October 30, 2019

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

FILE NUMBER S7-11-19: MODERNIZATION OF REGULATION S-K ITEMS 101, 103 AND 105

Dear Ms. Countryman,

The Principles for Responsible Investment (PRI) welcomes the opportunity to submit comments on File Number S7-11-19: Modernization of Regulation S-K Items 101, 103, and 105 ("Proposed Rule").

The PRI is the world's leading initiative on responsible investment. It works to understand the investment implications of environmental, social and governance (ESG) factors and to support its international network of investor signatories in incorporating these factors into their investment and ownership decisions. Launched in New York in 2006, the PRI has grown to over 2,500 signatories, managing over $86 trillion AUM and is still growing.[1] The U.S. is the PRI's largest market, with 500 signatories investing over $42 trillion AUM.[2]

Signatories to the PRI commit to six principles to advance their own responsible investing activities that include the incorporation of ESG analysis into their investment decisions. Signatories to the PRI consistently complain that lack of access to consistent, comparable data on ESG factors is a barrier to their efforts to integrate ESG factors into their investment decisions effectively. The comments on the Proposed Rule that follow are guided by the PRI's efforts to advance policies that will improve signatories' access to such data.

We agree with the SEC's assessment that Regulation S-K should be updated to improve disclosures for investors. The PRI is concerned, however, that many of the proposed changes are not beneficial to investors, particularly on the issue of materiality, the shift in multiple disclosure items to a principles-based approach, and the failure to address investors' demand for enhanced climate risk disclosure. We are pleased that the proposal suggests enhanced disclosure of human capital management matters and, at the same time, are concerned that by focusing on a principles-based approach the disclosures will not provide investors with consistent, comparable data that will be decision-useful. The Commission should continue to use a combination of principles-based and rules-based disclosures.

[1] As of 01 October 2019
[2] As of 01 October 2019

Materiality

The Commission should not rely only on the principle of materiality, as without additional specific disclosure requirements, the principle is not operative in practice. Pulling disclosure requirements back to the highest order principle of materiality and rejecting or minimizing the use of specific required disclosures, is an invitation to companies to tell their stories in a manner that makes comparison difficult. This approach conflicts with the foundational purpose of Regulation S-K, which the Commission's release acknowledges is "to foster uniform and integrated disclosure."[3]

Moreover, experience has shown that corporate managers do not always judge materiality in terms that investors consider appropriate, especially when it comes to emerging issues that bear on the viability of a company's business model or otherwise have a latent but material impact on a company's financial position. For investors that are managing retirement savings with 10-, 20- or 30-year investment time horizons, materiality needs to be considered over the long-term. Investors depend on the Commission, with its bird's eye view of the capital markets, to monitor such developments and keep its overall disclosure regime up to date. Limiting disclosure to corporate managers' narrower aperture on systemic issues puts both investors and companies at risk.

Disclosure Requirements

In order for investors to effectively and efficiently integrate material data into investment decisions, they must have consistent access to quantitative data, supplemented by qualitative disclosures that explain the companies' business practices. This is true for ESG disclosures, as well as more traditional financial disclosures. The Proposed Rule would shift to a more principles-based disclosure regime for several components of Regulation S-K.

The Commission's economic analysis acknowledges that the comparability of reporting may be reduced under principles-based standards, which rely more heavily on the fallibility of managers' professional judgment and experience.[4] The Commission's economic analysis also acknowledges that rules can address these risks and that the potential benefits of rules-based requirements are increased comparability among firms, decreased information asymmetry, improved stock market liquidity and lower costs of capital.[5]

Instead of eliminating rules-based disclosures, as the Commission proposes to do in several elements of the Proposed Rule, it should use its extensive experience reviewing and probing issuer disclosures to develop consistent rules on emerging, material topics, including line-item disclosure on access to and use of human capital resources as well as climate-related risks.

Human Capital Management

The PRI supports the position taken by the SEC in the rule proposal that human capital can be an "important resource and driver of performance."[6] Investors do need a better understanding of "how each company looks at its human capital and, in particular, where management focuses its attention in this space." But investors also need to be able to make reliable comparisons among investment choices.

The Commission's proposal to allow issuers to limit disclosure to their own, bespoke metrics on human capital is an invitation to choose metrics that put the issuer in its best light. It is tantamount to allowing companies to report solely bespoke financial measures. As with financial reporting, investors depend on the Commission to use its deep insight, based on file reviews, issuer engagement,

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[3] Rule Proposal page 5
[4] Rule proposal page 7
[5] Rule proposal page 79
[6] Rule proposal page 48

enforcement and research, to develop appropriate measures that will facilitate fair and accurate comparisons. Prescriptive, quantitative disclosure requirements would provide investors with decision-useful data that can be incorporated into investment analysis and decision-making.

