CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

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The Honorable Allison Herrin Lee
Acting Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Acting Chair Lee:

Thank you for taking the time to meet with the U.S. Chamber of Commerce on March 3, 2021. We appreciated the opportunity to speak with you and your staff, and we look forward to continuing our engagement with the Securities and Exchange Commission on topics including access to capital for minority-owned businesses and climate disclosure.

As we discussed, the Chamber is a ready participant in conversations about the nexus of climate change and corporate disclosure. We believe there is much common ground to ensure that investors receive material information as it relates to climate change. The Chamber supports the development of market-driven environmental, social, and governance (ESG) standards, and strongly believes that any public policy approach to ESG reporting must be rooted in the Supreme Court's well-established concept of materiality. We believe all disclosures should provide decision-useful information to investors and be workable for companies of different sizes and industries. While disclosures may be a part of an all of government, comprehensive policy to combat climate change, disclosures should be used to protect investors and should not be used as a means to achieve policy goals outside the scope of the federal securities laws.

The Chamber and its membership look forward to continuing to serve as a partner in the Commission's work on ESG as it advances through a formal rulemaking process. New policies related to ESG should be made after weighing the costs and benefits of the chosen course, with justification for new policies being made clear to affected parties and the public. As you noted in a public statement on August 21, 2019,[1] Commission interpretive guidance and staff directives can serve as useful tools, but they cannot replace notice-and-comment rulemaking. As you aptly observed in those same remarks, "Commission action, on the other hand, is different and commands attention and compliance."

Against this backdrop, the Chamber urges caution regarding the SEC's recently-announced ESG enforcement initiative. The initiative appears to take an enforcement-first approach to ESG and climate change even though the Commission has not yet completed its review and updates to the 2010 guidance regarding climate change disclosures, which many see as a reasonable predicate

[1] https://www.sec.gov/news/public-statement/statement-lee-082119

to further guidance or rulemaking.[2] The SEC must observe the rules and processes governing administrative procedure required by law.

The Chamber believes that there should be a strong cop on the beat to ensure America's capital markets are safe, orderly and efficient.[3] Clear rules of the road are important to achieve that objective and enforcement should not be used as a means to establish new policy, particularly on a ground-breaking issue that will have important implications for investors and the companies that they invest in.

While it is essential that the SEC pursue bad actors, market participants should likewise have fair and advanced notice of their disclosure and compliance obligations. An investigative subpoena should not replace a concept release, and an order that institutes proceedings should not replace a final rule. We are deeply concerned that using the SEC's enforcement apparatus in place of notice-and-comment rulemaking will discourage companies from going public just as the economy turns its sights onto recovery from the pandemic through capital formation and job creation.

We encourage the Commission to provide fair notice, communicate explicit expectations, and adhere to the Administrative Procedure Act when taking action related to climate change and other ESG topics. In order to cultivate certainty among issuers about the longevity of policies and create lasting investor protections, it is important that climate policies be subject to notice and comment to be sure that all stakeholders are heard, a common practice to provide for well-informed rulemaking. An enforcement taskforce should not replace the right of investors, companies or "Mr. & Mrs. 401k" to be heard on rules that will impact disclosures for decades.

Thank you again for the opportunity to share the business community's views on formulating balanced ESG policies. The Chamber looks forward to serving as an active resource to the Commission and the SEC staff as this work progresses.

Sincerely,

Tom Quaadman

[2] https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure

[3] Chamber of Commerce Center for Capital Markets Competitiveness. "Examination U.S. Securities and Exchange Commission Enforcement." 2015. http://www.centerforcapitalmarkets.com/wp-content/uploads/2015/07/021882_SEC_Reform_FIN1.pdf