NATIONAL ASSOCIATION OF
Manufacturers

Jay Timmons
President and CEO

July 10, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters:

Manufacturers work every day to improve the quality of life for all Americans, and to do so in a way that embraces the entrepreneurial spirit, pioneers groundbreaking new technologies and creates well-paying jobs for hard-working women and men across the country. The industry's strength and the success of the nearly 13 million people who make things in America depend on manufacturers' ability to raise the funds necessary for job-creating investments in equipment, machinery, facilities and research and development. To help jumpstart and boost this important progress, manufacturers often turn to the public market to raise capital—but recent actions from the Securities and Exchange Commission are now putting their ability to finance their growth in jeopardy.

When manufacturers offer their shares to the public, it allows everyday Americans to participate in the industry's success, largely through passive investments like mutual funds, pension plans and 401(k) accounts. As publicly traded businesses, manufacturers have a fiduciary duty to these Main Street investors. The decisions made by management teams and boards of directors must be guided by shareholders' long-term financial best interests. Manufacturers take this responsibility seriously, as well as their obligation to provide appropriate disclosures so shareholders can evaluate how well management and the board are performing on their behalf. Shareholders, meanwhile, have an important say in how the business is run by electing and holding accountable a company's board of directors.

Unfortunately, in recent years manufacturers have experienced an influx of third parties seeking to upset this delicate and critical balance.

Manufacturers now receive shareholder proposals on a regular basis from activists that have little-to-no investment in their company or interest in its success. These proposals almost invariably seek to advance environmental, social and governance agendas unrelated to the business's long-term prospects. Furthering these distracting and costly proposals are so-called "proxy advisory firms," which influence or control large swaths of the shareholder vote yet operate with minimal transparency and significant conflicts of interest.

The mission of the SEC is to maintain efficient capital markets while also protecting investors and supporting capital formation. But several of the SEC's recent actions run counter to these goals.

Rather than tamp down on the deluge of politically motivated proposals, the SEC has granted special access to the proxy ballot for ESG activists. Instead of providing appropriate oversight of proxy firms, the SEC has rolled back commonsense guardrails that were designed to inform and protect investors. And instead of allowing the time-tested materiality standard to govern companies' disclosure obligations, the SEC has proposed prescriptive, inflexible ESG mandates that will dramatically increase costs for manufacturers while providing minimal benefit for investors.

As the Financial Services Committee embarks on its monthlong series of hearings on ESG and other issues related to the proxy process, manufacturers urge you to take concrete steps to counter this trend. To ensure that manufacturers can focus on creating value for shareholders and driving economic expansion in the United States, the National Association of Manufacturers is calling on Congress to:

1. Prevent activists from hijacking the proxy ballot in pursuit of agendas unrelated to long-term business growth and shareholder value creation;
2. Rein in proxy advisory firms and limit their outsized influence on corporate governance;
3. Reinforce asset managers' fiduciary duty to Main Street investors and retirees; and
4. Address the onslaught of ESG disclosure mandates by requiring public companies to report only that information which is material to their shareholders.

In short, Congress must step in to depoliticize the business decisions that impact the lives and life savings of millions of Americans.

Manufacturers are determined to create jobs, lead the economy and improve the quality of life for all Americans. We are counting on your leadership to counter the SEC's regulatory overreach and help us achieve these goals.

Sincerely,

JTimmons

Jay Timmons

NATIONAL ASSOCIATION OF Manufacturers

Protecting Manufacturers and Main Street Investors from SEC Overreach and Activist Interference

A flood of activists, interest groups and other third parties are trying to politicize public company governance—and recent actions by the Securities and Exchange Commission are making it easier for them. Congress must act to rein in the SEC's regulatory overreach, keep activists out of the boardroom and protect Americans' investments in manufacturing growth.

