

September 27, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
110 F Street, N.E.
Washington D.C. 20549

**Re: Human Capital Management (HCM) Disclosures Rulemaking Petition
File 4-711 – 07/06/2017**

Dear Chairman Clayton,

On behalf of more than 400,000 members and supporters of Public Citizen, we enthusiastically support the Human Capital Management Petition filed with the Securities Exchange Commission (SEC or Commission) by the Human Capital Management Coalition on July 6, 2017.

Public Citizen supports vigorous enforcement of laws that promote investor rights. Our members are investors through individual accounts, retirement accounts, pension funds and other venues.

Research on Human Capital Management

This petition builds on a robust body of research that shows the importance of human capital management in determining material value of the firm. Human capital management covers a range of issues, from training, to retention, workplace safety and productivity.

Firms with superior human capital management (HCM) enhance company performance and share value.¹ Two portfolios of large-capitalization companies that launched in 2001 and 2003 using criteria related to training and employee development outperformed the S&P 500 on an annualized basis by 3.1% and 4.4%, respectively, through May 25, 2010.²

A survey of 36 studies on the value of training showed a correlation with superior investment outcomes.³ At the granular level, disclosures about benefits can be illuminating to an investor. For example, one

¹ See, for example, Beeferman, Bernstein “*The Materiality of Human Capital to Corporate Financial Performance*” IRRC AND THE KENNEDY SCHOOL (April 2015)
<http://www.law.harvard.edu/programs/lwp/pensions/publications/FINAL%20Human%20Capital%20Materiality%20April%2023%202015.pdf>.

² Laurie Bassi & Dan McMurrer, *Human Capital Management Predicts Stock Prices*, AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT, (June 2010) (<http://mcbassi.com/wp/resources/documents/HCMPredictsStockPrices.pdf>)

³ Lee, Michael Byungnam; Yong-Hee Chee. 1996. *Business strategy, participative human resource management and organizational performance. The Case of South Korea*. ASIA PACIFIC JOURNAL OF HUMAN RESOURCES, (Sept. 1, 1996)
<http://journals.sagepub.com/doi/abs/10.1177/103841119603400105>

study about the clothing maker Patagonia found that on-site child care paid for itself in reduced absenteeism.⁴

The potential for improved HCM in turn enhancing the greater economy is substantial. HCM success is an intangible asset, not recorded on the company's balance sheet. When the Financial Accounting Standards Board (FASB) last addressed this issue of valuing intangible assets, it noted, "The market value... of US publicly traded companies was five times larger than their balance sheet value... thus, about 3/4 of the value of public companies, as perceived by investors, reflects nonphysical and nonfinancial assets. Much of this huge value constitutes intangibles that are absent from the balance sheet."⁵ This means that intangible assets such as HCM account for the lion's share of a firm's value.

A survey by PricewaterhouseCoopers in 2015 of CEOs showed they identified "availability of key skills" as the second most worrying risk, ahead of geopolitical uncertainty, tax burden and shift in consumer spending and behaviors.⁶

Leading investors from the California state pension funds to BlackRock favor increased human capital management disclosure. BlackRock chief Larry Fink advocated CEOs to develop a strategic framework for long-term value creation and disclose more about their vision and plans for the future, including how they are "developing [their] talent."⁷ It is now cliché that firms declare that their employees are their most valuable asset. At the same time, the market suffers many glaring employee-related inefficiencies.

Runaway executive pay, for example, siphons money that might be reinvested in the firm such as through skills development and better compensation for employees (that, in turn, could produce more revenue.) Many mergers prove to be mistakes, both to investors as promised synergies fail to manifest and to employees who lose their jobs, doubly worse when they are both employees and investors. Offshoring jobs at a company not only harms the domestic job numbers at that firm, but also morale. It also further harms investment in other firms that no longer are needed to supply goods and services following the first firm's offshoring of jobs. Stock buybacks may boost the share price that triggers executive bonuses, but the capital might be better used if reinvestment in the company, such as through workforce development.

The Need for Greater Human Capital Management Information

Even given this clear correlation between HCM and investor value, the SEC requires minimal information regarding employees. Specifically, under Regulation S-K, only one item addresses the issue, and simply mandates the disclosure of the "number of persons employed."

We agree with the petitioners that this is woefully inadequate. As they summarize:

⁴ Rose Marcario, "Patagonia's CEO Explains How to Make On-Site Child Care Pay for Itself" FAST COMPANY (August 15, 2016). Available at: <https://www.fastcompany.com/3062792/second-shift/patagonias-ceo-explains-how-to-make-onsite-child-care-pay-for-itself>.

⁵ Baruch Lev "Intangible Assets: Concepts & Measurements" NYU ENCYCLOPEDIA OF SOCIAL MEASUREMENT, VOL 2 (2005) p 299. Available at: <http://raw.rutgers.edu/docs/intangibles/Papers/Intangible%20Assets%20Concepts%20and%20Measurements.pdf>.

⁶ 18th Annual Global CEO Survey, PRICEWATERHOUSECOOPERS, (2015) (<http://www.pwc.com/gx/en/ceo-survey/2015/assets/pwc-18th-annual-global-ceo-survey-jan-2015.pdf>).

⁷ Matt Turner, *Here is the Letter the World's Largest Investor, BlackRock CEO Larry Fink, Just Sent to CEOs Everywhere*, BUSINESS INSIDER, (Feb. 2, 2016) <http://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016-2>

“Research has shown that differences in human capital management performance can form the basis for successful investment strategies. Human capital management matters not only when it confers competitive advantage and improves firm performance. Material risks related to human capital management can create substantial risks for companies and investors, damaging corporate reputation, generating legal liabilities and undermining relationships with key stakeholders.”⁸

The case of Wells Fargo, where account-creation quotas led to fraud and termination of thousands of employees, emphasizes the connection between HCM and firm value.

The SEC’s mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation requires careful consideration and adoption of the petition.

We agree with the enumerated subjects that deserve disclosure:

1. Workforce demographics (number of full-time and part-time workers, number of contingent workers, policies on and use of subcontracting and outsourcing);
2. Workforce stability (turnover (voluntary and involuntary), internal hire rate);
3. Workforce composition (diversity, 111 pay equity policies/audits/ratios);
4. Workforce skills and capabilities (training, alignment with business strategy, skills gaps);
5. Workforce culture and empowerment (employee engagement, union representation, work-life initiatives);
6. Workforce health and safety (work-related injuries and fatalities, lost day rate);
7. Workforce productivity (return on cost of workforce, profit/revenue per full-time employee);
8. Human rights commitments and their implementation (principles used to evaluate risk, constituency consultation processes, supplier due diligence); and
9. Workforce compensation and incentives (bonus metrics used for employees below the named executive officer level, measures to counterbalance risks created by incentives).

We also believe there should also be mandatory information about violations, fines, and work stoppages.

Generally, in the age of Big Data, we believe the SEC should be looking for additional information that would benefit shareholders. Public Citizen also supports a petition co-signed by 1.2 million investors calling for political spending disclosure. We believe that the additional information we seek is already maintained by firms, or at least it should be by any responsible management. Investors demand more information about the companies they own, not less. We are concerned that SEC leadership has seemed bent on reducing disclosure, apparently at the behest of management.

We believe the SEC’s capital formation agenda would benefit from improving disclosure on vitally important driver of performance – human capital management. For questions, please contact Bartlett Naylor at [REDACTED], or [REDACTED]

Sincerely,

Public Citizen

⁸ HCM Petition, HUMAN CAPITAL MANAGEMENT COALITION (July 6, 2017)
<https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>