Business Roundtable℠

More Than Leaders. Leadership.

The Materiality Standard for Public Company Disclosure: Maintain What Works

October 2015

Business Roundtable

More Than Leaders. Leadership.

Business Roundtable CEO members lead companies with $7 trillion in annual revenues and nearly 16 million employees. Business Roundtable member companies have a combined stock market capitalization of $7.9 trillion and invest $129 billion annually in research and development. Our companies pay more than $222 billion in dividends to shareholders and generate more than $495 billion in sales for small and medium-sized businesses annually. Business Roundtable companies also make nearly $8 billion a year in charitable contributions.

Please visit us at www.brt.org, check us out on Facebook and LinkedIn, and follow us on Twitter.

Copyright © 2015 by Business Roundtable

The Materiality Standard for Public Company Disclosure: Maintain What Works

Table of Contents

I. Introduction

A foundational principle of the U.S. securities laws is that public companies have an obligation to publicly disclose to prospective investors and shareholders information that is significant — or material — to making informed investment and proxy voting decisions. To help identify information that is most useful to investors and filter out less significant information, Congress incorporated the materiality principle as a fundamental tenet of the disclosure requirements in the federal securities laws it adopted in the 1930s. The Securities and Exchange Commission (SEC) similarly incorporated the principle of materiality into its rules. Thus, for approximately eight decades, the principle of materiality has been embedded in the framework that governs how public companies disclose information to the investing public. Not only does this foundational principle serve investor protection well by filtering out irrelevant material, but the concept also naturally evolves over time to address new issues and developments and takes into account the facts and circumstances that are relevant to each company.

Policymakers should maintain the materiality standard for determining what information public companies must disclose to investors. The time-tested standard has been proven effective in protecting investors and helping them make informed investment and voting decisions.

In the recent past, Congress has abandoned strict adherence to this bedrock materiality principle and sought to use the federal securities laws to address issues that are irrelevant to investment or voting decisions. Specifically, Congress enacted legislation requiring public companies to disclose information in SEC filings relating to conflict minerals and payments to foreign governments for resource extraction and mine safety — irrespective of the materiality of the information to investors and the fact that the federal securities laws are ill equipped to effectively address these issues. The SEC and public companies — and ultimately, the investing public — have borne enormous costs and burdens in adopting, complying with and monitoring these new types of requirements.

Instead of benefitting investors, these mandates require expending extensive SEC resources on proposing, adopting and implementing regulations that distract from its core statutory objectives, including investor protection. Compliance costs for public companies and their shareholders have been extraordinary in many cases. Investors also receive information that is irrelevant and distracting to their investment and voting decisions. Congress' experiment in using the federal securities laws to address social concerns without any consideration of materiality has failed to achieve its stated objective.

It is also important to note that these requirements apply only to U.S. public companies. The thousands of large and small companies that have not accessed the U.S. public capital markets are not required to make these disclosures. This discrepancy highlights the arbitrary, incompatible and distortive impact of the requirements, underscoring that pursuing a set of laws specifically designed for one purpose to instead achieve a completely unrelated objective is ineffective.

Nevertheless, various groups are now advocating for disclosure of additional information to address issues of societal concern, such as human trafficking and levels of political contributions, again without regard to whether the information is material to investors. To the extent that these issues deserve the attention of policymakers, none should be addressed through the required SEC disclosure framework for public companies, absent a materiality component.

Deviation from the principle of materiality is costly to public companies, fails to serve the interests of investors and distracts the SEC from its core mission. In the future, Congress should avoid repeating the mistake of using the federal securities laws to address alleged societal concerns. Further, Congress should promptly move to repeal statutory provisions previously adopted under the federal securities laws that have raised these concerns.

II. Materiality Is the Cornerstone of the Federal Securities Laws

Materiality has been the cornerstone of the federal securities laws since Congress incorporated this principle in the first of these laws in the 1930s. It subsequently has been incorporated in SEC rules and pronouncements and interpreted by the U.S. Supreme Court.

