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October 17, 2019

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Securities and Exchange Commission, *Proposed Rule: Modernization of Regulation S-K Items 101, 103 and 105*, SEC Release Nos. 33-10668; 34-86614; File No. S7-11-19

Dear Secretary Countryman:

The Sustainability Accounting Standards Board (SASB) submits this letter in response to the Commission's proposal to amend Regulation S-K in order, among other things, to improve the quality of issuer disclosures regarding human capital.

We agree with the Commission's view that human capital is a vital corporate asset that is for the most part insufficiently addressed in corporate disclosure documents. Thus, we agree with statements such as that made by Chairman Clayton that "the historical approach of disclosing only the costs of compensation and benefits often is not enough to fully understand the value and impact of human capital on the performance and future prospects of an organization."[1] Accordingly, we support the Commission's rulemaking initiative.

We do have suggestions stemming from the Commission's principles-based approach. The Proposing Release explains that investors would be best served "by understanding how each company looks at its human capital and, in particular, where management focuses its attention in this space."[2] Companies would decide what is material and what should be disclosed.

Because the Commission is taking this approach, we believe the Commission should make clear in the rule that companies must disclose more than boilerplate and should provide specific metrics to the extent they are material to the company's financial and operating performance. Further, the SEC should either strongly encourage or require issuers to make their disclosures pursuant

[1] Chairman Jay Clayton, *Remarks to the SEC Investor Advisory Committee* (March 28, 2019).
[2] Securities and Exchange Commission, *Proposed Rule*: *Modernization of Regulation S-K Items 101, 103 and 105*, SEC Release Nos. 33-10668; 34-86614; File No. S7-11-19) at 49.

to a framework or set of disclosure standards. Numerous surveys and studies have shown, and SASB's outreach has confirmed, that investors are dissatisfied with existing disclosures relating to environmental, social and governance (ESG) matters, including human capital management, because such disclosures are generally inconsistent and non-comparable between companies. In the context of financial reporting, the Financial Accounting Standards Board's standards have long been viewed as facilitating consistency, reliability, and comparability; a similar objective should be sought for disclosure of material ESG information such as human capital.

In this regard, we respectfully submit that the SASB standards – adopted by a board of independent private-sector experts after due process including significant stakeholder input – are particularly useful. SASB has developed, and continues to refine, a comprehensive set of financially material ESG standards, including those relating to disclosure of human capital management, that are being broadly endorsed by investors and adopted by issuers. The standards can be used globally; indeed, more than 44% of the companies thus far adopting the standards are domiciled outside of the United States. Notwithstanding its global reach, SASB has particular depth in United States financial regulation. On its governance and standard-setting boards and among its staff are persons with vast relevant experience, including former chairs of the SEC, the FASB, the PCAOB, and COSO, as well as individuals who held high-level positions at the Treasury Department and elsewhere (See Appendix I). Importantly, the standards are industry-specific, a characteristic that is important because, as Chairman Clayton has explained, "[e]ach industry, and even each company within a specific industry, has its own human capital circumstances."[3] Accordingly, as the Commission has done in other contexts (the closest precedent being internal control reporting pursuant to Section 404 of the Sarbanes-Oxley Act), we urge that, if the SEC adopts this principles-based rule, the Adopting Release state that issuers should consider using the SASB standards as a means of complying with the rule — while also stating that other disclosure frameworks, if developed through due process and focused on financial materiality and the informational needs of investors, could be used as well.[4]

Because of our recommendation regarding SASB we discuss in some detail below SASB's structure and use of due process in development of its standards.

I. THE NEED FOR BETTER HUMAN CAPITAL DISCLOSURE

A. Information about human capital is highly important to the capital markets:

In the last several decades, human capital and its management have become increasingly important to corporate value creation. With changing societal values and a rise of technological innovation, fundamental shifts in the economy and workforce have created human capital trends related to the role of intellectual capital, the definition of employee, and employee well-being and satisfaction relative to employee productivity and retention.

[3] Chairman Jay Clayton, *Remarks to the SEC Investor Advisory Committee* (March 28, 2019).
[4] SASB made a similar suggestion in its comment letter submitted in response to the SEC's 2016 Concept Release on Regulation S-K, available at https://www.sec.gov/comments/s7-06-16/s70616-25.pdf

The importance of improved human capital disclosures was discussed in detail in the rulemaking petition filed by the Human Capital Management Coalition in July 2017.[5] Following up on that petition, the SEC's Investor Advisory Committee (IAC) in March of this year urged the SEC to adopt a human capital disclosure rule.[6] The IAC recommendation stated:

> Research has found that high quality HCM [human capital management] practices correlate with lower employee turnover, higher productivity, and better corporate financial performance, producing a considerable and sustained alpha over time. The value-relevance of HCM metrics is consistently demonstrated in financial research. A meta-review was conducted in 2015 by Harvard researchers of 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. The review found positive relationships in a majority of studies between financial performance, however measured, and disclosed training programs or HR policies on such topics as employee participation and pay for performance. [Footnotes omitted]

A particularly thorough analysis of human capital disclosure was submitted to the IAC in connection with its consideration of this issue. The research was performed by Professor Anthony Hesketh at the Lancaster University Management School in the United Kingdom. Professor Hesketh stated that "the way we value our relationships with organizations and the products they create is changing, with concomitant and material changes for the underlying financial value of organizations. Human capital and its management are becoming increasingly material to these changes." He found that the data "suggest the depth of human capital disclosure is highly associated with high performance." He made several significant findings regarding disclosure: human capital cost disclosers perform better; the deeper and more thorough the disclosure, the greater the economic returns secured from talent; companies that make disclosures obtain a higher return on investment from talent; human capital cost disclosers focus on value creation over the long term; and the possible benefits from greater human capital disclosure "far outweigh the costs." And, particularly relevant, firms with greater levels of human capital disclosure use metrics rather than lengthy narratives.[7]

