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July 21, 2016

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

Dear Mr. Fields:

Subject: File No. S7-06-16, Release Nos. 33-10064, 33-77599
Business and Financial Disclosure Required by Regulation S-K

The California Public Employees' Retirement System (CalPERS) is pleased to submit comments to the Securities and Exchange Commission (SEC) in response to the Concept Release on Business and Financial Disclosure Required by Regulation S-K (Concept Release).

As the largest public pension fund in the United States, CalPERS manages approximately $295 billion in global assets.[1] CalPERS aims to achieve sustainable, long-term investment returns on these assets on behalf of the more than 1.8 million public employees, retirees and beneficiaries. As long-term shareowners, effective disclosures are essential to enhancing the efficiency of capital markets and support informed decision-making as to how we vote our interests and allocate capital to achieve sustainable returns.

Corporate financial reporting plays an integral role within capital markets by providing transparent and relevant information about the economic performance and condition of businesses. CalPERS strongly believes that all investors, whether large institutions or private individuals, should have access to disclosures that allow them to make informed voting and investment decisions. Furthermore, we believe that disclosures should be meaningful, understandable, timely, comparable and consistent to enable open and honest dialogue and informed decision making. Without such disclosures, CalPERS

[1] CalPERS investment fund total market value as of market close on July 4, 2016
https://www.calpers.ca.gov/page/investments

and other investors are disadvantaged in capital allocation decisions and voting decisions regarding boards of directors, auditors and shareholder proposals.

CalPERS' investment mission is to manage our investment portfolio in a manner that is sustainable, cost effective, transparent and risk-aware to generate returns to pay benefits. In support of these efforts, our Global Governance Principles outline areas that require effective disclosures, including the following: investor rights, board quality, diversity, independence and competence, compensation, corporate reporting, and regulatory effectiveness.[2] Additionally, CalPERS Legislative and Policy Engagement Guidelines also provide guidance to strengthen disclosures, and inform the positions that CalPERS takes in a number of areas, including the following: corporate accountability, financial markets, sustainability, and diversity.[3] We draw substantially from these principles and guidelines in commenting on this Concept Release.

The SEC's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. In this regard, CalPERS appreciates the SEC's focus on the structure and effectiveness of the SEC's disclosure system, and strongly supports the SEC's work to comprehensively review the disclosure requirements of Regulation S-K. However, we urge the SEC to consider all potential improvements to the current disclosure regime for the benefit of investors, such as clarifying the definition of materiality to reflect long-term investor needs, including more decision-useful information in disclosures. We also urge the SEC to consider enhancements to the disclosure regime that would make better use of technological advances to efficiently provide greater and more precise disclosures on sustainability, including more robust reporting of quantitative and qualitative climate risks, and provide broader reporting of board diversity information.[4] CalPERS also supports the addition of reports on corporate political spending.

We appreciate the opportunity to respond to specific questions in each of the major sections of the Concept Release: Disclosure Framework, Information for Investment and Voting Decisions, and Presentation and Delivery of Important Information. Enclosed is our response to specific questions in Appendix A.

[2] CalPERS Global Governance Principles
https://www.calpers.ca.gov/docs/board-agendas/201603/invest/item05a-02.pdf

[3] CalPERS Legislative and Policy Engagement Guidelines
https://www.calpers.ca.gov/docs/board-agendas/201512/pension/item-7-attach-2.pdf

[4] Petition for Amendment of Proxy Rule Regarding Board Nominee Disclosure – Chart/Matrix Approach, March 31, 2015
https://www.sec.gov/rules/petitions/2015/petn4-682.pdf

We look forward to working with you as the Concept Release proceeds through the regulatory process. Please do not hesitate to contact us through Mary Anne Ashley, Chief of our Legislative Affairs Division, at ([redacted], or Dan Crowley of K&L Gates LLP, our Federal Investment Policy Representative, at ([redacted]. Thank you for considering these views.

Sincerely,

DOUGLAS HOFFNER
Interim Chief Executive Officer

Enclosure

CalPERS' comments begin at section III (B) of the Concept Release.

III. B. 1. PRINCIPLES-BASED AND PRESCRIPTIVE DISCLOSURES REQUIREMENTS

6. Should we revise our principles-based rules to use a consistent disclosure threshold? If so, should a materiality standard be used or should a different standard, such as an "objectives-oriented" approach or any other approach, be used? If materiality should be used, should the current definition be retained? Should we consider a different definition of materiality for disclosure purposes? If so, how should it be defined?

Principles-based rules should not be revised to use a consistent disclosure threshold. Registrants vary in size and purpose such that having a "one size fits all" approach would not add value. Any change should address a specific rule for specific purposes. Theoretically, "objectives-oriented" revisions may seem to be efficacious, but it is unclear how it would work in practice. There is value in the certainty that the existing practice provides. Percentage thresholds at large companies appear to be too huge when applied. We lack a consistent definition of materiality. It appears that technology would allow for greater detail which would tend toward enhanced disclosures, but there has been a push to weaken the materiality definition.[1]

In Robert G. Eccles and Tim Youmans's[2] paper, *Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality,* they address the current state of the definition of "materiality" in the United States (U.S.), rightly pointing out that there is no standard definition:

> Materiality forms the conceptual bedrock of corporate reporting, yet no authoritative definition of it exists. In "Securities Regulation," Louis Loss points out that the legal field offers no specific definition of the word. Court opinions on materiality have merely sketched its conceptual contours. Every time materiality has been relevant to a legal case in the U.S., the court has opined that it must be decided on a case-by-case basis, as is the precedent when deciding fraud cases. The U.S. Supreme Court has also asserted that this determination must be based on both qualitative and quantitative factors based on the "total mix" of information

[1] Financial Accounting Standards Board News Release. "*FASB Proposes Improvements to Materiality to Make Financial Statement Disclosures More Effective,"* September 24, 2015. *http://www.fasb.org/cs/ContentServer?pagename=FASB%2FFASBContent_C%2FNewsPage&cid=1176166401832*

[2] Robert G. Eccles and Tim Youmans, "*Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality" Working Paper 16-023. http://www.hbs.edu/faculty/Publication%20Files/16-023_f29dce5d-cbac-4840-8d5f-32b21e6f644e.pdf*

> made available. Further complicating the "total mix" standard set by the Supreme Court for evaluating potentially material omissions or misstatements, the Court left open the issue of "circularity" in its definition of materiality. Finally, the courts have also made clear that materiality must be determined with complete clarity. These opinions do not discuss "degrees" of materiality; materiality is binary. A fact either is material, in which case it must be reported, or is not material, in which case it does not need to be reported.[3]

Eccles and Youmans argue that investors have no say in the materiality determination without suing. Despite the fact that registrant judgments vary greatly, the fact that registrants determine what is material to reasonable investors is problematic in getting meaningful and comparable disclosures. Much work needs to be done to clarify "materiality" in the many forms it is used. Interestingly, Eccles and Youmans choose to focus on the most common articulation of materiality as being related to the "total mix" when the holding in the seminal case focused on voting decisions. This is important because it focuses on the investor's judgment which is in our view fundamental materiality for a long term, global investor like CalPERS, will vary from that of a short term investor looking for information which is relevant to trading. Keeping the investor's judgment to the forefront is vital. CalPERS Investment Beliefs highlight that we are exposed to risks which can accumulate over time, such as climate change. Materiality can accumulate over time and access to holdings.

7. Should we limit prescriptive disclosure requirements and emphasize a principles-based approach? If so, how? How can we most effectively balance the benefits of a principles-based approach while preserving the benefits of prescriptive requirements?

A combination of prescriptive and principles based disclosure makes sense. We think of this as a "floor and ladder" approach – with required minimum and options to add and illustrate. This would work well for climate risk reporting where required quantitative measures, such a greenhouse gas emissions report would be disclosed alongside qualitative scenarios reporting, which would be principles based. In each case, the approach taken should lead to greater disclosure of the economic realities of the registrant's operations. In some cases, this will be best obtained through prescriptive disclosures. The U.S. Supreme Court has provided some insight into the purpose of the Securities Exchange Act of 1934 (1934 Act) in Basic v. Levinson, 485 U.S. 224 (1988). As quoted below, the Supreme Court described the fundamental purpose as "implementing a philosophy of full disclosure."

> The 1934 Act was designed **to protect investors against manipulation of stock** prices. *See* S.Rep. No. 792, 73d

[3] See id at 4.

> Cong., 2d Sess., 1-5 (1934). Underlying the adoption of extensive disclosure requirements was a legislative philosophy:
>
> "There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy."
>
> H.R.Rep. No. 1383, 73d Cong., 2d Sess., 11 (1934). This Court **"repeatedly has described the *fundamental purpose' of the Act as implementing a `philosophy of full disclosure.'"*** Santa Fe Industries, Inc. v. Green, 430 U. S. 462, 430 U. S. 477-478 (1977), quoting SEC v. Capital Gains Research Bureau, Inc., 375 U. S. 180, 375 U. S. 186 (1963).[4]

The SEC's focus should be on ensuring the full disclosure needed to prevent manipulation of stock prices. In other words, there should be a movement towards enhanced disclosure.

8. What are the advantages and disadvantages of a principles-based approach? Would a principles-based approach increase the usefulness of disclosures? What would be the costs and benefits of such an approach for investors and registrants?

Principles allow flexibility and judgment. We need both. Principles based reporting and specific required disclosure give the full picture to investors. Auditors pay a key role in ensuring a fair balance is struck.

9. Do registrants find it difficult to apply principles-based requirements? Why? If they are uncertain about whether information is to be disclosed, do registrants err on the side of including or omitting the disclosure? If registrants include disclosure beyond what is required, does the additional information obfuscate the information that is important to investors? Does it instead provide useful information to investors?

International experience demonstrates that companies are fully able to provide both rules and principles based disclosers. As a global investor, CalPERS values both.

10. Do registrants find quantitative thresholds helpful in preparing disclosure? Do such thresholds elicit information that is important to investors? Do they require registrants to provide some disclosure that investors do not need? To the extent our rules contain quantitative thresholds, how should we define them? Are specified dollar amounts more or less effective than amounts based on a registrant's financial condition, such as a percentage of revenues or assets?

[4] Basic v. Levinson 485 U.S. 224 (1988) pg. 230.

Specified dollar amounts are sometimes best because the percentage of revenues or assets is often a huge number for large registrants and rarely becomes material. Modern technology clearly supports a registrant's ability to be more precise. For example, improved data may eliminate the need for "sampling" given the capabilities to analyze all of the available data. CalPERS would welcome the added transparency technology would provide, but the rules need to support registrants actually having to provide the disclosures.

11. Should we develop qualitative thresholds for disclosure? Should there be a combination of quantitative and qualitative thresholds?

