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October 22, 2019

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

RE: File Number S7-11-19- "Modernization of Regulation S-K Items 101, 103, and 105"

Dear Madam Secretary:

I write on behalf of the New York State Common Retirement Fund (Fund), the third-largest public pension fund in the United States, which holds and invests the assets of the New York State and Local Retirement System on behalf of its more than one million members, retirees, and beneficiaries. We appreciate the opportunity to provide comments on the proposed Modernization of Regulation S-K Items 101, 103, and 105 (Proposed Rule).

Human Capital Management (Item 101(c)(1)(xiii))

The Fund applauds the Commission for seeking comment on the issue of increasing disclosure related to human capital resources and believes certain detailed disclosures from registrants are warranted. The Fund views human capital management, and related policies, practices and performance, as integral to sound corporate culture and long-term value creation. Research has shown a link between effective human capital management practices and higher shareholder returns, profitability and overall firm performance against benchmarks.¹ Conversely, poor human capital management practices can create substantial risks for investors, including reputational and legal risks that can jeopardize long-term shareholder value.

First, the Fund would like to express its concerns with moving towards completely principles-based disclosure for human capital resources in Item 101(c). Experience has shown that principles-based disclosures, in certain areas, have not provided investors with adequate information. Principles-based disclosure provides individual company executives broad discretion with how they determine materiality. This can lead to

¹ Aaron Bernstein and Larry Beeferman, The Materiality of Human Capital to Corporate Financial Performance, Pensions and Capital Stewardship Project, Labor and Worklife Program, Harvard Law School, April 2015:

https://lwp.law.harvard.edu/files/lwp/files/final_human_capital_materiality_april_23_2015.pdf

inconsistencies and a failure of comparability, which makes investment analysis more expensive for investors. The Fund believes there should be a balanced approach between principles-based and prescriptive rules for items related to human capital resources disclosures in Item 101(c). [For example, a tech company may broadly disclose that its business depends on retaining and attracting high-quality personnel; however, if the company does not provide information related to the total number of employees, employee turnover, and employee satisfaction, investors may not fully measure the impact of the company's human capital management practices and its ability to mitigate this risk. This balanced approach would allow issuers flexibility while providing investors with specific and comparable key performance indicators.]

Second, the Fund would like to address the categories of disclosures that may provide decision-useful information related to human capital management disclosures. In 2017, the Fund joined a global group of 25 institutional investors representing over \$2.8 trillion in assets in submitting a rulemaking petition to the SEC urging the adoption of standards that would require companies to disclose information on human capital management policies, practices, and performance.² While the petition did not define specific metrics for reporting, it offered nine broad categories of information deemed fundamental to human capital analysis, including: 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 Fund recommends that the Commission review this petition and consider its recommendations relating to human capital management disclosures.

The Commission should also review the March 28, 2019, SEC Investor Advisory Committee recommendation on human capital management disclosure.³ This recommendation includes a discussion of standardized human-capital-related key performance indicators that could be used by companies to provide investors comparable and decision-useful information. As mentioned in the recommendation, disclosure related to the number of people employed by a company, including specific breakdowns of full-time, part-time, and contingent workers, would provide investors useful information about the cost, value, and stability of a company's workforce. The Fund recommends employment breakdowns that include seasonal workers, independent contractors, and a breakdown of domestic U.S. workers and workers outside the U.S. Lastly, the Fund recommends that companies disclose information related to anticipated employee turnover rates as this would also be instructive in assessing long-term strategy. This level of specificity will provide consistency and comparability and give investors a full picture of a company's workforce.

Lastly, investors today do not have consistent, comparative data to evaluate diversity in each registrant's work force. In the Fund's view, the Employment Information Report EEO-1, that is a mandatory submission to the U.S. Equal Employment Opportunity Commission (EEOC) by private sector employers with 100 or more employees, would be very useful to investors. Twenty-five percent of S&P 100 companies have voluntarily

² Rulemaking petition to require issuers to disclose information about their human capital management policies, practices and performance, July 6, 2017: <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

³ Recommendation of the Investor Advisory Committee Human Capital Management Disclosure, March 28, 2019: <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>

made these data public.⁴ It would not add a burden to registrants since this data is already collected and reported. These data will provide comparability and give investors a full picture of whether a registrant is tapping the entire pool of talent available to it.

