



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

October 22, 2019

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

File No. S7-11-19

Dear Ms. Countryman:

We are writing to you on behalf of the Human Capital Management Coalition (the “HCMC” or “Coalition”) to comment on the Securities and Exchange Commission’s (“SEC” or the “Commission”) proposed release, “Modernization of Regulation S-K Items 101, 103, and 105,” Exchange Act Release No. 86614 (the “Release”).¹ We commend the Commission for continually seeking ways to modernize corporate reporting to investors and we thank Chairman Jay Clayton, the Commissioners, and staff for moving this rulemaking forward. We also thank the Commission for seeking input from investors, issuers, and other market participants on the Release and appreciate the opportunity to share our views. Our comments below focus on proposed changes to reporting rules governing Item 101(c) in Regulation S-K regarding the Narrative Description of Business, and on human capital-related disclosures in particular. As detailed below, we believe that a combination of rules-based disclosures with quantitative metrics that allow for comparability, together with principles-based disclosures that allow for differences in industry and individual company practices, are necessary to provide investors with critical decision-useful information about human capital management (“HCM”).

Established in 2013, the HCMC is a cooperative effort among 28 institutional investors representing over \$4 trillion in assets under management to further elevate human capital management as a critical component in company performance and in the creation of long-term value. More information about the Coalition is available at <http://www.uawtrust.org/hcmc>.

We agree with the Commission that updates to issuer reporting are warranted in light of changes in our economy and capital markets in the 30 years since Items 101, 103 and 105 of Regulation S-K were adopted. In 2017, the HCMC filed a petition for rulemaking (the “Petition”; also incorporated herein as Appendix A),² asking the Commission to adopt rules, or amend its existing rules, to require

¹ Exchange Act Release No. 86614, “Modernization of Regulation S-K Items 101, 103, and 105,” Aug. 8, 2019 (available at <https://www.sec.gov/rules/proposed/2019/33-10668.pdf>).

² Human Capital Management Coalition, “Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance,” July 6, 2017 (available at <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>).



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registrants to disclose information about their HCM policies, practices, and performance. The Petition, which was supported by over 30 comment letters from a broad range of investors and other key market participants, was submitted in response to the greater role human capital plays in creating value and risks,³ as well as the inadequacies of voluntary disclosure regarding HCM. We also supported⁴ the Investor Advisory Committee’s (the “IAC”) March 2019 recommendation that the Commission consider requiring HCM disclosure from issuers, noting that “[t]he value-relevance of HCM metrics is consistently demonstrated in financial research.”⁵ Our comment to the IAC is incorporated herein as Appendix B.

The case for HCM disclosure has strengthened since we submitted the Petition. Last month, *CFO* magazine described a “groundswell of momentum” for HCM disclosure over the past two years: “Propelling the idea is the ever-broadening consensus among stakeholders that effective assessments of a company’s performance and prospects require solid information on workforce costs, productivity, and how employees are hired, developed and managed.”⁶ The International Organization for Standardization’s (“ISO”) “*Guidelines for Human Capital Reporting for Internal and External Stakeholders*” (ISO 30414:2018), approved in December 2018, provides guidance on reporting of “core” HCM areas like workforce cost, workforce composition, workforce stability and organizational culture.⁷ Delaware Supreme Court Chief Justice Leo Strine recently urged the adoption of stronger workforce reporting requirements for all companies, asserting that a lack of reporting and recognition of human capital as a source of value for companies versus merely a cost could “lead corporate managers to underinvest in human capital,” despite its importance in ensuring long-term performance at the firm and market levels.⁸

³ The SEC’s Investor Advisory Committee noted that “the implied intangible asset value of the S&P 500 grew to an average 84% by 2015 from the 1970s, when it was less than 20%.” Recommendation of the Investor Advisory Committee on Human Capital Management Disclosure, Mar. 28, 2019, at 1 (hereinafter, “IAC Recommendation”) (available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>).

⁴ Human Capital Management Coalition, Comment to the Recommendation of the Investor Advisory Committee on Human Capital Management Disclosure, March 22, 2019 (available at <https://www.sec.gov/comments/265-28/26528-5180975-183539.pdf>).

⁵ IAC Recommendation, at 2.

⁶ David McCann, “Human Capital’s Big Reveal,” *CFO*, Sept. 11, 2019 (available at <https://www.cfo.com/human-capital-careers/2019/09/human-capitals-big-reveal/>).

⁷ See <https://www.iso.org/standard/69338.html>; <https://www.iso.org/news/ref2357.html>.

⁸ Leo E. Strine, Jr., “Toward Fair and Sustainable Capitalism,” presented at “A New Deal for This New Century: Making Our Economy Work For All,” N.Y.U. Constance Milstein and Family Global Academic Center, Oct. 3-4, 2019 (available at https://www.law.nyu.edu/sites/default/files/Fair%20and%20Sustainable%20Capitalism%20Proposal%20-%20White%20Paper_09.26.19%20FINAL.pdf).

We offer our thoughts on the specific questions posed in the Commission’s release below:

12. Should we shift to a more principles-based approach for Item 101(c), as proposed? Would registrants find it difficult to apply the principles-based requirements?

13. Would the proposed principles-based requirements elicit information that is material to an investment decision? If not, how might Item 101(c) be further improved? Are there any additional disclosure topics that we should include in Item 101(c) to facilitate disclosure? Alternatively, should we exclude any of our proposed disclosure topics?

We appreciate the Commission’s willingness to engage in rulemaking on human capital disclosure. From an investor perspective, however, we do not believe that the substantial move toward a principles-based approach for human capital disclosure contemplated in the Release will provide investors with the type of robust, clear and comparable information we require. Rather, it would leave investors more exposed to the same types of information asymmetries that U.S. securities laws and regulations – beginning with the Securities Act of 1933 and the Securities and Exchange Act of 1934 – have sought to mitigate.

Support for a Combined Rules-Based and Principles-Based Approach to Human Capital Disclosure

The general approach to HCM disclosure proposed in the Release suffers from a fundamental shortcoming: While securities law has always positioned investors as the intended recipients of issuer disclosures, the proposed approach instead would create a system that relies entirely on the judgment of management to determine which aspects of HCM to disclose to shareholders rather than using an investor lens. Revised Item 101(c) would be entirely principles-based, with disclosure of human capital resources only required to the extent the registrant themselves determines these disclosures are “material to an understanding of” the registrant’s business.

The Commission’s rationale for this approach to human capital disclosure is that “each industry, and even each company within a specific industry, has its own human capital considerations, and that those considerations may evolve over time.”⁹ We agree that HCM priorities can vary between industries. For example, the most acute health and safety risks for hospitals differ from those most prevalent in mining companies, potentially impacting the metrics companies in each industry measure and monitor. Industries like apparel, food, and electronics, whose products are often obtained or manufactured in countries with weak labor protections, have reason to prioritize collecting and analyzing information about human rights in their supply chains. Human capital priorities can shift even at the

⁹ Release, at 49.



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734.929.5789





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same company: A tech firm that abandons hardware manufacturing for cloud computing services would need to retool its recruitment, succession planning, and talent development processes, as would an industrial firm embarking on a digital transformation. All of this would be impactful information to investors and would supplement the rules-based disclosures to provide color around identified trends and comparable information.

But as stated above, performance on certain human capital metrics are material to investors across all companies. Materiality is defined by reference to what a reasonable shareholder would consider important in deciding how to invest or vote.¹⁰ A broad range of investors have identified certain human capital-related information as likely to influence their decision making, and a substantial majority of the comments submitted on the Petition supported some degree of standardized, comparable disclosures across all companies. The HCMC believes that consistency and comparability in reporting promotes efficiency both for issuers who would have concrete guidance on what to report and how, and for investors who would no longer need to pore through reams of documents to find basic information on the workforce. It allows investors to easily and efficiently compare companies and benchmark performance. It also levels the playing field between large institutional investors who can demand (and afford) more data from companies on human capital, and smaller retail investors who, on a practical basis, often cannot.

Universal Line-Item Disclosure Metrics

A modest number of specific items should be required to be disclosed by all registrants, with opportunity to provide narrative context and explanation for the data. A principles-based approach could be used for the remainder of human capital disclosure, as discussed in the next section.

We advocate that all registrants should be required to disclose the following:¹¹

1. **The number of people employed by the issuer**, broken down by full-time and part-time employees along with contingent workers who produce its products or provide its services (independent contractors, supplied through subcontracting relationship, temporary employees, etc.);¹²
2. **The total cost of the issuer's workforce**, including wages, benefits and other transfer payments, and other employee expenses;

¹⁰ See *TSC Industries v. Northway*, 426 U.S. 438, 449 (1976).

¹¹ At a minimum, even if these suggested items are not adopted, line-item disclosure requirements should be arrived at through a process in which investors identify the HCM information they view as material at all companies.

¹² Our answer to question 24 is thus "yes." This approach was supported by the IAC in its recommendation on HCM disclosure. See IAC Recommendation, at 4 and our expanded discussion on question 24 in the body of this comment below.



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hcmc@rhac.com

734.929.5789

3. **Turnover** or similar workforce stability metric;¹³ and
4. **Workforce diversity data**, concentrating on gender and ethnic/racial diversity across different levels of seniority.¹⁴

Line-item disclosures provide the advantage of comparability, the lack of which is a major flaw in our existing voluntary disclosure regime. As we noted in the Petition, investors value consistency and comparability, and line-item disclosures can be used to analyze practices across a large number of companies, identify outliers, and track developments over time. The CFA Institute, a global association of investment management professionals, commented in response to a 2016 SEC Concept Release on Regulation S-K that principles-based disclosure can lead to differing interpretations that thwart comparability.¹⁵

Line-item disclosures are also easier and less expensive to extract through an automated process, reducing costs for investors and helping to level the playing field between institutional investors, whose staffs and outside investment managers can help parse lengthy non-standardized disclosures, and retail investors. SEC Chairman Jay Clayton has repeatedly stressed the Commission's commitment to retail or "Main Street" investors. In his first speech, Chairman Clayton stated, "[o]ur analysis starts and ends with the long-term interests of the Main Street investor,"¹⁶ and he has often returned to that theme.¹⁷

Further, the line-item disclosures we propose above need not be financially burdensome for issuers to collect and disclose. For example, the International Financial Reporting Standards ("IFRS") already includes an accounting treatment for total workforce costs, including salaries, pensions, and other benefits.¹⁸

¹³ See IAC Recommendation, at 4.

¹⁴ As we note in our Petition, the line-item disclosure could provide a limited exception for disclosure of workforce composition outside the United States, to the extent that local laws may restrict such disclosure. Also see Comment of Trillium Asset Management on the Release dated Sept. 4, 2019 (providing evidence to support requirement that companies disclose information on workforce diversity) (available at <https://www.sec.gov/comments/s7-11-19/s71119-6067407-191464.pdf>); IAC Recommendation, at 4.

¹⁵ Comment of CFA Institute on S-K Concept Release dated Oct. 6, 2016, at 5 (available at <https://www.sec.gov/comments/s7-06-16/s70616-375.pdf>).

¹⁶ Speech of SEC Chairman Jay Clayton, "Remarks at the Economic Club of New York," July 12, 2017 (available at <https://www.sec.gov/news/speech/remarks-economic-club-new-york>).

¹⁷ See, e.g., Speech of SEC Chairman Jay Clayton, "Remarks at the Economic Club of New York," Sept. 9, 2019 (available at https://www.sec.gov/news/speech/speech-clayton-2019-09-09#_ftn1) ("Please note the common theme running through the work I have outlined so far—serving the interests of our long-term Main Street investors."); "Speaking With Main Street Investors in the Windy City" (available at <https://www.sec.gov/page/speaking-main-street-investors-windy-city>) (describing "Main Street" investor roundtable); Dave Michaels, "SEC Chairman Wants to Let More Main Street Investors in on Private Deals," *The Wall Street Journal*, Aug. 30, 2018 (available at <https://www.wsj.com/articles/sec-chairman-wants-to-let-more-main-street-investors-in-on-private-deals-1535648208>).

