

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

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May 12, 2021

The Honorable Maxine Waters  
Chair  
House Committee on  
Financial Services  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patrick McHenry  
Ranking Member  
House Committee on  
Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Waters and Ranking Member McHenry:

The U.S. Chamber of Commerce appreciates the Committee holding the markup scheduled for May 12, 2021. We write to express our opposition to the following measures:

**Amendment in the Nature of a Substitute to H.R. 2570, the Climate Risk Disclosure Act of 2021**

This bill would require public companies to disclose in their annual public filings information relating to the financial and business risks associated with climate change. The bill would also require the SEC to establish, in consultation with other relevant financial agencies, climate-related risk disclosure metrics and guidance, which would be industry-specific, and would require companies to make both quantitative and qualitative disclosures.

The Chamber believes there is much common ground to ensure that investors receive material information as it relates to climate change. We support the development of market-driven environmental, social, and governance (ESG) standards, and strongly believe that any public policy approach to ESG reporting must be rooted in the Supreme Court's well-established concept of materiality. Disclosures should provide decision-useful information to investors and be workable for companies of different sizes and industries. While disclosures may be a part of an all of government, comprehensive policy to combat climate change, disclosures should be used to protect investors and should not be used as a means to achieve policy goals outside the scope of the federal securities laws.

The Chamber urges members to keep in mind the Supreme Court's landmark decision on materiality in 1976 (*TSC Industries, Inc. v. Northway, Inc.*). On behalf of a unanimous Court, Justice Thurgood Marshall rejected the idea that a fact is material if it "might" be important to an investor.<sup>1</sup> Instead, the Court explained that in formulating a materiality standard, it sought to

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<sup>1</sup> 426 U.S. 438, 448-49 (1976).

avoid a scenario in which investors would be overwhelmed “in an avalanche of trivial information—a result that is hardly conducive to informed decisionmaking.” Justice Marshall recognized that information overload harms investors, and therefore set a more demanding test of materiality.

The Chamber has been a leading voice in ESG policy discussions, encouraging industries to work with investors on industry-specific standards to meet the needs of their investors, and, moreover, to reflect the circumstances and context of standalone industries and businesses.<sup>2</sup> To accommodate the varying needs of investors and industry, the Chamber has been and continues to be an advocate for voluntary, market-based disclosure, which allows companies appropriate flexibility. In fact, 90% of S&P 500 companies published corporate sustainability reports in 2020, up from just 20% in 2011,<sup>3</sup> demonstrating that providing companies discretion in their disclosures is effective in driving change to corporate decision-making.

It is clear that voluntary disclosures are responsive to investor demand for information, and issuers should continue to be able to respond to investor demand how they see fit and in a manner that makes sense for their company.

The Chamber opposes this legislation.

### **Amendment in the Nature of a Substitute to H.R. 3007, the “Disclosure of Tax Havens and Offshoring Act”**

The Chamber opposes H.R. 3007, which would amend the Securities Exchange Act of 1934 to require the disclosure of country-by-country financial reports from multinational enterprises to be made publicly available by the Securities and Exchange Commission (SEC).

The legislation would impose unworkable and complex reporting requirements on companies with operations overseas without providing any decision-useful information for investors. Further, the materiality standard that has guided corporate disclosure for decades already captures any information this bill attempts encompass. Recent mandated disclosures that stray from the principle of materiality – such as the conflict minerals and pay ratio rule – have only imposed costs on public company shareholders and not contributed to long-term value creation.

The U.S. has long maintained that country-by-country reporting information, as with all other information provided to tax authorities, should remain confidential. Country-by-country reporting arose as a result of Action 13 of the OECD / G20’s BEPS initiative that began in 2013. We believe there is a global consensus that country-by-country tax information should only be made available to and exchanged among governments. In particular, the U.S. agreed to the inclusion of country-by-country reporting in Action 13 contingent on this confidentiality

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<sup>2</sup> Center for Capital Markets Competitiveness. “[ESG Reporting Best Practices](#).” 2019.

<sup>3</sup> Governance and Accountability Institute. [90% of S&P 500 Index Companies Publish Sustainability Reports in 2019](#). July 2020.

requirement. Global tax authorities already have access to the relevant tax information of multinational enterprises (MNEs) in order to address issues such as tax fraud. Such information does not need to be made public for tax authorities to do their jobs effectively.

We have serious concerns that the legislation would have negative consequences for business competitiveness. The current rules surrounding country-by-country reporting have established the right balance between meaningful corporate transparency and protection of commercially sensitive information. Making country-by-country tax information public would jeopardize the proprietary information of U.S. companies which should be protected from global competitors. Companies understand that they must share tax information on a confidential basis with the relevant tax authorities, where it can be explained in context. Making country-by-country tax information public would only succeed in allowing third-parties access to highly sensitive information about a firm's business and operations that could be misinterpreted and misused.

Thank you for considering our views on the above bills.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a large, stylized flourish at the end.

Neil L. Bradley

cc: Members of the House Committee on Financial Services