



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

July 21, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington D.C., 20549-1090

Via email: rule-comments@sec.gov

RE: Business and Financial Disclosure Required By Regulation S-K (File No. S7-06-16)

Dear Mr. Fields:

I appreciate the opportunity to provide comments on the Securities and Exchange Commission's ("SEC") concept release entitled "Business and Financial Disclosure Required by Regulation S-K" (the "Concept Release").

As Comptroller of the City of New York, I am a trustee of four of the City's five pension funds and chief investment adviser to all five funds (the "NYC Funds"). The NYC Funds have \$163 billion in assets invested on behalf of close to 715,000 active and retired New York City employees, including \$56 billion invested in nearly 3,500 publicly-listed U.S. companies.

As long-term shareowners, the NYC Funds actively engage portfolio companies on a broad range of risks and practices that we consider material to protect and create sustainable shareowner value. We rely on company disclosures to assess these risks and to inform our engagement priorities, and also to enable us to fulfill our responsibility to cast proxy votes consistent with the NYC Funds' fiduciary duties and proxy voting guidelines.

It is our view that investors in the U.S. market need more, not less, disclosure. While investors could benefit from the elimination both of redundancies within a particular filing and of unhelpful "boiler plate" disclosures, we do not believe that an excess of corporate disclosure is itself a significant concern among investors. We share the view, expressed in comment letters from the SEC's Investor Advisory Committee (IAC) and the Council of Institutional Investors (CII), that simply reducing the volume of information available to investors should not be the goal of the SEC's Regulation S-K review.¹

Among the areas in which investors would benefit from enhanced disclosure, we consider sustainability as broadly defined -- to encompass risks related to the environment, human capital and rights, and political activity, among other matters -- to be areas of particular focus for the NYC Funds. We therefore applaud the SEC for including in its Concept Release a section on Disclosure of Information Relating to Public Policy and Sustainability Matters and have elected to limit the following comments principally to these matters.

¹ Comment letters regarding File No. S7-06-16 from the SEC Investor Advisory Committee (June 15, 2016) and Kenneth A. Bertsch, Executive Director, Council of Institutional Investors (July 8, 2016).



Principles-Based and Prescriptive Disclosure Requirements

While we believe that principles-based disclosure requirements can play a useful role, we reiterate the view expressed by the IAC that “Regulation S-K is and should remain primarily rules based.” Rules-based requirements ensure that disclosures are made on a uniform basis and are therefore comparable across issuers. Principles-based disclosure requirements provide issuers with greater flexibility, which can be useful to complement and/or supplement rules-based requirements and address new and evolving risks, but the management discretion inherent in such requirements means that they are ill-suited to serve as the stable foundation for market-wide disclosure.

Public Policy and Sustainability Matters (Section F)

The NYC Funds, as a matter of policy, believe that “[e]nvironmental, social, regulatory, operational, and other matters may present risks or opportunities for a firm’s ability to create and sustain long-term value” and that “robust corporate reporting should go well beyond financial reporting.”² Indeed, the NYC Funds’ Proxy Voting Guidelines explicitly “support comprehensive qualitative and quantitative reporting of a firm’s material financial, environmental, and social performance.”³

Accordingly, the NYC Funds have long encouraged portfolio companies to prepare and disclose sustainability reports using the Global Reporting Initiative (GRI) framework. While we continue to believe that voluntary standalone sustainability reports can provide useful information to investors on a broad range of sustainability and corporate social responsibility matters, they are not an adequate or appropriate substitute for the disclosure of material sustainability information in a company’s SEC filings.

Among other concerns, those *ad hoc* sustainability reports, for which management can select the items on which to focus, at times may not address the sustainability issues most relevant to investors; tend to highlight those policies, practices and data that show the company in a positive light; and are neither audited in most cases nor necessarily subject to board oversight. Perhaps most importantly, they provide little insight into whether the board of directors considers the various items covered to be material or integral to the company’s value creation strategy, and if so, how.

We encourage the SEC to formulate line-item requirements to elicit clear and detailed disclosure of fundamental public policy and sustainability risks, including the specific risks highlighted below, and to develop principles-based rules requiring disclosure of additional sustainability-related risks to supplement these disclosures where appropriate.

