



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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July 25, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Draft SEC Strategic Plan for Fiscal Years 2018-2022 (Release No. 34-83463)**

Dear Mr. Fields:

The U.S. Chamber of Commerce (the “Chamber”) created the Center for Capital Markets Competitiveness (the “CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century global economy.¹ The CCMC is committed to working to implement reforms to strengthen the economy, restore investor confidence, and ensure well-functioning capital markets. The CCMC welcomes the opportunity to comment on the Securities and Exchange Commission’s (the “SEC” or “Commission”) Draft Strategic Plan for Fiscal Years 2018-2022 (the “Draft Strategic Plan”).

The CCMC believes that the Draft Strategic Plan should concentrate on:

- 1. Public Company Regulatory Reform;**
- 2. Modernizing Existing SEC Rules;**
- 3. Disclosure Reforms;**
- 4. Standards of Conduct for Investment Professionals;**

¹ The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

- 5. Shareholder Proposal Reforms;**
- 6. Strengthening Enforcement and Due Process; and**
- 7. Improved Data Analytics.**

Discussion

As the SEC recognizes in the Draft Strategic Plan, “the number of companies raising capital through the public securities markets has declined, and those that are joining our public disclosure and offering regime are doing so later in their lifecycle.”² The CCMC shares the SEC’s concern that these trends have “reduced the number of opportunities our Main Street investors have to invest in companies, including those in the emerging and growth sectors of our economy,”³ and believes that they present a serious roadblock to the long-term health of the American economy.

This decline is multifaceted with no single solution. A number of factors contribute to this problem, including those outside the control of Congress or the SEC, but there are several issues squarely within the purview of the SEC that can and should be addressed to help bring our capital markets into the 21st century. The CCMC agrees with the SEC’s view in the Draft Strategic Plan that “market developments such as these make the SEC’s vigilance more important than ever [and] . . . require [the SEC] to reassess the tools, methods, and approaches used in the past and adapt them to ensure their continued effectiveness.”⁴

The Draft Strategic Plan is a more streamlined and aspirational document than recent prior SEC strategic plans. We are hopeful that this new approach will have a greater impact on the agency’s future agenda.

The CCMC supports the SEC’s high-level goals to:

1. Focus on the long-term interests of Main Street investors;

² Draft Strategic Plan, at 5.

³ Draft Strategic Plan, at 5.

⁴ Draft Strategic Plan, at 5.

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2. Recognize significant developments and trends in our evolving capital markets and adjust efforts to ensure the SEC is effectively allocating its resources; and
3. Elevate the SEC's performance by enhancing its analytical capabilities and human capital development.

I. Public Company Regulatory Reform

The CCMC supports initiatives to reform the public company regulatory regime to address impediments to companies going public and regulatory burdens associated with remaining a public company. While the Jumpstart Our Business Startups Act (the "JOBS Act") began to address this issue, support for further reforms from a wide spectrum of industry participants remains strong. Accordingly, the CCMC agrees with the SEC's efforts to focus on facilitating public capital markets, including through initiative 1.5 of the Draft Strategic Plan, which focuses on identifying ways to increase the number and range of long-term, cost-effective investment options available to retail investors, including by expanding the number of companies that are SEC-registered and exchange-listed.

The CCMC is pleased that the SEC has already begun to take action by extending the confidential filing provisions of the JOBS Act to all issuers and allowing issuers to use these same provisions when conducting certain secondary offerings, and we urge the SEC to consider additional reforms. For example, the CCMC, along with other organizations that represent a diverse cross-section of the American economy, recently released a report, [*Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public*](#), which provides 22 recommendations for improving the public company regulatory regime.

The CCMC commends the SEC's efforts to focus on facilitating vibrant public securities markets. We look forward to working closely with you, Congress, and other stakeholders to help make further reforms a reality.

II. Modernizing Existing SEC Rules

The CCMC has been a strong proponent of periodic review of existing regulations. Such reviews ensure regulators keep rules up to date and consistent with market evolutions. Accordingly, the CCMC supports initiatives 1.4 and 2.2.

A. Corporate Disclosure System

The CCMC has long encouraged effective communication between companies and investors, which empowers investors to make informed decisions as to how and where to deploy their capital. Accordingly, the CCMC has been a strong supporter of initiatives to modernize our corporate disclosure system to align public company disclosure obligations with the needs of today's investors. The CCMC commends the Commission for making modernization of corporate disclosure a priority through initiative 1.4 of the Draft Strategic Plan, which focuses on the design, delivery and content of disclosures so investors, particularly retail investors, can access useful and timely information to make informed investment decisions.

