposed Revision of the Employer Information (EEO-1) Report to Include Collection of Pay Data, available at https://www.regulations.gov/document?D=EEOC-2016-0002-0240; Susan Baker and Brianna Murphy, Trillium Asset Management Comment to U.S. EEOC on Proposed Revision of the Employer Information (EEO-1) Report to Include Collection of Pay Data, available at http://www.trilliuminvest.com/wp-content/uploads/2016/03/EEOC-Comment-Letter-3.9.16.pdf; Katie Johnson, *She's Pressing Top Companies on Pay Equity*, Boston Globe (May 21,

Asking companies to explain whether they conduct regular pay equity audits provides important insight not only into compliance but also workplace inclusion and equity. Companies that publicly commit to addressing the wage gap, and that do not have illegal pay secrecy policies, are less likely to be subject to government compliance actions or costly wage lawsuits, and should be better able to attract strong performers to a place where their contributions will be fairly valued.

Our proposed pay equity and "Top 200" disclosures provide material information without requiring specific public disclosure of individual compensation amounts that may be considering sensitive or proprietary. Companies would be making statements about their policy and the demographics of the highest paid employees without including specific salaries or other individual pay data.

Human Capital Subcommittee

Given the importance that diversity and human capital play in assessing future profitability, market share and risk, shareholders should also be well-informed about the management structure and accountability mechanisms that the Board has put into place. Existing disclosures related to strategic human capital management are inconsistent and may not cover information most salient to investors, especially where there is such a large array of potential measures to consider.[59] Clear documentation about the level of Board oversight and engagement provides a simple, low-cost, comparable and effective measure.

In some of the country's largest and most costly discrimination lawsuits, litigants tied failures at the corporation's highest levels to the persistence of systemic bias and adverse outcomes throughout the organization.[60] Since systemic cases focus primarily on deficient policies and practices, strong oversight and accountability mechanisms can help reduce risk including the potential for expensive punitive damage awards.[61] In addition, when managers expect to be held accountable for their diversity performance, they are more likely to make fair decisions.[62] In light of the strong link between human capital and financial success, Investors would benefit from disclosures about whether any specific committee of the Board exists to oversee and drive change.

2016), available at https://www.bostonglobe.com/business/2016/05/20/she-pressing-top-companies-pay-equity/tA0XUQep7QCRGj6NTG82pL/story.html.

[59] *See supra* notes 3-4.

[60] Mehri, et al, *supra* note 19, at 429-435 (describing senior management failures in discrimination cases against Texaco and the Coca-Cola Company).

[61] David Glovin and Patricia Hurtado, *Novartis Must Pay $250 Million in Gender Bias Lawsuit,* Bloomberg News (May 19, 2010), available at http://www.bloomberg.com/news/articles/2010-05-19/novartis-must-pay-250-million-in-punitive-damages-after-losing-bias-case.

[62] *See supra* notes 49-51.

The SEC Should Require Increased Disclosure of Diversity Governance Indicators

Adopting these disclosures is consistent with national economic priorities, emerging market practices around what is material information for investors, and the SEC's stated goal in the Concept Release of "modernizing" regulation S-K. Diversity Governance disclosures promote efficiency, competition and capital formation by making it easier for investors to assess corporate human capital and diversity performance clearly and consistently, and to take this into account when weighing the potential risk and profitability of investment decisions or voting. As explained above, this information is not available from other sources, increasing the benefit to investors of standard required disclosures.

In light of the substantial benefits, the cost of these disclosures would be very low. Disclosure regarding a company's Board diversity practices would require adding a few paragraphs to existing disclosure statements and providing information on how members of the Board of Directors and nominees identify – information a company could quickly and easily obtain by querying a small group of people. The metrics rely on existing data and reports and the pay equity disclosures would involve making short statements of policy.

Our proposal to limit these disclosures to companies with 5000 or more employees further reduces the cost of disclosure and focuses disclosure on employers with more sophisticated human resources systems and practices. We also recommend considering a two year phase-in period, providing ample time for companies to anticipate these new disclosures and prepare accordingly.

In closing, we appreciate this opportunity to provide our views on how to align the required Regulation S-K disclosures with effective means to consider diversity in the context of investment or voting decisions. We are happy to provide any other information or input that may assist the Commission in this important task.

