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Statement to the House Committee on Financial Services
Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets

Hearing:

Promoting Economic Growth:
A Review of Proposals to Strengthen the Rights and Protections for Workers

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Economic Growth and Efficient Capital Markets: An Agenda at Odds with Subcommittee's Bills Under Consideration

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Biographical Statement: About Mr. Copland

James R. Copland is a senior fellow at the Manhattan Institute, where he has served as director of legal policy since 2003.[1] He has authored many policy briefs; book chapters; articles in journals including the *Harvard Business Law Review* and *Yale Journal on Regulation*; and opinion pieces in periodicals including the *Wall Street Journal*, *National Law Journal*, and *USA Today*. He has testified before both houses of Congress, government agencies, state and municipal legislatures, and international bodies. He is frequently cited in news articles in outlets including the *New York Times*, the *Washington Post*, *The Economist*, and *Forbes*; and has made hundreds of media appearances on networks including PBS, Fox News, MSNBC, CNBC, Fox Business, Bloomberg, C-Span, and NPR.

Mr. Copland has authored scores of reports considering various aspects of shareholder regulation and corporate governance, as well as writing on the subject in popular[2] and academic[3] journals. On multiple occasions, Mr. Copland has been named to the National Association of Corporate Directors "Directorship 100" list, which designates the individuals most influential over U.S. corporate governance.[4]

Prior to joining the Manhattan Institute, Mr. Copland served as a management consultant with McKinsey and Company in New York and as a law clerk for Ralph K. Winter on the U.S. Court of Appeals for the Second Circuit. Mr. Copland has served as a fiduciary, director, or trustee on many corporate, nonprofit, and government boards. He holds a J.D. and an M.B.A. from Yale University, where he was an Olin Fellow in Law and Economics and a Teaching Fellow in Macroeconomics and Game Theory; an M.Sc. in Politics of the World Economy from the London School of Economics and Political Science; and a B.A. in Economics, with highest distinction and highest honors, from the University of North Carolina at Chapel Hill, where he was a Morehead Scholar and was awarded the Honors Prize in Economics.

The Manhattan Institute for Policy Research does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my long-running research on shareholder regulation and corporate governance as an Institute scholar, my statement before the subcommittee is solely my own, not my employer's.

Written Statement

Chairman Waters, Ranking Member McHenry, and members of the Committee, I would like to thank you for the invitation to testify today. My name is James R. Copland. Since 2003, I have been a senior fellow with and director of legal policy for the Manhattan Institute for Policy Research, a public-policy think tank in New York City. Although my comments draw upon my research conducted for the Manhattan Institute,[5] my statement before the Committee is solely my own, not my employer's.

The proposed legislation under consideration by the committee intersects significantly with my areas of research. Three of the proposed bills, two sponsored by Representative Axne and one sponsored by Representative Phillips, seek to increase reporting requirements for businesses related to job outsourcing, workforce composition, and executive-worker pay ratios. The fourth bill concerns corporate stock buybacks and would require the Securities and Exchange Commission (SEC) to study and engage in new rulemaking on the issue.

In short, I believe that each of the draft bills is seriously misguided and likely to retard, not promote economic growth. I strongly urge the committee not to take up these ill-considered pieces of legislation and return its focus to efforts like the bipartisan Jobs and Investor Confidence Act, which passed the House by an overwhelming margin in the last Congress.

Overview of U.S. Capital Markets

The overall state of the American economy remains strong. Unemployment rates are as low as they have been in five decades, although the share of the adult population in the workforce remains stubbornly lower than historical norms. Interest rates and inflation remain low.

Similarly, U.S. capital markets remain robust. The publicly traded stock markets are at near-record highs, having recovered from the collapse of the "dot com" stock market bubble, the September 11 attacks, and the collapse of the real-estate finance bubble and subsequent financial crisis over the first two decades of the century. Moreover, the initial-public-offering market in the United States is finally taking off after nearly two decades of weakness.

