



**NASAA**

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**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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April 20, 2021

The Honorable Maxine Waters  
Chairwoman  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington DC, 20515

The Honorable Patrick McHenry  
Ranking Member  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington DC, 20515

Re: April 20, 2021 Full Committee Markup

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I am writing to express our views regarding several legislative proposals scheduled to be considered by the Committee this week. I appreciate your attention to NASAA’s views.

**(1) The Improving Corporate Governance Through Diversity Act (H.R. 1277)**

The Improving Corporate Governance Through Diversity Act, as amended,<sup>2</sup> would require public companies to disclose annual information on the voluntary self-identified racial, ethnic, gender, and veteran composition of their boards of directors and executive officers.<sup>3</sup> The bill would also require that such companies disclose whether their boards of directors have adopted any “policy, plan or strategy” to promote diversity among these bodies, and would instruct the U.S. Securities and Exchange Commission’s (“SEC”) Office of Minority and Women Inclusion to develop and publish “best practices,” in order to help public companies comply with the new diversity reporting requirements. In addition, H.R. 1277 would establish a new “Diversity Advisory Group” within the SEC, which would be exempt from the Federal Advisory Committee Act, and be comprised of representatives from the Federal government, state and local governments, academia, and the private sector. Under the bill, the Advisory Group would be tasked with identifying strategies to “increase gender, racial and ethnic diversity among members of the board of directors of the issuer,” and be required to report periodically to Congress and the public.

NASAA has repeatedly called for Congress to examine the current state of corporate board composition with an eye toward encouraging greater diversity. In doing so, NASAA has noted that leading research indicates that greater board diversity correlates with sound corporate governance

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<sup>1</sup> The oldest international organization devoted to investor protection, NASAA was organized in 1919. Its membership consists of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

<sup>2</sup> Amendment in the Nature of a Substitute offered by Rep. Meeks of New York. *See* [https://financialservices.house.gov/uploadedfiles/04.20.2021\\_bills-117-2123-b001281-amdt-9.pdf](https://financialservices.house.gov/uploadedfiles/04.20.2021_bills-117-2123-b001281-amdt-9.pdf)

<sup>3</sup> The information that would be disclosed would be based on “voluntary self identification.”

and enhances the performance of public companies. We have also noted evidence which shows that investors themselves increasingly regard corporate board diversity to be an indication of good governance, which improves both corporate performance and investor relations. Most recently, in NASAA's Legislative Agenda for the 117<sup>th</sup> Congress, state securities regulators called for Congress to pass legislation "to require public companies to disclose information that demonstrates the diversity on their boards, or the lack thereof, as well as information regarding the diversity of their corporate operations."<sup>4</sup>

NASAA congratulates the Committee for its decision to prioritize H.R. 1277, including by considering the bill during its first legislative markup of the new Congress. We are pleased to support the legislation, and we urge its passage.

## **(2) The Diversity and Inclusion Data Accountability and Transparency Act (H.R. 2123)**

The Diversity and Inclusion Data Accountability and Transparency Act, as amended,<sup>5</sup> would amend Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to require that regulated financial firms with 100 employees or more disclose diversity data. Notably, this legislation seeks to strengthen and build upon provisions enacted in 2010 that have largely failed to live up to Congress's policy goals, in part because an overwhelming majority of financial firms have simply declined to voluntarily disclose diversity data to the federal regulators.<sup>6</sup>

Congress has a critical role to play in advancing diversity, equity, and inclusion across our nation's capital markets, including and perhaps especially in the financial services industry. It is striking and unfortunate that, despite relatively overwhelming evidence that a diverse workforce enhances a company's ability to employ top talent, build employee engagement, innovate, and ultimately succeed, the financial services industry continues to significantly lag other large segments of our economy regarding the inclusion of women and people of color.<sup>7</sup>

By empowering the SEC's Office of Minority and Women Inclusion to require the largest regulated financial firms – including but not limited to the largest broker-dealers and SEC registered investment advisors – to disclose their diversity data, H.R. 2123 goes a long way toward giving federal financial regulators the tools and authorities they need to gain a better understanding of trends and practices related to diversity and inclusion employed by the institutions they supervise, register, or regulate.<sup>8</sup> NASAA strongly supports the legislation and urges its passage.