Climate Change Disclosure

The Commission has maintained guidance on required disclosure of material environmental issues since the 1970s.[7] As those issues have evolved, so has the Commission's guidance. It is particularly important to update and strengthen it now, given that the most recent Commission Guidance Regarding Disclosure Related to Climate Change, issued in 2010, has not resulted in the quality or quantity of disclosure intended. In 2014, Ceres researchers conducted a retrospective review of S&P 500 issuers' filings after the 2010 guidance.[8] They found that on the whole issuers did not report "company specific information" or "quantify[] risks or past impacts." Rather, they found that issuers tended to use "boilerplate language of minimal utility to investors" that only "briefly discussed" climate change.

A 2018 scan by the Financial Stability Board's Task Force on Climate-related Financial Disclosures, of an even broader group of companies, found a wide variety of disclosure quality across industries, and in particular minimal disclosure of resiliency strategies and material forward-looking financial impacts.[9] In the same year, the GAO issued a report on its review of the Commission's climate-related disclosure program.[10] It found, among other things, that the Commission's enforcement through comment letters had been limited, as well as that the Commission staff faced constraints in reviewing climate-related disclosures as it primarily relies on information that companies determine is material. The Commission should address these deficiencies before issuing a final rule.

The Commission's apparent decision not to further develop its guidance on climate-related disclosures, notwithstanding investor demand, essentially relegates such disclosures to a voluntary, privately-ordered disclosure system outside the purview of the Commission's reporting regime. This is inefficient, unduly complex and confusing, and undermines investors' ability to effectively integrate climate-related risks into investment processes and decisions. It also particularly affects individual investors who do not have the time, resources or clout to ask issuers for the information needed to understand potential climate-related effects on their portfolios and react with sound investment and voting decisions. There is broad consensus among the scientific community that the effects of climate change have already begun, and those effects already affect investors of all ages with all lengths of investment horizons.

Material climate-related disclosures – such as the scenario analyses recommended by the Financial Stability Board's Task Force on Climate-related Financial Disclosures and robust estimates of both the amount and timing of future GHG emissions – are incredibly important to provide investors a clear and balanced understanding of the long-term implications and viability of an issuer's strategy.[11]

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[7] Release No. 33-5170 (July 19, 1971) [36 FR 13989]

[8] Jim Coburn and Jackie Cook, Ceres, Cool Response: The SEC & Corporate Comate Reporting (2014), https://www.ceres.org/sites/default/files/reports/2017-03/Ceres_SECguidance-append_020414_web.pdf.

[9] Task Force on Climate-related Financial Disclosures, 2018 Status Update (Sept. 2018), https://www.fsb-tcfd.org/wp-content/uploads/2018/08/FINAL-.

[10] GAO-13-188, Climate-related Risks: SEC Has Taken Steps to Clarify Disclosure Requirements (Feb. 2018), https://www.gao.gov/assets/700/690197.pdf.

[11] See Greg Rogers, Climate Change and the First Rule of Italian Driving, CarbonTracker Blog (July 26, 2018) ("[T]he corporate reporting focus on historical emissions fails to address the real issue—

Climate disclosures are every bit as suitable for disclosure as forward-looking economic projections, which the Commission has long encouraged through Regulation S-K.[12] And indeed, they are critical to provide investors a complete understanding and plug material omissions in those economic projections. For example, as the Carbon Tracker Initiative pointed out in its comment letter on the Commission's 2016 concept release, "Very few companies discuss the demand implications of emissions reduction targets with any level of granularity. However, many of the largest fossil fuel companies provide significant forward-looking information, extending out decades, that projects robust demand for their products. Most companies that provide such projections recognize that they are inconsistent with the 2°C Goal but offer no meaningful discussion of the risk to the company should that goal be achieved."[13]

Regulation S-K imposes certain requirements to tether such economic projections to reason. Climate-related effects should be brought into that framework. Continuing to relegate disclosure on climate change to separate reports subjects both issuers and investors to risk from misleading, "business as usual" economic projections that omit the potential effects of climate change, climate policy and business disruption on those projections.

REQUEST FOR COMMENTS ON ITEM 101

Item 101 of Regulation S-K, generally, requires issuers to disclose recent developments in the issuer's business. Due to the PRI's focus on ESG matters, the comments that follow will focus on Item 101(c), which currently requires disclosure of information related to the "sources and availability of raw materials," the impact on the issuer's business of its efforts to comply with environmental laws, and the number of employees.[14]

12. Should we shift to a more principles-based approach for Item 101(c), as proposed? Would registrants find it difficult to apply the principles-based requirements?

