NATIONAL ASSOCIATION OF Manufacturers

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September 29, 2025

The Honorable Paul Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Updates to the Commission's Regulatory Agenda[1]

Dear Chairman Atkins:

On behalf of the National Association of Manufacturers ("NAM"), I am writing to offer our members' suggestions for new rulemaking, guidance, and other policy initiatives to enable a new chapter of balanced, sensible, and pro-growth regulations at the Securities and Exchange Commission ("SEC").

The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that supports and empowers the 13 million people who make things in America. As the largest manufacturing association in the U.S., the NAM's membership includes businesses of all sizes, across all industrial sectors, and in all 50 states. Manufacturers collectively contribute $2.94 trillion to the U.S. economy—and right-sized, commonsense regulations are critical to sustaining the manufacturing strength that underpins our nation's prosperity.

As you know, the SEC's tripartite mission is to facilitate capital formation, protect investors, and maintain efficient markets. Unfortunately, in recent years, the Commission has done little to expand access to capital while imposing burdensome requirements that have increased compliance costs for public companies without concomitant investor benefit. Manufacturers thus support your efforts to reorient and right-size the regulatory environment for publicly traded manufacturers—which will promote capital formation, job creation, shareholder value, and growth at companies of all sizes.[2]

[1] We applaud the Commission's plans, as detailed in the Spring 2025 Agency Rule List, to undertake rulemakings on Shareholder Proposal Modernization, the Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and the Rationalization of Disclosure Practices. In this letter, we provide recommendations for those rulemakings and suggest additional topics that the Commission should consider as it prepares the next edition of its regulatory agenda.

[2] This letter supplements the regulatory recommendations that the NAM submitted earlier this year in response to Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative." *See* NAM Comments to the SEC on

I. Adopt Reforms to Promote Capital Formation and Ease Burdens on Smaller Issuers

The NAM has long supported reforms to foster capital formation, to improve the regulatory environment for manufacturing firms to go (and remain) public, and to reduce the existing disclosure burdens on smaller and mid-cap corporate issuers.

A. Reduce Disclosure Burdens by Updating the Thresholds for Smaller Reporting Companies and Accelerated Filers

Manufacturers believe that the Commission can do more to right-size the regulatory burdens faced by smaller companies, while continuing to provide appropriate protection for investors. We have been encouraged by the comments of Commissioners Mark Uyeda and Hester Peirce about the need to modernize the SEC's classification of issuers and reduce disclosure burdens on smaller companies, and we understand that scaled disclosure is a priority for the Commission under your leadership. We share Commissioner Uyeda's concern that "[o]utdated financial thresholds, lack of scaling, and overlapping definitions can result in a complex and ineffective regulatory regime, imposing unnecessary costs on companies and their shareholders," and we support his goal of ensuring that issuers' "ongoing reporting obligations are proportionate to their size and resources." [3] While the Commission acted in 2018 and 2020 to address the burdens faced by smaller companies, we believe that more fundamental reform is needed. We urge the Commission to go beyond considering incremental changes to the existing thresholds and act decisively to update the classifications so that they approximate the traditional small, mid, and large-cap categories with which investors are familiar.

First, we encourage the Commission to eliminate the confusing overlap between the definitions of smaller reporting companies ("SRCs"), non-accelerated filers, and accelerated filers.[4] Under the current rules, most SRCs are non-accelerated filers, but an SRC becomes an accelerated filer if its annual revenues exceed $100 million, provided that it has at least $75 million in public float. As accelerated filers, these companies are subject to the costly mandate to provide an

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Executive Order 14219 (11 April 2025), *available at* https://documents.nam.org/REGS/NAM_Letter_to_SEC_re_Executive_Order_14219_04-11-25.pdf.

[3] *See* Commissioner Mark T. Uyeda, Remarks at 44th Annual Small Business Forum (10 April 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-small-business-forum-041025 ("Under the Commission's current rules, a company with a $250 million public float is subject to the same disclosure requirements as a company with a $250 billion public float. The Commission has not updated its thresholds for how companies qualify as an accelerated filer or large accelerated filer since those thresholds were established in 2005.")

[4] As Commissioner Peirce observed in 2019, "The process of determining whether a company is an SRC and a non-accelerated filer, or an SRC and an accelerated filer, or outside of both categories is so complicated that even we at the SEC need diagrams to figure it out. The fact that we ourselves struggling to understand our own regime does not bode well for smaller companies trying to follow our rules without the benefit of a staff of seasoned securities attorneys." Hester M. Peirce, Statement at Open Meeting on Proposed Amendments to Sarbanes Oxley 404(b) Accelerated Filer Definition (9 May 2019), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-proposed-amendments-sox-404b-accelerated-filer-definition.

auditor attestation of management's assessment of the company's internal control over financial reporting, as required by Section 404(b) of the Sarbanes-Oxley Act. In addition, these companies are subject to shortened filing deadlines—40 days for Form 10-Q and 75 days for Form 10-K.

We recommend that the Commission combine the non-accelerated filer and SRC definitions into a single category[5] and set a higher maximum public float ceiling (such as $1 billion) to determine whether a company qualifies for the regulatory relief enjoyed by smaller issuers. Fully aligning the two definitions—as had been the case prior to the Commission's 2018 SRC reforms—would provide greater regulatory certainty and reduce burdens on all smaller companies. In addition, a meaningful increase in the maximum public float ceiling for SRC/non-accelerated filer status is warranted given the rate of inflation and the growth in overall market capitalization since the Commission originally set these filer thresholds in 2005. We also recommend that the Commission substantially increase the current $100 million annual revenue trigger that forces SRCs to graduate to accelerated filer status. To make compliance easier, we suggest setting this trigger at the same revenue limit for emerging growth company ("EGC") status, which is now $1.235 billion.[6]

Second, we recommend that the Commission significantly increase the minimum threshold (e.g., to $10 billion in public float) for large accelerated filer status to provide a more meaningful distinction between mid-cap companies and large-cap issuers, as these firms typically have significant differences in their investor bases and available resources for compliance. As Commissioner Uyeda has observed, accelerated filers, which accounted for 23% of reporting companies in 2005, have dwindled to 7%, while the percentage of companies that are large accelerated filers has doubled from 18% to 36%.[7] The current accelerated filer definition, which now covers companies with public floats up to $750 million, has not kept pace with widely accepted definitions for "mid-cap" companies.[8] Manufacturers believe that the Commission should strive to have three general categories of filers with updated thresholds that are easily

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[5] Alternatively, if the Commission opts to keep a separate SRC definition, it should update the accelerated filer definition to provide that no SRCs would be subject to the additional reporting requirements for that category of issuers.

[6] The NAM also suggests that the Commission seek to update the public float and revenue ceilings every five years to reflect inflation. We support an approach like that prescribed by the JOBS Act, which directs the Commission to adjust the annual gross revenue amount to determine EGC status to reflect the changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. *See, e.g.,* Press Release, SEC Adopts JOBS Act Inflation Adjustments (9 September 2022), *available at* SEC.gov | SEC Adopts JOBS Act Inflation Adjustments.

[7] Commissioner Mark T. Uyeda, "Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference" (24 February 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425.

[8] *See, e.g.,* Investopedia, "Mid-Cap: Definition, Other Sizes, Valuation Limits, and Example," *available at* https://www.investopedia.com/terms/m/midcapstock.asp (defined "mid-cap" to include companies between $2 billion and $10 billion in market cap); Nasdaq Glossary, *available at* https://www.nasdaq.com/glossary/m/mid-cap (defined mid-cap as "a stock with a capitalization usually between $1 billion and $5 billion."); *Forbes*, "What Are Mid-Cap Stocks? – Forbes Advisor" (13 November 2024) ("Mid-cap stocks are shares of companies with total market capitalization in the range of about $2 billion to $10 billion.")

understandable by companies and their investors. Accordingly, we recommend the following categories: SRC/non-accelerated filer (up to $1 billion in public float or annual revenues less than $1.235 billion; mid-cap/accelerated filers (between $1 billion and $10 billion in public float); and large accelerated filers (above $10 billion in public float).

Finally, we suggest that the Commission apply a three-year rolling average for its public float and annual revenue triggers before companies are deemed to move up to accelerated or large accelerated filer status. Such an approach would allow companies more time to plan for the greater disclosure burdens they would face and prevent one-off spikes in valuation or revenue from changing an issuer's filing status.

B. Tailor Disclosure Burdens to Better Reflect the Limited Resources of Small and Mid-Cap Companies

In addition to updating the SRC/non-accelerated filer, accelerated filer, and large accelerated filer thresholds, we encourage the Commission to do more to differentiate among the disclosure burdens that apply to small, mid-cap, and large companies. As Commission Uyeda has noted, there is no difference between the overall disclosure burdens borne by accelerated filers (which now include some SRCs) and mega-cap issuers, aside from the different deadlines for Form 10-K reporting (75 days for accelerated filers versus 60 days for large accelerated filers).[9]

When Congress passed the JOBS Act in 2012 to ease disclosure burdens for newly public companies, existing[10] smaller companies were not granted the same relief. In addition, there has been a proliferation of new disclosure obligations (through legislation and SEC rulemaking) since 2010 that has made it more costly for manufacturers and other companies to remain in the public markets. Accordingly, we encourage the Commission to fully exempt all small companies from recent disclosure rulemakings that have imposed significant new compliance costs while only providing partial relief (or in some cases no relief).

We recommend that the Commission consider rulemaking to fully exempt SRCs/non-accelerated filers from the following disclosure requirements. When these rules were proposed, the NAM highlighted the significant impacts they could have on smaller manufacturers, and we continue to believe that exemptions for these businesses would support capital formation without undermining investor protection:

- "Pay versus performance" disclosure
- 10b5-1 plan disclosure
- "Clawback" (incentive-based compensation recovery) policy listing standards
- Cybersecurity disclosure
- Climate risk disclosure
- XBRL data-tagging requirements

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[9] Commissioner Mark T. Uyeda, Remarks at 44th Annual Small Business Forum (10 April 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-small-business-forum-041025.

[10] Under the JOBS Act, companies that first sold common shares prior to December 8, 2011 are not eligible for EGC status.

We also encourage the Commission to provide relief for SRCs (wherever possible) from the Dodd-Frank Act's proxy voting and corporate disclosure requirements. Since these rules were implemented pursuant to Dodd-Frank, it has become clear that they provide little if any material information to investors, making it all the more damaging for small manufacturers to divert resources to comply with these mandates:

- Say-on-pay votes
- Say-on-frequency votes
- Say-on-golden-parachute votes
- CEO pay ratio disclosure
- Conflict minerals disclosure (and other specialized disclosure mandates).[11]

In addition, we encourage the Commission to consider other ideas to moderate disclosure burdens, such as allowing SRCs/non-accelerated filers to voluntarily use a press release (via Form 8-K) to disclose their financial results (instead of preparing a more costly and largely duplicative Form 10-Q filing), and/or extending the current 45-day deadline for quarterly financial reporting to 60 days. Furthermore, the Commission should consider allowing smaller issuers to reduce the frequency of their Form 10-Q reporting to twice a year.[12]

As noted earlier, accelerated filers (which now include some small-cap issuers) also would benefit from regulatory relief and should not be subject to the same disclosure burdens as mega-cap issuers. Accordingly, we ask the Commission to pursue rulemaking (and support legislation, if necessary) that would exempt these companies from the SEC's Dodd-Frank compensation disclosure mandates (including pay versus performance, the "clawback" listing standards, and CEO pay ratio disclosure). Finally, Congress and the SEC should exempt this category of issuers from the now-unnecessary Dodd-Frank mandate to hold a say-on-frequency vote every six years.

While most accelerated filers do not receive many shareholder proposals, the Commission should make clear via rulemaking (or guidance) that this category of companies is not obligated to include proposals on social policy topics in their proxy materials, given the costs that proposal proponents impose on companies and other investors. Finally, we recommend that the SEC provide five extra days (45, instead of 40 days) to accelerated filers to submit their Form 10-Q filings to help them better comply with their disclosure obligations.

C. Extend "Emerging Growth Company" Status to More Companies

[11] As discussed in Section V(F), the NAM also supports the full repeal of the conflict minerals disclosure mandate (Section 1502 of Dodd-Frank), given the significant costs incurred by U.S. manufacturers each year and the failure of this legislation to reduce violence in the Congo region of Africa.

[12] The Commission previously sought comment on some of these suggestions. *See* Request for Comment on Earnings Releases and Quarterly Reports (18 December 2018), *available at* https://www.sec.gov/files/rules/other/2018/33-10588.pdf. We were pleased to see recent news reports that indicate the Commission plans to pursue rulemaking to provide more reporting flexibility to companies. *See, e.g.,* CNBC, "SEC to propose rule change on Trump's call to end quarterly earnings reporting, says Chair Atkins" (19 September 2025), *available at* https://www.cnbc.com/2025/09/19/sec-to-propose-rule-change-on-trumps-call-to-end-quarterly-earnings-reporting-says-chair-atkins.html.

In addition to reducing burdens on existing issuers, we believe that more can be done to incentivize private companies[13] to access the public markets and obtain the additional capital they need to grow their business and hire more employees.[14] The JOBS Act of 2012 created the "emerging growth company" definition and the associated "IPO On-Ramp," which was tremendously successful in opening up the public market to small and growing businesses. To build on the success of this initiative, we have endorsed House legislation[15] that would raise the annual revenue threshold for EGC status to $3 billion and extend the EGC on-ramp period to 10 fiscal years. We also believe that newer companies should be allowed to remain as EGCs even if their public float crosses the current $750 million threshold for large accelerated filer status, unless the Commission increases this threshold significantly, as we suggested in Section I(A).

D. Reduce Sarbanes-Oxley Burdens for Small and Mid-Size Companies

The annual cost of complying with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act ("SOX") remains a substantial burden[16] for small and mid-size public companies. While non-accelerated filers are exempt from this mandate, smaller reporting companies with at least $75 million in public float lose their exemption from SOX 404(b) compliance if their annual revenues exceed $100 million. Accelerated filers are similarly subject to this costly requirement. In our view, small and mid-cap public manufacturers should not have to forego capital-raising or revenue opportunities to grow their business out of concern that they may unexpectedly cross these thresholds and trigger SOX 404(b) compliance costs.

Accordingly, the NAM has asked Congress to consider legislation that would exempt all SRCs from these costs, regardless of their annual revenue. We also recommend that the Congress go further and exempt from SOX 404(b) all accelerated filers, a category that now includes many small-cap companies.[17]

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[13] We welcome the Commission's recent policy statement that clarifies that the SEC will not object to accelerating the effectiveness of registration statements by IPO companies that include mandatory arbitration bylaws to resolve federal shareholder claims. Policy Statement, "Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions" (17 September 2025), *available at* https://www.sec.gov/files/rules/policy/33-11389.pdf.

[14] Given the additional compliance costs posed by Form 10-Q quarterly reporting obligations, we ask the Commission to consider allowing EGCs to opt for semi-annual reporting (i.e., permit EGCs to publish an earnings release in lieu of a 10-Q filing during their first and third quarters.)

[15] H.R. 3323, the Helping Startups Continue to Grow Act.

[16] In a 2022 survey report by consulting firm Protiviti, 30% of respondents (who all were from companies past their second year of SOX compliance) said they spent more than $2 million a year on compliance, up 24% from the year before. *See* Protiviti, "SOX Compliance Amid Rising Costs, Labor Shortages and Other Post-Pandemic Challenges" (2022). KPMG, in a 2023 report based on a survey of 153 company respondents, estimated that the average company budget for SOX compliance was $1.6 million. For smaller companies (which KPMG defined as having less than $10 billion in annual revenue), the average SOX program budget was $1.1 million, a meaningful expense for companies of that size.

[17] *See* NAM Letter to the House Subcommittee on Capital Markets re Hearing: "Reassessing Sarbanes-Oxley: The Cost of Compliance in Today's Capital Markets" (24 June 2025), *available at* https://documents.nam.org/NAM.Letter.SOX.Hearing.June.2025.final.pdf.

If Congress does not act, we encourage the Commission to explore options (such as exempting all SRCs from SOX 404(b) or increasing the public float and revenue thresholds that trigger accelerated filer status) to spare more companies from this ongoing compliance burden. As the Commission recognized in 2020[18] when it considered exempting all SRCs from Section 404(b), "[r]educing these additional issuers' costs would reduce their overhead expenses and may enhance their ability to compete with larger issuers. To the extent that the cost savings for the additional affected issuers enable capital investments that would not otherwise be made, this alternative would also lead to additional benefits in capital formation."

E. Modernize the Accredited Investor Definition

Many of the NAM's members are smaller private manufacturers that depend on private offerings to raise capital, including those pursuant to Rule 506 of Regulation D. Unfortunately, these offerings are available only to a limited number of individual investors who have qualified for "Accredited Investor" status, a definition that is primarily based on an investor's existing net worth or income. The NAM asks the Commission to undertake a rulemaking to modernize this definition and provide additional ways to qualify, such as an exam administered by the Financial Industry Regulatory Authority to test an investor's financial sophistication.[19] We also encourage consideration of Commissioner Uyeda's suggestion that the SEC consider a sliding scale approach that would allow individuals to invest up to a certain percentage of their net worth (or income) in private securities.[20]

F. Establish a Public Company Advisory Committee

To help ensure the SEC is responsive to the concerns of issuers, the NAM supports the formation of a Public Company Advisory Committee. We believe that such a committee, which could be modeled after the Investor Advisory Committee and include representatives from various industries and companies with varying market caps, could help highlight emerging regulatory concerns, allow companies to provide input to Commission staff before new rules are formally proposed, and allow issuers to provide constructive feedback on existing rules, disclosure review initiatives, and enforcement priorities. While we support legislation to permanently establish such a committee, we note that the Commission has the authority[21] to create such a panel on its own, and we request that the SEC proceed under that authority to solicit nominees for such a committee.

G. Promote Research Coverage for Smaller Companies

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[18] Final Rule: Accelerated Filer and Large Accelerated Filer Definitions, 17 CFR Parts 229, 230, 240, and 249 (12 March 2020), *available at* https://www.sec.gov/files/rules/final/2020/34-88365.pdf.

[19] The NAM supports three bills (H.R. 3339, H.R. 3348, and H.R. 3394), which passed the House Financial Services Committee with bipartisan support, which would allow more shareholders to qualify as accredited investors.

[20] Commissioner Mark T. Uyeda, Remarks at the 51st Annual Securities Regulation Institute (22 January 2024) *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012224.

[21] The Commission used its existing authority to create the Fixed Income Market Structure Advisory Committee and Asset Management Advisory Committees; although, both panels are now inactive.

As the Commission is aware, smaller companies (particularly those with low liquidity) historically have had difficulty in attracting coverage from research analysts, which makes it challenging for these companies to attract new investors.[22] This trend has accelerated since the European Union's Markets in Financial Instruments Directive II, which barred brokerage firms from using unbundled client funds to pay for equity research. While the Commission issued a no-action letter on this topic in 2017 to address the brokerage industry's concerns, that letter expired in 2023. We agree with other market participants that the SEC should provide more permanent relief and allow U.S.-based brokers to use unbundled dollars to pay for equity research without having their analysts register as investment advisers.

II. Adopt Reforms to Depoliticize the Shareholder Proposal Process

A. Propose Rulemaking to Modernize Rule 14a-8

Manufacturers expend significant effort conducting outreach to investors about the direction of their businesses, and they strive to structure corporate governance policies for the benefit of long-term shareholder value creation. Yet despite these good faith efforts on the part of issuers and the vast majority of investors, the proxy process has in recent years been hijacked by a cadre of professional shareholder proponents that seek to force companies to act according to their own narrow interests rather than the good of the business or long-term investor returns.

1) Allow the Exclusion of Environmental, Social, and Political Proposals Unless Material to the Company

The Division of Corporation Finance published Staff Legal Bulletin ("SLB") 14L in November 2021, which further empowered these professional shareholder proponents and resulted in a flood of prescriptive proposals on environmental, social, and political issues that had little to do with long-term shareholder value.[23] As we pointed out in 2023 when we intervened in federal litigation[24] over Rule 14a-8, "[t]he corporate proxy ballot is not the appropriate venue for policy decisions better made by America's elected representatives, and manufacturers are regularly caught in the middle as activists on the left and the right bring fights from the political arena into

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[22] *See, e.g.,* Sifma, Need for Continued MiFID II Relief: Overview of Key Issues and Challenges under the Advisers Act (15 November 2022), *available at* https://www.sifma.org/wp-content/uploads/2023/02/Need-for-Continued-MiFID-II-Relief-Overview-of-Key-Issues-and-Challenges-under-the-Advisers-Act.pdf; NIRI Letter on SEC Announces Measures to Facilitate Cross-Border Implementation of the European Union's MiFID II's Research Provisions (31 October 2017), *available at* https://www.sec.gov/comments/mifidii/cll5-2660133-161422.pdf.

[23] Many of these environmental and social proposals have experienced declining support as U.S. institutional investors have become more discerning about what they will vote for. During the 2025 proxy season, environmental-focused proposals averaged just 11% support, down from 18% in 2024. Likewise, support for resolutions on social causes fell to 11% from 14% the year before. Teneo, "Top Five Takeaways from the 2025 Proxy Season," *Harvard Law School Forum on Corporate Governance* (15 June 2025), *available at* https://corpgov.law.harvard.edu/2025/06/15/top-five-takeaways-from-the-2025-proxy-season/.

[24] *See National Center for Public Policy Research v. SEC*, Motion for Leave to Intervene by the National Association of Manufacturers (5th Cir. 2024), *available at* https://documents.nam.org/law/NAM_Intervention_Motion_NCPPR_v_SEC.pdf.

the boardroom."[25] In response to SLB 14L, the NAM warned that this guidance would "incentivize shareholder proposals wholly unrelated to long-term shareholder value creation."[26]

Fortunately, the SEC has acted to reverse this damaging trend by publishing SLB 14M, which rescinded SLB 14L and clarified the SEC staff's standards for granting no-action relief requests to exclude proposals based on lack of relevance (Rule 14a-8(i)(5)) or for attempting to micromanage the company's "ordinary business" operations (Rule 14a-8(i)(7)). SLB 14M reinstated the staff's traditional approach to proposals that purport to raise "significant social policy" issues. However, we are concerned that future SEC leadership could withdraw SLB 14M and allow a new proliferation of special-interest proposals, so we recommend that the Commission consider formal rulemaking to further ensure that the shareholder proposal process is not hijacked by such proponents.

While we welcome the company-specific approach of SLB 14M and the clarity provided regarding the staff interpretations of the relevance and ordinary business exclusions, the NAM encourages the Commission to memorialize those positions via rulemaking. In addition, we urge the SEC to make clear that materiality—a bedrock principle in corporate disclosure—is an independent basis for exclusion. We share Commissioner Uyeda's view that a proposal should be excludable "if it focuses on a social policy issue that is not materially related to the company."[27] Under such a standard, "[t]he degree of the relationship [between the topic and the company] should be sufficiently unique so that social policy issues generally applicable to any company are excludable," Uyeda explained.

