U.S. Chamber of Commerce
Center for Capital Markets
Competitiveness

Unlocking America's Capital Markets: Fueling Economic Growth and Innovation

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Executive Summary

Companies that file registration statements with the Securities and Exchange Commission (SEC) and offer securities to the general public are typically referred to in the U.S. as public companies. Public companies have been a critical source of job creation and innovation throughout the U.S. economy for decades. Capital raised in a public offering is used to hire new employees, invest in research & development, and expand operations. Public offerings provide businesses with a steady and reliable source of capital that helps them create well-paying jobs, remain profitable, and stay competitive for the long term.

Investors reap the benefits when companies go public. Millions of Americans directly or indirectly invest in public companies through retirement or education savings plans. The opportunity to invest early in a growth-stage company, before its share price potentially increases significantly, is also an opportunity for investors to create wealth and financial security, which in turn helps generate additional investment in other companies.

Unfortunately, the public markets in the U.S. are not nearly as strong as they were even two generations ago. The number of public companies has fallen by roughly 50% since the late 1990s, and the initial public offering (IPO) market remains a fraction of what it was in the 1980s. Returning the IPO market to its position of historical strength is critical to boost job creation and economic growth in the years to come.

While many factors have contributed to the decline in public companies, there is little doubt that the regulatory framework in the U.S. is damaging this market. Congress has addressed some of the issues that led to the decline in the number of IPOs, but there are additional ways that policymakers of all stripes can help ignite a new era of economic growth through America's public markets.

The U.S. Chamber of Commerce and Nasdaq have a long-standing partnership to inform policymakers about the need to maintain strong public markets in the U.S. In this report, the Chamber and Nasdaq have partnered to deliver recommendations to reinvigorate the IPO market and improve the regulatory environment for public companies.

Summary of Recommendations

Improvements to the Jumpstart Our Business Startups (JOBS) Act and Tailoring Regulations for Small Public Companies

- Extend the emerging growth company (EGC) eligibility time frame from 5 years to 10 years unless the EGC's revenue exceeds $2 billion (in 2025 dollars and adjusted annually for inflation) for two consecutive years after the initial 5-year period.
- Remove the counterproductive phase-out rule that disqualifies a company from continuing as an EGC if it becomes a large, accelerated filer.
- Modernize the threshold that determines well-known seasoned issuer (WKSI) status to include companies that have $75 million or less in public float.
- Codify into law the ability of all issuers to submit draft registration statements confidentially to the SEC and test the waters with investors prior to an IPO.
- The SEC should adopt internal policies to shorten the IPO review process.

Reforms to the Proxy Process

- Reestablish meaningful oversight of proxy advisory firms.
- Return the shareholder proposal system under Rule 14a-8 to its original purpose.

Improvements to Public Company Disclosure

- Cease the cross-border application of foreign regulation to U.S. businesses.
- Reinforce the materiality standard as the touchstone for corporate disclosure.
- The SEC should continue scaling disclosure requirements for small public companies.
- The SEC should consider changes to rules governing delivery of disclosures to the public.
- Simplify quarterly reporting requirements and give EGCs the option to issue a press release with earnings results in lieu of a 10-Q.

Increasing Equity Research Coverage of Small Public Companies

- The SEC should examine any regulations that may be contributing to a lack of research in small issuers and develop relevant rulemakings to increase coverage. A full examination and reconsideration of the 2003 Global Research Analyst Settlement is also necessary.
- Policymakers should adopt a permanent solution that allows brokers to receive payments for equity research without having to register as investment advisers to limit the extraterritorial reach of MiFID II and foreign regulators.

Financial Reporting and Public Company Accounting Oversight Board (PCAOB) Recommendations

- The SEC and the PCAOB should jointly examine cost drivers behind ICFR and develop guidance to help address unnecessary costs for small public companies.
- The PCAOB should adopt a more robust set of good governance standards, including cost-benefit analysis.

Introduction

The U.S. public markets have long been the most dynamic in the world because of their unparalleled ability to connect high-growth businesses with capital. The ultimate goal of many entrepreneurs is to start a business from scratch, grow it into a thriving enterprise, then one day complete an initial public offering (IPO) and have the company's shares trade on a U.S. stock exchange. Businesses that go public have been an indispensable source of job creation and innovation, supporting growth throughout the U.S. economy.

Some of the most iconic companies in America had humble beginnings that started in a garage, a dorm room, or a single storefront. Today, many of these companies employ thousands of workers, develop society's crucial innovations, are owned by a vast base of shareholders, and some have market capitalizations worth hundreds of billions of dollars.

These quintessentially American stories do not happen through sheer luck. The path from startup company to IPO is only possible when markets are able to connect capital with ideas, and the vision of entrepreneurs can be transformed into a business that is consistently profitable and competitive over a long period of time. Historically, the steady and reliable capital raised through a public offering has been the preferred method for high-growth businesses to support their long-term business strategy. After a public offering, any investor—whether an institution or an individual—can invest in that company, providing the business with a more permanent base of potential investors. This can ultimately lower the long-term costs of capital for public companies compared to other forms of capital raising.

Investors also benefit when businesses choose to go public. When individuals can invest in young, growth-stage companies—either directly as a shareholder or indirectly through a retirement or pension plan—they are able to participate in the financial success of America's best companies and ideas. This system helps generate wealth and supports the financial and retirement security of millions of Americans.

