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

October 22, 2019

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

Re: File No. S7-11-19

Dear Ms. Countryman:

I appreciate this opportunity to provide comments on the Securities and Exchange Commission's ("SEC") proposed release, "Modernization of Regulation S-K Items 101, 103, and 105 (the "Release"). Given the New York City Retirement Systems (the "NYCRS" or the "Systems") particularly strong interest in assessing the human capital management performance of our portfolio companies, my comments focus mainly 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.

I am encouraged that the SEC has initiated a process to solicit feedback and comments in its preparation of final rules that will provide investors with more robust human capital-related disclosures. I support the SEC's proposed principles-based approach to the extent it is expanded to also provide for certain line item disclosures that will provide investors with a baseline of quantitative human capital disclosures that are material, consistent and comparable, and universally applicable across issuers.

As Comptroller of the City of New York, I am the investment advisor to, and custodian and a trustee of, the NYCRS, which have $207 billion in assets under management as of July 31, 2019, including $62.3 billion invested in more than 3,000 publicly traded U.S. companies. These assets are managed in order to provide retirement security for more than 700,000 members.

The NYCRS' strong interest in robust human capital management practices and disclosures is reflected in their Corporate Governance Principles and Proxy Voting Guidelines, which assert that "the Systems support clear board oversight and disclosure of material information addressing the role that a company's workforce – also known as the firm's human capital – plays in generating long-term value for shareowners."[i] It is also rooted in the NYCRS' more than 25-

year record of advocating that portfolio companies voluntarily adopt responsible human capital management policies, practices and disclosures, often through the submission of shareowner proposals under SEC Rule 14a-8, a rule that we believe in its current form has served investors and issuers well.

In general, the NYCRS submit shareowner proposals that seek (1) to promote fair labor practices and diverse and equitable workplaces at companies and in their global supply chains that we believe will contribute to employee diversity, morale, productivity and retention and (2) disclosure of quantitative metrics that will better enable us to evaluate the performance of our portfolio companies in terms of their ability to hire, retain, promote and equitably compensate women and minorities.[ii]

Consistent with the NYCRS' commitment to robust human capital management practices and disclosures, we are founding members of the Human Capital Management Coalition (HCMC), a collaboration of 28 institutional investors representing over $4 trillion in assets seeking to further elevate human capital management as a critical component in company performance and in the creation of long-term value. Accordingly, I am also a signatory to the HCMC's Rulemaking Petition asking the SEC to adopt rules to require issuers to disclose information about their human capital management policies, practices and performance submitted to the SEC on July 6, 2017[iii]

In light of the above, we welcome the SEC's focus on ensuring investors get the disclosures they need to make informed investment and voting decisions on behalf of our participants and beneficiaries.

We offer our thoughts on specific questions in the 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?

No. We are mindful of the shortcomings of a principles-based disclosure regime that does not also require certain line-item disclosures that are consistent and comparable across issuers.

We agree that principles-based disclosure can provide useful information, particularly with respect to what the Release identifies as the "measures or objectives that management focuses on in managing the business." While this is useful information that may help investors to assess management quality and company performance with respect to human capital management, it is investors — not management – who are best positioned to identify human capital-related information that is material to an investment and/or voting decision.

By proposing a strictly principles-based disclosure regime, we are concerned that the SEC is in effect delegating to management the responsibility for determining what information and metrics are material to investors. We have two primary concerns with this approach:

1. Absent quantitative metrics that are consistent and comparable across issuers, both within and across particular industries, investors have no way to evaluate and benchmark the effectiveness of a company's human capital practices, both over time and relative to peers (however defined, including for example, by size, industry and/or geographic market).

2. The flexibility and subjectivity afforded to management may prompt boilerplate disclosures and could also lead management to select metrics that (a) present the company and its performance in the most favorable light, and, relatedly, to omit metrics that may present the company unfavorably; or (b) fail to address the dimensions of human capital management performance of greatest interest to investors, as reflected in their investment and voting policies and/or valuation models.

I believe that issuers already collect a substantial volume of data on their human capital, and that line item disclosures–focused on the universally-applicable metrics we define below—would be efficient and cost-effective for issuers, and would provide significant benefit to investors. In fact, research conducted by Professor Anthony Hesketh for the Embankment Project on Inclusive Capitalism (EPIC), found that firms that disclose data on their ability to create value by leveraging human capital perform better than non-disclosers. Professor Anthony Hesketh summarized this research in his March 21, 2019 comment letter to the SEC's Investor Advisory Committee (IAC).[iv] Among the findings highlighted in his letter:

1. Human capital cost disclosers (among S&P 500 firms) perform better.

2. The deeper the disclosure, the greater the economic returns secured from talent.

3. Disclosers obtain a higher return on investment from talent (ROIT).

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?

No. For the reasons described above, I do not believe the proposed principles-based requirements, absent supplemental line item disclosures, will provide investors with information that is material to an investment decision. Therefore, we support principles-based disclosures in combination with line items requiring disclosure of a modest number of specific metrics to provide investors with a baseline of human capital disclosures that are material, consistent and comparable, and universally applicable across issuers. Specifically, we believe that issuers should be required to disclose the following:

1. Workforce composition, including the number of people employed by the issuer, broken down by (a) gender, race, and ethnicity, including among senior management (b) also by full-time and part-time status together with contingent workers.

