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Sustainability Accounting Standards Board
 1045 Sansome Street, Suite 450
 San Francisco, CA 94111

Comments on SASB’s Human Capital Management Preliminary Framework

We represent institutions with long histories of experience working to improve the rights of workers globally. We recognize the growing potential of SASB to help investors direct capital towards companies that uphold labor rights and thus have superior risk-adjust returns. We have been advising Rights CoLab’s research collaboration with the Data Science Institute of Columbia University and SASB to generate evidence of the financial materiality of corporate labor practices in order to support improvements to SASB’s standards. The recommendations below reflect that on-going work.

We welcome SASB’s prioritization of human capital management in its standards updating process. The Standards Board had already decided to make Human Capital Management SASB’s first standard setting project before the pandemic, and COVID-19 has only magnified the need to ensure that companies improve labor practices for their workforce and workers in their supply chains.¹ We are pleased to see the incorporation into the Preliminary Framework of workers in supply chains and those in the “alternative” workforce. Below we offer 1) suggestions for further improvements to the Framework to ensure that the resulting standards better capture benefits to workers and

¹ Mark Anner, “Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains,” Center for Global Workers’ Rights (CGWR), (March 27, 2020), <https://www.workersrights.org/wp-content/uploads/2020/03/Abandoned-Penn-State-WRC-Report-March-27-2020.pdf>; and “Protecting People In A Pandemic,” Walk Free, accessed February 10, 2020, <https://www.walkfree.org/reports/protecting-people-in-a-pandemic/>.

companies, as well as reduce reputational, operational, and regulatory risks for companies; and 2) recommendations for standard setting projects. In making these recommendations, we recognize that the scope of human capital management is in great flux with investors, and that corporate practices that were once thought to be immaterial are rapidly becoming recognized as material.

The Preliminary Framework opens the aperture of SASB’s human capital management standard setting to the challenges of today’s global economy. It acknowledges that the increasing cost of compliance and of capital arising from poor practices are growing for all firms, and clarifies that labor practices can engender not just regulatory and reputational risk, but also financial and operational risk. The Framework also identifies two critically important new human capital themes: “Labor Conditions in Supply Chains” and “Alternative Workforce.” Further, it makes important connections between basic benefits (e.g., paid sick leave) and mental health, employee performance, growing inequality, and human rights. In defining trends, such as automation and contingent labor, which create conditions of worker precarity and labor harms, the Preliminary Framework indicates that SASB considers related risks as financially material and a necessary basis for the development of effective reporting standards for long-term value creation.² We agree, and below we point to additional disclosure topics and metrics that can provide investors with more accurate information on industry-specific risks.

Recommendations for Improvements to the Human Capital Management Framework

There are certain core characteristics of human capital management, including worker well-being, fair and equitable pay, worker engagement, etc., that apply to all workers regardless of where they are situated, be it in headquarters or within supply chains. We therefore strongly endorse the proposed human capital management themes, in particular “Labor Conditions in Supply Chains” and “Alternative Workforce,” because their inclusion rightly broadens the scope of the workforce to reflect today’s business structures, and paves the way for standard setting that can better capture human capital management risks.

There are further reasons why the Preliminary Framework’s recognition of labor conditions in supply chains as a material human capital management issue makes sense. From an investor perspective, understanding how workers are treated within a company’s supply chain and in its alternative workforce is critical to understanding the whole company. Companies themselves acknowledge that they have power over how workers in their supply chains are treated,³ and may be held jointly liable for supply

² Joanne Bauer and Paul Rissman of Rights CoLab make this argument in their comments on the Exposure Drafts of the Conceptual Framework and Rules of Procedure, which can be accessed here: <https://rightscolab.org/rights-colab-submits-comments-to-sasb-on-the-exposure-drafts-of-its-conceptual-framework-and-rules-of-procedure/>.