Congress first included the concept of materiality in the Securities Act of 1933. Section 17(a)(2) of that act provides, for example, that "[i]t shall be unlawful for any person in the offer or sale of any securities ... to obtain money or property by means of any untrue statement of a ***material*** fact or any omission to state a ***material*** fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading." Congress also included the concept in the Securities Exchange Act of 1934. For example, Section 18(a) of the Exchange Act holds persons liable for making, or causing to make, any statement, "in any application, report, or document ... which statement was at the time and in light of the circumstances under which it was made false or misleading with respect to any ***material*** fact … ."

"Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good."

— Justice Thurgood Marshall, writing for the majority, 1976

As early as 1947, the SEC adopted rules incorporating and defining materiality, making clear that the focus should be on information that is relevant to informed investment decisions. Rule 405 under the Securities Act defined the term "material" as follows: "[W]hen used to qualify a requirement for the furnishing of information as to any subject, [materiality] limits the information required to those matters to which an average prudent investor ought reasonably to be informed before purchasing the security registered." In 1982, in keeping with U.S. Supreme Court decisions (as discussed on the next page), the SEC amended the definition of "material" in Rule 405 as follows: "[W]hen used to qualify a requirement for the furnishing of information as to any subject, [materiality] limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered."

The U.S. Supreme Court has defined the standard to be used in determining whether information is material in a series of decisions beginning in 1970. In *Mills v. Electric Auto-Lite Co.*,[1] which dealt with proxy voting, the court stated that "[w]here the misstatement or omission in a proxy statement has been shown to be 'material,' as it was to be here, that determination itself indubitably embodies a conclusion that the defect was of such a character that it might have been considered important by a reasonable shareholder who was in the process of deciding how to vote."[2]

In 1976, Justice Thurgood Marshall, writing for the majority in *TSC Industries, Inc. v. Northway, Inc.*,[3] noted the importance of the concept of materiality as a filtering mechanism: "Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good."[4] In discussing the harms of a low materiality standard, the court stated that "not only may the corporation and its management be subjected to liability for insignificant omissions or misstatements, but also management's fear of exposing itself to substantial liability may cause it to bury the shareholders in an avalanche of trivial information — a result that is hardly conducive to informed decision-making."[5] The court then articulated the standard for materiality that is still widely used today:

> **An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote…** . It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, ***there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information available.***[6]

The Supreme Court reaffirmed this standard for materiality in *Basic Inc. v. Levinson* in 1988,[7] making clear that the determination of whether a piece of information is material is an "inherently fact-specific finding" and a purpose of the analysis is to prevent management from burying shareholders in an "avalanche of trivial information."[8] Since then, courts have used this standard across the country when determining whether the information at issue in a securities suit was material to investors. For example, the U.S. Courts of Appeals for the Second Circuit and the Ninth Circuit have stated that to satisfy the materiality requirement, “there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information made available.”[9] Further, the Supreme Court most recently reaffirmed this standard for materiality in its June 2014 decision, *Halliburton Co. v. Erica P. John Fund, Inc.*[10]

III. Materiality Best Serves and Protects Investors

The standard for materiality articulated by the Supreme Court — "an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote" — benefits investors in at least three ways. First, by filtering out irrelevant information, it helps ensure that investors are not buried in an "avalanche of trivial information." Second, it requires public companies to consider the information they are required to disclose based on their particular facts and circumstances. Third, as changes occur in either the broader economy or within a public company, the information that is important to a reasonable investor changes, and the materiality standard requires public companies to adjust their disclosures.

"When disclosure gets to be too much or strays from its core purposes, it can lead to 'information overload' — 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 as investors in our financial markets."

— SEC Chair Mary Jo White, October 2013

Materiality Filters Out Irrelevant Information

As Congress, courts and the SEC have recognized, filtering out irrelevant information is critical to investors' ability to make informed investment and voting decisions. As noted in the previous section, as early as 1976, the Supreme Court recognized the dangers of information overload: "Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good."[11] Other courts also have recognized the harm that an "avalanche of trivial information" can cause investors.[12] In this regard, courts have developed a "buried facts" doctrine, whereby a company can be held liable for issuing disclosures "in a way that conceals or obscures information sought to be disclosed."[13] This "doctrine applies when the fact in question is hidden in a voluminous document or is disclosed in a piecemeal fashion which prevents a reasonable shareholder from realizing the 'correlation and overall import of the various facts interspersed throughout' the document."[14]

