CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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February 25, 2021

The Honorable Brad Sherman
Chairman
Subcommittee on Investor
Protection, Entrepreneurship,
and Capital Markets
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Huizenga
Ranking Member
Subcommittee on Investor
Protection, Entrepreneurship,
and Capital Markets
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Sherman and Ranking Member Huizenga:

The U.S. Chamber of Commerce applauds you for scheduling the February 25, 2021 hearing on "Climate Change and Social Responsibility." The climate is changing, humans are contributing to these changes, and the Chamber believes that there is much common ground to address climate change with policies that are practical, flexible, predictable, and durable. The Chamber supports the development of market-based environmental, social, and governance ("ESG") standards and strongly believes that any public policy approach to ESG reporting must be rooted in the materiality standard and workable for companies of different sizes and industries.[1]

As the Subcommittee considers its approach towards ESG reporting, the Chamber urges members to keep in mind the Supreme Court's landmark decision on materiality in 1976 *(TSC Industries, Inc. v. Northway, Inc.).* On behalf of a unanimous Court, Justice Thurgood Marshall rejected the idea that a fact is material if it "might" be important to an investor. Instead, the Court explained that in formulating a materiality standard, it sought to avoid a scenario in which investors would be overwhelmed "in an avalanche of trivial information—a result that is hardly conducive to informed decisionmaking." Justice Marshall recognized that information overload harms investors, and therefore set a more demanding test of materiality."

The Chamber has been a leading voice in ESG policy discussions, encouraging industries to work with investors on industry-specific standards to meet the needs of their investors, and, moreover, to reflect the circumstances and context of standalone industries and businesses.[2] To accommodate the varying needs of investors and industry, the Chamber has been and continues to be an advocate for voluntary, market-based disclosure, which allows companies appropriate flexibility. In fact, 90% of S&P 500 companies published corporate sustainability reports in 2020,

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[1] Center for Capital Markets Competitiveness. Essential Information: Modernizing Our Corporate Disclosure System. Winter 2017.
[2] Center for Capital Markets Competitiveness. ESG Reporting Best Practices. 2019.

up from just 20% in 2011,[3] demonstrating that providing companies discretion in their disclosures is effective in driving change to corporate decision-making.

While disclosures may be an important piece of a comprehensive policy to combat climate change, disclosure should not be a tool for advancing interests or achieving policy goals that may not be aligned with a company's ability to create value over time. Specifically, any effort to use U.S. securities law to police free speech is misplaced. Disclosure should focus on a company's risks and opportunities that bear a sufficient potential to impact the company's long-term and operational and financial performance in light of its business.

The Chamber supports the concept of establishing a Sustainable Finance Advisory Committee at the Securities and Exchange Commission ("SEC"), should that committee function on the bipartisan basis of other advisory committees within the SEC. The SEC's Investor Advisory Committee and Small Business Capital Formation Advisory Committee have both created important opportunities for consideration of all viewpoints and market perspectives and have both produced reasoned and productive recommendations to the Commission. However, any committee established to advise the Commission on sustainable finance would only be effective if it is comprised of individuals with diverse viewpoints regarding the relationship between ESG disclosure and corporate performance.

The Chamber once again applauds the Subcommittee for working to address issues related to climate change, and we look forward to working with you on these issues going forward.

Sincerely,

Neil L. Bradley

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[3] Governance and Accountability Institute. 90% of S&P 500 Index Companies Publish Sustainability Reports in 2019. July 2020.