2) Update the Ownership and Resubmission Thresholds to Reflect the Costs Imposed on Companies and Other Shareholders

Notwithstanding the Commission's long-overdue modernization of Rule 14a-8 in 2020,[28] it remains the case that the thresholds for submitting shareholder proposals are too low and allow activists with little-to-no stake in a company to drown out the views of other investors. The $2,000 economic threshold, which was set in 1998 and is available to proponents who have

[25] *See* National Association of Manufacturers, Press Release: "Manufacturers Challenge SEC's Authority to Politicize Corporate Governance" (24 May 2023), https://nam.org/manufacturers-challenge-secs-authority-to-politicize-corporate-governance-23172/?stream=policy-legal.

[26] *See* NAM Comments on Staff Legal Bulletin 14L (30 November 2021), *available at* https://documents.nam.org/tax/nam_comments_slb_14l.pdf.

[27] Commissioner Mark T. Uyeda, "Remarks at the Society for Corporate Governance 2023 National Conference" (21 June 2023) ("Uyeda 2023 speech"), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-society-corporate-governance-conference-062123.

[28] The Commission's 2020 rulemaking set a new $25,000 threshold for a proponent holding shares for at least one year and a $15,000 minimum for investors holding shares for at least two years, while maintaining the existing $2,000 threshold for an investor who holds a company's shares for three or more years. Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, 17 CFR Part 240 (23 September 2020). Unfortunately, the three-year holding period has not limited the flood of special-interest proposals because the "corporate gadflies" who spam proxy ballots have long held *de minimis* positions in a wide range of large-cap issuers.

held shares for at least three years, is no longer a sufficiently meaningful stake, given the substantial costs[29] levied on companies as well as the burdens imposed on investors who have to wade through lengthy proxy statements choked with multiple resolutions on similar topics. Following SLB 14L, some NAM members reported receiving more than a dozen proposals each year, including from both sides of the political aisle. Many of these proposals related to special-interest social or political disputes that were not material to the company. Manufacturers also reported that some proponents failed to negotiate in good faith and refused to withdraw their resolutions (even after the company offered concessions) because they wanted to use the company's proxy statement as a platform to express their political views and bolster their fund-raising efforts.

The 2020 rulemaking also included much-needed increases in Rule 14a-8's resubmission requirements to weed out "zombie" proposals that reappear year after year despite not receiving meaningful support. We encourage the SEC to further refine these thresholds in light of the significant influence of the two major proxy advisory firms and the growing number of small and mid-size investment managers who vote in lockstep with their recommendations (often through automated "robo-voting" platforms). If a shareholder proposal is endorsed by the two largest proxy firms, the resolution most likely will receive at least 30% of votes cast at companies with significant institutional ownership. Accordingly, the SEC's highest resubmission threshold (which is now 25%) should be increased to a level that requires broader investor support for these perennial proposals than just the automated votes cast by the proxy firms.

In sum, we recommend the Commission undertake a rulemaking that includes the following reforms to Rule 14a-8:

- Make it clear that public companies are not required to include proposals that seek to raise "significant social policy issues," if those issues are not material to the specific company. In ruling on no-action requests based on materiality, the SEC staff should defer to a company board's determination about whether a particular issue is material instead of second-guessing those decisions.[30]
- Raise the outdated $2,000 economic threshold for long-term investors to ensure that all proponents own a sufficiently meaningful stake in the companies where they file proposals.[31]

[29] In its 2020 rulemaking, the Commission cited cost estimates from companies ranging from $50,000 to $150,000 to respond to each shareholder proposal.

[30] We encourage the SEC to provide objective standards through the rulemaking process and not expect the Commission staff to continue to make subjective determinations over whether a particular proposal topic is a "significant social policy issue" or "raises a policy issue that transcends the individual company's ordinary business operations." As noted above, we believe that the staff should defer to a corporate board's materiality determinations on proposals that raise environmental, social, or political topics.

[31] We suggest raising the minimum ownership requirement for long-term investors to at least $10,000 and provide for automatic increases in Rule 14a-8's economic thresholds every five years to reflect inflation. A required stake of at least $10,000 is merited given the growth in overall market capitalization and the rate of inflation since 1998. A $2,000 investment in the Russell 3000 index in 1998 would be worth $12,712 today (assuming the reinvestment of dividends). While $10,000 would be significantly less than the costs incurred by public companies, it would be a more meaningful sum than $2,000.

- Increase the minimum support requirements to resubmit substantially similar proposals from 5% (if previously voted on once), 10% (if voted on two times), and 25% (if voted on three or more times) to 10%, 20%, and 40%, respectively.[32]
- Adopt a new "momentum" requirement to augment the resubmission thresholds. We believe that issuers should be permitted to exclude shareholder proposals that have been considered three or more times if the most recent vote on the matter represented a 10-percentage point decline in support from the previous vote. This reform would allow companies and shareholders to avoid the time, cost, and distraction associated with the consideration of proposals that may have exceeded the resubmission thresholds but that are declining substantially in shareholder support.[33]
- Seek public comment on whether to impose absolute limits (based on company size) on the total number of proposals that may appear on a company's ballot to ensure that investors are not overwhelmed by a flood of proposals.[34]

3) Consider Procedural Changes to Improve the Efficiency of the No-Action Process

We also encourage the Commission to consider procedural improvements to improve the efficiency of the Rule 14a-8 no-action letter process. For instance, the Commission should no longer require companies to provide drafts of their opposition statements to proponents at least 30 days in advance of filing the definitive proxy statement. This requirement often results in needless effort, as some companies are still waiting for the SEC staff to decide on their no-action requests, which (if granted) would negate the need for an opposition statement. This requirement also is counterproductive to constructive engagement, as companies still may be negotiating with proponents over the withdrawal of their proposals, a prospect that becomes less likely once the company's opposition statement is shared. [35] Finally, having advance access to the company's opposition statement enables those activists who insist on having the "last word" to file lengthy unvetted rebuttals via Form PX14A6G filings, which appear on a company's EDGAR feed.

To provide more time for the staff to review no-action requests in advance of companies' proxy

[32] We were pleased to see the Commission's recent withdrawal of the proposed 2022 amendments to Rule 14a-8 (87 FR 45052), as those amendments would have undercut the resubmission reforms in the 2020 rule and allowed more duplicative and substantially implemented proposals to appear on proxy ballots. *See* Withdrawal of Regulatory Actions (12 June 2025).

[33] The Commission proposed such a momentum requirement, but it was not included in the final 2020 rule.

[34] We suggest that the SEC seek public comment on the approach outlined in U.S. Senator Eric Schmitt's 2023 bill (S. 3179) on shareholder proposals, which would cap the number of proposals on the ballot based on company size: seven at large accelerated filers; four at accelerated filers; and two at non-accelerated filers.

[35] As Commissioner Uyeda has observed, this opposition statement requirement is inconsistent with the Commission's other proxy rules, noting that the SEC does not require parties in proxy contests to exchange drafts of their "fight" letters before filing. *See* Uyeda 2023 speech, *supra* note 27.

printing deadlines, we suggest pushing back the initial deadline for shareholder proposals by 10 days to 130 calendar days before the date of the company's proxy statement was released to shareholders in connection with the previous year's annual meeting. Likewise, the deadline for no-action requests could be moved back 10 days to 90 calendar days before the filing of proxy materials. Finally, we encourage the SEC to provide a limited right of appeal of staff no-action determinations to the full Commission, particularly in those cases where the staff diverges from its past approach in similar proposal exclusion disputes.[36]

B. Close Loopholes That Allow Activists to Evade Rule 14a-8

We also ask the Commission to consider rulemaking to close two loopholes that have allowed activists to circumvent the limitations of Rule 14a-8.

In recent years, there has been a surge of "voluntary" exempt solicitation filings (via Form PX14A6G[37]) by proponents and other activists. During the SEC's 2023-24 fiscal year, activists clogged issuers' EDGAR feeds with more than 400 of these filings, which often included false and/or misleading statements about companies. In some cases, these exempt filings were cited in proxy advisor reports, which gave these activist missives additional credibility. The vast majority of these filings also exceeded the 500-word limit the SEC has set for shareholder proposals.

