

Statement

Remarks to the Small Business Capital Formation Advisory Committee



Commissioner Mark T. Uyeda

Oct. 13, 2022

Thank you, Carla [Garrett]. Good morning and welcome. I have been looking forward to the Advisory Committee convening in-person and I am grateful that we have this opportunity today.

First, I'd like to thank Commissioner Andrea Seidt for her service on the Advisory Committee and providing the important perspective of state securities regulators. State securities regulators play an important role in the development and implementation of rules governing small business capital formation. I also take this opportunity to welcome Bill [William] Beatty. I have known Bill, as well as his predecessor Michael Stevenson at the Washington Department of Financial Institutions, for many years through NASAA [North American Securities Administrators Association]. I thank you all for your service.

I am concerned by certain market and regulatory trends. First, the number of publicly-traded companies continues to go down. This results in a narrower set of economic opportunities for retail investors, who generally are unable to access investments in private markets. According to one recent report, "the number of US companies traded on major US exchanges has declined significantly in recent decades. For example, after peaking in 1996 at more than 8,000 companies, the number of domestic US-listed public companies decreased nearly 50% by 2019 (i.e., to approximately 4,300 companies)."^[1] Although higher regulatory compliance costs may not be the sole factor driving this decrease, we should aim to improve the regulatory balance to incentivize companies to go or remain public.

The Commission's current regulatory agenda, if finalized, will impose further reporting and disclosure obligations on public companies. I am particularly interested in whether there are any linkages between the proposed disclosures and financial materiality. For example, in considering the Commission's proposal regarding climate-related disclosures, commenters have suggested that there may be significant additional compliance costs for public companies, without providing significantly better financial information on which to base their investment decisions.^[2] I look forward to reviewing the input we receive on these proposals.

The Commission's regulatory agenda proposes to go further and includes additional corporate disclosure frameworks, such as human capital disclosures.^[3] I have similar concerns about financial materiality – a framework that has historically guided the Commission's effective disclosure practices – especially in light of the fact that recently adopted rules already require registrants to make certain human capital disclosures "to the extent such disclosures would be material to an understanding of the registrant's business."^[4]

Our rulemaking benefits from robust economic analysis. As such, the Commission's rulemaking proposals should consider the cumulative impact of the entire regulatory agenda. The Commission should also revisit the assumption used in many recent Commission rulemakings, that the costs for outside legal counsel to comply with SEC reporting obligations is \$400 per hour, an estimate that has remained static since 2006.^[5]

Thank you for your service and for taking on difficult issues. Tackling these issues, while sometimes challenging in the short term, will in the long term result in more opportunities for small businesses to raise needed capital and grow their businesses. I look forward to your discussion and the presentations today.

[1] *The Declining Number of Public Companies and Mandatory Reporting Requirements*, Ernst and Young, prepared for American Council for Capital Formation (June 2022), available at <https://accf.org/wp-content/uploads/2022/06/EY-ACCF-The-declining-number-of-public-companies-and-mandatory-reporting-requirements-June-2022.pdf>.

[2] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33-11042 (Mar. 21, 2022) [87 FR 21334 (Apr. 11, 2022)], available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>. See e.g., Letter from David L. Kanagy, Executive Director and CEO, Society for Mining Metallurgy & Exploration (June 13, 2021), available at <https://www.sec.gov/comments/climate-disclosure/cll12-8914303-244682.pdf> (stating that “[t]he Commission should also avoid the imposition of detailed, burdensome requirements on specific industries regarding any climate-related disclosures, recognizing that overall mandate of the federal securities laws already requires the disclosure of “material risks” to investors”); Letter from Chris Netram, Vice President, Tax and Domestic Economic Policy, The National Association of Manufacturers (June 8, 2021) available at <https://www.sec.gov/comments/climate-disclosure/cll12-8895803-241279.pdf> (stating that “[t]he NAM respectfully encourages the SEC not to institute a top-down, one-size-fits-all mandate—which would significantly increase costs and liability for public companies without providing a corresponding increase in useful information to investors”). *But see* Letter from Marcie Frost, Chief Executive Officer, California Public Employees’ Retirement System (June 12, 2021), available at <https://www.sec.gov/comments/climate-disclosure/cll12-8916192-245002.pdf> (stating that “the current disclosure regime for corporate reporting falls short of our expectations as investors, and we believe that companies should disclose better information in regulatory reports so that shareowners can more easily identify, assess and manage climate risk and opportunity”).

[3] See e.g., *Human Capital Management Disclosures*, Agency Rule List – Spring 2022, available at: https://www.reginfo.gov/public/do/eAgendaMainoperation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F

[4] See *Modernization of Regulation S-K Items 101, 103, and 105*, Release No. 33-10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)], available at <https://www.sec.gov/rules/final/2020/33-10825.pdf>.

[5] *Statement on the Final Rule Related to Pay Versus Performance* (Aug. 25, 2022) at note 21, available at <https://www.sec.gov/news/statement/uyeda-statement-final-rule-related-pay-versus-performance-082522>.