



March 7, 2024

Mr. Christopher Mirabile
Chair, Investor Advisory Committee
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: March 7th Investor Advisory Committee Meeting

Dear Mr. Mirabile:

The U.S. Chamber of Commerce (“Chamber”) urges the Securities and Exchange Commission (“SEC” or “Commission”) Investor Advisory Committee (“IAC”) to reject any changes to the materiality standard for corporate disclosure during the March 7th meeting. Changes to the materiality standard would not improve our capital markets. The materiality standard – grounded in U.S. Supreme Court precedent – has been a critical guardrail for corporate disclosure, that ensures companies do not bury investors in an ‘avalanche’ of trivial information.¹

U.S. governance and accounting requirements are the gold standard globally. It is one of the reasons why American public capital markets are the largest in the world – double that of Europe and China combined.² The Chamber is concerned that the materiality discussion at the IAC could lead to proposals to water down the materiality standard, which we believe would weaken investor protections and could ultimately cede the competitive advantage of U.S. capital markets.

Importance of the Materiality Standard

For 90 years, materiality has been the guiding principle of corporate disclosure under the federal securities laws. The materiality standard – 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

¹ See, e.g. U.S. Chamber Report “Essential Information: Modernizing Our Corporate Disclosure System” (2017) https://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL.pdf?x48633.

² U.S. equity markets represents 41% of the 118 trillion in global equity market cap while China and the EU both each represent 11% of the global equity market. <https://www.sifma.org/2022-capital-markets-outlook/markets-matter/>.

provided by corporate issuers. This standard has endured through presidential administrations and changes in the makeup of SEC. And as a bedrock for disclosure of information to investors, the standard continues to ensure that the SEC remains faithful to its 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.*,³ Justice Marshall, writing for a unanimous Supreme Court, articulated a meaningful standard of materiality that was designed to provide investors with the significant information they need to make informed voting and investing decisions. This decision also cautions that “disclosure policy” under securities law “is not without limit”⁴ because investors should be safeguarded from being overwhelmed with information that runs counter to the goal of better investor decision making.⁵

Subsequently, the Court in *Basic, Inc. v. Levinson*⁶ rejected 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.”⁷ As an alternative articulation, Justice Marshall wrote that for information to be material “there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available,”⁸ indicating that the materiality of a particular item of information is to be judged against the backdrop of other information that companies disclose or investors otherwise can access.

This Court’s standard of materiality, and extensive lower court jurisprudence over the years, helps shield investors from the harms associated with information overload and protects the federal securities laws from being used for purposes other than providing decision-useful information to investors. More fundamentally, the materiality standard has been well-understood by investors and regulators alike for decades, and neither Congress nor the courts have deviated from it.

The Chamber is concerned that calls to “improve” the materiality standard to shroud a controversial regulatory agenda would be harmful for investors. Federal securities laws should not be exploited to achieve social or policy objectives and the agenda of special interests..

³ 426 U.S. 438 (1976).

⁴ *Id.* at 448.

⁵ *See id.* at 448-9.

⁶ 485 U.S. 224 (1988).

⁷ *TSC Industries*, 426 U.S. at 449.

⁸ *See id.* at 449-50.

Materiality and the Current SEC Regulatory Agenda

During his March 2021 confirmation hearing before the Senate Banking Committee, Chair Gensler stated: “It’s the investor community that gets to decide what’s material...it’s not a government person like myself. It’s all about that reasonable investor and do they think it’s significant in the mix of information.”⁹

Chair Gensler accurately described the concept of materiality during that confirmation hearing, although investor demand or interest alone should not determine whether certain information must be disclosed.

For the past three years, however, the SEC has sought to flip the concept of materiality by acting to decide what information is material. These actions include final rules regarding cybersecurity and cyber controls by public companies,¹⁰ and the May 2023 stock buyback rule,¹¹ which was vacated by the Fifth Circuit Court of Appeals after the court found that the SEC acted “arbitrarily and capriciously, in violation of the [Administrative Procedure Act.]”¹²

Conclusion

Thank you for the opportunity to share our strong concerns and to urge the IAC to avoid ill-advised attempts to weaken the materiality standard.. The Chamber is committed to continuing our ongoing work with the SEC, Congress, and the private sector on these critical issues.

Sincerely,



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

⁹ Senate Banking Committee Nomination Hearing (March 2, 2021).

¹⁰ Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (Release No. 33-11216).

¹¹ Share Repurchase Disclosure Modernization (Release No. 34-97424).

¹² Chamber of Commerce of the United States of America, Longview Chamber of Commerce, Texas Association of Business v. U.S. Securities and Exchange Commission (October 31, 2023)

<https://www.ca5.uscourts.gov/opinions/pub/23/23-60255-CV0.pdf>.

cc: The Honorable Gary Gensler, SEC Chair
cc: The Honorable Hester Peirce, Commissioner
cc: The Honorable Caroline Crenshaw, Commissioner
cc: The Honorable Mark Uyeda, Commissioner
cc: The Honorable Jaime Lizarraga, Commissioner

[Attachment: U.S. Chamber of Commerce report: "Essential Information: Modernizing Our Corporate Disclosure System." Winter, 2017].