



October 22, 2019

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File No. S7-11-19
Modernization of Regulation S-K Items 101, 103, and 105**

Submitted via rule-comments@sec.gov

Dear Ms. Countryman:

This letter is being submitted by Financial Executives International's (FEI) Committee on Corporate Reporting (CCR) in response to the Securities and Exchange Commission's (SEC or "the Commission") *Modernization of Regulation S-K Items 101, 103, and 105* ("the amendments" or "the Proposal" or "the Proposed Rule").

FEI is a leading international organization of more than 10,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives, and other senior-level financial executives. The Committee on Corporate Reporting (CCR) is a technical committee of FEI comprised of 45 Chief Accounting Officers and Corporate Controllers from Fortune 100 and other large public companies, representing approximately \$9.6 trillion in market capitalization. CCR reviews and responds to pronouncements, proposed rules and regulations, pending legislation, and other documents issued by domestic and international regulators and organizations such as the SEC, FASB, and PCAOB.

This letter represents the views of CCR and not necessarily the views of FEI or its members individually.

Executive Summary

As preparers of financial information, we commend and support the Commission for its efforts to modernize its rules and regulations. We recognize the importance of providing relevant, decision-useful information to investors to enable informed investment, credit, and voting decisions. We also agree with the Commission that the many changes in our capital markets and the domestic and global economy since the adoption of Regulation S-K necessitate the amendments. We believe that many of the amendments in this modernization effort will improve readability, discourage repetition, and highlight pertinent information while decreasing the burden on preparers. Below we have included for your consideration, certain recommendations related to the human capital, general development of business, government regulations, environmental proceedings, and risk factors disclosures. In addition, although not included in the Proposal, we have a recommendation regarding the materiality threshold for disclosures of

transactions with related persons. We also have a general concern regarding competitive or sensitive information that may be required as a result of the amendments.

Competitive or Sensitive Information

We observe that many of the amendments in the Proposed Rule could require companies to disclose competitive or sensitive forward-looking information. We do not believe the Commission's intent is to require this type of information. Therefore, we recommend an overarching safe harbor provision be added to all required forward-looking disclosures in the Proposed Rule.

A. Proposed Amendments to General Development of Business – Item 101(a)

We appreciate the Commission's efforts to make item 101(a) more principles-based. We support the focus on disclosing material developments of a registrant's business rather than requiring a broad description of general business developments. We agree with the Commission that the changes will allow registrants to highlight and explain their unique circumstances, which in turn will result in improved disclosures for users, but we have concerns with certain amendments as outlined below.

Eliminate Prescribed Timeframe

We understand that the intent of eliminating the five-year Item 101(a) timeframe (reduced to one year for 10-K filings) is for registrants to determine the appropriate time period necessary to discuss the material developments of the business. While we agree with this intent, we are concerned with the practical application of this amendment. Many businesses have had material developments that span further than five years. Without the guideposts of the five-year timeframe, some companies may consider it necessary to include information from decades past, which could significantly increase the volume of this disclosure. This would provide very little additional value to users, but it could require substantial effort to prepare and may have an unintended consequence of distracting users from the most important developments. We do not believe it is the Commission's intent to lengthen this disclosure; therefore, we recommend the Commission retain the five-year time frame while emphasizing that only material developments are required to be disclosed. This is consistent with the other principles-based amendments made elsewhere in the proposal.

Require Only Updated Disclosure in Subsequent Filings

We appreciate the intent of this amendment is to focus the current filing only on material business developments since the most recently filed disclosure, and by hyperlink to the previous disclosure, present a full discussion of the general developments of the business. While we agree that cross-referencing and hyperlinking within and across filings can be beneficial in many instances, we do not

believe that this is an operable solution for this particular disclosure. Hyperlinking portions of this disclosure could extend the disclosure across multiple filings and would require users to look in various locations to obtain a complete picture of a business. We believe that the current disclosure provides readers with background that is important to a comprehensive understanding of the business and of the information contained elsewhere in the filing. Therefore, unless user feedback suggests that hyperlinking is preferred, we suggest that the Commission remove this option.

Include Material Changes to Business Strategy as Potential Disclosure Topic

We support the principles-based amendment to Item 101(a)(1) that provides a non-exclusive list of the types of information that a registrant may need to disclose, emphasizing that this information should only be disclosed when material. We believe that this amended disclosure will provide users with appropriate decision-useful information while allowing preparers to omit immaterial information that was previously disclosed based on compliance rather than relevance.