¹⁸ See IAS 19 – Employee Benefits at <https://www.ifrs.org/issued-standards/list-of-standards/ias-19-employee-benefits/>.



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hcmc@rhac.com

734.929.5789

Similarly, many U.S. companies track basic workforce data like labor costs for administrative purposes such as processing payroll. Human resources analytic tools developed in-house and services like ADP, SAP, Oracle and Workday are commonly utilized to assist with data collection. Data on workforce diversity by job classification—including jobs at the leadership and managerial levels—is already required by the U.S. Equal Employment Opportunity Commission.¹⁹ Firms could leverage the human resources tools and services they already use, along with data they are already required to collect for reporting purposes, to satisfy new human capital reporting requirements.

Pitfalls of Principles-Based-Only Standards and the Need for Clarity

The exclusively principles-based Risk Factor disclosures in financial reports provide a cautionary example. As the Commission notes in the release, research has shown that the volume of Risk Factor disclosure has increased substantially in recent years and that the informational value of the disclosure has not improved.²⁰ In remarks at the September 2019 Council of Institutional Investors meeting, Commissioner Robert Jackson Jr. stated that his office had studied Risk Factor disclosures in 10-K filings and found that they contained three times more redundant boilerplate language than 10 years ago.²¹ We are concerned that relying exclusively on principles-based requirements may elicit generic disclosures that fail to provide decision-useful information and take substantial time to review and analyze.

Aside from data collection and reporting pitfalls, we are also concerned that a lack of well-defined rules on reporting key human capital information may open the door for companies that have suboptimal human capital performance to pick and choose metrics that may paint a misleading picture of their performance, or may omit critical information altogether. Similarly, a company that has strong performance one year, but suboptimal performance another year, may choose to only report certain metrics on years where the results are the best, leading to holes in data and reducing comparability. These potential issues could reduce investors' faith in the markets and impair future capital formation – precisely the problems disclosure laws were enacted to mitigate.

From a drafting perspective, it is also important to note that some of the proposed new language is ambiguous. One could read the proposed language as asking registrants to identify those “measures or objectives that may be material” but not requiring disclosure regarding *performance* on those measures or objectives. Under this reading, if a registrant views training as a material measure used in

¹⁹ See U.S. Equal Employment Opportunity Commission (“EEOC”), EEO Reports/Surveys (available at <https://www.eeoc.gov/employers/reporting.cfm>). Also see Notice of Immediate Reinstatement of Revised EEO-1: Pay Data Collection for Calendar Years 2017 and 2018 (available at <https://eeocomp2.norc.org/>).

²⁰ Release, at 66.

²¹ Video, “CII Fall 2019 Conference: Welcome & Dual Class Stock and the Future of Corporate Governance,” at 41:58-42:30 (available at https://www.youtube.com/watch?v=CVwFD_-aZ6Y).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

managing its business, it would disclose that fact and perhaps describe the metrics it uses but not provide investors with specific information about whether training expenditures, policies or programs are having their intended effect. Such disclosure would not be specific enough to be useful to investors. Accordingly, we urge the Commission to clarify that registrants must provide information about their performance on material measures or objectives.

Similarly, the Item states that disclosure should include “any human capital measures or objectives that management focuses on in managing the business.” The absence of other examples or definitions suggests that human capital measures or objectives are material only if management “focuses on” them, and the meaning of that phrase is not clear.

21. Should disclosure regarding human capital resources, including any material human capital measures or objectives that management focuses on in managing the business, be included under Item 101(c) as a listed disclosure topic, as proposed? Should we define human capital? If so, how?

As noted above, we believe that the most appropriate approach for human capital disclosure would require a bifurcated approach where all companies would report on a set of well-defined, rules-based metrics *in addition to* material human capital measures or objectives management focuses on in running their business. The best-presented information will be written in a way that helps investors better understand a firm’s human capital management strategy, how the human capital management strategy supports the overall business strategy, and how the company ensures that it is performing against its own benchmarks and objectives.

Members of the HCMC developed a set of high-level questions about human capital strategy, targets, and benchmarking that may assist companies in articulating these connections to investors.²² BlackRock, the largest global asset manager with nearly \$7 trillion in assets under management²³ and ownership meeting or exceeding 5 percent in most S&P 500 companies,²⁴ also provides public guidance outlining how it approaches engagement on human capital management issues with portfolio companies.²⁵

²² Human Capital Management Coalition, “Questions about Human Capital Management Strategy, Targets, and Benchmarking, 2018 (available at <http://uawtrust.org/AdminCenter/Library.Files/Media/501/About%20Us/HCMCoalition/HCMC%20PMD%20Qs%20Attachment%20-%20Sept%202018.pdf>).

²³ Saqib Iqbal Ahmed, “BlackRock beats profit estimates as assets swell to nearly \$7 trillion,” Reuters, October 15, 2019 (available at <https://www.reuters.com/article/us-blackrock-results/blackrock-profit-beats-as-its-low-risk-funds-attract-more-money-idUSKBN1WU18B>).

²⁴ Lucian A. Bebchuk and Scott Hirst, “The Specter of the Giant Three,” Boston University Law Review, Vol. 99 (2019), at 721-741 (available at <https://ssrn.com/abstract=3385501>).

²⁵ BlackRock, “BlackRock Investment Stewardship’s approach to engagement on human capital management,” 2019 (available at <https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-human-capital.pdf>).



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hcmc@rhac.com

734.929.5789

We also believe that the Commission should provide guidance to issuers on defining human capital. Absent guidance in this area, issuers may struggle to report on even basic workforce information, making it more difficult for investors to capture and analyze even the most basic workforce information efficiently and effectively.²⁶

The HCMC provided a basic definition of human capital in our 2017 rulemaking petition, based off of our own analysis of available literature and documentation on human capital that may be instructive:

There is broad agreement that human capital encompasses the knowledge, motivation, skills and experience of a company's workforce, as well as its alignment with the company's mission and values.²⁷

22. With respect to human capital resource disclosure, should we provide non-exclusive examples of the types of measures or objectives that management may focus 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, as proposed? Would providing specific examples potentially result in disclosure that is immaterial and not tailored to a registrant's specific business? Would not including such examples result in a failure to elicit information that is material and in some cases comparable across different issuers?

For the principles-based portion of the bifurcated approach to disclosure we outline above, we believe that illustrative guidance would be useful and that the Commission should consider providing it outside of Item 101(c) itself such as through Staff Guidance.

This approach would allow a more complete discussion of the factors registrants should consider in determining which measures or objectives to disclose. The Commission could draw on the work of many organizations, including ISO, the Principles for Responsible Investment's Employee Relations Group, the Sustainability Accounting Standards Board, and the Global Reporting Initiative²⁸ that have considered HCM disclosure by various kinds of companies.

24. Should we retain an explicit requirement for registrants to disclose the number of their employees? Alternatively, should we permit registrants to

²⁶ For example, an analysis by the Center for Safety & Health Sustainability of human capital-related reporting from companies listed on the Corporate Knights' "Global 100 Most Sustainable Corporations in the World 2016" found 14 distinct definitions used for "workers." See Comment of Center for Safety & Health Sustainability on the HCMC "Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance" dated June 15, at 8 (available at <https://www.sec.gov/comments/4-711/4711-3838129-162757.pdf>).

²⁷ Human Capital Management Coalition, "Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance," at 2.

²⁸ See Petition, at 15-18.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

disclose a range of the number of its employees and/or a range for certain types of employees?

The HCMC has consistently acknowledged the limitations of the current requirement that registrants disclose the number of individuals they employ; however, we believe the issue with this requirement lies in its imprecision, not in its inclusion as an area of focus: the reporting instruction alone is insufficient in providing investors with a full accounting of a company's labor force. In its 2016 Concept Release, the Commission noted that the headcount data disclosed by companies may vary substantially.²⁹ For example, some companies will report the number of full-time and part time employees overall, while some report headcount by business unit or division. Some companies may only report on their domestic workforce. And despite 2008 SEC staff guidance stating that industries typically reliant on independent contractors should be disclosing this numbers as well,³⁰ many companies still fail to do so.

We support the approach suggested by the IAC in its March 2019 Recommendation that this basic headcount metric should be expanded to include a breakdown in the numbers of full-time, part-time, and contingent workers. Similar to the other limited rules-based disclosures we propose in this comment and as noted above, this data need not be excessively burdensome to collect: many U.S. public companies already track basic workforce data like headcount and labor costs for administrative purposes such as processing payroll and complying with mandatory DOL reporting requirements. Human resources analytic tools are commonly utilized to assist with data collection, and firms could leverage the human resources tools and services they already use to fulfill new human capital reporting requirements

* * *

²⁹ "Disclosure of the number of employees varies among registrants."

<https://www.sec.gov/rules/concept/2016/33-10064.pdf>

³⁰ See 203.01. <https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

We appreciate the opportunity to provide the Commission with our views. If you have any questions, or need anything further, please do not hesitate to contact Cambria Allen-Ratzlaff, Chair of the HCMC and Corporate Governance Director for the UAW Retiree Medical Benefits Trust, at 734-929-5789 or via email at callen@rhac.com.

Respectfully submitted,

The Human Capital Management Coalition

On behalf of the Human Capital Management Coalition:

Sincerely,

Cambria Allen-Ratzlaff
Chair, Human Capital Management Coalition
Corporate Governance Director, UAW Retiree Medical Benefits Trust
734-929-5789
callen@rhac.com



**Human Capital Management Coalition Rulemaking Petition to Strengthen
Human Capital Management Disclosure, July 6, 2017**

July 6, 2017

William Hinman
Director, Division of Corporate Finance
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dear Mr. Hinman:

The Human Capital Management Coalition (the “HCM Coalition”) respectfully submits this petition for rulemaking pursuant to Rule 192(a) of the Commission’s Rules of Practice.¹ As representatives of the HCM Coalition, a group of institutional investors with \$2.8 trillion in assets, we request that the Commission adopt new rules, or amend existing rules, to require issuers to disclose information about their human capital management policies, practices and performance.

There is broad consensus that human capital management is important to the bottom line, and a large body of empirical work has shown that skillful management of human capital is associated with better corporate performance, including better risk mitigation. We view effective human capital management as essential to long-term value creation and therefore material to evaluating a company’s prospects.

Requiring disclosure regarding human capital management would fulfill the Commission’s core mission of investor protection; satisfy Congressional mandates to promote efficiency, competition and capital formation; and serve the public interest, for the following reasons:

- Given the key role of human capital, investors under current Commission disclosure requirements cannot adequately assess a company’s business, risks and prospects, for investment, engagement or voting purposes, without information about how it is managing its human capital.
- Greater transparency would allow investors to more efficiently direct capital to its highest value use, thus lowering the cost of capital for well-managed companies.

¹ Rules of Practice and Rules on Fair Fund and Disgorgement Plans, section 192(a) (Sept. 2016)(available at <https://www.sec.gov/about/rules-of-practice-2016.pdf>).



P.O. Box 14309
Detroit, MI 48214

hmc@rhac.com

734.929.5789





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

- Consistent mandatory disclosure standards would obviate the need for issuers to respond to a multitude of investor requests for human capital-related information; make that information easier for all investors to collect and analyze; and level the playing field for investors that are not large enough to demand or otherwise access individualized disclosure.
- There is broad consensus that long-term investing strategies are needed to stabilize and improve our markets and to effect the efficient allocation of capital. Human capital management metrics are precisely the type of information that enables investors to take the long view.

In the last section of this petition, we suggest key categories of information that we believe are fundamental to furthering investors' understanding of how well a company is managing its human capital. These categories include: workforce demographics; workforce stability; workforce composition; workforce skills and capabilities; workforce culture and empowerment; workforce health and safety; workforce productivity; human rights; and workforce compensation and incentives.

The HCM Coalition is a collaborative effort among a global group of institutional investors to further elevate human capital management as a critical component in company performance and in the creation of long-term shareholder value. More information on the HCM Coalition and its members is available [here](#). In the main body of this letter, we provide detailed evidence that supports our belief that human capital is a company's most valuable asset and that stewarding human capital with that in mind will help to preserve and add value.