These phenomena are interrelated. As the economist Joseph Schumpeter noted in his 1942 classic *Capitalism, Socialism and Democracy*, "the process of industrial mutation . . . incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one. This process of Creative Destruction is the essential fact about capitalism. It is what capitalism consists in and what every capitalist concern has got to live in." Schumpeter described how *financial markets* were critical in permitting economies to remake themselves—by shifting resources from less-efficient to more-efficient uses.

Notwithstanding the overall health of the financial and broader economic markets, it is clearly the case that the gains from economic growth in recent decades have not been equally shared. The reasons for this are many and varied. In labor markets, reasons for unequal sharing in economic gains' returns include but are not limited to: market shifts that increase to human capital; the entry of billions of global workers into the stream of commerce; the welcome and long-overdue entry of previously excluded women and racial minorities in domestic labor markets; and shifts in immigration patterns tilted toward lower-human-capital workers, which puts downward pressure on wages for less-educated American workers. (Outside the labor-market context, shifts in marriage patterns and household composition exacerbate realized inequality. And disparities in the provision of education entrench and perpetuate them.)

And it is important to note that the overall strength of market valuations obscures trends toward consolidation in our publicly traded capital markets. The number of publicly traded companies in the United States today is roughly half that two decades ago. Although 2019 may shape up to be a banner year in IPO markets as several highly valued companies go public, there is no reason to believe that the trend *against* public listing for non-giant companies is abating. The reasons for this shift are varied, and include the availability of large supplies of private capital. But the fact that so many enterprises would prefer to avoid public capital markets is an indictment of our current regulatory regime.

Among the changes that have doubtless exacerbated the shift away from public listings in the last two decades are onerous new reporting requirements under Sarbanes-Oxley; increasingly hyperactive shareholder activism—led by social investors, politically controlled public pensions, and labor-union investment vehicles—oriented toward social and political goals; and increasing control over publicly traded companies by government regulators and prosecutors, including previously rare deferred prosecution agreements. Moreover, U.S. publicly traded companies are subject to shareholder litigation that is severely cabined for their privately held peers and virtually unknown in foreign jurisdictions, notwithstanding Congressional reform efforts.[6]

The bills before the committee seem geared toward addressing the first problem (inequality in economic outcomes) but broadly to ignore the latter (publicly traded markets' inhospitability to smaller companies). But they are much more likely to impair economic growth. And unfortunately, their effects are more likely to fall on those already struggling to make ends meet.

The Disclosure Bills

Traditionally, corporate law in the United States has largely resided at the state level. In the Great Depression, Congress enacted an overarching federal regulatory regime, through the Securities Act of 1933 and the Securities Exchange Act of 1934,[7] but the federal role was largely oriented toward corporate disclosure. Substantive corporate-law rules and processes were still governed by the states.

The statutory text of the securities statutes expressly calls on the SEC to require *material* facts be disclosed to investors. In 1947, the SEC defined the term "material" in Rule 405 as limiting required disclosures to "the information required to those matters to which an average prudent investor ought reasonably to be informed before purchasing the security registered." In his decision for the Supreme Court in its 1976 *TSC Industries, Inc. v. Northway Inc.* decision, Justice Thurgood Marshall explained that "Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good."[8]

Unfortunately, in recent years, the SEC has been prodded by this body to require just the sorts of disclosures that worried Justice Marshall.
For example, Section 1502 of the Dodd-Frank Act directed the SEC to order public companies to

disclose their use of products derived from the "exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo."[9] The U.S. Government Accountability Office has found that "nearly all the companies required to report this information did so."[10] But the rule has not had its intended effect. Instead, it prompted a *de facto* boycott of minerals from an impoverished African nation, which "increased the probability of infant deaths in villages near the policy-targeted mines by at least 143 percent."[11]