The SEC, too, has recognized the disadvantages of requiring disclosure of nonmaterial information. For example, in the 1970s, the SEC evaluated the potential required disclosure of environmental issues and other societal concerns. More than 100 different societal issues "were submitted in which 'ethical' investors were said to be interested."[15] The SEC declined to require disclosure on any of the other societal concerns because "[d]isclosure of comparable non-material information regarding each of these would in the aggregate make disclosure documents wholly unmanageable and would significantly increase the costs to all involved without, in our view, corresponding benefits to investors generally."[16] Moreover, the SEC noted that "as a practical matter, it is impossible to provide every item of information that might be of interest to some investor in making investment and voting decisions."[17]

More recently, in a 2003 guidance regarding the management discussion and analysis requirements of Regulation S-K, the SEC underscored that the effectiveness of the required periodic disclosures "decreases with the accumulation of unnecessary detail or duplicative or uninformative disclosure that obscures material information."[18] And most recently, SEC Chair Mary Jo White pointed out that "[w]hen disclosure gets to be too much or strays from its core purposes, it can lead to 'information overload' — 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 as investors in our financial markets."[19]

Materiality Takes into Account the Facts and Circumstances of Each Company

The materiality concept ensures that the information disclosed to investors is customized to the unique characteristics of each public company and does not elicit "overinclusive or underinclusive" information as would occur under a generic standard.

Another important component of the materiality standard is that it takes into account the specific facts and circumstances that are relevant to each public company. Public companies vary enormously in the industries in which they operate, how they structure their operations, the products they sell, the services they provide, the size of their businesses and, of course, the economic environment in which they operate. Therefore, as the Supreme Court has instructed, whether a piece of information is material for any one public company requires a facts-and-circumstances analysis. The SEC, too, has affirmed that "an assessment of materiality requires that one views the facts in the context of the 'surrounding circumstances.'"[20] Thus, the materiality concept ensures that the information disclosed to investors is customized to the unique characteristics of each public company and does not elicit "overinclusive or underinclusive" information as would occur under a generic standard.[21] In that regard, to the extent that information relating to an issue of societal concern is material to a particular public company, disclosure is required (see discussion in the next section regarding SEC guidance on materiality of specific issues). For example, the management discussion and analysis requirements in Item 303 of Regulation S-K mandate that companies disclose "any known trends or any known demands, commitments, events or uncertainties that will result or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any ***material*** way."

Materiality Evolves Over Time

Finally, the materiality concept serves investor protection by helping ensure that the information required in a disclosure evolves over time. Developments in the broader economy or within the public company can significantly affect what is important to an investor at any time. Since materiality depends upon whether information is important to a reasonable investor, it changes over time and provides a framework for addressing new issues and shedding issues whose importance has waned. As stated by the SEC, "The federal securities laws are dynamic and respond to changing circumstances."[22] To that end, the SEC has provided specific guidance to companies over time with respect to changing issues and developments that may be material to investors. For example, it has identified the following issues, among others: (1) the conversion to the euro in July 1998;[23] (2) potential Y2K issues in August 1998;[24] (3) climate change issues in February 2010;[25] and (4) cybersecurity issues in October 2011.[26] In each case, the SEC highlighted the topic for public companies and instructed them to disclose information regarding these issues ***if*** that information *is material*.

IV. Deviation from the Materiality Standard Harms Investors

Despite the benefits the materiality standard provides investors, public companies, the financial markets and the U.S. economy more broadly, Congress — often at the urging of special interest groups — has called for public disclosure of certain types of information under the federal securities laws without considering the materiality of the information to investors. Rather, Congress has identified specific societal concerns and used the federal securities laws as a vehicle to bring public attention to those issues. In this regard, the EDGAR system on the SEC website, which contains the filings of all public companies, provides an inviting repository for these disclosures.

These efforts, however, do the very thing the Supreme Court and SEC cautioned against — requiring public companies to disclose information irrespective of whether it is material to investors, thus resulting in information overload and obscuring material information. Conflating the protection of investors with unrelated societal concerns undermines the strength of a critical cornerstone of the U.S. capital markets. Therefore, even if the tactic of using the public company disclosure regime proves successful in improving a societal problem, policymakers should exercise restraint and maintain strict adherence to the materiality standard.