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<sup>4</sup> See NASAA's Legislative Agenda for the 117<sup>th</sup> Congress, Principle III (2021) at 10, available at <https://www.nasaa.org/wp-content/uploads/2021/03/NASAA-Legislative-Agenda-for-117th-Congress.pdf>.

<sup>5</sup> Amendment in the Nature of a Substitute offer by Rep. Beatty of Ohio. See [https://financialservices.house.gov/uploadedfiles/04.20.2021\\_bills-117-2123-b001281-amdt-9.pdf](https://financialservices.house.gov/uploadedfiles/04.20.2021_bills-117-2123-b001281-amdt-9.pdf).

<sup>6</sup> Section 342 of the Dodd-Frank Act requires financial regulators to create diversity standards for their regulated entities, including the collection of diversity data. However, the vast majority of covered entities have, to date, declined to participate in these annual diversity self-assessment requests. Similarly, many public companies generally have not shared metrics of diversity.

<sup>7</sup> Remarkably, as of 2020, only nine of the 100 top VC partners worldwide are women, and women make up only 11 percent of VC partners in the U.S., according to a recent report by Deloitte.

<sup>8</sup> The federal regulators addressed by H.R. 2123 include the Office of the Comptroller of the Currency (OCC), the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB), and the Securities and Exchange Commission (SEC).

### (3) The ESG Disclosure Simplification Act (H.R. 1187)

Increasingly, investors view a company’s environmental, social, and governance, or “ESG” practices, as a material metric for determining whether to invest.<sup>9</sup> To date, however, there are no uniform standards for the reporting of environmental and certain other ESG factors in the United States. In the absence of such standards, public companies lack clarity when making disclosures relating to ESG considerations, and, in some cases, may have incentives to make selective or potentially misleading disclosures about the benefits of their practices, products or services.<sup>10</sup> H.R. 1187 seeks to remedy that problem.

The ESG Disclosure Simplification Act, as amended,<sup>11</sup> would require public companies to disclose in SEC filings and any proxy or solicitation materials that describe the “views of the issuer regarding links between ESG metrics and the long-term strategy of the issuer,” and any process the issuer uses to determine the long-term business strategy of the issuer. Further, the bill would express the non-binding “Sense of Congress” that “environmental, social, and governance [ESG] metrics” are “de-facto material” for the purposes of disclosure under the Securities Exchange Act of 1934.<sup>12</sup> The bill would also create a new permanent “Sustainable Finance Advisory Committee” within the SEC, that would, within 18 months of its first meeting, be required to submit “recommendations about what ESG metrics” the SEC should require to be disclosed.<sup>13</sup>

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<sup>9</sup> For example, BlackRock, the world’s largest asset manager, recently announced that it would be asking companies it invests in to (1) publish disclosure in line with industry-specific Sustainability Accounting Standards Board (SASB) guidelines, or disclose a similar set of data in a way that is relevant to the particular business, and (2) disclose climate-related risks in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). State Street, announced the launch of a system for evaluating the performance of a company’s business operations and governance vis-à-vis what State Street had identified as financially material and sector-specific ESG issues, based on the SASB materiality framework and data from third-party providers. State Street explained that it uses this system to help clients understand their portfolio exposures, as well as inform its own investment and voting decisions.” See Rick A. Fleming and Alexandra M. Ledbetter, *Making Mandatory Sustainability Disclosure a Reality*, SEC Office of the Investor Advocate White Paper (2020) at 2, available at <https://www.sec.gov/files/making-mandatory-sustainability-disclosure-a-reality-white-paper.pdf>.