There should be both quantitative and qualitative thresholds. For example, executive compensation may not reach a materiel quantitative threshold, but meets a qualitative threshold, such as investors' calls for full disclosure. Registrants may argue that political expenditures may not meet a quantitative threshold, but many investors suggest that knowing political contributions made by registrants has qualitative importance. When there is disclosure of qualitative information shareowners can better determine whether interests are aligned and whether the company is being managed well .

12. Do registrants find principles-based disclosure requirements helpful in preparing disclosure? Do such requirements elicit information that is important to investors?

Principles-based disclosure provides an objective and allows the registrant to construct its own unique response, whereas, rules-based disclosure is more prescriptive and does not provide the same level of discretion within a response. Principles-based disclosures have the advantage of facilitating disclosure of information that a rules-based disclosure requirement would not allow.

13. Would principles-based disclosure affect corporate compliance and governance structures? If so, how?

Principles based disclosure requires the judgment and time of a competent, engaged board. That companies have such boards is entirely consistent with investors' expectations on good corporate governance.

IV. A. 4. c. COMPLIANCE WITH ENVIORNMENTAL LAWS ITEM (101(c)(1)(xii))

49. Should we increase or reduce the environmental disclosure required by Item 101(c)(1)(xii)? Why? What kind of information should we add to or remove from this requirement?

The environmental disclosure requirement should be enhanced to cover more than one year into the future. Item 101(c)(1)(xii) only requires a registrant to provide "material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year **and for further periods as the registrant may deem material.**" Unfortunately few registrants deem that additional periods are material and report only the minimum required. The prescribed time period should be lengthened appropriately for environmental matters generally. A current example is risk reporting in line with the Paris Agreement – a focus of many shareowner proposals this proxy season.

50. Is disclosure about the material effects that compliance with provisions regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon a registrant's capital expenditures, earnings and competitive position important to investors? If so, should we require registrants to present this disclosure in a specific format? Would this disclosure be more appropriate in MD&A or the business section?

The material effects that compliance with environmental provisions may have on a registrant's capital expenditures, earnings, and competitive position are very important to long-term investors like CalPERS. Given the nature of environmental issues, it would be appropriate to create a special requirement to report on such issues in the MD&A and provide that registrants disclose further into the future than what is required on other issues.

IV. A. 5. NUMBER OF EMPLOYESS (Item 101(c)(i)(xiii))

54. Does disclosure of the number of persons employed by the registrant help investors assess the size, scale and viability of a registrant's operations and any trends or shifts in operations? Is this disclosure important to investors and why? Is there any additional information about employees that would be important to investors? If so, what information?

Disclosure of the number of persons employed by the registrant is needed to help investors effectively assess the size, scale and viability of a registrant's operations and trends. As stated in CalPERS Investment Belief 4, long-term value creation requires effective management of three forms of capital: financial, physical and human. The scope of human capital management includes a company's direct employees, as well as the employees of vendors in the company's supply chain. In addition, human capital management encompasses a broad range of corporate practices, including but not limited to: hiring and retention, training, compensation, fair labor practices, health and safety, responsible contracting, and diversity and inclusion.

Disclosing the total number of persons employed helps put hiring, retention and training expenditures into better context for investors. Furthermore, the size of the registrants' operations has a direct impact on the scope of corporate practices identified as risks to investors. Changes over time will highlight trends that are important to investors. Therefore, disclosure of the number of persons employed by the registrant is needed to help investors effectively assess the size, scale and viability of a registrant's operations and trends.

Enhanced human capital disclosures by registrants are essential to investors' ability to effectively hold boards accountable in their role to oversee management's performance on human capital risk and opportunity. Corporate boards must provide oversight and accountability for the company's strategy to create long-term value including the management of human capital. Disclosure of the number of persons employed by the registrant supports investors' ability to hold corporate boards accountable for the development and implementation of company policies, procedures, training and internal reporting structures related to human capital management. As noted in the CalPERS Global Governance Principles,[5] the registrant's human capital practices should cover social factors that contribute to long-term value creation such as: universal human rights, equal employment opportunity, freedom of association, occupational health and safety, fair competition, and strategic social investments.

Enhanced human capital disclosures are also critical to an investor's ability to promote governance, transparency, and board accountability in the effective management of human capital. Research shows that there is a correlation between investing in people - their compensation, training, health and safety, etc. - and long-term shareowner return. As highlighted in the Center for American Progress June 2016 report titled *Workers or Waste*, "human capital investments are generally productivity-enhancing expenditures that can improve investor returns."[6] Additionally, a report titled "*The Materiality of Human Capital to Corporate Financial Performance*" found that "there is sufficient evidence of human capital materiality to financial performance to warrant inclusion in standard investment analysis."[7] Moreover, human capital management is particularly important in those sectors where continued success and ability to operate is heavily dependent on the company's ability to leverage its human capital to create value.

Shareowners are increasingly incorporating analyses of human capital management into their overall evaluation of a company's ability to deliver long-term sustainable value. Since human capital is an intangible corporate asset, investors need a comprehensive understanding of a company's process for managing human capital with a clear link to long-term shareowner value. Specifically, investors need information about the company's overall human capital management strategy, metrics, benchmarks and strategic targets, as well as a clear link showing how those factors impact short and long-term performance. For example, company costs of labor including a breakdown of investments in compensation, training, recruitment, retention, induction and engagement would be useful. Additionally, disclosures around workforce composition;

[5] See, https://www.calpers.ca.gov/docs/policy-global-governance.pdf , dated March 14, 2016

[6] See, p. 2, https://cdn.americanprogress.org/wp-content/uploads/2016/06/03042031/HumanCapital.pdf , dated June 2016

[7] See, p.2,
http://www.law.harvard.edu/programs/lwp/pensions/publications/FINAL%20Human%20Capital%20Materiality%20April%2023%202015.pdf dated April 2015

employee engagement; health and safety; and attrition would also help investors assess and compare human capital management performance, over time at the same company and across companies.

Current financial reporting rules require companies to disclose very little information about how human capital is measured or managed. Mercer Human Resource Consulting has reported that on average, companies spend 36 percent of corporate revenues on human capital, including employee compensation, training and development, but only 20 percent of the 100 largest publicly-traded companies in the U.S. report information on human capital and its contribution to the company's strategy.[8]

We believe that enhanced disclosure of legal, reputational, and financial risks related to poor human capital management will improve investors' ability to assess human capital policies and practices with emphasis on the long-term. Such enhanced disclosures should include various metrics and any related information that provides context to the data. The key is for investors to be provided with sufficient disclosures in order to understand how human capital management fits into the company's overall strategy to create long-term value.

Additionally, we would like to emphasize the importance of corporate board diversity. On March 31, 2015, CalPERS, alongside eight other pension funds, called on the SEC to strengthen disclosure of corporate board diversity. A joint petition[9] was sent to the SEC urging the adoption of a rule requiring corporate disclosure of board nominees' gender, racial, and ethnic diversity, as well as mix of skills, experiences, and attributes. We also submitted a response regarding the House of Representatives (H.R.) 4718 Gender Diversity in Corporate Leadership bill sponsored by Representative Carolyn B. Maloney. The bill would require the SEC to establish a Gender Diversity Advisory Group to study and make recommendations on strategies to increase gender diversity among the members of the board of directors of issuers, and to amend the Securities Exchange Act of 1934 to require issuers to make disclosures to shareholders with respect to gender diversity, and for other purposes. In our letter[10], we asked that Representative Maloney consider expanding the scope of the bill to go beyond merely gender diversity to include skill sets, age, nationality, race, sexual orientation, gender identity, and historically under-represented groups.

55. For new registrants filing a registration statement that have not had revenue from operations during each of the preceding three fiscal years, Item 101(a)(2)(iii) requires disclosure of any anticipated material changes in the number of employees in the various departments such as research and development, production, sales or administration. Is this information useful to

[8] See, http://uawtrust.org/AdminCenter/Library.Files/Media/501/About%20the%20Trust/HCM%20Summit/DB_The%20Sound%20of%20Silence%20in%20Corp%20Reporting.pdf , dated 2006

[9] See, https://www.sec.gov/rules/petitions/2015/petn4-682.pdf , dated March 31, 2015

[10] See, www.calpers.ca.gov/docs/board-agendas/201605/invest/item05b-00.pdf

investors? Should we include a similar requirement for all registrants in periodic and current reports? Should this requirement be in addition to or in lieu of the current requirement to disclose the number of employees?

Disclosures around the number of persons employed by the registrant can help investors assess the size and scale of company operations, plans and related risks. Subsequently, disclosures around anticipated material changes in the number of employees in the various departments would be used by investors to assess a company's long-term strategy and ability to manage identified risks. Mandatory disclosure of any anticipated material changes in the number of employees would also provide additional context around human capital risks that could materialize and impact long-term shareowner value. When companies disclose material anticipated changes, investors are able to better analyze and understand operational trends and shifts. Therefore any known or anticipated changes in the number of employees would be useful information to investors.

56. Should we require registrants to distinguish among their total number of persons employed, such as by distinguishing between:

• Full-time and part-time or seasonal employees;

• Employees and independent contractors; or

• Domestic and foreign employees?

Why or why not?

We support requiring registrants to distinguish among their total number of persons employed. Our Global Governance Principles highlight the belief that companies should adopt maximum progressive practices that emphasize and focus on human rights protections for all employees at all levels of the company. To effectuate progressive protections for all employees, companies must understand and disclose the total number of persons employed. Disclosures that distinguish the total number of employees employed by time base, employment status and/or foreign or domestic status provides shareowners with greater detail as to the extent of human capital risk and the span of those potentially impacted.

57. Rather than requiring registrants to disclose the number of employees or independent contractors, should we require or permit registrants to provide a range? Why? Should we allow for different ranges based on the size of the registrant? Would reporting a range rather than a specific number reduce the costs of producing this disclosure?

Despite the growing recognition of the importance of human capital management, company disclosures concerning this matter are still lacking. We acknowledge that some human capital metrics may be unique or universal depending on the industry, sector, or company strategy; however, we believe that at minimum investors should expect a single metric from companies - the number of persons employed.

Based on a 2012 American National Standards Institute (ANSI) template prepared in cooperation with the society for Human Resource Management (SHRM), the Center for American Progress recommends mandatory disclosure of four human capital variables. One of the recommended variables is the disclosure of the total number of full-time equivalent (FTE) employees a company employs on an annual basis. We believe that reporting the specific number of employees as opposed to a range helps put hiring, retention, and training expenditures in context.

We believe that comprehensive disclosure of the total number of employees and independent contractors can help investors better assess the effectiveness of corporate training and HR policies. Investor Responsibility Research Center Institute authors Aaron Bernstein and Larry Beeferman touched on this issue in the April 2015 report titled, "*The Materiality of Human Capital to Corporate Financial Performance*." The report reviewed 92 empirical studies that examined the relationship between human resource policies and one or more financial outcomes including 36 specifically on training and 56 on human resources systems more generally. Much of the research is based on quantifiable metrics such as how much a company spends per employee. The report found that corporate training and other HR policies, if implemented effectively, can enhance financial performance. As with any data gathering, having specifics enhances the outcome. In this case, having the specific number of persons employed would benefit shareowners.