The National Association of Manufacturers is calling on lawmakers to:

1. **Prevent activists from hijacking the proxy ballot** in pursuit of political agendas unrelated to long-term business growth and shareholder value creation;
2. **Rein in proxy advisory firms** and limit their outsized influence on corporate governance;
3. **Reinforce asset managers' fiduciary duty** to Main Street investors and retirees; and
4. **Address the onslaught of ESG disclosure mandates** by requiring public companies to report only that information which is material to their shareholders.

Depoliticize Corporate Governance

Manufacturers are increasingly caught in the middle as activists seek to advance social and political agendas via the proxy ballot. The SEC's actions are enabling these ideologically motivated groups, so Congress must:

- Limit the SEC's authority to force companies to include **politically motivated shareholder proposals** on their proxy ballot;
- Clarify that Rule 14a-8 violates **manufacturers' First Amendment rights**;
- Rescind the SEC's policy of requiring inclusion of proposals addressing issues of **"broad societal impact"** when there is no nexus to a company's business;
- Clarify that companies can always exclude from the proxy ballot proposals that are **irrelevant to their business** or that seek to micromanage their operations;
- Allow companies and their shareholders to adopt **alternative procedures** governing the consideration of shareholder proposals;
- Prevent the SEC from finalizing its proposed changes to the **exclusion criteria** under Rule 14a-8;
- Increase the **share ownership thresholds** that allow activists to place proposals on public company ballots; and
- Increase the **resubmission thresholds** that force shareholders to consider failed proposals on a recurring basis.

Rein in Proxy Advisory Firms

Proxy advisory firms exercise outsized influence on corporate governance at manufacturers of all sizes. Their significant conflicts of interest and minimal accountability and transparency pose a threat to everyday Americans' retirement savings, so Congress must:

- Reinstate the SEC's 2020 rule providing for **oversight of and transparency into proxy firms**;
- Require proxy firms to offer companies an opportunity to **review and provide feedback on draft recommendations**;
- Ensure that investors have access to companies' perspectives on potentially **misleading proxy firm standards** and recommendations;
- Prevent proxy firms from **distorting company decisions** and investor votes by offering consulting services to the same companies whose governance is the subject of their voting advice;
- Codify that providing **proxy voting advice constitutes a solicitation** under the Exchange Act;
- Clarify that proxy firms are subject to the proxy solicitation rules' **antifraud standards** and should accordingly make appropriate disclosures to ensure their advice is not misleading to investors; and
- Require proxy firms to provide **robust disclosures** about their methodologies, conflicts of interest, procedures to ensure accuracy and reliability, sources of information, analytical expertise and operational capabilities.

Protect Main Street Investors

Americans often invest in manufacturers' success through passive vehicles like mutual funds, pension plans and 401(k) accounts. In order to ensure that the managers of these plans are acting in the best interests of manufacturing workers and other Main Street investors, Congress must:

- Ensure that asset managers make decisions based on pecuniary factors and in the **long-term financial best interests of everyday investors**;
- Prevent asset managers from relying on proxy firms' **robo-voting** services on contested or controversial topics;
- Ensure that asset managers **review all relevant information** available to them before casting proxy votes;
- Require passively managed funds to **defer to the judgment of elected independent boards of directors** on most shareholder votes; and
- Monitor the extent to which asset managers may be over-relying on the ratings and recommendations of proxy firms and ESG ratings organizations and **consider appropriate guardrails** to protect everyday investors.

Limit ESG Disclosure Mandates

The SEC's aggressive ESG rulemaking agenda will dramatically increase costs and liability for manufacturers and overwhelm investors with a deluge of irrelevant information. Public companies should be required to report only material information useful to shareholders, so Congress must:

- Prevent the SEC from adopting **ESG disclosure mandates** that require reporting beyond material information;
- Protect small and privately held businesses from the SEC's overreaching **Scope 3 emissions reporting requirement**;
- Block the SEC's attempts to **mandate climate reporting** in companies' financial statements;
- Ensure that SEC-mandated cybersecurity disclosures do not **interfere with companies' efforts** to work with law enforcement or otherwise respond to cybersecurity incidents; and
- Prevent the SEC from **interfering in company governance** of ESG topics.