



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

October 22, 2019

RE: Submission on the Modernization of Regulation S-K Items 101, 103, and 105 (File Number S7-11-19)

Dear Secretary Countryman:

I am writing to support the Commission's efforts to modernize Regulation S-K and particularly its effort to improve disclosure of material environmental, social, and governance (ESG) information under Items 101, 103, and 105.

My comments are informed in part by an analysis I have conducted of 282 public comments submitted in response to over 140 questions related to risk disclosure from the Commission's 2016 Regulation S-K Concept Release (the "Concept Release").¹ The forthcoming article containing the full analysis is entitled *Disclosure Overload? Lessons for Risk Disclosure & ESG Reporting Reform From the Regulation S-K Concept Release* and is available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452457.

The results of this study shed light on many of the areas highlighted in the proposed rules, for example:

- Investors were more likely to support prescriptive disclosure in some form, while reporting companies and business advocates were more likely to oppose prescriptive disclosure.
- One of the most significant determinants of opposition to or support for ESG reforms, such as the environmental and human capital disclosures proposed here, is whether the respondent supported some form of prescriptive disclosure.
- While investor responses supported some streamlining of risk-related disclosure, most were most concerned about the *under-disclosure* of material risk information, including material ESG risk information; those most concerned about *over-disclosure* were business advocates, not investors.
- Investor comments strongly supported the expansion of human capital disclosures and the standardization of ESG disclosures generally.

¹ Business and Financial Disclosure Required by Regulation S-K: Concept Release, 81 Fed. Reg. 23916, 23919 (Apr. 22, 2016).

- Investors and business advocates views diverged sharply with regard to the adequacy of current ESG disclosures under Regulation S-K, and these differences were statistically significant. Lack of comparability is a key investor concern.
- A clear area of agreement among both investors and business advocates respect to Item 105's risk factor disclosures was on the need to reduce generic, boilerplate disclosures.
- Of relevance to Question 43 of the proposed rules, responses from investor and business advocates also appeared to align against requiring registrants to rank, quantify, or prioritize risk factors under Item 105, although the data regarding these questions was limited; many respondents raised concerns about the practical difficulty of making such determinations with respect to even known risks.

Consistent with the majority of investor comments to the Concept Release, as outlined above, I am writing to express support for (i) the proposed revision of Item 101(c) to include the material effects of compliance with material government regulations, including but not limited to, environmental regulations (Question 20); (ii) the proposed revision of Item 101(c) to include human capital resource disclosure (Question 21), and (iii) the retention of a quantitative threshold in Item 103, rather than a materiality threshold, with respect to disclosure of certain environmental proceedings (Question 33). With regard to the specific content of the proposed human capital disclosures (Question 24), I reference the findings reported in my article regarding investor positions on these issues. Finally, I support the proposed revisions to Item 105 to change the disclosure standard from the “most significant” factors to the “material” factors (Question 41).

I believe that these changes will promote comparability among registrants and greater access among investors to material ESG information, although further work is needed to effectively standardize ESG disclosure and ensure that material ESG information is adequately disclosed.

Best regards,

/s/ Virginia Harper Ho

Virginia Harper Ho, Earl B. Shurtz Research Professor