The Fund supports the SEC's S-K modernization effort as it relates to encouraging issuers to provide additional material human capital management-related disclosures. The use of well-developed, investor-focused frameworks that focus on the needs of investors would facilitate greater consistency and comparability of human capital management disclosures and improve the quality of information available to investors.

Legal Proceedings (Item 103)

The Fund urges the Commission to reconsider its proposal to increase from \$100,000 to \$300,000 the disclosure threshold for monetary sanctions imposed by a governmental authority in environmental proceedings. In its current formulation, this particular disclosure requirement does not appear to be burdensome for companies. Additionally, these disclosures provide important warning signs for investors; the expectation of a six-figure environmental penalty could portend potential mass tort, securities fraud, or other proceedings that may ultimately have a substantial impact on the company. Considering the low burden of reporting these proceedings, and their potential to provide investors with early warnings about future litigation risks, the Fund opposes the Commission's proposal to change the threshold for disclosure of environmental risks.

Furthermore, the Fund believes the Commission should fundamentally overhaul reporting related to legal proceedings instead of paring back disclosures. For example, there should be broader disclosure of sexual harassment claims under Item 103. Few legal proceedings alleging sexual harassment involve damages exceeding 10% of a company's corporate assets. This means that even troubling sexual harassment claims against high-level executives are not required to be disclosed, leaving investors in the dark regarding possible litigation risks or patterns of mismanagement. The Fund believes a fundamental overhaul regarding reporting related to legal proceedings is necessary and long overdue.

Climate Risk Disclosure

Climate risk is a material risk that investors consider when making investment decisions. While the Fund assumes the Commission intends to continue its modernization of Regulation S-K beyond items 101, 103, and 105, we are disappointed that it has chosen not to propose climate-related disclosures as part of Item 101, as Commissioners Robert Jackson and Allison Herren Lee noted in their Joint Statement.⁵ The Fund uses various climate risk factors in its investment decision-making, as do many other investors. We have been requesting enforcement of existing guidance and new mandatory disclosure on this issue for several years⁶ because of its importance to the Fund's investment strategy.

⁴Calvert Research and Management's Calvert Diversity Report 2017: Examining the Cracks in the Ceiling, May 24, 2017

⁵ Joint Statement of Commissioners Robert J. Jackson, Jr. and Allison Herren Lee on Proposed Changes to Regulation S-K, August 27, 2019: <https://www.sec.gov/news/public-statement/statement-jackson-lee-082719>

⁶ See, e.g., New York State Comptroller letter to the SEC, July 2016 at <https://www.sec.gov/comments/s7-06-16/s70616-205.pdf>, CERES letter to the SEC, June 2016 at <https://www.sec.gov/comments/s7-06-16/s70616-214.pdf>, New York Comptrollers letter to the SEC, April 2015 at https://www.osc.state.ny.us/press/re-leases/apr15/sec_letter0415.pdf

Recent Fund efforts illustrate the importance of obtaining consistent climate data across sectors. The Fund has established a \$4 billion low emissions index that eliminates or underweights stock ownership in some of the largest greenhouse gas emitters based on emissions data reported to or estimated by the Carbon Disclosure Project. Unfortunately, many companies still do not disclose key emissions data. The Fund's experience with this investment strategy underscores the need for mandatory and consistent disclosure concerning climate risk and emissions in every industry.

The Fund supports the view of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) that climate risk is a non-diversifiable risk that affects nearly all industries.⁷ The Fund's current access to climate-related information is limited, because disclosure regarding climate risks is voluntary and not uniform. The TCFD has developed a framework for climate disclosures that solicits decision-useful, forward-looking information about the material financial impacts of climate change. The Fund believes the SEC should require public companies to adopt the TCFD recommendations including disclosure of their greenhouse gas emissions, how their businesses are prepared for the transition to a low carbon economy by reducing GHG emissions and establishing business models to be in line with the Paris Climate Agreement's goals.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Liz Gordon', with a long horizontal flourish extending to the right.

Liz Gordon
Executive Director of Corporate Governance

⁷ Financial Stability Board Task Force on Climate Related Financial Disclosure Final Report at <https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf>