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October 14, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Obama:

Corporations are flooding our elections with millions of dollars in secret political contributions, drowning out the voices of working families. Yet two weeks ago, Republican leaders successfully forced a rider into must-pass legislation to fund our government that prohibited the Securities and Exchange Commission (SEC) from issuing a final rule requiring public companies to disclose these political contributions.[1] As the White House Press Secretary noted, the rider "essentially protect[s] the ability of special interests to funnel money into political campaigns without having to disclose it."[2] Democrats will continue to fight to remove the rider when Congress considers the next government funding bill in December, and I urge you to make clear in advance that you will veto any bill that includes it.

But the rider is not the biggest barrier to making progress on this critical issue. For years, the Chair of the SEC, Mary Jo White, has refused to develop a political spending disclosure rule despite her clear authority to do so, and despite unprecedented and overwhelming investor and public support for such a rule.

This brazen conduct is merely the most recent and prominent example of Chair White undermining your Administration's priorities and ignoring the SEC's core mission of investor protection. From the beginning of her tenure, Chair White has made clear that she is concerned that companies disclose too much to investors – a presumption directly counter both to the views of investors themselves and the animating purpose of this agency for more than eighty years. She has failed to complete disclosure mandates Congress enacted in the wake of the 2008 financial meltdown, while simultaneously devoting the SEC's limited discretionary resources to a far-reaching, anti-disclosure initiative cooked up by big business lobbyists seeking to reduce the amount of information public companies must make available to their investors. And she has remained conspicuously silent when your Administration has issued veto threats against anti-

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[1] *See* H.R. 5325, "Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act" (signed into law on September 29, 2016) (online at https://www.congress.gov/bill/114th-congress/house-bill/5325/text?q=%7B%22search%22%3A%5B%22chamberActionDateCode%3A%5C%222016-09-28%7C114%7C17000%5C%22+AND+billIsReserved%3A%5C%22N%5C%22%22%5D%7D&resultIndex=1).

[2] White House Office of the Press Secretary, "Press Briefing by Press Secretary Josh Earnest, Sept. 23, 2016," (online at https://www.whitehouse.gov/the-press-office/2016/09/23/press-briefing-press-secretary-josh-earnest-9232016).

disclosure bills, providing cover to those in Congress who seek to roll back disclosure requirements and compromise the transparency and safety of our markets.

Enough is enough. To address your concerns on political spending disclosure, and to advance other priorities of your administration and investors, I respectfully urge you to exercise your unilateral authority under 17 C.F.R. § 200.10 to immediately designate another SEC commissioner as Chair of the agency.

Presidential Authority and Obligation to Designate a New SEC Chair

The President has unilateral authority – independent of both the Senate and the Commission – to designate a Chair from among the Commission's members. While all five members of the SEC are appointed by the President with the advice and consent of the Senate, federal regulations establish that the "Chairman is designated by the President" pursuant to the SEC's Reorganization Plan No. 10 of 1950.[3] Four years ago, you used this authority to designate an existing Commissioner, Elisse B. Walter, as Chair of the Commission, without intervening action by the Senate.[4]

While demoting an existing Chair and selecting another from among the agency's current Commissioners would be an uncommon act, Chair White's extraordinary, ongoing efforts to undermine the agency's central mission make such a step necessary. Congress created the SEC more than eighty years ago in response to the widespread loss of confidence in public markets following the stock market crash of 1929. Here is how the agency describes its purpose:

> The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.[5]

Transparency helps investors separate desirable investments from undesirable ones and evaluate business activities objectively, thus allowing them to allocate their capital more efficiently. By contrast, reducing requirements for public companies to disclose information

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[3] 17 C.F.R. § 200.10 states that the commissioners of the SEC are "appointed by the President, with the advice and consent of the Senate," but the "Chairman is designated by the President pursuant to the provisions of section 3 of Reorganization Plan No. 10 of 1950." Section 3 of that Reorganization Plan states that the "functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President."

[4] *See* Ben Protess, and Susanne Craig, "Rebuilding Wall St.'s Watchdog," *New York Times* (Nov. 26, 2016) (noting that "[Walter's] appointment does not require Congressional approval because she was previously confirmed as a commissioner.") (online at http://dealbook.nytimes.com/2012/11/26/schapiro-head-of-s-e-c-to-announce-departure/?_r=0).

