U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

Statement of the U.S. Chamber of Commerce

ON: "Examining the SEC's Agenda: Unintended Consequences for U.S. Capital Markets and Investors"

TO: U.S. House of Representatives, Committee on Financial Services, Subcommittee on Capital Markets

BY: Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

DATE: November 1, 2023

Chairman Wagner, Ranking Member Sherman: my name is Tom Quaadman, Executive Vice President of the U.S. Chamber of Commerce's (Chamber) Center for Capital Markets Competitiveness (CCMC). Thank you for the opportunity to testify today regarding the regulatory agenda at the Securities and Exchange Commission (SEC) under the Biden Administration.

The SEC plays a central role to the function of U.S. capital markets, and as such, its rulemaking agenda has significant consequences. The Chamber agrees that the rules governing the marketplace should be updated from time to time to account for market development. However, since 2021, rulemaking at the SEC has been torrential, disjointed, and rushed, and has not allowed appropriate time for stakeholder evaluation or engagement on its proposed rules.[1] The Commission's robust agenda and expedited pace has prompted hurried work at the Commission, resulting in inadequate cost-benefit analyses and errors. The Chamber is concerned that, under current leadership, the SEC is moving away from its historical role as an impartial market regulator and is increasingly becoming a politicized agency to the detriment of American companies and the competitiveness of U.S. capital markets. The SEC's tripartite mission of investor protection, capital formation, and fair, orderly, and efficient markets has allowed the SEC to maintain its reputation as a "sober" market regulator, but with the Commission's expansive and policy-driven agenda, that hallmark of the agency may be in jeopardy.

[1] *See*: Letter from U.S. Chamber, et. al. re: Importance of Appropriate Length of Comment Periods. April 5, 2022. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/04/FINAL_as-Sent-to-SEC_Joint-Trades_Comment-Period-Letter_4-5-2022.pdf?#

The expansive and patchwork nature of the SEC's regulatory agenda has caused deep concern in the business community. Since April 2021, the SEC has proposed or finalized nearly 50 separate rulemakings, a pace not seen since the SEC was charged by Congress with implementing dozens of provisions of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] The vast majority of these rules have not been mandated or even authorized by Congress; a recent report from the Committee on Capital Markets Regulation finds that 83% of the SEC's current agenda lacks a Congressional mandate.

A letter from the SEC Inspector General (IG) in October 2022 raises serious concerns about the capacity of the SEC to review, assess and analyze comments in light of the unprecedented volume of proposed rulemakings from the SEC since 2021.[3] Senior SEC officials reported a troubling increase in attrition and expressed concern that the SEC "may not have received as much feedback during the rulemaking process, either as a result of shortened timelines during the drafting process or because of shortened public comment periods." SEC staff also told the IG that the SEC's haste increases the litigation risk associated with several rules. Notwithstanding these warnings from its own staff, the SEC has marched ahead apace with rulemaking proposals under the same flawed process that has defined the last two years.

The SEC has created a challenging new environment for business and has begun to open itself up to the possibility of "pendulum swing" of policy from one administration to the next – a phenomenon the SEC has traditionally sought to avoid. Nowhere is this more evident than at the Division of Corporation Finance (CorpFin), specifically in the corporate governance arena. The Commission has sought to subvert 2020 final rules on shareholder proposal resubmission thresholds,[4] arbitrarily reversed a modest reform effort to invite greater transparency and accountability for proxy advisors,[5] and proposed the biggest increase in total costs for corporate reporting in a generation without adequately justifying the benefits.[6] Through proposed and final changes such as these, the SEC is taking steps that weaken the purpose of corporate governance. This will do little to address – and may even exacerbate – the steady decline of the

---

[2] Regulatory Incidence of SEC Proposed and Final Rulemakings (Gensler Chairmanship, April 17, 2021 to August 15, 2023), Committee on Capital Markets Regulation. Available at https://capmktsreg.org/wp-content/uploads/2023/08/CCMR-Statement-on-SEC-Agenda-Mapping-08.31.2023.pdf

[3] The Inspector General's Statement on the SEC's Management and Performance Challenges, October, 2022. *Available at*: https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf

[4] *See*: Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8 (Release No. 34-95267). Until the SEC's 2020 Final Rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, the shareholder ownership thresholds for submitting a shareholder proposal had not been updated since 1998, and resubmission thresholds had not been updated since ***1954***.