Human Capital and Value Creation

Over the past several decades, the importance of human capital to corporate value creation has surged. There is broad agreement that human capital encompasses the knowledge, motivation, skills and experience of a company's workforce, as well as its alignment with the company's mission and values.²

² See, e.g., Gary Becker, *The Age of Human Capital*, at 3 (2002) ("Human capital refers to the knowledge, information, ideas, skills, and health of individuals."); National Association of Pension Funds, "Where is the Workforce in Corporate Reporting," at 8 (June 2015)



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hcmc@rhac.com

734.929.5789

As the global economy has become more knowledge-intensive and competitive, companies are under increasing pressure to adapt to new technologies and differentiate themselves.³ Human capital is responsible for innovation, as well as effectively managing and carrying out companies' day to day work—whether that is shelving goods at a store, caring for hospital patients, repairing equipment or investing assets to provide retirement benefits for its employees.

Human capital is thus key to getting and maintaining competitive advantage. Former Secretary of Labor Robert Reich asserted, “The only unique assets that a business has for gaining competitive advantage over its rivals are the skills and dedication of its employees.”⁴ One influential finance scholar has characterized human capital as firms’ “most valuable asset.”⁵

Companies and their leaders recognize the paramount importance of human capital. Global CEOs surveyed by PricewaterhouseCoopers in 2015 identified “availability of key skills” as the second most worrying risk, ahead of geopolitical uncertainty, tax burden and shift in consumer spending and behaviors.⁶ Kevin Ryan, founder and CEO of Gilt Group, put it this way:

Of all the duties facing a CEO, obsessing over talent provides the biggest return. Making sure that the

(<http://www.plsa.co.uk/PolicyandResearch/DocumentLibrary/0439-Where-is-the-workforce-in-corporate-reporting-An-NAPF-discussion-paper.aspx>).

³ E.g., Bo Hansson, “Employers’ Perspectives on the Roles of Human Capital Development and Management in Creating Value,” at 7, Apr. 2006 (“As economies continue to become more global and technological change continues to favour the highly educated and skilled, the already-significant role of human capital is likely to increase.”)

(<http://files.eric.ed.gov/fulltext/ED530787.pdf>)

⁴ <https://blogs.oracle.com/oraclehcm/create-great-employee-experiences>; see also Michael Adelowotan, “The Significance of Human Capital Disclosures in Corporate Annual Reports of Top South African Listed Companies: Evidence From the Financial Directors and Managers”, *Afr. J. Bus. Mgmt.*, Vol. 7(34), 3248-58 (2013), at 3249 (“Human capital is an asset that can provide a source of sustained competitive advantage because they are often difficult to imitate [citation omitted].”)

(<http://academicjournals.org/journal/AJBM/article-full-text-pdf/61F9D6E20836>).

⁵ Luigi Zingales, “In Search of New Foundations,” *The Journal of Finance*, Vol. LV, No. 4, 1623-1653 (Aug. 2000), at 1642-43 (faculty.chicagobooth.edu/luigi.zingales/papers/research/search.pdf).

⁶ PricewaterhouseCoopers, “18th Annual Global CEO Survey,” at 9 (2015) (<http://www.pwc.com/gx/en/ceo-survey/2015/assets/pwc-18th-annual-global-ceo-survey-jan-2015.pdf>).



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environment is good, that people are learning, and that they know we're investing in them every day—I'm constantly thinking about that, yet I still don't feel I'm doing enough. If CEOs did absolutely nothing but act as chief talent officers, I believe, there's a reasonable chance their companies would perform better.⁷

Materiality of Human Capital Management

The importance of human capital is supported by decades of research. A large body of empirical work has shown that thoughtful management of human capital is associated with better corporate performance, including risk mitigation.

Research has shown that differences in human capital management performance can form the basis for successful investment strategies. Studies by Laurie Bassi, former director of research at the American Society for Training and Development, show that stock selection using training and other human capital management practices can produce superior investment outcomes. Two portfolios of large-capitalization companies launched in 2001 and 2003 using criteria related to training and employee development outperformed the S&P 500 on an annualized basis by 3.1% and 4.4%, respectively, through May 25, 2010.⁸ Four other portfolios launched in 2008, selected using a wider variety of HCM factors including commitment to talent management also outperformed the S&P 500 through May 25, 2010 on an annualized basis to varying degrees, from .1% to 11.9%.⁹

Similarly, investing in companies identified as desirable workplaces can generate superior returns. A study by Wharton's Alex Edmans found that investing in a value-weighted portfolio of companies in the Fortune 100 America's Best Companies to Work For from 1984 through 2009 generated excess risk-adjusted returns of 3.5% per year.¹⁰

⁷ Kevin Ryan, "Gilt Group's CEO on Building a Team of A Players," *Harvard Business Review*, Jan.-Feb. 2012 (available at <https://hbr.org/2012/01/gilt-groupes-ceo-on-building-a-team-of-a-players>).

⁸ Laurie Bassi & Dan McMurrer, "Human Capital Management Predicts Stock Prices," at 1 (June 2010) (<http://mcbassi.com/wp/resources/documents/HCMPredictsStockPrices.pdf>) (hereinafter, "Bassi & McMurrer Stock Prices").

⁹ Bassi & McMurrer Stock Prices, at 1.

¹⁰ Alex Edmans, "Does the Stock Market Fully Value Intangibles," *Journal of Financial Economics*, Vol. 101, 621-640 (2011), at 621 (<http://faculty.london.edu/aedmans/Rowe.pdf>).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

A recent report by the Harvard Law School Pensions and Capital Stewardship Program reviewed 92 studies that measured performance using metrics of value to investors, such as total shareholder return, return on assets, return on capital, profitability and Tobin's Q.¹¹ The Harvard Report found that in a majority of studies human capital management policies were associated with better financial performance.¹²

Many academic studies have concluded that combinations or bundles of policies and practices affect firm performance, and significant attention has been paid to the impact of a "high-performance" or "high commitment" workplace. Although there is no single definition, these are policies and practices designed to reduce turnover, encourage greater employee commitment and motivation and enhance employee skills.

For example, Mark Huselid analyzed a group of high performance workplace practices and determined that such practices are associated with lower turnover as well as better productivity and firm financial performance. Specifically, the study found that certain combinations of high-performance workplace practices were associated with statistically significant increases in productivity, Tobin's Q and gross rate of return on capital.¹³ Similarly, Huselid and Barry Becker found that high performance workplace practices have a statistically significant positive effect on firm performance.¹⁴ More recent scholarship has found that specialized high-performance workplace practices enhanced performance in

¹¹ Aaron Bernstein and Larry Beeferman, "The Materiality of Human Capital to Corporate Financial Performance," Pensions and Capital Stewardship Project, Labor and Worklife Program, Harvard Law School, Apr. 2015.

(<http://law.harvard.edu/programs/lwp/pensions/publications/FINAL%20Human%20capital%20Materiality%20April%2023%202015.pdf>).

¹² Bernstein & Beeferman, at 12.

¹³ Mark Huselid, "The Impact of Human Resource Management Practices on Turnover, Productivity, and Corporate Financial Performance," *Academy of Management Journal*, at 645-47 (1995), at 658-659 (http://www.markhuselid.com/pdfs/articles/1995_AMJ_HPWS_Paper.pdf).

¹⁴ Mark Huselid & Brian Becker, "The Strategic Impact of High Performance Work Systems," at 2 (Aug. 25, 1995) (http://www.bhbassociates.com/docs/articles/1995_Strategic_Impact_of_HR.pdf); see also Brian Becker & Barry Gerhart, "The Impact of Human Resource Management on Organizational Performance: Progress and Prospects," *Academy of Management Journal* Vol. 39, No. 4, at 797 (1996) ("In sum, at multiple levels of analysis there is consistent empirical support for the hypothesis that HR can make a meaningful difference to a firm's bottom line.") (amj.aom.org/content/39/4/779.short?rss=1&sssource=mfr).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

interdependent work settings by supporting the relationships among roles needed to carry out tasks effectively.¹⁵

There is evidence that training can positively affect corporate performance. The Harvard Report reviewed 36 studies, of which 22 found that training was “associated only with superior investment outcomes.”¹⁶ Other overviews of studies have found ample evidence that the provision of training or higher training expenditures is linked to better performance on intermediate measures, such as productivity and customer satisfaction, as well as financial performance.¹⁷ Some of the studies reviewed measured performance in years subsequent to the years in which training was measured, to address the question of causation.

Research by Zeynep Ton, an expert on operations management, suggests one avenue by which training may improve performance in retail. Ton’s research has found that high-performing retailers use cross-training to provide flexibility and address variability in demand—thus better satisfying customers—without resorting to practices like last-minute (“just-in-time”) scheduling and extremely short shifts that lead to higher turnover and lower motivation.¹⁸

Ton’s research also showed that cutting labor hours, a common strategy among retailers looking to control expenses, often backfires in the form of reduced profitability. Ton obtained store-level data for over 250 Borders bookstores from 1999 through 2002 and analyzed their spending on labor; she found that increasing labor spending resulted in higher profit margins or, put another way, that increased labor costs

¹⁵ Jody Hoffer Gittel et al., “A Relational Model of How High-Performance Work Systems Work,” *Organizational Science*, Vol. 21, No. 2 (Mar.-Apr. 2010)

(http://www.jstor.org/stable/27765979?seq=1#page_scan_tab_contents).

¹⁶ Bernstein & Beeferman, at 10.

¹⁷ Hansson, at 19-23 (“In one of the few U.S.-based studies that analyzed actual training expenditures, a recent analysis of financial institutions conducted for the American Bankers Association (2004) found that those financial institutions with higher-than-average training expenditures per employee subsequently had better outcomes than other institutions on five key financial measures examined: return on assets, return on equity, net income per employee, total assets per employee, and stock return.”); Laurie Bassi et al., “Profiting From Learning Firm-Level Effects of Training Investments and Market Implications,” *Singapore Management Review*, Vol. 24, No. 3, 61-76 (2002), at 63

(<http://home.uchicago.edu/ludwig/papers/BassiEtal-Singapore-2002.pdf>). The author of the first overview noted that few training studies had been done on U.S. companies due to data constraints.

¹⁸ Zeynep Ton, *The Good Jobs Strategy*, 138-148 (2014).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

generated sales increases large enough to raise overall profitability.¹⁹ Understaffing led to “phantom stockouts,” where a product is in the store but cannot be located for the customer, bungled promotions, theft and spoilage.²⁰ Similar conclusions were reached in a study by Vidya Mani and two colleagues, who found systematic understaffing during peak hours at 41 retail stores and estimated that appropriate staffing would improve profitability by 5.74%.²¹ Managing human capital by treating it solely as an expense to be minimized, then, can depress performance in retail.

Employee engagement, which many employers measure, has also been found to have a positive association with firm performance. Definitions of employee engagement vary, but it is generally agreed to include the strength of an employee’s commitment to the employer and the employee’s willingness to expend effort in his or her role.²²

The reciprocal nature of employee engagement—its dependence on employer as well as employee commitment—differentiates it from employee satisfaction. Consultant Aon Hewitt has emphasized the need for senior leaders to create a “culture of engagement.”²³ As one author put it, “The degree to which employee engagement technology translates into a happier, more productive workforce, however, may depend on company culture and management’s willingness to examine and act on its own shortcomings.”²⁴

An analysis of 50 global firms by Towers Watson determined that the average one-year operating margins of companies with low engagement scores trailed those at companies with high “sustainable engagement” scores by 17

¹⁹ Ton, at 38-40.

²⁰ Ton, at 40.

²¹ Vidya Mani et al., “Estimating the Impact of Understaffing on Sales and Profitability in Retail Stores,” *Production and Operations Management*, Vol. 24, No. 2, 201-218 (2015) (<http://public.kenan-flagler.unc.edu/faculty/kesavans/understaffing.pdf>).

²² Dinah Wisenberg Brin, “Technology for Employee Engagement on the Rise,” *Society for Human Resource Management* (Feb. 9, 2016) (<https://www.shrm.org/ResourcesAndTools/hr-topics/technology/Pages/Technology-for-Employee-Engagement-Rising.aspx>).

