JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

MAXINE WATERS, CA, RANKING MEMBER

October 7, 2015

The Honorable Mary Jo White
Chair
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 201549

Dear Chair White:

As the Chair of the U.S. Securities and Exchange Commission ("SEC"), you have the authority to determine the agency's agenda and the duty to ensure compliance with statutory mandates. Continued demands from third parties that the SEC devote significant staff and financial resources to a discretionary rulemaking mandating the disclosure of public company political spending would be a waste of the SEC's finite resources. Such a rule is clearly well outside the SEC's mission to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."

One of Congress's chief responsibilities in overseeing the SEC is to ensure the agency is a good steward of its resources, both its time and its budget, which has increased more than 64% over the last 10 years. Discretionary projects inevitably detract from the more urgent and legally mandated tasks that actually help struggling working families secure their financial futures, such as the bipartisan Jumpstart Our Business Startups Act, which the SEC has regrettably failed to implement on time. Furthermore, the SEC's inability to complete Dodd-Frank mandates, particularly in the derivatives area, has caused unnecessary uncertainty and allowed the Commodity Futures Trading Commission to dictate outcomes not intended by Congress.

Your insistence in the past that the SEC adhere to the concept of materiality in any required disclosures made by public companies is commendable. As articulated by the U.S. Supreme Court in *TSC Industries, Inc v. Northway, Inc*, materiality does not turn on what investors "might" find important but rather requires that there be a "substantial likelihood that a reasonable investor would consider it important in deciding how to vote."[1] As former Commissioner Troy Paredes astutely observed, "the federal securities laws have long rejected 'merit review' – the idea that investors should only be permitted to invest in the securities

[1] *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

of companies that regulators decide meet certain substantive standards."[2] Investors should receive materially relevant information about securities to be offered for sale and the SEC must police those disclosures for fraud and deception.

While disclosure of material information is central to the SEC's mission, there has been a growing recognition in recent years of the dangers of investors being inundated with too much information. We agree with your acknowledgement in 2013 that the SEC "must continuously consider whether information overload is occurring as rules proliferate and as we contemplate what should and should not be required to be disclosed going forward."[3] Devoting valuable staff time and limited resources to a discretionary rulemaking, and more specifically, a highly controversial discretionary rule to force public companies to report all perceived facets of their political involvement, is unsound.

In testimony before the House Financial Services Committee in March 2015, you reiterated your view that the SEC must not stray from its commitment to the materiality standard, lest the Commission establish rules "which can create information overload and thereby bury material information that will benefit investors."[4] Mandatory disclosure of political spending for all public companies is virtually indistinguishable from the congressionally-mandated disclosures found in Titles IX and XV of the Dodd-Frank Act that you have previously characterized as being "more directed at exerting societal pressure on companies to change behavior, rather than to disclose financial information that primarily informs investment decisions."[5]

We note that a letter addressed to you on August 31, 2015, from several United States Senators urging the SEC to mandate corporate disclosure of political spending fails to mention the materiality doctrine. Instead this letter cites concerns related to the Supreme Court's *Citizens United v. Federal Election Commission* decision, which does not implicate the Federal securities laws. Any attempt to promulgate political spending disclosure requirements that do nothing to advance the SEC's investor protection mission will justifiably be viewed as politicizing the work of an independent agency. We urge you to heed your own admonition that a government agency must always be "aware of the perception that it may be acting for political purposes, or any purpose other than fulfilling its core mission."[6]

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[2] Troy Paredes, "Information Overload and Mandatory Securities Regulation Disclosure", June 16 ,2015, available at http://www.regblog.org/2015/06/16/paredes-mandatory-securities-disclosure/
[3] Remarks by Chair Mary Jo White, "The Path Forward on Disclosure," Oct. 15, 2013.
[4] "Examining the SEC's Agenda, Operations, and FY 2016 Budget Request": Hearing before the Committee on Financial Services, 114th Cong. (2015).
[5] Remarks by Chair Mary Jo White, "The Importance of Independence," Oct. 3, 2013.
[6] "Examining the SEC's Agenda, Operations, and FY 2014 Budget Request": Hearing before the Committee on Financial Services, 113th Cong. (2013).

Rather than capitulating to activist pressure to use the Federal securities laws as a cudgel to force public companies to disclose extraneous matters in their periodic filings, the SEC should instead redouble efforts to simplify the disclosure regime governing our capital markets, and renew its commitment to the materiality doctrine articulated by the Supreme Court.

Sincerely,

Jeb Hensarling
Chairman

Scott Garrett
Chairman
Subcommittee on Capital Markets and
Government Sponsored Enterprises