[5] Securities and Exchange Commission, "What We Do" (online at https://www.sec.gov/about/whatwedo.shtml).

material to investment decisions undermines efficient markets, encourages fraud, and, in extreme cases, can sow the seeds of future economic meltdowns.

Chair White's comprehensive anti-disclosure agenda runs directly contrary to the SEC's purpose. It hurts investors, undermines Administration policy, and willfully misinterprets congressional mandates. You have the authority to designate a new SEC Chair, and I believe Chair White's anti-disclosure efforts give you ample reason to do so.

The remainder of this letter details some of my concerns.

Political Spending Disclosure

The SEC will not make progress on a political spending disclosure rule under Chair White's leadership. Despite immense bipartisan support from the public, the investor community, academic experts, former SEC commissioners, and yourself, Chair White has steadfastly opposed SEC action in this area.

As you know, the Supreme Court's *Citizens United* decision in 2010 facilitated unlimited political spending by corporations.[6] In his opinion for a bare, five-Justice majority, Justice Kennedy expressed strong support for public disclosure of that corporate spending:

> A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. . . .With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests.". . .The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.[7]

Building on Justice Kennedy's analysis, in August 2011, a bipartisan group[8] of ten law professors submitted a petition to the SEC, asking the agency to "develop rules to require public companies to disclose…the use of corporate resources for political activities."[9] Investors and the public submitted hundreds of thousands of comments in support of the petition – a show of

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[6] *Citizens United v. Federal Elections Commission*, 558 U.S. 310 (2010) (online at https://www.law.cornell.edu/supct/html/08-205.ZO.html).

[7] *Id.*

[8] Lucian A. Bebchuk and Robert J. Jackson, Jr., "Hindering the S.E.C. From Shining a Light on Political Spending," *New York Times* (December 21, 2015) (online at http://www.nytimes.com/2015/12/22/business/dealbook/hindering-the-sec-from-shining-a-light-on-political-spending.html?_r=0).

[9] Letter from the Committee on Disclosure of Corporate Political Spending to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, RE: Petition for Rulemaking (August 3, 2011) (online at https://www.sec.gov/rules/petitions/2011/petn4-637.pdf).

support unprecedented in SEC history.[10] In response, shortly before leaving office in early 2013, then-SEC Chair Mary Schapiro announced that the agency would begin work on a political spending disclosure rule and that the agency expected to propose such a rule by April 2013.[11]

When she took office in April 2013, Chair White reversed course. The agency did not begin work on a political spending disclosure rule. Then, under pressure from Republican lawmakers and business groups representing the companies seeking to hide their political contributions, Chair White removed the political spending disclosure rule from the agency's 2014 regulatory agenda – effectively killing the rule for the next year.[12] The rule has not appeared on the agency's regulatory agenda since.

Chair White's refusal to move forward on a political spending disclosure rule serves the narrow interests of powerful executives who would prefer to hide their expenditures of company money to advance their own personal ideologies. Despite her refusal, however, broad support from shareholders, experts, and the public has not waned. The agency has received more than 1.2 *million* comments related to the potential political spending rule, the vast majority of which support agency action.[13] Forty-four Senators have expressed strong support for a political spending disclosure rule.[14] And a bipartisan group of three former SEC commissioners – including Republican Chairman William Donaldson and Democratic Chairman Arthur Levitt – called the SEC's inaction on a political spending disclosure rule "inexplicable," and said that the agency's "failure to act offends not only us . . . but investors and the professionals who serve

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[10] Securities and Exchange Commission, "Comments on Rulemaking Petition: Petition to require public companies to disclose to shareholders the use of corporate resources for political activities" (online at https://www.sec.gov/comments/4-637/4-637.shtml). *See* Lucian Bebchuk and Robert Jackson Jr., "The Million-Comment-Letter Petition: The Rulemaking Petition on Disclosure of Political Spending Attracts More than 1,000,000 SEC Comment Letters," Harvard Law School Forum on Corporate Governance and Financial Regulation (September 4, 2014) (online at https://corpgov.law.harvard.edu/2014/09/04/the-million-comment-letter-petition-the-rulemaking-petition-on-disclosure-of-political-spending-attracts-more-than-1000000-sec-comment-letters/). (discussing the "unprecedented crossing of the million-comment-letter mark."

[11] Paul Blumenthal, "Corporate Political Spending Pushes SEC to Consider Disclosure Rule," *The Huffington Post* (January 8, 2013), (online at http://www.huffingtonpost.com/2013/01/08/corporate-political-spending_n_2432618.html); SEC, "View Rule: Disclosure Regarding the Use of Corporate Resources for Political Activity" (online at http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=3235-AL36).

[12] Dina ElBoghdady, "SEC Drops disclosure of corporate political spending from its priority list," *Washington Post* (November 30, 2013) (online at https://www.washingtonpost.com/business/economy/sec-drops-disclosure-of-corporate-political-spending-from-its-priority-list/2013/11/30/f2e92166-5a07-11e3-8304-caf30787c0a9_story.html). *See also* Letter from the United States Chamber of Commerce et al. to Elizabeth Murphy, Secretary, Securities and Exchange Commission, Re: File No. 4-637 (January 4, 2013) (online at https://www.sec.gov/comments/4-637/4637-1198.pdf); Letter from American Petroleum Institute to Elizabeth Murphy, Secretary, Securities and Exchange Commission, Re: File No. 4-637 (September 5, 2012) (online at https://www.sec.gov/comments/4-637/4637-1095.pdf); Letter from Americans for Prosperity to Elizabeth Murphy, Secretary, Securities and Exchange Commission (January 25, 2012) (online at https://www.sec.gov/comments/4-637/4637-62.pdf).

[13] Securities and Exchange Commission, "Comments on Rulemaking Petition: Petition to require public companies to disclose to shareholders the use of corporate resources for political activities" (online at https://www.sec.gov/comments/4-637/4-637.shtml).

[14] Letter from Senator Jeffery A. Merkley, et al., U.S. Senate, to Mary Jo White, Chair, Securities and Exchange Commission (August 31, 2015) (online at https://www.merkley.senate.gov/imo/media/doc/20150831_SECLetter.pdf).

them."[15] They added that the agency's inaction "flies in the face of the primary mission of the Commission, which has since 1934 been the protection of investors."[16]

Even after congressional Republicans rammed through a limitation on political spending disclosure in last December's government funding bill, Chair White could have directed the SEC to begin work on a disclosure rule. While the rider prohibited the SEC from using any funds "to finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade association,"[17] dozens of senators and congressmen noted in a letter to Chair White that the limited restriction did not "bar the SEC from discussing, planning, investigating, or developing plans or possible proposals for a rule or regulation relating to the disclosure of political contributions."[18] Nonetheless, Chair White refused to act. While she retains that same authority under the current rider extending through early December, there is no reason to believe she will change course now.

As your Press Secretary said recently, "transparency in politics is something that is worthy of bipartisan support."[19] Indeed, it has historically enjoyed bipartisan support – and continues to do so today among the American public,[20] notwithstanding recent efforts by Republican leaders in Congress. Congressional Democrats will fight to remove the recently passed rider from December's government funding legislation, and I urge you to threaten to veto any effort to extend this corrupt policy. But these efforts will be meaningless as long as Chair White continues to control the agenda of the SEC. You have the authority to make a change at the agency, and I respectfully urge you to use that authority.

Chair White's Extraordinary Anti-Disclosure Record

Chair White's anti-disclosure views extend well beyond political spending. For the last three years, these views have undermined the SEC, your Administration's priorities, Congressional mandates, and the best interests of investors. This extensive record provides additional, compelling evidence for an immediate leadership change at the SEC.

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[15] Letter from William Henry Donaldson, 27th Chairman of the SEC, Arthur Levitt, 25th Chairman of the SEC, and Bevis Longstreth, 60th Commissioner of the SEC, to Mary Jo White, Chair, Securities and Exchange Commission (May 27, 2015) (online at https://www.citizen.org/documents/sec-commissioner-letter-re-political-spending.pdf).

[16] *Id.*

[17] *See* H.R. 2029: Consolidated Appropriations Act, 2016 (became law on December 18, 2015) (online at https://www.congress.gov/bill/114th-congress/house-bill/2029/text).

[18] *See* Letter from Senator Menendez, et al., U.S. Senate, to Mary Jo White, Chair, Securities and Exchange Commission (December 22, 2015) (online at http://www.commoncause.org/policy-and-litigation/letters-to-government-officials/letter-to-mary-jo-white-on-budget-riders.PDF) and Letter from Professor John C. Coates IV, Harvard Law School, to Senator Robert Menendez, U.S. Senate (December 17, 2015) (online at http://www.commoncause.org/policy-and-litigation/letters-to-government-officials/letter-to-sen-menendez-on-sec-riders.pdf).

[19] White House Office of the Press Secretary, "Press Briefing by Press Secretary Josh Earnest, Sept. 23, 2016," (online at https://www.whitehouse.gov/the-press-office/2016/09/23/press-briefing-press-secretary-josh-earnest-9232016).

[20] *See, e.g.*, Corporate Reform Coalition, "Polling" (online at http://corporatereformcoalition.org/resources/what-people-are-saying).

Chair White's "Disclosure Effectiveness Initiative"

From the beginning of her tenure, Chair White has operated from the curious presumption that public companies currently disclose *too much* information. That presumption has led her to devote the SEC's limited discretionary resources to something called the "Disclosure Effectiveness Initiative," a review geared toward reducing companies' existing disclosure obligations.

Chair White has advanced her comprehensive, anti-disclosure agenda under the guise of addressing "information overload," which she has defined as "a phenomenon in which ever-increasing amounts of disclosure make it difficult for investors to focus on the information that is material and most relevant to their decision-making."[21] In an October 2013 speech, fewer than six months after she took office, Chair White said that concerns about information overload "resonate[d]" with her, despite failing to cite a single complaint from a single investor about receiving too much information.[22]

Indeed, "information overload" is not a serious concern of the investor community. Consider the views of the SEC's Investor Advisory Committee, which was formed in the wake of the 2008 financial meltdown to – in the words of Chair White herself – "help advise the [SEC] as it seeks to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation," and is "comprised of individuals with diverse expertise representing a wide variety of investor interests."[23] The Advisory Committee recently described the current amount of disclosure as "appropriate."[24] The Chartered Financial Analyst Institute, the premier organization for investment professionals around the world, has called the idea of information overload a "misperception,"[25] and other investor representatives have expressed similar sentiments.[26]

While the investor community does not believe that information overload is a problem, one prominent group does: the U.S. Chamber of Commerce, which lobbies government on behalf of the giant companies responsible for making these disclosures. In 2014, the Chamber published a lengthy report on what it called the "pressing concern" of information overload. While requirements to provide transparent, objective information to investors and the public is undoubtedly an inconvenience for some of the companies who bankroll the Chamber, this report

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[21] Mary Jo White, "The Importance of Independence," 14th Annual A.A. Sommer, Jr. Corporate Securities and Financial Law Lecture, Fordham Law School (October 3, 2013) (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539864016).

[22] *Id.*

[23] *See* Securities and Exchange Commission, "Investor Advisory Committee" (online at https://www.sec.gov/spotlight/investor-advisory-committee-2012.shtml).

[24] Letter from SEC Investor Advisory Committee to Division of Corporate Finance, U.S. Securities and Exchange Commission (June 15, 2016) (online at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-approved-letter-reg-sk-comment-letter-062016.pdf).

[25] Letter from CFA Institute to Keith Higgins, Director Division of Corporate Finance, Securities and Exchange Commission, Re: The SEC's Disclosure Effectiveness Initiative (Nov. 12, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-24.pdf).

[26] *See, for example,* Letter from Heather Slavkin Corzo, Director, Office of Investment, at the AFL-CIO, to Keith F. Higgins, Director, Division of Corporate Finance, Securities and Exchange Commission (November 20, 2015) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-65.pdf), p. 2.

was also unable to present a single piece of evidence that their concern was actually "pressing" for investors, whose interests the SEC is intended to serve.[27]

Despite the lack of data to support this effort, Chair White plowed ahead with it. At a 2013 speech before the National Association of Corporate Directors – a group representing the board members of public companies – Chair White reiterated that she was "raising the question…as to whether investors need and are optimally served by the detailed and lengthy disclosures about all of the topics that companies currently provide," both publicly and "internally at the SEC."[28] Once again skipping over the SEC's main purpose as established by Congress, Chair White asserted that a much narrower congressional mandate in the Jumpstart Our Business Startups Act represented an exciting "opportunity" to begin advancing her anti-disclosure agenda.[29]