²³ Aon Hewitt, “2015 Trends in Global Employee Engagement,” at 4 (2015) (<http://www.aon.com/attachments/human-capital-consulting/2015-Trends-in-Global-Employee-Engagement-Report.pdf>).

²⁴ Gemma Richardson-Smith and Walter Bappert, “Employee Engagement: A Review of Current Thinking,” *Institute for Employment Studies*, at 14 (2009); Brin.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

percentage points.²⁵ A 2002 meta-analysis found that higher employee engagement is associated with higher customer satisfaction and loyalty, productivity and profitability, as well as lower turnover.²⁶ Aon Hewitt estimates that a 5% increase in employee engagement leads to a 3% increase in revenue growth the following year.²⁷

A case study by the Human Capital Management Institute (HCMI) found that Jet Blue locations and flights with a higher average “net promoter score”—a measure of how likely an employee is to recommend Jet Blue as an employer (often used in lieu of employee engagement measures)—had higher customer satisfaction and revenue. The HCMI estimated that a 5% increase in net promoter score was associated with a 1% increase in revenue.²⁸

Further, board and workplace diversity has been linked to financial performance. A growing body of empirical research indicates a significant positive relationship between firm value and the percentage of women and minorities on boards. A 2012 Credit Suisse Research Institute evaluated the performance of 2,360 companies globally over six years and found that companies with one or more women on boards delivered higher average returns on equity, lower leverage, better average growth and higher price/book value multiples.²⁹ A 2015 McKinsey study of 366 companies found that corporate leadership in the top quartile for racial and ethnic diversity were 35 percent more likely to have financial returns above their national industry median.³⁰

Human capital management matters not only when it confers competitive advantage and improves firm performance. Material risks related to human capital management can

²⁵ Tony Schwartz, “New Research: How Employee Engagement Hits the Bottom Line,” *Harvard Business Review*, Nov. 8, 2012 (<https://hbr.org/2012/11/creating-sustainable-employee.html>).

²⁶ James K. Harter et al., “Business-Unit-Level Relationship Between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis,” *Journal of Applied Psychology* Vol. 87, No. 2, 268-79 (2002) (www.factorhappiness.at/downloads/quellen/S17_Harter.pdf).

²⁷ Aon Hewitt, at 1.

²⁸ <http://www.hcmiinst.com/casestudy/jetblues-profit-to-engagement-linkage-case-study/>.

²⁹ Credit Suisse, “Does Gender Diversity Improve Performance?” Jul. 31, 2012 (<https://www.credit-suisse.com/us/en/about-us/research/research-institute/news-and-videos/articles/news-and-expertise/2012/07/en/does-gender-diversity-improve-performance.html>)

³⁰ Vivian Hunt, Dennis Layton & Sara Prince, “Diversity Matters,” McKinsey & Company, Feb. 2, 2015 (<http://www.diversitas.co.nz/Portals/25/Docs/Diversity%20Matters.pdf>)

create substantial risks for companies and investors, damaging corporate reputation, generating legal liabilities and undermining relationships with key stakeholders.

Human capital-related risks are not limited to a company's direct employees. Major shifts in the organization of work over the past several decades, including the rise of outsourcing, subcontracting, franchising and complex global supply chains, have multiplied those risks. When a company's products or services are made or provided by its employees, that company has control over the work and, as a general matter, liability for legal violations related to it. As employment relationships are increasingly supplanted by contractual ones, there is a growing concern that the incentives of the company's contracting partners are not necessarily aligned with those of the company. This misalignment may lead to financial and reputational damage.³¹

It is not unusual for there to be multiple layers of contractors and subcontractors whose employees produce goods or provide services for a firm and who may be spread out across multiple countries or geographic regions. Generally, the further down the chain one goes, the greater the incentives are to cut corners through nonpayment of owed wages, safety shortcuts and other violations.³² A company's ability to control how work is performed on its behalf depends on clear performance standards and robust monitoring, enforcement and coordination mechanisms; falling short on any of these can have serious consequences. For example, investigators have concluded that BP's 2010 Deepwater Horizon explosion and oil spill, which killed 11 workers, cost shareholders billions and released nearly five million barrels of oil into the Gulf of Mexico,³³ resulted from, among other things, the lack of hazard assessment coordination between BP and the contractor actually operating the drilling rig.³⁴

³¹ See, e.g., David Linich, "The Path to Supply Chain Transparency: A Practical Guide to Defining, Understanding, and Building Supply Chain Transparency in a Global Economy," at 2 (2014) ("The dispersed nature of today's supply chains creates increasing levels of risk for multinational businesses, making transparency both critical and complex.") (dupress.deloitte.com/content/dam/dup-us-en/articles/supply-chain-transparency/DUP785_ThePathtoSupplyChainTransparency.pdf)

³² David Weil, "How to Make Employment Fair in the Age of Contracting and Temp Work," *Harvard Business Review*, Mar. 24, 2017.

³³ Campbell Robertson & Clifford Krauss, "Gulf Spill is the Largest of its Kind, Scientists Say," *The New York Times*, Aug. 2, 2010 (<http://www.nytimes.com/2010/08/03/us/03spill.html>).

³⁴ See U.S. Chemical Safety Board, "CSB Investigation: At the Time of 2010 Blowout, Transocean, BP, Industry Associations, and Government Offshore



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

Candy maker The Hershey Company (Hershey) was blindsided in 2011 when a subcontractor of a subcontractor of Hershey’s packing facility contractor used an educational travel program to bring foreign students to the U.S. to pack and move heavy boxes. Eventually, the students staged a public walkout to protest working conditions, the deduction of fees and inflated rent from their paychecks and the fact that they were required to continue working at the facility in order to maintain their educational travel visas.³⁵ Hershey, its packing facility contractor Exel, and Exel’s staffing subcontractor SHS all claimed not to know about the students’ plight, since the student workers were provided by yet another subcontractor, raising questions about the adequacy of the firms’ oversight of their staffing providers.³⁶

Evolving norms are calling for more due diligence and transparency on human capital risks in the supply chain. A 2010 *Harvard Business Review* article noted, “Consumers, governments, and companies are demanding details about the systems and sources that deliver the goods.”³⁷ Regulators have responded by instituting measures that encourage attention to these risks. In the United Kingdom (U.K.), the Modern Slavery Act requires larger businesses to prepare a “slavery and human trafficking statement” for each fiscal year, confirming that the firm has taken steps to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business. The firm can, alternatively, state that it has taken no such steps.³⁸ In California, the Transparency in Supply Chains Act requires that large companies doing business in California disclose their “efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale,”

Regulators Had Not Effectively Learned Critical Lessons From 2005 BP Refinery Explosion in Implementing Safety Performance Indicators,” July 24, 2012 (<http://www.csb.gov/csb-investigation-at-the-time-of-2010-gulf-blowout-transocean-bp-industry-associations-and-government-offshore-regulators-had-not-effectively-learned-critical-lessons-from-2005-bp-refinery-explosion-in-implementing-safety-performance-indicators/>).

³⁵ Julia Preston, “Foreign Students in Work Visa Program Stage Walkout at Plant,” *The New York Times*, Aug. 17, 2011 (<http://www.nytimes.com/2011/08/18/us/18immig.html>).

³⁶ Dave Jamieson, “Student Guestworkers at Hershey Plant Allege Exploitative Conditions,” *The Huffington Post*, Aug. 17, 2011 (http://www.huffingtonpost.com/2011/08/17/student-guestworkers-at-hershey-plant_n_930014.html).

³⁷ Steve New, “The Transparent Supply Chain,” *Harvard Business Review*, Oct. 2010 (<https://hbr.org/2010/10/the-transparent-supply-chain>).

³⁸ See <http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>.

including certification, audits, verification, internal accountability and training.³⁹

Current Lack of Comparable Data on Human Capital

Despite the importance of human capital management to company performance, human capital is nearly invisible in the Commission’s disclosure rules. Regulation S-K, which sets forth disclosures required in registration statements and various reports under the integrated disclosure system, contains one item related to human capital: Item 101(c)(xiii), in the “Narrative Description of Business” section, mandates disclosure of the “number of persons employed by the registrant.”⁴⁰

Companies often make mention of human capital-related risk factors in periodic filings with the Commission; these disclosures, however, tend to be boilerplate, designed to limit liability rather than convey meaningful information about human capital management practices. A study by the Sustainability Accounting Standards Board (SASB) found that more than 40% of all 10-K disclosures on sustainability topics were boilerplate and that lack of standardization limited the utility of the 15% of disclosures that used metrics.⁴¹ Boilerplate disclosures are not only unhelpful to investors; there is some evidence that vague risk factor disclosures are construed negatively by the market, leading to higher costs of capital.⁴²

Surveys conducted by environmental, social and governance (ESG) data providers do not solve these problems. Many companies are overwhelmed with disclosure requests and limit their responsiveness, often to the largest investors.⁴³ Even if an investor or data provider asks for uniform

³⁹ Kamala Harris, *The California Transparency in Supply Chains Act: A Resource Guide*, at I (2015) (oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf).

⁴⁰ <https://www.law.cornell.edu/cfr/text/17/229.101>.

⁴¹ Comment of the Sustainability Accounting Standards Board on “Concept Release: Business and Financial Disclosure Required by Regulation S-K,” dated July 1, 2016 (<https://www.sec.gov/comments/s7-06-16/s70616-25.pdf>) (hereinafter, “S-K Concept Release”).

⁴² Ole-Kristian Hope et al., “The Benefits of Specific Risk-Factor Disclosures,” at 11 (Feb. 26, 2016) (“greater specificity in risk factor disclosure reduces the variance uncertainty premium and thus the expected cost of capital”) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2457045).

⁴³ E.g., Mike Hower, “Could Sustainability ‘Survey Fatigue’ Launch a \$1 Billion Industry?” *Greenbiz*, Apr. 2, 2015 (<https://www.greenbiz.com/article/gisr-program-cuts-core-esg-research-and-ratings>).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

information from all companies it surveys, responses may be incomplete, may not adhere to the requested format and may calculate metrics differently, making it difficult to compare companies across industries and markets.

Some companies do not respond to reasonable requests for information at all, leaving investors few options for recourse. Filing shareholder proposals is one strategy used by investors to encourage companies to report on various risks not captured fully by existing disclosure requirements, but rules limiting the topic and scope of these proposals effectively preclude investors from obtaining comprehensive human capital-related information in this way. For example, a shareholder may request information about human rights risks in the supply chain but proposals addressing other human capital matters, such as wages and benefits, are barred, with few exceptions, by the “ordinary business” exclusion in the shareholder proposal rule.⁴⁴ Recent efforts to place tighter restrictions on shareholder proposals, such as legislation that would dramatically increase the ownership threshold investors must meet to file a proposal, may effectively eliminate this strategy.⁴⁵

Data acquired by searching websites have similar shortcomings. Some investors have turned to online social media sources such as Glassdoor, a jobs and recruiting site with a database of millions of employee reviews of companies as well as salary information.⁴⁶ Reviewers can describe pros and cons of a company, indicate whether they approve of its CEO and critique their employee benefits. Users can also provide information about interviews at companies. Glassdoor data thus have the potential to shed light on companies’ human capital management. Glassdoor reviews are anonymous, though, and thus vulnerable to manipulation by companies seeking to project a positive image. Even assuming all reviews are penned by actual current or former employees, Glassdoor is subject to the same bias as other review sites:

⁴⁴ E.g., Best Buy Co., Inc. (Mar. 8, 2016) (allowing exclusion on ordinary business grounds of proposal regarding minimum wage, reasoning it dealt with “general compensation matters”); Pilgrim’s Pride Corp. (Feb. 25, 2016) (permitting exclusion on ordinary business grounds of proposal requesting report on certain occupational safety and health matters).

⁴⁵ See

http://www.cii.org/files/issues_and_advocacy/correspondence/2017/Apr%2024%20Letter%20Committee%20on%20Financial%20Services_FINAL.pdf.