[5] *See*: Letter from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce responding to SEC Re-Proposed Rules on Proxy Voting Advice. Dec. 23, 2021. Available at: http://www.centerforcapitalmarkets.com/wp-content/uploads/2021/12/211222_Comments_Proxy-AdvisorRule_SEC_FINAL.pdf?#

[6] According to the SEC's own estimate, the cost of the SEC's proposed climate disclosure rule would increase the cost burden associated with corporate disclosure from $3.9 billion to $10.2 billion, over a 2.5-fold increase. *See*: Letter from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce responding to SEC Proposed Rule on the Enhancement and Standardization of Climate-Related Disclosures for Investors. Apr. 19, 2022. Available at: https://www.centerforcapitalmarkets.com/letter/ccmc-urges-the-sec-to-extend-comment-period-on-proposed-rule-regarding-the-enhancement-and-standardization-of-climate-related-disclosures-for-investors/

number of public companies in the United States. Compounding these concerns, the Chamber[7] and the U.S. business community[8] is concerned that a new proposal on auditing standards from the Public Company Accounting Oversight Board's (PCAOB) could significantly and inappropriately expand liability and add exorbitant costs for companies for noncompliance with laws and regulations (NOCLAR).

The SEC's recent actions on corporate governance include:

1. **Gutting reforms to the proxy advisory industry adopted by the SEC in 2020.** After rigorous examination,[9] the SEC's 2020 proxy reforms sought to allow public companies to respond to vote recommendations from proxy voting advice companies to correct any errors or mistaken assumptions contained within the recommendation. The reforms also held proxy advisory firms accountable by explicitly applying Rule 14a-9 to proxy advisors to prohibit statements that contain false or misleading information. Without providing any evidence that the 2020 reforms would harm investors, the SEC announced it would not enforce aspects of the final 2020 rulemaking *before it even went into effect*[10], and then adopted its "Proxy Voting Advice" rule in July 2022, which negated critical aspects of the 2020 reforms.[11] Proxy advisors demonstrate an enormous amount of influence over proxy voting in the United States, yet the industry is riddled with conflicts of interest and continues to make egregious errors in vote recommendations. The SEC's efforts to undo even modest reforms for proxy advisors is a harmful development for investors and the capital markets as a whole that drew a legal challenge from the Chamber to the 2022 rule.[12]

2. **Changes to Exchange Act Rule 14a-8 that will lead to more frivolous and immaterial shareholder proposals being submitted at companies every year.** The shareholder proposal system under Rule 14a-8 is intended to be a mechanism for shareholders to put forward constructive proposals and ideas for how to improve the long-term performance of public companies. Over the years, however, the system become a favored tool of activists to target companies over issues that are often uncorrelated to financial performance. In

---

[7] *See*: U.S. Chamber of Commerce letter to the PCAOB re: Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations. August 2, 2023. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/08/230801_Comments_CompanyNoncompliance_PCAOB.pdf?#

[8] *See*: U.S. Chamber of Commerce, et al. letter to the PCAOB re: Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations. August 2, 2023. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/08/20230807-Coalition-of-Business-Trades-comment-to-PCAOB-NOCLAR-proposal.pdf?#

[9] *See*: U.S. Chamber of Commerce. "Examining the SEC's Proxy Advisor Rule." Fall 2020. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2020/10/CCMC_RoseWalker_v5.pdf

[10] Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(1), 14a-2(b), 14a-9 (June 1, 2021)

[11] *See*: Letter from Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce responding to SEC Re-Proposed Rules on Proxy Voting Advice. Dec. 23, 2021. Available at: http://www.centerforcapitalmarkets.com/wp-content/uploads/2021/12/211222_Comments_Proxy-AdvisorRule_SEC_FINAL.pdf?#