In December 2013, the SEC's Division of Corporation Finance issued a report on a portion of the agency's existing disclosure requirements.[30] The report argued that the SEC should conduct an additional review of the internal and external factors that "may have contributed to the length and complexity of company filings and the costs of compliance" as a "possible next step."[31] Once again, this report included no actual evidence that the "length and complexity of company filings" bothered investors. In fact, the six-page section describing its scope does not mention the needs of investors once.[32] By contrast, that section expresses concern over the "ongoing compliance burden associated with public company status."[33]

Again, the agency moved forward, devoting its limited discretionary resources toward the creation of something it called the Disclosure Effectiveness Initiative.[34] This April, the SEC released the first component of the Initiative: a Concept Release that assesses whether certain disclosure requirements "continue to provide the information that investors need to make informed investment and voting decisions and whether any of our rules have become outdated or unnecessary."[35]

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[27] Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, *Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation* (2014), as part of a comment letter from Tom Quaadman, Vice President, Center for Capital Market Competitiveness, to Kevin O'Neill, Deputy Security of the Securities and Exchange Commission, and Lynn Powalski, Deputy Secretary of the Securities and Exchange Commission, RE: U.S. Chamber Report on Disclosure Effectiveness (July 29, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-11.pdf), p. 3.

[28] Mary Jo White, Chair, Securities and Exchange Commission, "The Path Forward on Disclosure" (October 15, 2013), speech to the National Association of Corporate Directors' Leadership Conference (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539878806).

[29] *Id.*

[30] Securities and Exchange Commission, *Report on Review of Disclosure Requirements in Regulation S-K, As Requested by Section 108 of the Jumpstart Our Business Startups Act* (December 2013) (online at https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf).

[31] *Id.* at 95.

[32] *Id.* at. 2-7.

[33] *Id.* at 3.

[34] *See* Securities and Exchange Commission, "Disclosure Effectiveness Initiative" (online at https://www.sec.gov/spotlight/disclosure-effectiveness.shtml).

[35] Securities and Exchange Commission, Business and Financial Disclosure Required by Regulation S-K (Concept Release) (April 2016) (online at https://www.sec.gov/rules/concept/2016/33-10064.pdf), p. 6. In a recent letter, Chair White claimed that "the question of eliminating disclosure requirements" is "a limited part of our

Despite public inquiries, including from Congress, Chair White has never produced any data to suggest the counterintuitive, "information overload" concern represents an actual problem that actual investors have ever raised. At a June 2016 Banking Committee Hearing, Chair White was unable to answer my basic questions about what evidence the SEC had, upon launching the Disclosure Effectiveness Initiative, "that information overload was a real problem for investors."[36] In a letter sent after the hearing, Chair White stated that the SEC's "periodic" investor surveys "have generally suggested that many disclosures are regarded as lengthy and complicated."[37] Yet the most recent investor survey Chair White cited was a 2008 report showing that investors wanted less "legal jargon" and the ability to access disclosure documents online – not that they wanted their disclosures to cover fewer topics.[38]

Chair White also referenced "other reports and studies" exposing the "challenges…[of] the increasing length and complexity of company annual reports," but cited reports that focused primarily on the *format*, not content, of disclosures.[39] As I have told Chair White repeatedly, I "support efforts to enhance disclosure for investors by cutting out pure redundancies" and "improving disclosure presentation."[40] But the Disclosure Effectiveness Initiative goes well beyond that by aiming to reduce the number of topics disclosed to investors – something the investor community almost uniformly opposes.

Chair White has also refused to say how much time and agency resources have been spent on this voluntary initiative. When I asked the Chair that specific question in a letter earlier

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comprehensive review," citing the SEC's additional efforts to determine "what, if any, existing disclosures should be modified," which "new disclosure requirements should be added," and whether "disclosure should be presented in a different manner." While the Disclosure Effectiveness Initiative does include other components, the fact remains that the Initiative, which was entirely voluntary, signals the SEC's willingness to "eliminate" existing disclosures. There is no evidence to suggest that investors want fewer topics covered in their disclosures. *See* Letter from Mary Jo White, Chair, Securities and Exchange Commission, to Senator Elizabeth Warren, U.S. Senate (July 22, 2016).

[36] Office of Senator Elizabeth Warren, "Sen. Elizabeth Warren Banking Hearing with SEC Chair White" (June 15, 2016) (online at https://www.warren.senate.gov/?p=video&id=1206).

