U.S. Chamber of Commerce

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September 29, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Request for Comment, Securities and Exchange Commission; Draft 2022-2026 Strategic Plan for Securities and Exchange Commission; 87 Fed. Reg. 53040; Docket No. 2022-18582 (August 30, 2022)

Dear Ms. Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("Chamber") appreciates this opportunity to comment on the Securities and Exchange Commission's ("SEC") Draft Strategic Plan for Fiscal Years 2022-2026 ("Strategic Plan"). The Strategic Plan is an important opportunity for the public to provide input regarding matters under the SEC's jurisdiction, as well as issues on the horizon that the SEC should be considering in the context of its tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

The Strategic Plan touches on several areas of particular interest for the Chamber's members, including: modernization of corporate disclosure; updating SEC regulations to reflect evolving technologies; and effective enforcement of the securities laws. As the SEC considers its priorities for the coming years, the Chamber provides the below observations and recommendations on some of these key topics.

I. Modernization of Corporate Disclosure

The Chamber welcomes the Strategic Plan's focus on modernization of the content and delivery of disclosures provided by public companies to investors. The Chamber agrees that enabling investor access to disclosures and calibrating disclosures to be more decision-useful for investors are important goals for the SEC, particularly as technology has enabled investors to access information through computers, smartphones, and other means that did not exist when the securities laws were first enacted.

Over the last decade, the Chamber put forward recommendations to improve the SEC's corporate disclosure regime so that it is more reflective of the modern investor. The Chamber has issued several reports outlining specific reforms, including:

- *Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation*, issued in 2014, which included nearly twenty recommendations to simplify and improve existing requirements related to quarterly and annual reports as well as proxy statement disclosures. The report also discussed the eventual possibility of a "company file" or centralized electronic depository for each public company in lieu of the existing 10-Q/10-K/proxy statement requirements.

- *Essential Information: Modernizing Our Corporate Disclosure System*, which reinforced the importance of the SEC's materiality standard in determining what companies must disclose and which protects investors from "information overload."

- *Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public ("IPO Report")*, *which included two dozen reform ideas for how to improve the public company model, including scaling disclosure requirements for small and emerging businesses that are more sensitive to the costs that result from compliance mandates.*

Congress has also – on a bipartisan basis – taken action in recent years to reform corporate disclosure. The 2012 Jumpstart our Business Startups ("JOBS") Act[1] required the SEC to review Regulation S-K and determine ways to simplify disclosure requirements for emerging growth companies (EGCs). Additionally, the 2015 Fixing America's Surface Transportation (FAST) Act[2] directed the SEC to further study Regulation S-K and to issue rulemakings that scale Regulation S-K requirements for EGCs and small issuers and eliminate "duplicative, outdated, or unnecessary" disclosure requirements for all public companies. In 2019 and 2020, the SEC issued rulemakings effectuating these mandates and reforming several aspects of Regulation S-K for the first time in nearly three decades.[3]

Unfortunately, recent rule proposals from the SEC threaten this progress and would result in lengthy new disclosure requirements that produce questionable benefits for investors. For example, the SEC's recent proposals regarding climate change disclosure and cybersecurity disclosure embrace a uniform, burdensome approach that will impose enormous costs on shareholders. As the Chamber explained in recent comment letters to the SEC, these proposals fail to consider the ways that public companies have already adapted their disclosures to meet investor

[1] Pub. L. No. 112-106
[2] Pub. L. No. 114-94
[3] Modernization of Regulation S-K Items 101, 103, and 105 (August 2020); FAST Act Modernization and Simplification of Regulation S-K (March 2019)

demand regarding climate change, cybersecurity, and other issues.[4] SEC modernization of corporate disclosure must recognize that while interest around particular issues can evolve over time, issuers must be afforded the flexibility to tailor disclosures so that they are more useful and informative than following prescriptive mandates.

II. Updating SEC Regulations to Facilitate Capital Formation

The Chamber has been a leader in working with the SEC and Congress to implement reforms that increase access to capital for small and emerging businesses and which would help stem the decline of public companies in the United States over the last 25 years. The JOBS Act and subsequent legislation passed by Congress have provided critical regulatory relief for EGCs and other small businesses looking to raise capital, and the SEC has also recently taken steps to facilitate capital formation, including changes to the accredited investor standard, amending the definition of a smaller reporting company, and long overdue changes to the rules governing shareholder proposals and proxy advisory firms.