Currently, the SEC does not require comprehensive disclosure of human capital management practices, risks and opportunities. The absence of a market standard for human capital metrics makes it difficult for investors to compare how human capital is managed across industries and sectors. We believe that a comprehensive set of disclosures should include not only the number of persons employed, but also any related issues including workforce composition, employee engagement, health and safety, and turnover. Therefore, given we would embrace more detail; we do not support allowing registrants to provide a range.

As stated in past comment letters, CalPERS does not favor reporting exemptions based on the size of the company. We believe that the market penalizes companies that are less transparent. Reporting a range rather than a specific number would not reduce the costs of producing the disclosure of the number of persons employed. The cost of compliance may initially appear to be a higher cost for a smaller company; however, the SEC already requires this disclosure under the narrative description of business.[11] In most cases, providing the information has little incremental cost since companies have already captured the data.

[11] See, section 229.101 paragraphs (c)(1)(xiii), http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:3.0.1.1.11&rgn=div5 (last accessed May2016)#se17.3.229_1101 , as of June 9, 2016

58. Should we require disclosure of additional information about a registrant's employees or employment practices? What would be the challenges of requiring disclosure of any additional information, and what would be the benefits to investors?

A comprehensive set of disclosures should cover (at a minimum) the following employment practices: hiring and retention, training, compensation, fair labor practices, health and safety, responsible contracting, and diversity.

Enhanced human capital disclosures help shareowners gauge whether a company is effectively managing its workforce or missing opportunities through poor human capital management. There are both tangible and intangible benefits associated with the effective management of human capital. For example, improved long-term performance, cost savings related to medical expenses and environmental clean-up, compensation premiums, waste and water reduction, and reduced energy consumption are potential benefits in the effective management of human capital. There are also intangible benefits that are harder to quantify such as, a culture of excellence, high employee engagement and satisfaction, as well as competitive advantages.

We believe that enhanced disclosures around human capital give shareowners greater oversight and ability to ensure board accountability for the company's strategy to create long-term value through the management of human capital. In some cases, the failure to disclose and oversee material human capital practices has led to destruction of shareowner value through exposure to operational, reputational and legal risks.

59. As outsourcing and subcontracting have become more prevalent in the last few decades, what, if any, additional information about a registrant's outsourcing or subcontracting arrangements should we require? Would this information be most useful in the context of the description of the registrant's business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management? What would be the challenges of requiring disclosure of this information?

The scope of human capital management includes a company's direct employees, as well as the employees of vendors in the company's supply chain. As a result, outsourcing and subcontracting arrangements could contribute to greater operational, reputational, and legal risk. For example, outsourcing and subcontracting could harm or contribute to roadblocks in existing operations or make efforts to expand more difficult. In addition, the ineffective management of outsourcing and subcontracting could result in higher recruitment, training and retention costs.

As outsourcing and subcontracting have become more prevalent in the last few decades, enhanced disclosure of a registrant's outsourcing or subcontracting arrangements should capture related operational, reputational and legal risks. In circumstances where the registrant is not responsible for the day-to-day management of the outsourced or subcontracted employees, there is an added complication to what gets reported. An example of investor concern regarding outsourcing and subcontracting risks is the creation of the Human Capital Management (HCM) initiative formed in the wake of the Bangladesh tragedies. CalPERS participated in the HCM initiative as a founding member alongside a group of global investors engaging six retail companies on supply chain activities. In addition, we recently completed a board presentation[12] on the HCM initiative and the financial benefits of diversity and inclusion in the global corporate market.

Given such employees remain important to the business, investors should be informed whether substantial portions of a company's operations happen to be dependent on another company. If there is a requirement to report, registrants will likely provide better oversight of outsourced operations. Therefore we believe comprehensive human capital disclosures should include material information about a registrant's outsourcing or subcontracting arrangements.

IV. B. 1. SELECTED FINANCIAL DATA (Item 301)

67. Is the Item 301 disclosure that is not otherwise available or readily accessible important to investors? Are there benefits to having the five-year information in one table?

No changes should be made. Companies do not appear to have an issue presenting Item 301 information in a single table. Companies routinely use simple techniques to show differences and changes such as providing footnotes. Having the information in one place prevents a shareowner from having to review multiple sources to get basic information. Technology will make it easier to fulfill the requirements.

68. Should we retain, modify or eliminate Item 301? Why? Does it achieve the goal of highlighting significant trends in a registrant's financial condition and results of operation? Does it also achieve the goal of providing selected financial data in a convenient and readable format? How would the elimination of Item 301 affect investors? Would elimination of this requirement increase costs to investors because they would then need to obtain this information from prior filings?

Item 301 should be retained. There is no issue with Item 301 from an investor perspective. Technology makes it much easier to produce now than when the Item was introduced.

69. If we retain Item 301, should we modify this requirement and, if so, how? Should we modify the item to require additional disclosure and, if so, what additional disclosure would be important to investors and why?

[12] See, https://www.calpers.ca.gov/docs/board-agendas/201604/invest/item10a-01.pdf , dated April 2016

Item 301 should be retained. Five years is an appropriate number of years. There should be a requirement to explain all changes.

70. Instruction 1 to Item 303(a) specifies that, where trend information is relevant, reference to the five-year selected financial data pursuant to Item 301 may be necessary. 261 Despite this instruction, registrants generally do not discuss or analyze trends outside the three-year timeframe of Item 303. Does selected financial data effectively highlight significant trends that are not described elsewhere? If so, is five years an appropriate period or should we modify the number of fiscal years required to be included in the selected financial data? If selected financial data does not effectively highlight significant trends that are not described elsewhere, how could we modify our requirements to best achieve the objective of highlighting significant trends in registrants' financial condition and results of continuing operations?

There is no need to modify this requirement. Five years is an appropriate amount of time. There is an argument that the timing should be longer, but five years is a reasonable compromise. Capacity would be better spent making modifications elsewhere.

71. EGCs are not required to present selected financial data for any period prior to the earliest audited period presented in connection with its first effective registration statement. Should we revise Item 301 to provide a similar accommodation for all registrants? Why or why not?

Item 301 should not be modified to provide additional exceptions. Also, CalPERS does not agree with the exceptions currently provided to ECGs. Expanding the exceptions available to ECGs to the entire market would bring to life what we initially feared with exceptions in the first place—"exception creep."

72. Should we require Item 301 disclosure for the full five years only in certain instances such as when a registrant revises its annual financial statements or if information on the earliest two of the last five years is available without unreasonable cost or expense?

It should be easy for registrants that desire to provide full disclosure to comply with Item 301. The information is in company records. Changes are normally explained with footnotes. Registrants are already aware of the requirement and can plan for future disclosure.

73. Currently, Item 301 disclosure is required in comparative columnar form. If we continued to require this disclosure, should we consider other presentation or format requirements?

The columnar format is simple. CalPERS believes that there is no need to institute a different process.

74. What types of investors or audiences are most likely to value the information required by Item 301?

All investors could find Item 301 information useful. In one place, an investor can see top line important numbers and how those numbers have changed over a five year period.

75. What is the cost of providing the disclosure required by Item 301, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 301.

Item 301 requires registrants to disclose information that has already been produced. A preparer simply needs to pull information from company records. Given technological enhancements, providing this disclosure has become much easier and less costly over time. Non-GAAP financials are likely more costly and difficult to compile, yet they are provided by registrants.

76. Does Instruction 2 provide a reasonable balance between specified content and a flexible approach that permits registrants to select the data that best indicates performance? Why or why not? If not, how should we modify Instruction 2? For example, should we modify Instruction 2 to be more prescriptive or provide for a more flexible approach? If a flexible approach should be used, should we require registrants to disclose their reasons for the items it included?

CalPERS believes that Instruction 2 provides a reasonable balance allowing a registrant to conform the disclosure to the nature of its business. Certain information is required, but a registrant may add additional items that it believes would enhance an understanding of and highlight other trends. It appears that Instruction 2 elegantly strikes a balance. There is no need to make changes.

77. Should we require auditor involvement (e.g., audit, review or specified procedures) for this disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?

It would enhance investor confidence if the disclosures were included in the audit review.

78. What is the impact of listing specific items of disclosure in Instruction 2? Do registrants view the items listed in Instruction 2 as a checklist? Should additional items be considered?

CalPERS believes that listing items enhances comparability. Instruction 2 appropriately highlights key matters while providing flexibility to add additional information. Since registrants may already add additional information, there does not appear to be a need to prescribe additional items.

IV. B. 3. CONTENT AND FOCUS OF MD&A (Item 303 – Generally)

88. What requirements in Item 303 are important to investors? How could Item 303 be improved?

All requirements of Item 303 are important to investors. In Item 303, the registrant discusses its financial condition, changes in financial condition and results of operations. More specifically, Item 303 discusses (1) liquidity, (2) capital resources, (3) results of operations, (4) off balance sheet arrangements, and (5) contractual obligations. Item 303 disclosures can be further improved by ensuring registrants report accurately.

89. Do the current requirements of Item 303 result in disclosure that highlights the most significant aspects of the registrant's financial condition and results of operations? Are there any requirements in Item 303(a) and (b) that result in immaterial disclosures that may obscure significant information? If so, how? Should we consider a qualitative or quantitative threshold rather than materiality for requiring MD&A disclosure? If so, what threshold would be appropriate and why? Would adopting a different standard impede the flexibility of analysis and assessment under the current materiality standard? If so, how?

Yes, the current list should capture the most sought after information. The U.S. Court of Appeals, Second Circuit outlines the Item 303 reporting requirements in Stratte-MuClure v. Morgan Stanley, 776 F.3d 94, (2d Cir. 2015). The Second Circuit stated that:

> The SEC's test for a duty to report under Item 303, on the other hand, involves a two part (and different) inquiry. Once a trend becomes known, management must make two assessments:
>
> (1) Is the known trend likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
>
> (2) If management cannot make the determination, it must evaluate objectively the consequences of the known trend

> on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on registrant's financial condition or results of operations is not reasonably likely to occur.

Currently, registrants may avoid using the two step test opting not to disclose based on compliance with the higher Basic standard.[13] When analyzed, it is important to note that the duty to report standard is based on management showing that something "is not reasonably likely to come to fruition." The existing standard appears appropriate to promote transparency. The SEC should move to enforce the existing the standard.

90. There are various sources of Commission and Division guidance on MD&A. These include Commission releases, sections of the Division's Financial Reporting Manual and staff Compliance and Disclosure Interpretations. Given the amount of Commission and staff guidance on MD&A, should we consolidate guidance in a single source? If so, which guidance remains helpful, and is there guidance that we should not include in a consolidation? Would consolidation of this guidance facilitate registrants' compliance with the item's requirements, or is the existing form of this guidance sufficient?

