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

October 22, 2019

Subject: Modernization of Regulation S-K Items 101, 103, and 105; Release Nos. 33-10668; 34-86614

Dear Secretary Countryman,

On behalf of the California Public Employees' Retirement System (CalPERS), I write in support of the Securities and Exchange Commission's (SEC or Commission) ongoing efforts to improve disclosures under Regulation S-K. We submit this comment in response to the Commission's "Modernization of Regulation S-K Items 101, 103, and 105" (Proposed Rule).

As the largest public defined benefit pension fund in the United States, we manage more than $380 billion in global assets on behalf of nearly two million public employees, retirees, and beneficiaries. Our duty to pay benefits decades into the future requires that we take a long-term view in assessing whether the companies that we hold in our portfolio are effectively managed. Financial reporting plays an integral role in this assessment by providing transparent and relevant information about the economic performance, conditions and operations of businesses. CalPERS expects fair, accurate, and timely reporting on how companies identify and manage risks related to the three forms of capital: financial, physical, and human.

Regulation S-K establishes the standards for required disclosures beyond the financial statements. We appreciate the Commission reviewing and attempting to modify these disclosures since there have been no changes to these disclosures in over 30 years. As there may be another long period before additional modifications, we view these changes as critical. In the current form, we believe the Proposed Rule contains several areas that do not fully acknowledge the significance of certain disclosures to institutional investors.

With the Proposed Rule, the Commission seeks "to improve these disclosures for investors, and to simplify compliance efforts for registrants." While we appreciate and share the Commission's goals, we fear that the proposed changes fall short of improving disclosures for investors. Additionally, we think registrants will have to convert longstanding communication efforts into principles-based disclosures which will make compliance more difficult in transition. The Commission never analyzed the transition to the Proposed Rule.

In the U.S., we assert registrants will make the minimum required disclosures unless additional information makes the registrant look better to investors and analysts. The moves to principles-based disclosure could lead to more transparency, but could make it easier for registrants to avoid certain disclosures required under the existing rules. Much depends on how registrants institute the changes and how the registrants apply the concept of materiality as transformed in the Proposed Rule.

Materiality

We emphasized the importance of materiality in our letter to the Commission on File No. S7-15-16 – Disclosure Update and Simplification, dated November 2, 2016. In the letter, we opposed modifications to the use of materiality in a manner that reduces disclosures. With a greater emphasis on principles-based disclosures in the Proposed Rule, materiality becomes more important in determining what registrants will disclose. Instead of clarifying materiality, the Commission makes the concept substantially more confusing in a manner that would only benefit those trying to avoid disclosure. The Commission does not use a single definition for the concept. Materiality shifts within the Proposed Rule for Items 101, 103 and 105. Further, in multiple instances, footnotes in the Proposed Rule attempt to eliminate the "double materiality" problems written into the body of the rule. (See e.g., footnotes 55, 81, and 160 of the Proposed Rule). The Commission submits in footnote 160 that it can see no cases where using multiple layers of materiality to determine whether disclosure is required could be problematic. We do not agree. As an example, consider sexual harassment laws where a registrant could argue that those laws are not material to its business but faces violations or allegations that could be material. Here, there would be no requirement to disclose a material compliance concern with an "immaterial" law, regardless of the magnitude of the violations.

With principles-based disclosures, we ask that the Commission remove the risk of double materiality problems. Registrants are aware of the issue and leaving it in place benefits them. While we recognize that some might argue that double materiality is purely a theoretical or academic construct, we distinguish the Proposed Rule change as having practical implications. As proposed, material compliance effects resulting from immaterial laws would not need to be disclosed. This does not align with our interpretation of principles-based disclosures or material information.

We also ask that the Commission clarify and simplify the multiple definitions of materiality. We agree with its importance, but the proposed changes can be simplified. In addition, with the right definition of materiality, disclosures would improve. We recommend that the Commission use the definition for materiality that is used in Regulation S-X. Under Regulation S-X, Rule 1-02(o), material, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.

Human Capital Management

We see human capital as a clear driver of value and appreciate the Commission's recent determination to include human capital management disclosure in its efforts to improve disclosures under Regulation S-K. The fact that there are few standards for measuring and reporting on human capital topics makes it difficult for investors to truly understand related risks and opportunities when assessing individual companies. These concerns led us to become a member of, or work closely with, organizations focusing on human capital, and specifically on human capital disclosure some of which are referenced below.

