U.S. Chamber of Commerce

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April 15, 2025

The Honorable Mark Uyeda
Acting Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Securities and Exchange Commission Regulatory Priorities

Dear Acting Chairman Uyeda:

The U.S. Chamber of Commerce ("Chamber") hereby submits its recommendations to the Securities and Exchange Commission ("SEC" or "Commission") for consideration as part of the SEC's regulatory agenda. We look forward to working with the SEC to maintain the status of the U.S. capital markets as the most competitive, liquid, and efficient in the world.

The Chamber makes the following recommendations, detailed in discussion below:

I. Strengthen the Public Company Model
- A. *Reinstitute robust oversight of proxy advisory firms*
- B. *Protect shareholders from activist campaigns conducted through the shareholder proposal system*
- C. *Adopt a formal policy affirming materiality as the standard for corporate disclosure*

II. Facilitate Capital Formation and Increase Opportunity for Investors
- A. *Modernize the SEC's accredited investor definition*
- B. *Exempt business development companies from the acquired fund fees and expenses ("AFFE") rule*
- C. *Enact further changes to improve the initial public offering ("IPO") process and encourage more companies to go and stay public*

III. Prioritize the Needs and Preferences of Investors
- A. *Adopt a rule to make e-delivery default for investor documents*
- B. *Provide permanent exemption for fixed income securities from Rule 15c2-11*

<u>Discussion</u>:

I. <u>Strengthen the Public Company Model</u>

A. *Recommendation: Reinstitute robust oversight of proxy advisory firms*

In 2020, after an extensive, years-long examination of flaws within the proxy advisor industry, the SEC adopted a rules package that required proxy advisors to adhere to basic standards of transparency and accountability. These rules required that proxy advisors provide public companies that are subject to vote recommendations from proxy advisors with an opportunity to review and respond to draft recommendations, disclose conflicts of interest that could taint voting recommendations, and be held liable for any false or misleading statements contained in vote recommendations.[1] At the time, the SEC also issued Commission-level guidance that clarified the fiduciary duty of investment advisers when hiring proxy advisors for voting advice.

Proxy advisors play an important role within the corporate ecosystem. Proxy advisors make recommendations to institutional investors about how to vote on important topics during proxy season, including director elections, shareholder proposals, and approval of mergers or executive compensation plans. However, the industry is dominated by just two firms – Institutional Shareholder Services (ISS) and Glass Lewis – which make up 97% of the industry. ISS and Glass Lewis operate with inherent conflicts of interest, including providing consulting services on how to improve proxy voting outcomes, that compromise their voting advice and have a proven track record of committing factual and analytical errors each proxy season. Enhancing regulation of the industry has won bipartisan support in Congress over the last decade.

Unfortunately, in 2021 and after a change in leadership at the Commission, the SEC announced a "no-action" enforcement approach to the new proxy advisor rules, and ultimately issued a new rule that rescinded much of the 2020 reforms *before those reforms even took effect.* The SEC undertook this rescission without providing any evidence that doing so was in the best interest of all investors.

The Chamber urges the SEC to prioritize re-implementing robust oversight and regulation of the proxy advisory industry. Investors deserve to know whether a voting recommendation is based upon false or misleading information and whether a proxy advisor may be prioritizing its own financial or policy interests ahead of the interests of public company shareholders.

Additionally, the SEC should also expand its regulation of proxy advisory firms to include ESG and sustainability ratings firms, whose influence in the marketplace continues to grow unchecked and who have similar deficiencies – including accuracy of information and conflicts of interest – to the proxy advisory firms.

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[1] See e.g. U.S. Chamber "Examining the SEC's Proxy Advisor Rule" https://www.uschamber.com/assets/documents/proxyadvisoryrule_examine_nov2020.pdf

B. *Recommendation: Protect shareholders from activist campaigns conducted through the shareholder proposal system*

Worryingly, U.S. capital markets have become increasingly politicized over the past 10 years. Public companies often find themselves as the targets of sophisticated activist campaigns animated by political objectives that have little to do with improving a company's performance or increasing returns for shareholders. Professional activists across the political spectrum seek to implement through boardrooms what they cannot achieve through the ballot box.