[12] *See*: https://www.uschamber.com/cases/capital-markets-and-corporate-law/chamber-of-commerce-v-sec-2

2020, the SEC adopted changes that would have required proposals to receive a modest level of support to be resubmitted in subsequent years. However, in July 2022 the SEC proposed changes to Rule 14a-8 that would undermine the ability of companies to exclude frivolous or unpopular proposals from their proxy materials.[13] If these proposed changes to Rule 14a-8 were adopted, companies and their shareholders would have to bear the not-insignificant cost of having to explain and register their opposition to certain proposals year after year. Boards and management of companies would also increasingly be distracted from focusing on core operations and long-term planning.

3. **Staff Legal Bulletin 14L.** Additionally, in November 2021 SEC staff issued Staff Legal Bulletin (SLB 14L) which includes a new interpretation of the "ordinary business" exemption under Rule 14a-8. SLB 14L explains that companies will no longer be able to rely on this exemption in order to exclude a proposal from their proxy materials if that proposal deals with an issue that has a "broad societal impact." In other words, a shareholder proponent need not demonstrate that a proposal is correlated with a company's financial performance – only that it involves an issue which the SEC staff agrees implicates a "broad societal impact." The long-term effect of this reinterpretation by SEC staff will be a marked expansion of the subject matter that companies must deal with during their annual proxy season, including topics that are inherently of a social or political nature and have little if nothing to do with corporate performance. In issuing this guidance, CorpFin acted in an opaque and seemingly capricious manner, jettisoning decades of SEC policy for the sake of political expediency.[14]

4. **Mandating the use of universal proxy cards for contested director elections.** In November 2021, the SEC adopted a rule to require that "universal proxy" cards be used for contested corporate director elections. The rule was adopted with little explanation for why universal proxy cards or necessary or what specific problem currently exists within the proxy system that universal proxy cards would address. The final rule will only increase the frequency and ease of proxy fights at public companies and "balkanize" the makeup of boards, all to the detriment of Main Street investors who will see not benefit from this rule.

5. **Expanding the scope of executive compensation policy beyond Congressional mandate and violating Administrative Procedure Act (APA) practice.** The Dodd-Frank Act required the SEC to implement rules regarding

---

[13] *See*: Letter from U.S. Chamber of Commerce to the SEC re: Proposed Rule on Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8. Sep. 12, 2022. Available at: https://www.centerforcapitalmarkets.com/letter/u-s-chamber-comments-on-sec-proposed-rule-under-exchange-act-rule-14a-8/

[14] *See*: Letter from U.S. Chamber of Commerce to SEC Chair Gensler re: Staff Legal Bulletin 14L (CF), November 16, 2021. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/11/21.11.16_-Comments_StaffLegalBulletin14L_SEC.pdf?

executive Pay versus Performance (Section 953(a)) and Recovery of Erroneously Awarded Compensation ("clawbacks") (Section 954). In 2015, the SEC issued proposed rules on each of these topics that were not finalized in that era. The current SEC subsequently reopened each of these comment files – where it should have issued reproposals – and took an inappropriately expansive view of the governing statute in finalizing both rules. The final clawback rule failed to account for the number of publicly traded companies that had voluntarily adopted their own clawback compensation policies since the 2015 proposal (a 106% increase) and took an overly-broad interpretation of the circumstances (i.e. restatement of disclosed information) in which clawbacks are required.[15] Similarly, the current SEC's final Pay vs. Performance rule incorporated measures that were not contemplated by the 2015 proposing release, but the SEC merely reopened the 2015 comment file and asked new questions where it should have reproposed the rule.[16] The SEC's final rule includes a requirement to disclose evaluation criteria for performance via a "Company-Selected Measure" system and "rankings" for these measures that requires companies to incorporate additional topics (such as achievement of climate-related goals) in evaluating executive performance that were not considered in the 2015 proposal.