2. Workforce cost, including salaries and employee benefits.

3. Workforce stability (i.e., turnover)

A large and growing body of empirical research suggests a positive correlation between diversity and performance. Research by McKinsey, for example, suggests that companies with greater gender and racial/ethnic diversity in the leadership team have stronger financial performance.[v]

At present, companies with over 100 employees and federal contractors with over 50 employees and federal contracts over $50,000 are required to disclose annually to the U.S. Equal Employment Opportunity Commission (EEOC) their EEO-1 matrix of employees in seven gender/race/ethnic categories across nine job categories, including senior management.

Many major U.S. companies already voluntarily disclose all or part of their EEO-1 employee diversity data, often in response to shareowner proposals from the NYCRS and/or other investors. While we are aware of at least one public company, The Charles Schwab Company, that has argued–to investors and to the SEC–that it is prohibited by federal law from disclosing its EEO-1 employment data, significantly, the SEC staff rejected this argument in its February 28, 2014 letter denying the company's request for permission to omit from its proxy statement the NYCRS' shareowner proposal requesting disclosure of its EEO-1 data.[vi]

Notably, the EEOC recently amended its reporting requirements to include pay levels for various categories. And last week, Intel announced that it would publicly release its employee pay data, broken down by race and gender later this year.

In addition to firm-wide disclosure on the race and gender of employees, particularly among senior management, we ask the SEC to also require a breakdown of the number of full-time, part-time and contingent workers, consistent with the IAC's recommendation to the SEC and also with the spirit of the term "workforce" in the UK Corporate Governance Code, as described below.

With respect to human capital costs, the International Financial Reporting Standards (IFRS) includes accounting standards for total workforce cost, including salaries, pensions, and other benefits.[vii] As noted above, human capital cost disclosers among S&P 500 firms perform better, according to research from Professor Anthony Hesketh.

Many investors consider turnover to be a fundamental quantitative human capital data point that is universally applicable to all issuers and relatively straightforward to measure.

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?

Yes, we encourage the SEC to provide issuers with a definition of human capital, and offer below several approaches for the SEC's consideration, based on NYCRS policies, the UK Corporate Governance Code and the HCMC's rulemaking petition.

As defined in the NYCRS' Corporate Governance Principles and Proxy Voting Guidelines:

Human capital development encompasses a broad range of practices, including but not limited to employee training and development, fair labor practices, health and safety, responsible contracting, and diversity, both with respect to the company's own domestic and international employees as well as the employees of vendors throughout the global supply chain. Collectively or individually, a company's human capital management practices may impact company performance.

The NYCRS' expansive view of human capital is consistent with the approach taken by the UK Corporate Governance Code (the "Code") maintained by the UK Financial Reporting Council (FRC). According to the FRC, "the revised Code asks [UK] companies to take into account the views of the 'workforce'. This term has been carefully chosen to capture the complexity and diversity of modern contractual relationships between companies and individuals undertaking work for them. The culture of the company, its strategy and values, and decisions made by the board and senior management, will have impact on all those paid to work for the company. In return, these individuals will have a direct impact on the success of the company."[viii]

Finally, in its 2017 rulemaking petition, the HCMC noted that "there is broad agreement human capital encompasses the knowledge, motivation, skills and experience of a company's workforce, as well as its alignment the company's mission and values."

Conclusion

In our experience, many public companies tout the centrality of their employees to the company and their role in creating value for shareowners; a full-text search of the SEC's Edgar database of public company filings in the past 12 months yielded 31 hits with versions of the clause "our people/employees are our most valuable asset." As long-term investors, we believe that companies should treat employees as an asset to be maximized, rather than a cost to be minimized.

Many companies highlight their commitment to diversity and describe various policies and efforts to recruit, retain and promote minorities and women. However far fewer companies provide objective performance data on their "most valuable asset." Absent quantitative data that is both comprehensive and comparable, investors have no way to evaluate and benchmark the effectiveness of these efforts, both over time and relative to peers.

I am hopeful that the above comments will meaningfully strengthen the final rules without imposing significant cost on regulated entities. Please contact Michael Garland, Assistant Comptroller for Corporate Governance and Responsible Investment ([redacted]; [redacted]), if you would like to discuss these matters further.

Thank you for your consideration.

Sincerely,

Scott M. Stringer
New York City Comptroller

[i] Corporate Governance Principles and Proxy Voting Guidelines, (available at https://comptroller.nyc.gov/wp-content/uploads/documents/NYCRS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines_2019-Revised-February-2019.pdf)

[ii] For the 2019 proxy season, for example, the NYCRS submitted proposals seeking (a) disclosures regarding both the racial/ethnic diversity of a company's workforce and any gender pay equity gaps and policies; and (b) policies to prohibit mandatory arbitration of employment-related claims.

[iii] Available at https://www.sec.gov/rules/petitions/2017/petn4-711.pdf.

[s]See Dr Anthony Hesketh to Anne Sheehan, Chairman, Investor Advisory Committee, SEC,available at https://www.sec.gov/comments/265-28/26528-5180428-183533.pdf)

[v] Vivian Hunt, Dennis Layton, Sara Prince, "Why Diversity Matters," McKinsey & Company, January 2015,available at https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters;
Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, Lareina Yee, "Delivering Through Diversity," McKinsey & Company, January 2018

[vi] available at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2014/newyorkcitycomptroller022814-14a8.pdf

[vii] See IAS 19 – Employee Benefits, available at https://www.ifrs.org/issued-standards/list-of-standards/ias-19-employee-benefits/

[viii] See Proposed Revisions to the UK Corporate Governance Code, December 2017, available at https://www.frc.org.uk/getattachment/31897789-cef6-48bb-aea9-f46b8cf80d02/Proposed-Revisions-to-the-UK-Corporate-Governance-Code-Dec-2017-1.pdf