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[5] See generally, Human Capital Management Coalition, *Rulemaking Petition To Require Issuers To Disclose Information About Their Human Capital Management Policies, Practices and Performance* (July 6, 2017) available at https://www.sec.gov/rules/petitions/2017/petn4-711.pdf (hereinafter HCMC Petition).
[6] SEC Investor Advisory Committee, *Recommendation from the Investor-as-Owner Subcommittee on Human Capital Management Disclosure* (March 19, 2019), available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac032819-investor-as-owner-subcommittee-recommendation.pdf
[7] Prof. Anthony Hesketh, *Letter to Anne Sheehan*, Chair, SEC Investor Advisory Committee (March 21, 2019) at 4. Professor Hesketh's work was commissioned as part of a project led by the Coalition for Inclusive Capitalism, which was assisted by Ernst & Young LLP and included the involvement of 31 companies, asset managers and asset owners with approximately $30 trillion dollars of assets under management. See *Report of the Embankment Project for Inclusive Capitalism* (EPIC), The Coalition for Inclusive Capitalism (October 2018) available at https://www.ey.com/Publication/vwLUAssets/ey-at-embankment-project-inclusive-capitalism/$FILE/EY-the-embankment-project-for-inclusive-capitalism-report.pdf

SASB's research and outreach work has also found that human capital management is essential to long-term value creation. Approximately one-fourth of the letters received during the open comment period for the SASB standards discussed human capital's importance to business operations and as an asset for long-term performance.

B. Existing disclosures are inadequate:

It is not the case that companies today fail altogether to disclose any relevant information about human capital. They do make disclosures, but the information tends not to be decision-useful.

This assessment has been confirmed through numerous studies and surveys. SASB's researchers have found that most ESG disclosures, which include those related to human capital management, consist of boilerplate disclosures — generic statements that are not specifically tailored to the individual company, the risks it faces and the opportunities it might have. SASB found that this type of vague, non-specific information was used more than 50 percent of the time when companies addressed a SASB topic in 2017.[8]

Moreover, companies have traditionally disclosed ESG information to their investors and other stakeholders without reference to any generally accepted set of metrics or standards. Even when reporting on similar topics, two companies in the same industry might use different performance metrics or time periods, making it difficult for investors to analyze and compare or normalize that information. Further, as the EPIC report (described in footnote 7 above) concluded, companies frequently discuss how they deploy the knowledge, skills and capabilities of their workforce but they "tend to report on this through qualitative narratives or data that is not comparable, which makes it difficult to evaluate companies in a rigorous or consistent way."[9] This has caused widespread dissatisfaction, not only from investors but also from corporate issuers themselves. For example, a recent McKinsey study found that 85% of investors either agreed or strongly agreed that "more standardization of sustainability reporting" would help them allocate capital more effectively, and 68% of corporate executives either agreed or strongly agreed that standardization would enhance their company's ability to create value or mitigate risk.[10]

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[8] SASB, *The State of Disclosure: An analysis of the effectiveness of sustainability disclosure in SEC filings* (2018) available at https://www.sasb.org/wp-content/uploads/2019/08/StateofDisclosure-Report-web112717-1.pdf?__hstc=105637852.135a89045bd6ea85f68591478e99eb09.1553809423920.1570492048390.1570494269935.17&__hssc=105637852.1.1570494269935

[9] *Report of The Embankment Project for Inclusive Capitalism* at 41.

[10] McKinsey & Company, *More than values: The value-based sustainability reporting that investors want* (August 2019). Likewise, a 2016 PwC survey on ESG found that only 29 percent of investors polled were confident in the quality of ESG information they were receiving and only eight percent of investors thought that existing ESG disclosures allow for comparison across companies and peers. PricewaterhouseCoopers, *Older and wiser: Is responsible investment coming of age?* (2016) available at https://www.pwc.com/gx/en/sustainability/publications/assets/pe-survey-report.pdf Numerous other reports and studies have discussed the general topic of the growing interest in better ESG disclosure. See, *e.g.,* Deloitte, *Heads Up: Sustainability Disclosure Goes Mainstream* (September 24, 2019).

The lack of comparable, decision-useful information also has negative long-term societal and economic impacts. A company's investments in employee training, or health, or direct compensation can lead to lower dividends or reduction in short-term profitability, so companies may avoid such expenditures even though they can create long-term value for shareholders and broader societal benefits. In addition, considerable research has shown that human capital disclosures in the United States lag far behind those made in Europe and elsewhere, meaning that the societal and economic benefits accruing from more comprehensive human capital disclosure also lag in the U.S.[11]

II. SASB HAS DEVELOPED A COMPREHENSIVE SET OF ESG DISCLOSURE STANDARDS, INCLUDING HUMAN CAPITAL METRICS, THAT ARE BEING BROADLY ACCEPTED

A. Overview of SASB:

SASB is an independent nonprofit organization established in 2011 to set standards for companies to use when disclosing ESG information to investors. SASB standards relate to climate change, natural resource constraints, technological innovation, human capital, and other matters that may have a material impact on the company's financial condition.

The standard-setting process SASB follows is outlined in two governing documents: Rules of Procedure and a Conceptual Framework. SASB's due process is characterized by evidence-based research, broad and balanced market input, public transparency, and independent oversight. It is designed to be driven by input from capital market participants such as corporations, investors, and other subject matter experts.

SASB takes an industry-specific approach to sustainability accounting, establishing standardized performance metrics for sustainability factors that are most relevant to companies in a given industry. The ability to identify business relevant ESG issues for each industry is driven by the concept of financial materiality. Generally speaking, financially material information is that which is important to a person making an investment or voting decision and which impacts the financial condition or operating performance of the company.

In order to group companies based on their shared sustainability-related risks and opportunities, SASB created the Sustainable Industry Classification System® (SICS®), which contains 77 industries. By providing a new lens through which to view peer groups, SICS enables investors to more effectively identify and manage under- or overexposure to key sustainability risks and opportunities, enhancing their assessments of fundamental and relative valuations, and to construct diversified portfolios and indices around sustainability factors.

SASB's sustainability topics are organized under five broad sustainability dimensions:

[11] See, e.g., Hesketh, *Letter to Anne Sheehan* at 6 ("the U.S. trails behind" the UK and EU in human capital disclosure).