> No, the SEC should retain its current approach for Item 101(c). The Rule Proposal states that a core reason for proposing to shift to a principles-based approach is to make clear to issuers that they have discretion to omit the data points currently enumerated under Item 101(c).[15]

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future emissions from the use of fossil fuels—and thus 'neglect[s] the most material portion of fossil fuel companies' climate impact.'"). Rogers recommends –

> Going forward, as oil companies announce science-based ambitions and targets, they will need robust and continuously updated estimates of both the amount and timing of future GHG emissions. Firm managers will need this information to ensure that capital allocation and budgeting decisions align with the organization's climate objectives. Investors will need it to reach informed judgments about the reasonableness of announced climate strategies and to gauge company performance against them. Like the first rule of Italian driving, what's behind me is not important.

[12] 17 CFR § 229.10(b). To encourage rigor in making projections in the face of uncertainty about the future, the Commission has also encouraged issuers to consider obtaining "[a]n outside review of management's projections [to] furnish additional support for having a reasonable basis for a projection." Assurance over climate-related disclosures is an important source of reliability for investors; it often accompanies ad hoc reports and is considered in ratings. But today the quality of such assurance statements varies as much as the quality of the disclosures and should also be improved.

[13] Carbon Tracker Initiative, Comment on SEC Release No. 33-10064, Business and Financial Disclosure Required by Regulation S-K, (2016), https://www.sec.gov/comments/s7-06-16/s70616-185.pdf page 5.

[14] Rule proposal page 23

[15] Rule Proposal page 25

The PRI is very concerned that a shift to a principles-based approach would lead to the omission or sporadic reporting of information related to access to natural resources, environmental compliance and the number of employees. The ability to review this information and analyze changes at a company over time and among various companies within an industry are critical for an investor to integrate this data effectively into its investment considerations.

13. Would the proposed principles-based requirements elicit information that is material to an investment decision? If not, how might Item 101(c) be further improved? Are there any additional disclosure topics that we should include in Item 101(c) to facilitate disclosure? Alternatively, should we exclude any of our proposed disclosure topics?

No. Principles-based requirements would not elicit all of the information that is material to investors. Decision-useful disclosures require a combination of line-item, quantitative disclosures provided pursuant to prescriptive requirements supplemented by principles-based disclosures. The Commission can improve Item 101(c) by retaining the existing disclosure requirements and adding disclosure on ESG topics like climate risk, human rights, gender pay disparities, political spending, and international tax strategies.

14. Should we instead require disclosure of any or all of the topics addressed in our proposed examples? If so, which topics? Should we require other types of business information? If so, what information?

See answer to question #13.

20. Should we include as a listed disclosure topic the material effects of compliance with material government regulations, as proposed, or should we focus more narrowly on compliance with environmental regulations, as currently required under Item 101(c)? Would the proposed more principles-based approach to governmental regulatory compliance disclosure elicit the appropriate level of disclosure about environmental and foreign regulatory risks? If not, are there more specific disclosures that we should require? Should we continue to include material estimated capital expenditures for environmental control facilities as a disclosure topic under Item 101(c)?

Many issuers currently provide disclosure of material government regulations that apply to the business. This information is useful to investors in evaluating the business and should not be eliminated. As such, the SEC should require disclosure of impact of material government regulations on the business and specify that this must include disclosure about environmental risks.

To ensure that this disclosure provides investors with consistent, comparable data about regulatory compliance matters, the Commission should adopt a prescriptive approach to the disclosure requirement. The proposed principles-based approach would allow registrants to use their judgement to determine what information is material which is likely to result in the omission of information that investors find material.

The SEC should continue to include material estimated capital expenditures for environmental control facilities as a disclosure topic under Item 101(c).

21. Should disclosure regarding human capital resources, including any material human capital measures or objectives that management focuses on in managing the business, be included under Item 101(c) as a listed disclosure topic, as proposed? Should we define human capital? If so, how?

Yes, disclosure of human capital resources should be included in item 101(c). The PRI supports the position of the Human Capital Management Coalition that human capital should be defined as "[p]eople's competencies, capabilities and experience, and their motivations to innovate".[16]

There is significant investor demand for human capital data, and research has shown a positive correlation between investment in human capital and increased financial performance.[17] Investments in the workforce benefit the employees, the business, investors and our economy as a whole.

