



September 16, 2024

To the Members of the United States House of Representatives:

The U.S. Chamber of Commerce strongly supports the policies to revise corporate governance practices for public companies in H.R. 4790, the Prioritizing Economic Growth Over Woke Policies Act.

Pragmatic and practical corporate governance policies ensure that U.S. companies can flourish in our public capital markets, fostering a robust marketplace that provides investors with opportunities to save for retirement, education, housing, and other important lifetime goals. However, due to shortcomings in securities regulation, a handful of activists have been able to hijack the process for how shareholders engage with companies.

The 2024 Proxy Season has again demonstrated that just a few activist investors<sup>1</sup> can push a political agenda that is only tangentially related, or wholly unrelated, to a company's economic success. National political and policy issues should be decided by elected officials, not in a company's shareholder meeting.

H.R. 4790 includes pragmatic reforms to shareholder proposals, proxy advisors, and the SEC's regulatory process, and requires the federal government to study the extraterritorial reach of European Union laws on U.S. businesses and markets.

### Shareholder Proposals

H.R. 4790 would reform the shareholder proposal process to focus on economic return, including: raising resubmission thresholds; limiting the recurrence of substantially similar or duplicative shareholder proposals; and reversing an SEC staff directive that compels companies to consider shareholder proposals that have a "broad societal impact." These reforms would help prevent activists from continuing to push proposals even after they fail to receive even modest support.<sup>2</sup>

### Proxy Advisory Firms

H.R. 4790 would require proxy voting advice businesses (or "proxy advisory firms") to register with the SEC. This would mitigate conflicts of interest in the

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<sup>1</sup> In one analysis of the 2024 Proxy Season, Sullivan & Cromwell found that just ten shareholder proponents were responsible for a substantial majority of shareholder proposal submissions. Just 4 individuals represented 29% of the more than 850 proposals submitted to S&P Composite 1500 companies. "2024 Proxy Season Review: Part 1." Sullivan & Cromwell. Available at: <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/2024-Proxy-Season-Review-Part-1.pdf>.

<sup>2</sup> See: Center for Capital Markets Competitiveness, U.S. Chamber of Commerce. "The SEC Must Put a Stop to the Politicization of the Shareholder System." June 14, 2024. Available at: <https://www.uschamber.com/finance/the-sec-must-put-a-stop-to-the-politicization-of-the-shareholder-system>.

services proxy advisory firms provide to investors while affording public companies the opportunity to correct false or misleading information that proxy advisory firms use to formulate recommendations on shareholder proposals and director elections. In the 2024 Proxy Season, companies reiterated their concerns about proxy advisory firms' conflict of interest and lack of accountability.<sup>3</sup> Further, the current leadership at the SEC recently made the unprecedented decision to not defend their own authority to regulate proxy advisors in court,<sup>4</sup> creating an even stronger imperative for Congress to act.

## Materiality Standard for Corporate Disclosures

H.R. 4790 would enshrine the Supreme Court's definition of materiality<sup>5</sup> into law. This standard is meant to determine what information public companies must disclose to investors based on what information those investors need to make informed investing decisions.<sup>6</sup> Enshrining the materiality standard into the SEC's rulemaking process would help prevent regulations from being politicized.

## Extraterritorial European Union Law

Finally, the Chamber supports requiring the federal government to study the impacts of the European Union's Corporate Sustainability Reporting Directive ("CSRD") and the Corporate Sustainability Due Diligence Directive ("CS3D"). Both Directives, which are set to become law in EU member states, would impose new extraterritorial regulations on certain U.S.-parented companies that do business in the EU.

The Chamber strongly supports corporate governance reforms in H.R. 4790.

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<sup>3</sup> See: The Wall Street Journal. "Elon Musk Foils the Proxy Firms." June 20, 2024. Available at: <https://www.wsj.com/articles/elon-musk-foils-the-proxy-firms-99f441e4>.

<sup>4</sup> See: Bloomberg Law. "SEC Proxy Firm Rules Case Survives as Trade Group Takes Lead." Sep. 3, 2024. Available at: <https://news.bloomberglaw.com/esg/sec-proxy-firm-rules-case-stays-alive-as-manufacturers-take-lead>.

<sup>5</sup> The SEC has an imperative role to play in the appropriate function of the U.S. capital markets, and a main principle underlying that role is materiality. Since the securities laws were first enacted, materiality has been the standard to determine what information public companies must disclose to investors. In the 1976 *TSC Industries, Inc. vs. Northway, Inc.* decision, the Supreme Court established a meaningful standard of materiality that was designed to provide investors with the significant information they need to make informed voting and investing decisions. Importantly, the Court provided further guidance but noted that the "disclosure policy" under the federal securities laws "is not without limit" because investors should be safeguarded from being overwhelmed with information that runs counter to the goal of better investor decision making. The Court operationalized this principle in its decision – subsequently affirmed by the Court in *Basic, Inc. v. Levinson* – by rejecting the notion that information is material if it "might" be important to an investor in favor of the following test: information is material for purposes of federal securities regulation if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote" or invest. The Court has noted its concern that absent a defined materiality standard, investors could be buried "in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking." The materiality standard has served investors well for decades and has been a bedrock of corporate disclosure in the United States.

<sup>6</sup> See: Center for Capital Markets Competitiveness, U.S. Chamber of Commerce. "Essential Information: Modernizing Our Corporate Disclosure System". Winter 2017. Available at: [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)

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quaadman', with a long, sweeping horizontal stroke extending to the right.

Tom Quaadman  
Senior Vice President  
Economic Policy  
U.S. Chamber of Commerce