1. *Environment*. This dimension includes environmental impacts, such as using nonrenewable natural resources as a major production input or releasing significant pollutants into the environment.
2. *Social Capital.* This dimension addresses the management of a company's key relationships with outside parties, such as customers, local communities, the public, and the government. It includes issues related to human rights, the protection of vulnerable groups, local economic development, access to and quality of products and services, affordability, responsible business practices in marketing, and customer privacy.
3. *Human Capital*. This dimension addresses the management of a company's human resources (employees and individual contractors) as key assets to delivering long-term value. It includes issues that affect labor relations as well as the health and safety, and employee engagement/productivity, and diversity and inclusion.
4. *Business Model and Innovation*. This dimension addresses the integration of environmental, human, and social issues in a company's value-creation process, including product innovation, operational efficiency, and the responsible design and disposal of products. It also includes supply chain management and materials sourcing.
5. *Leadership and Governance.* This dimension involves the management of issues that are inherent to the business model or common practice in the industry or that are in potential conflict with the interest of broader stakeholder groups. This includes regulatory compliance, risk management, safety management, conflicts of interest, anticompetitive behavior, and corruption and bribery.

After almost seven years of research and market consultation, SASB published sustainability accounting standards for 77 industries in November 2018. Because not all matters of potential interest to investors are financially material, the average SASB standard contains six industry-specific topics and 14 associated performance metrics.

B. SASB Structure and Due Process:

SASB solicited extensive market input in developing the standards. The process involved hundreds of Industry Working Group (IWG) members; deep consultation with 141 companies, 19 industry associations (representing hundreds of companies), and 38 institutional investors; and 12 public comment periods, which elicited more than 300 comment letters.

As set out in the SASB Rules of Procedure, the SASB's standard-setting activities are transparent and follow careful due process, including extensive consultation with companies, investors, and relevant experts. Standard-setting is accomplished through a rigorous process that includes evidence-based research and broad, balanced stakeholder participation. The process seeks to respond to comments provided by stakeholders. For example, a total of 248 changes were made to provisional standards in response to stakeholder comments, and the rationales for all of those changes were described at the time of standards-adoption in a Basis for Conclusions document.

This work has been, and will continue to be, overseen and performed by two separate SASB boards in a governance structure similar to the structure adopted by other internationally-recognized bodies that set standards for disclosure to investors, including the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB). This structure includes a board of directors ("the Foundation Board") and a standards-setting board ("the Standards Board").

The Foundation Board oversees the strategy, finances, and operations of the entire organization, and appoints the members of the Standards Board. The SASB Foundation also provides education and other resources that advance the use and understanding of our standards. The Foundation Board is not involved in setting standards but does oversee the Standards Board's compliance with the organization's due process requirements.[12]

The Standards Board, working with SASB staff, develops, issues, and maintains the SASB standards. It continually conducts research, engages with corporate professionals, investors, and subject matter experts, and monitors existing, evolving, and emerging sustainability issues. Significantly, the Standards Board and SASB staff have organized a Standards Advisory Group (SAG) comprised of individuals from leading companies, financial institutions, and/or third parties with industry expertise in sustainability or related issues. In order to secure ample feedback and stakeholder input across all of SASB's 11 sectors, the group is large, including 176 members with additions to be made as needed. A list of SAG members is available at https://www.sasb.org/provide-feedback/standards-advisory-group/.

The SASB Foundation and Standards boards are comprised of individuals with vast financial regulatory experience (see Appendix I). The boards include a former Under Secretary for Domestic Finance at the Treasury Department (who chairs the Foundation Board), two former SEC chairs (one of whom is the Foundation Board's vice-chair), a former Director of the Division of Corporation Finance (who is also a trustee of the IFRS Foundation), a former SEC General Counsel (who also served as a board member and acting chair of the PCAOB), a former chair of FASB (who was one of the original members of the International Accounting Standards Board), a former member of the FASB, and a former chair of COSO. [13]

[12] The SASB Foundation is funded by a range of sources, including contributions from philanthropies, companies, and individuals, as well as through the sale and licensing of publications, educational materials, and other products. The SASB Foundation receives no government financing and is not affiliated with any governmental body, the FASB, the International Accounting Standards Board, or any other standard-setting body.

[13] It should also be noted that, during its formative years, another former SEC Commissioner, Aulana Peters, served on SASB's Board. One additional relevant fact: including Ms. Peters, membership on SASB's two boards includes five recipients of the highly-prestigious William O. Douglas Award, given annually by the Association of SEC Alumni. These five persons, along with the other board members, comprise a group of individuals whose commitment to investor protection and experience with regulatory protocols would be difficult to replicate anywhere.

C. SASB's Broad Acceptance:

Although the SASB's standards were only published late last year, the standards have achieved broad acceptance among investors, issuers, and regulators throughout the world.[14] There are many reasons that SASB is achieving these results. It is due in part to studies that validate SASB's approach.[15] It is also due to broad support from investors, both U.S.-based and non-U.S. More specifically, it is likely attributable to SASB's position as the only comprehensive, industry-specific set of ESG standards based on financial materiality.