22. With respect to human capital resource disclosure, should we provide non-exclusive examples of the types of measures or objectives that management may focus 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, as proposed? Would providing specific examples potentially result in disclosure that is immaterial and not tailored to a registrant's specific business? Would not including such examples result in a failure to elicit information that is material and in some cases comparable across different issuers?

The SEC should require line-item disclosures of human capital resources and investment in development of human capital so that registrants provide material, quantitative data and investors can compare information between issuers and at companies over time. Line-item disclosure requirements should include a list of mandatory human capital metrics that issuers must provide. The Commission should consider supplementing those disclosures with a principles-based requirement that the issuer discusses how it employs human capital strategies to support its business objectives. This may list supplemental, non-exclusive examples of the types of measures or objectives that management may focus on in managing the business, as proposed.

23. With respect to human capital resource disclosure, should we include other non-exclusive examples of measures or objectives that may be material, such as the number and types of employees, including the number of full-time, part-time, seasonal and temporary workers, to the extent disclosure of such information would be material to an understanding of the registrant's business? Could other examples include, depending on the nature of the registrant's business and workforce: measures with respect to the stability of the workforce, such as voluntary and involuntary turnover rates; measures regarding average hours of training per employee per year; information regarding human capital trends, such as competitive conditions and internal rates of hiring and promotion; measures regarding worker productivity; and the progress that management has made with respect to any objectives it has set regarding its human capital resources? Would providing specific examples potentially result in disclosure that is immaterial and not tailored to a registrant's

[16] The Human Capital Management Coalition, Rulemaking petition to require issuers to disclose information about their human capital management policies, practices and performance, (2017), p16. https://www.sec.gov/rules/petitions/2017/petn4-711.pdf
[17] PRI, An Investor Guide to Engaging Retailers on Employee Relations, (2015). https://www.unglobalcompact.org/library/4071

specific business? Would not including such examples result in a failure to elicit information that is material and in some cases comparable across different issuers?

> Yes, the SEC should include these factors (non-exclusive examples of measures or objectives that may be material, such as the number and types of employees, including the number of full-time, part-time, seasonal and temporary workers) as line-item disclosures. This would increase transparency and comparability between companies and at individual companies over time. In addition, the Commission should require line-item disclosures of turnover, training, trends, productivity and objectives. Principles-based disclosures could be useful where information is more qualitative (i.e. to explain progress that management has made). Not including line-item disclosures would result in a failure to elicit information that is material and comparable across different issuers.

24. Should we retain an explicit requirement for registrants to disclose the number of their employees? Alternatively, should we permit registrants to disclose a range of the number of its employees and/or a range for certain types of employees?

> Yes, the SEC should retain an explicit requirement for registrants to disclose the number of their employees.

REQUEST FOR COMMENTS ON ITEM 103

Item 103 requires issuers to disclose pending legal proceedings, including any issues in which the government is a party. This includes legal issues related to environmental regulations, with a proposed increase in the required disclosure threshold from $100,000 to $300,000.

32. Should we adjust the $100,000 threshold for environmental proceedings in which the government is a party in Item 103 for inflation, as proposed? Should this threshold be adjusted for inflation periodically, such as every three years or some other interval? Does CPI inflation provide an appropriate adjustment factor for environmental proceedings? If not, what adjustment factor should we use?

> No, the threshold should not be raised and should not be adjusted for inflation. Information about issuers' responsiveness to climate-related risks is more important today than ever before, as the threat of climate change is already having significant impacts in the United States and globally, and the impacts of climate change on asset prices and our economy, more generally, will only grow as climate change progresses. Disclosures about environmental proceedings help investors to understand how issuers are behaving with regard to their responsibilities to respond to climate-related risks. As a result, the current $100,000 threshold for disclosure of environmental proceedings is appropriate and should be retained to allow investors access to material information.

33. Should we instead adopt an alternative threshold for environmental proceedings disclosure? If so, what threshold should we use, and what data or sources should provide the basis for the alternative threshold? Should we raise the dollar threshold above the proposed $300,000 threshold, e.g., to $500,000, $750,000, or $1,000,000, and if so, what would be the basis for that increase? Are there alternative approaches (e.g., a materiality threshold) that would work better than a bright-line dollar threshold? If so, describe the approach and explain why it would be preferable to our proposal.

As discussed in response to question 32, above, the threshold should not be increased. The Commission should retain the current approach to this disclosure and should not allow companies to apply a materiality threshold to determine whether to disclose information about environmental proceeding. Management is likely to have a different assessment than investors of what information is material and, by allowing management to exercise judgment in this area, the Commission risks allowing registrants to exclude information that investors find decision-useful.