The sweeping societal benefits that result from companies going public are enormous. It has been estimated that 92% of a company's job growth occurs after its IPO[1], while other research has found that post-IPO companies increase employment by 20% annually compared to companies that withdrew from an IPO.[2] Encouraging more companies to enter the public markets is a long-held goal of policymakers for good reason.

Concerningly, the competitiveness of the U.S. public markets and the interest of companies in going public have diminished over the last three decades. The number of public companies in the U.S. has declined from a peak of 8,000 in the late 1990s to roughly half that number today. The average number of annual IPOs remains a fraction of what it was in the 1990s.

The implications for the U.S. economy stemming from the drop in the number of public companies have been a source of concern for policymakers since IPO activity began its steady decline in the 2000s. After the 2008–2009 financial crisis, there was a severe drop in IPOs at the precise moment that the economy was desperate for job creation and new opportunities for investors after the market losses stemming from the crisis. Instead, the immediate post-crisis regulatory response was to layer new regulations on public companies, which hampered the recovery and further damaged the IPO market.

Eventually, Congress and the executive branch came to understand that the regulatory framework for public companies was disincentivizing companies from going public in the first place, and that reforms were necessary to stimulate the IPO market. Congressional hearings were held to examine the issue, and in March 2011 the Treasury Department convened a conference that solicited ideas for how to promote access to capital for growing businesses.

The result of these efforts was the 2012 Jumpstart Our Business Startups (JOBS) Act, a bipartisan achievement that breathed new life into the IPO market. Companies were able to take advantage of provisions of the JOBS Act the day it was signed into law.

The JOBS Act established a new class of issuer (a term used to describe a public company), the emerging growth company, or EGC. EGCs were defined by the JOBS Act as growth-stage businesses with less than $1 billion in annual revenues.

EGCs may take advantage of an IPO on-ramp that temporarily exempts them from costly regulatory mandates that apply to traditional IPOs. Notably, EGCs are exempt from the auditor attestation requirements under section 404(b) of the 2002 Sarbanes-Oxley Act and are permitted to provide audited financial statements for their two previous fiscal years opposed to the typical three for other companies.

In the years leading up to the JOBS Act, Sarbanes-Oxley Section 404 had been widely cited as a reason why fewer companies were going public, something even the SEC acknowledged in its 2003 rulemaking implementing Section 404 when it said that the rule could “discourage some companies from seeking capital from the public markets” due to the high costs of compliance the rules impose on public companies.[3]

Additionally, the JOBS Act allowed EGCs to engage in pre-IPO communication about the company’s prospects (test the waters) with potential investors and file draft registration statement confidentially with the SEC.

The JOBS Act had an immediate positive impact upon the trajectory of the IPO market. From 2008 to 2012 there were on average 121 IPOs each year in the U.S. After passage of the JOBS Act, from 2013 to 2021, IPOs averaged 344 annually.[4] EGCs also made up 93% of all IPOS from 2013 to 2021, demonstrating that tailored regulation for smaller companies can provide an incentive to go public.[5]

Importantly, in the 13 years that the JOBS Act has been in effect, the act has made it easier for companies to enter the public markets while preserving investor protections.

The momentum gained from the JOBS Act led to other initiatives from Congress to improve the regulatory environment for pre-IPO and small public companies. For example, Congress in 2015 passed a law that made further accommodations for EGCs during the IPO on-ramp period and directed the SEC to simplify or eliminate outdated disclosure requirements for all public companies.[6] Congress has wisely taken steps over the years to improve regulatory conditions to strengthen markets while assiduously avoiding direct market interventions.

The SEC has also taken initiative on its own to modernize rules for the IPO process. In 2017, it permitted all public companies to submit draft registration statements for nonpublic review and further expanded draft registration statement accommodations in early 2025.[7] This permitted companies to maintain confidentiality about some of the more sensitive aspects of their business strategy or intellectual property. In 2019, the SEC started allowing all issuers, not just EGCs, to test the waters with investors prior to an IPO.[8] Some of these ideas were also embraced by an influential report on the capital markets issued by the Treasury Department in 2017.[9]

The SEC then took further steps to enhance the public company model, which is the term used for the set of rules and regulations that govern companies once they go public. Because public companies access money from everyday investors, Congress decided in 1933 and through subsequent law that public companies provide annual and quarterly disclosures about their performance and operations to the public. However, in the nine decades since the securities laws were first enacted, the SEC's disclosure regime has become bloated to the point that investors can become overwhelmed with the amount of information that is provided by public companies in their SEC filings.

This system creates substantial costs for issuers—particularly smaller public companies— and can make it difficult for investors to determine the most important information about a company. To address this, the SEC in 2018 allowed more small public companies to take advantage of certain scaled disclosure and financial reporting requirements and eliminated certain outdated, duplicative, or redundant disclosure mandates for all public companies.[10]