Experience shows, however, that the success of using public company disclosure to address societal concerns is, at best, speculative and, in some cases, exacerbates the problem. The most prominent example of legislation invoking these types of tactics is the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was passed in the wake of the 2008–09 financial crisis. Despite its principal aim of responding to the financial crisis by addressing systemic risk in the financial system, the Dodd-Frank Act contains several provisions that require public company disclosure of information that is immaterial to investors and unrelated to the root causes of the financial crisis.

The Dodd-Frank Act contains several provisions that require public company disclosure of information that is immaterial to investors and unrelated to the root causes of the financial crisis.

Conflict Minerals

Section 1502 of Dodd-Frank requires public companies to make disclosures regarding their use of conflict minerals — a concern that arises as a result of the "exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo, which is helping to finance conflict characterized by extreme levels of violence… ."[27] The provision requires public companies to disclose information relating to whether their products contain "minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country." The rule, approved by the SEC, fails to include a *de minimis* exemption for disclosure. As a result, even the slightest trace amount of a mineral imposes costly due diligence and disclosure requirements, burdening shareholders as they bear the cost of public companies having to prepare such unnecessary disclosures. For public companies, this situation leaves two basic alternatives: either cease purchasing minerals that could possibly be from the Democratic Republic of the Congo (DRC) or undertake an expensive due diligence and disclosure commitment. For those choosing to continue purchasing minerals that might be from the DRC, the SEC estimated that initial implementation of Section 1502 of the Dodd-Frank Act would cost public companies $3 to $4 billion.

Despite good intentions, evidence is mounting that the conflict minerals rule is actually exacerbating the problem in the DRC. Some mines in the DRC are run by warlords, but a meaningful number are not. However, it is virtually impossible, in any cost-effective way, for a company that is many steps removed from the mines in its supply chain to separate conflicted mines from those that are not. As a result, the entire region is painted with a scarlet letter, which give companies an incentive to obtain the minerals they need from sources outside the DRC region.

The rule has just added to the DRC's problems. Indeed, in a letter dated July 5, 2011, to President Barack Obama and SEC Chair Mary Schapiro, representatives of the people of South Kivu Province in the DRC wrote that "[w]hile the law does not require that companies cease buying minerals from the Congo, it has predictably resulted in an 'embargo in fact' on the legitimate mineral trade in eastern Congo. International buyers tell our merchants that they prefer to buy from countries whose products are not under a cloud of international suspicion."[28] This unfortunate result was confirmed by David Aronson, a freelance writer and editor who has spent substantial time in central Africa over a 25-year period. On

May 21, 2013, Mr. Aronson testified before the U.S. House of Representatives Committee on Financial Services' Monetary Policy and Trade Subcommittee, stating that "the 'conflict minerals' provision of [Dodd-Frank] … is a case study in how good intentions can go awry, particularly when a compelling activist-sponsored narrative substitutes for considered and timely analysis."[29]

Resource Extraction

Similarly, Section 1504 of Dodd-Frank requires resource extraction issuers to include in their annual reports information relating to *any* payment by the issuer, its subsidiary or an entity under its control "to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals." This information is required to be disclosed without any consideration of whether it is of any significance to a reasonable investor.

CEO Pay Ratio

Section 953(b) of Dodd-Frank directs the SEC to require companies to disclose the annual total compensation of their median employee and chief executive officer and the ratio of the two amounts. For a host of reasons, including, as noted by the SEC, that information cannot be compared from one company to another, or even from one year to the next, this information is immaterial and, arguably, misleading. Indeed, in its release proposing the SEC pay ratio rule, the SEC states:

These pending provisions, which do not apply to the many thousands of nonpublicly traded companies, further steer away from the materiality standard and its intended benefit to investors.

> We are proposing these amendments to Item 402 in order to satisfy the statutory mandate of Section 953(b). We note that neither the statute nor the related legislative history directly states the objectives or intended benefits of the provision or a specific market failure, if any, that is intended to be remedied … .

At the same time, the congressional mandate to calculate the ratio using the compensation for the median employee — as opposed to, for example, the average compensation — means that implementation will be enormously costly to companies and their investors.