³ For example: “Deep-Dive Session: The Impacts And Opportunities Of Purchasing Practices,” Copenhagen Fashion Summit, (2019), <https://vimeo.com/270358288>; and “Unilever Commits To Help Build A More Inclusive Society,” Unilever, (January 21, 2021), <https://www.unilever.com/news/press-releases/2021/unilever-commits-to-help-build-a-more-inclusive-society.html>.

chain practices⁴ or face regulatory changes extending their liability.⁵ Moreover, inclusion of supply chain labor practices as part of its human capital management standards will bring SASB in step with new and emerging law in Europe and elsewhere on mandatory human rights due diligence, as well as international standards, such as the International Labour Organization's (ILO) core labor standards, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, and the EU Action Plan on human rights and decent work in global supply chains.

We have two suggestions for improvements to the characterization of the themes, which if adopted, can better ensure that the finalized Framework provides the strongest possible foundation for the standard setting process.

First, the category headings elide the fact that the Preliminary Framework's six themes implicate fundamental rights, as enshrined in the ILO core labor standards, and as such focus on lagging indicators rather than leading indicators.⁶ For example, the denial of rights is the cause of "worker stress," which the Framework rightly identifies as a corporate risk; therefore, achieving "worker wellness" depends on upholding rights. By focusing on the protection of rights rather than generalized impacts of the failure to do so, the Framework will be more likely to yield leading indicators, which are far more valuable to investors. Moreover, the discussion on the role of "organizational culture" in Diversity and Inclusion is missing the concept of "equity" as a fundamental right and a necessary core value to achieve a company's diversity targets, not just a matter of "culture." Finally, the theme "Labor Conditions in the Supply Chain" does not fully capture the risks of labor exploitation in high-risk contexts, such as withholding of documents, inadequate wages that may be withheld or delayed, excessive working hours, and the denial of the fundamental right to freedom of association and collective bargaining.

Second, the Preliminary Framework points mainly to a company's exposure to regulatory and reputational risk as the basis for consideration of supply chain risks in the SASB standards, and underplays operational risk. Poor management of supply chains is also an operational risk, and can be more strongly acknowledged as such within the Framework so that the disclosure standards can be strengthened.⁷ Operational risk for global manufacturers came into sharp relief last year as thousands

⁴ For example: <https://www.bostonglobe.com/business/2019/08/20/amazon-drivers-can-move-forward-with-class-action-lawsuit/Q2ZywX3nhCimHbZILwnKbK/story.html>

⁵ For example, regulation of Uber and Lyft in California under Assembly Bill 5 <https://www.npr.org/2020/10/22/926916925/uber-and-lyft-must-make-drivers-employees-california-appeals-court-rules>

⁶ The ILO has designated four "core" labor standards: i) freedom of association and the effective recognition of the right to collective bargaining, (ii) elimination of all forms of forced or compulsory labor, (iii) effective abolition of child labor, and (iv) elimination of discrimination in respect of employment and occupation. They were substantiated in 1998 in the ILO's Declaration on the Fundamental Principles and Rights at Work: <https://www.ilo.org/public/english/standards/reim/ilc/ilc86/com-dtxt.htm>.

⁷ The multiple dimensions of corporate risk that supply chain mismanagement represents is evident in the repository of evidence compiled by Rights CoLab can be found here: <https://rightscolab.org/evidence-of-corporate-risk-of-harms-to-workers-in-their-value-chains/>. We were happy to see that this compilation was cited in the Preliminary Framework, pp 107-108.

of factories had to close because of orders being canceled or postponed without notice, leading to long-term damage in the supply chain.⁸ In short, there is abundant evidence that supply chain resilience depends upon good labor practices in supply chain management.

Recommendations for Priority Standard-Setting Projects

Here we set forth our recommendations for standard-setting projects that should flow from the finalized Framework. We suggest four priority considerations in developing these metrics across SASB's standards: (1) Addition of metrics related to high-risk labor practices; (2) Extension of disclosures related to collective bargaining across industries and into supply chains; (3) Attention to gender and race throughout human capital metrics; (4) Development of indicators that assess the extent and quality of human rights due diligence.

