

October 22, 2019

Jay Clayton, Chair
Robert Jackson, Hester Peirce, Allison Lee, Elad Roisman, Commissioners
Securities and Exchange Commission
100 F St, NE
Washington, D.C. 20549

Re: Modernization of Regulation S–K Items 101, 103, and 105

File Number S7– 11–19

Dear officers,

We, the undersigned organizations, write to offer the following comments on the proposed rule described by the Securities and Exchange Commission (SEC, Agency, Commission) as “Modernization of Regulation S-K, items 101, 103, and 105.” In brief, we are disappointed that the SEC ignored numerous petitions, such as those involving disclosures on climate change and political spending, and thereby has missed the opportunity to improve its disclosure requirements to better reflect dynamic changes relevant to American corporations.

Since the SEC adopted Regulation S–K in 1977,¹ the business world has transformed. The internet and computer industries spawned companies that now dominate the list of best-capitalized corporations. Human capital is the most valuable asset in these firms. Environmental issues, namely climate change, is a glaring risk factor. Governance failures, such as the accounting frauds of the early 2000s and then the Wall Street crash of 2008, mean issues such as corporate political spending are chronic investor concerns, as evinced by frequency of shareholder resolutions on this subject.²

Yet the SEC’s proposed changes to the S-K form fail to recognize these transformations.

Human Capital

The SEC has received voluminous comment from investors asking for greater disclosure regarding human capital. Institutional investors, including signatories below, sought information on worker recruitment, employee turnover, hiring practices, employee benefits and grievance mechanisms, employee engagement, investment in employee training, workplace health and safety, strategies and goals related to human capital management and legal or regulatory proceedings related to employee management, whether employees are covered by collective bargaining agreements, and employee compensation or incentive structures. The Human Capital Management Coalition

¹ In adopting Regulation S-K, the SEC explained that its effort would foster uniform and integrated disclosure for registration statements under both the Securities Act and the Exchange Act, and other Exchange Act filings. This document would include both financial and non-financial filings. A financial filing describes, in quantitative terms, the business results by quarter and by year, as well as the balance sheet describing the basic value of the firm, including assets, liabilities, and net worth. A non-financial filing describes in qualitative terms the nature of the business, various transactions.

² *Corporate Political Activity*, PROXY PREVIEW (website visited Sept. 23, 2019)
<https://www.proxypreview.org/2019/report/social-issues/corporate-political-activity>

submitted a petition with specific ideas,³⁴ marshalling dozens of studies demonstrating the material impact of various employment practices.

Currently, the SEC only requires two disclosures regarding its employees: their number, and the median pay.⁵ Instead of embracing investor petitions for greater disclosure, the SEC actually proposes to delete a current requirement, specifically the enumeration of employment totals. Regarding human capital, the SEC only invites firms to discuss the issue broadly.⁶ We believe this nebulous requirement will do little to inform investors and wastes an important opportunity to make disclosures relevant where human capital has become a determining factor in the fate of the average company. We firmly believe that the SEC is ignoring the emerging acknowledgement in the business community about the broader role of human capital to corporate success.⁷

Environmental Record

Global warming represents an existential threat to the planet and will impact the future of every public company. In an erroneous response to this, the SEC proposes to reduce the disclosures related to the environment. Specifically, the Agency proposes to revise the \$100,000 threshold for disclosure of environmental proceedings to which the government is a party to \$300,000. This reduction in reporting flies in the face of already inaccurate disclosures. In addition, the Environmental Protection Agency found that “74 percent of publicly-traded companies had failed to adequately disclose the existence of environmental legal proceedings in their 10-K registration requirements.”⁸ The SEC should be increasing enforcement of its minimal disclosure requirements in addition to improving requirements in this vital area.

Political Spending

Of all the petitions received by the SEC regarding improved disclosure, none has received more signatories than the 1.2 million investors, academics, and members of the public who called for greater corporate political spending disclosure.⁹ On top of that, more than 26,000 comments came to the SEC on this issue in response to the original Concept Release on Reg S-K.¹⁰ Each year, shareholder resolutions calling for such disclosure count among the most common. In 2019, there were more than 93 proposals filed on this issue, with support increasing each year.¹¹ Yet, despite this outcry of support from shareholders the SEC offers nothing here. In fact, the SEC cites a letter from

³ *Rulemaking petition to require registrants to disclose information about their human capital management policies, practices and performance*, File No. 4-711 HUMAN CAPITAL MANAGEMENT COALITION (July 6, 2017), available at <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

⁴ *Members of the Human Capital Management Coalition*, HUMAN CAPITAL MANAGEMENT COALITION (website visited September 16, 2019) <http://uawtrust.org/AdminCenter/Library.Files/Media/501/About%20Us/HCMCoalition/hcmmembership2018.pdf>

⁵ The former has been required since the beginning of the S-K form; the latter came in 2018 to fulfill a requirement under Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. There has never been a requirement to enumerate how much is expended on wages; this figure is part of a larger categories, such as sales and general administrative expense.