Dodd-Frank also required, in Section 953(b), that the SEC require companies to disclose their median employee's total annual compensation, the same for their chief executive officer, and the ratio of the two amounts. In promulgating the subsequent necessary rule in 2018, the SEC noted, pointedly, "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 . . ." Academic commentary described the pay-ratio rule as "a unique approach to disclosure, which we term disclosure-as-soundbite."[12] Specifically critics described the pay-ratio rule as an approach "characterized by (1) high public salience—the pay ratio is superficially intuitive and resonates with the public to an extent much greater than other disclosure, and (2) low informational integrity . . . meaning that the information is lacking in accuracy, difficult to interpret, and incomplete."[13]

The three draft disclosure bills under consideration by this subcommittee—the two sponsored by Representative Axne and the one sponsored Representative Phillips—fall squarely within this "disclosure as soundbite" paradigm.

- ***The Pay Raise Bill.*** The Phillips bill is simply a warmed-over version of the pay-ratio disclosures currently required under Section 953(b). Whereas those disclosures apply to a *static* pay ratio, the Phillips bill would apply them to "raises," or a *change* in pay. If anything, the problems with the Dodd-Frank pay-ratio rule are exaggerated in this context. Median worker earnings are likely to move in relatively modest, predictable fashion. But executive pay might vary widely from year to year, based on hiring and retention needs, the market for such talent, and—given that compensation is regularly geared to stock-market performance—stock-price moves.

  There is generally little reason to expect the ratio of CEO pay and median worker pay to be constant—or meaningful. The market for "maximum contract" salaries under the NBA collective bargaining agreement bears little relationship to the average price of concession workers. The market for headliner Hollywood actors and actresses bears little relationship to film crews. Labor markets are segmented and pay is oriented toward marginal productivity. The right comparison group for a chief executive is not the median company worker but a host of competing candidates for a senior executive's services—including not only other companies but parallel businesses that might employ top business talent, including entrepreneurial ventures, private equity shops, investment banks, and management consultancies.

  To understand the rise in executive pay, it is important to understand that its increase has been *driven by stock investors.* Equity investors are, by definition, entitled to a corporation's residual earnings.[14] But because corporate dividend payments are discretionary rather than mandatory and because equity investors are otherwise unable to protect their interests contractually, owners of common stock face significant *agency costs*, or obstacles to enforcing their interests against corporate management. One such risk, of course, is excessive pay and benefits for corporate managers. But another is that management may choose to *avoid risks* that investors might prefer they take. And corporate managers may also choose to avoid choices that imperil their own interests—such as selling the company to a prospective acquirer—even if such choices would create value for shareholders.[15]

As a general rule, in recent years, corporate boards—prompted by shareholders, particularly institutional investors—have worried more about the latter than the former agency costs; and they have sought to mitigate such costs by directly aligning managers' incentives with equity owners'. Stock options and other equity-compensation plans that transfer some portion of companies' ownership to chief executives and other top management, in lieu of cash compensation.[16] "Golden parachutes" and other vehicles that pay executives bonuses in the event of a change of corporate control encourage managers to be active partners rather than impediments to a company's prospective sale that offered sizable rewards to shareholders.[17]

It is unlikely that corporate boards or institutional investors will abandon plans for executive compensation that have been implemented over the last three decades—while the broader stock market has grown tenfold. But due to pay issues' "high public salience," the disclosures pushed by the Phillips bill would likely generate significant media attention adverse to the average equity owner's interests. And because the negative news stories generated by such reporting would not be required of private companies or foreign competitors, the pressure for going-private transactions and foreign acquisitions would grow.

- ***The Outsourcing Bill.*** Representative Axne's bill requiring a listing of all foreign and domestic employees, pushed by the AFL-CIO, is by and large a "disclosure as soundbite" bill akin to the pay-ratio rule and proposed legislation. Companies already regularly disclose foreign-and-domestic aggregate financials. There is no reason whatsoever why a precise tally of worker by domicile is material. Moreover, such reporting would doubtless generate confusion in reporting. Companies using wholly owned subsidiaries would appear to have more foreign presence than those contracting with foreign firms.