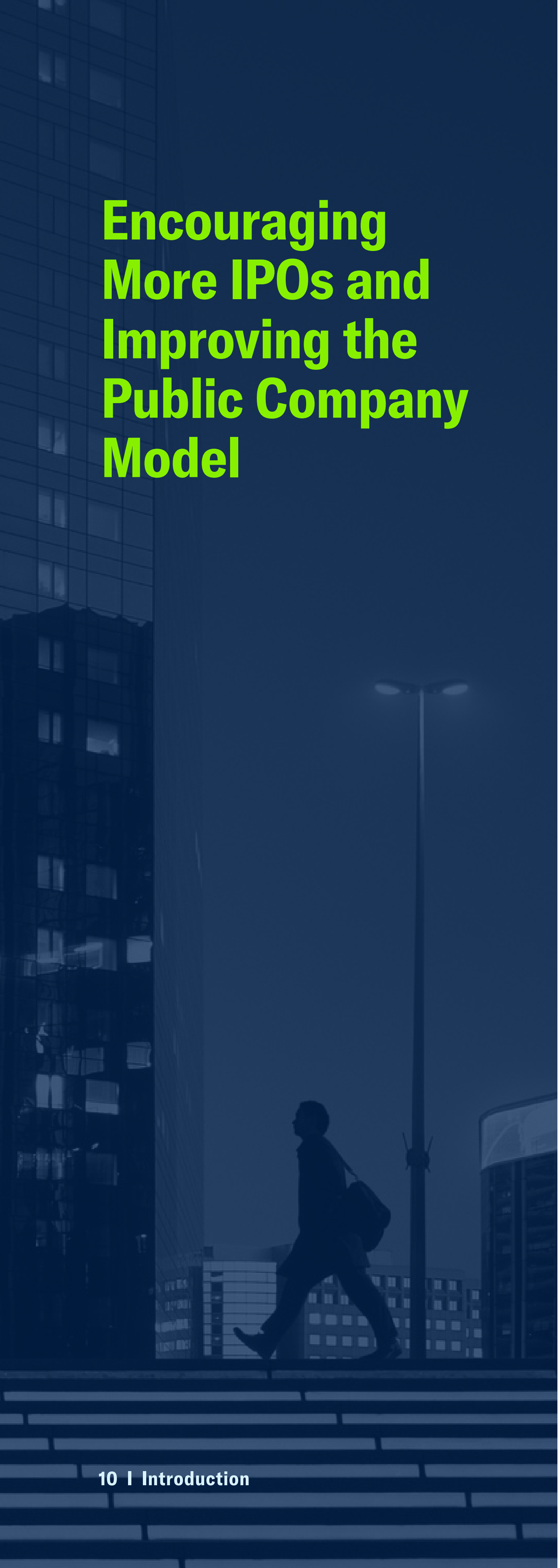
In addition to annual and quarterly reporting requirements, a public company must also navigate the annual proxy season. Proxy season generally refers to the period leading up to and including a company's annual meeting where shareholder votes are held on various matters. Public companies are required to provide shareholders with a detailed proxy statement, soliciting their votes on matters to be considered at the annual meeting.

In recent years, the proxy process has become increasingly influenced by activists that exploit the SEC's proxy rules to force companies to consider immaterial matters—often those of a social or political nature—during annual meetings. The proxy process has also come under greater scrutiny because of the influence of proxy advisory firms, which make recommendations to institutional investors for how to vote on director elections, shareholder proposals, or other topics considered at an annual meeting.

Because proxy advisors are turned to by large investors for help with proxy voting, they exert an enormous amount of influence over corporate governance in the U.S., but the industry is riddled with conflicts of interest and prone to committing errors when providing vote recommendations to institutional investors. Proxy advisors often make recommendations that are not rooted in economic analysis, leading to outcomes that are detrimental to shareholders of public companies. In 2020, the SEC adopted rules that provided a baseline level of transparency and accountability for the proxy advisory industry.[11]

The SEC also adopted changes to the shareholder proposal system under Securities Exchange Act Rule 14a-8—a system that has been abused by special interests that use it as a mechanism each proxy season to advance social or political agendas that have nothing to do with financial return or investor protection. Rule 14a-8 has permitted activists to submit proposals dealing with immaterial topics year after year, which create real costs and distractions for companies.[12]

Unfortunately, the problems with proxy advisory firms and Rule 14a-8 continue to exist, necessitating the need for the SEC or Congress to enact more permanent changes that protect the interests of investors and facilitate the entry of growing companies into the public markets.



Encouraging More IPOs and Improving the Public Company Model

Encouraging more companies to go and stay public is not just about trying to meet arbitrary benchmarks for annual IPO activity; it is imperative to support sustainable growth in the economy and the long-term competitiveness of the U.S. capital markets. From 1950 to 2010, the U.S. economy averaged 3.4% in real economic growth per year. Since 2010, the annual average has slowed to 2.2%, with some forecasts projecting that growth could dip below 2% per year in the next decade.[13] Expanding the IPO on-ramp and returning the U.S. IPO market to its position of historical strength must be included as part of any pro-growth agenda for the economy.

Sustained economic growth provides a foundation for broad-based prosperity by expanding opportunities, increasing incomes, fostering innovation, and enhancing the overall quality of life for individuals and families. It is a critical driver in reducing poverty and creating a society where everyone has a chance to thrive. When our economy is growing at 3%, individuals who are born today will see America's economy double in size by the time they are in their early 20s. At 2% growth, it will take until they are in their mid-30s for the economy to double.

To be clear, prioritizing enhancements to the public markets should not be viewed as diminishing the importance of the private capital markets and businesses that choose to stay private for any number of reasons. U.S. policymakers should welcome both strong private capital markets and public markets. However, if businesses that otherwise would go public are electing not to largely because of regulatory costs or the overall burden of being a public company, that is a problem.

The U.S. Chamber of Commerce and Nasdaq have collaborated closely over the years to inform policymakers about the importance of the public markets and put forward ideas to modernize securities regulation in the

U.S. In 2018, we partnered with several other organizations to produce 22 recommendations to policymakers on how to help companies go and stay public.[14] While some of these recommendations have been implemented, there is still more work ahead to modernize public company regulation.

