



# CENTER FOR CAPITAL MARKETS

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# COMPETITIVENESS

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May 11, 2021

The Honorable Gary Gensler  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Gensler:

Congratulations on your confirmation as Chair of the U.S. Securities and Exchange Commission. We welcome your commitment to lead the SEC with the Agency's tripartite mission at the center of your actions. The U.S. Chamber of Commerce looks forward to building on our history of working constructively together to enact policies that encourage economic growth.

As the SEC develops actions related to environmental, social, and governance (ESG) policies, the Chamber stands ready to partner with you to address this important topic in a manner that enhances investor-driven material disclosures. During your confirmation hearing before the Senate Banking, Housing, and Urban Development Committee, you affirmed your support for upholding the 1976 Supreme Court definition of materiality as established in the *TSC Industries v. Northway* decision.<sup>1</sup> In the time since that decision, the court-established definition of materiality has become the bedrock of our capital markets and has served investors, issuers, and regulators very well. We strongly encourage the SEC to calibrate policies to adhere to the well-established, well-understood, and well-functioning definition of materiality.

The Chamber also encourages the SEC to prioritize access to capital for entrepreneurs. Increasing access to capital, especially for minority-owned and women-owned businesses, can be one of the most powerful and effective tools for economic recovery from the COVID-19 pandemic. Prior to the pandemic, black-owned non-employer businesses were less than half as likely to get financing as white-

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<sup>1</sup> U.S. Chamber of Commerce, "Essential Information: Modernizing our Corporate Disclosure System." Winter 2017. [http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information\\_Materiality-Report-W\\_FINAL.pdf?x48633](http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL.pdf?x48633)

owned firms.<sup>2</sup> In June of 2020, the Chamber launched the Equality of Opportunity Initiative to develop sustainable solutions to help close race-based opportunity gaps in areas like entrepreneurship. The Chamber recommends that the Commission task the SEC's Office of the Advocate for Small Business Capital Formation to analyze the needs of minority-owned businesses and make recommendations for improving their access to capital. A recent study found that, if the number of people-of-color-owned firms was proportional to their labor force participation, the U.S. would add more than 1.1 million businesses, supporting an estimated 9 million additional jobs and adding nearly \$300 billion in workers' income.<sup>3</sup>

The COVID-19 pandemic has reinforced the need for strong investor protections, particularly in standards of conduct for retail and retirement plan customers. The SEC has worked very hard to establish Regulation Best Interest (Reg BI) to clarify the standards of conduct for brokers and investment advisers while also preserving investor choice. The investment industry has also worked diligently to prepare for the rule's implementation on June 30, 2020, investing significant sums and internal resources to comply with Reg BI. Importantly, subsequent rulemakings from the Department of Labor (DOL), Financial Industry Regulatory Authority (FINRA), and Municipal Securities Rulemaking Board (MSRB) have sought to align their standards with Reg BI to bring greater clarity to investment professionals and investors. We believe Reg BI is a strong, consistent national standard that both increases consumer protection and preserves investor choice. We look forward to working with you to maximize the investor benefits of Reg BI.

The pandemic highlighted the preference for investors to be able to receive documents about their business with broker-dealers and investment advisers electronically. The pandemic has accelerated the evolution toward a digital economy wherein investors may generally prefer the use of their digital address (e.g. email) over paper. In April 2020, 53% of adults surveyed said that the Internet was essential during the pandemic, and another 34% describe it as "important, but not essential."<sup>4</sup>

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<sup>2</sup> U.S. Chamber of Commerce, "Addressing Opportunity Gaps for Minority-Owned Businesses Through Increasing Access to Capital and Credit." November 20, 2020. <https://www.uschamber.com/series/above-the-fold/addressing-opportunity-gaps-minority-owned-businesses-through-increasing>

<sup>3</sup> [http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/#The\\_Distribution\\_of\\_Firms\\_with\\_Paid\\_Employees\\_in\\_2012\\_and\\_the\\_Number\\_of\\_Missing\\_Minority\\_Businesses](http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/#The_Distribution_of_Firms_with_Paid_Employees_in_2012_and_the_Number_of_Missing_Minority_Businesses)

<sup>4</sup> Pew Research Center, *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, available at <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/> (2020).

In light of these developments, the SEC should reconsider its past interpretations and revise outdated rules to permit e-delivery of investment documents.

Finally, we are enthusiastic about the passion for digital assets that you bring to the Commission. There is significant innovation underway that has the potential to increase opportunities for investors and promote capital formation. In the way of this innovation stands regulatory ambiguity – we hope your knowledge of these markets can cut through red tape that is causing uncertainty for market participants.<sup>5</sup>

Again, congratulations on your confirmation as Chair of the SEC. The Chamber stands ready to serve as a resource and we look forward to engaging with you at crucial moments over your tenure.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive, slightly slanted style.

David Hirschmann  
President and Chief Executive Officer  
Center for Capital Markets Competitiveness

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<sup>5</sup> U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader (January 2021), available at <https://www.centerforcapitalmarkets.com/resource/digital-assets-a-framework-for-regulation-to-maintain-the-united-states-status-as-an-innovation-leader/>