⁴⁶ E.g., Laurie Bassi, “Should You Be Worried About Your Company’s Glassdoor Scores?” Blog Post, Feb. 11, 2016 (<http://mcbassi.com/2016/02/11/should-you-be-worried-about-your-companys-glassdoor-scores/>).

unhappy employees will be more motivated to share their views than happy ones.

Disclosure Requirements Evolve in Response to Investor Needs

In sum, investors do not currently have the ability to obtain comparable human capital data from U.S. issuers. But the Commission's rules are not static; it has broad authority conferred in the Securities Act and Exchange Act to "promulgate rules for registrant disclosure as necessary or appropriate in the public interest or for the protection of investors."⁴⁷

Evolving investor needs have led to updates in disclosure requirements. For example, the corporate governance disclosure items, including director qualifications and executive compensation, have been revised to accommodate investors' increased interest in board accountability and desire for more granular disclosure around executive compensation packages.⁴⁸ Similarly, the Commission has expanded the events triggering an obligation to disclose on Form 8-K (Current Report) and reduced the number of days registrants have to make those disclosures to keep pace with changing investor expectations.⁴⁹

The Commission has recognized that current requirements governing periodic reporting about companies' businesses and risks are likely outdated. Last year the Commission solicited comments from investors on a wide variety of potential changes to both the substance and format of disclosures as part of its Disclosure Effectiveness initiative.⁵⁰ Commissioner Kara Stein noted last year:

⁴⁷ See Securities Act Release No. 10064, "Business and Financial Disclosure Required by Regulation S-K," at 21-22 & n.50 (Apr. 13, 2016) (available at <https://www.sec.gov/rules/concept/2016/33-10064.pdf>).

⁴⁸ See, e.g., "Report on Review of Disclosure Requirements in Regulation S-K," at 53 (Dec. 2013) (<https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>); Straka, at 806.

⁴⁹ See Securities Act Release No. 8400, "Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date" (Mar. 16, 2004) (adopting release) (available at <https://www.sec.gov/rules/final/33-8400.htm>) and Securities Act Release No. 8106, "Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date" (June 19, 2002) (proposing release) (stating that "investors and the securities markets today demand and expect more 'real-time' access to a greater range of reliable information concerning important corporate events that affect publicly traded securities") (available at <https://www.sec.gov/rules/proposed/33-8106.htm>).

⁵⁰ See Securities Act Release No. 10064, *supra*,



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

What investors want changes. Materiality evolves. It changes as society changes, and it also changes with the availability of new and better data. To achieve effective disclosure, we must understand what is important to today's investors.⁵¹

As discussed below, investors have significant appetite for disclosures regarding human capital management and would use such information to inform their investment and voting decisions in a number of different ways.

Investor Demand for Human Capital Data

A wide range of investors have shown interest in obtaining information that will enable them to analyze the effectiveness of companies' human capital management practices. Investor appetite for human capital disclosure should be understood within the larger context of concern over short-termism. In a widely publicized letter to CEOs at S&P 500 companies, BlackRock chief Larry Fink advocated "resistance to the powerful forces of short-termism" and investment in long-term growth. To that end, he urged CEOs to develop a strategic framework for long-term value creation and disclose more about their vision and plans for the future, including how they are "developing [their] talent."⁵²

Asset manager UBS has tied underinvestment in the workforce to short-termism: "A key reason behind the outperformance of the best places to work seems to lie in the short-/long-term conundrum created by human capital investments – often essential to long-term profit generation, but likely to hurt performance in the short term."⁵³ As long-term investors, we need to understand the drivers of sustainable value creation and address barriers to efficient capital allocation.

Investor participation in several major initiatives evidences support for human capital disclosure.⁵⁴ The U.N.-

⁵¹ Speech of Commissioner Kara M. Stein, "Disclosure in the Digital Age: Time for a New Revolution," May 6, 2016 (available at <https://www.sec.gov/news/speech/speech-stein-05062016.html>).

⁵² Matt Turner, "Here is the Letter the World's Largest Investor, BlackRock CEO Larry Fink, Just Sent to CEOs Everywhere," Business Insider, Feb. 2, 2016 (<http://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016-2>).

⁵³ UBS Investment Research, "Corporate Culture: Relevant to Investors?" at 1, Aug. 19, 2013 (<http://faculty.london.edu/aedmans/Rowe%20UBS3.pdf>).

⁵⁴ In the interest of brevity, we do not discuss all investor initiatives related to human capital disclosure. A matrix prepared by the Human Capital



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

supported Principles for Responsible Investment (“PRI”) has 1500 signatories with \$62 trillion in assets under management who agree to incorporate ESG issues into investment decision making and seek those disclosures from companies in which they invest.⁵⁵ The PRI’s Employee Relations Group coordinated an investor campaign from 2013-2015 that aimed to enhance human capital management and reporting at 27 global retailers. The group’s steering committee identified core metrics most strongly correlated with firm performance based on empirical research—employee turnover, absences, training and engagement. Subsequently, 24 PRI signatories engaged with the companies. According to the group’s report, the company engagement brought about some improvements, but left “much scope” for further work.⁵⁶

Investors have also backed the work of SASB to establish sustainability accounting standards, including standards for human capital reporting. SASB explains its mission as follows:

A new, standardized language is needed to articulate the material, non-financial risks and opportunities facing companies today. These non-financial risks and opportunities that affect corporations’ ability to create long-term value are characterized as “sustainability” issues. Sustainability issues vary by industry because they are closely aligned with business models, the way companies compete, their use of resources, and their impact on society.⁵⁷

SASB has identified one or more human capital issues as “material” for accounting purposes for at least some industries in each of its 10 sectors.⁵⁸ It has characterized human capital as a “cross-cutting” issue.⁵⁹

Management Institute, reproduced in a publication by the UK’s Pensions and Lifetime Savings Association, identifies additional efforts. Pension and Lifetime Savings Association, “Understanding the Worth of the Workforce: A Stewardship Toolkit for Pension Funds” (July 2016), at 9 (http://www.plsa.co.uk/PolicyandResearch/DocumentLibrary/~/_media/Policy/Documents/0591-Understanding-the-worth-of-the-workforce-a-stewardship-toolkit-for-pension-funds.pdf).

⁵⁵ <https://www.unpri.org/about>.

⁵⁶ PRI, “An Investor Guide to Engaging Retailers on Employee Relations,” at 4-5 (2015) (<https://www.unglobalcompact.org/library/4071>)

⁵⁷ <http://www.sasb.org/sasb/vision-mission/>

⁵⁸ <http://www.sasb.org/materiality/sasb-materiality-map/>

⁵⁹ www.sasb.org/blog-moving-from-provisional-to-codified-an-update-on-the-consultation-period.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

SASB’s board of directors includes numerous investor representatives.⁶⁰ As well, representatives of many large asset managers and owners, including CalPERS, CalSTRS, PGGM, Vanguard, Goldman Sachs, State Street Global Advisors and BlackRock, serve on SASB’s investor advisory group.⁶¹

The integrated reporting movement also recognizes the importance of human capital disclosure to investors. The push for integrated reporting--providing information on all factors that create value, not just traditional measures of financial and physical capital, in one report—is spearheaded by the International Integrated Reporting Council (IIRC). The IIRC is a “global coalition of regulators, investors, companies, standard setters, the accounting profession and NGOs”⁶² whose board⁶³ and council⁶⁴ include institutional investor representatives.

The IIRC’s objective is to use integrated reporting—to embed “integrated thinking” within “mainstream business practice in the public and private sectors.”⁶⁵ The IIRC defines integrated thinking as “the active consideration by an organization of the relationships between its various operating and functional units and the capitals that the organization uses or affects.”⁶⁶ The benefits the IIRC suggests for integrated reporting include better decision making by providers of financial capital.⁶⁷

Human capital, defined as “[p]eople’s competencies, capabilities and experience, and their motivations to innovate,” is one of the six capitals on which disclosure should be made in an integrated report.⁶⁸ Information about human capital, the IIRC says, needs to be treated with “similar rigour and accountability as is afforded to financial capital.”⁶⁹

⁶⁰ <http://www.sasb.org/sasb/board-directors/>

⁶¹ <http://using.sasb.org/investor-advisory-group/>

⁶² <http://integratedreporting.org/the-iirc-2/>

⁶³ <http://integratedreporting.org/the-iirc-2/structure-of-the-iirc/the-iirc-board/>

⁶⁴ <http://integratedreporting.org/the-iirc-2/structure-of-the-iirc/council/>

⁶⁵ The International <IR> Framework, at 2 (2013)

(<http://integratedreporting.org/wp-content/uploads/2015/03/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf>)

⁶⁶ The Integrated <IR> Framework, at 2.

⁶⁷ The Integrated <IR> Framework, at 2.

⁶⁸ The Integrated <IR> Framework, at 4, 12.

⁶⁹ IIRC, “Creating Value: The Value of Human Capital Reporting,” at 4 (2015) (http://integratedreporting.org/wp-content/uploads/2015/12/CreatingValueHumanCapitalReporting_IIRC06_16.pdf).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

The Global Reporting Initiative (“GRI”) also illustrates investors’ desire for standardized information about sustainability issues, including human capital. The GRI describes its mission as “help[ing] businesses, governments and other organizations understand and communicate the impact of business on critical sustainability issues such as climate change, human rights, corruption and many others.”⁷⁰

To that end, the GRI Global Sustainability Standards Board sets reporting standards,⁷¹ which include standards on training, labor/management relations, diversity, freedom of association and collective bargaining and several other subjects relevant to human capital.⁷² Shareholders sometimes refer to the GRI’s framework in shareholder proposals asking companies to issue a sustainability report.⁷³ In 41 countries, almost 80% of the largest 100 companies issuing sustainability reports use the GRI’s guidelines.⁷⁴

The international human resources and financial community are also currently pursuing the development of human capital disclosure standards. A committee of global experts, working under the International Organization of Standardization’s (ISO) directives for standards development are writing a standard called “Guidelines -Human Capital Reporting for Internal and External Stakeholders.” Since November 2015, this working group has aimed “to establish a common global understanding on human capital reporting” to allow stakeholders more easily to “access and derive an understanding of an organization’s human capital and its present and future performance.”⁷⁵

The Global Unions Committee on Workers’ Capital (“CWC”) recently endorsed the Guidelines on Workers’ Rights

⁷⁰ <https://www.globalreporting.org/information/about-gri/Pages/default.aspx>.

⁷¹ <https://www.globalreporting.org/information/about-gri/governance-bodies/Global-Sustainability-Standard-Board/Pages/default.aspx>.

⁷² <https://www.globalreporting.org/standards/gri-standards-download-center/>.

⁷³ *E.g.*, <http://www.asyousow.org/wp-content/uploads/2013/09/2010-apple-reso.pdf>.

⁷⁴ <https://www.globalreporting.org/information/news-and-press-center/Pages/GRI-is-the-global-standard-as-sustainability-reporting-goes-mainstream-says-KPMG-survey.aspx>.

⁷⁵ “Q&A: Professor Stefanie Becker Says Human Capital and Engagement are Worldwide Issues,” undated (available at <http://enterpriseengagement.org/newswire/content/8475926/qa-professor-stefanie-becker-says-human-capital-and-engagement-are-worldwide-issues/>).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

and Labour Standards, which recommends, among other things, disclosure of human capital metrics to improve asset owners' understanding of "company commitments to worker well-being." These metrics include data on workforce composition, including workers employed by staffing agencies, franchisees and subcontractors; turnover relative to industry; human rights due diligence; leading worker health and safety indicators; and access to training. The CWC is an international labor union network that promotes dialogue and action on the stewardship of workers' retirement savings and works to educate fund trustees on responsible investment.⁷⁶

The Pensions and Lifetime Savings Association (the "PLSA") recently sent letters to the chair of each company whose stock is a constituent of the FTSE 350 index of large- and mid-capitalization U.K. companies, asking for disclosure of the number of full- and part-time employees, as well as employee turnover. The PLSA's chief executive Joanne Segars explained, "It's essential that pension funds know more about how the companies, in which they invest, manage and engage their employees. We know that engaged workers make for stronger companies and stronger companies make for better investment returns - creating an economy that works for everyone."⁷⁷

Investor Uses for Human Capital Disclosures

Investors are interested in using human capital disclosure for different purposes, depending on their investment strategy. Many investors favor more robust human capital disclosures to permit them to identify and invest in companies that manage their human capital most effectively; for these investors, human capital management is an input for fundamental analysis alongside more traditional inputs like product quality, technological innovation and distribution channels.