Since the 2018 report was issued, further challenges for public companies and companies considering going public have developed. For example, policies pursued by foreign regulators—namely the European Union's Corporate Sustainability Due Diligence Directive (CS3D) and Corporate Sustainability Reporting Directive (CSRD) threaten to impose obligations on U.S. firms that would be exceedingly difficult, if not impossible, to implement.

The public capital markets—by way of the federal proxy rules and other sources—have also been drawn into contentious cultural and political debates in the U.S., which typically presents a lose-lose scenario for companies and their shareholders. Organized special interests seek to achieve through corporate pressure campaigns what they cannot achieve through the normal electoral or legislative processes of the U.S. political system. This puts the hard-earned savings of American investors at risk as companies are pressured to prioritize objectives that are unrelated to long-term performance.

This type of operating environment ends up discouraging companies from entering the public markets with its additional scrutiny and additional requirements, making politicizing the capital markets not conducive to capital formation and risking America's standing as the preeminent destination for global capital.

Over the last several months, the Chamber and Nasdaq convened a series of meetings and roundtables with public companies, venture capitalists, institutional investors, securities law experts, and investment bankers to determine the best path forward for the U.S. public markets. The insight and expertise gained from these sessions helped inform this report. We are pleased to partner once again with this latest set of recommendations and look forward to working closely with Congress, the SEC, and other policymakers on these important issues.

Recommendations

Building on the Success of the JOBS Act and Tailoring Regulations for Small Public Companies

Title I of the JOBS Act established the IPO on-ramp for EGCs and quickly became the preferred method of going public in the years since the JOBS Act became law. The on-ramp currently provides temporary exemptions from certain regulatory requirements for a period of 5 years or when the company exceeds the revenue threshold for EGCs. (Currently, it's set at $1.235 billion after inflation adjustments since the JOBS Act was passed.)

Recommendation

Extend the EGC eligibility time frame from 5 years to 10 years and increase the revenue ceiling for EGCs to a minimum of $2 billion (in 2025 dollars and adjusted annually for inflation) for 2 consecutive years after the initial 5-year period).

Evidence from the JOBS Act shows that EGCs overwhelmingly take advantage of the Title I provisions Among other provisions, Title I permits EGCs to file registration statements confidentially with the SEC, exempts EGCs from the auditor attestation requirements of the 2002 Sarbanes-Oxley Act and allows EGCs to provide investors with two years of audited financial statements opposed to the typical three for traditional IPOs.

Sarbanes-Oxley's auditor attestation mandate —which requires public companies to hire a third-party to audit their internal controls over financial reporting—had frequently been cited as a reason why more companies were not going public prior to the JOBS Act. The auditor attestation mandate had driven the average annual audit costs for public companies to over $2 million per year in the immediate years after Sarbanes-Oxley was passed—a substantial sum for a smaller company considering a public offering.[15] This coincided with a general rise in audit costs that led companies to reconsider the costs and benefits of an IPO.

The confidential treatment of draft registration statements has also been attractive to EGCs as it allows them to keep sensitive information confidential for competitive purposes.

In the second year of the JOBS Act being law, 90% of EGCs submitted at least one registration statement confidentially, 65% provided two years of audited financial statements, and 98% used the extended phase-in period for the auditor attestation requirements of Sarbanes-Oxley.[16] A vast majority of EGCs also used the JOBS Act to provide scaled executive compensation disclosures. Companies can be provided needed certainty about the costs of being public by guaranteeing that they will get these benefits for a minimum of 5 years after they go public. In addition, extending the on-ramp from 5 years to 10 years would allow many of these companies to grow before they are subject to regulatory requirements that are appropriate for more mature companies.

Similarly, while the EGC revenue threshold is adjusted for inflation annually, the current level does not properly reflect growth of the economy and the capital markets since the JOBS Act was passed. Allowing companies to qualify as EGCs if they have revenue up to $1.5 billion for two consecutive years and adjusting that ceiling for inflation would give more companies the opportunity to take advantage of the JOBS Act.

Recommendation

Remove the counterproductive phase-out rule that disqualifies a company from continuing as an EGC if it becomes a large accelerated filer.

Companies can face uncertainty about their status as an EGC once they go public due to factors beyond their control. By the second year after the JOBS Act was passed, for example, 30% of EGCs that went public in 2012 complied with the requirement of Sarbanes-Oxley section 404(b) because they became large accelerated filers. Large accelerated filers are defined under SEC regulation as having a public float of $700 million or more and are subject to the auditor attestation requirements under the Sarbanes-Oxley Act."[17] EGCs should be permitted to retain their status even if they happen to cross a threshold that would otherwise reclassify them as large accelerated filers.

Recommendation

Modernize the threshold that determines well-known seasoned issuer (WKSI) status to include companies that have $75 million or less in public float.

WKSIs are a class of issuer under SEC regulation that are eligible to file shelf registration statements, which become automatically effective once filed. Allowing shelf registration and other regulatory accommodations would minimize reporting costs for companies that are already established in the marketplace. As one expert testified to Congress in 2023, "allowing additional seasoned issuers to qualify as WKSIs would greatly facilitate the ability of many companies to access the public markets."[18]

Recommendation

Codify into law the ability of all issuers to submit draft registration statements confidentially to the SEC and test the waters with investors prior to an IPO.

