



October 22, 2019

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609
via email at rule-comments@sec.gov

RE: File Number S7-11-19 (Modernization of Regulation S-K);
File Number 4-711 (Human Capital Petition)

Dear Ms. Countryman:

The Los Angeles County Employees Retirement Association (LACERA) appreciates the opportunity to submit comments in response to the Securities and Exchange Commission's (SEC or Commission) August 23, 2019, proposed rulemaking regarding the modernization of Regulation S-K Items 101, 103, and 105 (Proposed Rulemaking),¹ and in support of the July 6, 2017, petition for rulemaking regarding human capital management.² We focus our comments on the Commission's proposed changes to reporting rules governing Item 101(c) regarding the Narrative Description of Business by which the Commission proposes such reporting to include "any human capital measures or objectives that management focuses on in managing the business, to the extent such disclosures would be material to an understanding of the registrant's business." We applaud the Commission's explicit inclusion of human capital in the Proposed Rulemaking and believe that the Commission should consider both principles-based and rules-based guidance to promote adequately investment-useful and comparable human capital disclosures.

LACERA is the largest county pension system in the United States, with over \$58 billion in plan assets as of September 30, 2019, including equity holdings in approximately 3,000 U.S. companies. LACERA's mission is "to produce, provide, and protect the promised benefits" for nearly 170,000 beneficiaries. We encourage public policies governing financial markets to promote sustainable, long-term value in order to enhance our ability to fulfill our mission.

Our comments to the Commission are guided by two fundamental concepts outlined in LACERA's *Corporate Governance Principles*.³ First, we consider that financial markets work most efficiently when investors have timely, reliable, and comparable information about material aspects of a firm's performance. Transparency of a firm's key financial and operating performance is critical for investors to assess a firm's financial viability and prospects for delivering sustainable value. Second, we consider that effective management of human capital – including the development, incentives, and

¹ United States Federal Register. Modernization of Regulation S-K Items 101, 103, and 105. Securities and Exchange Commission Release Nos 33-10668; 34-86614; File No. S7-11-19. August 23, 2019. Available at: <https://www.federalregister.gov/documents/2019/08/23/2019-17410/modernization-of-regulation-s-k-items-101-103-and-105>.

² Human Capital Management Coalition. Petition for Rulemaking to the Securities and Exchange Commission. July 6, 2017. Available at: <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>.

³ LACERA. *Corporate Governance Principles*. March 2019. Available at: <http://www.lacera.com/BoardResourcesWebSite/BoardOrientationPdf/policies/CorpGovPrinciples.pdf>.

retention of a firm's workforce – is vital to any firm's success. Our *Principles* encourage companies to identify, ensure board oversight, and disclose information about significant human capital drivers that are related to the firm's ability to create and protect firm value.

We believe the Commission's Proposed Rulemaking addresses a pronounced gap in current market disclosure practices. The oft-repeated adage that a company's workforce is its "most valuable asset" is supported by a range of research assessing the relationship between workplace practices and financial performance across a range of indicators (including total shareholder returns, return on assets, return on capital, and profitability).⁴ Yet investors typically have little insight into how companies are managing the risks and opportunities associated with this "most valuable asset," such as key performance indicators and how well they are aligned to businesses' long-term strategic objectives. U.S. regulatory disclosures, as guided by Regulation S-K Item 101(c) for example, are largely limited to requiring disclosures of the registrant's total number of employees. Perhaps underscoring market interest in human capital reporting, research also suggests that firms that disclose *any* information regarding their human capital performance tend to outperform non-disclosers.⁵

We appreciate the Commission's consideration and deliberation of how best to address that information gap, under the auspices of the Commission's mission to protect investors; maintain fair, orderly, and efficient capital markets; and facilitate capital formation. As a long-term, diversified institutional investor, we concur with the Commission that the range of human capital performance indicators that may be financially material for an investor to consider in assessing a registrant may vary across industries and by the specific nature of the firm's business strategy to create and sustain value. We therefore support inclusion of principles-based guidance so that registrants may incorporate both narrative and numeric disclosures that are relevant to their business profile and strategy. To guide registrants in identifying investment-useful information relevant to their industries and in line with a principles-based approach, we recommend that the Commission urge that such disclosures be guided by a suitable, recognized reporting framework, such as the Sustainability Accounting Standards Board (SASB), to which LACERA is affiliated as a member of its Investor Advisory Group.⁶

Principles-based disclosures alone, however, have inherent weaknesses and may impede effective comparability, thereby limiting the Commission in its aim to promote efficient capital markets and facilitate capital formation. We share the view of the CFA Institute on this hazard and incorporate below its October 6, 2016, response to the Commission's S-K Concept Release:

In general, principles-based requirements will have one, some, or all of three primary outcomes. First, issuers will withhold disclosure based on an internal determination that the information is immaterial. Second, issuers will group information in a manner that obfuscates negative performance or conditions. And third, different issuers will apply the "principles" differently, thus making the information incomparable across different issuers. For data-driven disclosures, therefore, we believe the Commission needs to provide prescriptive rules as to what must be reported, the manner in which it is reported, and the assumptions behind the

⁴ For an overview of over 90 studies, see Aaron Bernstein and Larry Beeferman. "The Materiality of Human Capital to Corporate Financial Performance." Pensions and Capital Stewardship Project, Labor and Worklife Program, Harvard Law School. April 2015. Available at: https://lwp.law.harvard.edu/files/lwp/files/final_human_capital_materiality_april_23_2015.pdf;

⁵ Coalition for Inclusive Capitalism. *Embankment Project for Inclusive Capitalism*. 2018. Available at: <https://www.epic-value.com/>.

⁶ Sustainability Accounting Standards Board. Available at: <https://www.sasb.org>.

reporting. As noted above, without such prescription, investors may not receive materially important information, may not be aware of material information, and/or they would not be able to compare disclosures across companies or across industries.⁷

To complement a principles-based approach (and address its shortcomings), we suggest that the Commission incorporate rules-based disclosures for a select number of consistent, universally applicable human capital metrics, to facilitate a base level of disclosures and broad comparability. In this regard, the Commission should consider core metrics related to workforce composition and structure (such as the number of full-time, part-time, and contingent workers, as well as diversity data consistent with Equal Employment Opportunity EEO-1 reporting, where permissible⁸), indicators of workforce stability (such as turnover), and data points enabling investors to assess a registrant's return on human capital investments. Rules-based reporting of core human capital metrics is consistent with our view that comparable, reliable, and timely disclosure of key performance indicators facilitates investment analysis and decisions.

We commend the Commission for allowing us this opportunity to provide comments. Please contact the undersigned at 1 (626) 564-6000 or [REDACTED] if you would like to further discuss any of the above remarks.

Sincerely,



Jonathan Grabel
Chief Investment Officer

CC: The Honorable Jay Clayton, Chair
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner

⁷ CFA Institute. Comment on S-K Concept Release. October 6, 2016, at 5. Available at: <https://www.sec.gov/comments/s7-06-16/s7-06-16/s70616-375.pdf>.

⁸ U.S. Equal Employment Opportunity Commission. EEO Reports/Surveys. Available at: <https://www.eeoc.gov/employers/reporting.cfm>.