However, over the decades since many securities laws were enacted, and especially in recent years as special interest groups have targeted SEC-mandated disclosure as a means to advocate for social and political change, the securities disclosure regime has been inundated with disclosure mandates that are often unnecessary and duplicative. As a result, SEC disclosure documents have continued to expand and become more dense and complicated. It should come as no surprise, then, that investors often become overwhelmed with information that is not useful, making it difficult for them to identify important information about a business, and, in some cases, causing them to simply ignore the long, dense documents altogether. Moreover, the financial and administrative burdens of preparing such lengthy disclosure documents further discourage companies from going public.

An effective disclosure system provides investors the material information they need to make objective decisions regarding the value of an investment, but does not overwhelm them with extraneous information that can obscure what is material and distract investors from what really matters about a company. Thus, in rethinking the disclosure regime, the guiding principle should be materiality (i.e., what would a reasonable investor consider important for a decision regarding a financial investment). Requiring public companies under the federal securities laws to disclose

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information that is not material to a reasonable investor, including efforts to advance social or political goals through SEC-mandated corporate disclosures, risks eroding investor confidence in securities regulation and impairing the competitiveness of our capital markets by making it more costly for innovative companies to raise capital. Investors, issuers and capital markets are best served by a disclosure system based on the well-established definition of materiality. The CCMC report, *[Essential Information: Modernizing Our Corporate Disclosure System](#)*, released in January 2017, explores further why materiality is, and should remain, the guiding principle for public company disclosure.

The CCMC has been a strong supporter of the SEC's ongoing efforts related to disclosure modernization and simplification and has offered numerous suggestions for advancing its goals. For example, the CCMC submitted letters to the SEC on July 29, 2014⁵ and December 20, 2017,⁶ in which we provided comments on the SEC's corporate disclosure effectiveness initiative and proposed rules on FAST Act modernization and simplification of Regulation S-K, respectively. In addition, the CCMC released reports in 2014 and 2016, respectively, entitled *[Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation](#)* and *[Restarting the Growth Engine: A Plan to Reform America's Capital Markets](#)*.

B. Standards of Conduct for Investment Professionals

The CCMC appreciates the Draft Strategic Plan's focus on the needs of Main Street investors, many of whom rely on the counsel of investment professionals to help them achieve both short- and long-term financial goals.

The CCMC welcomes the leadership role taken by the SEC to enhance the standards of conduct for broker-dealers and investment advisers to foster a regulatory system that best serves the interests of investors. The SEC is the proper agency to oversee the regulatory framework that applies to the interactions that broker-dealers and investment advisers have with retail investors.

⁵ <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-11.pdf>.

⁶ <https://www.sec.gov/comments/s7-08-17/s70817-2826306-161645.pdf>.

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The SEC's proposed Regulation Best Interest⁷ would properly preserve retail investor choice and access to the brokerage "pay as you go" advice model, while ensuring broker-dealers develop and implement reasonable policies and procedures using a principles-based approach. While the CCMC is generally supportive of Regulation Best Interest, we believe that it should be enhanced in a number of ways and will be submitting further comments to the SEC.

C. Shareholder Proposal Reform

The regulatory framework for shareholder proposals is badly out of date and needs to be reformed for the benefit of shareholders, public companies and the capital markets. CCMC urges the Commission to prioritize modernization of the shareholder proposal system governed by Rule 14a-8 of the Securities Exchange Act of 1934. While Rule 14a-8 is not the only means an investor has to get the attention of management, it "is popular because it provides an opportunity for any shareholder owning a relatively small amount of the company's shares to have his or her own proposal placed alongside management's proposals in the company's proxy material."⁸ For decades, the SEC often took the position that proposals dealing with personal grievances, or those of a social or political nature, were not proper subjects for shareholders to vote on under Rule 14a-8, largely because such proposals sought to advance goals other than improving a company's performance. Such an approach helped prevent abuse of the system, while affording shareholders a voice..

Unfortunately, the long-standing guardrails that were put in place to protect investors have steadily weakened, and this system has increasingly become an avenue for a minority of special interest activists to advance agendas that are disconnected from enhancing the long-term performance of companies. For instance, 56 percent of all shareholder proposals at Fortune 250 companies during the 2017 proxy season involved social or policy goals.⁹ Despite the prevalence of such proposals, shareholder support for these proposals has been remarkably low. From 2006 through 2015, Fortune 250 companies faced 1,347 shareholder proposals principally involving social or policy goals, with none receiving majority shareholder support over

⁷ Proposed Rule: Regulation Best Interest, Release No. 34-83062, April 18, 2018.