Confidential filings and testing the waters quickly became two of the more widely used provisions of the JOBS Act soon after it was signed into law. The SEC has expanded eligibility for both of these JOBS Act reforms, most recently in early 2025 with additional changes to the processes for submitting draft registration statements. Still, Congress should codify the policy into law so that it cannot be weakened or rescinded in the future by the SEC.

Recommendation

The SEC should adopt internal policies to improve the IPO review process.

While EGCs have overwhelmingly submitted draft registration statements confidentially, the SEC staff review process for registration statements is still cumbersome and time-consuming. Once a company submits a draft registration, the SEC takes time to provide comments back to the company—a process that can take multiple rounds and last for months, creating uncertainty in the timeline for SEC approval. This delay raises the risk that the company may not be able to complete its IPO due to market conditions or other reasons. One recent analysis estimated that 40% of companies that filed a registration statement did not ultimately complete an IPO.[19] The SEC should at a minimum seek to shorten the amount of time the review process takes and ensure that any comments requiring a company's attention provided by SEC staff are only of critical importance.

Reforms to the Proxy Process

Public companies have increasingly become the target of activists who exploit the securities laws to advance political or social objectives through the annual proxy process. These campaigns typically have little or nothing to do with corporate performance, can impose millions of dollars' worth of costs on shareholders, and represent significant opportunity costs. In recent years, activists across the political spectrum have targeted public companies over a wide range of controversial issues. Corporate leaders often find themselves in the difficult position of having to respond and take positions on topics that divide their shareholder or customer base. This politicization of the securities laws is harmful to the reputation of the U.S. capital markets and provides another reason for companies to stay private.

The SEC's shareholder proposal system under Rule 14a-8 has become the preferred vehicle for special interests to advance their idiosyncratic agendas. In the 2024 proxy season alone, companies were called on by activists to address any number of societal issues, including conducting racial equity audits, providing information about gestational crates in the pork industry or the use of cage-free eggs, or reporting on diversity, equity, and inclusion (DEI) targets or metrics within a company.[20] The SEC's position on whether companies must include controversial proposals with their proxy materials has varied depending on which political party occupies the executive branch. These policy swings are not entirely predictable and make it difficult and costly for companies to navigate proxy season. An overhaul of the entire Rule 14a-8 system framework is needed to address the unnecessary costs that the current system imposes on public company shareholders.

Exacerbating many of the underlying problems with the proxy process is the influence of the proxy advisory industry. Proxy advisors can play an important role in corporate governance by advising institutional investors how to vote on matters that are important to a company's long-term performance. However, the two foreign-owned firms that continue to dominate this industry—Institutional Shareholder Services (ISS) and Glass Lewis—operate with significant conflicts of interest and often make errors when providing vote recommendations. Smaller public companies have also historically had a more difficult time communicating with and providing feedback to proxy advisory firms. The reforms outlined below would correct many of these deficiencies and ensure that proxy advice is always accurate, useful, and given with the best interest of investors in mind.

Recommendation

Reestablish meaningful oversight of proxy advisory firms.

In 2020, the SEC adopted reforms to increase accountability and transparency for proxy advisory firms. This rulemaking was the culmination of a years-long effort by Congress and the SEC to examine the flaws within the industry and develop solutions that are in the best interest of public company shareholders.

The SEC's 2020 rule provided a mechanism for public companies to comment on draft vote recommendations in order to correct any errors, required proxy advisors to disclose information regarding their conflicts of interest, and held proxy advisors accountable by extending the SEC's antifraud authority under Rule 14a-9 to the dissemination of proxy advice. These were sensible, calibrated changes that incorporated the views of public companies, investors, and proxy advisors themselves throughout the rulemaking process.

However, after the administration change in 2021, the SEC announced a "non-enforcement" policy for the 2020 rule and ultimately rescinded many of the reforms before they even took effect.[21] The SEC's rescission and non-enforcement policy currently remain the subject of litigation. Regardless of the outcome in court, the SEC and, if necessary, Congress have the opportunity to establish effective oversight of proxy advisory firms based upon the SEC's 2020 rule.

Nearly every participant in the proxy process—issuers, brokers, transfer agents, and institutional investors—are subject to robust requirements under the federal proxy rules. Proxy advisors must similarly be required to adhere to the basic transparency and accountability requirements that were central to the SEC's 2020 reforms.

Oversight of Environmental, Social, and Governance (ESG) Ratings Firms

Over the last 15 years, many institutional investors—including asset management firms and pension plans—adopted policies to integrate ESG factors into their investment process. These policies can be influenced by ratings provided by a handful of ESG ratings firms that "score" companies based upon certain ESG criteria.

However, there is very little oversight or regulation of ESG ratings firms, an industry that exhibits many of the same deficiencies as proxy advisory firms. The ratings provided by these firms are typically developed through a highly subjective and nontransparent process that does not take business or industry-specific facts into account. Companies are effectively determined to be ESG-friendly or not ESG-friendly, which influences decisions from institutional investors that use ESG ratings as part of their investment screening process. Since topics that fall under the ESG umbrella can often be of a nonfinancial nature, the influence these firms exert can distort markets and lead to inefficient capital flows.

Accordingly, the SEC should expand its regulation of proxy advisory firms to include ESG and sustainability ratings firms, whose clout in the marketplace continues to grow unchecked.

Recommendation

Return the shareholder proposal system under Rule 14a-8 to its original purpose.