6. **Inappropriately disincentivizing and politicizing Share Repurchase Programs ("buybacks").** The SEC's final 2022 Share Repurchase Disclosure Modernization rule requires companies to disclose granular information about company repurchase activity and offer a justification for engaging a buyback. The SEC did not offer convincing evidence that investors needed either of these categories of disclosure[17] – indeed, these disclosures are seemingly motivated by politics and policy preference – and the Chamber has subsequently challenged the SEC's rule in court.[18]

---

[15] *See*: Letter from U.S. Chamber of Commerce to the SEC re: Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation. November 22, 2021. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/11/211122_Comments_Clawbacks_SEC.pdf?#

[16] *See*: Letter from U.S. Chamber of Commerce to the SEC re: Reopening of Comment Period for Pay Versus Performance. March 4, 2022. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/03/220304_Comments_PayvPerformanceReopening_SEC.pdf?#

[17] *See*: Letter from U.S. Chamber to the SEC re: Share Repurchase Disclosure Modernization. April 1, 2022. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/04/220401_Comments_Share-Repurchases_SEC.pdf?#; Letter from U.S. Chamber, et. al. re: Share Repurchase Disclosure Modernization, Rule 10b5-1 and Insider Trading. April 1, 2022. *Available* at: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/04/FINAL220401_CoalitionComments_Repurchases_SEC.pdf?#; Supplemental Letter from U.S. Chamber to the SEC re: Share Repurchase Disclosure Modernization. September 20, 2022. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/09/220920_Comments_Buyback_SEC.pdf?#; Letter from U.S. Chamber to the SEC re: Share Repurchase Disclosure Modernization re: Reopening of Comment Period for Share Repurchase Disclosure Modernization. January 11, 2023. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/01/20230111-Supplemental-Comment-on-Buybacks_Excise-Tax-Addendum.pdf?#; U.S. Chamber of Commerce. "Corporate Liquidity Provision & Share Repurchase Programs." Fall 2021. *Available at*: https://www.centerforcapitalmarkets.com/resource/corporate-liquidity-provision-and-share-repurchase-programs/; U.S. Chamber of Commerce. "Addendum to Corporate Liquidity Provision & Share Repurchase Programs." Spring 2022. *Available at*: https://www.centerforcapitalmarkets.com/resource/addendum_stockbuy-back/

[18] *See*: https://www.uschamber.com/cases/capital-markets-and-corporate-law/chamber-of-commerce-v-sec-3

The Chamber is concerned that the SEC has not weighed the aggregate impact of these changes, particularly on the public company model and the attractiveness of U.S. public markets for potential new initial public offerings. For example, according to the SEC's own estimates for each rule, the costs of the Clawback, Pay vs. Performance, Buybacks, and Universal Proxy final rules taken together will add new compliance burdens of $6.7 billion for public companies. For comparison, the SEC estimates that the *total* cost burden associated with its related forms for public companies is $3.9 billion.[19] Moreover, these estimates were completed before the SEC raised its average cost for legal fees from $400/hour to $600/hour.

In addition to these changes to the corporate governance landscape, the Commission has also taken recent action or will take action to require an onslaught of new disclosures on topics like climate, cybersecurity, and human capital management. The SEC, working in coordination with other government agencies whose primary responsibility it is to address these topics (such as the Environmental Protection Agency, the Cybersecurity and Infrastructure Security Agency, and the Department of Labor), has a role to play to the extent these risks implicates the SEC's tripartite mission of investor protection, maintaining fair, orderly and efficient markets, and facilitating capital formation. To that extent, the Chamber is concerned about developments related to:

I. Climate Disclosure

The U.S. business community is meeting investor demand regarding material information on issues related to governance, environmental and other matters . In this sense, the U.S. capital markets – and, by extension, U.S. securities laws – have functioned efficiently toward the allocation of capital.