1. Increasing corporate use: As noted, a complete set of the SASB standards was published in November 2018. Since then, a broad swath of public companies has expressed interest in using the standards. As of the date of this letter, more than 100 companies are now using the SASB metrics in whole or in part (a list of these companies is available at https://www.sasb.org/company-use/). But that number may actually understate corporate

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[14] There are perhaps hundreds of articles and public statements speaking highly of SASB's work and progress. A few examples: Ted Knutson, Forbes, *ESG Metrics for Investors in Infancy, SEC Told*, (December 14, 2018) ("Formed by Michael Bloomberg with former SEC Chair Mary Schapiro as vice chair, SASB is the most relied upon of over 100 think tanks, investment managers and consultants who are creating ESG standards."); Paul Rissman, proxy preview, *SASB Addresses Growing Demand for Sustainability Disclosure* (March 12, 2019) ("SASB standards are voluntary, but because they are supported by investors, including some of the world's largest, they may constitute an effective disclosure regime. Asset management behemoths like BlackRock, Vanguard and State Street have not only embraced, but also helped to *create* the SASB standards."); Carine Smith Ihenacho, Norges Bank Investment Management's Chief Corporate Governance Officer, Global News Wire, *SASB Expands Investor Advisory Group* (May 22, 2019) ("As a long-term, universal investor, we have an interest in sustainable development. We urge for standardized, concrete and relevant sustainability data and we ask companies to go from words to numbers – because what gets measured gets managed. We welcome SASB's work in developing industry-based standards for improved sustainability reporting."); Barbara Zvan, Chief Risk & Strategy Officer of the Ontario Teachers' Pension Plan & IAG Chair, Global News Wire, *SASB Expands Investor Advisory Group* (May 22, 2019) ("The fact that our new members come from a variety of countries in Europe, Asia and North America is a sign that sustainability disclosure is a global concern, and SASB's standards are a valuable tool for both companies and investors.); Anne Simpson, Financial Times, *Companies struggle to digest 'alphabet soup' of ESG arbiters* (October 6, 2019) ("The value to us of SASB is the effort to identify potentially material issues on environmental and social issues); Paul Rissman, Diana Kearney, *Rise of the Shadow ESG Regulators*, Harvard Law School Forum on Corp. Gov. and Fin. Reg. (March 2, 2019) ("While more than one cause will foment [ESG reporting], the factor that will seal the shift in stockholder attitude, and in turn emphasize ESG reporting as a corporate priority, is last November's finalization of a set of material disclosure standards for sustainability topics. The Sustainability Accounting Standards Board (SASB), an organization conceived explicitly to formulate standards that comply with the Supreme Court's definition of materiality, can soon be instrumentalized to improve the monitoring of corporate behavior, and thus corporate behavior itself.")

[15] Research from the Harvard Business School has shown the SASB approach can help companies enhance business outcomes, including their return on sales, sales growth, return on assets, and return on equity, while also enjoying improved risk-adjusted shareholder returns. Mozaffar Khan, George Serafeim, and Aaron Yoon, The Accounting Review, Vol. 91, No. 6, *Results for value-weighted portfolios of firms scoring at the bottom and top quintiles of the total, material, and immaterial sustainability indexes* (November 9, 2016). Meanwhile, Russell Investments found evidence that SASB-focused ESG scores are better predictors of market returns than more broadly defined ESG scores, even after adjusting for known drivers of equity returns. Emily Steinbarth, Scott Bennett, Russell Investment Management Ltd. *Differences in the four-factor alphas of high and low portfolios formed on the basis of Material and Immaterial Sustainability Issues* (February 2019).

interest. This is because, thus far in 2019, SASB has been referenced in 467 documents published by 349 different companies. These typically are instances where the company cites SASB's standards and research as providing guidance on materiality assessments and particular metrics, while not issuing a report using SASB metrics (in many instances because the company does not appear to be prepared at this time to issue such a report).[16]

2. Investor support and use: There are many indications of strong investor support for SASB's work. The SEC's IAC March 2019 Recommendation regarding human capital management disclosure expressly noted this fact when it stated: "Institutional and retail investors have a pronounced interest in clear and comparable information about how firms approach HCM. This interest is reflected in ongoing projects by the Sustainability Accounting Standards Board (SASB)."[17]

Another sign of support is the Investor Advisory Group (IAG) organized by SASB in late 2016. SASB's IAG is now comprised of 46 firms with more than $34 trillion in assets under management or ownership (a list of the members is included at Appendix II). Membership is global; approximately one-third of the members are domiciled outside of the United States. Members of the IAG are committed to assisting SASB in promoting better ESG disclosure.[18]

And investors are already using SASB's framework for integration into data platforms and investor tools, investible products, sustainability management and reporting software, and services. One of the most significant efforts has been taken by State Street Global Advisors, which recently launched R-Factor, an ESG scoring system that uses SASB's Materiality Map[19] as the ESG framework to generate a unique ESG score for listed companies. Building on this scoring system, Bloomberg now offers ESG benchmarks for asset owners and managers and custom indices that maximize the R-Factor ESG score.

3. Regulatory support (including stock exchanges): The SASB standards are being recognized by regulatory bodies and stock exchanges throughout the world as a decision-useful tool for ESG reporting. Here are some highlights:

- The SASB standards are referenced as a resource for corporate disclosure by the EU Non-Financial Reporting Directive (EU NFR474D), which requires companies to include non-financial disclosures in their annual reports from 2018 onwards. The SASB

[16] SASB reports have been included in a variety of corporate communications – 10Ks, annual reports, sustainability reports, and websites. At a previous time SASB took the position that companies should only use the standards in filings made with the SEC, but after receiving extensive feedback from corporations and investors the SASB Foundation Board determined to change that position. Regardless of where the information is disclosed, SASB believes that the governance processes (including management participation and board oversight) and internal control procedures to ensure accuracy for these disclosures should be substantially similar to those used for traditional financial reporting.
[17] *Recommendation of the IAC*, Human Capital Management Disclosure (March 28, 2019) at 3.
[18] Aside from the IAG, SASB has organized the SASB Alliance, comprised of more than 100 asset managers, asset owners, and companies who are generally supportive of SASB's work. Additional information is available at https://www.sasb.org/alliance-membership/.
[19] SASB's *Materiality Map*, available at http://materiality.sasb.org/

standards (including select climate metrics) are included in the EU Commission guidance to improve corporate disclosure of climate-related information, released in July 2019, as part of the EU Sustainable Finance Action Plan.[20]