Consolidating the guidance in one place would provide substantial benefits. First, it would simplify finding relevant guidance. Second, it would provide an opportunity to fix inconsistencies in the current guidance. Finally, it would facilitate compliance. Professor Henry Hu succinctly highlights the need to consolidate and update guidance regarding Item 303.[14]

91. Should we revise our rules to require registrants to provide an executive-level overview? If so, should our rules prescribe the information that must be covered? What would be the benefits and challenges of prescribing the content of the overview and what content should we require? For example, should we require an executive-level overview to discuss the most significant accounting estimates and judgments? Should any requirement for an executive-level overview be limited to registrants of a certain size?

We agree with the argument expressed by the law firm Wachtell, Lipton, Rosen & Katz when it states that an executive level overview "could be a useful means for explaining to investors how management and the board think about performance, strategy, expectations, capital allocation priorities, and future drivers of growth, key risks, and other important topics of concern."[15] The information should not be prescriptive but should provide an opportunity for executives to communicate with shareowners directly.

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[13] Douglas W. Greene, Why Item 303 Just Doesn't Matter in Securities Litigation, Law 360. October 2015. . http://www.law360.com/articles/711040/why-item-303-just-doesn-t-matter-in-securities-litigation

[14] Letter from Henry T.C. Hu (Oct. 7, 2015)(stating Item 303 is supplemented by "a bewildering stream of guidance of varying degrees of formality and legal import).

[15] Letter from Wachtell, Lipton, Rosen & Katz (May 16, 2016).

The overview should contain the most significant accounting estimates and judgments and should not be limited to registrants of a certain size. Further, the communication should be in the words of the executives and avoid boiler plate language.

92. If we were to require an executive-level overview, how could we encourage registrants to provide an overview that does not simply duplicate disclosure provided elsewhere?

While duplication may occur, CalPERS believes that an executive level overview would still be beneficial.

93. Are there other methods that registrants could employ or new rules that we should consider that would result in more meaningful analysis in MD&A?

We advocate registrants providing information and analysis about activities that might occur well into the future and covering environmental, social, and governance (ESG) related items. To be clear, using the current two-step test and analyzing the threat of climate change, many registrants should provide more robust reports on the impact of climate change. Under current practice, there is a safe harbor given that the adverse impact of climate change is well into the future.

94. What types of investors or audiences are most likely to value the information required by Item 303 and does the audience for disclosure vary across the different parts of Item 303 disclosure? If so, how? Would the manner of presentation affect how various types of investors benefit from Item 303 disclosure?

All investors benefit from Item 303 disclosures. The focus should be on the information presented rather than the manner presented. If a company is accurately and fully disclosing, key information is reported regardless of the manner presented. Other than adjusting for significant technological enhancements, there is little need for presentation changes. Placing guidance in one place would be an important enhancement.

95. Should we require a different format or presentation of MD&A such as a requirement for the discussion to be tagged or presented in a structured manner?

Registrants can have some unique circumstances. There is some commonality within industries, but a registrant should have enough flexibility to present its unique situation. At first glance, there appears to be advantages to tagging, but in practice it may be challenging to standardize or capture unique issues a registrant may face. Please review the Japanese experience with tagging prior to placing an emphasis on tagging. Tagging appears to work well on things that are known ahead of time and not so well on unique items. Therefore a blend of formats could be useful – tagging for comment items and a structured opportunity for free form comment.

96. Should we require auditor involvement (e.g., audit, review or specified procedures) regarding the reliability of MD&A disclosure, and if so, what should the nature of the involvement be? What would be the benefits and costs to registrants and to investors?

Auditor involvement would strengthen the reporting and could focus on the assumptions and processes for developing reporting. This is also the case for scenario reporting, as requested by many investors on climate change. An emerging issue for investor opinion is whether boards have the skills and experience to provide robust reporting – for example on climate change – what has been dubbed “climate competence boards”.

97. What is the cost of providing the disclosure required by Item 303, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 303.

Shareowners ultimately pay for disclosures and require accurate and robust disclosure. Shareowners need to assess how capital is being properly allocated, and understand that the board is providing adequate oversight of management. Therefore, shareowners should have a greater voice in determining the value of disclosures.

98. What are the benefits of providing the disclosure required by Item 303? How could the benefits change if we made any of the changes contemplated here? Please provide quantified or qualitative estimates where possible relating to disclosure under Item 303.

Item 303 requires a registrant to discuss its financial condition, changes in financial condition and results of operations. The discussion shall include information covering the following: 1. Liquidity; 2. Capital resources; 3. Results of operations; 4. Off balance sheet arrangements; and 5. Tabular disclosure of contractual obligations. In practice, registrants do not examine trends that may take a while to develop such as climate change, asserting that there is too much uncertainty regarding events or conditions that are further out than a couple of years. This would increase costs for certain registrants, but the benefits could be enormous for long-term investors.

99. Does the two-step test for disclosure of a known trend, demand, commitment, event or uncertainty result in the most meaningful forward-looking disclosure? Why or why not? How do registrants determine when something is “reasonably likely” to occur?

The two-step test for forward looking statements currently applied by the SEC results in greater disclosure than what would be required by the Basic test; which focuses only on a probability and magnitude calculation.

The United States Court of Appeals, Second Circuit outlines the Item 303 reporting requirements in Stratte-MuClure v. Morgan Stanley, 776 F.3d 94, (2d Cir. 2015). The Second Circuit states that:

> The SEC's test for a duty to report under Item 303, on the other hand, involves a two-part (and different) inquiry. Once a trend becomes known, management must make two assessments:
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> (1) Is the known trend likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
>
> (2) If management cannot make the determination, it must evaluate objectively the consequences of the known trend on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on registrant's financial condition or results of operations is not reasonably likely to occur.

Given that the two-step test fosters greater transparency, CalPERS supports this test. It is clear given current court cases that a registrant's failure to meet this standard does not equal a violation of Rule 10b-5 automatically but could serve as a basis for liability. In any event, registrants should be required to disclose more information other than only disclosing what would be litigated. CalPERS favors the tests that support the greatest transparency.

It is important to note that in the described test, management must determine that something "is not reasonably likely to occur." The burden is clearly on management to determine that something is not reasonably likely, to avoid further analysis and reporting obligations. Based on the current reporting of climate change, it appears that many registrants have determined that it is not reasonably likely or that if it actually occurs there will not be a material effect on financial condition or results of operations. This is not a credible response, in the wake of the Paris Agreement. In sum, we prefer a standard that calls for the greatest transparency.

100. Should we revise the two-step test to apply a different standard in the first prong and if so, how? For example, should we require disclosure when a trend, event or uncertainty is more likely than not, probable, or reasonably possible to occur, rather than "reasonably likely" to occur?

The two-step test should not be revised. It serves a useful purpose. The standard should not be raised to "more likely than not" because in some cases that would raise the standard above the Basic standard. An event with great magnitude would not have to be reported if the likelihood is under 50 percent, but it would capture events of significantly lesser magnitude if the likelihood is greater than 50 percent. The current two-step test leans toward disclosure when the magnitude of an event is great but the probability of occurrence cannot be determined. “Reasonably possible” would be a better standard because it would require additional disclosures that may be important to shareowners and investors, particularly long term owners like CalPERS. We need to close the gap somewhat between what registrants acting in the shoes of “reasonable investors” deem to be “material” and what some reasonable investors would deem to be material if actually deciding. Interestingly, the two-step test offers a compromise such that if there is doubt the registrant should disclose. CalPERS prefers that approach.

101. Should we eliminate the two-step test in favor of a different standard for identifying required and optional forward-looking disclosure and, if so, what test would be appropriate? For example, should we revise Item 303 to incorporate the probability/magnitude standard from *Basic v. Levinson*. Which standard – the two-part test, *Basic's* probability/magnitude standard, or some other standard – should we require, and why? Would any particular formulation be more or less burdensome for registrants?

For the reasons discussed above, the two-step test promotes greater transparency and therefore is the best investor option from a long-term perspective. There is a greater need to enforce that standard. Moving to the Basic test would reduce transparency. It would also keep valuable information solely in the hands of management giving management a substantially greater advantage when making investment decisions in the registrant’s securities.

102. We have stated previously that quantification of the material effects of known material trends and uncertainties can promote understanding and may be required to the extent material. Should we revise Item 303 to specifically require registrants, to the extent practicable, to quantify the material effects of known trends and uncertainties as well as the factors that contributed to those known trends and uncertainties? Why?

Yes, we should ask for disclosure of material trends. We should also use the term “materiality” less when referencing disclosures. For example, the first question above uses the term “material” three times. The question asks whether registrants should report to the extent **material, material** trends and uncertainties that have a **material** effect. From an investor perspective, we would like registrants to report on material trends. It is unclear what we get once an item must be analyzed through two additional materiality steps with each having a high threshold. Unfortunately, the rules too frequently contain similar problems in construction. Ultimately materiality must be judged by investors. The fullest disclosure possible enables this.

IV. B. 6. OFF-BALANCE SHEET ARRANGEMENTS (Item 303(a)(4))

125. Does Item 303(a)(4) elicit disclosure that is important to investors? Is this information otherwise available in Commission filings?

From an investor perspective, the issues related to off-balance sheet items must be appropriately covered. CalPERS welcomes duplication in this area if it makes it less likely that there will be another investment scandal where a registrant is ostensibly compliant with the rules but is actually not disclosing significant risks.

126. If we retain the disclosure requirements in Item 303(a)(4), should we expand the disclosure required by this item? If so, what additional disclosure would be important to investors and why? For example, should we revise our rules to require registrants to analyze the risks and financial potential associated with its off-balance sheet arrangements?

The disclosure requirement in Item 303(a)(4) should be maintained and expanded. An executive overview analyzing the risks and financial potential associated with off-balance sheet arrangements would be very beneficial.

127. If we retain the disclosure requirements in Item 303(a)(4), should this information be located in MD&A, the notes to the financial statements, or both? Is the location of the disclosure important? Are there challenges associated with auditing this information?

Item 303(a)(4) remains necessary and should be presented in both places.

128. If we eliminate Item 303(a)(4), do the other requirements in Item 303 and the requirements in U.S. GAAP require adequate disclosure in terms of the location, presentation and nature of information about off-balance sheet arrangements? Would eliminating Item 304(a)(4) result in costs to investors?

No; there is little confidence that the remaining Item 303 requirements would produce adequate disclosures.

129. In the adopting release for Item 303(a)(4), the SEC noted that “[t]he MD&A rules already require disclosure regarding off-balance sheet arrangements and other contingencies.” Do the disclosure requirements in Item 303 regarding liquidity and capital resources require adequate disclosure about matters that will result in or is reasonably likely to result in the termination or material reduction in the availability of material off-balance sheet arrangements to the registrant and the course of action the registrant has taken or proposes to take to address such circumstances?

