

Public Statement

Remarks for Telephone Call with SEC Investor Advisory Committee Members



Chairman Jay Clayton

Feb. 6, 2019

Thank you, Anne [Sheehan] and the Committee for the invitation to join your call today. I appreciate your scheduling flexibility and look forward to our next in person meeting.

I will start with a few words about disclosure requirements as well as today's topics – human capital and proxy plumbing – to give you a sense of how I think about these matters.^[1] Afterwards, I would be happy to help facilitate a discussion of those topics, and take questions, if that makes sense to the group.

Framework for Analyzing Disclosure Rules. As you know from my previous remarks to the Committee, I believe the Commission's disclosure requirements must be rooted in the principles of: (1) materiality – as so well defined by Justice Marshall^[2]; (2) comparability – as demonstrated by our commitment to U.S. GAAP; (3) flexibility – as requirements that are too rigid can lead to superfluous and, in some cases, misleading disclosure; (4) efficiency – as the question generally is not rule or no rule, but rather what rule is most effective with the least cost; and (5) responsibility (or liability) – as rules have little long-term value if they cannot be effectively monitored and enforced. I also believe that our disclosure requirements and guidance must evolve over time to reflect changes in markets and industry while being true to the principles I articulated.

Current human capital disclosure requirements – I am thinking of Items 101 and 102 of Regulation S-K – date back to a time when companies relied significantly on plant, property and equipment to drive value. Today, human capital and intellectual property often represent

an essential resource and driver of performance for many companies. This is a shift from human capital being viewed, at least from an income statement perspective, as a cost.

I believe our disclosure rules and guidance, and our issuers, should focus on the material information that a reasonable investor needs to make informed investment and voting decisions. Applying this unassailable tenet to human capital is not a simple task. 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. Because of those differences and the principles of materiality, comparability, and efficiency, I am wary of jumping in with rules or guidance that would mandate rigid standards or metrics for all public companies.

Instead, I think investors would be better served by understanding the lens through which each company looks at their human capital. Does management focus on the rate of turnover, the percentage of their workforce with advanced degrees or relevant experience, the ease or difficulty of filling open positions, or some other factors? I have heard this and similar questions on earnings conference calls and in other investor settings. I am interested in hearing from those on the Committee who manage investment capital – what is it that you are looking for as an investor and what questions do you ask the issuers when it comes to human capital?

Here, a note on comparability. In some cases it is possible to identify metrics that provide for reasonable market-wide comparability (for example, U.S. GAAP). In other cases, this is not possible at a market-wide level, and comparability is reasonably possible at an industry level or only at a company level (this is demonstrated by the development of non-GAAP financial measures). For example, for human capital, I believe it is important that the metrics allow for period to period comparability for the company.

Proxy Plumbing. Turning to the proxy solicitation and voting process (or proxy plumbing), I think there is broad agreement that the current system needs a major overhaul. As I mentioned previously, I am interested in suggestions for what such an overhaul would entail. I am also interested in ideas for what the Commission can do in the interim (short of a total overhaul) to improve the current system, and I hope market participants will continue to submit those ideas to the comment file from the November proxy roundtable.

I am delighted to report that I have asked Commissioner Roisman to take the lead on efforts to consider improvements to the proxy process generally, including proxy plumbing, and I am even more delighted that Commissioner Roisman has agreed to take up this task. I am pleased that Commissioner Roisman is able to join me today on this call.

Thank you.

[1] I note that my thoughts do not necessarily reflect the views of my fellow Commissioners or the SEC staff.

[2] *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).