In 2013, CalPERS was a founder of the 28-member Human Capital Management Coalition (HCMC), a cooperative effort among a group of influential investors to further elevate human capital management as a critical component in company performance. We have worked closely with the HCMC and support the HCMC's July 6, 2017 HCMC SEC Human Capital Petition asking the Commission to pursue rulemaking that would lead to stronger disclosure from issuers about their human capital management policies, practices and performance. We strongly agree with the HCMC's position that rules-based disclosures with numeric metrics provide crucial information to investors.

I personally worked with CEOs, leading consultants and academics from around the world on the Embankment Project on Inclusive Capitalism (EPIC). This effort linked financial value to human capital reporting and found demonstrated value in reporting specific human capital metrics. Though initially starting with a bias towards principles-based disclosure the report concluded after extensive discussion and study that concise, numeric, comparable disclosures were the most conclusive indicators of company performance and, therefore, most useful to investors. Companies must develop metrics to best articulate their long-term value narrative to investors.

By expanding the discussion on human capital, we note that the Commission has recognized the value of human capital. While we would like to see this new focus result in additional transparency, we do not believe that the Commission's current approach will provide sufficient comparable disclosure to aid investors. Thus, we and others will make recommendations for metrics that should be disclosed by all registrants including, the number of full-time, part-time and contingent workers; employee turnover rates; and diversity statistics. These disclosures should not be overly burdensome as many U.S. public companies already collect some of these metrics as part of their human capital efforts and others, such as diversity statistics, are required by the Department of Labor such as the Employer Information Report or EEO-1.

Furthermore, one of our team members sits on the SEC Investor Advisory Committee (IAC). The IAC provided recommendations on Human Capital Management Disclosure dated March 28, 2019. We read and applauded that submission, which stated:

> At the most basic, issuers could be required to comply with a principles-based disclosure requirement asking them to detail their HCM policies and strategies for competitive advantage and comment on their progress in meeting their corporate objectives.

The IAC went on to make several recommendations including that the Commission consider requiring registrants to disclose certain specific human capital metrics that would provide important information to investors.

Currently, the Proposed Rule offers a purely principles-based approach to Item 101(c) and does not add any of the specific metrics that the IAC recommended the Commission to consider. We hope that the Commission will further consider its decision, looking again at recommendations of the IAC, as well as, our input, and the input of our many peers and partners regarding the need in the U.S. for certain line item disclosures for human capital. In addition, there is a need for additional disclosures by industry, in-line with the human capital disclosures produced by SASB.

Principles-Based Disclosures

CalPERS invests in about 11,000 companies around the world. As such, we have had significant exposure to principles-based disclosures. In some of those jurisdictions, disclosures are more robust. We do note that we have not been as fortunate in the United States with principles-based disclosures with the most notable example being the 2010 climate reporting guidance which has been largely ignored because there were no disclosure requirements. There is value in principles-based disclosures where registrants may tell their own stories, but on critical matters, investors want to see comparable numbers.

General Development of Business Item 101(a)

CalPERS did not address any issues with Item 101(a) in its July 21, 2016 letter to the SEC on "Business and Financial Disclosure Required by Regulation S-K." We find no substantial reporting under 101(a) and find no need to add a materiality requirement. Adding a materiality requirement will certainly reduce disclosures when the disclosure is already at a minimal level. Further, the concept of being able to complete disclosure by disclosing in a given period and attaching one hyperlink assumes that there would never be more than one additional period to report a business development. If there is a development in a subsequent period, two hyperlinks would be required. The proposal does not work operationally. Finally, there is a question regarding time periods, under the current proposal, a registrant could choose to report something as critical as a bankruptcy for only two years. Investors would have to look through old disclosures to get a full picture of a registrant. When taken as a whole, the proposal complicates and clouds an area where there are no existing reporting problems.

Legal Proceedings, Item 103

Registrants have not been very good at disclosing issues with only a $100,000 threshold. The EPA and other organizations have found rampant under-reporting in this area. The Commission appears to now reward historical under-reporting by raising the threshold. It is not clear that raising the threshold will be coupled with enhanced enforcement.