² New York City Employees’ Retirement System, New York City Police Pension Fund, New York City Fire Department Pension Plan, and Board of Education Retirement System of the City of New York. “Corporate Governance Principles and Proxy Voting Guidelines” (April 2016) (available at http://comptroller.nyc.gov/wp-content/uploads/documents/Corporate_Governance_Principles_and_Proxy_Voting_Guidelines.pdf); Teachers’ Retirement System of the City of New York. “Corporate Governance Principles and Proxy Voting Guidelines” (April 2016) (available at <https://www.trsnyc.org/ASPENMemberPro/WebContent/publications/CorporateGovernanceandProxyVotingGuidelines.pdf>).

³ Ibid.

Climate change

As long-term investors, the NYC Funds believe climate change creates risks and opportunities across our entire portfolio. Absent improved disclosure, however, it is difficult for investors to identify, quantify and assess these risks. While the NYC Funds welcomed the SEC's 2010 Interpretive Guidance on Climate Change, we share the view, expressed in a joint investor comment letter (to which I am also a signatory) submitted yesterday by CERES (the "CERES Letter"), "that existing SEC rules have not, as applied by the Commission to date, produced sufficient information for investors to evaluate material [climate-related] risks, which we believe are becoming increasingly significant to companies in multiple sectors."⁴

The CERES Letter, which we incorporate by reference, recommends additional guidance or line-item disclosure requirements "to elicit consistent, comparable, decision-useful narrative and metrics-based sustainability disclosure that is useful to investors." As part of this effort, we urge the SEC to collaborate with the Task Force on Climate-related Disclosures convened by the Financial Stability Board, and to consider requiring mandatory disclosure of appropriate objective metrics that the Task Force, consistent with its mandate, may recommend on a voluntary basis.

Political spending disclosure

The NYC Funds believe that the use of corporate assets for political activities creates legal, compliance, and reputation risks for U.S. companies and their shareowners. Absent disclosure, investors are unable to monitor these risks, nor ascertain to what extent a business model is reliant on rent-seeking, and lobbying to create such opportunities.

We believe these concerns are shared broadly by investors. We note both the record number of overwhelmingly supportive comments submitted on a 2011 rulemaking petition to the SEC from a group of law professors regarding disclosure of corporate political spending and the proliferation of, and voting support for, shareowner proposals requesting such disclosure.⁵ Between 2010 and 2016, investors filed 349 shareowner proposals requesting disclosure of political spending, with average voting support reaching an all time high of 33.2 percent in 2016, a significant level of support in the face of consistent management opposition.⁶ Including closely-related proposals related to lobbying, which is a form of indirect political spending, investors have filed 657 proposals since 2010 seeking greater disclosure.

At present, corporate contribution disclosure requirements, to the extent that they exist, are porous; dispersed among several federal, state and local regulatory agencies, none of which is focused on investor protection; and lack a consistent format. By far the biggest loophole under current law is the one that allows companies to anonymously funnel money into the political process through 501(c)6 trade associations and 501(c)4 nonprofit organizations, tax-exempt entities that are not required to disclose or identify contributors. Such indirect political payments can dwarf direct contributions that may be publicly reported.

⁴ Joint Investor Letter to Chair Mary Jo White Regarding File Number S7-06-16 (July 20, 2010) (available at https://www.ceres.org/files/sec-concept-release-letter/at_download/file)

⁵ Petition of The Committee on Disclosure of Corporate Political Spending, File No. 4-637 (Aug. 3, 2011) (available at <https://www.sec.gov/rules/petitions/2011/petn4-637.pdf>).

⁶ FACT SHEET: The Investor Campaign for Corporate Political Activity Disclosure (June 2016) (available at <http://corporatereformcoalition.org/wp-content/uploads/2016/06/Corporate-Political-Spending-Shareholder-Resolutions-2010-2016.pdf>)

Over the past ten years, the NYC Funds have engaged dozens of companies, with mixed success, to request they disclose their direct and indirect political spending. Many companies that do disclose only provide partial disclosure; companies may report their direct expenditures to political candidates, but often oppose disclosing expenditures to other organizations active in politics, such as entities operating under Internal Revenue 501(c)(4) and 501(c)(6).

The NYC Funds therefore support uniform and comprehensive line-item disclosure requirements of all corporate expenditures spent on political activities.

Human Capital Management

The NYC Funds support clearer information about the role that a firm's human capital plays in generating firm performance and value. Human capital encompasses a broad range of practices, including but not limited to employee training and development, compensation, fair labor practices, health and safety, responsible contracting, and diversity, with respect to both the company's own domestic and international employees and the employees of vendors throughout the global supply chain.