CalPERS is comfortable with redundancies in this area.

130. Should we require additional disclosure of off-balance sheet arrangements that occurred during a reporting period, such as an exhibit identifying all such arrangements?

Yes; there is a need to report all such arrangements. Registrants may argue the lack of materiality on some arrangements yet have material off-balance sheet obligations in the aggregate. This raises another substantial issue regarding materiality. Materiality needs to be addressed not only on an item by item basis but in the aggregate as well.

IV. B. 8. CRITICAL ACCOUNTING ESTIMATES

137. Should we revise Item 303 to require disclosure about critical accounting estimates? If so, what information would be important to investors?

Yes; Item 303 should be revised to include all of the information contained in pages 140-144 of the Concept Release.

138. Should we define "critical accounting estimates"? If so, should the definition be based on our 2001 guidance, the definition proposed in 2002,4or something else? Why? Are there any other elements to a "critical accounting estimate" that have not been captured in prior definitions?

The new definition should make clear the level of technology and detail being used to gather information to create an estimate. Interestingly, technological advances such as IBM Watson and other artificial intelligence technologies make greater certainty possible. Shareowners should benefit from the possibilities through greater transparency.

139. Why do registrants repeat the discussion of accounting policies presented in the notes to the financial statements? How can we encourage registrants to eliminate repetition in MD&A of the discussion of accounting policies provided in the notes to the financial statements?

Better definitions and examples may produce a change in the "boiler plate" delivered. This is an example of registrants consistently trying to meet only the minimum requirement. The SEC could make such information a part of an audit committee chair's report to provide it in the chair's own words.

140. Do registrants find the guidance for disclosing critical accounting estimates from the 2003 MD&A Interpretive Release helpful in determining whether such disclosure is required? Would it be helpful for registrants if we incorporated this or other elements of our guidance on critical accounting estimates into Regulation S-K?

Yes, it would be helpful if the guidance on critical accounting estimates appeared directly in Regulation S-K. Further, there would be a benefit in consolidating all guidance messages and placing the critical information for Regulation S-K in one place.

141. Should we revise our requirements to elicit more comparable disclosure among registrants? If so, how? Should we adopt prescriptive requirements relating to critical accounting estimates? Are there any accounting estimates common to a particular industry that are "critical" to all participants in that industry?

Technology may quickly move the needle on this issue. Some elements are common, but registrants are very often uniquely peculiar. It would be very hard to standardize such disclosures to get full comparability. Much help may come from organizations standardizing certain disclosures. The SEC should review adopting the most useful standards. The focus should be on full disclosure.

142. Should we require the disclosure of management's judgments and estimates that form the basis for MD&A disclosure? For example, should we require registrants to disclose the quantitative and qualitative factors that form its assessment of materiality? Should we require registrants to disclose how they assessed materiality?

Given that registrants must place themselves in the shoes of "reasonable investors" and materiality is central to most disclosures, it is critically important to know the factors that form the assessment of materiality for a registrant. The SEC should require such disclosure. Given the standard is that of a reasonable investor, the process should be driven by investor input.

143. Should we require management to disclose the nature of its assessment of errors that it determined to be immaterial and therefore were not corrected?

Yes, management should disclose the nature of errors that were determined immaterial as well as provide an estimate of the aggregate amount of such uncorrected errors.

144. Should we require disclosure of other critical accounting estimates, such as those that impact other metrics or measures, such as the number of new customers or the number of subscribers?

Registrants should disclose all critical accounting estimates, including the method of determining the estimate.

IV. C. 1. RISK FACTORS (Item 503(c))

145. How could we improve risk factor disclosure? For example, should we revise our rules to require that each risk factor be accompanied by a specific discussion of how the registrant is addressing the risk?

Item 503 requires disclosure of risk factors that make an offering speculative or risky. The disclosures must be concise and logically organized and include distinctive risks specific to an issuer or offering and not include risks that could apply to any registrant. Additionally, Item 503 directs the registrants to explain how each risk affects the registrant. Embedded in our Global Governance Principles is the expectation that corporate boards disclose fair, accurate, and material information relevant to investment decisions enabling shareowners to evaluate risks, past and present performance, and to draw inferences regarding future performance, for example, relating to climate change.

CalPERS believes that comprehensive disclosure of risk factors should clearly reveal how registrants identify and manage risks, in order to generate sustainable economic returns. For that reason, both a detailed explanation as to how each risk affects the registrant, as well as disclosure of exactly how the registrant is addressing the risk are needed to provide greater context to shareowners' assessment of risk and risk management. For investors and stakeholders, as the providers of the capital, knowing what measures boards take in managing and mitigating risks allows a growing sense of trust and confidence to be developed with regards to their investments.[16] CalPERS considers this to include not only financial capital, but also human and physical capital, often referred to as "ESG."

146. Should we require registrants to discuss the probability of occurrence and the effect on performance for each risk factor? If so, how could we modify our disclosure requirements to best provide this information to investors? For example, should we require registrants to describe their assessment of risks?

We would support modifying disclosure requirements to require registrants to discuss the probability of occurrence and the effect on performance of each risk factor.[17] Currently, Item 503 directs the registrants to explain how each risk that makes an offering speculative or risky affects the registrant. We believe that enhanced corporate reporting related to governance, risk and compliance helps to put historical performance into context, as well as risks, opportunities and prospects for the company in the future. Detailed disclosures around not only the probability of the occurrence but also the result and implications on performance may help shareowners understand a company's strategic objectives and its progress towards meeting them. It is critical that corporate financial reporting expands information about what would be considered contingent liabilities and provides a more robust discussion around the likelihood and impact of those liabilities.

147. How could we modify our rules to require or encourage registrants to describe risks with greater specificity and context? For example, should we require registrants to disclose the specific facts and circumstances that make a given risk material to the registrant? How should we balance investors' need for detailed disclosure with the requirement to provide risk factor disclosure that is

[16] See, The Ethical Boardroom Article, "The boards' role in installing a risk-intelligent culture" http://ethicalboardroom.com/risk/boards-role-installing-risk-intelligent-culture/, dated March 16, 2014

[17] See, p. 32, CalPERS Global Governance Principles, dated March 2016

"clear and concise"? Should we revise our rules to require registrants to present their risk factors in order of management's perception of the magnitude of the risk or by order of importance to management? Are there other ways we could improve the organization of registrants' risk factors disclosure? How would this help investors navigate the disclosure?

Key determinants of materiality in non-financial disclosures are whether it will influence the decisions of users, whether the omission or misstatement would influence a user's decision, and the practitioner's judgment.[18] Disclosures should include relevant and material information on a timely basis so as to allow shareowners to take into account information which assists in identifying risks and sources of wealth creation. Guidelines on materiality for non-financial information are generally modeled on the definition of materiality for financial reporting.[19] Under the current definition, information is material "if there is a substantial likelihood that a reasonable shareowner would consider it important in deciding how to vote."[20] Although the SEC and Public Company Accounting Oversight Board (PCAOB) have received pressure to put quantifiable numbers behind the definition of what is "material," the current definition is a mix of rules-based components and some elements of principles-based standards.[21]

As stated by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), "we do not believe any investors are worse off for access to too much information."[22] We believe that frequent and meaningful communication should be considered the "cornerstone" for an effective risk framework. Although risk factor disclosures must be clear and concise, disclosures should be sufficient enough to help shareowners understand and assess the breadth of risks faced by the company as well as details as to whether and how the board is carrying out its risk oversight responsibilities.

Presentation of risk factors is critical to how shareowners assess and digest the information provided. Although we appreciate disclosure of management's perception of the magnitude of the risk, we believe that the board plays an extremely important role in risk oversight. The board is ultimately responsible for a company's risk management

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[18] See, p. 66, Robert G. Eccles, Michael P. Krzus, Jean Rogers, and George Serafeim, "The Need for Sector Specific Materiality and Sustainability Accounting Standards," volume 24, no. 2, Journal of Applied Corporate Finance a Morgan Stanley Publication, dated Spring 2012

[19] See, p. 66, Robert G. Eccles, Michael P. Krzus, Jean Rogers, and George Serafeim, "The Need for Sector Specific Materiality and Sustainability Accounting Standards," Journal of Applied Corporate Finance a Morgan Stanley Publication, dated Spring 2012

[20] See, line 231, Basic Inc. v. Levinson, 485 U.S. 224 (1988), quoting line 449 TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976)

[21] See, Kenneth A. Bertsch, Council of Institutional Investors (CII) letter to the SEC regarding Reg S-K, dated July 8, 2016

[22] See, p. 1, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) letter to SEC regarding regulation s-k, dated July 2016 (PENDING…Not published yet;)

philosophy, organizational risk framework and oversight. Furthermore, the board should set out specific risk tolerances and implement a dynamic process that continuously evaluates and prioritizes risks. Since the board is accountable to shareowners, we believe that presentation of risk factors in order of the board's perception of the magnitude and importance provides a more focused view in light of long-term corporate strategy.

Sustained shareowner value includes the effective management of risk and opportunities in the oversight of financial, physical and human capital. Given how essential risk management is to the integrity and efficiency of capital markets, the role of corporate boards in risk management is unquestionable. Board approval of risk management plans can be an effective mechanism to bring the transparency and visibility into the company's risk management practices which in turn helps more informed decision-making concerning long-term risk and return. Therefore, CalPERS supports improvements to risk management rules which emphasize the significant role of corporate boards in effective risk oversight, management, and mitigation.

Currently, Item 503 (c) disclosures require headers to help distinguish material risks relevant to the long-term impact on risk and return. To improve the organization of registrants' risk factors, we support an integrated representation of operational, financial, environmental, social, and governance performance in terms of both financial and non-financial results in order to offer investors better information for assessing risk. Organization of risk factors should clearly include the steps taken to identify, measure, disclose and monitor material risks. Disclosures should include any policies, operating procedures, internal controls, federal and state law compliance programs, reporting, and decision-making protocols implemented to effectively manage, evaluate and mitigate risk. Additionally, we recommend that the board annually approve and disclose a documented risk management plan for the benefit of shareowners. In recent revisions to CalPERS' Global Principles we have highlighted the need for Boards to be independent, competent, and diverse. We regard this as essential to ensuring effective risk oversight, particularly on emerging issues like climate change risk, cyber security, and human capital management. Hence the importance of disclosure on the board's skills, experience, and diversity mapped out against strategy as set out in CalPERS petition to the SEC. [23]

148. What, if anything, detracts from an investor's ability to gain important information from a registrant's risk factor disclosure? Do lengthy risk factor disclosures hinder an investor's ability to understand the most significant risks?