These exempt filings are not routinely reviewed by the Commission staff, and there is no formal process for companies to appeal to the SEC to remove abusive filings that include false and misleading statements. It appears likely that some retail investors have mistakenly believed that these filings were vetted by the Commission or the company as these filings appear on company-specific EDGAR feeds on the SEC's website. Unlike with Rule 14a-8, there is no minimum ownership threshold, and some exempt filings have been made by non-proponents with no apparent stake in the company. A few companies have reported that they tried to engage with these PX14A6G filers or filed a response, which often prompted activists to make additional filings.

In response to companies' concerns, the Commission staff issued new guidance in January 2025 and reaffirmed that Rule 14a-9, which prohibits false or misleading statements in proxy materials, applies to these voluntary filings.[38] Notwithstanding this guidance, activists continue to exploit this loophole and clutter companies' EDGAR feeds with these filings. We encourage the Commission to close this loophole fully by clarifying through rulemaking that these exempt filings are only available to investors that meet the actual requirements of Rule 14a-6(g) (i.e.,

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[36] To limit the potential abuse of such an appeal process, the staff could cap the number of appeals that a proponent or company could pursue each proxy season.

[37] Under Exchange Act Rule 14a-6(g), investors who own more than $5 million in company securities are required to use Form PX14A6G when they communicate to other shareholders on proxy voting matters. In 2018, the SEC issued staff guidance that said that investors holding less than $5 million in shares could make voluntary exempt filings, a loophole that has been repeatedly abused by activists.

[38] Compliance and Disclosure Interpretations, Proxy Rules and Schedules 14A/14C (27 January 2025) *available at* https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/proxy-rules-schedules-14a14c.

own at least $5 million in a company securities).

However, if the Commission decides to continue to allow other activists to make these "voluntary" exempt filings, it should apply the same commonsense limits that now apply to Rule 14a-8 shareholder proposals: 1) a 500-word limit per filing; 2) restricting these filings only to qualified proponents with a proposal slated to appear in the company's ballot; 3) a limit of one exempt filing per proponent for a specific company's shareholder meeting; and 4) an SEC review process where companies can ask the Corporation Finance staff to remove any PX14A6G filings that violate the proxy rules.

In addition, we encourage the Commission to provide guidance and/or amend Rule 14a-4(d) to close a loophole in the universal proxy rules that has been used by activists to circumvent the one-proposal-per-meeting limit of Rule 14a-8(c). This tactic was employed by labor activists to place five shareholder proposals on the ballot at Warrior Met Coal in 2024. We are concerned that other activists may try this approach in the future unless the SEC acts.

III. Provide Meaningful Oversight of Proxy Advisory Firms

The NAM has worked for more than a decade to encourage the Commission to provide much-needed oversight of proxy advisory firms. The two largest U.S. proxy firms, ISS and Glass Lewis, maintain an effective duopoly over the proxy voting advice market. As such, these firms exercise outsized influence over public companies and their shareholders—despite the firms' inflexible policies, lack of transparency, glaring conflicts of interest, reluctance to correct errors, and recommendations that often prioritize agendas unrelated to long-term shareholder value.

After a lengthy and thoughtful rulemaking process, the SEC in 2020 finalized a NAM-supported rule that instituted commonsense safeguards designed to increase transparency around these influential firms. Critically, the rule required proxy firms to provide their final recommendations to impacted companies and to notify investors of any company responses to those recommendations; it also required the proxy firms to disclose their conflicts of interest.

In 2021, the SEC, under then-Chairman Gary Gensler, began to take steps to dismantle these important safeguards before they had a chance to take effect. In June 2021, the Division of Corporation Finance suspended enforcement of the rule, and the SEC granted ISS "relief" from the rule's requirements. The NAM filed a lawsuit over the rule's suspension, and a federal judge ruled that the SEC violated the Administrative Procedure Act by suspending the rule outside the notice-and-comment process.

In 2022, the SEC finalized a rule that unlawfully rescinded critical portions of the 2020 proxy firm rule—including the compromise requirement that proxy firms share their recommendations with impacted companies after they are finalized and take steps to ensure that investors have access to any company responses to those recommendations. The Commission also scrapped the "robo-voting" guidance that had been finalized concurrently with the 2020 rule, which cautioned asset managers when using the proxy firms' automated voting platforms. The NAM filed a new lawsuit that challenged the SEC's actions to rescind the 2020 rule, and the U.S. Court of Appeals for the Fifth Circuit ruled in 2024 that the SEC's actions were "facially irrational" and not "reasonable or reasonably explained." The Fifth Circuit also directed the SEC

to reinstate the 2020 rule's issuer-review-and-feedback provisions that were rescinded by the 2022 rulemaking.[39]

A. Recommendations to Improve Proxy Report Accuracy and Address Conflicts of Interest

In addition to reviving the issuer-review provisions of the 2020 proxy firm rule, we ask the Commission to formally rescind the 2022 rule and to propose a new rulemaking that would strengthen the reforms adopted in 2020. Such a rule should include the following provisions:

- A proxy advisory firm must provide all U.S. public companies that are covered by its proxy research with a reasonable opportunity (at least three business days) to review the proxy firm's draft report (including voting recommendations) to check for errors, analytical flaws, or other concerns.[40] If a company provides a written response to the draft report, that response should be included (via a hyperlink or an attachment) when that research is initially distributed to the proxy firm's clients.

- The Commission should prohibit the proxy firms from offering proxy research that is tainted by conflicts of interest (such as providing consulting services on equity plans, say-on-pay, or other ballot items covered by the firm's proxy research reports).

- At the very least, the SEC should mandate that any conflicts of interest (such as a consulting relationship between the proxy firm and a company and/or a shareholder activist) be clearly disclosed on the cover page of any proxy report that addresses the company or an activist so that proxy firm clients can readily access that information.

B. Additional Reforms Related to Investment Managers' Use of Proxy Firms

In addition to the reforms listed above, we respectfully request that the Division of Investment Management consider the following actions to ensure that investment managers fulfill their fiduciary duties to their clients when retaining proxy firms:

- Publish updated guidance (to replace the "robo-voting" guidance rescinded in 2022) to investment advisers on their fiduciary duties to their clients when using the proxy firms'

[39] However, ISS filed a separate lawsuit that asserts the SEC does not have the authority to regulate proxy advice under the Exchange Act's solicitation rules. The NAM intervened in that case to ensure that our members' views were represented. Regrettably, ISS prevailed in district court. That decision was upheld in July 2025 by the U.S. Court of Appeals for the District of Columbia Circuit, in part because the SEC abandoned its appeal and failed to defend its regulatory authority. In light of these court decisions, the NAM has asked Congress to reaffirm the Commission's long-standing authority to regulate proxy advice.

[40] A similar review provision was included in the Commission's 2019 draft rule, which the NAM supported. A pre-publication review process would be more effective to ensure that investors vote their shares based on accurate proxy research than the concurrent review provisions in the 2020 rule, given that a growing number of proxy firm clients are using automated "robo-voting" platforms that cast their votes within 48 hours of report publication and they are unlikely to go back and revote their shares if a company provides a subsequent response.

automated voting systems; such guidance would be based on the SEC's authority under the Advisers Act.