<sup>10</sup> Oftentimes, those disclosures can make the company appear to its investors to be more environmentally friendly than it really is, a phenomenon also known as “greenwashing.” The result is investor confusion. See NASAA’s Legislative Agenda for the 117<sup>th</sup> Congress (2021) at 19, available at <https://www.nasaa.org/wp-content/uploads/2021/03/NASAA-Legislative-Agenda-for-117th-Congress.pdf>.

<sup>11</sup> Amendment in the Nature of a Substitute offered by Rep. Vargas of California. See [https://financialservices.house.gov/uploadedfiles/04.20.2021\\_bills-117-1187-v000130-amdt-3.pdf](https://financialservices.house.gov/uploadedfiles/04.20.2021_bills-117-1187-v000130-amdt-3.pdf)

<sup>12</sup> NASAA takes no position on the Sense of Congress resolution. It is important to note that “Sense of Congress” resolution is not legally binding because it is not presented to the President for his signature. Indeed, according to the Congressional Research Service (CRS), “even if a ‘sense of’ provision is incorporated into a bill that becomes law, such provisions merely express the opinion of Congress or the relevant chamber. They have no formal effect on public policy and have no force of law.” See <https://fas.org/sgp/crs/misc/98-825.pdf>.

<sup>13</sup> Additional and timely clarification regarding what ESG metrics should be disclosed to investors is necessary. Indeed, as the SEC Investor Advocate recently observed, “the case for ESG disclosure has become only stronger [in 2020],” however “adoption and implementation of prescriptive ESG-related disclosure requirements is extremely challenging when there is so much variation among the private-sector frameworks because the SEC may be reluctant to choose one model over the others in the absence of a clear consensus surrounding any particular framework. Without a critical mass of support for a particular model, it may require an act of the U.S. Congress to determine

The time has come to provide investors seeking to understand factors relating to a company's ESG profile with the ability to accurately understand and weigh ESG risks in their investment decisions, and Congress can play an important role in this regard.<sup>14</sup> NASAA has previously called for Congress to enact legislation that would direct the SEC to develop a uniform standard for ESG reporting by public companies so that investors can understand companies' real practices and impact, and "make 'head-to-head' comparisons between competing investments."<sup>15</sup> NASAA has also urged that Congress consider legislation that would direct the SEC to establish a task force to consolidate, to the extent possible, themes from existing reporting frameworks and standards in order to catalyze faster progress toward standardization."<sup>16</sup> H.R. 1187 marks an opportunity to "move the ball forward" on both of these recommendations; therefore, NASAA is pleased to support its passage.

Thank you again for your consideration of NASAA's views. Please do not hesitate to contact me, or Mike Canning, NASAA's Director of Policy & Government Affairs, if we may be of any additional assistance.

Sincerely,



Lisa Hopkins  
NASAA President  
General Counsel and Senior Deputy Commissioner of Securities, West Virginia

CC: The Honorable Gregory Meeks  
The Honorable Juan Vargas  
The Honorable Joyce Beatty

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which standards should become the official metrics for ESG disclosure in the United States." *See* <https://www.sec.gov/files/making-mandatory-sustainability-disclosure-a-reality-white-paper.pdf>.

<sup>14</sup> As SEC Investor Advocate Rick Fleming observed last year, while "the case for ESG disclosure has become only stronger," the actual "adoption and implementation of prescriptive ESG-related disclosure requirements is extremely challenging when there is so much variation among the private-sector frameworks because the SEC may be reluctant to choose one model over the others in the absence of a clear consensus surrounding any particular framework. Without a critical mass of support for a particular model, it may require an act of the U.S. Congress to determine which standards should become the official metrics for ESG disclosure in the United States." *Id.*

<sup>15</sup> *See* NASAA's Legislative Agenda for the 117<sup>th</sup> Congress, Principle II (2021) at 9, *available at* <https://www.nasaa.org/wp-content/uploads/2021/03/NASAA-Legislative-Agenda-for-117th-Congress.pdf>.

<sup>16</sup> *Ibid.*