Nowhere is this more evident than the SEC's shareholder proposal system, governed under Rule 14a-8 of the Securities Exchange Act. Originally intended as a mechanism to improve communication and make companies more responsive to their shareholders, Rule 14a-8 has devolved into the preferred tool of political and socially-motivated activists that have little to no interest in the financial performance of underlying companies. The shareholder proposal system, however, imposes significant costs and serious distractions for companies and their shareholders and weakens the reputation and appeal of U.S. public markets. The true cost of frivolous shareholder proposals must be weighed through the lens of reputational harm and opportunity costs.

The SEC made the situation worse in 2021 when it issued Staff Legal Bulletin 14L ("SLB 14L"), which effectively allowed any shareholder proposal to receive a vote during an annual general meeting so long as the proposal dealt with an issue that has a "broad societal impact." This ill-defined and broad standard unsurprisingly led to a marked increase in the number of immaterial and politically-motivated proposals submitted to public companies during proxy season.

Fortunately, under your leadership, the SEC rescinded SLB 14L and issued new guidance, Staff Legal Bulletin 14M ("SLB 14M"), which returns to the general principle that proposals must relate to a company's ordinary business operations to move forward during proxy season.

The Chamber recommends that the SEC solicit public input on further changes to Rule 14a-8 with an eye towards more fundamental changes to the rule and to adopt any necessary reforms to prevent further abuse of the system. Politically motivated campaigns should be focused on the public square and voters there, not on public companies and their leaders via shareholder proposals. The SEC should act to remove politics from capital markets as much as possible and bring certainty to investors and companies via steady, well-defined, well-supported rules.

C. *Recommendation: Adopt a formal policy affirming materiality as the standard for corporate disclosure*

For 90 years, materiality has been the guiding principle of corporate disclosure and financial reporting under the federal securities laws. The materiality standard – i.e. what determines information that is important to a reasonable investor who is focused on investment returns – is critical to providing investors with confidence in the integrity and accuracy of information provided by corporate issuers. Materiality has served as a constant throughout the SEC's history regardless of who chairs the Commission, or which party occupies the White House. In short, materiality is a bedrock of the U.S. public capital markets and has long been interpreted to ensure that federal securities regulation and the SEC remain faithful to the SEC's mission of protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation.

In the landmark 1976 case of *TSC Industries, Inc. v. Northway, Inc.,*[2] Justice Thurgood Marshall, writing for a unanimous Supreme Court, articulated a meaningful standard of materiality designed to provide investors with the significant information they need to make informed voting and investing decisions, but with a caution – namely that the "disclosure policy" under the federal securities laws "is not without limit"[3] because investors should be safeguarded from being overwhelmed with information that runs counter to the goal of better investor decision making.[4] The Court operationalized this principle in its decisions – subsequently affirmed by the Court in *Basic, Inc. v. Levison*[5] - by rejecting 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.[6]

The Chamber is concerned that calls to "improve" the materiality standard can be more accurately interpreted as calls to change the materiality standard in a way that would be harmful for investors. U.S.-based companies now also face the potential threat of being forced to make disclosures according to different materiality standards under reporting mandates adopted by the European Union with extraterritorial reach. Over the past few years, new theories have been proffered about how corporate disclosures and a changing definition of materiality can be bent to achieve social or policy objectives. Indeed, this deployment does not match the intended purpose of corporate disclosures and financial reporting, which is to provide investors with

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[2] 426 U.S. 438 (1976).
[3] *Id.* At 448.
[4] *See id.* At 448-9.
[5] 485 U.S. 224 (1988).
[6] *TSC Industries,* 426 U.S. at 449.

essential information to make informed decisions regarding a company and its performance.