[37] Letter from Mary Jo White, Chair, Securities and Exchange Commission, to Senator Elizabeth Warren, U.S. Senate (July 22, 2016), p. 6.

[38] Securities and Exchange Commission Office of Investor Education and Advocacy, *Mandatory Disclosure Documents Telephone Survey* (June 30, 2008) (online at https://www.sec.gov/pdf/disclosuredocs.pdf).

[39] One study from the University of Toronto found that "individual investors invest in firms with higher quality financial disclosures. Specifically…more concise, readable, and transparent financial disclosures…suggesting that *both the form and the content of financial disclosures influence individual retail investors' investment decisions* [emphasis added]." Studies from RR Donnelly and PriceWaterhouseCooper similarly focused on format (One investor in the RR Donnelly study, for example, noted that "[f]ewer pages are always better, but brevity at the risk of missing discussion of a complex issue isn't positive." PWC, meanwhile, noted that surveyed investors "indicated general skepticism about potential changes that might reduce the information currently available to them."). A Stanford University, RR Donnelly, and Equilar survey of asset managers was more critical of disclosure content, such as "disclosure relating to pay ratios (the ratios of CEO pay to median employee pay and CEO pay to other named executive officer pay), yet emphasized making this material more "clear" – not eliminating it from disclosures. For a full list of studies, *see* Letter from Mary Jo White, Chair, Securities and Exchange Commission, to Senator Elizabeth Warren, U.S. Senate (July 22, 2016), p. 6, n.22.

[40] Letter from Elizabeth Warren to Mary Jo White, Chair, Securities and Exchange Commission (July 7, 2016) (online at http://www.warren.senate.gov/files/documents/2016-7-7_Letter_from_Senator_Warren_to_Chair_White.pdf).

this year, she did not provide an answer.[41] Nevertheless, the volume of work the agency has produced in connection with this initiative – including the 341-page Concept Release the agency issued recently – indicates that agency has dedicated considerable time to this effort despite failing to finalize several congressionally mandated rules.

Thus, despite constant lip service to the imaginary concept of "information overload," Chair White's initiative should be seen for what it is: a far-reaching, time-intensive, anti-disclosure initiative cooked up by big business lobbyists seeking to reduce the amount of information public companies make available to their investors. Giant public companies have every right to advocate for less transparency in public markets, whatever the broader economic consequences. But the SEC was not created to work for them. Under a new Chair, the agency can re-direct its limited discretionary resources away from actively undermining the interests of investors and back toward its core purposes.

Refusal to Complete Congressionally Mandated Rules

Chair White's anti-disclosure agenda extends well beyond her decisions about allocating the discretionary resources of the agency. Her zeal in pursuing the discretionary Disclosure Effectiveness Initiative stands in stark contrast to her failure to implement numerous disclosure requirements required by federal law.

In the wake of the greatest economic meltdown since the Great Depression, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, in part, to address inadequate investor understanding of company behavior.[42] The Act required the SEC to develop several rules to this end. Chair White, however, appears to view these congressional mandates as mere suggestions that the agency is free to ignore. And she has gone further – publicly denigrating some of these requirements as superfluous and misguided.

In a 2013 speech, for example, she asserted that provisions requiring the disclosure of mine safety violations and sources of conflict minerals "seem more directed at exerting societal pressure on companies to change behavior, rather than to disclose financial information that primarily informs investment decisions."[43] She "question[ed], as a policy matter, using the federal securities laws and the SEC's powers of mandatory disclosure to accomplish these goals."[44] In making these assertions, Chair White once again ignored the views of actual

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[41] Letter from Mary Jo White, Chair, Securities and Exchange Commission, to Senator Elizabeth Warren, U.S. Senate (July 22, 2016).

[42] At the Dodd-Frank signing ceremony, for example, you stated that the new law would "finally bring transparency to the kind of complex and risky transactions" taking place on Wall Street. *See* White House Office of the Press Secretary, "Remarks by the President at Signing of Dodd-Frank Wall Street Reform and Consumer Protection Act" (July 21, 2010) (online at https://www.whitehouse.gov/the-press-office/remarks-president-signing-dodd-frank-wall-street-reform-and-consumer-protection-act).

