CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting and defending America's free enterprise system, welcomes the hearings this week that focus on corporate governance, the Financial Stability Oversight Council (FSOC), the Financial Accounting Standards Board (FASB) and the Public Company Auditing Oversight Commission (PCAOB), and the Financial Stability Board (FSB) held respectively by the Full Committee, Subcommittee on Capital Markets and Government Sponsored Enterprises, and Subcommittee on Monetary Policy and Trade. In light of these hearings, the Chamber offers its views on the impact to the capital markets affecting Main Street and the economy.

Hearing entitled ***"Corporate Governance: Fostering a System that Promotes Capital Formation and Maximizes Shareholder Value"***

The American capital markets are the deepest, most liquid, and most transparent source of financing the world has ever known. The ability of companies of every size and sector to obtain the capital they need to innovate and grow has yielded considerable economic and societal benefits, including significant job creation and increases in worker welfare. One of the most important sources of capital for businesses is public financing. The public company model aligns the interests of investors, managers, workers, and consumers for the cause of economic growth.

Unfortunately, over the last few decades, regulatory costs and other new factors have begun to outweigh the benefits of becoming a public company. The rate of initial public offerings (IPOs) continues to be depressed compared to past metrics. More troubling, the number of public companies in the United States has dropped 19 of the past 20 years, and there are now less than half of the number of public companies today than we had in 1996. In short, there is both an inflow and an outflow problem for public companies.

The Jumpstart Our Business Startups Act (JOBS Act) was a bipartisan effort to help resolve this inflow problem. The JOBS Act, by many measures, has helped to improve businesses' ability to access the tools needed to grow from small to large businesses. Moreover, as these companies grow, they are able to invest more and hire more employees. While there was an initial rise in IPOs and the number of public companies shortly after the implementation of the JOBS Act, the trends of decline have reasserted themselves in the past year.

The outflow of public companies over the past two decades has many causes. Some of them are macroeconomic issues, including the financial crisis and continued historic low rates of economic growth. Others are a matter of policy, including the federalization of corporate governance and imposition of new legal and regulatory burdens that hinder capital formation and that do not provide material benefits to investors. Still other reasons are process related, including the failure of the Securities and Exchange Commission (SEC) to act as a gatekeeper for the shareholder proposal process, repetitive shareholder proposals that have little or declining support, and lack of oversight of proxy advisory firms. This is not an exhaustive list, many other reasons abound.

It is critical for the Subcommittee to study these issues and make it a priority to reverse the continued decline of the number of public companies in the United States. This is critical in order to break through the recent ceiling of two percent economic growth and create well-paying jobs.

The following actions should be taken to increase the number of public companies in the United States:

1. **Proxy Advisory Firms Oversight:**[1] The SEC should build on its 2014 guidance to ensure that proxy advisory firms are subject to appropriate oversight. Alternatively, Congress should pass H.R. 5311, which would create more oversight of proxy advisory firms by eliminating conflicts of interest and ensuring that such firms' advice is truly in the best economic interest of investors.

2. **Resubmission Thresholds:**[2] Shareholder engagement is an important part of the governance of a corporation and deployment of capital. However, situations arise of repetitive submissions of shareholder proposals that have low or declining support among shareholders. This creates a cost for companies and investors. The SEC should modernize its resubmission thresholds to ensure that shareholder proposal

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[1] *See* Testimony of Thomas Quaadman, U.S. Chamber of Commerce, at May 17, 2016, hearing before the Subcommittee on Capital Markets and Government Sponsored Enterprises, *available at* http://financialservices.house.gov/uploadedfiles/hhrg-114-ba16-wstate-tquaadman-20160517.pdf; BEST PRACTICES AND CORE PRINCIPLES FOR THE DEVELOPMENT, DISPENSATION, AND RECEIPT OF PROXY ADVICE, *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/Best-Practices-and-Core-Principles-for-Proxy-Advisors.pdf (Mar. 2013).

[2] *See* Pet. for Rulemaking Regarding Resubmission of Shareholder Proposals Failing to Elicit Meaningful Shareholder Support filed by U.S. Chamber of Commerce *et al.*, *available at* https://www.sec.gov/rules/petitions/2014/petn4-675.pdf.

proponents cannot repeatedly resubmit proposals that a company's shareholders have soundly rejected.

3. **Disclosure Effectiveness:**[3] The proxy statement and other SEC disclosure documents have grown exponentially in size limiting the utility of disclosures to provide investors with decision useful information. The disclosure system is still rooted in a 1930's style paper system and many disclosures are simply obsolete or otherwise not optimal for investors. The SEC should use materiality to determine which disclosures to remove or reform. Additionally, new innovative tools such as the company file should be implemented to benefit investors by preventing the repetitive disclosure of the same information.

4. **14a-8 reform:**[4] The SEC has abdicated its role as the gatekeeper to determine which shareholder proposals are relevant to the interests of a business and its shareholders, and which are extraneous in nature. The SEC should clarify its rules in this area. If the SEC does not, Congress should consider devolving these powers back to the States in which a business is incorporated in.