- Propose a rulemaking to amend Rule 206(4)-6 of the Advisers Act to set specific standards for any "independent third parties" hired by investment managers to provide advice on proxy voting. The NAM believes that an investment manager who retains a proxy firm should only be allowed to cleanse itself of potential conflicts of interest if the proxy firm itself meets certain minimum standards regarding conflicts of interest and research accuracy.[41]
- Review the naming and marketing of the proxy firms' voting guidelines that are offered to institutional and retail clients through investment managers' "pass-through" (or "client-directed") voting platforms to ensure that those voting policies are being described accurately[42] and that investors have the option to override those instructions.[43]

IV. Increase Ownership Transparency to Help Manufacturers Engage More Effectively with Their Investors

A. Improve the Timeliness of Form 13F Disclosures

The NAM's publicly traded members value engagement with shareholders. Investor outreach—to both current and potential shareholders—is vital to the success of any public company. It is critical that businesses have accurate and current information about their shareholders so that they can communicate effectively with them throughout the year.

The quarterly Form 13F filings by investment managers are the only reliable way for public

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[41] The NAM suggests consideration of the following standards for proxy firms to improve the breadth and quality of information available to investment managers to enable them to make proactive vote choices in the best interest of the investors whose funds they manage. In all cases, proxy firms should provide issuers with a draft copy of the recommendation with sufficient time for review. If a recommendation is contested, the proxy firm should: (1) give the issuer an opportunity to respond to the recommendation; (2) disclose and justify the impact of any significant departures in methodology between the proxy firm and the issuer (e.g., differences in determining peer group, disclosed compensation, or business metrics); (3) include in the materials provided to the investment adviser a response from the issuer explaining the reasoning behind management's preferred course of action and/or highlighting errors in the firm's report; and (4) disable any "robo-voting" mechanisms to vote shares based on the proxy firm's recommendations.

[42] ISS has marketed a misleadingly labeled "Board-Aligned" voting policy that appears to be a "vote with management/board" policy, but this policy actually tracks closely with the ISS benchmark voting guidelines (except on environmental and social shareholder proposals).

[43] To ensure informed investor choice, investment managers that offer their clients pre-set voting policies provided by a proxy firm (or an activist) should be required to comply with various procedural safeguards, such as those outlined in the Commission's no-action response to ExxonMobil's retail voting program. *See* Response of the Office of Mergers and Acquisitions, Division of Corporation Finance, to Exxon Mobil Corp. (15 September 2025), *available at* SEC.gov | Exxon Mobil Corporation. For instance, these clients should receive annual reminders about their selected voting instructions (and the right to opt out) and should have the ability to override specific vote instructions at no cost.

companies to access information about their institutional shareholders. Apart from Form 13F, shareholders generally are not required to publicly identify themselves unless they beneficially own more than 5% of a public company's outstanding shares—a threshold that few shareholders in the typical publicly traded manufacturer meet. As such, the data from Form 13F is the best ownership information available to public companies. This information is essential to manufacturers' engagement programs and facilitates vital shareholder outreach, communication, and education. These filings also are used to attract capital, as many smaller issuers utilize 13F data to identify potential investors who have invested in similar companies. Unfortunately, these important outreach and engagement efforts are inhibited by the outdated 45-day filing period for Form 13F disclosures, which is a relic of the 1970s. Many companies see significant turnover in their shareholder base during the 135 days that transpire from the start of a quarter until these filings are due, which means that some of the ownership data in 13F filings will be out of date.

We encourage the Commission to improve the timeliness and utility of 13F filings by undertaking a rulemaking to reduce the 45-day filing period to five business days, the same deadline that now applies to Schedule 13D filings by activists.[44] Such a modernization is long overdue and would greatly benefit manufacturers and their shareholders.[45]

B. Increase Transparency Around Significant Short Positions

One of the most significant deterrents to a private manufacturer going public is the prospect of a coordinated attack by unscrupulous short sellers who often communicate inaccurate information about the company to the market in an effort to drive down the company's stock price. This "bear raid" risk is particularly acute for smaller public companies (especially pre-revenue startups in the biotech and pharmaceutical sectors) that have inexpensive share prices or have few resources to defend themselves. Even if they did have more resources, these companies are not able to engage directly with these activists unless the short sellers choose to surface publicly.

Form 13F filings do not include data on short positions, despite a directive in Section 929X of the Dodd-Frank Act for the SEC to mandate the *public disclosure* of short positions. In 2022, the SEC approved Rule 13f-2 that requires investment managers to confidentially report their short positions each month to the Commission, which then publishes aggregate data on short positions that does not identify specific short sellers. While this rule was a step forward, we encourage the SEC to do more to help issuers to obtain basic information about whether an investor has a significant short position in their securities—so they are better prepared in the

[44] For more on our views on Form 13F, please see the NAM's Comments on File No. S7-08-20: Reporting Threshold for Institutional Investment Managers (28 September 2020), *available at* https://www.sec.gov/comments/s7-08-20/s70820-7843292-223808.pdf. During that 2020 rulemaking, public companies, retail investors, and investment managers overwhelmingly opposed a proposal to reduce 13F transparency.

[45] For more on the case for 13F modernization, please see the NIRI-NYSE-Society for Corporate Governance Petition for Rulemaking Under Section 13(f) of the Securities and Exchange Act of 1934, File No. 4-825 (19 April 2024), *available at* https://www.sec.gov/files/rules/petitions/2024/petn4-825.pdf.

event of a coordinated attack by short sellers.[46] When enacting Section 929X, Congress determined that short positions were not worthy of confidential treatment and should be made public, so we request that the Commission publish a monthly list of significant short positions (e.g., a net short position of greater than 1% of shares outstanding in a public company) that would identify investment managers and their positions.[47] Such public disclosures would enable companies to engage proactively with short-position holders about their concerns and protect issuers and their investors from coordinated bear raids that destroy long-term shareholder value.

V. Consider Additional Modifications to Existing Rules to Ease Burdens on Companies

A. Rescind the Rigid Rules on Reporting Cybersecurity Incidents

In August 2023, the SEC finalized a rule to require new cybersecurity disclosures from publicly traded companies. Most notably, that rule included a requirement that companies disclose material cybersecurity incidents to the public within four business days. This rigid deadline along with the requirement to file an amended Form 8-K once additional information is discovered has proven confusing in practice, even with the benefit of staff guidance. Issuers are prophylactically filing Form 8-Ks within four business days even when a complete materiality assessment has not been completed to avoid being "second-guessed" by the Commission (or sued by investors) about whether an incident was material and when materiality determinations were made. This strict disclosure mandate has provided manufacturers with minimal flexibility to delay or forgo disclosure in order to investigate and respond to an incident, to work with law enforcement, or to avoid tipping off attackers.

Manufacturers respectfully request the SEC to rescind Item 1.05 of Form 8-K and allow companies instead to return to their historical practice of voluntarily reporting cybersecurity incidents via Item 8.01 of Form 8-K after the incident has been contained.[48]

B. Modernize the SEC's Executive Compensation Rules to Reduce Compliance Burdens and Improve the Usefulness of Disclosure for Main Street Investors

[46] In light of the U.S. Court of Appeals for the Fifth Circuit's recent decision in *National Association of Private Fund Managers v. SEC*, we urge the SEC not to abandon Rule 13f-2's collection of short-position data from investment managers, given public companies' need to track short activity in their stock to respond promptly to investor concerns.

[47] If the Commission does not opt for public disclosure of short positions, we recommend that the SEC staff set up a process for confidentially notifying a company's investor relations officer (or general counsel) whenever an investment manager reports a short position that exceeds 1% of a company's outstanding shares.

[48] For more on this topic, please see the NAM's Letter in Support of Public Petition for Rulemaking on the Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure Rule, File No. 4-856 (17 June 2025) and the NAM Letter to SEC Chair Regarding Executive Order 14219 (11 April 2025).

As explained in our two recent letters[49] submitting comments on the SEC's executive compensation roundtable, the NAM believes that the Commission can simplify the complex rules that have prompted public companies to prepare increasingly lengthy Compensation Disclosure & Analysis ("CD&A") sections in their proxy materials. Neither Main Street investors nor companies are served by rules that have directed issuers to provide an expanding array of footnoted tables, prompted companies to retain outside consultants to perform complex "compensation actually paid" calculations that often are misleading, and caused issuers to provide pay-related disclosures that often exceed 20 or 30 pages. Under an ideal disclosure regime, a company's board should be able to explain its approach to incentivizing executives in plain English in five to 10 pages. Wherever possible, the Commission should strive to replace prescriptive mandates with principles-based disclosure and simplified tables designed for the reasonable investor.