Unsurprisingly, given that none of these provisions has anything to do with the SEC's mission of protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation, the rules the SEC adopted under both Sections 1502 and 1504 have been challenged and vacated, in whole or in part.[30] Addressing these unfamiliar issues also has caused the SEC to divert its attention from its core mission. As SEC Commissioner Daniel M. Gallagher stated, rulemakings for sociopolitical issues "contribute neither to the maintenance of fair, orderly, and efficient markets, nor the facilitation of capital formation, nor investor protection."[31] These proposals are instead "creations of special interest groups ... and they sap the finite bandwidth of the SEC." SEC Chair Mary Jo White has also stated that the "independence" and "unique expertise" of the SEC should be respected "by those who seek to effectuate social policy or political change through the SEC's powers of mandatory disclosure."[32] When implementing legislation containing disclosure requirements that are loosely aimed at addressing societal concerns, the SEC should at least use its exemptive authority to embed the materiality principle in the relevant rulemaking so that investors are receiving relevant material information.[33]

Unfortunately, Congress' use of the federal securities laws in recent years to address broader issues is not limited to the Dodd-Frank Act. The Iran Threat Reduction and Syria Human Rights Act of 2012 (Section 219) amends the Exchange Act to require issuers to disclose whether the issuer, or any of its affiliates, knowingly engaged in certain activities with Iran or those who support Iran, as well as other individuals described in the act.

There are also pending congressional attempts to address other societal concerns, such as human trafficking, through disclosure under the federal securities laws. On June 11, 2014, the Business Supply Chain Transparency on Trafficking and Slavery Act was introduced in the House of Representatives.[34] It would amend the Exchange Act to require issuers "to include annually in such reports, a disclosure whether the covered issuer has taken any measures during the year ... to identify and address conditions of forced labor, slavery, human trafficking and the worst forms of child labor within the covered issuer's supply chain."[35] Once again, the pending legislation applies only to public companies and ignores whether the information is material to investors in making an investing or voting decision.

Further, special interest groups are demanding that Congress and/or the SEC adopt additional requirements under the federal securities laws that would require the disclosure of specified information irrespective of whether it is material to investors. For example, on April 14, 2014, a group of academics submitted a rulemaking petition to the SEC, calling on it to propose regulations “that would require public companies to disclose their political spending.”[36]

These pending provisions, which do not apply to the many thousands of nonpublicly traded companies, further steer away from the materiality standard and its intended benefit to investors.

V. Conclusion

For more than eight decades, the materiality principle has governed public company disclosure under the federal securities laws and has served investors, the markets, capital formation and the broader economy well. The materiality principle filters out irrelevant information to help provide investors the information necessary to make informed investment and voting decisions. Another highlight of the materiality standard is that it naturally evolves over time to address changing circumstances, both in the broader economy and within each public company. To the extent that societal concerns become material for a particular public company, disclosure of that information is already required. Recent efforts to abandon the materiality concept and use the federal securities laws to address general societal concerns are harmful to investors and must be stopped. This slippery slope of abandoning strict adherence to the flexible and time-tested materiality standard burdens the SEC with conflicting and irreconcilable mandates. Further, none of these provisions apply to the many thousands of large and small nonpublic companies. These provisions randomly apply only to public companies while heaping mounds of information on investors in public companies that are immaterial to investing and voting decisions.

Endnotes

1 *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970).

2 *Id.* at 384 (emphasis added).

3 *TSC Indus. Inv. v. Northway, Inc.*, 426 U.S. 438 (1976).

4 *Id.* at 448.

5 *Id.* at 448–49.

6 *Id.* at 445 (emphasis added).

7 *Basic Inc. v. Levinson,* 485 U.S. 224, 234 (1988).

8 *Id.* at 236 (internal quotation marks omitted).

9 See *Dalberth v. Xerox Corp.,* No. 13-1658, 2014 WL 4390695, at *10 (2d Cir. Sept. 8, 2014) (internal quotation marks omitted) and *Petrie v. Electronic Game Card, Inc.,* 761 F.3d 959, 970 (9th Cir. 2014) (internal quotation marks omitted).

10 *Halliburton Co. v. Erica P. John Fund, Inc.,* 134 S. Ct. 2398, 2413 (2014).

11 *Basic,* 485 U.S. at 234.

12 *Basic,* 485 U.S. at 236.

13 *Werner v. Werner,* 267 F.3d 288, 297 (3d Cir. 2001).