REQUEST FOR COMMENTS ON ITEM 105

Item 105 requires issuers to disclose the risk factors that may impact the performance of the issuers' stock. The Rule Proposal proposes revising risk factor disclosure to include a summary of the risk factors if the full disclosure is longer than 15 pages; change the disclosure standard from 'most significant' to 'material' factors; and directs issuers to separate specific and general risk factors under different headings.

The Commission's assessment is correct that risk factor disclosures are often "lengthy and generic."[18] They often fail to provide investors with information that provides insight into how the company is managing the relevant risks or how those risks may impact the business. Unfortunately, the Proposed Rule rejects approaches discussed in the Concept Release that would have resulted in significant improvements to risk factor disclosures, including requirements that issuers disclose how they are managing relevant risks and the probability that those risks will occur. To the contrary, the Proposed Rule would impose superficial changes to the risk disclosures that will not have a meaningful impact on the usefulness of the information.

35. Would our proposed approach to Item 105 result in improved risk factor disclosure for investors?

No, the principles-based approach proposed by the Commission is likely to result in less information about risk factors but is not likely to result in the provision of consistent, comparable data that provides investors with genuine insight into how the risk factors in question impact the business and how the company is acting to mitigate those risks. There is no reason to believe that allowing issuers more discretion to determine which risks are discussed will encourage issuers to disclose more company-specific information. Instead, the approach in the Proposed Rule is like to simply lead to boiler-plate disclosure of fewer risks than included in current disclosures under Regulation S-K.

36. Would our proposal to require summary risk factor disclosure if the risk factor discussion exceeds 15 pages result in improved risk factor disclosure for investors?

No. Issuers would simply produce abbreviated versions of the more extensive risk disclosures. Investors want access to comprehensive disclosure about risk factors, but they want that information to be tailored and specific to each particular issuer, and to provide insight into each company's business model, operations, and strategic plan. Encouraging issuers to remove boilerplate without replacing it with effective disclosure is not helpful. Reorganizing information that is not useful to the investor only changes how it is presented, without any added value for the investor. The Commission must mandate that issuers disclose risk factors that are company-specific, with a discussion of how the issuer is responding to those risks.

[18] Proposed Rule page 65

37. Is 15 pages an appropriate number of pages to trigger summary risk factor disclosure? If not, what is the appropriate page limit that should trigger summary risk factor disclosure? Is there a better alternative than a page limit to trigger summary risk factor disclosure (e.g., should we consider a word limit instead)?

See answer to question #36.

41. Would changing the standard from the requirement to discuss the "most significant" factors to the "material" factors, as proposed, result in more tailored disclosure and reduce the length of the risk factor disclosure? Would changing the standard, as proposed, result in other consequences that we have not considered? If so, provide specific examples of such consequences.

See answer to question #36.

42. Would our proposal that registrants organize their risk factors under relevant headings improve disclosures for investors?

No, if the information issuers provide to investors is principles-based and boiler-plate, reorganizing their information under relevant headings will not increase the usability of information. As mentioned in response to question #35, current risk factor disclosures are not useful to investors, and only a change in the information required will assist in improving disclosures for investors.

45. Should we require registrants to explain how generic, boilerplate risk factors are material to their investors, and what, if anything, management does to address these risks?

Yes, this would help move companies towards disclosure of useful information for investors.

47. How might we further improve risk factor disclosure?

The Commission should require issuers to use line-item disclosure, with supplementary principles-based disclosure where information for the investor may be useful in that format; have specific disclosures that are relevant in addressing risk-factors for that company; require disclosure of environmental, social, and governance factors, which are financially material to investors. Examples beyond human capital management and environmental proceedings include human rights, tax, political spending, climate change, general ESG disclosure and others that may be specific to a company's business.

The PRI is concerned that the proposed changes on materiality, the shift to a principles-based approach for several elements of Regulation S-K, and lack of enhanced climate risk disclosure harms investors. Investors need consistent, comparable data to make well-informed investment decisions. The Commission should develop consistent rules on material topics and update specific disclosure requirements to facilitate rigor and comparison of ESG factors. Thank you for the opportunity to comment on the File Number S7-11-19: Modernization of Regulation S-K Items 101, 103 and 105 ("Proposed Rule").

For further conversation and follow up, please contact our Washington, DC based team:

- Heather Slavkin Corzo, Head of U.S. Policy: [redacted]
- Colleen Orr, U.S. Policy Analyst: [redacted]

Yours sincerely,

Fiona Reynolds
Chief Executive Officer
Principles for Responsible Investment

cc. The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison H. Lee