Securities Exchange Act Rule 14a-8 was originally established as a mechanism to facilitate constructive dialogue between shareholders and the boards of public companies. Proposals that dealt with immaterial topics or personal grievances were not considered relevant to the interests of a company's shareholder base.

Over time, however, the SEC weakened the guardrails that protected shareholders from bearing the costs of dealing with frivolous or immaterial proposals year after year. Predictably, Rule 14a-8 became a favorite vehicle of special interests to pursue their agendas during the annual proxy season. Instead of focusing exclusively on the needs of all shareholders, some companies have had to spend time and resources dealing with, for example, a proposal dealing with low-flow showerheads in hotels[22], a proposal calling on a company to run for office and place itself on an electoral ballot[23], or a proposal demanding that a company produce a report to detail how it deals with fake news.[24] These types of efforts may satiate the most extreme of activists, but they do absolutely nothing to create value for shareholders.

Recent actions by the SEC have only worsened the problem. SEC Staff Legal Bulletin 14L (SLB 14L) issued in 2021 led to a sharp increase in the number of social and politically motivated proposals at public companies. SEC Commissioner Mark Uyeda noted that after SLB 14L was issued, the number of proposals dealing with environmental or social issues jumped by over 50% and the frequency of votes on such proposals increased by 125%.[25] As a result, annual general meetings could be turned into a kind of debating society where management and activists spend time discussing matters that are irrelevant to the company's strategic goals. In other words, these proposals become a distraction for companies that are trying to focus on their long-term objectives and performance.

This system is not without cost. Millions of dollars worth of shareholder money every year is sunk into legal and other costs to deal with frivolous activism. Private companies take note of this flawed system when they are going through the process or deciding whether or not to go public.

In 2025, the SEC has begun to reverse course and bring a touch of sobriety back to Rule 14a-8. A recent staff bulletin withdrew SLB 14L and made it clear that any proposal submitted must involve a topic that is economically relevant to the underlying company.[26] These are all positive developments for future proxy seasons.

However, a fundamental rethinking of the entire Rule 14a-8 system is needed. It does not benefit public companies and their shareholders when policies surrounding Rule 14a-8 swing wildly from one presidential administration to the next via SEC staff guidance. The SEC should solicit public feedback and initiate a rulemaking process to enact wholesale changes to the shareholder proposal system that can be relied on by companies for long-term planning.

The SEC should consider, for instance, a safe harbor that permits boards to properly exercise their fiduciary duty by excluding certain proposals. It should codify many of the policies contained in the 2025 staff bulletin to eliminate the prevalence of immaterial and harmful activist campaigns.

Furthermore, the SEC should seek to close a loophole in the Universal Proxy rule that special interests can now use as an end run around Rule 14a-8 and forcing companies to include immaterial proposals with their proxy materials. The SEC adopted the Universal Proxy rule in 2021 to make it easier for dissidents to nominate their board candidates during proxy season. Throughout that rulemaking process, the SEC never fully examined or sought comment on how activists might use the Universal Proxy rule to place shareholder proposals on a company's ballot and in the process skirt the requirements of Rule 14a-8. However, at least one activist exploited the Universal Proxy rule during the 2024 proxy season to force a company to include that activist's proposals with its own proxy materials.[27] The SEC should consider an outright repeal of the Universal Proxy rule since the rule was unnecessary in the first place.[28] Absent a repeal, the SEC should amend the rule to prohibit its use for shareholder proposals.

Improvements to Public Company Disclosure

A 2022 report from the American Council for Capital Formation found that at the end of 2019 there were at least 800 fewer public companies in the U.S. because of the high cost of mandatory reporting under our securities laws. The report further estimated that a 10% increase in reporting costs would have led to 80 fewer public companies, which would have had a combined 51,000 employees and $60 billion in revenue.[29] Unfortunately, the SEC has often neglected to consider the cumulative costs of regulatory requirements on shareholders and job creation when adopting new disclosure mandates.

The corporate disclosure regime should also never be used to achieve social or policy objectives. An unfortunate—and tragic—example of this is the Dodd-Frank Act's conflict minerals rule, which was adopted with the explicit intent of addressing violence in the Democratic Republic of Congo (DRC). However, in practice the supply chain reporting required by the rule worsened the situation in the DRC while failing to provide investors with any type of decision-useful information.[30] The rule also imposes enormous costs on public company shareholders. The SEC estimated initial compliance costs for companies to be between $3 billion and $4 billion, with annual costs of over $600 million.

Public companies are also now at risk of becoming subject to extraterritorial regulation, including the European Union's Corporate Sustainability Due Diligence Directive (CS3D) and Corporate Sustainability Reporting Directive (CSRD), which as currently drafted would import ideologically drive, EU-style regulation into the U.S. CS3D, in particular, would also open U.S. businesses up to potentially frivolous litigation and redefine the role of board of directors.

Recommendation

Reinforce the materiality standard as the touchstone for corporate disclosure.

Since the securities were first enacted in the 1930s, materiality has been the standard that decides how companies communicate with their investors, primarily through their SEC filings. In TSC Industries vs. Northway, the Supreme Court clarified that a fact is material if “there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.”[31] The Court subsequently affirmed that the same standard applies to both voting and investment decisions. The Chamber previously issued a report outlining the historical importance of the materiality standard and why it should continue to guide corporate disclosure in the U.S.[32]

In recent years, however, the materiality standard has been bent to meet particular policy goals, and public companies are subject to several disclosure mandates that do not meet the test of materiality. These include mandates stemming from the Dodd-Frank Act as well as more recently adopted SEC rules on nonfinancial disclosure.