1. Addition of High-Risk Labor Practice Disclosure Metrics

Currently, SASB's supply chain-related disclosures almost exclusively rely on certifications and audits. While companies can sometimes glean meaningful information about high-risk labor practices within supply chains through audits, audits are not (nor were they intended to be) sufficient on their own. They (1) range in quality and consistency, (2) measure only a part of the supply chain even at their most rigorous, and (3) need to be complemented with effective strategies and actions to address the risks. A more effective means for investors to assess supply chain risks is through well-crafted metrics that reveal underlying conditions that are likely to produce negative impact and yield material risks. SASB metrics should address supply chain competency gaps, labor contracting models, and sourcing practices that are well-documented to have a direct effect on the treatment of workers in supply chains, and more fundamentally, changes in workforce structure. Again, we believe this focus is more likely to yield leading indicators of more value to investors than lagging indicators focused on harm after it has occurred.

For example, a company can be asked to disclose the percentage of product or services sourced from worksites and geographies at risk for forced labor, such as migrant communities, isolated worksites, prisons, refugee/internally-displaced persons (IDP) communities, or conflict-affected or high-risk areas⁹ – or the percentage of revenue derived from high-risk commodities. Industry-specific purchasing practices that

⁸ This phenomenon was particularly pronounced in the garment sector. See: Chloé Bailey and Joya Cooper-Hohn, "Cancelled Orders and Factory Closures: The Devastating Impact of Covid-19 on Workers in Garment Supply Chains," Freedom Fund, (May 5, 2020), <https://freedomfund.org/blog/cancelled-orders-and-factory-closures-the-devastating-impact-of-covid-19-on-workers-in-garment-supply-chains/>.

⁹ The OECD provides an authoritative definition of "conflict-affected and high-risk areas" here: https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas_9789264185050-en.

increase risks to workers are also emerging.¹⁰ Another area ripe for standard-setting, which the OECD Secretariat is likely to take up in the forthcoming revision to the OECD Guidelines on Multinational Enterprises, is the topic of responsible disengagement with suppliers.

Changes to the structure of a firm's workforce also give insight into the labor risks it faces. The Human Capital Management Coalition has advocated for several good, decision-useful metrics to capture these changes and risks, including the percentage of full time, part time and contracted employees, and total labor costs, which we believe should be separated out for each category. For the supply chain workforce, however, additional work will be needed to extend this metric to include the numbers for factories or agricultural entities and workers producing for the companies. Here metrics developed by the Workforce Disclosure Initiative could be a useful resource. Likewise, since the total labor cost associated with outsourced work can be more difficult for a firm to ascertain, a different approach will be necessary to capture supply chain labor cost trajectory. This might entail looking at production cost – total raw materials cost/total production cost for example.

We recommend that rather than the historic practice of relying on audit nonconformance metrics alone, SASB add metrics that can help investors gauge how effectively companies are addressing the root causes of non-conformances and risks, including those related to purchasing practices, workforce structure, and worker agency.

2. Extend Disclosure Metrics Related to Collective Bargaining Across Industries and Into Supply Chains

When workers are able to directly raise concerns without fear -- through unions, effective grievance mechanisms, and other means of enabling worker voice – companies gain critical knowledge about potential and recurring workplace harms. The presence of an effective means for workers to voice grievances is also essential to worker wellbeing – for both employees and contingent workers. Therefore, worker organizing can be seen as a source of company resilience and long-term value creation; it is the denial of such organizing rights that creates risk, not the inverse.