⁸ Proposed Rule: Amendments to Rules on Shareholder Proposals, Release No. 34-39093, Sept. 19, 1997.

⁹ http://www.proxymonitor.org/Forms/pmr_15.aspx.

board opposition.¹⁰ In 2016, only one proposal related to corporate political spending received the support of a slight majority of shareholders, and in 2017, only two climate-related proposals received majority shareholder support.¹¹ Notwithstanding the low support levels, current SEC rules allow investors to resubmit proposals year after year even if they have been overwhelmingly rejected in the past.

Moreover, a very small subset of investors have come to dominate the shareholder proposal system, while the vast majority of investors who routinely vote against these proposals are lost in the discussion and forced to bear the costs. For instance, 25 percent of all shareholder proposals at Fortune 250 companies during the 2017 proxy season were sponsored by just three individuals and their family members.¹² These individuals repeatedly file substantially similar proposals across a broad set of companies, where they typically hold relatively small amounts of stock.¹³ In addition, 46 percent of all shareholder proposals at Fortune 250 companies in 2017 were sponsored by “socially responsible” investing funds that expressly concern themselves with more than just share-price maximization, as well as policy-oriented foundations and various retirement and investment vehicles associated with religious or public-policy organizations.¹⁴ Only nine percent of all shareholder proposals at Fortune 250 companies in 2017 were sponsored by individual investors apart from the three individual investors.¹⁵

Processing and responding to shareholder proposals imposes significant costs to companies. Proposals dealing with social or political matters also serve as a serious distraction for boards of directors, whose responsibility it is to focus on the long-term best interests of the company. Frivolous proposals can also obscure or lessen consideration of proposals that focus on how to improve a firm’s performance that other shareholders have put forth. The broken Rule 14a-8 system is yet another burden on companies and their shareholders that only serves to make the public company model less attractive, thereby limiting investment opportunities available to Main Street investors.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

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Rule 14a-8 reform is long overdue, and we urge the Commission to make shareholder proposal reform a priority. While there are many possibilities for Rule 14a-8 reform, an important and meaningful first step would be for the SEC to raise the level of support a proposal must receive before it is resubmitted. The current “Resubmission Rule” allows a company to exclude a proposal from its proxy statement if it fails to receive the support of three percent of shareholders if voted on once in the last five years; six percent if voted on twice in the last five years; and ten percent if voted on three or more times in the last five years. Thus, a proponent is allowed to resubmit a proposal even if over 90 percent of shareholders have rejected it on multiple occasions. In 1997, the SEC proposed, but did not finalize, a rule raising these thresholds from the current three percent/six percent/ten percent system to a more reasonable six percent/fifteen percent/thirty percent system. We believe the 1997 proposal is a good starting point for the SEC to consider modernization of this outdated system, as reflected in our 2014 [rulemaking petition](#) on this issue.¹⁶

In addition to amending the Resubmission Rule, the CCMC offered the following six recommendations to the SEC for reforming Rule 14a-8 in its 2017 report, [Shareholder Proposal Reform: The Need to Protect Investors and Promote the Long-Term Value of Public Companies](#):

- Withdraw Staff Legal Bulletin 14H, issued in October 2015, to restore certainty under the Rule 14a-8(i)(9) exemption allowing exclusion of a proposal if it conflicts with one of the company’s own proposals.
- Offer more transparency to investors by requiring proponents to provide sufficient disclosure regarding their economic interests and objectives.
- Reassert the “relevance rule” under Rule 14a-8(i)(5) by allowing excludability of a proposal if the subject matter impacts less than five percent of a company’s total assets and five percent of net earnings.¹⁷

¹⁶ Available at <https://www.sec.gov/rules/petitions/2014/petn4-675.pdf>.

¹⁷ We note that Staff Legal Bulletin 14I addresses this issue in part, but to date are only aware of a single no-action letter in which a frivolous shareholder proposal was excluded on those grounds.

- Prohibit the use of images, photos or graphs as part of proposals, while maintaining the ability of proponents to include a hyperlink for a website they wish to include.
- Provide market participants with more certainty regarding its policing of Rule 14a-8(i)(4), which deals with proposals that relate to a redress of a personal claim or grievance.
- Allow for the exclusion of proposals that include materially false or misleading statements.