- In August 2019, the Canadian Securities Administrators (an organization of securities regulators from the ten provinces and three territories in Canada), published CSA Staff Notice 51-358, Reporting of Climate Change-Related Risks. The guidance directed issuers to SASB's work "to assist them in making their materiality assessments in this area." [21]
- SASB standards are also among the most frequently referenced tools by the Financial Stability Board's Task Force on Climate-Related Financial Disclosure (TCFD) for implementing the TCFD Recommendations.
- COSO references SASB as a resource for performing ESG materiality assessments and as a resource to support the disclosure of ESG-related risks and the organization's management of those issues. The "Guidance for Applying Enterprise Risk Management (ERM) to Environmental, Social and Governance (ESG)-related Risks" aligns with COSO's widely-accepted Enterprise Risk Management - Integrating with Strategy and Performance, and is intended to bring ESG risks and opportunities into a clearer focus for mainstream business and other organizations around the world.
- SASB is referenced as a resource for disclosure by stock exchanges for their publicly listed companies, in 26 countries and six continents (see Appendix III), including some of the largest such as NYSE, LSE and NASDAQ.[22]

D. SASB's Human Capital Metrics:

As described above, human capital is one of the five sustainability dimensions that serve as the basis for SASB's standard-setting framework. Human capital management disclosure topics rank as the second most frequently-recurring topics in the SASB standards, behind climate change, indicating the significance of human capital issues across sectors.

With increasing market interest and engagement on human capital issues, the SASB Board voted at its open meeting last month (September 2019) to launch a project to determine whether additional general issue categories and associated disclosure topics and metrics in this area might be needed. The project is designed to identify financially-material cross-cutting human capital management themes across sectors and determine industry-specific human capital issues by sector, incorporating the latest research and evidence on human capital issues. SASB has

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[20] EU Commission, *Guidelines on non-financial reporting: Supplement on reporting climate-related information* (June 20, 2019).

[21] CSA Staff Notice 51-358, *Reporting of Climate Change-related Risks* (2019 Notice).

[22] The SEC – unlike its counterparts in many parts of the world – has not referred to SASB. But Commissioners Jackson and Lee, in their *Joint Statement* (see footnote 23 below), recognized "the work of the Sustainability Accounting Standards Board, which has carefully refined its measures through extensive engagement with investors and issuers alike in order to emphasize metrics most material to investors."

already outlined the project based standards setting process which will employ due process and seek the views of relevant stakeholders throughout the development process.

III. BECAUSE OF THE SEC'S PROPOSAL IS PRINCIPLES-BASED, THE SEC SHOULD STRONGLY ENCOURAGE OR REQUIRE COMPANIES TO USE AN INVESTOR-FOCUSED DISCLOSURE FRAMEWORK THAT HAS BEEN DEVELOPED THROUGH DUE PROCESS, SUCH AS THE SASB FRAMEWORK

A. Principles-based versus rules-based approach and boilerplate versus metrics:

The SEC's proposed rule would amend Item 101 (Description of Business) of Regulation S-K to require 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)."

At the outset, we have two comments on this proposal.

1. Line-item requirements versus principles: The SEC is proposing to take a principles-based approach to this subject matter. Rather than complying with specific human capital line item disclosure requirements, the issuer would make its own determination of material human capital issues that require disclosure.

It has been suggested that a line-item disclosure rule would be preferable. In particular, Commissioners Jackson and Lee issued a Joint Statement making this argument. They cited two main concerns: first, that the principles-based approach would give "company executives discretion over what they tell investors," and second, that the approach might "produce inconsistent information that investors cannot easily compare, making investment analysis—and, thus, capital—more expensive." [23]

Although we do not disagree that there might be benefits from a line-item disclosure rule, we believe that the Commissioners' concerns should be largely, or even entirely, ameliorated by a widespread use of the SASB standards. First, broad corporate use of the standards should limit executives' discretion in what to disclose. This is because SASB's guidelines provide that a company using the SASB framework should use all the metrics applicable to that company's industry or, alternatively, to explain why it is omitting certain metrics.[24] This approach ensures

[23] *Joint Statement of Commissioners Robert J. Jackson Jr. and Allison Herren Lee on Proposed Changes to Regulation S-K* (August 27, 2019) available at https://www.sec.gov/news/public-statement/statement-jackson-lee-082719

[24] SASB, *Standards Application Guidance* (2018) ("An entity that omits one or more disclosure topics and/or accounting metrics should disclose the omission(s), as well as the rationale for the omission(s). For example, if a disclosure topic does not apply to an entity's business model, the entity should disclose that the topic and its associated metrics were omitted on the lack of applicability. If an entity believes it necessary to modify a metric, the entity shall disclose the fact that the metric was changed, as well as the

that companies will disclose comparable information and enables investors to benchmark performance across companies.

Second, concern about inconsistent information that investors cannot easily compare is at the heart of the SASB initiative. Inconsistency and lack of comparability draw to a close when companies use an established industry-specific disclosure framework.

2. Boilerplate versus metrics: Another aspect of the proposal raises a separate concern. We believe that the Commission likely intends that issuers make substantive disclosures that go beyond mere boilerplate, but it is not altogether clear from the wording of the proposal how much specificity is sought. The proposal would require a "description any human capital measures or objectives that management focuses on in managing the business." One conceivable interpretation of that language is that a company could say nothing more than, as one example, "we focus on employee turnover," without including such metrics as the company's existing or historic rate of turnover and its target rate of turnover, along with a narrative description of why turnover is an important matter for the company.

Concern about boilerplate, or non-meaningful and non-comparable corporate disclosures, underlies the investor pressure for a new SEC rule. For example, the HCMC Petition stated, "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." [25] Moreover, Chairman Clayton has expressed a need for disclosure of "metrics [that] allow for period to period comparability for the company." [26] Accordingly, we strongly urge that the Commission, either in the rule text or in the Adopting Release, make clear that boilerplate human capital disclosures are inadequate and that metrics, to the extent they are available or applicable, be used.

B. Consistent with numerous precedents, the Commission should either strongly encourage or require companies to use a generally accepted framework for making the human capital disclosures, such as SASB's.

1. The COSO Precedent: We urge that the SEC expressly refer corporate issuers to an independent standards setter, specifically SASB, for use in making their disclosures. This approach would facilitate consistent and comparable disclosures.[27]

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rationale for the change.") available at https://www.sasb.org/wp-content/uploads/2018/11/SASB-Standards-Application-Guidance-2018-10.pdf

[25] HCMC Petition at 11.