Respectfully Submitted,

/s/
Cyrus Mehri
Pamela Coukos
Working IDEAL

Also submitted on behalf of:

Amalgamated Bank
Boston Common Asset Management
National Women's Law Center
Sleigh Strategy, LLC

ADDENDUM: ORGANIZATION DESCRIPTIONS

Amalgamated Bank. Amalgamated Bank's LongView Funds, with over $12 billion under management, seek to enhance long-term shareholder value through initiatives that encourage portfolio companies to pursue sound governance policies and to follow high standards of social and environmental practices.

Boston Common Asset Management. Boston Common Asset Management is an investment manager that specializes in sustainable and responsible global equity strategies. As investors we are committed to incorporating the full range of environmental, social and governance (ESG) factors in evaluation of the securities of our portfolio companies. On behalf of its shareowners, Boston Common urges portfolio companies to improve transparency, accountability, and manage for the long term. One of our key corporate governance priorities is board diversity. We believe that diversity, inclusive of gender and race, is an essential measure of sound governance and a critical attribute to a well-functioning board of directors.

National Women's Law Center. The National Women's Law Center is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women and women of color. For more information on the Center, visit www.nwlc.org

Sleigh Strategy LLC. Steve Sleigh started his own consulting service, Sleigh Strategy LLC, in March 2015 after serving as the Fund Director for the IAM' s multi-employer pension, savings, and health plans from April 2011 to March 2015. The IAM pension fund is the fifth largest multi-employer plan in the United States. Steve's consulting business, Sleigh Strategy LLC, provides strategic advice for aligning the interests of business, labor, and investors, and is closely affiliated with the Yucaipa Companies. Prior to leading the IAM benefit funds Steve was a principal with the Yucaipa Companies for five years and was involved in all aspects of fund raising, deal sourcing and diligence, and governance of portfolio companies.

From 1994 to 2006 Steve was the Director of Strategic Resources for the International Association of Machinists and Aerospace Workers (IAM). Steve served as a director on the Federal Reserve Bank of Richmond from 2011 to 2015 and is currently a board member of the Amalgamated Bank of New York.

Working IDEAL. Working IDEAL provides trusted, effective and innovative advice on inclusive workplaces, diverse talent and fair pay to large and small companies, universities, non-profits, unions and other organizations across the nation. We specialize in evidence-based diversity assessments and pay equity audits for clients with serious commitments to equal employment opportunity and affirmative action. Our expertise includes leadership development, employee engagement, and strategic human capital – and how to deploy those tools to support stronger workplace inclusion, diversity, equity and access.

Founding Principal Cyrus Mehri is also a founding partner of the law firm Mehri & Skalet, PLLC. Cyrus has served as co-lead class counsel in some of the largest and most significant race and gender cases in U.S. history: *Roberts v. Texaco Inc.*, ($176 million; S.D.N.Y.1997); *Ingram v. The Coca-Cola Company* ($192 million; N.D. Ga. 2001); *Robinson v. Ford Motor Company* ($10 million and 279 apprentice positions; S.D. Ohio 2005); *August-Johnson v. Morgan Stanley* ($47 million; D.D.C. 2007); *Amachoev v. Smith Barney* ($34 million; N.D. Cal. 2008); *Norflet v. John Hancock Life Insurance Co.* ($24 million; D. Conn. 2009), and *Carter v. Wells Fargo Advisors*, LLC ($32 million; D.D.C. 2011). The hallmark of these settlements is innovative programmatic relief. Cyrus also helped create the "Rooney Rule" which has resulted in a record number of minority head coaches and general managers in the National Football League.

Founding Principal Pamela Coukos, JD, PhD, is an advisor and expert with more than 20 years of experience in equality law, policy and research. Pam recently completed five years as a Senior Advisor at the U.S. Department of Labor's Office of Federal Contract Compliance Programs, where she worked on pay equity, civil rights enforcement, and paid leave. Her career spans civil rights litigation, research, policy analysis, teaching and training, and advocacy - and the government, private and nonprofit sectors. Pam is currently advising companies and organizations on gender equity, pay equity, diversity and inclusion, and affirmative action.