[43] Mary Jo White, "The Importance of Independence," 14th Annual A.A. Sommer, Jr. Corporate Securities and Financial Law Lecture, Fordham Law School (October 3, 2013) (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539864016).

[44] *Id.*

investors, who had explained in detail why these disclosures would help them make investment decisions.[45]

This reluctance to follow the law goes well beyond the required conflict minerals rule. As of October 2016, the SEC has yet to finalize *nineteen* mandatory rules under the Dodd-Frank Act.[46] Many of those unfinished rules would offer investors additional information to assist them in navigating public markets. These include a rule to enhance the reporting and dissemination requirements of security-based swap information;[47] a rule to require registrants to disclose "pay versus performance" information;[48] and a rule to increase the transparency of information available "with respect to loan or borrowing of securities."[49]

Regulators, particularly those at independent agencies, are vested with a great deal of discretion. Such discretion, however, flows entirely from federal laws created by Congress. It has never extended – and indeed it cannot extend – to a bald-faced refusal to comply with clear and unambiguous legal requirements created by Congress. Like every federal official, Chair White is sworn to follow the law, regardless of any potential divergences between Chair White's personal policy preferences and Acts of Congress. Rather than force investors to suffer the time and expense of litigation in an effort to force her to do her job, you can make substantial progress toward fixing this problem – and protecting the safety and efficiency of our financial markets – by immediately designating a different SEC Commissioner as Chair of the agency.

Disclosure Rollbacks in Congress and SEC Inaction

Throughout her tenure, Chair White's unapologetic anti-disclosure posture has also resulted in an SEC that regularly fails to stand up for its own authority and regulations in this area. Her stance has empowered efforts to weaken federal disclosure requirements.

During this Congress alone, House Republicans have passed several bills that would weaken disclosure requirements over your Administration's veto threats. In each instance, Chair White refused to weigh in with opposition to the anti-disclosure measures.[50]

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[45] *See, e.g.*, comments from "12,257 Concerned Consumers" who argued that the SEC's conflict mineral rule was "the only way to ensure a transparent system that will give consumers and investors the choice not to support violent conflict in eastern Congo" (February 17, 2011) (online at https://www.sec.gov/comments/s7-40-10/s74010-304.pdf). *See* the SEC's "Proposed Rule: Conflict Minerals" (online at https://www.sec.gov/comments/s7-40-10/s74010.shtml) for additional comments.

[46] See "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act" (online at https://www.sec.gov/spotlight/dodd-frank.shtml#).

[47] See SEC Release No. 34-74245; File No. S7-03-15, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information* (proposed February 11, 2015) (online at https://www.sec.gov/rules/proposed/2015/34-74245.pdf).

[48] See SEC Release No. 34-74835; File No. S7-07-15, *Pay Versus Performance* (proposed April 29, 2015) (online at https://www.sec.gov/rules/proposed/2015/34-74835.pdf).

[49] See "Other—Remaining: Section 984(b)" at "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act" (online at https://www.sec.gov/spotlight/dodd-frank.shtml#).

[50] *See* H.R. 37, H.R. 2357, H.R. 1657, and H.R. 5424. Statements of Administration Policy issuing veto threats are available for H.R. 37 (https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr37r_20150112.pdf); H.R. 2357 (https://www.whitehouse.gov/sites/default/files/saphr2357r_20160906.pdf), H.R. 1657

In September, for example, your Administration expressed its "strong" opposition to H.R. 2357 because it would force the SEC to reduce the disclosures required in its Form S-3 and "limit the SEC's ability to finalize previously proposed investor protections," among other language that would "weaken…Dodd-Frank."[51] Your veto threat stated that the bill would "reduce transparency and inhibit effective regulatory oversight of our capital markets by the Securities and Exchange Commission."[52] But H.R. 2357 passed a few days later – without public opposition from the SEC.[53]

That same month, your Administration threatened to veto H.R. 5424 because it "would enable private fund advisers to slip back into the shadows."[54] Specifically, your Administration took issue with the fact that the bill would "repeal important safeguards," including the requirement that private fund advisers "deliver a plain language narrative brochure to clients annually."[55] Yet once again, the SEC did not publicly oppose the bill, and it passed the House despite your Administration's strong opposition.[56]

