

# SEC Rule Change Requires New Human Capital Resources Disclosure

*By Hedley Lawson, Global Managing Partner of Aligned Growth Partners, LLC*

Responding to calls from investors, proxy advisory firms, and other stakeholders for companies to provide more information about their human capital management practices, the Securities and Exchange Commission acted to amend Regulation S-K, which details the information that public companies must include in their public federal securities law filings that now requires them to describe their human capital resources measures and objectives that the company focuses on in managing its business. The amendments are effective on November 9, 2020.

## **New Disclosure Requirement**

Before this new amendment, the only required information related to human capital a company had to disclose was the total number of individuals it employed. The SEC now requires a company to describe its human capital resources, including the number of persons employed by the company, and any human capital measures or objectives that the company focuses on in managing the business, such as, depending on the nature of the company's business and workforce, measures or objectives that address the development, attraction, and retention of employees. Of note, the SEC's Adopting Release, does not define the term "human capital" nor prescribe the required form of disclosure. As well, the amendments do not require the disclosure of any specific metrics; however, it has cited measures or objectives that address the attraction, development, and retention of employees as examples of areas where disclosure and related metrics may be appropriate, but offers them simply as potentially relevant subjects.

## **Recommended Actions to Adopt the New Disclosure**

Given the limited time to prepare the new disclosure, companies are expected to move quickly to gain a clear understanding of their current human capital management policies and practices. This will likely involve looking at the human capital measures and objectives currently used in the management of the business and already publicly disclosed or reviewed internally with the Board. Close collaboration with the company's human resources to prioritize the human capital objectives that are the key drivers of its performance and long-term value creation will be key. And, as we have written previously, the establishment of an Organization Committee (<https://alignedgrowth.com/the-need-for-boards-to-remake-their-committee-structure/>) we believe should continue to deserve serious consideration by public and private boards of directors.

While each company will need to evaluate its own particular circumstances to identify its human capital resources and determine their materiality to an understanding of its business with or absent of the establishment of an Organization Committee, several broad categories that should receive consideration include the following:

## **CATEGORY**

### **POTENTIAL TOPICS**

#### Workforce governance

- Board or committee oversight of human capital strategy
- Role and expectations of the Chief Human Resources Officer
- Legal and ethical compliance

#### Workforce composition

- Agile and transformational talent acquisition and recruiting
- Meaningful, measurable, and sustainable diversity, equity, and inclusion
- Experience and education of workforce

#### Workforce stability

- Voluntary and involuntary turnover analytics
- Actionable succession planning and employee promotability
- Meaningful employee satisfaction surveys

#### Workforce skills and development

- Professional and personal development opportunities

#### Workforce culture

- Employee engagement
- Work-life initiatives
- Employee health, safety, and well-being programs
- Employee recognition programs

#### Workforce compensation (in the absence of a Compensation Committee)

- Gender, racial, and generational pay equality

- Incentives and cash and non-cash benefits
- Targeted market compensation data and analysis

We believe that the above discussion points provide an excellent framework for companies to begin their initial discussion and, with this new requirement, to give thoughtful consideration to establish an Organization Committee to ensure that the new SEC requirements can be prudently included in the annual report on Form 10-K and in the agile and transformational human capital strategy of the company.