Here again, the pandemic's effects support this proposition: in the United States, where unions have been in decline for decades,¹¹ union membership in 2020 increased as a proportion of the workforce, demonstrating the resilience of union jobs over non-union jobs.¹² Moreover, in the U.S., we have seen organizing activities in industries that have

¹⁰ There is currently a wealth of efforts seeking to develop global purchasing practice metrics in the apparel industry, e.g., the ACT Framework, Better Buying Initiative, NYU Stern Center for Business and Human Rights apparel metrics, SAI Social Fingerprint, the FLA Responsible Sourcing Principles and the FairWear Foundation that can provide a useful starting point. See: <https://actonlivingwages.com/wp-content/uploads/2019/10/ACT-GLOBAL-PURCHASING-PRACTICES-COMMITMENTS-1.pdf>.

¹¹ Caleb Crain, "State of the Unions: What happened to America's labor movement?," New Yorker, (August 19, 2019), <https://www.newyorker.com/magazine/2019/08/26/state-of-the-unions>.

¹² "Union Members Summary," U.S. Bureau of Labor Statistics, (January 22, 2021), <https://www.bls.gov/news.release/union2.nr0.htm>.

not previously been organized, such as at e-commerce companies Wayfair, Google, and Amazon, a development that has caught investors' interest and support.¹³

As SASB extends its standard setting into a global context, the strength or weakness of organized labor becomes a financially material topic across many more industries. Page 7 of the Preliminary Framework lays out the intention to identify key industry-agnostic topics:

This information gathered through the Public Consultation Period will enable SASB to (i) finalize its analysis and conclusions regarding key industry-agnostic human capital management themes that represent relevant business issues with significant sustainability impacts across industries; (ii) analyze the industry-specific manifestations of these industry-agnostic themes; and (iii) help form the foundation for standard-setting activities across the SASB standards.”

In the current formulation of the Labor Relations topic within the Standards, there is just one metric that relates to worker organizing, “Percentage of active workforce covered under collective bargaining agreements” (310a.1), and this metric applies to only 6 of 77 industries and only to the direct workforce in contrast to other emergent frameworks.¹⁴ It is our view that freedom of association and collective bargaining constitutes an industry-agnostic topic. The ILO deems it to be a core labor right for all workers regardless of industry, and under the UN Guiding Principles on Business and Human Rights, establishing an effective grievance mechanism is a responsibility of all companies, regardless of industry.¹⁵

Because union organizing is constrained in many parts of the world, SASB metrics on collective bargaining will need to be constructed to include alternative forms of worker representation and mechanisms to give workers voice, while not undermining unions. We recommend that SASB revisit the characterization of this disclosure topic, and extend a decision-useful metric on worker agency across all of its industry standards as a priority standard-setting projects.

¹³ Dave Lee, “Amazon must not interfere with US union effort, say investors,” Financial Times, (February 9, 2021), <https://www.ft.com/content/c7f24fbb-bb4e-489e-8a30-37708700e816>.

¹⁴ “SASB Human Capital Management Bulletin,” SASB, (November 21, 2020), p. 6, <https://www.sasb.org/knowledge-hub/sasb-human-capital-bulletin/>. By contrast, for example, World Economic Forum’s extended metric list includes freedom of association and collective bargaining, and the World Benchmarking Alliance has put this into its core social indicator list for all companies.

¹⁵ “Guiding Principles on Business and Human Rights,” United Nations Human Rights Office of the High Commissioner, (2011), Principle 29, p. 31, https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

3. Attention to Gender and Race throughout Human Capital Topics and Metrics

Among the world's most vulnerable workers are women, who are disproportionately affected by the worst forms of labor abuse. Recognizing this, the ILO has established new global standards (ILO Convention 190 and Recommendation 206) aimed at ending sexual violence and harassment at the workplace. In the discussion of the evidence for the theme of "Mental health, wellbeing, and health-related benefits," the Preliminary Framework references Harvard Business School's Impact Weighted Accounts Project finding of "disproportionately high" workplace health and safety risks for women and the finding "that women suffer greater work-related physical and mental health outcomes." (p 51) The era of #MeToo has also rendered the mistreatment of women a financial risk as well as a human rights risk.¹⁶

