U.S. Chamber of Commerce

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April 18, 2024

To the Members of the United States Congress:

The U.S. Chamber of Commerce supports H.J. Res. 127 / S.J. Res. 72, a resolution of disapproval under the Congressional Review Act to nullify the Securities and Exchange Commission's (SEC) final rule on the Enhancement and Standardization of Climate-related Disclosures for Investors.

The Chamber had hoped that the SEC would produce a climate disclosure rule that would provide clarity in disclosure of material climate-related matters. Materiality is the key to government mandated disclosures because it both ensures that investors receive information that is necessary for a fair and well-functioning market and because it prevents the government from using disclosure as a means of directing the activities and positions of private businesses.

Unfortunately, the SEC's final rule departs from the consistent, longstanding, and well-understood definition of materiality as defined in the landmark Supreme Court case *TSC Industries, Inc. v. Northway, Inc.* (1976). In that decision, the unanimous court held that public company disclosures should be determined by what information a reasonable investor would consider important when making a decision to invest in a company's stock.

In its final rule, the SEC has seriously eroded the materiality standard by replacing the current principles-based approach with a highly prescriptive process that will result in mandatory disclosures of information that is not material to the interests of reasonable investors. As one Commissioner noted in dissenting remarks, "[w]hile the Commission has decorated the final rule with materiality ribbons, the rule embraces materiality in name only."[1]

This change is counterproductive. By mandating that companies produce extensive amounts of information that is not material, information that is most important to investors for making informed decisions is obscured, which will create confusion and misimpressions.

The SEC's rule does little to address and may exacerbate the steady decline in the number of public companies in the United States. Moreover, the costs to comply with stringent disclosure requirements may disincentivize private companies from going public,[2] which decreases marketplace choices for Main Street investors saving for retirement or other lifelong goals. Even with limited exemptions and safe harbors contained in the final rule, it is

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[1] Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors. Commissioner Hester Peirce. March 6, 2024. Available at: https://www.sec.gov/news/statement/peirce-statement-mandatory-climate-risk-disclosures-030624.

[2] Remarks at the "Going Public in the 2020s" Conference. Commissioner Mark Uyeda. March 3, 2023. Available at: https://www.sec.gov/news/speech/uyeda-remarks-going-public-conference-030323.

indisputable that the costs to businesses in completing an initial public offering (IPO) or remaining in the public marketplace will increase significantly due to the SEC's new mandates. This one rule could ultimately be responsible for 15 percent of a company's annual SEC disclosure cost.[3]

The unfortunate result of the SEC's final climate disclosure rule will be less competitive – and more politicized – U.S. capital markets. The Chamber therefore supports H.J. Res. 127 / S.J. Res. 72.

Sincerely,

Tom Quaadman
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U.S. Chamber of Commerce

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3 *Supra* fn 1.