5. **Financial Reporting Modernization:**[5] Financial reporting is an important vehicle for companies to communicate with investors and markets to efficiently deploy capital. However, many of the policies and standards have not kept pace with an ever evolving and dynamic economy. The SEC, FASB, and PCAOB should accelerate efforts to modernize financial reporting policies, including using the longstanding definition of materiality under the federal securities laws as a common definition of materiality across financial reporting.

6. **Repeal Rules Unrelated to the SEC's Mission:**[6] Corporate disclosures are increasingly used to promote social or political agendas. Some of these rules, such as conflict minerals, have since been found to violate the First Amendment through compelled shaming and to exacerbate the harm they have sought to correct. Such politically motivated rules need to be removed from the SEC's authority and placed with the agencies of original jurisdiction.

7. **Restore the Economically Targeted Investment Bulletin:**[7] The 2008 guidance linking ERISA fund investment decisions and corporate governance should be restored to make investor return paramount in that decision making process.

8. **Expand the JOBS Act**:[8] Congress should pass additional JOBS Act 2.0 legislation to arrest the decline of public companies and open the portals of capital formation.

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[3] *See* U.S. CHAMBER OF COMMERCE, CORPORATE DISCLOSURE EFFECTIVENESS: ENSURING A BALANCED SYSTEM THAT INFORMS AND PROTECTS INVESTORS AND FACILITATES CAPITAL FORMATION, *available at* https://www.uschamber.com/sites/default/files/021053_ccmc_disclosure.pdf.

[4] See letter from 17 trade associations

[5] See letter from U.S. Chamber to Mary Jo White

[6] *See* Nat'l Ass'n of Manufacturers v. SEC, 748 F.3d 359 (D.C. Cir. 2014).

[7] See letter from U.S. Chamber to Secretary Perez

> Congress should also pass H.R. 3784 (to create a small business advocate within the SEC) and H.R. 4168 (to require the SEC to respond to the recommendations of the annual small business forum) to overcome bureaucratic inertia and have the SEC proactively pursue policies to promote capital formation and competition in conjunction with investor protection.

Finally, there has been a recent discussion amongst some stakeholders about the creation and usage of non-financial social or political metrics for public companies to disclose issues unrelated to investor returns. The SEC recently asked questions in the S-K concept release on these issues and, if such disclosures should be created. While this discussion is ongoing, it is important to recognize that several states have created "B" corporations to have a social purpose as well as a profit goal. Such disclosure requirements may make sense for "B" corporations but not for traditional public companies.

*Hearing entitled **"The Annual Report of the Financial Stability Oversight Council"***

While the Chamber supports efforts to identify and mitigate legitimate threats to the stability of the U.S. financial system, the FSOC should only take action where there is a credible threat backed by data or other evidence rather than conjecture and unsubstantiated assumptions. Since its inception, the FSOC has been operating in a black box with little to no transparency, particularly with respect to the systemically important financial institution (SIFI) designation process. The recent ruling by a U.S. District Court judge in the case of MetLife vs. FSOC over MetLife's SIFI designation validates the many flaws with the designation process. Specifically, the designation rules that FSOC set for itself to demonstrate that a target designee was vulnerable to material financial distress and posed a threat to stability were not followed in the MetLife case. Moreover, the structure of the FSOC leads to analysis of nonbank financial institutions from a bank-centric lens where nonbanks are certain to fail.

Nevertheless, the Chamber is pleased that the FSOC has taken steps to understand the asset management industry to better assess if activities or products in the space pose a risk before moving large asset managers along the designation process. Additionally, setting up an interagency task force to collect and analyze data with regard to certain activities related asset management demonstrates good practice. It is disappointing, however, that the same process has not been afforded the insurance industry.

In this regard, the Chamber laid out a series of reforms in December 2013 report, the ***Financial Stability Oversight Council Reform Agenda*** that focused on the structure, transparency and process of the Council. These recommendations are also included in the recent Chamber report ***Restarting the Growth Engine: A Plan to Reform America's Capital Markets***, which reiterates the need for the opportunity to de-risk before designation and use a clearly defined "off-ramp" to designation, both of which remain missing today. Many of these changes

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[8] See Testimony of Thomas Quaadman before the Subcommittee on Capital Markets and Government Sponsored Enterprises, *available at* http://financialservices.house.gov/uploadedfiles/hhrg-114-ba16-wstate-tquaadman-20151202.pdf.

would bring about transparency and due process and can easily be implemented by the Council with the need for legislative action.