Risk Factors

We oppose limiting risk factor disclosures. The Commission wrongly assumes that the number of pages are always dictated by the overuse of boilerplate. On the contrary, some registrants actually use space to explain particular risk factors such that investors understand the registrant and how it is handling risks better. Next, the selected materiality definition does not fit with periodic reporting. As stated previously, we look to disclosures to better understand how companies where we have an ownership interest are being managed. This informs not only our investment but our voting decisions. The Commission has selected a materiality definition on page 70 that focuses on the initial purchase decision from an IPO or company offering. It is not clear why the materiality focus cannot be on what investors would like to know to be able to make informed voting decisions. Finally, we would appreciate added emphasis on the risks associated with climate change.

We have enclosed our responses to specific questions in Attachment A.

We welcome the opportunity to discuss this release in more detail. Please contact Don Pontes, Investment Director, at (916) 795-2110, if you have any questions or wish to discuss in more detail.

Sincerely,

Marcie Frost
Chief Executive Officer

Enclosure

4. **When only updated business disclosure is provided in a filing, should we require the incorporation by reference of, and active hyperlink to, the most recently filed disclosure that, together with the update, would present a full discussion of the general development of a registrant's business, as proposed? Would such an approach, which would enable a reader to review the updated disclosure and one hyperlinked disclosure, facilitate an investor's understanding of the general development of a registrant's business?**

   It appears that the Proposed Rule contemplates there being only one update and does not address subsequent updates. Alternatively, the Proposed Rule might require the use of multiple hyperlinks to provide a full discussion and transparent reporting. In either understanding of the proposed changes, the Proposed Rule becomes substantially more complex while substantially reducing transparency.

5. **Would registrants find it difficult to apply the proposed principles-based requirements? How could we alleviate any expected difficulties?**

   Registrants might use the principles-based requirements to avoid making unfavorable but currently-required disclosures. This becomes more likely with the Commission's modifications to the concept of materiality, which signals to registrants that substantially less would be required to justify withholding disclosure. In order to alleviate the difficulties, the Commission could leave Item 101(a) as is. We are not aware of an over disclosure or other disclosure problem under Item 101(a) that would be fixed by adding the specific materiality requirement proposed by the Commission. Registrants are currently using appropriate standards and not over reporting.

6. **Would principles-based requirements for Item 101(a) effectively facilitate the provision of information that is material to an investment decision? If not, how might Item 101(a) be further improved?**

   Item 101(a) could be improved by leaving it alone. The Commission has added an additional materiality requirement to an Item that already contained numerous specific materiality requirements by adding materiality in the introduction. This first causes drafting confusion because it appears that the Commission has long avoided double materiality, but in the Proposed Rule, it embraces the confusion caused and offers repair in a footnote to the Proposed Rule discussion. This creates problems and confusion on multiple levels in an Item where there is currently no issue.

   Next, if there is this additional level of materiality, such standard should reasonably support transparent disclosure. The construction in the Proposed Rule clearly does not. The Proposed Rule contains numerous approaches to the concept of materiality beginning with what would be material for Item 101(c), which can be found in the existing Instructions to Item 101:

> the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (e.g., whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (e.g., whether it affects or may affect numerous items in the segment information), and the impact of the matter (e.g., whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

The opposite end of the various definitions and approaches to materiality can be found on page 70 of the Proposed Rule when a definition taken from Securities Act Rule 405 is used to define materiality for Item 105 as follows:

> The term material, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase a security.

For periodic reporting purposes, it is not clear why the Commission chose to apply a Securities Act Rule definition when the Commission defines materiality in Regulation S-X. This needs to be corrected with an appropriate standard of materiality.

We propose that the Commission adopts the definition of material in Regulation S-X. Regulation S-X, Rule 1-02(o) defines *material* as such:

> The term *material,* when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.

We note that the Regulation S-X definition of material does not appear in any form in the discussion of the Proposed Rule.

8. Should we make disclosure of business strategy mandatory in Commission filings? If so, how should "business strategy" be defined and what can we do to address concerns about confidentiality?

Yes, disclosure of business strategy should be mandatory in Commission filings. In the Internet age, it is hard to develop examples where a registrant could successfully operate a confidential business strategy, so the confidentiality arguments appear moot. It should be made clear that changes in business strategy would not have to be disclosed prospectively. Disclosure of actual operating business strategy should be required. The business strategy should emphasize the long-term plan the company will use to secure and maintain a successful position in its chosen market(s).