- ***The "Human Capital Management" Bill.*** Representative Axne's other bill, involving so-called "human capital management," also fits the "disclosure as soundbite" paradigm. Proposed by a coalition led by the United Auto Workers and other labor unions and politically controlled public-employee pension funds, the bill would require the SEC to implement a host of detailed disclosures around workforce composition and management, including "diversity" data and goals. There is little reason to believe that such disclosures are material to a profit-maximizing investor. Shareholders have routinely considered and rejected similar shareholder proposals over the last decade.[18] And such data, like those involving pay ratios, would be difficult to compare across companies and sectors. This proposed disclosure—largely designed to empower outside activists to pursue social ends through press reporting, adverse to the average diversified investor's fiduciary interests.

The Share Buyback Bill

The return of capital to shareholders—more than 70% of which are institutional investors that reallocate capital—is the most efficient way to shift societal resources to highest-value use. Five of the six largest companies in the world today, by market capitalization, are American companies that simply did not exist 50 years ago.

Any laws or rules that would limit shareholder corporations from returning capital to investors—instead favoring retaining earnings—is simply foolhardy. How exactly should the director of a textile manufacturing company in the United States reinvest company earnings? The Belgian company Picanol and the Japanese company Tsudakoma have made significant advances in air-jet loom technologies. But their products can be purchased by manufacturers worldwide. It is hard to see how reinvesting earnings internally for a U.S. textile company twenty years ago—as opposed to distributing them to shareholders able to invest funds in Google or Amazon—would not have been value destroying.

Of course, corporations that wish to distribute earnings to shareholders need not do so through share repurchases. They also may do so through paying corporate dividends. But even when the tax rates on such payouts is identical, there may be reasons why a company's board of directors, acting as fiduciaries, may prefer share repurchases to common dividends:

- ***Smoothing dividend flows.*** Dividend payments are discretionary; shareholders have no right to any distribution of capital. Nevertheless, once a given dividend level is established, many shareholders may come to expect the same level to be paid going forward. Certain classes of shareholders—retirees, pensions, and endowments that use corporate dividend flows as an income stream, rather than reinvesting them—may tend to count on a dividend level and improperly calculate expected future cash flows when corporations vary their dividend payments. Moreover, an increased dividend payment may create an improper signal to market actors if corporate fiduciaries do not expect a one-time increase in realized profits to continue into future periods. Such is a particular risk if current cash flows are abnormally high due to a one-time asset sale or tax law change.

- ***Taking advantage of share mispricing.*** Corporate boards and executives have inside information about a company's future earnings. For precisely this reason, federal courts have applied common-law prohibitions on insider trading to be actionable fraud under the federal securities laws.[19] Congress subsequently enacted statutes reifying this prohibition;[20] and the SEC promulgated clarifying regulations.[21] Whereas corporate fiduciaries are prohibited from *misappropriating* their insider knowledge for their own benefit,[22] purchasing underpriced shares *creates* value for shareholders whom fiduciaries owe a duty. Such share repurchases also have the salutary effect of improving market pricing—thus increasing capital-markets efficiency and in the aggregate, over time, reducing market volatility and episodic economic contractions driven by debt predicated on mispriced securities.

- ***Facilitating shareholder tax timing.*** Even when capital gains and dividends are treated identically in the tax code, they are not identical to individual owners of shares in a C corporation. Capital gains are only taxed when realized. Corporate dividends are taxed

> when distributed. Thus, distributing corporate earnings via dividends generates a taxable event for *all* corporate shareholders on a *pro rata* basis. But distributing corporate earnings via share repurchases creates a taxable event *only for those shareholders who sell their shares*. Thus, shareholders who view a company's market price as undervaluing its long-term value—a view implicitly consistent with the view of the board authorizing a stock buyback—can defer taxation and hold their shares. With shares repurchased by the corporation rather than outside buyers on the open market, the number of shares floated falls—and the shareholder's percentage of future earnings rises.