A prime example of this is the SEC’s 2024 climate disclosure rule, which mandates that companies produce extensive amounts of information that is not material and therefore obscures what is most important to make informed voting and investment decisions. This would include forward-looking, speculative disclosures about the risks of climate change along with highly prescriptive climate-related targets and goals and, for many companies, disclosures regarding greenhouse gas emissions.

By the SEC’s own estimate, the climate disclosure rule would cost public companies $2.3 billion every year. SEC Commissioner Hester Peirce pointed out that the climate disclosure rule alone could constitute 15% of an average company’s annual SEC reporting cost.[33]

To prevent future harm to investors through ill-advised rulemakings, the SEC should also adopt a clear policy that any future disclosure requirements will be grounded in the Supreme Court articulated principle of materiality.

Recommendation

Cease the cross-border application of foreign regulation to U.S. businesses.

The extraterritorial reach of CSRD and CS3D threatens U.S. sovereignty over its domestic capital markets. The animating purpose of these projects is to change corporate practices in a way that aligns with the priorities of European regulators. In other words, the objectives of CSRD and CS3D are not centered on providing investors with material information as would be consistent with U.S. law. The supply chain reporting requirements under CS3D go well beyond anything that currently exists under U.S. law or would be required under the materiality standard. Boards of directors would assume direct responsibility for a company’s supply chain due diligence and would be required to consider sustainability when making decisions to carry out their fiduciary duty. Again, this type of requirement presents a conflict with existing state and federal law in the U.S.

As currently drafted, CS3D would be extremely difficult—if not impossible—for many U.S. companies to implement without conflicting with existing law in the U.S. Although the EU has indicated it may scale back some of the more problematic provisions of CSRD and CS3D, they still represent a major threat to the competitiveness of U.S. businesses.

We encourage the administration and Congress to continue dialogue and negotiation with their European counterparts to prevent the imposition of EU law on U.S. businesses and protect the American economy from the harmful effects of CS3D and CSRD.

Recommendation

The SEC should continue scaling disclosure requirements for small public companies.

In 2018, the SEC adopted changes to the smaller reporting company (SRC) definition to permit more companies to take advantage of scaled disclosure requirements. As the SEC stated at the time, the changes "will promote capital formation through a modest reduction in compliance costs for newly eligible SRCs while maintaining appropriate investor protections."[34], [35] Similarly, Congress exempted EGCs from certain Dodd-Frank Act mandates such as the pay ratio rule and pay versus performance rule, along with extensive executive compensation disclosures that other public companies must provide.

These exemptions are a recognition of how the costs of such mandates can harm EGCs or small public companies and divert resources away from hiring, research & development, or other productive functions. The SEC should further examine its disclosure regime and determine whether further exemptions from costly disclosure rules are warranted for small public companies and/or EGCs.

Recommendation

The SEC should consider changes to rules governing delivery of disclosures to the public.

Additionally, a fundamental rethink of delivery systems for SEC disclosure is overdue. The current requirements involve self-contained reports provided on either an annual or quarterly basis and do not take into account new technologies or how investors today typically receive and disseminate information. The SEC has previously considered the adoption of a "company file" system that would collect "core information about a company… in a centrally and logically organized interactive data file." Companies could then provide continuous updates to that file, which would be easily accessible for investors. Since the SEC first considered this idea in 2009, investor use of new technologies has only advanced, and the 1930s paper-based system is becoming even more obsolete. The SEC should convene public forums and solicit public comment on how disclosure delivery systems could be modernized in a way that benefits investors and minimizes costs on public companies.

Recommendation

Simplify quarterly reporting requirements and give EGCs the option to issue a press release with earnings results in lieu of a 10-Q.

According to the report of the IPO Task Force—a committee convened through a Department of Treasury conference in 2011 and whose recommendations formed the basis of the JOBS Act—92% of public companies said that the "administrative burden of public reporting" was a significant challenge to completing an IPO and becoming a public company. The 1930s-style disclosure system that continues to exist has grown upon itself over the decades, and the SEC has rarely considered wholesale simplification of disclosure requirements. The growing density of SEC filings makes it difficult for investors to determine the most salient information about a business. Allowing EGCs to issue a press release that includes earnings results every quarter— opposed to a full quarterly report—will still provide investors with the material information they need to make informed decisions but reduce some of the unnecessary burden associated with the current system.

Increasing Equity Research Coverage of Small Public Companies

The 2024 annual report of the SEC's Office of Small Business Capital Formation found that 44% of small and mid-capitalization stocks have no research coverage at all, while 73% of large capitalization stocks are covered by more than 10 analysts.[36] As one contributor to the report noted, limited research coverage can exacerbate volatility and decrease liquidity in a particular stock.[37] Companies that do not have any research coverage can appear opaque or unworthy of investment. Institutional investors, in particular, may be cautious about investing client capital in companies that have no available research. The 2003 Global Research Analyst Settlement, past SEC guidance, and rules overseen by the Financial Industry Regulatory Authority (FINRA) have all contributed to the dearth of research coverage in small public companies.

Recommendation

The SEC should examine any regulations that may be contributing to a lack of research in small issuers and develop relevant rulemakings to increase coverage. A full examination and reconsideration of the 2003 Global Research Analyst Settlement is also necessary.

