

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>).



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- 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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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>).



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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&ssource=mfr).



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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).



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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.



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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.hcmist.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>)



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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



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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>).



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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%202017Letter%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*,



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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



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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.



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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).



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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/>).



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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.professionalspensions.com/professional-pensions/news/2476649/plsa-urges-ftse-350-leaders-to-share-more-data-about-workforce>.



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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.



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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/>).



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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.



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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.



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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



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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_macrovs_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).



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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.



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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.



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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.

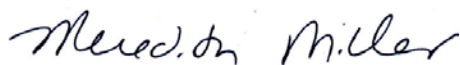
We appreciate the opportunity to express our views to the Commission. If the Commission or Staff have any questions about this Petition, or if we can provide any additional information, please contact Meredith Miller, Chief Corporate Governance Officer for the UAW Retiree Medical Benefits Trust, at mamiller@rhac.com.

Respectfully submitted,

The Human Capital Management Coalition

On behalf of the Human Capital Management Coalition:

Sincerely,



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