The following instances detract from an investor's ability to gain important information:

- Companies confuse' clear and concise' requirements with minimal or boilerplate disclosures.

[23] See, https://www.sec.gov/rules/petitions/2015/petn4-682.pdf , dated March 31, 2015

- Inconsistent presentation, organization, context, and comparability of risk disclosures. [24],[25]
- Risk factors placed in multiple locations.[26]
- Litigation and compliance risks, competing disclosure objectives in accounting and SEC reporting standards, and the different needs of investors are additional barriers to effective disclosures.[27]

149. How could we revise our rules to discourage registrants from providing risk factor disclosure that is not specific to the registrant but instead describes risks that are common to an industry or to registrants in general? Alternatively, are generic risk factors important to investors?

Both registrant specific and industry wide risks are relevant to investors, and usually intersect.

150. Should we specify generic risks that registrants are not required to disclose, and if so, how should we identify those risks? Are there other ways that we could help registrants focus their disclosure on material risks?

Generic risks can affect registrations differently, so we encourage both.

151. Should we retain or eliminate the examples provided in Item 503(c)? Should we revise our requirements to include additional or different examples? Would deleting these examples encourage registrants to focus on their own risk identification process?
We support retaining the examples provided in Item 503 (c). Eliminating the risk examples could negatively impact the focus, consistency and comparability of disclosures. Although the list of risk factors is non-exhaustive, it provides a basis by which risk factor disclosures are generally approached by registrants. The list of specific risk factors can be an effective tool to bring focus, consistency and comparability to disclosures. We support revising Item 503 (c) requirements to include additional or different examples; however, we recognize that some registrants may be inclined to use the list of examples as a prescriptive checklist. A good source for introducing new risk

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[24] See, p. 67, Robert G. Eccles, Michael P. Krzus, Jean Rogers, and George Serafeim, "The Need for Sector Specific Materiality and Sustainability Accounting Standards," volume 24, no. 2, Journal of Applied Corporate Finance a Morgan Stanley Publication, dated Spring 2012

[25] See, The Corporate Risk Factor Disclosure Landscape, The Investor Responsibility Research Center Institute , dated January 2016

[26] See, p. 146, footnote 464, "Although we focus on Items 503(c) and 305 of Regulation S-K, risk-related disclosure may be provided in response to other requirements, such as Items 101(d)(3) (risk attendant to foreign operations), 103 (legal proceedings), or 303 (MD&A)." SEC Regulation S-K Concept Release

[27] See, Ernst & Young, Disclosure Effectiveness: What investors, company executives and other stakeholders are saying, dated November 2014

factors is the investor community's own guidelines, for example, Ceres, Principles for Responsible Investment (PRI), International Corporate Governance Network (ICGN) and individual asset outer guidelines, which provide extensive examples. [28]

152. Should we require registrants to identify and disclose in order their ten most significant risk factors without limiting the total number of risk factors disclosed?

Disclosure of the ten most significant risk factors may be considered arbitrary – too much for some, or too little for others. If the SEC could define the required elements, there may be value, but the suggested changes do not appear to yield what is needed. We need registrants to honestly state risks. Nothing suggested above would change the current culture.

153. Are there ways, in addition to those we have used in Item 503, our Plain English Rules and guidance on MD&A, to ensure that registrants include meaningful, rather than boilerplate, risk factor disclosure?

In order to ensure that registrants include meaningful, rather than boilerplate risk factor disclosures, we believe that corporate compensation practices should be evaluated to ensure alignment with the company's risk tolerance. We believe that compensation structures should not encourage excessive risk taking. Compensation plans should be designed to support sustainability performance objectives particularly with regard to risk management.[29] The process for identifying, measuring and managing risk oversight through compensation policies should be disclosed in addition to any updates or changes that impact the alignment of compensation with risk management. We also are seeking disclosure of scenarios to stress test the company's assumptions around long term risks such as climate change.

154. Risk profiles of registrants are constantly changing and evolving. For example, registrants today face risks, such as those associated with cybersecurity, climate change, and arctic drilling, that may not have existed when the 1964 Guides and 1968 Guides were published. Is Item 503(c) effective for capturing emerging risks? If not, how should we revise Item 503(c) to make it more effective in this regard?

We believe that disclosures required under Item 503(c) should be strengthened by the SEC's interpretive guidance similar to the SEC guidance issued in 2010 regarding reporting of risks posed by climate change in regular securities filings. SEC guidance would help improve transparency, risk management and oversight, and contribute to stabilized financial markets if the SEC acts on it. All past guidance should be consolidated to allow registrants to obtain such guidance in one place. It would also

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[28] Ibid. CalPERS Global Governance Principles

[29] See, p.22, CalPERS Global Governance Principles, dated March 2016, https://www.calpers.ca.gov/docs/forms-publications/global-principles-corporate-governance.pdf

allow the SEC to correct any inconsistencies. We also recommend that the SEC review recent shareowner proposals and voting guidelines to assess investor needs. The expected advice of the Financial Stability Board Climate Risk Reporting Taskforce will also be useful.

155. What types of investors or audiences are most likely to value the Item 503(c) disclosures?

Sustainable factors and the financial impact of those factors have become increasingly pivotal to shareowner decision-making. As a result, long-term shareowners need a broad range of information in making well-informed capital allocation decisions. The overall desire for risk disclosure is to assess the risks taken and ensure that they are adequately compensated. Accordingly, shareowners use Item 503 (c) disclosures to assess and evaluate risks against performance and to draw inferences about long-term performance.

156. What is the cost of providing the disclosure required by Item 503(c), including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 503(c).

We consider this information to be available in the course of good risk management. If not, the additional expense will yield an important benefit to investors via improved risk management.

IV. C. 2. QUANTITATIVE DISCLOSURES ABOUT MARKET RISK (Item 305)

157. Is Item 305 effective in eliciting disclosure about market risks and risk management practices that investors consider important? If not, how could Item 305 be improved?

As indicated in CalPERS Global Principles, risk oversight is one of the key metrics we use to evaluate the quality of corporate boards. It's our view that Item 305 disclosures can be effective in highlighting the registrant's aggregate market risk exposure as well as itemizing specific risk exposures associated with fluctuations in interest rates, foreign currency exchange rates, commodity prices and equity prices. We also see Item 305 disclosures serving as a baseline for further discussions on the registrant's risk management practices.

158. Does Item 305 result in information that allows investors to effectively assess (1) a registrant's aggregate market risk exposure, and (2) the impact of market risk sensitive instruments on a registrant's results of operations and financial condition? If not, how could we revise Item 305 to achieve these goals?

To the extent that a registrant's Item 305 disclosure is comprehensive and detailed, it does provide information that allows investors to assess the registrant's aggregate market risk exposure. However, the registrant's latitude to choose one of three disclosure methods affects the level of detail included in Item 305 disclosures. This impacts how effectively investors can use the information to assess the registrant's market risk exposure. For instance, a registrant that chooses to use the Value-at-Risk (VaR) method of disclosure will have less detailed information in its Item 305 disclosures, compared to a registrant that chooses the tabular method of disclosure.[30]

159. Do the disclosure alternatives in Item 305(a) elicit adequate quantitative disclosure about market risk? Do the rules or the instructions discourage registrants from fully evaluating and disclosing their market risk exposures, such as in a sensitivity analysis? Should the rules be more prescriptive? If so, in what ways should we revise the rules and instructions to Item 305(a)?

The disclosure alternatives outlined in Item 305(a), namely, tabular presentation, sensitivity analysis and VaR disclosures, give registrants wide leeway in choosing the type of disclosure option to adopt. Out of the three disclosure alternatives, the tabular presentation method has the most detailed information and the VaR method has the least detailed information of market risk exposure.

Sensitivity analysis, which expresses potential loss in future earnings, fair values or cash flows in a given set of scenarios can be a useful tool in gauging the potential impact of market risk exposure as long as the set of scenarios chosen are good representations of all of the possibilities, including low-probability events.

Research has shown that companies needing greater access to capital markets are more likely to adopt the tabular method. On the other hand, companies that would incur higher potential costs from revealing proprietary information, and thus compromise their competitive position, tend to choose the VaR method.[31]

160. Should additional or different principles guide the market risk disclosure requirements? Should we expand our definition of "market risk sensitive instruments" to require registrants to provide additional disclosure about other risks, including credit risk, liquidity and funding risk and operational risk?

If there is a consensus to expand the disclosure requirement of Item 305, a more descriptive term for Item 305 can be found in "Quantitative and Qualitative Disclosures about *Financial* Risk" as financial risk comprises credit, liquidity and operational risk in addition to market risk.[32]

[30] See Ekaterina E. Emm, et al. "Choices and Best Practice in Corporate Risk Management Disclosure," *Journal of Applied Corporate Finance,* Vol. 19 Num. 4 (2007), pp.17-28.
[31] See Ekaterina E. Emm, et al. "Choices and Best Practice in Corporate Risk Management Disclosure," *Journal of Applied Corporate Finance,* Vol. 19 Num. 4 (2007), p.28.
[32] Source: Financial Stability Institute https://www.bis.org/fsi/

161. Should we limit the quantitative disclosure requirement to certain registrants such as financial institutions or registrants engaged in financial services? Why or why not?

We do not share the view that the quantitative disclosure requirement should be limited to registrants engaged in financial services only. Market risk exposure is not limited to financial institutions or registrants engaged in financial services only. In an economy where non-financial corporations have global operations that are bound to be impacted by market risk, investors stand to benefit from the disclosures outlined in Item 305 in assessing the market risk exposure of individual corporations and their risk management practices.

162. What types of investors or audiences are most likely to value the information required by Item 305?

Item 305 disclosures of market risk exposure are likely to be highly valued by long-term investors. As stated in CalPERS Investment Belief 4, "Long-term value creation requires effective management of three forms of capital: financial, physical and human."[33] In evaluating new investments and monitoring the performance of current investments, CalPERS would like to see a robust risk management framework that takes various macroeconomic scenarios into account. A current example is climate change risk.

163. What is the cost of providing the disclosure required by Item 305, including the administrative and compliance costs of preparing and disseminating this disclosure? How would these costs change if we made any of the changes contemplated here? Please provide quantified estimates where possible and include only those costs associated with providing disclosure under Item 305.

The cost of providing the disclosure required by Item 305 is likely to vary depending on the complexity of the registrant's operations.

164. How have standard risk management practices and methods of reporting market risk evolved since the adoption of Item 305 in 1997? Should we revise Item 305 to reflect those changes and if so, how? Should we provide for new disclosure alternatives in addition to, or in lieu of, existing alternatives?