There is little reason for concern with publicly traded C corporations' increasing use of share buybacks. The most valuable companies in the market today are mostly new; many of yesteryear's valuable companies are significantly smaller concerns, if they still exist. Reallocating capital toward its most efficient uses is precisely the function of our capital markets. Any notion that companies should retain earnings and invest them internally rather than redistributing them to shareholders to reinvest is disastrous folly. And such reallocation should indeed be expected to increase after a significant tax code change.

The notion that a company could consistently manipulate stock prices through share buyback programs assumes a very weak notion of capital-market efficiency inconsistent with reality.

I do not mean to suggest that an announced share buyback program should have no impact on share price. An announced share buyback should be expected to have a positive short-run correlation with a company's share price, other things being equal. Such an announcement is, implicitly, a statement by a company's board that it believes the company undervalued in the public markets. And given this reality, it is conceivable that corporate insiders might "time" their sales of shares or exercise of options to take advantage of a modest price movement—as SEC Commissioner Robert Jackson finds in a preliminary analysis. The SEC may wish to study this issue further and consider the pluses and minuses of limitations on insiders' sale of shares surrounding buyback announcements.

But beyond this modest consideration, there is no reason to believe that a company could prop up its share price for long with share repurchases. Hundreds of billions of dollars trade daily on stock exchanges; and this amount significantly *understates* financial markets' modern liquidity, given hundreds of trillions of dollars in derivative contracts at any given time.

There is certainly no reason to saddle the SEC with a new study, and new rulemaking, as proposed in the new bill—particularly one larded with "soundbite" disclosures such as median employee and executive compensation, and the percentage increases in same; and considerations such as "reducing wealth inequality." On the whole, share buybacks are *good* for investors—and help to protect investors' interests, to promote efficient capital markets, and to facilitate capital formation.

Conclusion

Unlike the Jobs and Investor Confidence Act, which passed the House in the last session by a broad bipartisan majority, the bills under consideration today are certain to be divisive—and were they enacted, they would be unhelpful. I believe that each of the draft bills is seriously misguided and likely to retard, not promote economic growth. We should not allow reasonable policy concerns about income inequality to intrude on our capital-market regulation, which has long been properly oriented around the SEC's tripartite mission to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation.

The principal function of federal securities law, as opposed to state corporate law, is to promote efficient disclosure. Courts and federal regulators, understanding that disclosures have costs as well as benefits, have long oriented disclosure around a *materiality* requirement. The three proposed disclosure bills fail this standard and instead promote a "disclosure as soundbite" regime designed to generate media attention rather than inform investors pricing securities.

The principal function of capital markets is to reallocate capital to its most efficient uses. Implicit in this function is returning earnings to shareholders when internal projects, using retained earnings, are less valuable than alternative uses in the marketplace. Corporate share repurchases are an efficient mechanism for returning such capital. Share buybacks allow investors to rely on more predictable dividend flows and to time the tax treatment of their capital assets, and they facilitate efficient market pricing to shareholders' benefit through corporate fiduciaries' use of corporate information. Although it is within the SEC's regulatory scope to oversee corporate repurchases, and the Commission should continue to investigate potential short-term convergence between share repurchases and insider stock sales, the overall scope of such concerns is overblown—and the proposed cure here far more dangerous than the concerns.

Although I believe that capital markets are functioning well and the economy is exhibiting solid growth, there are reasons for concern. Chiefly, the number of publicly traded companies remains lower than it was two decades ago; initial public offerings may be on the uptick in dollar volume but have languished for far too long. Investors and corporate fiduciaries have sent strong signals that our capital markets, today, make sense only for the very largest enterprises. Among the government burdens on publicly traded companies in the market that should concern policymakers are:

- Onerous reporting requirements, under Sarbanes-Oxley and other new dictates
- Socially oriented shareholder activism and reduced director discretion
- Inordinate influence by proxy advisory firms
- Corporate criminal investigations, applying sanctions unavailable at trial
- Shareholder litigation

I have written about many of these issues. A selected list of writings I have authored or published follows, and should be incorporated by reference. I encourage members of the committee to ask questions, which I will endeavor to answer to the best of my ability.