The Preliminary Framework also emphasizes the importance of workplace culture in inculcating values of gender equity and pay equity – and suggests that the tone is set at the top. In the supply chain context, addressing gender vulnerabilities in the workplace is also vital to workplace health and safety standards, where the absence of certain considerations, such as the provision of washrooms on farms, can lead to gender harassment and violence.¹⁷

Ensuring gender equity, therefore, can require different measures for different contexts and metrics need to be designed with awareness to contextual needs. As SASB is well aware, while the core characteristics of human capital management are common to all workforces, how these issues manifest in different contexts will vary. In terms of Diversity & Inclusion a metric of "percentage of female employees," which could be an appropriate metric for headquarters, is meaningless in a situation of garment factory workers, where women constitute upwards of 80% of the workforce. On the other hand, a metric such as GRI 405-2, "Ratio of basic salary and remuneration of women to men" could apply across diverse contexts. Similarly, SHARE asks companies to disclose gender-pay equity analysis conducted and disclosed by level of work, including promotion and advancement.

The same level of attention needs to be applied to race. Recognizing the intersectionality of race and gender and in line with the Human Capital Management Coalition's diversity and inclusion priority, there's an opportunity to define a set of metrics that best capture the risks across diverse contexts.

The need to examine the differential impacts of company policies on gender and race ties back to the importance of worker empowerment, where all workers have a safe channel to express grievances to management. In conducting the research for new

¹⁶ "#MeToo opens up new risks," Insurance Business, (September 20, 2018),

<https://www.insurancebusinessmag.com/au/features/analysis/metoo-opens-up-new-risks-111803.aspx>.

¹⁷ For a gender analysis of the situation for female farmers on sugarcane farms that are part of the Bonsucro certification standard, see:

<https://www.business-humanrights.org/en/blog/social-audits-fall-short-on-gender-equality/>. The United Nations' Women's Empowerment Principles offers a good starting point: <https://www.weeps.org/about>.

metrics, we recommend that SASB develop metrics that provide for disaggregation by gender and race across the Human Capital Management metrics.¹⁸

4. Development of metrics that assess the extent and quality of human rights due diligence

Developments in Europe to create a human rights due diligence (HRDD) legal regime render the absence of HRDD a legal as well as operational risk for companies.¹⁹ The demand for legislation is driven by widespread acknowledgment that human rights due diligence is essential to identifying and reducing risks to workers and companies, and therefore should be considered foundational to robust financially material disclosure standards.²⁰ SASB has one metric for due diligence within the general issue category of “human rights and community relations.” However, it only applies to a few extractive industries and refers to due diligence for community impacts only, not impacts on workers.²¹

The Preliminary Framework’s Appendix of Supporting Evidence acknowledges that supply chain risk has also become an interest of investors:

From the investor perspective, respect for human rights is strongly associated with value chain resilience and a stable business operating environment. Investors are increasingly aware of and concerned about the significant operational, financial, legal, and reputational risks portfolio companies might face when they fail to manage human rights risks. (p 106)

The requirement of identifying risks throughout a company’s own operations and in its supply chain through an HRDD process is not only a risk to portfolio companies, but also to investors, who face potential liability when HRDD is absent.²² As noted in the Preliminary Framework, the Investor Alliance for Human Rights has called investors’

¹⁸ The World Benchmarking Alliance will soon be working to mainstream our gender assessment across all sectors.

¹⁹ Business & Human Rights Resource Centre is tracking these developments at <https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/>. Within Europe, the push is for HRDD includes due diligence measures for environmental impact and is commonly referred to as Mandatory Human Rights and Environment Due Diligence.