Accordingly, the Chamber encourages the SEC to adopt a formal, Commission-level policy statement that affirms the Supreme Court-articulated materiality standard as *the* standard for corporate disclosure in the United States, akin to legislation authored by Senator Mike Rounds and Representative Bill Huizenga.[7] The Chamber also encourages the SEC to apply this principle to its oversight of the standards set at the Financial Accounting Standards Board ("FASB") and the Public Company Accounting Oversight Board ("PCAOB").

II. Facilitate Capital Formation and Increase Opportunities for Investors

A. *Recommendation: Modernize the SEC's accredited investor definition*

The private capital markets have grown substantially in recent years and provide crucial benefits to communities across America.[8] Regulation D ("Reg D") of the Securities Act is a key capital-raising mechanism for many private businesses. However, current SEC rules severely limit the scope of individuals eligible to invest in Reg D or similar offerings. The SEC's "accredited investor" rules equate financial sophistication with wealth and largely prohibits individuals who do not meet certain income or net worth thresholds from investing in Reg D offerings.

The current rules therefore have the effect of leaving millions of investors behind when private businesses become highly successful before they eventually go public. The SEC's accredited investor rules should take a different approach that allows individuals to invest in private offerings – with certain limitations – regardless of their income or net worth.

While several bipartisan bills to improve the definition of "accredited investor" are currently pending in Congress, the SEC maintains sufficient authority under current law to amend the definition to create greater public participation in private markets. The Chamber supports several proposals that have been put forward: for example, establishing a Financial Industry Regulatory Authority ("FINRA")-administered exam to assess an individual's financial sophistication; permitting individuals with certain professional licenses to be deemed accredited; and allowing investors to invest a certain percentage of their net worth or assets in private securities (Chairman Uyeda's

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[7] *See*: S. 2005 (118th), Mandatory Materiality Requirement Act of 2023. https://www.congress.gov/bill/118th-congress/senate-bill/2005/related-bills

[8] U.S. Chamber of Commerce, "Large Private Companies Strengthen Communities Across America." Oct. 2024. https://www.uschamber.com/economy/large-private-companies-strengthen-communities-across-america

"sliding scale" approach).[9] The SEC should prioritize this issue and initiate a formal rulemaking process to modernize the criteria that determines who qualifies as an accredited investor.

B. *Recommendation: Exempt business development companies from the acquired fund fees and expenses ("AFFE") rule*

The SEC adopted the AFFE rule in 2006 to provide greater transparency regarding fund expenses, but in practice it has been inappropriately applied to Business Development Companies ("BDCs"). Because of the unique legal structure of BDCs, AFFE overstates the actual costs of investing in BDCs therefore giving investors a fundamentally misleading picture of BDC costs.

BDCs are a critical source of capital for small and middle market businesses throughout the United States. BDCs are required by law to invest 70% of their assets in "eligible portfolio companies," generally described as U.S. based businesses that are either private or publicly listed with a market capitalization below $250 million. In the wake of 2008-2009 financial crisis and changes to the bank lending market, businesses often turned to BDCs for financing. Today, there are roughly 140 BDCs with over $300 billion invested in American business.

Because of the overstated high cost of BDC investment under AFFE, several index providers dropped BDCs from their indices which led to an outflow of institutional investor capital. This has kept the BDC lending market from reaching its full potential and also diminished the benefits that institutional investment brings to BDC shareholders and the small- and medium-sized businesses that rely on BDCs for investment capital.

The SEC should adopt a rulemaking that fully exempts BDCs from the AFFE rule. Doing so would not only help BDCs deploy more capital, but it would also protect investors from a disclosure that is misleading.

C. Recommendation: *Enact further changes to improve the initial public offering (IPO) process and encourage more companies to go and stay public*

The American economy benefits when *both* private capital markets and public capital markets are strong. The balance between private markets and public markets should not be viewed as a zero-sum game – when one market is strong it does not by default weaken the other. Instead, the SEC should pursue changes to its rules that help

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[9] Remarks at the 51st Annual Securities Regulation Institute. Commissioner Mark Uyeda (Jan. 22, 2024) https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012224

businesses raise capital at each stage of their lifecycle, up to and including an IPO. This is especially true when current regulations can make it cost prohibitive to go public.