Further Resources

Testimony

James R. Copland, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs, Apr. 2, 2019, *available at* https://www.banking.senate.gov/imo/media/doc/Copland%20Testimony%204-2-191.pdf.

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James R. Copland, Testimony before the House Financial Services Committee, Apr. 26, 2006, *available at* https://www.manhattan-institute.org/html/testimony-james-r-copland-united-states-house-representatives-committee-financial-services-6053.

Reports

James R. Copland et al., *Proxy Advisory Firms: Empirical Evidence and the Case for Reform* (Manhattan Institute 2018), *available at* https://media4.manhattan-institute.org/sites/default/files/R-JC-0518-v2.pdf.

James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2016: A Report on Corporate Governance and Shareholder Activism* (Manhattan Institute 2016), *available at* http://www.proxymonitor.org/pdf/pmr_13.pdf.

James R. Copland & Steven Malanga, *Safeguarding Public Pension Systems—A Governance-Based Approach* (Manhattan Institute 2016), *available at* https://media4.manhattan-institute.org/sites/default/files/R-JCSM-0316.pdf.

Tracie Woidtke, *Public Pension Fund Activism and Firm Value* (Manhattan Institute 2015), *available at* https://media4.manhattan-institute.org/sites/default/files/lpr_20.pdf.

Article

James R. Copland, "Against an SEC-Mandated Rule on Political Spending Disclosure: A Reply to Bebchuk and Jackson," 3 *Harvard Business Law Review* 381 (2013), *available at* http://www.hblr.org/wp-content/uploads/2013/10/HLB209_crop.pdf.

Columns

James R. Copland, "Senator Warren's Bizarro Corporate Governance," ECONOMICS21.ORG, Aug. 16, 2018, *available at* https://economics21.org/warren-backwards-corporate-governance.

James R. Copland, "Another Shareholder Proposal? McDonald's Deserves a Break Today," *Wall Street Journal*, Jul. 7, 2017, *available at* https://www.wsj.com/articles/another-shareholder-proposal-mcdonalds-deserves-a-break-today-1499381801.

Howard Husock & James R. Copland, "'Sustainability Standards' Open A Pandora's Box Of Politically Correct Accounting, *Investor's Business Daily*, Mar. 24, 2017, *available at* https://www.investors.com/politics/commentary/sustainability-standards-open-a-pandoras-box-of-politically-correct-accounting/.

James R. Copland, "Getting The Politics out of Proxy Season," *Wall Street Journal*, Apr. 23, 2015, *available at* https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html.

James R. Copland, "Politicized Proxy Advisers vs. Individual Investors," *Wall Street Journal*, Oct. 7, 2012, *available at* https://www.manhattan- institute.org/html/politicized-proxy-advisers-vs-individual-investors-3863.html.

James R. Copland, "Are U.S. IPOs DOA?," *WashingtonPost.com*, Apr. 12, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/04/11/AR2007041101723.html.

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[1] *See* James R. Copland, https://www.manhattan-institute.org/expert/james-r-copland. The Manhattan Institute is a non-profit, non-partisan think tank developing ideas that foster economic choice and individual responsibility. *See* About MI, https://www.manhattan-institute.org/about.

[2] *See, e.g.*, James R. Copland, *Another Shareholder Proposal? McDonald's Deserves a Break Today*, WALL ST. J., Jul. 7, 2017, *available at* https://www.wsj.com/articles/another-shareholder-proposal-mcdonalds-deserves-a-break-today-1499381801; *Getting The Politics out of Proxy Season*, WALL ST. J., Apr. 23, 2015, *available at* https://www.manhattan-institute.org/html/getting-politics-out-proxy-season-5461.html; *Politicized Proxy Advisers vs. Individual Investors*, WALL ST. J., Oct. 7, 2012, *available at* https://www.manhattan- institute.org/html/politicized-proxy-advisers-vs-individual-investors-3863.html.