However, the SEC today has no discernible capital formation agenda, even though the agency routinely receives recommendations from Congress, the public, and sources such as the Advisory Committee on Small and Emerging Companies and the Annual Government-Business Forum on Small Business Capital Formation.[5] In 2020, the Chamber issued our *Growth Engine* report that put forth recommendations that the SEC could prioritize to build upon the success of the JOBS Act and other capital formation bills passed by Congress. We urge the SEC to use its existing authority to implement some of these recommendations – many of which have won bipartisan support in Congress and are also supported by a diverse coalition of market participants.

Modernizing our public policy and regulation to recognize the significant promise of digital assets is critical for the U.S. to maintain its position as a global innovation leader. Innovation is critical to driving long-term economic growth. This will only be possible if the U.S. can maintain technological leadership.

The Chamber released a report last year, "Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader,"[6] to provide

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[4] https://www.sec.gov/comments/s7-10-22/s71022-20131892-302347.pdf; https://www.sec.gov/comments/s7-09-22/s70922-20128398-291304.pdf

[5] https://www.sec.gov/news/press-release/2022-132

[6] Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader (January 2021). U.S. Chamber of Commerce, Center for Capital Markets Competitiveness.

a roadmap to U.S. policymakers. The report notes that the digitization of assets has the potential to revolutionize how goods and services are offered and how value is transferred for generations to come. The report includes considerations for a digital assets framework with a particular focus on financial services regulatory regimes because of their significant impact on digital assets and related blockchain innovation. A competitive and workable regulatory framework for digital assets is critical to the ability of the U.S. to attract the capital to fund this growing industry and for the promise of the technology to be realized.

The SEC has taken an opaque and disjointed approach for the regulation of digital assets. Market participants need the agency to clarify the applicability of the securities laws to digital assets. Providing clear rules of the road delineating where the agency believes its authority starts and stops, instead of relying on enforcement actions, is the preferred approach for inspiring confidence to participate in this market.

III. Operating an Effective Enforcement Program

An effective SEC enforcement program is a critical component of our capital markets. Identifying and taking action against bad actors upholds the integrity and transparency of markets and reinforces the rule of law for market participants. At the same time, the SEC must provide clear "rules of the road" for businesses – particularly small and startup businesses – and not use enforcement as a vehicle to establish de facto rules. The certainty of clear rules of the road also means that SEC enforcement should have a fair process for all to ensure that the rights of the accused are preserved while allowing the process to achieve its goals of finding the truth, punishing the wrongdoers, and preventing future harm. The recent Fifth Circuit Court of Appeals decision in *Jarkesy vs. SEC* underscores the Constitutional right to due process that is at the heart of our judicial system.

The Chamber's Growth Engine report included several recommendations for the SEC to improve its enforcement program, including:

- The SEC should allow defendants the opportunity to use the federal courts as the forum for enforcement actions instead of in-house administrative proceedings at the SEC;

- The SEC should make reforms to the Wells Process, such as providing reasonable notice to recipients and improved access to investigative files;

Available at: https://www.centerforcapitalmarkets.com/resource/digital-assets-a-framework-for-regulation-to-maintain-the-united-states-status-as-an-innovation-leader/

- The SEC should make updates to its policy for admissions, such as publishing guidance on how the issue of requiring admissions will be incorporated into settlement negotiations;

- The SEC should improve the efficiency of the investigation process by, for example, promptly providing written notification that an investigation has been closed;

- The SEC should apply the rule of lenity in administrative investigations, enforcement actions, and adjudication by reading genuine statutory or regulatory ambiguities related to administrative violations and penalties in favor of the targeted party in enforcement, as recommended by the Office of Information and Regulatory Affairs (OIRA) Administrator on August 31, 2020, to implement Executive Order 13924.

These recommendations and others were included in a comprehensive report on SEC enforcement released by the Chamber in 2015.[7] While the SEC has recently adopted some changes that are reflective of these recommendations, the Chamber urges additional reforms to improve the SEC's enforcement program.

Conclusion

The Chamber appreciates this opportunity to provide comment on the Strategic Plan and the SEC's continued efforts to improve its effectiveness as a regulator. We look forward to serving as a resource to SEC Commissioners and staff on these important issues.

Sincerely,

Tom Quaadman
Executive Vice President

[7] Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2015/07/021882_SEC_Reform_FIN1.pdf

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