Comment letters submitted in response to the Commission's Disclosure Effectiveness Concept Release reflect investors' interest in human capital disclosure. The CFA Institute, an association of investment professionals, stated in its comment letter that investors "want disclosures that help them understand how changes in the business and competitive

⁷⁶ <http://www.workerscapital.org/priorities/>.

⁷⁷ <http://www.professionalpensions.com/professional-pensions/news/2476649/plsa-urges-ftse-350-leaders-to-share-more-data-about-workforce>.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

environment, the economy, management, and business drivers will affect company performance [R]egistrants should provide disclosures on the different types of resources that help them generate revenues, cash and profit . . . [including] human resources.” More specifically, the CFA Institute urged the Commission to require more granular disclosure about the types of employees a company employs, to allow investors “to determine whether a company’s current employees matches the mix of employees that is optimal.”⁷⁸

Similarly, Cornerstone Capital, an advisory firm with institutional investor clients, opined that “human capital is a key intangible factor for all companies,” and advocated that companies be required to report their total payroll cost, turnover and diversity data.”⁷⁹ RPMI Railpen, which invests the 21 billion pounds sterling of assets in the U.K. Railways Pension Scheme, commented that employee engagement and turnover data were highly informative.⁸⁰

Some investors also view human capital management as an integral part of corporate culture, which investors have regarded as an important indicator of performance but have struggled to define and measure. For example, financial advisor and asset manager UBS has stated that “[c]orporate culture is an important, difficult and likely under-analyzed topic” in which employee engagement and satisfaction play an important role. According to UBS, evaluating culture presents “analytical challenges” due to the paucity of data. Conceding the limitations of the sources, UBS analysts compiled an employee satisfaction index from data on career websites such as Glassdoor, then analyzed employee comments and developed investment themes to identify suitable companies for investment.⁸¹ Similarly, according to the National Association of Pension Funds, for long-term investors such as pension funds, information about the workforce is “crucial to understanding a company’s culture.”⁸²

In addition to viewing human capital management as a criterion for identifying desirable companies in which to invest,

⁷⁸ Comment of CFA Institute on S-K Concept Release, dated Oct. 6, 2016, at 2-4 (<https://www.sec.gov/comments/s7-06-16/s70616-375.pdf>).

⁷⁹ Comment of Cornerstone Capital Group on S-K Concept Release, dated July 21, 2016, at 5 (<https://www.sec.gov/comments/s7-06-16/s70616-308.pdf>).

⁸⁰ Comment of Railpen Investments on S-K Concept Release, dated July 21, 2016, at 2-3 (<https://www.sec.gov/comments/s7-06-16/s70616-200.pdf>).

⁸¹ UBS, at 4.

⁸² National Association of Pension Funds, at 13.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

investors also want data that will help them avoid material risks created by poor workplace practices and to inform engagements.

The role of disclosure in addressing these risks is underscored by the U.N. Guiding Principles on Business and Human Rights, which charge companies with respecting human rights throughout their operations.⁸³ The Guiding Principles state that business is responsible for respecting, among other things, the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work—including freedom of association and freedom for discrimination, forced labor and child labor.⁸⁴ The Guiding Principles favor disclosure of human rights risks; they direct governments to “[e]ncourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”⁸⁵

Investor interest in information about human capital-related risks is evident from the substantial number of shareholder proposals filed on the limited number of human capital-related topics that are permissible under the shareholder proposal rule, such as human rights risk in the supply chain, workforce diversity and pay equity. According to data from the Sustainable Investments Institute, in 2016 shareholders submitted 96 proposals on “social” subjects, a large proportion of which sought human capital-related disclosure or policy changes. Settlements were reached on some proposals after the company agreed to take action on the proposal.⁸⁶

BlackRock’s Corporate Governance and Responsible Investment team has intensified its attention to human capital issues, spurred by the belief that human capital can be a source of both competitive strength and risk. BlackRock highlights this commitment in a presentation to a local municipal authority discussing—a four year engagement it undertook with a UK public transport company over employee health and safety and freedom of association, which BlackRock

⁸³ United Nations Office of the High Commissioner on Human Rights, “U.N. Guiding Principles on Business and Human Rights,” at 13 (2011) (http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

⁸⁴ U.N. Guiding Principles, at 13.

⁸⁵ U.N. Guiding Principles, at 4.

⁸⁶ *See, e.g.*, As You Sow & Sustainable Investments Institute, “Proxy Preview 2016,” at 36-43 (describing settlements) (<http://www.proxypreview.org/proxy-preview-2016/>).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

believed posed reputational and financial risks.⁸⁷ During the engagement, the company improved its disclosure, reduced employee injuries and accidents and appointed a new executive director with human capital experience. BlackRock predicted that such engagements will become more common, as “companies will become increasingly active in discussing human capital with their investors.”⁸⁸ For 2017-2018, BlackRock has identified human capital management as an engagement priority.⁸⁹

Many commenters on the Commission’s Disclosure Effectiveness Concept Release stated that improved human capital disclosure would allow them to avoid investing in companies with high levels of human capital-related risk or to engage risky companies in which they had already invested to advocate improved practices. The following statement in the comment by the Presbyterian Church U.S.A. is an example:

Information about the human rights risks present in a company’s operations and supply chain, as well as the management of those risks, is relevant information for an investor in assessing a company’s performance and management approach in both the short- and long- term. Poor management of human rights risks can lead to significant reputational, regulatory, and litigation risk for a company and can have a material impact on financial performance.⁹⁰

Several commenters also pointed to legal liabilities for discrimination and pay inequity, health and safety violations and labor disruptions as material risks related to human capital management practices.⁹¹

⁸⁷ BlackRock presentation to the London Borough of Lewisham, at 8 (February 19, 2015) (<http://councilmeetings.lewisham.gov.uk/documents/s33886/BlackRock%20Annual%20Presentation%2019-02-15.pdf>)

⁸⁸ “BlackRock Corporate Governance and Responsible Investment Report: Europe, the Middle East and Africa,” at 10 (June 30, 2015) (<https://www.blackrock.com/corporate/en-il/literature/fact-sheet/blk-qtrly-commentary-2015-q2-emea.pdf>).

⁸⁹ See www.blackrock.com/corporate/en-us/about-us/investment-stewardship/engagement-priorities.

⁹⁰ Comment of Presbyterian Church U.S.A. on S-K Concept Release, dated July 21, 2016, at 7 (<https://www.sec.gov/comments/s7-06-16/s70616-290.pdf>).

⁹¹ See Comment of AFSCME on S-K Concept Release, dated July 21, 2016, at 5 (<https://www.sec.gov/comments/s7-06-16/s70616-269.pdf>); Comment of Christian Brothers Investment Service on S-K Concept Release, dated July 21, 2016, at 18; Comment of Rockefeller & Co. on S-K Concept Release, dated July 21, 2016, at 2-3.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

Human capital disclosures can also, to some investors' thinking, shed light on the quality of upper management and the board's stewardship of the company; that, in turn, can be relevant to proxy voting decisions. Although proxy voting guidelines generally explicitly mention human capital issues only as they relate to votes on shareholder proposals addressing human capital-related risks, investors and proxy advisors take into account such factors when deciding whether to vote for director nominees.⁹² In its announcement that human capital management would be a 2017-2018 engagement priority, BlackRock stated that such engagement "also provides a lens into the company's culture, long-term operational risk management practices and, more broadly, the quality of the board's oversight."⁹³

Human capital disclosures may also signal broader challenges facing a company. Coalition member Sycomore Asset Management noted in 2013 an increase in fatal accidents at a French portfolio company reported pursuant to French disclosure requirements. Upon following up with a former safety manager, Sycomore learned that deep budget cuts had led to increased pressure on workers and decided to sell its stake. Shortly thereafter, the share price began to decline, and it remains far below 2013 levels today.⁹⁴

Investors may also use human capital disclosures for "screening" purposes. They may wish to include in a fund or portfolio only companies with exemplary human capital management practices, or to exclude companies whose practices are viewed as problematic. Human capital disclosures could also enable investors to identify industries or geographic regions to screen in or out. The sustainable, responsible and impact (SRI) investing sector⁹⁵ has grown tremendously: According to The Forum for Sustainable and Responsible Investment, one out of every six dollars under professional

⁹² See e.g., Goldman Sachs Asset Management, Global Proxy Voting Policy, Procedures and Guidelines, at 6 (may vote against or withhold support from nominees for "Material failures of governance, stewardship, or fiduciary responsibilities at the company") (https://www.gsam.com/content/dam/gsam/pdfs/us/en/miscellaneous/voting_proxy_policy.pdf?sa=n&rd=n).

⁹³ See www.blackrock.com/corporate/en-us/about-us/investment-stewardship/engagement-priorities.

⁹⁴ Email from Claire Bataillie, SRI Analyst, Sycomore Asset Management on Mar. 24, 2017.

⁹⁵ It is worth noting that responsible investment is not limited to screening, but also includes engagement, which benefits from robust human capital information.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

management in the U.S. at the end of 2013 was invested using SRI strategies.⁹⁶ SRI investors applying screens to U.S. companies must rely on voluntary disclosures, with their flaws of incompleteness and inconsistency, and the information researchers can hand-collect from sources like court dockets, news accounts and databases of Occupational Safety and Health Administration violations.⁹⁷

Human capital management disclosures could also be used by investment managers to create indexes and investable products. Investment managers are using those types of human capital data that are currently available for that purpose. For example, State Street Global Advisors has created a Gender Diversity Index made up of large capitalization U.S. companies with the highest levels of senior leadership gender diversity in their sectors.⁹⁸ State Street considers the proportion of women on the board, whether a company has a female CEO and the number of women among senior leadership.⁹⁹ The JPX (Japan Stock Exchange)/S&P CAPEX and Human Capital Index chooses companies using data from RobecoSAM on capital expenditures and human capital, including labor rights, employee development, employee turnover and talent attraction/retention.¹⁰⁰

Finally, robust human capital disclosures would benefit investors that are “universal owners” by supporting long-term investment strategies, thereby stabilizing our markets, and encouraging employers to invest in their workforces. Universal owners are investors with such widely diversified portfolios that they “effectively own the economy as a whole.”¹⁰¹ As a result, universal owners, including many HCM Coalition members, have “an economic interest in the overall

⁹⁶ <http://www.ussif.org/sribasics>.

⁹⁷ By contrast, in France, where human capital disclosure requirements are more extensive, socially responsible investment firm Sycomore Investments has launched a fund called “Happy@Work”, which uses performance indicators on quality of work life, motivation and empowerment. (http://en.sycomore-am.com/files/P/R/572265a0-PR_Launch_Sycomore_Happy_Work_July2015.pdf)

⁹⁸ <https://www.ssga.com/investment-topics/general-investing/2016/she-gender-diversity-index-introduction.pdf>.

⁹⁹ Julie Segal, “SHE: The ETF That Trades on Female Empowerment,” *Institutional Investor*, May 12, 2016 (available at <http://www.institutionalinvestor.com/inside-edge/3554005/she-the-etf-that-trades-on-female-empowerment.html>).