²⁰ The responsibility of companies to conduct human rights due diligence was first laid out in the UN Guiding Principles on Business and Human Rights, which was unanimously endorsed by the UN Human Rights Council in 2011 and has been widely endorsed by governments, business, and civil society. The Preliminary Framework acknowledges that investors have also become aware of the risks: “From the investor perspective, respect for human rights is strongly associated with value chain resilience and a stable business operating environment. Investors are increasingly aware of and concerned about the significant operational, financial, legal, and reputational risks portfolio companies might face when they fail to manage human rights risks.” p. 106.

²¹ For example, we note that metric EM-EP-210a3 for the Oil & Gas industry reads: “Discussion of engagement processes and due diligence practices with respect to human rights, indigenous relations and operations in areas of conflict.” There is a similar due diligence metric for the Chemicals, Coal, Metals & Mining and Forestry industries.

²² David Kreitmeir, Nathaniel Lane, Paul Raschky, “The Value of Names - Civil Society, Information, and Governing Multinationals on the Global Periphery,” SocArXiv, (December 18, 2020), <https://osf.io/preprints/socarxiv/aw7sq>.

attention to the risk of failing to conduct due diligence and developed guidance to help them manage it, and the Principles for Responsible Investment is extending this work.²³

There is now work underway to develop appropriate metrics for assessing the extent and adequacy of HRDD. The Workforce Disclosure Initiative (WDI) spearheaded by ShareAction has within its disclosure framework a number of metrics on HRDD. The World Benchmarking Alliance’s Social Transformation Framework and the EU Social Taxonomy also provide related metrics that companies are already being measured against.²⁴

Efforts to develop standards for assessing the quality of HRDD are still early stage, but we believe this is an important area for SASB to follow and engage with. There is a natural tendency for HRDD assessments to be process-oriented, and we agree with the discussion in the Preliminary Framework, citing Serafeim and Kotsantonis, that metrics that focus on outcomes are preferred. Several of us have been deeply involved in the debates over process- versus outcome-oriented human rights due diligence metrics, and we stand ready to work with SASB to address this challenge.

* * *

We have not addressed here the specific questions raised in the Human Capital Management survey that ask for which industries the themes identified in the Preliminary Framework are financially material. We believe that there is a financial materiality basis for applying metrics to a much wider range of industry standards than currently contemplated. Through Rights CoLab’s data science collaboration with the Data for Good Program of Columbia University’s Data Science Institute, we are working to generate this evidence.²⁵ We expect the data science research findings to support the need for robust labor metrics across a much wider array of industries than we see in the current Standards.

The Preliminary Framework provides a good conceptual foundation for SASB’s remaining human capital research. Ensuring high-quality, decision-useful disclosure will now require identifying equally strong, data-driven metrics. We look forward to continued engagement with SASB’s human capital standard setting process to achieve this goal.

²³ See: “Investor Toolkit on Human Rights,” The Investor Alliance for Human Rights, (May 2020), <https://investorsforhumanrights.org/investor-toolkit-human-rights>; and “Why and How Investors Should Act on Human Rights,” PRI, (October 2020), <https://www.unpri.org/human-rights-and-labour-standards/why-and-how-investors-should-act-on-human-rights/6636.article>.

²⁴ The World Benchmarking Alliance (WBA) will track human rights due diligence for 2,000 key global companies, using a public methodology available here: <https://assets.worldbenchmarkingalliance.org/app/uploads/2021/02/WBA-Social-Transformation-Framework-FINAL.pdf>. The Human Rights Due Diligence indicators build on the work of the Corporate Human Rights Benchmark methodology, which has also been used to provide evidence for the need for mandatory HRDD legislation and to assess national level implementation of the UNGPs in multiple countries.

²⁵ Joanne Bauer and Paul Rissman, “Our Data Science Approach for Improved SASB Standards,” Rights CoLab, (September 4, 2020), <https://rightscolab.org/harnessing-big-data-for-sasb-standards-to-improve-corporate-human-rights-practice-data-project-plan/>.

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