Hearing Entitled ***"Examining the Agenda of Regulators, SROs, and Standards-Setters for Accounting, Auditing, and Municipal Securities"***

The Chamber also appreciates the decision of the Subcommittee on Capital Markets and Government Sponsored Enterprises to review the agenda and recent work of the FASB and the PCAOB. The Chamber has consistently advocated for long-overdue modernization of financial reporting policies. In 2013, the Chamber sent a letter to SEC Chair Mary Jo White that proposed a series of financial reporting policy modernizations many of which are based upon recommendations made by the Advisory Committee on Improvements to Financial Reporting (CIFiR). The importance of implementing these recommendations has only grown since then, especially because of the passage of the JOBS Act, which specifically tailored the application of standards from to emerging growth companies**.**

In this respect, the Chamber actively urges you to review whether the FASB and PCAOB have actively engaged with the issuer community on issues of critical importance to them, such as coordinating on common definitions of materiality, considering the auditability of Generally Accepted Accounting Principles when developing accounting standards and disclosure requirements, and increasing communication between the FASB, PCAOB, and SEC.

To their credit, both the FASB and PCAOB have sought to increase issuer participation and input into the standards and rule setting processes. The Chamber commends the SEC and PCAOB for engaging in direct dialogue with the issuer community on a marked increase in assurance and cost related to internal controls, particularly after highlighting many of these issues in a letter to the PCAOB in 2015. The PCAOB should establish a business advisory committee to address ongoing issues on an ongoing basis.

However, we believe that more can be done to improve communication among these two standard setters and the SEC. This is why the Chamber report ***Restarting the Growth Engine*** specifically calls for the establishment of a Financial Reporting Forum (FRF). The FRF would seek to identify and propose solutions to problems before they reach crisis stage and also incorporate the input of investors (broadly defined) and businesses. This would ensure an appropriate mechanism for further coordination on issues of significant importance to the issuer and investor community.

Additionally, FASB and the PCAOB should abide by the same standards of process and transparency as the SEC. Therefore, the PCAOB and FASB advisory committees should abide by the Federal Advisory Committee Act.

Hearing Entitled ***"The Financial Stability Board's Implications for U.S. Growth and Competitiveness"***

The Chamber applauds the Subcommittee on Monetary Policy and Trade's efforts in reviewing how the FSB's standard-setting activities impact the U.S. economy. In this respect, it bears reiterating the Chamber's report ***Restarting the Growth Engine***, which lists the reconstitution of the FSB through a treaty to create transparent and accountable regulatory and designation processes as one of its principal recommendations.

As you know, the Chamber has serious reservations about the track record and lack of transparency in the FSB standard-setting process, the unbalanced representation between prudential and market regulators, and the impact of these issues on U.S. policymaking. Moreover, while we recognize that the FSB formulates recommendations, and not binding policy, such recommendations are often formally endorsed by the G-20 and create commitments for G-20 members. This often translates into international directives used for backdoor regulation, particularly with respect to the standards that the Federal Reserve is "compelled" to implement. With policy formulated behind closed doors and without public input that regulators are obligated to address, the end result is a process that is viewed with suspicion and that results in regulation that may be unnecessarily complex, burdensome, or unfeasible.

The transparency of the FSB and the process by which it sets standards is of critical importance given that the organization by acting as a global representative of its Members. It decides important questions such as (1) prescribing policy tools for the asset management industry and potential systemic risk that it may pose, if any; (2) mandating the IAIS to determine capital requirements for global systemically important insurers (G-SIIs) and internationally active insurance groups; (3) coordinating implementation of cross-border derivatives reform; (4) updating the FSB's annul list of global systemically important banks (G-SIBs) and G-SIIs; and (5) determining whether countries are compliant with their financial regulatory reform "peer reviews" or if more work needs to be done. In all of these activities, there is a considerable amount of uncertainty as to which Members are actually participating in FSB deliberations and how disputes or differences among Members are resolved.

Consequently, the Chamber believes that a fully transparent process should govern the FSB's deliberations and policy decisions. To ensure this transparency, we believe the FSB should be reconstituted through a treaty negotiated among its member countries, which would then be subject to congressional approval. This would provide Congress with the opportunity to improve the transparency of the FSB and to guarantee that its directives were subject to procedural safeguards based on the Administrative Procedure Act.

Additionally, the U.S. representative of the FSB should be a presidential appointee, subject to the advice and consent of the Senate. Ensuring the ability to review the credentials of a U.S. representative to the FSB, and obtaining necessary and appropriate commitments regarding his or her service at the FSB, is critical given the central role that U.S. regulators have at the FSB.

Finally, as the FSB operates on a consensus basis, the Chamber strongly urges U.S. representatives of the FSB to withhold any affirmative vote for G-SIFI designation unless the target company has been separately designated by the FSOC. Doing so would ensure much needed transparency and due process that is missing from the FSB process.

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The Chamber appreciates the work of the Financial Services Committee on all of these issues. Many of the issues raised in these hearings will have a direct impact upon Main Street businesses and economic growth and we look forward to working with you on policies to restore the American economy to its long-term growth potential.

Sincerely,

R. Bruce Josten

cc: Members of the Committee on Financial Services