On climate disclosure, the Chamber believes that practical, flexible, predictable, and durable market-based solutions and mechanisms are at the core of efforts to address climate risk and are reflected in the actions of the Chamber's members.[20] Combating climate change requires citizens, governments, and businesses to work together. American businesses play a vital role in creating innovative solutions and reducing greenhouse gases ("GHGs"). The Chamber believes that policy solutions addressing climate change should serve the goal of reducing emissions as much and as quickly as possible based on what the pace of innovation allows and the feasibility of

[19] *See*: Letter from U.S. Chamber of Commerce to the SEC re: The Enhancement and Standardization of Climate-Related Disclosures for Investors. April 19, 2022. *Available at*: https://www.centerforcapitalmarkets.com/letter/ccmc-urges-the-sec-to-extend-comment-period-on-proposed-rule-regarding-the-enhancement-and-standardization-of-climate-related-disclosures-for-investors/

[20] *See*: Letter from U.S. Chamber of Commerce to the SEC re: The Enhancement and Standardization of Climate-Related Disclosures for Investors. June 16, 2022. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/06/US-Chamber-comment-on-SEC-Climate-Related-Disclosure_FINAL.pdf?#; Supplemental letter from U.S. Chamber of Commerce to the SEC re: The Enhancement and Standardization of Climate-Related Disclosures for Investors. November 1, 2022. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2022/11/20221101-Climate-Disclosure-Supplemental_Combined_Compressed.pdf?#; Second supplemental letter from U.S. Chamber of Commerce to the SEC re: The Enhancement and Standardization of Climate-Related Disclosures for Investors. February 27, 2023. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/02/20230227_Comments_ClimateDisclosures_SEC.pdf?#

implementing technical solutions at scale. Promoting private sector innovation across industry sectors is critical to developing, deploying and commercializing climate solutions. The Chamber supports climate policy that includes the disclosure of material information for investors to use, as well as policies that are not distorted or duplicative because of overlapping regulations and are not skewed by political interests.[21] U.S. climate policy should recognize the need for action, while maintaining the national and international competitiveness of U.S. industry and commerce and ensuring consistency with free enterprise and free trade principles.

While the Chamber is concerned about the SEC's rulemaking proposal on climate disclosure, we are also concerned about the role of the SEC and other financial market regulators in addressing potential extraterritorial disclosure mandates from the European Union ("EU"). The EU's Corporate Sustainability Reporting Directive ("CSRD") and Corporate Sustainability Due Diligence Directive ("CS3D") pose significant challenges and risks for U.S.-parented companies active in Europe, but also open the door to regulatory protectionism.[22] The SEC, Department of Treasury, and other regulators must engage with European policymakers to avoid, as Secretary Yellen recently stated on CS3D, the potential "negative, unintended consequences…" related to the CS3D.[23] The Chamber supports members of Congress exercising oversight of financial regulators related to these developments.

II. Cybersecurity Disclosure

On cybersecurity disclosure, the Chamber appreciates some of the changes the SEC made to its final rule on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure from its March 2022 proposal.[24] Cybersecurity is a priority for the Chamber its members. While the SEC did make some changes, it was dismissive of important issues raised by the Chamber and others.[25] Some of the procedures included in the final rule could be vague and unworkable, continues to risk ignoring the role of national security agencies, and establishes conflicting obligations on the part of the issuer leading to unclear enforcement standards. The Chamber looks forward to continuing to work with the SEC and Chamber members on implementation of its new rule.

---

[21] *See*: U.S. Chamber of Commerce. "Corporate Sustainability Reporting: Past, Present Future." November 2018. Available at: https://www.uschamberfoundation.org/sites/default/files/Corporate%20Sustainability%20Reporting%20Past%20Present%20Future.pdf

[22] *See*: U.S. Chamber of Commerce. "Position on the EU Corporate Sustainability Due Diligence Directive." July, 2023. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/09/CCMC_EU-Disclosure_1-pager_v2-1.pdf

[23] *See:* Bloomberg. "Yellen Says US Is Concerned About EU's ESG Supply Chain Rules." June 13, 2023. *Available at*: https://www.bloomberg.com/news/articles/2023-06-13/yellen-says-us-is-concerned-about-eu-s-esg-supply-chain-rules

