



October 28, 2019

Vanessa A. Countryman  
Secretary  
Securities and Exchanges Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

**Submission: S7-11-19**

**Re: Modernization of Regulations S-K Items 101, 103, and 105 (RIN 3235-AL78) (84 Fed. Reg. 44358, August 23, 2019)**

Dear Secretary Countryman,

The Society for Human Resource Management (SHRM) appreciates this opportunity to submit comments on the new human capital disclosure requirements contained in the proposed regulation “Modernization of Regulation S – K Items 101, 103 and 105.” Our comments are solely focused on the human capital recommendations of the proposal and we are not taking a position on other aspects of the proposed rule.

SHRM creates better workplaces where employers and employees thrive together. As the voice of all things work, workers and the workplace, SHRM is the foremost expert, convener and thought leader on issues impacting today’s evolving workplaces. With 300,000+ HR and business executive members in 165 countries, SHRM impacts the lives of more than 115 million workers and families globally. Operating at the center of companies, we bring an important, practical perspective to human resource issues and the debate surrounding human capital disclosure.

The HR profession understands that engaged employees drive organizational success. Research shows that businesses with a critical mass of engaged employees outperformed their competition. But we also know that human capital metrics and the importance of any individual metric will vary by industry and even by company. For this reason, we urge the SEC to proceed with caution as they develop human capital disclosure standards.

As a general matter we support the approach taken in the proposed text at 229.101(c)(2)(ii). This section requires, to the extent that the disclosures are material, “A description of the registrant’s human capital resources, including in such description any human capital measures

or objectives that management focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the attraction development and retention of personnel.") This text retains the critical requirement for "materiality" that underpins most SEC public company disclosure requirements and leaves to the registrant a level of judgment on how to appropriately respond, given the nature of that individual company's operation. This is entirely logical as it is the company that is in the best position to determine what are the most critical aspects of its human capital resources relating to financial sustainability and thus of substantial interest to an investor.

Importantly, this approach rejects a prescriptive approach which would require companies to list and describe numerous specified categories of its human resource practices. In taking this position, we are quite aware that there is a general movement towards requiring public companies to disclose increasing amounts of information with regard to their human capital profiles and operations and to do so in a delineated, specified manner. (See, *e.g.* HCM Coalition SEC petition, p 26-27, and generally ISO 30414.)

There is a danger, however, that broad swaths of data disclosure could be used by advocacy groups and the plaintiffs' bar to unfairly distort the practices of a company--data which will be used out of context and with no actual probative value--to promote interests having little to do with educating an investor. There is also a danger that broad disclosure requirements will result "in an avalanche of trivial information a result that is hardly conducive to informed decision making".<sup>1</sup> Finally, the SEC needs to be cognizant of the fact that human resource departments already face a myriad of federal and state regulatory compliance requirements and added burdens should be carefully weighed against their benefits.

Therefore, SHRM disagrees, at this time, with the proposals advanced by certain groups discussed in the proposal's preamble<sup>2</sup>, which argue for numerous, prescriptive disclosure categories. Some have argued these should be pushed down the supply chain into multiple levels of subcontractors, requiring oversight and examination of that subcontractors' workforce,<sup>3</sup> a suggestion which indicates a lack of understanding of what is practical to achieve, despite the best of intentions. Whatever may seem feasible from an armchair's analysis may not be consistent with the practical limitations of an employer's resources.

In summary, SHRM supports the thrust of the proposal but urges the agency to proceed with caution. Human capital disclosure is a developing area and SHRM will refine our views as we

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<sup>1</sup> See TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976), and, generally "Essential Information: Modernizing our Corporate Disclosure Systems," U.S. Chamber of Commerce, Winter 2017. The TSC case involved proxy voting but its cautions are equally applicable here.

<sup>2</sup> See 84 FR 44369-70.

<sup>3</sup> "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," HCM Petition, p. 18. Of course, oversight of subcontractors is appropriate in certain situations. It is a question of what is practically achievable and identifying specific potential problems which need to be remedied.

gather more input from our membership and analyze the utility of disclosures and impact on companies which voluntarily comply with the new ISO standard 30414.

We look forward to working with the SEC as it proceeds and would be pleased to provide further input in any hearings or other forums on human capital disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy B. Hammer", with a stylized flourish at the end.

Nancy B. Hammer  
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