The 2017 Treasury Report found that research coverage of small public companies has become limited "due in part to the increase in regulation and compliance costs caused by the [Global Research Analyst Settlement]." That settlement was implemented to address the problem of research analysts being influenced by investment bankers that worked within the same firm. While well-intended, small public companies cite the settlement as having far-reaching consequences and being a contributor to the dearth of coverage for many companies. The 2017 Treasury Report recommended a holistic review of the Global Research Analyst Settlement and research analyst rules to determine what rules may need to be rescinded or amended to encourage greater research coverage.

In 2022, SEC staff issued a report examining current research rules pursuant to a congressional directive.[38] While the report offered little in the way of concrete recommendations for how to improve analyst coverage, it serves as a basis for the SEC to continue its work on the issue. We encourage a fundamental rethinking of the Global Research Analyst Settlement and the SEC to prioritize rulemakings that improve analyst coverage.

Recommendation

Policymakers should adopt a permanent solution that allows brokers to receive payments for equity research without having to register as investment advisers to limit the extraterritorial reach of MiFID II and foreign regulators.

The European Union's Markets in Financial Instruments Directive (MiFID II) contained a provision that prohibits broker-dealers from receiving soft dollar payments for equity research (i.e., payments that are bundled with compensation for other services provided by broker-dealers.) MiFID II ended up having significant extraterritorial reach, and U.S. broker-dealers had to begin accepting payments for research with hard dollars. Under U.S. laws, however, brokers are typically required to register as investment advisers if they accept such payments for research. The effect of MiFID II was to exacerbate the research coverage issue as brokers began to scale back their coverage of public companies.

The SEC had issued a series of no-action letters until it suddenly declined to extend this position in the summer 2023. We encourage Congress or the SEC to adopt a permanent solution that, at a minimum, allows brokers to receive hard dollars without having to register as investment advisers and which protects U.S. broker-dealers from the extraterritorial reach of foreign regulators.

Financial Reporting and PCAOB Recommendations

The accuracy and reliability of audited financial statements are essential for investor confidence. Strong internal controls within public companies are a critical component of the U.S. regulatory framework. Companies take seriously their internal controls obligation and invest significant resources to establish and oversee them. However, we continue to be concerned about the steady increase in costs surrounding internal controls over financial reporting (ICFR), the mechanism inside public companies that governs reporting, since the Sarbanes-Oxley Act was signed into law over 20 years ago.

The Public Company Accounting Oversight Board (PCAOB) has in recent years strayed far from its core mission and has failed to address some of the underlying cost drivers of ICFR. The change in leadership at the SEC presents a fresh opportunity for the SEC and the PCAOB to jointly reexamine ICFR, particularly its effect on small public companies.

Recommendation

The SEC should examine cost drivers behind ICFR and develop updated guidance to help address unnecessary costs for small public companies.

In 2007, the SEC attempted to address ICFR costs when it issued Commission Guidance Regarding Management's Report on Internal Controls over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (Management Guidance). This principles-based document was meant to empower companies to focus on material issues that pose the greatest risk of material financial misstatements. However, the ongoing PCAOB inspection process and standards for attestation have undermined the intent of the Management Guidance.

The SEC and the PCAOB should solicit public comment and conduct public roundtables to further explore this issue and identify changes that can be made to the PCAOB inspection process that will minimize costs for small issuers without compromising audit quality.

Recommendation

The PCAOB should adopt a more robust set of good governance standards, including cost-benefit analysis.

Over the past few years, the PCAOB has spent much of its resources developing extraneous proposals that are not tied to the PCAOB's core mission of improving audit quality in the U.S.

In 2023, for example, the PCAOB proposed a new standard that would have fundamentally transformed the role and responsibilities of public company auditors. The proposal—Auditing Standards Related to a Company's Noncompliance with Laws and Regulations (NOCLAR)—would have turned auditors into part-time lawyers and part-time detectives responsible for ferreting out any possible noncompliant or illegal activity occurring at the company that is the subject of an audit.

Such a sweeping and far-reaching transformation of the auditor's responsibilities, without any legislative mandate, necessitates compelling evidence of a significant, pervasive market failure. The proposal provided no such evidence. Instead, the PCAOB's justification for the proposal appears to be based on a general statement that auditors have a fundamental obligation to protect investors, and NOCLAR can result in legal and regulatory penalties as well as reputational loss. While the PCAOB eventually dropped that specific proposal, the initiative heightened concerns that the PCAOB's priorities were stepping further out of line with its core mission.[39]

The SEC also failed to conduct a proper economic analysis when it proposed to adopt an expansive new disclosure regime for audit firm engagement metrics in 2024. As the Chamber noted in our comment letter on the proposal, the proposal would have implemented a one-size-fits-all approach to audit firm disclosure and would not have provided investors with useful information regarding public company audits.[40]

From the outset of these and other proposals, the PCAOB failed to conduct a robust cost-benefit analysis or adequately explain how the proposals would improve audit quality. The PCAOB should never seek to implement a new standard unless it has fully analyzed the costs and benefits of the standard and can articulate how the standard would increase confidence in financial reporting.

Conclusion

Congress and the SEC now have a unique opportunity to begin an era of major reform to the public capital markets. Increasing the IPO pipeline in the years to come will boost job creation and economic growth and expand wealth creation opportunities for millions of American households. The U.S. Chamber of Commerce and Nasdaq look forward to working with all members of Congress, the SEC, and the private sector on this critical initiative for the U.S. economy.

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