⁶ Specifically, the SEC asks firms for “A description of . . . human capital resources, including in such description any human capital measures or objectives that management focuses on in managing the business (such as, depending on the nature of the registrant’s business and workforce, measures or objectives that address the attraction, development, and retention of personnel).”

⁷ *Our Commitment*, BUSINESS ROUNDTABLE, (August 19, 2019) <https://opportunity.businessroundtable.org/ourcommitment/>

⁸ Lawrence Schnapf, *Managing Environmental Liability in Business Transactions and Brownfield Redevelopment*, Juris Publishing, (2013), cited in Letter, Domini Trust, SEC (August 12, 2014) <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-13.pdf>.

⁹ *Petition*, Committee on Disclosure of Corporate Political Spending Petition for Rulemaking, SECURITIES AND EXCHANGE COMMISSION (August 3, 2011) <https://www.sec.gov/rules/petitions/2011/petn4-637.pdf>

¹⁰ Tyler Gellasch, *Towards a Sustainable Economy*, AFL-CIO, ET AL (September, 2016) <https://www.citizen.org/wp-content/uploads/sustainableeconomyreport.pdf>

¹¹ *Corporate Political Activity*, PROXY PREVIEW (website visited Sept. 23, 2019) <https://www.proxypreview.org/2019/report/social-issues/corporate-political-activity>

FedEx 20 times in this proposal, where the company calls for a reliance on volunteered “principles based” information, not numbers-based bright line disclosure.¹²

It’s not surprising that in the letters cited by the SEC, FedEx calls for a more principles- based disclosure given that FedEx has declined to be more transparent even when its own shareholders ask for it. At its September annual meeting, FedEx management recommended a vote against a proposal from its shareholders requesting more transparency around the company’s lobbying activity.¹³

Additional ESG Issues

The SEC has also received public petitions and comments calling for more disclosure of other critical indicators of well- managed companies. These requests include calls for corporations to disclose gender pay ratios on an annual basis, human rights policies, practices and impacts, and tax practices.¹⁴ These calls for increased disclosure culminated in a rulemaking petition from investors with more than \$5 trillion in assets under management asking the SEC to require comprehensive ESG risk disclosure.¹⁵

Costs but no Benefits

Finally, we find it revealing that the one area that the SEC asks for additional disclosure relates to compliance costs. The SEC asks corporations to count up and disclose the total cost of all compliance, including compliance with environmental laws. We do not object to such disclosure but believe it will fuel an anti-regulation agenda. Sensible regulations benefit corporations as the SEC’s own cost-benefit analysis document; surely corporations could estimate the benefits in addition to potential costs.

In summary, investors have petitioned to SEC to expand transparency, and the SEC has responding by proposing less disclosure. We urge the SEC to respond to these many petitioners with a robust, new disclosure regime.

For questions, please contact Rachel Curley at [REDACTED], or Bartlett Naylor at [REDACTED].

Sincerely,

Amazon Watch
American Federation of State, County and Municipal Employees (AFSCME)
As You Sow
California Clean Money Campaign
Campaign for Accountability
Center for American Progress
Congregation of Sisters of St. Agnes
Environment America
Friends Fiduciary Corporation
Global Witness
Green Century Capital Management
Harrington Investments, Inc.
Institute for Agriculture and Trade Policy

¹² Proxy Statement, *FedEx*, SECURITIES AND EXCHANGE COMMISSION (2019) <https://www.sec.gov/Archives/edgar/data/1048911/000120677419002626/fdx3608061-def14a.htm#STOCKHOLDERPROPOSALS99>

¹³ Proxy Statement, *FedEx*, SECURITIES AND EXCHANGE COMMISSION (2019) <https://www.sec.gov/Archives/edgar/data/1048911/000120677419002626/fdx3608061-def14a.htm#STOCKHOLDERPROPOSALS99>

¹⁴ *Petition, Request for rulemaking on environmental, social, and governance (ESG) disclosure*, SECURITIES AND EXCHANGE COMMISSION (October 1, 2018) <https://www.sec.gov/rules/petitions/2018/petn4-730.pdf>

¹⁵ *Id.*

Interfaith Center on Corporate Responsibility
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Jantz Management LLC
Miller/Howard Investments, Inc.
New Progressive Alliance
Newground Social Investment, SPC
NorthStar Asset Management, Inc.
Northwest Coalition for Responsible Investment
Oil Change International
OIP Trust
Oxfam America
Pax World Funds
Public Citizen
Railroads & Clearcuts Campaign
Reynders, McVeigh Capital Management LLC
Sierra Club
Teamsters
Tri-State Coalition for Responsible Investment
U.S. PIRG
Union of Concerned Scientists
Women's Institute for Freedom of the Press