[24] *See*: Letter from U.S. Chamber of Commerce to the SEC re: Finalization of the Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure. August 14, 2023. *Available at*: https://www.centerforcapitalmarkets.com/wp-content/uploads/2023/08/230814_Comments_CybersecurityRiskManagement_SEC_Final-1-1.pdf?#

[25] *See*: Letter from Thomas Quaadman and Christopher Roberti, et. al, of the U.S. Chamber of Commerce to the SEC re: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (File Number 27-09-22). P. 8-9; 16-17; 26-27. *Available at*: https://www.sec.gov/comments/s7-09-22/s70922-20128398-291304.pdf

III. Human Capital Management Disclosure

The SEC is also considering a new rulemaking proposal on human capital management, which is expected from the agency this Fall.[26] If the SEC proposes a new, prescriptive proposal on human capital, it must justify why such a proposal is needed so soon after the SEC's 2020 rule[27] that established a principles-based approach to human capital disclosure. The SEC's 2020 rule has effectively increased disclosure from companies for the use of investors,[28] and the SEC must meaningfully demonstrate why any new rulemaking proposal is justified in light of this evidence.

IV. Materiality

The SEC plays a vital role in the appropriate function of the U.S. capital markets, and a fundamental principle underlying that role is materiality.[29] Since the securities laws were first enacted, materiality has been the standard to determine what information public companies must disclose to investors. In the 1976 *TSC Industries, Inc. vs. Northway, Inc.* decision, the Supreme Court established a meaningful standard of materiality that was designed to provide investors with the significant information they need to make informed voting and investing decisions. Importantly, the Court provided further guidance but noted that the "disclosure policy" under the federal securities laws "is not without limit" because investors should be safeguarded from being overwhelmed with information that runs counter to the goal of better investor decision making. The Court operationalized this principle in its decision – subsequently affirmed by the Court in *Basic, Inc. v. Levinson* – by rejecting[30] the notion that information is material if it "might" be important to an investor in favor of the following test: information is material for purposes of federal securities regulation if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote" or invest. The Court has noted its concern that absent a defined materiality standard, investors could be buried "in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking." The materiality standard has served investors well for decades and has been a bedrock of corporate disclosure in the United States.

The Chamber has been a staunch advocate for the standard of materiality the Court formulated and supports a legislative effort that would codify the standard expressed by the Supreme Court, and prohibit the SEC from mandating disclosure requirements

---

[26] https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235

[27] https://www.sec.gov/news/press-release/2020-192

[28] *See*: Analysis from Gibson, Dunn, Crutcher. "A Survey of Disclosures from the S&P 100 During the Two Years Following Adoption of the Securities and Exchange Commission Rule." January 9, 2023. *Available at*: https://www.gibsondunn.com/evolving-human-capital-disclosures/

[29] *See*: Center for Capital Markets Competitiveness, U.S. Chamber of Commerce. "Essential Information: Modernizing Our Corporate Disclosure System". Winter 2017. *Available at*: http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL.pdf?x48633

[30] 485 U.S. 224 (1988).

that are outside the scope of the securities laws or are intended to promote objectives that are at odds with the interests of investors. The Chamber's 2017 report on materiality emphasized that the Supreme Court's materiality standard helps shield investors from the harms of information overload and appropriately tethers federal securities regulation to the SEC's and securities laws' reason for existence. Traditionally, materiality has centered on information that is important for investors focused on understanding the financial and operating performance of companies as investors attempt to gain wealth and earn income.

Conclusion

The SEC must look past the views of activist investors and address the needs of the marketplace for all investors, including retail and Main Street investors. The impact of recent and forthcoming corporate governance policies at the Division of Corporation Finance must be weighed in the aggregate, and their costs must justify their benefits against the overall attractiveness of the public company model to ensure future generations have viable and reliable investment opportunities to build wealth. Thank you for the opportunity to testify on these important matters, and I look forward to engaging with the Committee on these and other subjects.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

cc: Members of the House Committee on Financial Services