The Chamber has expressed concerns about the decline over the last three decades in the number of U.S. public companies – from a peak of about 8,000 in the late 1990s to roughly half that number today. Public companies are an important contributor to job creation and economic growth, and the financial returns provided by public companies are enjoyed by a broader base of investors – including retail investors who own shares directly or workers who own companies indirectly through a 401(k) plan or pension plan.

Congress made significant progress to encourage more public offerings with the 2012 Jumpstart Our Business Startups ("JOBS") Act and subsequent laws. However, the SEC does not need to rely on a new Congressional directive to improve the environment for IPOs and small public companies.

The SEC should consider the following reforms:

1. Further tailoring corporate disclosure for emerging growth companies ("EGCs") and small public companies to reduce compliance costs while ensuring investor protection;

2. Amending the well-known seasoned issuer ("WKSI") definition to include companies that have $75 million or less in public float;

3. Simplify quarterly reporting requirements for EGCs by allowing EGCs to issue a press release with financial results rather than the currently required 10Q;

4. The SEC should examine its review process for IPO filings and adopt policies to make the process more efficient.

It is imperative that the SEC include capital formation as part of its regulatory agenda.

III. <u>Prioritize the Needs and Preferences of Investors</u>

A. *Recommendation: Adopt a rule to make e-delivery default for investor documents*

The Department of Labor, Social Security Administration, and Thrift Savings Plan have all adopted e-delivery as the default for communication with investors. The IRS has also reported that 94% of all tax returns are e-filed. A recent report also showed that

85% of investors are comfortable with e-delivery being the default option for receiving shareholder communications.[10] Unfortunately, the SEC remains an outlier amongst federal agencies after reversing course in 2022 on Rule 30e-3, which had allowed SEC-registered funds to provide investors with shareholder reports and related documents online. Commissioner Peirce described this reversal as the SEC "changing its mind about a new rule without any clear rationale for doing so."[11]

Modernizing investor communications and disclosures is a commonsense reform that will benefit investors through more timely, secure, and accessible communications. For all of these reasons, the Chamber calls on the SEC to make e-delivery default for investor documents, including for existing accounts, while allowing an opt-in for investors who prefer to receive paper disclosures.

B. *Recommendation: Provide permanent exemption for fixed income securities from Rule 15c2-11*

In 2020, the SEC amended Rule 15c2-11 to enhance certain transparency requirements for over the counter (OTC) equity securities. During that rulemaking, the SEC never proposed or fully considered applying the requirements to fixed income securities. Yet in 2021, the SEC took the extraordinary position of applying the new 15c2-11 rules to the fixed income market for the first time in the Rule's history. Originally intended for equity markets, Rule 15c2-11 was implemented in 1971 to reduce fraud in the penny stock market. Rule 15c2-11 prohibits broker-dealers from publishing quotes on securities in the OTC markets unless they collect and review specified issuer information that must be publicly available.

The application of Rule 15c2-11 to fixed-income markets would adversely impact market liquidity and efficiency, reduce price transparency, and reduce electronic trading. We applaud the SEC for permanently exempting Rule 144A securities from Rule 15c2-11 and indefinitely extending no-action relief to other fixed income securities. However, the SEC should act to permanently exempt fixed income from Rule 15c2-11.

Conclusion

We appreciate the SEC's consideration of our recommendations and look forward to working with the SEC on its agenda.

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[10] https://www.sifma.org/resources/submissions/letters/e-delivery-investor-survey-results/

[11] One Good Step, More to Go: Statement on Final Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements. Commissioner Hester Peirce (Oct. 26, 2022) https://www.sec.gov/newsroom/speeches-statements/peirce-statement-shareholder-reports-102622

Sincerely,

Tom Quaadman
Senior Vice President
Economic Policy
U.S. Chamber of Commerce