We encourage the Commission to exempt all smaller companies (SRCs and non-accelerated filers) from the "pay versus performance" rule, the "clawback" listing standards, and the other Dodd-Frank-mandated compensation requirements; reduce the number of tables mandated tables by Item 402; and streamline the Summary Compensation Table by limiting it to pay data for the CEO and CFO (instead of five officers). The NAM also encourages the Commission to simplify the "pay versus performance" disclosure rule by, among other reforms, allowing companies to report "take home" pay from an executive's W-2 (or realized pay) in lieu of hiring consultants to make dozens of calculations to determine "compensation actually paid." Finally, we ask the Commission to suspend enforcement of the 2022 "clawback" rule until the rule can be modified to reduce burdens on companies.

C. Clarify That Personal Security for Executives Is Not a Disclosable Perk

We also recommend that the Commission update Item 402 to make clear that security expenditures to protect senior executives should not be required to be disclosed as perks given the growing consensus that personal security is "integrally and directly related to the performance of an executive's duties." Executives need to feel safe in their homes and while traveling to be able to do their jobs effectively. Unfortunately, the potential threat environment[50] for corporate executives has worsened in recent years, and the SEC's perk disclosure rules should reflect this reality.

D. Help Private Manufacturers Raise Capital by Providing Permanent Relief from Rule 15c2-11 for Fixed Income Securities

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[49] *See* the NAM's Comments on Roundtable on Executive Compensation Disclosure Requirements, File 4-855 (25 June 2025), *available at* https://www.sec.gov/comments/4-855/4855-616827-1809754.pdf; NAM's Additional Comments on the Roundtable on Executive Compensation Disclosure Requirements (6 August 2025), *available at* https://www.sec.gov/comments/4-855/4855-636727-1893534.pdf.

[50] According to data firm Equilar, S&P 500 companies spent a record sum last year to protect their CEOs, CFOs, and other top officers; the median expenditure was $106,530, a 16% increase. In addition, the percentage of S&P 500 executives with such protection rose to 33.8%, up from 23.3% during the 2020-2024 period. *See* Reuters, "US companies spending record amounts to protect executives as threats rise" (5 August 2025), *available at* https://www.reuters.com/sustainability/society-equity/us-companies-spending-record-amounts-protect-executives-threats-rise-2025-08-05/.

In 2020, the SEC adopted amendments to Rule 15c2-11 to require certain public disclosures from issuers of over-the-counter equity securities. In September 2021, the Division of Trading and Markets issued a no-action letter expanding the application of Rule 15c2-11 (and the 2020 amendments thereto) to include fixed-income securities. This reinterpretation of Rule 15c2-11, adopted without any opportunity for public comment, directly impacted issuers of fixed-income securities such as corporate bonds issued pursuant to Rule 144A.

Many privately held manufacturers issue Rule 144A debt to raise capital. Applying Rule 15c2-11 to Rule 144A offerings would force these private issuers to make detailed financial information about their business publicly available. Rule 144A already requires issuers to make their financial information available to institutional investors on a confidential basis, and these sophisticated institutions are the only investors allowed to participate in the Rule 144A market. This novel interpretation of Rule 15c2-11 would expose competitively sensitive information to the public, which cannot even purchase Rule 144A securities. Moreover, this drastic policy change was effectuated without public notice and comment or any cost-benefit analysis.

While the Commission has provided permanent relief for Rule 144A securities through an exemptive order, the relief granted to other fixed-income securities is based on a staff-level no-action letter that could be rescinded in the future, generating uncertainty in the market. Accordingly, the NAM respectfully encourages the SEC to:

- Rescind the September 2021 Trading and Markets no-action letter that initially applied Rule 15c2-11 to fixed-income securities;
- Preserve the October 2023 exemptive order with respect to Rule 144A fixed-income securities; and
- Expressly clarify that fixed-income securities are exempt from Rule 15c2-11, either by promulgating amendments to Rule 15c2-11 or by issuing another exemptive order.

E. Scale Back the Climate Disclosure Rule if It Survives Legal Challenge

Manufacturers are committed to providing appropriate disclosures about their efforts to limit their impact on the environment and to ensure sustainable business operations to the extent they are material to investors. Indeed, federal securities laws already require the disclosure of material information necessary for investors to make an informed investing or proxy voting decision.

Despite these requirements—and existing guidance for how companies can apply them to climate disclosures—the SEC in 2024 finalized an entirely separate disclosure regime for companies' greenhouse gas emissions and other climate-related information. While the final rule was less onerous than the proposed rule, this novel and complex reporting regime (if it survives an ongoing legal challenge) would impose significant burdens on publicly traded manufacturers.

Manufacturers appreciate the Commission's recent decision to cease defending the 2024 climate rule. We also agree with Commissioner Uyeda's views[51] that the Commission lacks the

[51] Commissioner Mark T. Uyeda, Acting Chairman Statement on Climate-Related Disclosure Rules (11 February 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-

regulatory authority to adopt a wide-ranging climate disclosure rule that would require a large volume of financially immaterial information.[52]

However, if this rule is ultimately upheld in court, the NAM urges the SEC to undertake a rulemaking to substantially revise or rescind it. Reconsidering this complex rule would provide the Commission with an opportunity to ensure that public company disclosures remain focused on information that is material to an investment or voting decision for each company based on its specific situation. If the Commission were to repropose a climate rule, it should draft a rule that is more appropriately tailored to give investors insight into the material climate-related risks that public companies face.[53]

F. Support Repeal of the Conflict Minerals Disclosure Mandate

Section 1502 of the Dodd-Frank Act, which requires companies to disclose their use of gold, tin, tungsten, and tantalum that originate in the Democratic Republic of Congo ("DRC") and surrounding countries, has long been one of the Act's most controversial provisions. As Commissioner Uyeda noted recently, "the abject failure of this provision should give pause to further attempts to use the SEC's disclosure regime to achieve social or political goals."[54]

The SEC's original conflict minerals rule, which required annual reporting of a company's usage and due diligence efforts via Form SD (Specialized Disclosure), was challenged in court by the NAM. In 2014, the U.S. Court of Appeals for the District of Columbia Circuit[55] upheld most of the rule but struck down a provision requiring companies to declare their products "DRC conflict free" (or not) on First Amendment grounds. In 2017, the SEC staff issued guidance that stated that it would not recommend enforcement action against companies that do not engage in the additional due diligence requirements imposed by Form SD Item 1.01(c). Nevertheless, companies continue to be subject to the rule's other provisions and have to make a "good faith" effort to determine the country of origin for its minerals and describe their efforts and findings in a Form SD filed annually with the SEC.

Publicly traded manufacturers report that the collection of conflict minerals data from distant entities within their supply chain remains extremely difficult and time consuming and often

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climate-change-021025.

[52] For more on this topic, please see the Brief of the National Association of Manufacturers as Amicus Curiae in Support of Petitioners and Vacatur, *Chamber of Commerce v. SEC*, U.S. Court of Appeals for the Eighth Circuit (24 June 2024), *available at* https://documents.nam.org/law/amicusbriefs/2024/Iowa_v_SEC_8Cir_062426.pdf.

[53] See NAM Comments on the Enhancement and Standardization of Climate-Related Disclosures for Investors (6 June 2022), *available at* https://www.sec.gov/comments/s7-10-22/s71022-20130306-296969.pdf.

[54] *See* Commissioner Mark T. Uyeda, Remarks at the "SEC Speaks" Conference 2025 (19 May 2025), *available at* SEC.gov | Remarks at the "SEC Speaks" Conference 2025.