[26] Chairman Jay Clayton, *Remarks for Telephone Call with SEC Investor Advisory Committee Members* (February 6, 2019).

[27] Other stakeholders have expressed support for this position. For example, the CFA Institute surveyed its members and found that "[s]ome 63% believe securities regulators should either develop ESG disclosure standards or support an independent standard setter to develop such standards." CFA members stated, among other things that "[t]he Sustainability Accounting Standards Board standards should be strongly considered by regulators as forming the basis of a standard." Mohini Singh, *Embracing the Inevitable: ESG Disclosures,* posted in *ESG, Financial Reporting* (July 23, 2019). Likewise, the Managing Director and Global Head of BlackRock Investment Stewardship stated: "While

We believe the closest analogy to our recommendation is the action taken by the Commission in 2003 when it adopted an internal control reporting rule as required by Section 404 of the Sarbanes-Oxley Act. In the Adopting Release, the Commission stated that commenters supported the establishment of "specific evaluative criteria" for internal control reports "in order to improve comparability among the standards used by companies to conduct their annual internal control evaluations." The Commission determined not to "establish" specific criteria but instead to refer issuers to the work of COSO as an acceptable approach framework. The Adopting Release stated:

> After consideration of the comments, we have modified the final requirements to specify that management must base its evaluation of the effectiveness of the company's internal control over financial reporting on a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment. The COSO Framework satisfies our criteria and may be used as an evaluation framework for purposes of management's annual internal control evaluation and disclosure requirements. However, the final rules do not mandate use of a particular framework, such as the COSO Framework, in recognition of the fact that other evaluation standards exist outside of the United States, and that frameworks other than COSO may be developed within the United States in the future, that satisfy the intent of the statute without diminishing the benefits to investors.[28]

The Adopting Release further explained what factors were relevant in its determination of a "suitable" framework developed by a private-sector body: the framework must "be free from bias; permit reasonably consistent qualitative and quantitative measurements of a company's internal control; be sufficiently complete so that those relevant factors that would alter a conclusion about the effectiveness of a company's internal controls are not omitted; and be relevant to an evaluation of internal control over financial reporting."

SASB satisfies these criteria. Most importantly, SASB is "free from bias" — as discussed above, the standards have been developed through extensive due process, overseen and adopted by independent, experienced, respected individuals with enormous public and private-sector regulatory experience at the very highest levels. The standards provide for consistent, industry-specific measurements of relevant sustainability factors, including those for human capital. The

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reporting is still evolving, we believe in the benefit of companies moving towards a more robust disclosure of HCM metrics. For instance, the SASB provides industry-specific metrics can provide companies and investors insight into the return on investment related to talent and enable companies to understand if they are outliers relative to peers from the perspective of long-term performance." Michelle Edkins, *BlackRock Investment Stewardship Engagement Priorities for 2019,* Harvard Law School Forum on Corp. Gov. and Fin. Reg. (January 31, 2019).

[28] Securities and Exchange Commission, *Final Rule: Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports* [SEC Release Nos. 33-8238; 34-47986; IC-26068; File Nos. S7-40-02; S7-06-03] (June 5, 2003); available at https://www.sec.gov/rules/final/33-8238.htm

standards are not necessarily "complete" in the internal control reporting sense because this is an emerging area of reporting, but they go far down the road in providing the metrics that are reasonably likely to be material to investors — and, of course, nothing impedes companies from deciding, based on a materiality analysis, to make disclosures of topics beyond those covered by SASB. Also of note: SASB's years-long process of developing standards echoes the effort COSO went through when it issued a revised internal control-integrated framework in 2013 after nearly five years of work. [29]

2. Other Precedents: The approach taken in 2003 regarding Section 404 and COSO is not the only precedent for what we are urging the SEC to do now. The SEC took a similar approach in its conflict-minerals rule adopted pursuant to Section 1502 of the Dodd-Frank Act. The rule requires that an issuer's due diligence with respect to conflict mineral determinations "follow a nationally or internationally recognized due diligence framework" so as to "enhance the quality" and "promote comparability" of conflict mineral reports. Much like the approach taken by the Commission with respect to Section 404, the Adopting Release stated:

> The final rule does not mandate that an issuer use any particular nationally or internationally recognized due diligence framework, such as the OECD's due diligence guidance, in recognition of the fact that other evaluation standards may develop that satisfy the intent of the Conflict Minerals Statutory Provision. However, to satisfy the requirements of the final rule, the nationally or internationally recognized due diligence framework used by the issuer must have been established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment, and be consistent with the criteria standards in GAGAS established by the GAO.[30]

There have also been occasions when the Commission has actually required companies to use a private-sector set of standards. The most prominent of such instance is, of course, with respect to the FASB, whose standards must be followed by U.S. public companies.[31] Another less well-known example is the SEC's adoption in 1999 of revised disclosure requirements for foreign private issuers to conform to the disclosure requirements endorsed by a non-governmental body, the International Organization of Securities Commissions (of which the SEC is a member).[32] Additionally, in 2018, the SEC adopted amendments to modernize the property disclosure requirements for mining registrants; in doing so, the Commission relied upon a set of standards called the Committee for Reserves International Reporting Standards. [33] Further, use of a private-

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[29] One of the SASB standards-setting co-vice chairs, Robert Hirth, was the chair of the COSO from 2008 to 2013, giving him particular insight into what the SEC might expect with respect to the functioning of a private-sector standards setter.
[30] Securities and Exchange Commission, *Final Rule: Conflict Minerals* [SEC Release No. 34-67716] (August 22, 2012) at 207
[31] See generally, *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter* [SEC Release Nos. 33-8221; 34-47743; IC-26028; FR-70] (April 25, 2003).
[32] See Securities and Exchange Commission, *Final Rule: International Disclosure Standards* [SEC Release Nos. 33-7745; 34- 41936; International Series Release No. 1205] (September 28, 1999).
[33] See SEC Release Nos. 33-10570;34-84509 (October 31, 2018).

sector set of standards is common throughout the government. For example, in 1996 Congress passed the National Technology Transfer and Advancement Act, which stated in part that "all federal agencies and departments shall use standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives determined by the agencies and departments."[34]

3. Other Frameworks: In urging that the Commission make a specific reference to SASB in its Adopting Release, we do not mean to suggest that the Commission imply that no other framework can be used. Other sustainability frameworks have been developed (or might be developed in the future), and they might also meet the criteria that were set forth by the Commission in its 2003 Rulemaking Release on Section 404 reporting, discussed above. But we do think it important to note two unique and highly significant aspects of SASB's approach.