¹⁰⁰ <http://www.indexologyblog.com/2016/11/03/sustainability-why-does-the-social-category-matter/>

¹⁰¹ Hawley & Williams, at 286.

performance of the financial markets and broader economy” in which they invest.¹⁰²

Human capital disclosure would strengthen both our financial markets and the U.S. economy. More transparency about human capital management would improve investors’ decision making and lead to more efficient capital allocation.¹⁰³ And greater transparency, at least in financial reporting, has been found to be economically beneficial.¹⁰⁴

As well, disclosure could promote a longer-term orientation. At present, a variety of factors, including short-term earnings pressures,¹⁰⁵ accounting policies¹⁰⁶ and compensation structures, create incentives for corporate managers to produce short-term results, which may lead to underinvestment in the workforce, though lack of data impedes



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

¹⁰² Office of the New York City Comptroller, Corporate Governance Principles and Proxy Voting Guidelines, at 7 (Apr. 2016) (http://comptroller.nyc.gov/wp-content/uploads/documents/Corporate_Governance_Principles_and_Proxy_Voting_Guidelines.pdf).

¹⁰³ See, e.g., Mary E. Barth & Katherine Schipper, “Financial Reporting Transparency,” *J. Acctg., Auditing & Fin.*, Vol. 23, Issue 2, Apr. 2008, at 174 (greater transparency can lower the cost of capital, provided the information “reduces nondiversifiable risk that arises from information asymmetry among investors or increases the average precision of investors’ assessments of the firm’s future cash flows”); see also Securities Act Release No. 10064, *supra* (“Lowering information asymmetries between managers of companies and investors may enhance capital formation and the allocative efficiency of the capital markets.”).

¹⁰⁴ See Barth & Schipper, at 174, 179 (“Research also suggests that financial reporting transparency is associated with positive macroeconomic effects.”)

¹⁰⁵ See Dominic Barton & Mark Wiseman, “Focusing Capital on the Long Term,” *Harvard Business Review*, Jan-Feb. 2014 (citing 2013 study by McKinsey and the Canada Pension Plan Investment Board of 1,000 board members and C-suite executives; 63% reported increasing pressure over the previous five years to generate short-term returns and 79% reported feeling especially pressured to demonstrate strong financial performance over a two-year or shorter period).

¹⁰⁶ For example, under Generally Accepted Accounting Principles, research and development (R&D) costs must be expensed in the period when they are made. There is evidence that this immediate impact on earnings leads to manipulation of investment to meet earnings targets. See Stephen J. Terry, “The Macro Impact of Short-Termism,” at 8-10 (2015) (economics.yale.edu/sites/default/files/terry_macrorows_mifet_latest_draft.pdf) (firms that narrowly meet earnings targets lower their investment in R&D and intangibles, “consistent with systematic manipulation of long-term investment to meet analyst forecasts of earnings,” leading to misallocation of R&D across firms).



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

efforts to quantify the extent of underinvestment.¹⁰⁷ The influence of financial markets often encourages companies to shift from direct employment to contractual arrangements such as outsourcing, subcontracting and franchising as a way to lower labor costs. Human capital disclosure, which would inform investors about the long-term risks associated with cost-cutting measures, could help counter those forces and promote a longer-term approach for both companies and investors. More stable capital markets and investment in the workforce would in turn benefit the broader public interest, as well as diversified investors.

Principles for Crafting Human Capital Disclosure Requirements

Having established the ways in which human capital disclosure requirements would advance the Commission’s mission, we now describe how we believe the Commission should proceed in this area. We have not included in this petition the text of disclosure requirements we believe the Commission should adopt. Instead, we urge the Commission to solicit input from all affected constituencies, with an emphasis on the needs of investors, to identify the matters on which disclosure would be most useful. The Commission has undertaken similar efforts when formulating rule proposals in other complex areas such as executive compensation.

A number of frameworks, including the Integrated Reporting Framework, SASB’s standards, the Global Reporting Initiative, the CWC Guidelines and the U.N. Guiding Principles on Business and Human Rights, recommend disclosure requirements and can provide a starting point for this process. Some companies, as well, have made high-quality disclosures in particular areas of human capital. For example,¹⁰⁸ Diesel & Motor Engineering plc, breaks down its workforce by position, gender and age, and discloses turnover, employee satisfaction scores and average training hours per employee.¹⁰⁹ Unilever reports on turnover, training—including

¹⁰⁷ Angela Hanks et al., “Workers or Waste?” Center for American Progress, at 5-12 (June 2016) (<https://cdn.americanprogress.org/wp-content/uploads/2016/06/03042031/HumanCapital.pdf>).

¹⁰⁸ These examples are not intended to illustrate comprehensive disclosure on all human capital-related topics but rather to show various approaches the Commission might consider on particular matters.

¹⁰⁹ See dimolanka.com/annualreport2014/human-capital.html.

within the supply chain, “where the bulk of [our] people work”—accident rates and gender equality.¹¹⁰

Below we set forth our views on some of the larger questions that the Commission will likely need to consider.

First, it may be argued that no human capital management practice or data point is applicable to all issuers, regardless of size, maturity and industry, and that the Commission should therefore not impose any across-the-board disclosure requirements. Although we agree that it may be appropriate to tailor some disclosure requirements more precisely, there is broad agreement that certain categories of information are fundamental to human capital analysis, and some disclosures from each category, whether quantitative or qualitative (or both), should be required (examples, which are not intended to be exhaustive, are in parentheses after each category):

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

¹¹⁰ See

www.unilever.com/images/annual_report_and_accounts_ar15_tcm244-478426_en.pdf.

¹¹¹ The regulation could provide a limited exception for disclosure of workforce composition outside the United States, to the extent that local laws may restrict such disclosure.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789



executive officer level, measures to counterbalance risks created by incentives)

Both specific, rules-based disclosures, such as the amount spent on employee training in the past year, and more open-ended principles-based disclosures like how training expenditures are aligned with a changing business strategy, would provide investors with valuable information about human capital management. The Commission will need to find the appropriate balance between these two approaches when crafting disclosure requirements.

Line-item disclosures are easier to extract through an automated process leveraging keywords or tags because every issuer makes the same disclosure in the same place in a filing using a consistent format. As a result, line-item disclosures are less expensive to collect and thus more accessible to a range of investors. Line-item disclosures can be entered into a database or spreadsheet and thus lend themselves to comparison and analysis. An investor could, for example, examine training expenditures for a particular industry and identify typical industry practice and outliers for further research. Line-item disclosures can be easily analyzed over time, to identify trends.

Investors value consistency and comparability highly. The CFA Institute argued in favor of uniformity and specificity in its comment on the Commission's Disclosure Effectiveness Concept Release:

In general, principles-based requirements will have one, some, or all of three primary outcomes. First, issuers will withhold disclosure based on an internal determination that the information is immaterial. Second, issuers will group information in a manner that obfuscates negative performance or conditions. And third, different issuers will apply the "principles" differently, thus making the information incomparable across different issuers. For data-driven disclosures, therefore, we believe the Commission needs to provide prescriptive rules as to what must be reported, the manner in which it is reported, and the assumptions behind the reporting. As noted above, without such prescription, investors may not receive materially important information, may not be aware of material information, and/or they would not be able to compare disclosures across companies or across industries.¹¹²

¹¹² Comment of CFA Institute on S-K Concept Release, at 5.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

Narrative reporting, by contrast, allows companies to provide a fuller picture and can give investors information they need to put quantitative disclosures into context. An investment researcher interviewed for an IIRC publication put it this way:

In this area there is always going to be a role for more narrative reporting. It is useful to know the staff turnover figure, but you want to know why it is at that level, what the baseline for that industry is. If there has been a move up or down, why that has occurred, has there been a business restructuring or has it been that the staff have become more dissatisfied over the past year?¹¹³

In many cases, quantitative and qualitative disclosures will complement each other. Investors have found that to be the case with the Commission's executive compensation disclosures: Quantitative (and easily retrievable) data allows investors to identify companies where pay practices might be problematic, and the Compensation Discussion and Analysis narrative disclosure supplies important context and explanation for the reported data.

Finally, disclosure requirements should encompass the entire workforce, regardless of location, to provide investors with the most complete picture of an issuer's human capital management practices. Global coverage is especially important for disclosures regarding human rights, given the increased human rights risks of operating in countries with weaker protections for workers. Including non-U.S. workers would also be consistent with the CEO to average worker pay ratio disclosure requirements taking effect for 2017;¹¹⁴ indeed, the same systems companies will rely on to comply with the CEO to average worker pay ratio disclosure mandate would facilitate data collection and calculation of metrics related to human capital management.

The Commission will need to consider the extent to which disclosure should be made about workers making a company's products or providing its services pursuant to contractual arrangements between the company and a contractor, franchisee or supplier. In light of the proliferation

¹¹³ IIRC, *Creating Value*, at 24.

¹¹⁴ Securities Act Release No. 9877, "Pay Ratio Disclosure" (Aug. 5, 2015) (<https://www.sec.gov/rules/final/2015/33-9877.pdf>).

of such arrangements, disclosure about the mechanisms used to monitor and enforce performance, and mitigate risks associated with the loss of direct control, would likely be useful for investors.

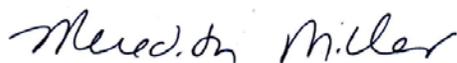
We appreciate the opportunity to express our views to the Commission. If the Commission or Staff have any questions about this Petition, or if we can provide any additional information, please contact Meredith Miller, Chief Corporate Governance Officer for the UAW Retiree Medical Benefits Trust, at mamiller@rhac.com.

Respectfully submitted,

The Human Capital Management Coalition

On behalf of the Human Capital Management Coalition:

Sincerely,



Meredith Miller,
Chief Corporate Governance Officer
UAW Retiree Medical Benefits Trusts
734-929-5789
mamiller@rhac.com



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789



APPENDIX B

Human Capital Management Coalition, Comment to Investor Advisory Committee Supporting Investor as Owner Subcommittee Recommendation re: Human Capital Disclosure, March 22, 2019

March 22, 2019

Anne Sheehan
Chair
Investor Advisory Committee
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Ms. Sheehan:

I am writing to you as the chair of the Human Capital Management Coalition (HCMC or Coalition) to affirm our support for the adoption of standards that would require listed companies to disclose information on human capital management policies, practices, and performance. We appreciate the work of the Investor Advisory Committee (IAC) and the Investor as Owner Subcommittee in moving this important issue forward.

Established in 2013, the HCMC is a cooperative effort among 25 institutional investors representing over \$3 trillion in assets under management to further elevate human capital management as a critical component in company performance and in the creation of long-term value. More information about the Coalition is available at <http://www.uawtrust.org/hcmc>.

As you may recall, the HCMC filed a rulemaking petition in July 2017 urging the U.S. Securities and Exchange Commission (SEC or Commission) to address the dearth of information accessible to investors that would help evaluate how well companies manage their human capital.¹ We filed our petition out of concern that corporate reporting on human capital to investors has become outdated: current reporting standards only require companies to disclose the number of employees,² a requirement adopted in 1973 when the majority of a company's value came from land, equipment, and other tangible assets.³

Today, company value is increasingly intangible, and it is human capital, or the collective knowledge, skills, and experiences of the workforce, that drives innovation. These collective talents of the workforce allow companies to compete in an environment where ingenuity and the ability to quickly adapt to novel technologies are the keys to lasting success. Company reporting to investors should reflect this reality, recognizing that effective human capital



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

management is critical to navigating these shifts and ensuring ongoing shareholder value creation.

Since we filed the petition, we continue to hold that the SEC is the correct venue to develop universal reporting standards for issuers, recognizing the Commission's core mission of investor protection and ensuring our capital markets remain fair, orderly, and efficient.⁴ As a federal administrative agency established for the exclusive benefit of the American public, the SEC is in fact the *only* organization where an independent and fully transparent discussion on an issue of this magnitude can take place.

Consistency and comparability in reporting promotes efficiency, both for issuers who would have concrete guidance on what to report and how, and for investors who would no longer need to pore through reams of documents to find even basic information on the workforce that may or may not be publicly available. It allows investors to easily and efficiently compare companies and benchmark performance. It also levels the playing field between large institutional investors who can demand (and afford) more data from companies on human capital, and smaller retail investors who, on a practical basis, often cannot.