With respect to the discussion of business strategy, we agree that only material changes to a previously disclosed strategy should be required. We also agree that it should not be mandatory to disclose strategy, as it could include proprietary information or be competitively harmful. Additionally, as mentioned above, a safe harbor provision should be added to this disclosure, and companies should not be required to disclose competitive or other sensitive information in updates to previously disclosed strategy.

B. Proposed Amendments to Narrative Description of Business – Item 101(c)

We support the Commission's efforts to make Item 101(c) more principles-based and eliminate the appearance that the requirements are a disclosure checklist. Under the current requirements, many companies include disclosures from the list in Item 101(c) regardless of whether the information is material or decision-useful. We believe this amendment will allow companies to appropriately tailor disclosures to their particular facts and circumstances and, as a result, include information that will be most beneficial to users. We support the amendments to the items registrants should consider disclosing other than those discussed below. We also support the exclusion of working capital practices and dollar amount of backlog. When material, this information should already be addressed in the Management Discussion and Analysis (MD&A) section.

Compliance with Material Government Regulations, Including Environmental Regulations

This proposed amendment would require companies to disclose the material effects of compliance with both domestic and foreign government regulations, in addition to environmental regulations as currently required. As noted in the Proposed Rule, it is common for companies to disclose this information, particularly those that are in regulated industries. We believe that the intent of this amendment is already being accomplished in practice, as companies are disclosing the material effects of regulations when

relevant. Additionally, existing guidance already requires disclosure of these impacts when material in the MD&A or within a company's Risk Factors. The addition of this requirement in the Business discussion could lead to extensive boilerplate language, as some companies may consider it necessary to include or increase disclosures regardless of relevance or materiality. Therefore, we do not support this proposed amendment.

Human Capital Disclosure

We acknowledge that human capital is a key resource for many companies and appreciate that certain investors and other stakeholders have an interest in human capital information. However, there are significant operational challenges to disclosing human capital information in the 10-K. While many companies currently provide some human capital information outside the 10-K, for example in voluntary filings, it would be impractical and costly to provide human capital data within the 60-day 10-K filing timeline with the degree of precision that might be expected in a financial filing. Requiring this information in the 10-K would require execution of disclosure controls and reviews at senior management and board levels under tight timelines established for financial reporting purposes. Many of these control procedures may not be necessary as much of this information is often assessed for general trends and indicators rather than precise datapoints. Furthermore, quickly collecting this data may be difficult because human capital information is often stored in varied systems across many jurisdictions.

We are also concerned about what human capital information companies would be expected to include in the 10-K. We agree with the Commission's view that fixed, specific line item disclosures would not result in the most meaningful disclosures, and we appreciate that the proposed requirement would allow management to include only the information that they believe is material. While the Commission's proposal does not prescribe specific human capital metrics or requirements, we are concerned that the evolving nature of human capital information across companies does not lend itself well to inclusion in the 10-K. The relationship between human capital information and financial performance is indirect, and many companies are still developing their understanding of this relationship and how it might be used for decision making. We believe it will often be difficult to identify how a change in a human capital metric did or will affect a company's financial performance. Additionally, every company is unique and collects, uses, and evaluates human capital information differently. For many companies, this process is continually evolving. Even within voluntary disclosures, there is a wide range of the type of information that companies are disclosing. Some companies include qualitative information about the importance of their workforce while others include detailed metrics. We believe the comparability of human capital disclosures across companies and even within industries may vary widely and could lead to confusion among users. We also believe it will be difficult for companies to provide consistent disclosures about what human capital information is material to their decision making, especially within the 10-K.

We are also concerned that the Proposed Rule as written could require companies to disclose competitive or sensitive information. Companies may have material human capital measures used by management

related to a specific geography, product line, or key talent group that is proprietary. For example, if a company had a material human capital measure related to a geographical center of excellence used to drive significant cost savings, disclosure may cause a competitor to try and replicate and/or compete for talent in the same geography.

We do not believe the proposed disclosures would be decision-useful and will be costly for companies to prepare. Thus, we recommend the Commission remove the proposed requirements for human capital disclosures.

However, if the Commission believes it is necessary to include the human capital disclosure requirement in the Final Rule, we strongly believe that the requirement should be a principles-based disclosure without any fixed, specific line items. In addition, to address our concern about competitively harmful information we recommend that an exception be added to the human capital disclosure so that companies are not required to disclose competitive or sensitive information.