While many companies declare that their workforce is their "most valuable asset," or some variation on that theme, companies provide very little information about how they are managing that most valuable of assets. At present, Form 10-K only requires disclosure of the number of firm employees, and some companies provide information pertaining to the number of employees covered by collective bargaining agreements.

I urge the SEC, as part of any revisions to Regulation S-K, to include rules requiring disclosure of certain human capital metrics, such as those measuring diversity, productivity, turnover and health and safety, and to require principles-based disclosures to elicit disclosure of additional items that may be relevant to specific companies or industries.

Specifically with respect to diversity, I urge the SEC to consider mandating disclosure of a company's EEO-1 report data, which details the composition of the company's workforce by race and gender across employment categories, including senior management. Federal law already requires companies with 100 or more employees to annually submit an EEO-1 Report to the Equal Employment Opportunity Commission, so the cost is minimal. Additionally, many companies already disclose their EEO-1 reports – a best practice actively encouraged by the NYC Funds through company engagements.

Additional comments

Board diversity

The NYC Funds, like many institutional investors, are increasingly focused on board of director quality, composition and diversity, including specifically with respect to race and gender. Under current disclosure rules, it is difficult for investors to identify the gender and racial diversity of corporate boards. It is also difficult to assess the collective set of skills and experience represented on a particular board; while individual director's skills are included in their respective bios, investors would benefit from a holistic snapshot of the skills and experience of the board as a whole.

In an effort to address these related concerns, last year I joined with North Carolina Treasurer Janet Cowell and representatives of seven other major U.S. public pension funds to petition the SEC to require issuers to indicate, in a chart or matrix, each nominee's gender, race, and ethnicity, in addition to the primary skills, experiences, and attributes that each director possesses.⁷ I urge the SEC to act on the recommendation in our March 31, 2015 petition, either as part of its Regulation S-K initiative or sooner as a standalone rulemaking. To ensure that the requested rule provides investors with useful disclosure, we recommend that the SEC include safeguards to limit the ability of boards to engage in "grade inflation," in which all directors are claimed to possess all, or virtually all, of the various skills and experiences identified as relevant in the matrix.⁸

Purchases of Equity Securities by the Issuer – Item 703 (or "Share Buybacks")

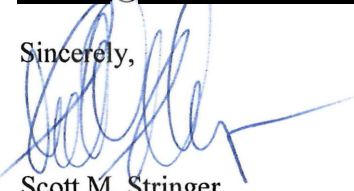
The current disclosure requirements relating to share repurchases, as defined by Item 703 of Regulation S-K, have not kept pace with the volume of such repurchases in the U.S. market and their impact. The volume of repurchases has recently made companies the largest collective buyer of stock in the U.S. market.⁹

As long-term investors, the NYC Funds support capital allocation strategies, including distributions to shareowners through buybacks and dividends, that do not jeopardize long-term firm value. We are concerned, therefore, by the very high level of share buybacks by U.S. companies, often at the peak of the market. Excessive buybacks can materially increase a company's risk profile, particularly when financed with additional debt, and may result in underinvestment in a company's long-term growth, such as through research and development, human capital development, and mergers and acquisitions. Moreover, share buybacks may be deployed to help a company engineer per share earnings and other targets, including those included in executive compensation incentive plans, that would not have been achieved otherwise.

We support disclosures that will enable investors to better assess the timing, costs (including debt-related costs for debt-financed buybacks) and impacts of share buybacks, including their impacts on per share metrics.

I appreciate the opportunity to provide comments on behalf of the NYC Funds. If you have any questions or require additional information, please do not hesitate to contact Michael Garland, Assistant Comptroller for Corporate Governance and Responsible Investment, at [REDACTED] or [REDACTED]@[REDACTED].

Sincerely,



Scott M. Stringer
New York City Comptroller

⁷ See "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>)

⁸ For an example of "grade inflation," see p. 9 of DTE Energy Company's 2016 proxy statement (available at <https://www.sec.gov/Archives/edgar/data/936340/000119312516500274/d119554ddef14a.htm>). For an example of useful matrix disclosure, see p. 15 of Prudential Financial, Inc.'s 2016 proxy statement (available at <https://www.sec.gov/Archives/edgar/data/1137774/000119312516513434/d136579ddef14a.htm>).

⁹ Lu Wang. "There's Only One Buyer Keeping S&P 500's Bull Market Alive." *Bloomberg*. March 14, 2016. <http://www.bloomberg.com/news/articles/2016-03-14/there-s-only-one-buyer-keeping-the-s-p-500-s-bull-market-alive>.