ASC Topic 815 – Derivatives and Hedging provides substantial guidance about hedge accounting in financial statements, which make some Item 305 disclosures redundant.[34]

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[33] See, p.6 , https://www.calpers.ca.gov/docs/forms-publications/calpers-beliefs.pdf

[34] See "Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation," *Center for Capital Markets Competitiveness – U.S. Chamber of Commerce*, p.20 http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/07/CCMC_Disclosure_Reform_Final_7-28-20141.pdf

Therefore, we think Item 305 revisions may include removing certain redundant disclosures that are already reported in financial statements.

The existing three disclosure alternatives, namely tabular presentation, sensitivity analysis and value-at-risk disclosure methods provide registrants with a sufficient number of disclosure alternatives to choose from. Introducing additional disclosure alternatives can hinder the comparability of market exposure across registrants.

165. What revisions should we consider to better link disclosure that identifies, quantifies, and analyzes a registrant's material market risks to its: (a) market risk sensitive instruments, (b) financial statements, (c) capital adequacy, and (d) any other metrics important to an understanding of market risk exposures?

The tabular presentation disclosure alternative is comprehensive enough for investors to link the disclosed information to the registrant's market risk sensitive instruments, financial statements, capital adequacy and other financial ratios that would highlight market risk exposures.

166. Should we eliminate the prescribed disclosure alternatives and allow registrants to discuss market risk according to the methods used by management to manage the risk? Would allowing a "management approach" provide investors with more insight about the way management actually assesses market risks, or would this approach unduly hinder investors' ability to compare market risk disclosures across registrants?

We believe keeping the current three disclosure alternatives offers a good balance of comparability without being overly prescriptive to registrants. Allowing registrants to discuss market risk according to the methods used to manage risk opens a wide door for disparate ways of market risk disclosure that would make it hard for investors to compare market risk exposures across registrants.

167. Is the disclosure required by Item 305 repetitive of the disclosure required by U.S. GAAP and Rule 4-08 of Regulation S-X? Conversely, does Item 305 result in disclosure that is important to investors and is not found elsewhere in a registrant's filing? Even considering any repetition, do investors benefit from disclosure about market risk exposure outside of the audited financial statements?

Although there could be an overlap between some disclosures required by Item 305 and those required by U.S. GAAP and Rule 4-08 of Regulation S-X, they are not completely redundant. In addition, the level of details in Item 305 disclosure is dependent on the disclosure alternative the registrant chooses to adopt. In our view, investors benefit from periodic, regular and detailed market risk disclosures even considering repetition.

IV. C. 4. CONSOLIDATING RISK RELATED DISCLOSURE

180. Should we require registrants to provide a consolidated discussion of risk and risk management, including legal proceedings, in a single section of a filing? If so, what information should be included? How should this information be presented?

There would be value in having a section that would encompass all of the risks in a single section. It could be an executive level discussion and include all risks in one location creating a very valuable section.

181. How could investors benefit from a consolidated discussion of risk factors, legal proceedings and other quantitative and qualitative information about market risk and risk management? What would be the challenges of requiring such a presentation?

The challenge would be in capturing all risks from each section where they currently appear and not allowing such risks to get watered down over time.

182. How would a consolidation of risk-related disclosure affect the cost of preparing a filing, if at all?

There would be additional costs in transitioning to this approach. Eventually the costs will likely be the same as they are now. Such consolidation will likely save the users of such disclosures time and processing costs provided all information is reported in a single location.

199. Is the information required under Item 703 about repurchases of a registrant's equity securities important to investors? If so, are there any revisions we could make to Item 703 to improve the disclosure provided to investors?

The information required under Item 703 about repurchases of a registrant's equity securities is very important to investors as it allows them to evaluate the share repurchase decision in light of other capital allocation alternatives, such as, paying out dividends, paying down debt and/or deploying capital in growth or acquisitions. As indicated in CalPERS Global Governance Principles, CalPERS views the registrant's decision to repurchase its own equity securities as a capital allocation decision made in relation to other competing alternatives. A future consideration is the impact on executive performance rewards.

CalPERS reviews share repurchase programs closely due to the fact that research has shown some companies tend to repurchase shares at or near the peak of the economic cycle when shares tend to be most expensive.[35] The Associated Press released a

[35] *Fortune.com*, "Why investors should fear the return of the buyback" (7 April 2016). Available at http://fortune.com/2014/04/07/why-investors-should-fear-the-return-of-the-buyback/

report in February 2016 showing that 229 companies in the S&P 500 lost a collective $126 billion on their share buyback investments over the past three years.[36]

A revision to Item 703 that would lead to more detailed disclosure of the registrant's share repurchase plan would enable us to analyze the decision in light of its short and long-term ramifications.

200. Should we require more granular information on repurchases of a registrant's equity securities? If so, what additional detail or more granular information should we require? For example, should we require disclosure about incurrence of indebtedness to fund repurchases or the impact repurchases had on performance measures, such as earnings per share or other items? If so, how should this information be formatted and presented?

To the extent that it enables investors to analyze the short- and long-term impact, more granular information on a share buy-back program is very helpful. Detailed information such as how the registrant plans to fund the share buy-back program and disclosing if the purpose of the share buy-back is to neutralize the dilution effect of stock-based executive compensation would be very helpful.

As stated in CalPERS Investment Belief 4,[37] "Long-term value creation requires effective management of three forms of capital: financial, physical and human." Effective management of financial capital includes an optimal capital allocation strategy that would create long-term value for shareowners. It's our belief that companies would benefit from having a solid capital allocation framework, which provides discipline when it comes to key decisions pertaining to the optimal use of financial capital.

The level of impact of share repurchase plans on shareowners' long-term value is dependent on multiple factors, including how the registrant plans to fund the share repurchase plan. For instance, if the registrant is incurring debt in order to buy-back shares, that can impact critical financial metrics such as the company's debt-to-equity ratio, which can have adverse effects on the cost of capital in the long-term. Therefore, there should be disclosure about the incurrence of any debt when there is a share repurchase.

It would also be helpful to disclose any incentives embedded in executive compensation plans that may favor share repurchases over other capital allocation strategies. Executive compensation metrics tied to EPS can create incentives for management to favor share repurchases over dividend payouts or long-term investment. The registrant should make it clear that the share buyback is in the best interest for its shareowners.

[36] Bernard Condon, "Companies lose billions buying back their own stock," *AP* (9 February 2016). Available at http://bigstory.ap.org/article/748b0768035d479294c71eed50b1d5f8/companies-lose-billions-buying-back-their-own-stock

[37] See, p.6 , https://www.calpers.ca.gov/docs/forms-publications/calpers-beliefs.pdf

To enable investors to see the impact of the share repurchase plan on financial performance metrics, the most effective way is to disclose it in a tabular form that states the performance metric figures with and without the share repurchase plan implemented and attributing for the debt incurred to implement the plan. For instance, stating the EPS figures both with and without share repurchase would highlight any impact the share repurchase plan would have on EPS.

201. Does Item 703 provide important information that is not also disclosed in a registrant's financial statements? Are there benefits to investors in providing this information in both the financial statements and in non-financial statement disclosure?

Item 703 provides important information, on a quarterly basis, regarding the purchases of registered equity securities by the registrant for each month included in the report period. U.S. GAAP requires annual disclosure in audited financial statements. Thus, the registrant's quarterly disclosures in Item 703 and its annual audited financial statements are complementary and not mutually exclusive.

To the extent possible, it would be desirable to incorporate Item 703 disclosures in the registrant's audited financial statements as that would add to the veracity of the information provided.

202. Item 703 requires disclosure of all repurchases of registered securities and does not have a de minimis requirement. Do investors find disclosure of all repurchases of securities during a registrant's fiscal quarter important to making a voting or investment decision? Should we adopt a general materiality standard or specify a monetary threshold for Item 703 disclosure in periodic reports?

The disclosure of share repurchases during a registrant's fiscal quarter is important to investors as it helps them evaluate the rationale of the share repurchase strategy, its size and timing compared to industry peers and its short- and long-term effects on shareowner value. In addition, investors use Item 703 disclosures along with information from financial statements to evaluate the soundness of the company's capital allocation policy, the potential effects of executive compensation that are tied to EPS and to comprehensively assess the share buyback decision's alignment with shareowners long-term interest.

203. Item 703 disclosure is required on a quarterly basis, while relevant U.S. GAAP disclosure is required on an annual basis. Should we require more frequent Item 703 disclosure? If so, what timeframe for reporting repurchases would be appropriate?

We believe quarterly Item 703 disclosure that would cover all of the months in the reporting period is sufficient to give investors a broad view of the company's share repurchases.

204. Should we require registrants to report repurchases on Form 8-K? For example, should we require Form 8-K disclosure only of repurchases that exceed a certain threshold, similar to Item 3.02 of Form 8-K, which requires registrants to disclose sales of equity securities that constitute more than one percent of the shares outstanding of the class of equity securities? If so, what should this threshold be and why?

In general, the idea of requiring registrants to report “significant” equity repurchases on Form 8-K is in line with the intent of Form 8-K, which is reporting significant corporate events. We view share repurchase decisions in light of the overall capital allocation strategy,[38] and as such, it is a significant corporate event when a plan to repurchase shares is put in place and executed over time.

IV. F. DISCLOSURE OF INFORMATION RELATING TO PUBLIC POLICY AND SUSTAINABILITY MATTERS

216. Are there specific sustainability or public policy issues are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?

CalPERS defines the relevant sustainability issues for voting and investment decisions with our Investment Beliefs and Global Governance Principles. Among our ten Investment Beliefs, we establish the responsibility of CalPERS to consider decisions over a long time investment horizon and that long-term value creation requires effective management of three forms of capital: financial, physical and human. Further, we highlight a few sustainability issues of particular importance – for example, climate change, natural resource availability, fair labor practices and diversity.[39]

CalPERS Global Governance Principles consider Corporate Reporting as one of five key themes. We highlight the importance of companies ensuring board oversight and full disclosure of all expenditures for charitable or political purpose, in order to foster alignment of interest. [40]

Meaningful disclosure –

[38] See, p.29, https://www.calpers.ca.gov/docs/policy-global-governance.pdf , dated March 14, 2016

[39] Further detail here: https://www.calpers.ca.gov/docs/forms-publications/calpers-beliefs.pdf
[40] Further detail here: https://www.calpers.ca.gov/docs/board-agendas/201603/invest/item05a-02.pdf.

CalPERS supports a market standard for sustainability data to be meaningful. In order to elicit meaningful disclosure, the standard should be industry-specific and a mixture of quantitative and qualitative factors. Through integrated reporting we are looking for early identification of issues so that markets can price risk and opportunity.

Flexibility and additional guidance –

CalPERS encourages the SEC to clarify their definition of materiality with regard to sustainability factors focusing on an investor perspective. This definition will guide corporates in which sustainability issues to include in the future as issues develop and should provide greater transparency.

CalPERS is also looking to the SEC to formalize mandatory “integrated reporting” in the 10-K.

217. Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant’s business and financial condition? Why or why not?

