CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

April 19, 2021

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

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

Dear Chair Waters and Ranking Member McHenry:

The U.S. Chamber of Commerce appreciates the Committee's efforts in holding the markup scheduled for April 20, 2021.

We support the following three measures:

A resolution to establish a Task Force on Artificial Intelligence in the Committee on Financial Services

Artificial intelligence presents new possibilities for financial services, but also new questions to consider for the future of financial services regulation. We look forward to working with the Task Force as its work gets underway and encourage it to underscore bipartisanship in its actions.

A resolution to establish the Task Force on Financial Technology in the Committee on Financial Services

Financial technology is an important part of the financial services landscape, and we are pleased to see the Committee will once again add focus on FinTech via the Task Force. We look forward to partnering with the Task Force in its efforts and encourage the Task Force to emphasize bipartisanship.

The Amendment in the Nature of a Substitute to H.R. 1277, the Improving Corporate Governance Through Diversity Act

The Chamber supports efforts to increase gender, racial, and ethnic diversity on corporate boards of directors, as diversity has become increasingly important to good corporate governance. According to PwC's 2019 Annual Corporate Directors survey, 94% of board directors surveyed indicated that a diverse board brings unique perspectives, 87% responded that diversity enhances performance, and 84% responded that it improves relationships with investors. In addition, 76% of directors agree that board diversity enhances the performance of the company. More recently, institutional investors and other stakeholders have pointed to growing research demonstrating the link between diversity and financial performance, innovation, productivity, and market share.

In 2020, the Chamber launched the [Equality of Opportunity Initiative] to develop real, sustainable solutions to help close race-based opportunity gaps in four areas: education, employment, entrepreneurship, and criminal justice. Systemic inequalities in these four areas perpetuate broader inequalities in our society, hold back individual and business success, and hinder economic growth. As part of this effort, the Chamber is identifying specific legislative solutions it is encouraging Congress to enact.

The "Improving Corporate Governance through Diversity Act of 2021" would establish a model to organically boost diversity on boards through disclosure, rather than the counterproductive quota-driven strategies that some jurisdictions have attempted. The legislation would also establish an advisory group that would carry out a study and provide recommendations on private sector strategies to increase gender, racial, and ethnic diversity among boards of directors.

The Chamber opposes the following four measures:

<u>The Amendment in the Nature of a Substitute to H.R. 1087, the Shareholder Political Transparency Act</u>

This bill would require public companies to submit quarterly reports to both the SEC and investors detailing the amount, date, and nature of a company's expenditures for political activities.

The Chamber strongly opposes this legislation. U.S. securities disclosures should not be a tool for advancing political goals or social policy agendas, and 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 a company's long-term and operational and financial performance in light of its business. Political spending does not meet these criteria.

This legislation poses a significant threat to free speech and may violate the First Amendment. Moreover, much of the information sought by activist-investors related to political contributions is already publicly available via state filings. This legislation is misguided.

<u>The Amendment in the Nature of a Substitute to H.R. 1187, ESG Disclosure Simplification Act</u>

This bill would require issuers to disclose certain environment, social and governance (ESG) metrics to shareholders, the connection between those metrics and the issuer's long-term business strategy, and the method by which the issuer determines how ESG metrics impact its long-term strategy. The bill would also require the U.S. Securities and Exchange Commission (SEC) to adopt rules requiring issuers to disclose ESG metrics in filings that require audited financial statements. Additionally, the bill would establish a Sustainable Financial Advisory

Committee (SFAC) at the SEC to provide a report identifying policy changes that could facilitate sustainable investments.

As the Committee 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.[1] 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, up from just 20% in 2011,[2] demonstrating that providing companies discretion in their disclosures is effective in driving change to corporate decision-making.

It is clear that voluntary disclosures are responsive to investor demand for information, and issuers should continue to be able to respond to investor demand how they see fit and in a manner that makes sense for their company. Company size and industry should also be considered.

The Chamber does support 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 opposes this legislation.

The Amendment in the Nature of a Substitute to H.R. 2516, The Promoting Diversity and Inclusion in Banking Act

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[1] Center for Capital Markets Competitiveness. ESG Reporting Best Practices. 2019.

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

This bill would require Federal banking regulators to include a diversity and inclusion component in the Uniform Financial Rating System and require mandatory reporting of diversity and inclusion assessments.

The Chamber agrees with the objective of increasing diversity and inclusion in the banking system but is concerned with the Information Financial Institutions Rating System (UFIRS) being used to accomplish this. Leveraging UFIRS for objectives other than achieving safety and soundness could have unintended consequences for stability of the banking system by erroneously suggesting some banks could fail or opening the door to additional changes to UFIRS to achieve social objectives.

The Amendment in the Nature of a Substitute to H.R. 2543, the Federal Reserve Racial and Economic Equity Act

This bill would require the Federal Reserve to carry out its duties in a manner that supports the elimination of racial and ethnic disparities in employment, income, wealth, and access to affordable credit. The Board would be required to report on disparities in labor force trends as well as on plans and activities of the Board to minimize these disparities.

The Chamber supports the independence of the Federal Reserve from Congress as it relates to carrying out its responsibilities for conducting monetary policy. The monetary goals of the Federal Reserve are to foster economic conditions that achieve both stable prices and maximum sustainable employment.

The Chamber has opposed other efforts initiated by Congress that would exert undue influence on the conduct of monetary policy by the Federal Reserve. On May 1, 2017, the Chamber wrote a letter to the House Financial Services Committee which noted concern about monetary policy provisions in the Financial CHOICE Act (H.R. 10): "the Chamber strongly opposes the inclusion of any requirements that infringe upon the independent monetary powers of the Federal Reserve, specifically provisions that impose new procedures beyond the normal audit for financial statement and reporting purposes, and any rules that impede the independence and impartiality of the Federal Open Market Committee."

We appreciate the opportunity to provide feedback on these seven legislative measures, and look forward to working with the committee throughout the legislative process.

Sincerely,

Neil L. Bradley

cc: Members of the Committee on Financial Services