[55] *National Association of Manufacturers, et al. v. SEC, et al.*, No. 13-5252 (D.C. Cir. 2014).

results in inconclusive findings.[56] In addition, both public (and privately held) manufacturers that sell parts or components to public companies must devote a significant amount of time to responding to their business partners' requests for information, a process that is often administered in a rigid manner and includes additional data requests that go well beyond the Dodd-Frank statutory mandate. Because the due diligence process is time consuming and outside the expertise of many suppliers, many affected companies have hired outside service providers to undertake their due diligence efforts for them.

Given the ineffectiveness of the conflict minerals disclosure regime to improve the quality of life for DRC residents over the past decade, it makes no sense to impose the rule's compliance costs[57] on U.S. public companies anymore. In addition, as Commissioner Uyeda has noted, this disclosure rule has served as a *de facto* U.S. boycott of DRC minerals and has reduced American influence in central Africa. The Trump administration is currently negotiating with the DRC on an agreement for the extraction of strategic minerals, and it makes little sense to maintain an ineffective SEC corporate disclosure rule that undercuts this effort and discourages U.S. companies from supporting legitimate mining activities in the DRC.

Accordingly, we encourage the Commission to support the repeal of Section 1502. In the meantime, we recommend that the Commission evaluate whether steps can be taken to ease existing compliance burdens, such as limiting a company's due diligence disclosure efforts to its direct suppliers.

G. Update Outdated Disclosure Thresholds

We also ask the Commission to consider updating the disclosure thresholds for public companies that have not been adjusted to keep pace with inflation. For instance, the current $120,000 disclosure threshold under Item 404(a) for related-party transactions was instituted in 2006[58] and has not been adjusted since then. We recommend that the Commission increase that threshold to at least $200,000, which is comparable to the average retainer for directors at mid-cap companies, and then make inflation adjustments every five years.

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[56] In a 2017 comment letter to the Commission when it was reevaluating the conflict minerals rule, the NAM reported: "Despite the massive effort put in by NAM companies to comply fully with the Rule, the effort has proved largely futile. Many manufacturers are forced to rely almost entirely on the due diligence of their suppliers for sourcing information, given that these minerals oftentimes represent only a small part of a final product that is not directly sourced by the issuing company. Issuers, therefore, have limited or no influence on suppliers, particularly those that are farther down the supply chain. Many of these suppliers are smaller, privately held companies that have limited resources and are themselves remote from the sourcing of the input metals." NAM Comment Letter on the SEC's Conflict Minerals Rule (16 March 2017), *available at* cll2-1645536-148285.pdf.

[57] In 2011, the NAM estimated that it would cost U.S. industry between $9.4 billion and $16 billion to implement processes to comply with the conflict minerals rule. NAM, Comment Letter on Proposed Conflict Minerals Rule (2 March 2011), *available at* s74010-183.pdf. Since then, manufacturers have continued to incur significant compliance costs, depending on the extent of their global supply chains. In 2017, a large NAM member company reported that it incurs $2 million in recurring compliance costs each year and that its ongoing compliance efforts require as many as 4.5 full-time equivalent employees.

[58] According to the Bureau of Labor Statistics' Consumer Price Index calculator, $120,000 in December 2006 would have the same buying power as $191,810.31 as of June 2025.

We also encourage the Commission to reevaluate Item 103's separate disclosure threshold that applies solely to environmental litigation initiated by government agencies. Although the Commission in 2020 increased that threshold to $300,000 from $100,000 and gave companies the option to set their own threshold of up to the lesser of $1 million or 1 percent of current assets, this revised threshold still is too low, as $1 million is not a material sum for all but the smallest companies. Manufacturers believe the same materiality threshold (i.e., the 10% of current assets standard in Item 103(b)(2)) should apply to all types of litigation that a company faces.

H. Refrain From Imposing New Barriers to Corporate Share Buybacks

In June 2023, the SEC finalized a rule designed to discourage the common practice of stock buybacks by public companies. Though couched as a new disclosure requirement, the rule's intent was clearly to deter issuers from repurchasing shares even when economically efficient and appropriate for their business and investors.

It is critical to their success as public companies that manufacturers are able to attract shareholders and efficiently allocate shareholder capital—and corporate stock buybacks are important for both capital formation and capital allocation. These return-of-capital transactions allow excess capital to flow where it can most efficiently be used, creating value for shareholders and enabling companies (including smaller issuers and newly public companies) throughout the economy to attract much-needed investment. The SEC's 2023 rule would have imposed burdensome disclosure requirements for companies repurchasing shares of stock, forcing them to track buyback activity on a daily basis and to provide justifications for any repurchases.

The NAM strongly opposed the buyback disclosure rule when it was proposed. Fortunately, in December 2023, the U.S. Court of Appeals for the Fifth Circuit vacated the rule. As the SEC considers its regulatory priorities in the coming year, manufacturers respectfully encourage the Commission not to take any similar steps to limit efficient capital allocation by discouraging stock buybacks through rulemaking.[59]

I. Request Withdrawal of the FASB's Burdensome Accounting Standard on Income Tax Disclosures

[59] Similarly, we encourage the Commission to revisit its 2022 rule that imposed new restrictions on the adoption of Rule 10b5-1 plans, a beneficial mechanism that helps corporate executives sell shares while complying with insider trading rules. These plans are critical to officers' and directors' ability to access a significant portion of their pay; otherwise, their equity compensation would inflate their theoretical net worth without being useful to their day-to-day expenses. Manufacturers believe that the rule's 90-day cooling-off period for officers and directors utilizing these plans is overly long, impractical, and unnecessary, and thus we recommend reducing that period to 30 days or until the release of an issuer's quarterly earnings report, whichever is shorter. Likewise, the NAM urges the Commission to review the usefulness of disclosure of the entry into new Rule 10b5-1 plans in periodic reports, as Form 4 includes a checkbox alerting the market when an executive has traded pursuant to such a plan. This preemptive disclosure has the effect of deterring executives from using Rule 10b5-1 plans both from the perspective of sharing legitimate retirement planning steps and the potential reaction of the market to an executive's planned stock sale.

Unless the Commission acts soon, public companies will be required to comply with the Financial Accounting Standards Board's ("FASB") Accounting Standards Update 2023-09 when they prepare their 2025 year-end financial statements in early 2026.

The NAM has previously expressed concern[60] that these new requirements will be highly burdensome and impose significant costs on companies, given the limited time after the fiscal year end that company tax and accounting teams have to prepare their financial statements. In addition, this new accounting standard will undermine the Commission's approach to materiality by mandating a disclosure approach that will require detailed income tax reporting (including payments to foreign governments) far in excess of the information that investors need. We also are concerned that public disclosure of this granular tax data could be misused by competitors and may expose U.S. companies to additional tax levies by foreign governments.

We urge the Commission to request that the FASB withdraw this updated accounting standard until a more narrowly focused standard that is based on materiality can be prepared.

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The NAM appreciates the Commission's recent efforts to rebalance the SEC's rulemaking agenda to prioritize capital formation and create a more hospitable environment for public companies. More progress can be made, and manufacturers look forward to working with the SEC to adopt commonsense regulations to reduce corporate disclosure burdens while still providing material information to investors. If the Commission staff has any questions on these recommendations, please contact Ted Allen, the NAM's Senior Director for Corporate Finance Policy, at tallen@nam.org.

Sincerely,



Charles Crain
Managing Vice President, Policy

CC:
Commissioner Peirce
Commissioner Crenshaw
Commissioner Uyeda
Director Moloney

[60] For more our concerns, please see the NAM's Comments on Proposed Accounting Standards Update—Income Taxes (Topic 740): Improvements to Income Tax Disclosures (29 May 2023), *available at* TAXDISC.ED.014.NATIONAL ASSOCIATION OF MANUFACTURERS CHRIS NETRAM.