[3] *See* James R. Copland, *Against an SEC-Mandated Rule on Political Spending Disclosure: A Reply to Bebchuk and Jackson*, 3 HARV. BUS. L. REV. 381 (2013).

[4] *See, e.g.*, NACD 2012 Honorees, https://www.nacdonline.org/directorship100/2012honorees.cfm ("Each year, NACD Directorship identifies the most influential people in the boardroom community, including directors, corporate governance experts, journalists, regulators, academics and counselors.").

[5] Some language in this testimony may be substantially similar to, or in some places identical, to that in my previous publications and earlier testimony before other government bodies.

[6] *See, e.g.*, Private Securities Litigation Reform Act of 1995, Pub. L. 104-67, 109 Stat. 737.

[7] *See* Securities Act of 1933, Pub. L. No. 73-22, Ch. 38, 48 Stat. 74 (1933) (codified at 15 U.S.C. §§ 77a–77aa (2006 & Supp. II 2009)); Securities Exchange Act of 1934, Pub. L. No. 73-291, Ch. 404, 48 Stat. 881 (1934) (codified at 15 U.S.C. §§ 78a–78oo (2006 & Supp. II 2009)).

[8] 426 U.S. 438, 448 (1976).

[9] The Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1502(a), Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[10] Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available, GAO-18-457, Jun 28, 2018.

[11] Dominic P. Parker, Jeremy D. Foltz & David Elsea, *Unintended Consequences of Sanctions for Human Rights: Conflict Minerals and Infant Mortality*, 59 J. LAW & ECON. 731, 731-774 (Nov. 2016).

[12] Steven A Bank & George S. Georgiev, *Securities Disclosure As Soundbite: The Case of CEO Pay Ratios*, B.C. LAW REV., (January 29, 2019), *available at* https://ssrn.com/abstract=3324882 or http://dx.doi.org/10.2139/ssrn.3324882.

[13] *Id.*

[14] In accounting, corporate finance, and bankruptcy law, equity owners have the lowest priority claim to a corporation's assets; *i.e.*, owners of equity capital are only paid after all other creditors and claimants in a corporate liquidation. *Cf.* Eugene F. Fama, *Agency Problems and the Theory of the Firm*, 88 J. POL. ECON. 288, 288-89 (1980) (arguing against "the typical presumption that a corporation has owners in any meaningful sense" and instead defining equity owners by their entitlement only to a residual claim on the corporation).

[15] *See generally* ADOLPH A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (The MacMillan Company, 1932) (a classical exploration of agency costs in the American corporation which remains a principle focus of corporate-law literature).

[16] *See, e.g.*, Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465, 1530 (2007) ("The 1990s board undertook . . . . to fashion executive compensation contracts that better aligned managerial and shareholder objectives, to give managers high-powered incentives to maximize shareholder value. In light of other institutional constraints, this meant stock options." (footnote omitted)).

[17] *See id.* at 1533-34 ("[Another] element of the 1990s board's focus on shareholder value in the market for managerial services was the 'golden parachute,' a generous severance package that was another alignment mechanism. . . . In the

case of an uninvited premium takeover bid, such packages often converted CEOs from opposition to acquiescence.”).
[18] *See generally* www.ProxyMonitor.org.
[19] *See, e.g.*, SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968); Dirks v. SEC, 463 US 646 (1983).
[20] *See, e.g.*, The Insider Trading Sanctions Act of 1984, Pub. L. 98-376, 98 Stat. 1264 (1984).
[21] *See* SEC Rule 10b5-1, *codified at* 17 C.F.R. 240.10b5-1 (2000).
[22] *See* United States v. O'Hagan,521 U.S. 642 (1997) (articulating misappropriation theory).