C. Proposed Amendments to Legal Proceedings – Item 103

Expressly Provide for the Use of Hyperlinks of Cross-References to Avoid Repetitive Disclosure

We support the amendment to allow hyperlinking or cross-referencing to other disclosures within the 10-K to satisfy the requirements of Item 103. This is a practice that many companies are already using in order to eliminate the duplicative information required by Item 103 and U.S. GAAP. We agree that this amendment will help users to focus on material information.

Update the Disclosure Threshold for Environmental Proceedings in which the Government is a Party

This proposed amendment would increase the threshold for environmental proceedings in which the government is a party from \$100,000 to \$300,000 to adjust for inflation. While we appreciate that adjusting thresholds for inflation is a logical step, the resulting threshold is still clearly immaterial for most public registrants. Although the intent of this disclosure may not be solely focused on quantitative materiality, we do not believe that a \$300,000 threshold is likely to provide qualitatively decision-useful information to users. Providing this level of information requires significant cost and effort for preparers, including disclosure controls and procedures that must operate at a dollar threshold well below what is required for the rest of the 10-K. Additionally, this requirement is not consistent with the other amendments that focus on the disclosure of material items. We understand the importance of disclosing environmental proceedings, but we do not believe that the current threshold is logical for most companies. Therefore, we recommend that the Commission consider requiring these disclosures based on filing status. Below is a proposal of the thresholds for each filer status.

Filer Status	Suggested Threshold
Large Accelerated Filer	\$5 Million
Accelerated Filer	\$2 Million
Non-Accelerated Filer	\$500,000
Smaller Reporting Company	\$500,000

In addition to the reporting burden of the threshold (\$100,000 current; \$300,000 proposed), the disclosure requires companies to report if such proceedings involve “potential” monetary sanctions. This often results in the reporting of the same event multiple times – when initially raised by a regulatory authority without a specific indication of the sanction amount, again when the regulator proposes a monetary sanction, and often a third time when the item is brought to conclusion and a final sanction is agreed and settled. If the proposed \$300,000 reporting threshold is retained, we ask that you consider a two-phased disclosure requirement – with the first phase of disclosure limited to only unsettled environmental sanction items material to the registrant – followed by a second disclosure phase based on the \$300,000 threshold when the sanction is agreed and settled.

D. Proposed Amendments to Risk Factors – Item 105

We understand and appreciate the effort to improve the disclosure of risk factors to highlight the most significant and meaningful information. We agree that currently, some risk factors that are disclosed by registrants are generic and may not provide much value to investors. However, we do not believe that applying a page limit to the risk factors section with a summary of risk factors if the limit is exceeded is a practical solution. Many companies, particularly those in regulated industries, have risk factors that exceed 15 pages in order to provide adequate disclosures that are important for investors to be aware of and to limit legal exposure. While the use of a summary may be helpful to some users, this would not include the appropriate level of detail necessary to fully understand a company’s risk factors and could open companies up to potential litigation.

Additionally, while we do not disagree with the change, we do not believe the change from “most significant” to “material” risk factors will significantly decrease the number or nature of risk factors disclosed, because companies will include certain general risk factors to mitigate legal exposure. We agree that organizing risk factors into headings and including general risk factors at the end of the section will help users as they search for company-specific risk factors. To decrease the number and length of the risk factor disclosures and to enhance the focus on the more meaningful and unique risks, we suggest that the Commission create a list of generic risk factors on the SEC website to which companies can hyperlink to rather than including them within each filing.



Committee on Corporate Reporting

Other Regulation S-K Disclosures

Regulation S-K Item 404 continues to prescribe a \$120,000 threshold for disclosures of transactions with related persons. Like the requirement to disclose environmental proceedings at a low threshold, this requirement necessitates disclosure controls and procedures beyond what would be required for financial reporting purposes. This adds cost and complexity to the reporting process for seemingly immaterial disclosures. Although not included in the Proposed Rule, we suggest that the Commission revise this threshold, which has not been updated since 2006, using the same tiered approach that we proposed for disclosure of environmental proceedings.

Conclusion

Overall, we support the Commission's proposed amendments to modernize Regulation S-K Items 101, 103, and 105. We appreciate the effort to improve disclosures for both users and preparers. We have provided recommendations that we believe will help the Commission to further improve the usefulness of the information provided while decreasing the effort to prepare the proposed disclosures.

Sincerely,

Prat Bhatt

Prat Bhatt
Chairman, Committee on Corporate Reporting
Financial Executives International