First, SASB is focused on information that is financially material to investors. There are some other private-sector standard setters that use this approach but do so only for a narrow range of issues, such as climate change. A broader set of standards has been developed by another leading and highly-regarded organization, the Global Reporting Initiative (GRI), which has widespread global use but uses a broader definition of materiality and seeks to serve a set of interested parties beyond investors.[35]

Second, the standards are specific to 77 industries. The importance of this approach has been widely affirmed. For example, the SEC's IAC recommendation stated that "any [human capital disclosure] requirements should be crafted so as to reflect the varied circumstances of different businesses, and to eschew simple 'one-size-fits-all' approaches that obscure more than they add."[36] Similarly, in discussing human capital disclosures at the March 2019 Investor Advisory Committee meeting, Chairman Clayton stated: "Each industry, and even each company within a specific industry, has its own human capital circumstances. For example, I would expect that the material human capital information for a manufacturing company will be different from that of a biotech startup, and different from that of a large healthcare provider. Further, the human capital considerations for a car manufacturer will be different from that of a home manufacturer." [37] SASB's industry-specific standards correspond precisely to this aspect of human capital disclosures.

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[34] Pub. L. 104-113, Mar. 7, 1996, 110 Stat. 775 sec. 12(d)(1) (1996).

[35] GRI developed the first corporate sustainability reporting framework and its standards are used by the majority of companies reporting sustainability information. GRI's approach and that of SASB are complementary. As explained in an article authored by the heads of both organizations, "The GRI standards are designed to provide information to a wide variety of stakeholders and consequently, include a very broad array of topics. SASB's are designed to provide information to investors and consequently, focus on the subset of sustainability issues that are financially material." Tim Mohin and Jean Rogers, Greenbiz, *How to approach corporate sustainability reporting in 2017* (March 16, 2017).

[36] SEC Investor Advisory Committee, *Recommendation from the Investor-as-Owner Subcommittee on Human Capital Management Disclosure* at 3.

[37] Jay Clayton, *Remarks for Telephone Call With SEC Investor Advisory Committee Members* (Feb. 6, 2019).

4. SASB Interaction with the SEC: We also want to note SASB's interest in working with the Commission and its staff in refining the human capital standards (or any other sustainability-related standards) going forward, particularly in view of SASB's human capital research project described above. SASB representatives have, for many years, periodically briefed the SEC on SASB's activities and will continue to do so.

Relevant on this point is the statement of the SEC when it reaffirmed the FASB's status as a "designated private-sector standard setter" in 2003 (following passage of the Sarbanes-Oxley Act). The Commission stated: "Because the Commission and FASB share the common goal of providing investors with the disclosure of meaningful financial information, we anticipate continuation of our collegial working relationship with the FASB. To that end, we expect that, when requested to do so, the FASB will make information and staff reasonably available to facilitate our, or our staff's understanding and implementation of a FASB standard." [38]

The same "common goal" and "collegial working relationship," and same openness to providing information to the SEC staff, applies here. We understand from former COSO board members that during the process of developing the revised COSO framework issued in 2013 there was frequent interaction between SEC staff members and the COSO board, with the SEC making comments and suggestions throughout the process. SASB would welcome such input going forward, both from the SEC and from regulators outside of the United States. Such interaction would be particularly timely in view of SASB's recently-initiated human capital research and standards-setting project described above.

IV. CONCLUSION

Human capital management is vitally important to companies' operating and financial performance, and fulsome disclosure of human capital issues benefits the capital markets and society at large. We therefore support the SEC's rulemaking initiative. Furthermore, under a principles-based rule as proposed by the Commission, disclosures are likely to lack comparability, consistency and reliability unless the SEC strongly encourages or requires that companies disclose topics and metrics using a recognized disclosure framework that has been developed through due process. Accordingly, we respectfully suggest that SASB, with its materiality-based, industry-specific, investor-focused set of standards, be referenced in the SEC's Adopting Release in much the same way that reference has been made to other private-sector initiatives in prior SEC rulemakings.

Respectfully submitted,

Thomas L. Riesenberg

Thomas L Riesenberg
Director of Legal and Regulatory Policy

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[38] Securities and Exchange Commission, *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,* SEC Rel. No. 33-8221;34-47743; IC-26028; FR-70 (April 25, 2003).

APPENDIX I - LIST OF SASB FOUNDATION AND STANDARDS BOARD MEMBERS

SASB Foundation Board Members:

- Madelyn Antoncic, Chief Executive Officer, The SASB Foundation (ex officio board member); Former Treasurer, The World Bank
- Alan Beller, Senior Counsel, Cleary Gottlieb Steen & Hamilton; Former Director, SEC Division of Corporation Finance; Member, IFRS Foundation Board of Trustees
- Rudi Bless, Chief Accounting Officer, Bank of America Merrill Lynch
- Else Bos, Executive Director and Chair of Prudential Supervision, De Nederlandsche Bank
- Audrey Choi, Chief Sustainability Officer, Chief Marketing Officer, and Chief Executive Officer, Institute for Sustainable Investing, Morgan Stanley
- Deborah L. DeHaas, Vice Chair and National Managing Partner of the Center for Board Effectiveness, Deloitte
- Ken Goldman, President, Hillspire; Former Chief Financial Officer, Yahoo!
- Steven O. Gunders, Retired Partner, Deloitte & Touche
- Robert H. Herz, Former Chair, Financial Accounting Standards Board; Board Member, Morgan Stanley, Fannie Mae, Workiva Inc., and Paxos
- Paula Loop, Assurance Partner and Leader of Governance Insights Center, PricewaterhouseCoopers
- Jim McIntire, Former Washington State Treasurer; Former President, The National Association of State Treasurers; Senior Advisor, Star Mountain Capital
- Clara Miller, President Emerita, The F.B. Heron Foundation
- Mary Schapiro, Vice Chair, Global Public Policy of Bloomberg LLP; Former Chair, SEC (Foundation Board Vice Chair)
- Robert K. Steel, Partner & Chief Executive Officer, Perella Weinberg Partners; Former Under Secretary of Treasury for Domestic Finance (Foundation Board Chair)
- Laura Tyson, Director, Institute for Business and Social Impact – Berkeley Haas School of Business; Former Chair, President’s Council of Economic Advisers
- Elisse Walter, Former Chair, SEC; Board Member, Occidental Petroleum Corporation
- Matthew Welch, President, The SASB Foundation (ex officio Foundation Board member)
- Jay Willoughby, Chief Investment Officer, The Investment Fund for Foundations
- Chuck Zegar, Philanthropist, Co-Founder of Bloomberg LP

SASB Standards Board Members:

- Jeffrey Hales, Charles T. Zlatkovich Centennial Professor of Accounting, University of Texas at Austin; Member, FASB’s Financial Accounting Standards Advisory Council (FASAC) (Standards Board Chair)
- Verity Chegar, Director, BlackRock Sustainable Investing (Standards Board Co-Vice Chair)
- Daniel L. Goelzer, Retired Partner, Baker & McKenzie LLP; Founding Member and Acting Chair, Public Company Accounting Oversight Board; Former General Counsel, SEC
- Robert B. Hirth, Jr., Senior Managing Director, Protiviti; Chairman Emeritus, Committee of Sponsoring Organizations of the Treadway Commission (COSO) (Standards Board Co-Vice Chair)

- Kurt Kuehn, Former Vice President/Chief Financial Officer, United Parcel Service
- Lloyd Kurtz, Senior Portfolio Manager, Head of Social Impact Investing, Wells Fargo Private Bank
- Elizabeth Seeger, Director, Sustainable Investing, KKR & Co.
- Marc Siegel, Partner, EY; Former Board Member, FASB
- Stephanie Tang, Director of Legal, Corporate Securities, Stitch Fix

APPENDIX II – MEMBERS OF SASB'S INVESTOR ADVISORY GROUP

The SASB Investor Advisory Group (IAG) comprises leading asset owners and asset managers who recognize the need for consistent, comparable and reliable disclosure of material and decision-useful ESG information. IAG Members:

- Encourage companies to disclose material and decision-useful ESG information to investors
- Believe standards would improve the quality and comparability of sustainability-related information
- Believe SASB's approach—which is industry-specific and materiality-focused—will help provide investors with relevant and decision-useful information
- Agree to participate in SASB's ongoing standards development process, so that outcomes best reflect investor needs
- Agree to encourage companies to participate in SASB's ongoing standards development process, so that outcomes reflect both issuer and investor viewpoints
- Believe that SASB standards can inform integration of sustainability factors into investment and/or stewardship processes, such as corporate engagement and proxy voting

Organizations:

APG
ATP
AXA Investment Managers
Bank of America Merrill Lynch
BCI
BlackRock
Boston Trust Walden
Breckinridge Capital Advisors
Brunel Pension Partnership
CalPERS
CalSTRS
Calvert Research & Management
Capital Group
Caisse de dépôt et placement du Québec (CDPQ)
CPPIB
Domini Impact Investments
Fidelity Investments
Franklin Templeton Investments
Goldman Sachs Asset Management
Harvard Management Company
Hermes Investment Management
LACERA
Legal & General Investment Management America

Manulife Investment Management
Morgan Stanley Investment Management
Neuberger Berman
New York City Retirement Systems
Nissay Asset Management
Nordea Asset Management
Norges Bank Investment Management
Northern Trust Asset Management
Ontario Teachers' Pension Plan
Oregon State Treasury, Investment Division
PGGM
PIMCO
Putnam Investments
QMA (a PGIM company)
RBC
Schroders
State Street Global Advisors
Sustainable Insight Capital Management
UAW Retiree Medical Benefits Trust
UBS Asset Management
Vanguard
Wells Fargo Asset Management
Wespath Investment Management

APPENDIX III - LIST OF STOCK EXCHANGES THAT RECOGNIZE SASB AS A TOOL FOR DISCLOSURE

There are a growing number of stock exchanges setting out recommendations for good practice in Environmental, Social and Governance reporting (ESG). The guides respond to demand from investors for a more consistent approach to ESG reporting. Of all the stock exchanges worldwide, 44 exchanges have publicly released ESG disclosure guidance for their publicly listed companies. SASB is referenced as a resource for reporting in 22 of these guidance documents, including nine with a market cap over $1 trillion (highlighted with asterisk).

Name	Region
Abu Dhabi Exchange	UAE
Australian Securities Exchange*	Sydney
Bolsa Mexicana de Valores	Mexico
Bolsa Nacional de Valores	Costa Rica
Bombay Stock Exchange*	Mumbai
Borsa Italiana	Italy
Botswana Stock Exchange	Botswana
Boursa Kuwait	Kuwait
Bourse de Luxembourg	Luxembourg
Bursa Malaysia	Malaysia
Colombo Stock Exchange	Sri Lanka
Deutsche Börse*	Frankfurt
Egyptian Exchange	Egypt
London Stock Exchange Group*	London; Milan
Nasdaq Nordic Exchanges*	Armenia, Copenhagen, Tallinn, Helsinki, Iceland, Riga, Vilnius, Stockholm
NASDAQ*	New York City
New York Stock Exchange*	New York City
Oslo Børs	Norway
Philippines Stock Exchange	Manila
Qatar Stock Exchange	Qatar
SIX Swiss Exchange*	Zurich
TMX Group*	Toronto