The SEC's lack of public opposition helps provide momentum to anti-disclosure efforts your Administration regards as dangerous. Powerful companies seeking to roll back SEC transparency requirements do not typically announce their desire to withhold material information from the markets in order to confuse, cheat, or defraud investors into handing over their money. Instead, legislative rollbacks of market protections are typically advanced under the guise of reducing "regulatory burdens" and unnecessary "red tape," and are frequently promoted as having few harmful effects on investors.[57] For example, the two bills discussed

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(https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1675r_20160202.pdf), and H.R. 5424 (https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr5424r_20160906.pdf). Note that the SEC has "raised concerns…behind the scenes" about H.R. 5424, the Investment Advisers Modernization Act of 2016. However, in spite of Chair White's "lingering concerns" about the bill, "the S.E.C. declined to publicly oppose it." *See* Ben Protess and Danielle Ivory, "Private Equity Tries to Chip Away at Dodd-Frank with House Bill," *New York Times* (September 8, 2016) (online at http://www.nytimes.com/2016/09/09/business/dealbook/private-equity-tries-to-chip-away-at-dodd-frank-with-house-bill.html?_r=0). In addition, Chair White has raised concerns with provisions of H.R. 37 that were part of legislation in the 113th Congress, but failed to comment on the bill in the 114th Congress. *See* Stephanie Craig, "Anti-data transparency provision set for House Vote," *Data Coalition* (January 13, 2016) (online at http://www.datacoalition.org/anti-data-transparency-provision-set/).

[51] Executive Office of the President, "Statement of Administration Policy: H.R. 2357—Accelerating Access to Capital Act of 2016" (September 6, 2016) (online at https://www.whitehouse.gov/sites/default/files/saphr2357r_20160906.pdf).

[52] *Id.*

[53] *See* H.R. 2357: Accelerating Access to Capital Act of 2015 (passed House on September 8, 2016) (online at https://www.congress.gov/bill/114th-congress/house-bill/2357/actions).

[54] Executive Office of the President, "Statement of Administration Policy: H.R. 5424—Investment Advisers Modernization Act of 2016" (September 6, 2016) (online at (https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr5424r_20160906.pdf).

[55] *Id.*

[56] *See* H.R. 5424: Investment Advisers Modernization Act of 2016 (passed House on September 9, 2016) (online at https://www.congress.gov/bill/114th-congress/house-bill/5424/actions).

[57] See, e.g., Office of Representative Ann Wagner, "Wagner's Bipartisan Job Growth Bill Passes House (press release)" (September 8, 2016) (online at http://wagner.house.gov/media-center/press-releases/wagner-s-bipartisan-job-growth-bill-passes-house) ("I am thrilled we are continuing to reduce unnecessary regulatory burdens on American companies.").

above are titled the "Accelerating Access to Capital Act" and the "Investment Advisers Modernization Act."

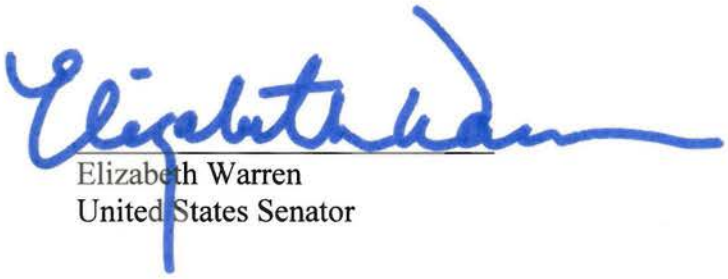
Members of Congress and the public look to the SEC to closely scrutinize these proposals and to sound the alarm when purportedly technocratic changes might cause real damage to investors and the financial markets. During Chair White's tenure, the SEC has failed to sound that alarm time and again. The conspicuous silence of the federal agency in charge of protecting investors has undermined your Administration's priorities and hurt the cause of the investor community.

Conclusion

Under the authority outlined in 17 C.F.R. § 200.10, you may immediately designate another SEC Commissioner as Chair of the agency. I strongly urge you to use that authority today.

I do not make this request lightly. I have tried both publicly and privately to persuade Chair White to direct the agency's resources toward pressing matters of compelling interest to investors and the public, and toward completing those rules that Congress has required it to implement. But after years of fruitless efforts, it is clear that Chair White is set on her course. The only way to return the SEC to its intended purpose is to change its leadership.

Sincerely,



Elizabeth Warren
United States Senator