14 *Id.* (quoting *Kas v. Fin. Gen. Bankshares Inc.,* 796 F.2d 508, 516 (D.C. Cir. 1986)).

15 Securities Act Release No. 5627, at 18 (Oct. 14, 1975).

16 *Id.*

17 *Id.* at 7.

18 SEC, Interpretation: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations (Dec. 29, 2003).

19 "The Importance of Independence," Speech of Chair Mary Jo White at the 14th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities and Financial Law (Oct. 3, 2013), www.sec.gov/News/Speech/Detail/Speech/1370539864016#.VEasLvnF98E.

20 SEC, Staff Accounting Bulletin, No. 99, Materiality (Aug. 12, 1999).

21 *Basic,* 458 U.S. at 236.

22 SEC, Statement of the Commission Regarding Disclosure of the Year 2000 Issues, Release No. 34-40277 (Aug. 4, 1998).

23 SEC, Staff Legal Bulletin No. 6, Publication of Divisions of Corporation Finance, Market Regulation and Investment Management (July 22, 1998) ("An issuer should disclose the impact of the euro conversion if that impact is expected to be *material* to the issuer's business or financial condition.").

24 SEC, Statement of the Commission Regarding Disclosure of Year 2000 Issues, Release No. 34-40277 (Aug. 4, 1998) ("[W]e believe a company must provide year 2000 disclosure if: (1) Its assessment of its Year 2000 issues is not complete, or (2) management determines that the consequences of its Year 2000 issues would have a *material* effect on the company's business, results of operations, or financial condition, without taking into account the company's efforts to avoid those consequences.").

25 SEC, Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 34-6149 (Feb. 8, 2010) (noting that certain disclosures must be made depending on whether "developments in federal and state legislation and regulation regarding climate change" would have a material effect on the company).

26 SEC, Division of Corporate Finance, CF Disclosure Guidance: Topic No. 2. Cybersecurity (Oct. 13, 2011) ("[M]aterial information regarding cybersecurity risks and cyber incidents is required to be disclosed when necessary in order to make the other disclosures, in light of the circumstances under which they were made, not misleading.").

27 *Dodd-Frank Wall Street Reform and Consumer Protection Act,* Section 1502(a), Pub. L. No. 111-203, 124 Stat. 1376 (2010).

28 See Letter to President Barack Obama and SEC Chair Mary Schapiro from representatives of the people of South Kivu Province in the DRC (July 5, 2011).

29 David Aronson, Testimony before the U.S. House of Representatives Committee on Financial Services, Monetary Policy and Trade Subcommittee (May 21, 2013).

30 *Nat'l Ass. of Manufacturers v. SEC,* 748 F.3d 359 (D.C. Cir. 2014); *Am. Petroleum Institute v. SEC,* 953 F. Supp. 2d 5 (D.D.C. 2013).

31 "The Securities and Exchange Commission — the Next 80 Years," Speech of Commissioner Daniel M. Gallagher at the 15th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities and Financial Law (October 16, 2014), www.sec.gov/News/Speech/Detail/Speech/1370543190122#.VEgUE_nF98E.

32 Speech of Chair Mary Jo White, *supra* note 19.

33 The SEC has authority to grant exemptions from disclosure requirements when it deems it "necessary or appropriate" "in the public interest" and consistent "with the protection of investors." 15 U.S.C. § 78mm(a)(1), § 78l(h); see also *Schiller v. Tower Semiconductor Ltd.,* 449 F.3d 286, 297 (2d Cir. 2006) (concluding that the SEC can grant an exemption so long as it "determine[s] that the exemption serves the public interest while at the same time leaving in place adequate investor protections.").

34 H.R. 4842, 113th Congress 2d Session (June 11, 2014).

35 *Id.* at 6.

36 Citizens for Responsibility and Ethics in Washington & Stephen M. Silberstein, Amended Rulemaking Petition at 3 (May 8, 2014), www.sec.gov/rules/petitions/2014/petn4-637-2-amended.pdf.

Business Roundtable℠

More Than Leaders. Leadership.

Printed on recycled paper

300 New Jersey Avenue, NW
Suite 800
Washington, DC 20001

Telephone 202.872.1260
Facsimile 202.466.3509
Website brt.org