We also believe that human capital reporting meets and exceeds the principles for the development of regulatory disclosure requirements laid out by SEC Chairman Jay Clayton in his opening remarks at the IAC's February 6 meeting.⁵ We address these principles in turn below:

- **Human capital information is material.**

Human capital is a key production input necessary for the development of goods and services that drive individual firm performance as well as the larger economy. As stated in our rulemaking petition, absent reasonably robust information about how a company manages its human capital, investors are unable to make fully informed decisions about a company's business, risks and prospects, for investment, engagement or voting purposes.

Recent research from the Embankment Project for Inclusive Capitalism (EPIC) supports this view, noting firms that disclose data on their ability to create value by leveraging human capital perform better than non-disclosers. In the



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

UK, where issuers are required to report detailed human capital information, firms with stronger human capital reporting show a return on invested talent (ROIT) – defined as the dollar return per one dollar invested in talent – that is nearly 3 times higher than the ROIT of non-disclosers⁶ and operating margins that are 33 percent higher than those of non-disclosers.⁷

The International Organization for Standardization (ISO) recently released “*Guidelines for Human Capital Reporting for Internal and External Stakeholders*” (ISO 30414:2018)⁸ which includes guidance on metrics companies should report internally, and which to report publicly with flexibility to accommodate large and small companies. The standards include details on the evaluation, measurement, and formatting of data.⁹

Companies, too, have recognized the importance of strong human capital practices to both the development and execution of their business strategies by elevating¹⁰ the role of the Chief Human Resources Officer as a key function¹¹ for operational leadership, as well as strategic development and execution.¹² Boards of companies such as McDonald’s¹³ and Wells Fargo¹⁴ have adopted committee charters that explicitly list human capital management oversight as a core responsibility.

To further underscore this point, a report from a recent meeting of compensation, risk, and audit committee chairs from Fortune 500 companies co-hosted by the National Association of Corporate Directors (NACD), Farient Advisors, PwC, and Sidley Austin LLP listed the following three human capital-related considerations for boards:

- The combination of major shifts in the workforce and the rise of emerging technologies will have a transformative impact on companies of all sizes and sectors.
- Boards need to elevate the discussion on human-capital strategy and risk, and clarify oversight responsibilities at the full board and committee levels.
- Directors should set expectations for management regarding human-capital objectives, and *use appropriate metrics to measure success*.¹⁵ (Emphasis added.)



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

Finally, investors are increasingly vocal that human capital is inextricably tied to performance. Since we filed the petition, investors' calls for higher-quality information have only intensified, with large asset management firms such as BlackRock and State Street identifying human capital as an important issue for investment stewardship and engagement.^{16,17,18} These large asset managers now control the majority of ordinary individuals' holdings in the public markets, performing research and creating products that will generate an appropriate return for the level of risk for institutional investors as well as main street investors.

Investors are the intended recipients of issuer disclosures, and in our view it is incumbent upon the SEC to ensure every investor, regardless of size, has equal access to this information.

- **Core human capital data is comparable and lends itself to standardization.**

Key information reported by companies – that is, information investors view as critical in their decision-making processes – is the most useful when it is uniform in measurement, format, and where it is reported, and can be benchmarked over time.

Our rulemaking petition underscores the importance of developing “[c]onsistent mandatory disclosure standards” to ensure investors can gather material human capital information quickly and efficiently.¹⁹ The ability to access data quickly and efficiently is even more important for passive investors whose holdings are widely dispersed across the U.S. public equity markets and thus may include thousands of companies.

An example involving employee turnover data reported by companies in the Russell 3000 Index – a good approximation of investable U.S. public equities – may be instructive. Employee turnover is often considered a basic quantitative human capital data point²⁰ that is both universally applicable to all issuers and relatively straightforward to measure and report. If an investor were to try and find employee turnover data from one of the few U.S. issuers that provide it, they would need to look through corporate



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

responsibility and sustainability reports,²¹ corporate websites, or in very limited cases, financial statements.²² Consistency and comparability would alleviate this burden by allowing investors to find and evaluate a basic data point in a far more efficient manner.

- **Human capital reporting standards can be both *flexible* and universally applicable.**

Consistent with our rulemaking petition, we recognize that there are human capital metrics that may be more relevant for certain industries than others, or even specific companies within an industry. Our petition offered nine categories of workforce information as a starting point for this discussion.

However, we continue to believe that all companies should report on core metrics that are universal across all companies regardless of industry or business strategy. Some examples of these metrics include the number of full time, part time and contingent workers; workforce costs; and employee turnover.

The recent work by EPIC and ISO cited above may provide a good starting point in determining which metrics are universal and which metrics are most appropriate for specific industries and companies.

- **Standardized human capital data can enhance *efficiency* at reasonable cost and effort, for investors and for issuers.**

Human capital data need not be expensive for issuers to collect and disclose. In the European Union, companies are required to report their total human capital costs, broken out by salaries, bonuses, and pension benefits.²³

Many U.S. companies track basic workforce data like labor costs for administrative purposes such as processing payroll. Human resources analytic tools developed in-house and services like ADP, SAP, Oracle and Workday are commonly utilized to assist with data collection. Firms could leverage the human resources tools and services they already use to satisfy new human capital reporting requirements.



P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

Further, high quality human capital disclosures need not be excessively long and verbose to be of use: firms that produce human capital disclosures investors find most useful do so with a third of the narrative than companies with lower-quality disclosures.²⁴ In fact, one of the reasons voluntary and involuntary employee turnover data is of particular interest to investors is because it is numeric.

- **The SEC is well-positioned to develop appropriate mechanisms for *monitoring and enforcement* of compulsory financial reporting.**

From a practical perspective, the workforce disclosure rules we are asking the SEC to update are part of the financial reporting requirements that already fall under the purview of the SEC's Division of Corporation Finance.²⁵ Regulation S-K sets forth disclosures required in registration statements and various reports under the integrated disclosure system. It contains one item related to human capital: Item 101(c)(xiii), in the "Narrative Description of Business" section, mandates disclosure of the "number of persons employed by the registrant."²⁶

Investors need high-quality quantitative and qualitative information that is relevant, reliable, and effective in communicating how adeptly a company manages its human capital resources to drive performance. Our request to the Commission is to ensure the information issuers report to investors accurately reflects the markets as they exist, and as they evolve. We submit that a single data point on the number of employees a firm directly employs tells us very little about the company's ability to manage human capital risks and leverage opportunities for growth and thus is no longer sufficient for a maturing market.





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

We appreciate the IAC's interest in this issue and the opportunity to share our views with you. We stand ready to assist in order to facilitate this process including participating in multistakeholder discussions to work toward a solution that satisfies the needs of both the preparers and the end users of financial information. We look forward to working with the IAC on this important issue.

On behalf of the Human Capital Management Coalition:

Sincerely,

A handwritten signature in black ink, appearing to read "Cambria Allen-Ratzlaff".

Cambria Allen-Ratzlaff
Corporate Governance Director
UAW Retiree Medical Benefits Trust



Cc: Hon. Jay Clayton
Chairman
U.S. Securities and Exchange Commission

Hon. Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

Hon. Hester Peirce
Commissioner
U.S. Securities and Exchange Commission

Hon. Elad L. Roisman
Commissioner
U.S. Securities and Exchange Commission





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

¹ Human Capital Management Coalition. (2017) *Rulemaking Petition to Require Issuers To Disclose Information About Their Human Capital Management Policies, Practices And Performance*, as submitted to the U.S. Securities and Exchange Commission on July 6, 2017. Retrieved from <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

² Item 101(c)(xiii), in the “Narrative Description of Business” section, mandates disclosure of the “number of persons employed by the registrant.” See <https://www.ecfr.gov/cgi-bin/text-idx?amp;node=17:3.0.1.1.11&rgn=div5>.

³ For example, in 1975, tangible assets accounted for 83 percent of the total market capitalization of companies in the S&P 500. See <http://www.oceantomo.com/intangible-asset-market-value-study/>.

⁴ <https://www.sec.gov/about.shtml>

⁵ Clayton, J. (2019 February 6). *Remarks for Telephone Call with SEC Investor Advisory Committee Members*. Retrieved from: https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-call-020619#_ftn2.

⁶ Embankment Project for Inclusive Capitalism. (2018). *The 2018 EPIC Report*, 42. Retrieved from: <https://www.epic-value.com/#report>.

⁷ Embankment Project for Inclusive Capitalism. (2018). *The 2018 EPIC Report*, 42. Retrieved from: <https://www.epic-value.com/#report>.

⁸ See International Organization for Standardization. (2018, December).

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⁹ See, e.g., McMurrer, Dan and Bassi, Laurie. (2019, January 10). “Human Resources Gets Its ISO Approval.” Retrieved from <https://www.workforce.com/2019/01/10/human-resources-gets-its-iso-approval/>.

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¹¹ Charan, R., D. Barton & D. Carey. (July-August 2015). *People Before Strategy: A New Role for the CHRO*. *Harvard Business Review*. Retrieved from: <https://hbr.org/2015/07/people-before-strategy-a-new-role-for-the-chro>.

¹² Hesketh, A. J., & Hird, M. (2010). The golden triangle: how relationships between leaders can leverage more value from people. In *Leading HR*, 103-135. Basingstoke: Palgrave Macmillan. Retrieved from: [http://www.research.lancs.ac.uk/portal/en/publications/the-golden-triangle-how-relationships-between-leaders-can-leverage-more-value-from-people\(94ba2051-b41d-4409-8fa0-5ebf237957d2\).html](http://www.research.lancs.ac.uk/portal/en/publications/the-golden-triangle-how-relationships-between-leaders-can-leverage-more-value-from-people(94ba2051-b41d-4409-8fa0-5ebf237957d2).html).

¹³ McDonald’s Corporation. (2016, July 28). *Public Policy & Strategy Committee Charter*. Retrieved from:

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¹⁴ Wells Fargo & Company. (2018, November 27). *Human Resources Committee Charter*. Retrieved from:

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¹⁵ National Association of Corporate Directors (2019, January 24). *NACD Compensation Committee Chair and Risk Oversight Advisory Councils: Board Oversight of Human Capital Strategy and Risks*. Retrieved from: <https://www.nacdonline.org/insights/publications.cfm?ItemNumber=64851>.

¹⁶ BlackRock. (2018 March). *BlackRock Investment Stewardship’s approach*





P.O. Box 14309
Detroit, MI 48214

hcmc@rhac.com

734.929.5789

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¹⁷ BlackRock. (2019). *Investment Stewardship*. Retrieved from: <https://www.blackrock.com/corporate/about-us/investment-stewardship#engagement-priorities>.

¹⁸ State Street Global Advisors. (2019, January 15). *Proxy Letter: Aligning Corporate Culture with Long-Term Strategy*. Retrieved from: <https://www.ssga.com/investment-topics/environmental-social-governance/2019/01/2019%20Proxy%20Letter-Aligning%20Corporate%20Culture%20with%20Long-Term%20Strategy.pdf>.

¹⁹ HCMC Rulemaking Petition, at 2.

²⁰ See, e.g., Embankment Project for Inclusive Capitalism. (2018). *The 2018 EPIC Report*, 41-43. Retrieved from: <https://www.epic-value.com/#report>

²¹ See, e.g., 3M's 2018 Sustainability Report (https://www.3m.com/3M/en_US/sustainability-report/) at 123; and Prudential Financials 2017 Sustainability Report (<https://www.prudential.com/links/about/sustainability>) at 23.

²² See, e.g., Intel Corporation Form 10-K (<https://www.sec.gov/Archives/edgar/data/50863/000005086319000007/a12292018q4-10kdocument.htm>) at 14.

²³ See, e.g., IAS 19 – Employee Benefits (<https://www.ifrs.org/issued-standards/list-of-standards/ias-19-employee-benefits/>).

²⁴ Embankment Project for Inclusive Capitalism. (2018). *The 2018 EPIC Report*, 42. Retrieved from: <https://www.epic-value.com/#report>.

²⁵ Regulation S-K sets forth disclosures required in registration statements and various reports under the integrated disclosure system. It contains one item related to human capital: Item 101(c)(xiii), in the “Narrative Description of Business” section which mandates disclosure of the “number of persons employed by the registrant.

²⁶ <https://www.law.cornell.edu/cfr/text/17/229.101>