11. **Should we permit certain registrants to provide the general business development disclosure by other means (*e.g.*, by a filer information page on the company's website)? If so, which registrants? Should we limit the use of such alternative means to well-known seasoned issuers? Are there concerns raised by the posting of the disclosure on a company's website (*e.g.*, regarding how long the company must retain the business development disclosure, when it must update the disclosure, and liability issues)? If so, how should those concerns be resolved?**

    We generally oppose efforts to disclose information by other means. As noted above, such provisions reduce transparency and increase complexity. Fundamentally, such provisions would directly oppose the goals articulated by the Commission in the Proposed Rule because they would reduce disclosures and add complexity.

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?**

    When shifting to a more principles-based approach, we need a stable and investor friendly materiality standard in order to get meaningful disclosures. Otherwise, we will enter an age of greater information gaps between management and the rest of the market. Given the Commission's adjustments to materiality, registrants might be less inclined to make disclosures that investors have found worthwhile. It is important to note that we agree that registrants should focus on providing material disclosures. However, we think that registrants currently do not disclose enough in regulatory reports and the Proposed Rule will codify this trend by allowing registrants to disclose even less than the current baseline.

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?**

    Item 101(c) would be improved by emphasizing the Commission's materiality definition found in Regulation S-X. We propose that the Commission adopts the definition of material found in Regulation S-X. Regulation S-X, Rule 1-02(o) defines *material* as such:

    > The term *material,* when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.

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?**

    Yes. We need to include a baseline of line-item disclosures for human capital, including the items raised by the HCMC, IAC, CII, ICGN, and others, which include number of full-time, part-time and contingent workers; employee turnover; employee diversity; and industry level standards in line with those supported by SASB.

20. **Should we include as a listed disclosure topic the material effects of compliance with material government regulations, as proposed, or should we focus 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)?**

    As drafted, we do not expect the proposal to improve the level of disclosure in this area. In fact, we expect to lose the one metric we currently have. Interestingly, many registrants may actually embrace the changes and report in a robust way. Our concern points to registrants with challenges who will rely on the principles-based approach and ultra-high materiality standards that will allow them to avoid disclosing anything meaningful.

    There is little disclosure of "environmental control facilities" because the term facilitates disclosure avoidance. We should have a broader concept that better captures capital expenditures for environmental purposes that actually encourages disclosure in a manner that would reduce long-term risks.

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?**

    After years of actively advocating for increased human capital reporting, including participation in HCMC, EPIC, IAC and SASB, company engagements and writings, we applaud the Commission addressing human capital. IAC outlines well, in its March 2019 recommendations, an excellent landing point, with principles-based general disclosures and key metrics. We are certain that HCMC will have great specific ideas as well.

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?

Without specific requirements, we fear that registrants will provide boilerplate responses with no metrics or avoid disclosure, arguing that such individual topics are not material to the company given the Commission's chosen materiality definition and approach. Our fear has the support of registrants' historical approach to such principles-based requirements in the U.S. For example, when we seek metrics in order to assess the quality of management, such as turnover information, it is not uncommon to receive qualitative information without any numbers.

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 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?**

    Such information should be included through line-item requirements rather than principles-based to promote transparency. The Commission should focus on metrics already compiled by registrants such that the information gap between management and investors would be narrowed. Given that registrants already have such information, it should be easy to provide. Aaron Bernstein and Larry Beeferman wrote a paper called "Corporate Disclosure of Human Capital Metrics" in 2017. Bernstein and Beeferman found that companies already collect a variety of human capital metrics of increasing interest to investors. Those companies do not normally disclose such information in regulatory reports. They would not incur additional collection costs if they had to disclose such information in regulatory reports.

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, we should require such disclosure with the specificity described by the IAC in its March 2019 recommendations.

30. Would our proposed revisions to Item 103 improve disclosures required by the item? Are there different or additional revisions we should consider to improve Item 103 disclosure?

The Item would be greatly improved by an enhancement in environmental reporting that goes well beyond the focus of environmental proceedings. CalPERS advocates for enhancements in environmental disclosures that focus on long-term sustainable development.

31. Should we expressly provide for the use of hyperlinks or cross-references, as proposed? Would the use of multiple hyperlinks be cumbersome for investors? Are there alternative recommendations that would more effectively decrease duplicative disclosure?

The use of hyperlinks is good if it is clear that all such hyperlinked information is a part of the regulatory filing, subject to the same standard, and will not change or be altered. It is important to note that such information can change or the link can be broken. The Proposed Rule does not deal with those issues.