There are some issues that are common to all firms (gender, diversity) and nearly all firms (impact of climate change). However, these issues manifest themselves differently in various sectors. Thus, we encourage line-item requirements for these cross-cutting issues, but with the caveat that the Industry Guides are updated to reflect the varying metrics the SEC is looking for per industry.

Without mandatory reporting, as noted by Anne Simpson, Investment Director, Global Governance in her remarks to the Taskforce on Climate Related Risks, “Companies unwilling to report may harbor the most significant risks. Also, there is a concern by companies that they will face adverse reaction under litigation or reputation, if they disclose voluntarily ahead of other companies.”

As long as there is the mix of mandatory disclosure and industry specificity, we do not feel this would obscure understanding of financial condition.

218. Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their websites. Corporate sustainability reports may also be available in databases aggregating such reports. Why do some registrants choose to provide sustainability information outside of their Commission filings? Is the information provided on company websites sufficient to address investor needs? What are the advantages and disadvantages of registrants providing such disclosure on their websites? How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting? If we permitted registrants to use

information on their websites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?

Companies provide sustainable information outside of their filings to address multiple stakeholder interests and marketing. We believe that embedding sustainability information in a separate report from financial reporting is challenging for investors as to which issues are material for a registrant, and how they perform over time and relative to their peers. According to our Legislative and Policy Engagement Guidelines, CalPERS promotes high quality global accounting standards, integration of relevant ESG performance factors, and rigorous independent audit.

CalPERS Global Governance Principles[41] support integrated financial reporting.

Financial reporting plays an integral role in the capital markets by providing transparent and relevant information about the economic performance and condition of businesses. Effective financial reporting depends on high quality accounting standards, as well as consistent application, rigorous independent audit and enforcement of those standards. Companies should provide for the integrated representation of operational, financial, environmental, social, and governance performance in terms of both financial and non-financial results in order to offer investors better information for assessing risk. The board should provide an integrated report that puts historical performance into context, and portrays the risks, opportunities and prospects for the company in the future, helping shareowners understand a company's strategic objectives and its progress towards meeting them. Such disclosures should:

- Be linked to the company's business model.
- Be genuinely informative and include forward-looking elements where this will enhance understanding.
- Describe the company's strategy, and associated risks and opportunities, and explain the board's role in assessing and overseeing strategy and the management of risks and opportunities.
- Be accessible and appropriately integrated with other information that enables shareowners to obtain a picture of the whole company.
- Use key performance indicators that are linked to strategy and facilitate comparisons.
- Use objective metrics where they apply and evidence-based estimates where they do not; and
- Be strengthened where possible by independent assurance that is carried out annually and with regard to established disclosure standards.

219. In an effort to coordinate ESG disclosures, several organizations have published or are working on sustainability reporting frameworks. 703 Currently, some registrants use these frameworks and provide voluntary ESG disclosures. 704 If we propose line-item disclosure requirements on sustainability or public

[41] CalPERS Global Governance Principles

policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?

There is currently no standard that meets investor expectations for public companies, but several come close. We encourage the SEC to host a roundtable to explore developing an independent view of material factors based on an investor perspective, and then leverage the metrics developed by the relevant standard setters. We also consider this work should go to the mainstream through the research and work program of the FASB and IASB. The first topic could be climate risk, following the FSB Taskforce Report. Of the existing standards that have been developed, CalPERS pays particular attention to the following:

- Carbon Disclosure Project (CDP) on Climate Change, Water, Forests and Supply Chains –beneficial for its breadth and because companies have been disclosing to CDP since 2001. However, we encourage materiality analysis of the metrics requested and synthesis to a manageable number of metrics.
- Global Real Estate Sustainability Benchmark (GRESB) for Infrastructure and for Real Estate – this platform is particularly designed for private assets. However, the majority of metrics are likely common to public and private firms in the Infrastructure and Real Estate sectors.
- Global Reporting Initiative – This is one of the more comprehensive standards, but we encourage materiality analysis of the metrics requested and synthesis to a manageable number of metrics. The initiative was founded by Ceres.
- Sustainability Accounting Standards Board (SASB) metrics were designed specifically to be integrated into a company's 10-K. The standards offer an evolving framework that captures 79 industries. However, they are at an early stage of development. Academic evidence shows that human capital factors such as gender equity and diversity are relevant for every sector, rather than merely the subset highlighted by SASB. Also, supply chain human rights considerations are relevant for nearly every sector, but only represented in a subset in SASB's standards.

Note: The Corporate Reporting Dialogue coordinated by the ICGN which is partnering with the International Integrated Reporting Council to develop this area. It is an initiative designed to respond to market calls for greater coherence, consistency and comparability between corporate reporting frameworks, standards and related requirements.

220. Are there sustainability or public policy issues for which line-item disclosure requirements would be consistent with the Commission's rulemaking authority and our mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation, as described in Section III.A.1 of this release? If so, how could we address the evolving nature of such issues and keep our disclosure requirements current?

See response for Question 217. Additionally, there are some issues that are common to all firms, for example, gender, diversity and the impact of climate change. However, these issues manifest differently in different sectors. Thus, we encourage line-item requirements for these cross-cutting issues, but with the caveat that the Industry Guides are updated to reflect the varying metrics the SEC is looking for per industry.

We also consider that mandatory reporting of all charitable and political expenditures is necessary for investors to assess alignment of interest.

221. What, if any, challenges would registrants face in preparing and providing this information? What would be the additional costs of complying with sustainability or public policy line-item disclosure requirements, including the administrative and compliance costs of preparing and disseminating disclosures, beyond the costs associated with current levels of disclosure? Please quantify costs and expected changes in costs where possible.

Registrants which have not reported sustainability information may find they encounter costs for gaining the skills in moving up the learning curve and systems to begin tracking and aggregating the relevant data. There are potential gains in gathering and managing data relevant to sustainable returns. This has been achieved by companies in every industry, and is not a barrier to reporting.

In many cases, cost may be minimal as companies are already tracking some form of sustainable data. Examples below:

- According to the Corporate Register, the largest repository for CSR/sustainable reports, there are more than 75,000 reports from more than 13,000 companies - http://www.corporateregister.com/
- S&P 500: 67 percent completed CDP questionnaire and 35 percent involved with GRI reporting (overlap of 31 percent) according to a Bloomberg screen performed in May 2016.
- S&P 1500: 27 percent completed CDP questionnaire and 14 percent involved with GRI reporting (overlap of 11 percent) according to a Bloomberg screen performed in May 2016.

222. If we propose line-item disclosure requirements that require disclosure about sustainability or public policy issues, should we scale the disclosure requirements for SRCs or some other category of registrant? Similarly, should we exempt SRCs or some other category of issuer from any such requirements?

The concept of different reporting requirements for smaller reporting companies vs. larger has been vetted by multiple sustainable frameworks creators going back to 2008.[42] Our investments tend to be multi-cap so we do value disclosure from smaller reporting companies. Just as in our responses to questions 216 and 218, CalPERS is

[42] https://www.globalreporting.org/resourcelibrary/Ready-to-Report-SME-booklet-online.pdf

looking for disclosure of information we regard as material, based on our Investment Beliefs and Global Governance Principles. Firms should be able to articulate their process for prioritizing key issues, and then disclose the qualitative and quantitative information that reports the impact of those issues on their business.

223. Should we modify or eliminate any of the exhibit requirements in Item 601? If so, which ones and why? Should we add any new exhibit requirements to Item 601? If so, what requirements should we add and why?

The existing disclosure requirement is not adequate to elicit the information investors are looking for. What we have received is mostly boilerplate language that does not provide forward looking, decision-useful, quantitative information. The following should be added:

1) The requirement does not clarify what climate change risks exist, and could be updated to include language from the Financial Stability Board's (FSB) Task-force on Climate-related Financial Disclosure. Mark Carney's speech launching the Taskforce is helpful in that it clarifies the three types of climate risk:

- "**Physical risks**: the impacts today on insurance liabilities and the value of financial assets that arise from climate - and weather-related events, such as floods and storms that damage property or disrupt trade;

- **Liability risks**: the impacts that could arise tomorrow if parties who have suffered loss or damage from the effects of climate change seek compensation from those they hold responsible. Such claims could come decades in the future, but have the potential to hit carbon extractors and emitters – and, if they have liability cover, their insurers – the hardest;

- **Transition risks**: the financial risks which could result from the process of adjustment towards a lower-carbon economy. Changes in policy, technology and physical risks could prompt a reassessment of the value of a large range of assets as costs and opportunities become apparent."

2) Further the Paris Agreement, agreed to by nearly 200 governments in December 2015 at COP 21, sets the global economy on a path to limiting emissions to 2 degrees Celsius. In addition to the three forms of risk highlighted by Mark Carney, investors need to know that portfolio firms are thinking about scenario analysis including how their business aligns with the 2 degree Celsius target.

257. Should we revise Item 601(b)(21) to eliminate the exclusions and require registrants to disclose all subsidiaries? What would be the benefits and challenges associated with this alternative?

Yes, registrants should disclose all subsidiaries. This would bring some important subsidiaries out of the shadows as highlighted in the Concept Release.

258. Should we expand the exhibit requirement to include additional disclosure about the registrant's subsidiaries? What additional information would be important to investors and why?

Yes, the information should be expanded. It is important to know more information about any entity that is benefitting from loan proceeds, including information regarding whether a certain entity is restricted or unrestricted, guaranteed or non-guaranteed. This additional information would better allow investors to understand the risks.

259. Should we require registrants to include an organization or corporate structure chart or similar graphic depicting their subsidiaries and their basis of control? How could such a graphic facilitate investors' understanding of a registrant's corporate structure? Should we require this chart or graphic as an exhibit or in the text of the annual report? What would be the challenges associated with this approach?

A detailed graphic would greatly facilitate understanding the interlocking structures. Some simply list the different subsidiaries showing basic relationships without showing how all of the entities are related. For many registrants, this graphic would be a complex chart. It is likely best placed as a separate exhibit. The exhibit should give an investor a good sense of the relationship of the entities without having to read all of the corporate documents, including credit agreements in order to create the structures. There would be some challenges with this approach because more would be required of the registrant, but it is far better than forcing investors to independently create organizational charts that the registrant could more readily provide.

260. For purposes of identifying which subsidiaries a registrant may omit from the exhibit, Item 601(b)(21) relies on the definition of "significant subsidiary" in Rule 1-02(w) of Regulation S-X. Does this definition appropriately exclude subsidiaries that are not important to investors? Does it exclude any subsidiaries that should be included? Should we consider a different definition or test for excluding certain subsidiaries from the exhibit? If so, what factors should we consider?

A "significant subsidiary" must pass a ten percent test based on investments, assets, or income. This is a high threshold when applied to large companies. Many registrants have important subsidiaries that are well below this level. The SEC should consider reducing the threshold by half. This would bring some important subsidiaries out of the shadows.