SEC Rule Change Requires Human Capital Resources Disclosure

Responding to calls from investors, proxy advisory firms, and other stakeholders for companies to provide more information about their human capital management practices, the SEC has amended Regulation S-K, which details the information that public companies must include in their public federal securities law filings, requiring them to describe their human capital resources, including the human capital measures and objectives that the company focuses on in managing its business. This disclosure is required to the extent material to understanding the company's business taken as a whole. The amendments are effective on November 9, 2020.

This Thoughtful Pay Alert summarizes this new human capital resources disclosure requirement and offers our preliminary thoughts on how companies may approach their initial disclosure.

The Disclosure Requirement

Before the amendments, 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 personnel).

Neither the amendments, nor the SEC's Adopting Release, however, define the term "human capital" nor prescribe the required form of disclosure. Rather, the amendments reflect a "principles-based" approach intended to give companies flexibility to determine what information is material to their current business circumstances and how to disclose it. While the SEC does not require the disclosure of any specific metrics, it has cited measures or objectives that address the attraction, development, and retention of personnel as examples of areas where disclosure (and related metrics) may be appropriate, but offers them simply as potentially relevant subjects.

Preparing for the New Disclosure

Given the limited time to prepare the new disclosure, we expect companies to move quickly over the next several months to get a firm grasp on 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 function to better understand how talent is managed and human capital matters are assessed internally will likely also be critical to enable a company to identify and prioritize the human capital objectives that are the key drivers of its performance and long-term value creation.

In terms of drafting the disclosure, in the absence of affirmative metrics from the SEC, we expect many companies will rely on private-sector standard setters (such as the Sustainability Accounting Standards Board ("SASB") and the Global Reporting Initiative ("GRI")) that have arisen to serve the demand for environmental, social, and governance ("ESG") metrics for guidance. While each company will need to evaluate its own particular circumstances to identify its human capital resources and determine their materiaity to an understanding of its business, some of the broad categories that we expect to receive consideration include the following:

Category	Potential Topics
Workforce governance	▪ Board or committee oversight of human capital resources ▪ Role of Human Resources Officer ▪ Employee engagement
Workforce composition	▪ Talent acquisition and recruiting ▪ Diversity and inclusion ▪ Experience and education of workforce
Workforce stability	▪ Turnover (voluntary and involuntary) ▪ Internal promotion initiatives ▪ Employee satisfaction surveys
Workforce skills and development	▪ Educational opportunities ▪ Formal and on-the-job training ▪ Employee recognition programs
Workforce culture	▪ Work-life initiatives ▪ Employee health, safety, and well-being programs ▪ Employee/manager feedback mechanisms
Workforce Compensation	▪ Pay elements ▪ Employee incentives and benefits ▪ Pay equity
Risk management	▪ Ethics and compliance ▪ Incentive risk management policies ▪ Succession planning for key positions

While the new disclosure is required in the annual report on Form 10-K, in recent years companies have been making effective use of their proxy statements and company websites to engage with investors and other stakeholders on the positive actions they have taken on key ESG issues. We expect this trend to continue when it comes to the required human capital resources disclosure. Consequently, we expect that over time companies will extend some of their current proxy and/or ESG disclosure practices to human capital resources matters, particularly when they have a positive story to tell.

Need Assistance?

Compensia has extensive experience working with legal counsel to help companies understand their disclosure obligations as they relate to their executive compensation program and other matters involving their workforce. If you would like assistance in determining how the new human capital resources disclosure rules may impact your current disclosure, including your proxy statement disclosure, or if you have any questions on the subjects addressed in this Thoughtful Pay Alert, please feel free to contact Mark A. Borges at 415.462.2995 or Jason Borrevik at 408.876.4035.

About Compensia:

Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management. ■

About Compensia

Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management.

Silicon Valley

125 S. Market Street
Suite 1000
San Jose, California 95113
408.876.4025

Thomas G. Brown, Chairman
tbrown@compensia.com
408.876.4023

Aaron Johansen
ajohansen@compensia.com
408.907.4310

Tom LaWer
tlawer@compensia.com
408.907.4309

Greg Loehmann
gloehmann@compensia.com
408.907.4319

San Francisco

One Embarcadero Center
Suite 2830
San Francisco, California 94111
415.462.2990

Mark A. Borges
mborges@compensia.com
415.462.2995

Erik Beucler
ebeucler@compensia.com
408.907.4314

Amanda Feyerabend
afeyerabend@compensia.com
415.462.2988

Southern California

Ralph Barry
rbarry@compensia.com
858.603.2288

Pacific Northwest

Jason Borrevik
jborrevik@compensia.com
408.876.4035