There is no problem with duplicative information, as long as the information is consistent. The Proposed Rule itself is filed with duplicative information by section in order to make each section independently readable. Given that most consumers of disclosures do not read the information cover to cover preferring to head to particular sections, it is unclear why the Commission favors eliminating a communication structure that it actually uses in its own communications. Few read documents cover to cover, yet, after decades of acknowledging this, the Commission now wants to reject the proposition and force all investors to adopt a cover to cover approach to consuming disclosures. This works contrary to the Commission's stated goals of enhancing disclosures and reducing complexity. The Commission would have to do a more substantial rewrite of the regulations to eliminate duplications. The chosen proposal harms investors.

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, there is severe under reporting in this area. GF Peters and AM Romi document a 72 percent non-adherence rate to SEC filing requirements in their 2013 article, "Discretionary Compliance With Mandatory Environmental Disclosures: evidence From SEC Filings," in the Journal of Accounting and Public Policy. The EPA has made similar findings. Plus, there is no enforcement when the facts show that information should have been reported. It is not clear how increasing the threshold would aid disclosure, unless the increase would correspond to a desire to actually monitor and encourage reporting. Since that is not the case, the change would just allow registrants to properly be able to justify not disclosing information that they currently do not disclose. The rationale the Commission is using to change the threshold is problematic as well because there is not a wholesale adoption of inflation adjustments by the Commission, unless such adjustment favors registrants and reduces transparency. We do not think that certain registrants should be rewarded for a history of failing to disclose in this area.

33. **Should we instead adopt an alternative threshold for environmental proceedings closure? 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.**

    The threshold should remain at $100,000 and applicable disclosure be encouraged. If there is an increase in the threshold, there should be greater enforcement of this disclosure. This can be done by making registrants report actual numbers in the year following the proceeding.

    Materiality would not work. Large companies would not have to report. George S. Georgiev explained the problem in his law review article, "Too Big to Disclose: Firm Size and Materiality Blindspots in Securities Regulation." Here, large companies routinely find that billion-dollar issues are not material to the overall operation of their businesses. Georgiev wrote his article based on the existing materiality standards and how they are applied. The Proposed Rule modifies the materiality standard and approach in such a way that we think registrants will be less likely to make such disclosures.

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

    The proposed approach will substantially reduce risk factor disclosure because the Commission adopts a special and incredibly high level of materiality for future disclosures. The Securities Act definition is not appropriate for periodic reporting. Investors vote on many things. Many of those votes center on the proper management of risks. The Commission's chosen materiality definition for having a duty to report would in large measure protect registrants when they choose not to disclose. This means that there will be a substantial reduction in transparency. The CalPERS investment office recently conducted a year-long research project focused on disruptive technologies and the impact on global markets. In an era when it is substantially easier to consume additional information and investors are seeking additional information because they have the capacity to analyze such information, the Commission should move to change the regulations to make it more likely that registrants would provide such information.

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?**

The Commission identifies a problem that few investors find challenging. The Commission begins with the premise that boilerplate disclosure is a problem for investors in the risk factor section. However, such disclosure is not inherently a problem and forced summary reporting may harm more than help. Some of the lengthy sections are created because registrants attempt to explain the risk factor and how the registrant might approach the risks. The changes would adversely impact this effective process. At least one registrant, has already pointed this out. The focus on page count would tend to reduce transparency.

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)?**

There is no correlation between page limits and enhanced substance. We were unable to develop the same statistics regarding page numbers in our unscientific experiment. The Commission should have access to the entire market and be able to tell us what the actual page count/word count average happens to be for all registrants. We think the Commission's efforts should focus on the substance and quality of the risk factor disclosures.

Furthermore, we do not agree with the use of Securities Act Rule 405 to define material for Item 105, according to page 70 of the Proposed Rule. The Commission never explains why a definition from the Securities Act makes sense in periodic reporting. Interestingly, the Commission provides a footnote highlighting the materiality definition in Exchange Act Rule 12b-2 to highlight that the definition is almost the same as the chosen Rule 405 definition. The Commission also adds on page 80 that registrants would remain subject to the antifraud provisions of the securities laws and Exchange Act Rule 10b-5(b). Unfortunately, that does not appear to be the case because the Commission has established what may be a lower disclosure standard compared to the existing antifraud standard. Further, in the case of risk factors, the Commission has chosen to direct the materiality test on the purchasers of securities only. This is highly problematic.

We would prefer no change to Item 105. If there is a change, we would prefer that the focus be on a materiality standard that acknowledges that the primary users of the disclosures are, in fact, shareowners assessing how well the registrant is being managed.