Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

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

October 2, 2022

Re: File No. 4-787

I write in support of the rulemaking petition submitted by the Working Group on Human Capital Accounting Disclosure on June 7, 2022. That petition builds upon and advances the petition, which I also support, of File 4-711 submitted by the Human Capital Management (HCM) Coalition.

By way of background, I am a long-time shareholder advocate who posts at Corpgov.net and facilitates conversations on Zoom with leading thinkers on corporate accountability at CorpEngage.net. I am a small "universal owner," filing hundreds of shareholder proposals this century. For example, I filed approximately 80 shareholder proposals for the 2022 season, reaching an agreement or winning a majority vote at over half the companies where I filed.

Although 75% of the variability of my returns is probably determined by GDP and systematic risks,[1] through "beta activism" I try to both increase my returns and reduce market risks.[2] The rulemaking proposed in File 4-787 gets close to the current root causes of significant HCM risk – the growing disparity in terms of both pay and voice between named executive officers (NEOs) and most employees. Those increasing chasms have brought on growing alienation (quiet quitting) and lower productivity.[3] At the same time, growing wealth disparity[4] is highly correlated with political polarization[5] at the system level.

Higher levels of employee ownership and opportunities for voice at publicly traded companies should be top focuses in HCM. Strong evidence indicates companies that prioritize these factors are more productive, profitable, and contribute to more equitable wealth distribution (especially for women and minorities), as well as a growing economy.[6]

---

[1] Moving Beyond Modern Portfolio Theory by Jon Lukomnik and James P. Hawley
[2] https://www.corpgov.net/2019/08/more-beta-modernizing-modern-portfolio-theory/
[3] https://www.reuters.com/markets/us/us-productivity-drops-second-quarter-annual-decline-largest-ever-2022-08-09/
[4] https://www.businessinsider.com/what-is-quiet-fleecing-wages-pay-productivity-economy-recession-inflation-2022-9
[5] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2649215
[6] https://www.nceo.org/article/research-employee-ownership#:~:text=A%202021%20study%20by%20the,a%20401(k)%20plan, https://www.hbs.edu/ris/Publication%20Files/22-021update_2436e39f-f7ff-4883-90a3-

As the petition in File 4-711 notes, although the SEC requires some disclosure of human capital resources, investors have no way to "determine total workforce costs—much less identify the distinction between investments and maintenance workforce expenses." Stock grants can be appropriately viewed as investments in labor, rather than an expense.

I was shocked that a recent Staff no-action denied shareholders the right to just place a proposal on a corporate proxy to seek a minimal level of information concerning how shares were distributed under compensation plans that legally required approval by a vote of shareholders.[7] It appears incongruous - the SEC requires a shareholder vote for the plans[8] but denies shareholders the right to learn how such approved plans have been carried out, even in a bare outline format. Yet, that is the Staff's interpretation of ordinary business under Rule 14a-8(i)(7).

Although better than nothing, the information requested by the petition in File 4-711 is too little to be fully meaningful in terms of stock awards to employees. It calls for disaggregation by full-time, part-time, and contingency employees but fails to facilitate even a basic comparison of stocks (and voice through proxy votes) awarded to NEOs/ board members and regular employees.

Less than 60% of Americans' overall income comes from working. The rest comes from owning capital. Having that second source of income is critical to building wealth but ownership isn't widely distributed. In 2021, the Federal Reserve reported that 89% of stocks are held by the richest 10%. Nearly half of American households own no stock at all. Between 1979 and 2018 wages grew 0.27% per year; returns on stock grew 8% a year.[9]

Additionally, the International Monetary Fund finds GDP growth is 0.08% lower in the five years following a 1% increase in the concentration of wealth. In contrast, increasing the share of income to the bottom 20% by 1% is associated with a 0.38% rise in GDP.[10]

Broad-based employee ownership is necessary for the benefits I seek both at the firm-specific level and to reduce the systematic risks to the economy as a whole that accompany growing wealth inequality. Although many publicly traded companies have recently made racial justice commitments, few report using stock incentives as a means of addressing those commitments. Disseminating access to this data and shedding light on the issue is an essential first step in identifying necessary improvements.

The SEC should require a report of stock awards, including share class, by EEO-1 category or some other meaningful typology that disaggregates such awards by employee level.

---

a17cc75b1bc1.pdf and https://smlr.rutgers.edu/institute-study-employee-ownership-profit-sharing/working-paper-series

7 https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2022/youngp&g081922-14a8.pdf

8 https://www.nyse.com/publicdocs/nyse/regulation/nyse/equitycompfaqs.pdf Frequently Asked Questions on Equity Compensation Plans, NYSE (last revised Dec. 1, 2021), https://www.nyse.com/publicdocs/nyse/regulation/nyse/equitycompfaqs.pdf

9 Ownership by Corey Rosen and John Case

10 https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf

Widespread employee ownership is correlated with better firm performance, fewer layoffs, better employee compensation and benefits, higher median household wealth, longer median job tenure, and reduced racial and gender wealth gaps.[11] It also has a long history of bipartisan support.[12] The SEC should require companies to meaningfully disclose employee ownership plans so that investors can measure corporate progress towards an engaged employee ownership culture.[13]

NCEO created the Employee Ownership Index in 2017. It was composed of companies that both had won major awards for high engagement management styles and had some form of broad-based employee ownership. The Index has since outperformed the S&P 500 by about a 2 to 1 ratio.[14]

An SEC requirement that companies report stock awards using a meaningful typology that disaggregates such awards by employee level would provide a wide variety of benefits to investors, employees, companies and society.

Thank you for considering my comments.

Sincerely,

James McRitchie, Shareholder Advocate/Publisher
Corporate Governance (CorpGov.net)

---

[11] https://secureservercdn.net/192.169.220.85/11l.986.myftpupload.com/wp-content/uploads/2021/10/WhitePaper-TurningEmployeesIntoOwners.pdf and https://www.nceo.org/article/research-employee-ownership

[12] https://www.thirdway.org/report/having-a-stake-evidence-and-implications-for-broad-based-employee-stock-ownership-and-profit-sharing

[13] https://smlr.rutgers.edu/faculty-research-engagement/institute-study-employee-ownership-and-profit-sharing

[14] https://www.nceo.org/employee-ownership-blog/employee-ownership-index-now-available-infinite-equity