We believe that such reforms are fully consistent with goals 1.5 and 2.2 of the Draft Strategic Plan, and the CCMC looks forward to working with the SEC and other interested parties on this important issue.

III. Strengthening Enforcement and Due Process

The CCMC views a strong and fair SEC as an essential element of maintaining efficient capital markets. Having a strong securities regulator is necessary for investors and businesses to have the certainty needed to transfer capital for its best use with an expectation of return, which allows market participants to engage in reasonable risk taking on a level playing field. A rigorous enforcement regime ensures efficient markets by rooting out fraudsters and other bad actors, but if not properly calibrated, it will also serve to discourage legitimate businesses that may be seeking growth capital. This issue is especially acute in light of the declining number of public companies.

In July 2015, the CCMC released a report, [*Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices*](#), which made 28 recommendations to improve SEC enforcement and due process. These recommendations were designed to strengthen the SEC enforcement program's ability to detect and deter fraud while also ensuring honest market participants benefit from a clear and fair investigations process. The recommendations focused on:

- Providing a structure for the choice of forum decision that incorporates due process protection.
- Strengthening the “Wells Process” so that defendants in SEC investigations have a more robust ability to marshal a defense before the SEC commences litigation.
- Clarifying the SEC policy on admissions of liability in settled cases.
- Reducing duplication in regulatory enforcement.
- Rationalizing the “broken windows” enforcement policy and the need for alternative methods of resolving matters.
- Improving oversight by the SEC commissioners over the SEC enforcement staff.
- Streamlining and improving the efficiency of the SEC investigation process, including with respect to document requests, production and preservation.

We are pleased that the SEC has been moving forward on some of the CCMC’s recommendations, and urge the Commission to consider our other recommendations as it implements the Draft Strategic Plan.

The CCMC supports the Commission’s enforcement efforts to focus on retail investors through, for example, initiative 1.3 of the Draft Strategic Plan, which is to pursue enforcement and examination initiatives focused on identifying and addressing misconduct that impacts retail investors, such as securities custody and penny stock trading.

The CCMC also commends the SEC on its efforts to focus on cybersecurity through, for example, initiative 2.3 of the Draft Strategic Plan. Indeed, the Enforcement Division’s new Cyber Unit has already taken important strides to combat cyber-fraud in our capital markets.

IV. Improved Data Analytics

For many years the CCMC has advocated for the SEC to make better use of data analytics and economic analysis in developing proposed rules and other regulatory initiatives. These issues were discussed at length in a 2013 report entitled [*The Importance of Cost-Benefit Analysis in Financial Regulations*](#). Basing regulations on the best available data is a fundamental building block to ensure regulations work as intended. As the Commission is well aware, the federal courts also probe the agency's cost-benefit analysis heavily when challenges to SEC rules.

A focus on empirical analysis is especially important given the evolution of the capital markets into highly complicated systems that generate vast amounts of trading data on a daily basis. Investment patterns are changing as well, with institutional investors now dominating most asset classes and retail investors becoming increasingly passive in their investment strategies. Understanding these dynamics and other emerging trends in the capital markets are a critical part of ensuring that the Commission's regulatory efforts are targeted and efficient.

We commend the Commission for placing a heightened emphasis on data analytics in the Draft Strategic Plan. Initiative 1.1, for example, identifies the importance of understanding how different types of investors participate in our rapidly evolving capital markets. Likewise, initiative 2.1 seeks to expand the Commission's market knowledge and oversight capabilities with a view toward identifying, understanding, analyzing and responding effectively to new market developments and emerging risks. Initiative 3.2 specifically expands the use of risk and data analytics to set regulatory priorities and focus staff resources in light of today's fast-paced, data-driven markets. And initiative 3.3 uses analytical tools to focus enforcement and examination resources in an effort to improve the Commission's ability to police wrongdoing in the capital markets. The CCMC agrees that these objectives are all worthy of attention.

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Conclusion

The CCMC believes that the goals and initiatives laid out in the Draft Strategic Plan will provide a constructive framework for ensuring the vibrancy of our capital markets well into the 21st century. We urge the Commission to consider our comments and recommendations in this letter and in the CCMC reports referenced throughout this letter as the Commission takes steps to achieve these goals.

We thank you for your consideration of these comments and are available to discuss them further with the Commissioners or Staff at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman

cc: The Honorable Jay Clayton
The Honorable Kara M. Stein
The Honorable Robert J. Jackson Jr.
The Honorable Hester M. Peirce