U.S. CHAMBER
Institute for Legal Reform

CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

October 30, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Petition for Rulemaking on COVID-19 Related Litigation

Dear Ms. Countryman:

Petitioner, the U.S. Chamber of Commerce ("the Chamber"), respectfully submits this Petition for rulemaking pursuant to Rule 192(a) of the Commission's Rules of Practice.

I. INTRODUCTION

The securities class action system is plagued with serious problems. Twenty-five years ago, Congress enacted the Private Securities Litigation Reform Act (PSLRA). Congress enacted the PSLRA because it found that "certain lawyers file frivolous 'strike' suits alleging violations of the Federal securities laws in the hope that defendants will quickly settle to avoid the expense of litigation."[1]

But it has become clear that the PSLRA alone has not corrected the imbalances in the securities litigation system. There has been an explosion of securities class action filings in recent years, with filing activity now exceeding the levels that led Congress to enact the PSLRA.

One driver of this surge has been the advent of event-driven lawsuits that are filed when a public company's stock declines after a negative event. For example, plaintiffs' lawyers have seized on wildfires, oil spills, product recalls, a plane crash, and a dam collapse as predicates for securities-related litigation. These lawsuits are often of dubious merit, but some plaintiffs' lawyers seek to leverage the expense of litigation, the monetary exposure, and the reputational harms to companies in order to extract a quick settlement. Indeed, legal experts—including Professor John Coffee of Columbia Law School—have expressed skepticism about these claims.

The world now faces a disaster unparalleled in recent times: the COVID-19 pandemic.[2] Securities class actions based on the pandemic are already being filed, with many more to come. There is a strong likelihood that pandemic-related events will be seized upon as the basis for additional securities litigation.

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[1] S. Rep. No. 104-98, at 4 (1995).

[2] For purposes of this Petition, the term "Coronavirus" or "COVID-19" means the disease, health condition, or threat of COVID-19 caused by SARS-CoV-2 or a virus mutating therefrom.

The PSLRA provided for just this sort of emergency: Congress gave the Commission the authority to expand the PSLRA's statutory safe harbors and create additional exemptions from liability when appropriate.[3] The Commission should exercise that authority and act without delay to place reasonable limits on securities litigation arising out of the COVID-19 pandemic.

II. THE PETITIONER

The Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. One of the Chamber's responsibilities is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly petitions administrative agencies and participates in cases relating to issues of concern to the nation's business community, including issues involving the federal securities laws.

Unjustified private securities litigation imposes a significant burden on the Chamber's members and adversely affects their access to capital markets. The Chamber, therefore, has a strong interest in regulatory actions that could help mitigate the impact of the wave of lawsuits that has already begun to hit federal courts in the wake of the COVID-19 pandemic.

III. DISCUSSION

A. Event-Based Claims Of Dubious Legitimacy Were Already On The Rise Before The COVID-19 Pandemic

The past three years have seen an explosion in securities litigation, with filing activity reaching levels not seen since the enactment of the PSLRA in 1995.

1. Recent studies tracking securities litigation filings found that 2019 saw the same high level of litigation as 2017 and 2018—in the words of one analyst, "it is clear that the recent elevated levels of securities class action lawsuit filings represent the new normal."[4]

Cornerstone Research reported that "[p]laintiffs filed 428 new securities class actions across federal and state courts, the highest number on record and nearly double the 1997-2018 average [of 215 cases]."[5] "Each of the last three years—2017 through 2019—has been more active than any previous year."[6] Other studies reported similar results—for example, NERA

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[3] 15 U.S.C. § 77z-2(g); 15 U.S.C. § 78u-5(g).

[4] Kevin LaCroix, *Federal Court Securities Suit Filings Remain at Elevated Levels*, D&O Diary (Jan. 1, 2020), https://www.dandodiary.com/2020/01/articles/securities-litigation/federal-court-securities-suit-filingsremain-at-elevated-levels/.

[5] Cornerstone Research, *Securities Class Action Filings – 2019 Year in Review*, at 5 (2020), https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2019-Year-in-Review (drawing from Stanford Law School Securities Class Action Clearinghouse data).

[6] *Id.* at 3.

Economic Consulting found 433 new cases in 2019, "the third consecutive year with more than 400 cases filed."[7]

In addition, "the likelihood of a U.S.-listed company getting hit with a securities suit is the highest it has ever been"—with one study finding "just under one out of every eleven U.S. listed companies was hit with a securities suit," a litigation rate of 8.66 percent.[8] Another study put the percentage higher at 8.9 percent—a record high and two and one-half times the 1997-2018 average of 3.6 percent.[9]

2. One significant driver of this increase in litigation activity has been the growth of event-driven claims. Numerous legal experts, including Professor John Coffee of Columbia Law School, have expressed skepticism about these types of claims. As Professor Coffee explains:

> Once, securities class actions were largely about financial disclosures (e.g., earnings, revenues, liabilities, etc.). In this world, the biggest disaster was an accounting restatement. **Now, the biggest disaster may be a literal disaster: an airplane crash, a major fire, or a medical calamity that is attributed to your product**…. The expectation of major losses from the disaster sends the issuer's stock price down, which in turn triggers securities litigation that essentially alleges that the issuer failed to disclose its potential vulnerability to such a disaster.[10]

Event-driven lawsuits differ fundamentally from traditional securities cases, as "traditional securities litigation is not filed in the immediate wake of a stock drop; rather, plaintiff's counsel spends months interviewing potential witnesses and gathering evidence in order to be able to plead an intent to defraud with the degree of particularity that the [PSLRA] demands."[11] But "[a] different pattern prevails … in the case of event-driven securities litigation, which regularly follows in the immediate wake of a stock drop"—and that may be because "some plaintiff's counsel are less concerned about surviving a motion to dismiss because they expect an early (and cheap) settlement."[12] As another experienced observer of securities class actions commented with respect to event-driven claims, "[f]irst comes the event, then comes the lawsuit."[13]

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[7] NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review*, at 2 (2020), https://www.nera.com/content/dam/nera/publications/2020/PUB_Year_End_ Trends_012120_Final.pdf.

[8] Kevin LaCroix, *Federal Court Securities Suit Filings*, *supra* note 4.

[9] Cornerstone Research, *Securities Class Action Filings – 2019*, *supra* note 5, at 11.

[10] John C. Coffee, Jr., *The Changing Character of Securities Litigation in 2019: Why It's Time to Draw Some Distinctions* (Jan. 22, 2019), http://clsbluesky.law.columbia.edu/2019/01/22/the-changing-character-of-securities-litigation-in-2019-why-its-time-to-draw-some-distinctions/ (emphasis added).

[11] *Id.*

[12] *Id.*

[13] Kevin LaCroix, *First, Wildfires. Then What? Securities Litigation, Of Course* (Nov. 18, 2018), https://www.dandodiary.com/2018/11/articles/securities-litigation/first-wildfires-securities-litigation-course/.

Congress enacted the PSLRA in 1995 in large part because it found that securities class actions were plagued by abusive practices and were driven by lawyers rather than investors. It found that "certain lawyers file frivolous 'strike' suits alleging violations of the Federal securities laws in the hope that defendants will quickly settle to avoid the expense of litigation" and that these lawsuits "are often based on nothing more than a company's announcement of bad news, not evidence of fraud."[14]

Today's event-driven lawsuits show that the same problems have returned, in a different form. This new barrage of lawyer-driven lawsuits is characterized by the very same rapid filing of claims with little or no investigation, designed to force defendants into settlements regardless of the merits—the same types of practices that Congress enacted the PSLRA to prevent.

The legitimacy of these lawsuits is highly suspect. As two experienced securities litigators have explained:

> The inherent problem in all event-driven securities litigation is that just because something bad happened does not mean that the company or its directors and officers committed fraud. Because many of these events relate to business or operational risks that are known or already subject to a company's risk disclosures, many of the event-driven suits are based on the tenuous theory that the occurrence or the event upon which the case is based was the materialization of an under-disclosed or downplayed risk.[15]

Notwithstanding the legal obstacles, these claims continue to be brought—following a pattern in which the complaint is filed very quickly after the adverse business event—because they typically create a large potential exposure. The defense costs are high, and few companies want to risk the reputational damage that could result from prolonging the litigation of such claims.

The plaintiffs' lawyers filing these event-driven securities class actions typically contend that the defendant company's statements before the adverse event occurred misrepresented the risk that (for example) an oil platform would explode, that its products would be the subject of tort litigation, or that its systems containing employee or customer information would be hacked. Alternatively, the complaint may assert that the company was obligated to disclose the risk of the adverse event and failed to do so.

Many event-driven securities cases of this kind that have been filed in recent years. For example:

- A hotel company was sued only one day after issuing a press release informing customers of a breach of its guest reservation system.[16]

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[14] S. Rep. No. 104-98, at 4 (1995).

[15] Jeffery A. Dailey & Neal Ross Marder, *The Rise in Event-Driven Securities Litigation: Why It Matters to Directors and Officers*, Willis Towers Watson (Nov. 12, 2018), https://www.willistowerswatson.com/en-US/ insights/2018/11/finex-observer-rise-in-event-driven-securities-litigation.

[16] Compl., *McGrath v. Marriott Int'l Inc.*, No. 1:18- cv-06845 (Dkt. No. 1) (E.D.N.Y. Dec. 1, 2018).

- An aircraft manufacturer was sued one month after a tragic plane crash.[17]

- Just eight days after the start of wildfires in California, a shareholder in a utility company filed a securities class action—notwithstanding the defendants' prior disclosures stating that "wildfires … can disrupt the generation and transmission of electricity, and can seriously damage the infrastructure necessary to deliver power," which can lead to "lost revenues and increased expenses," "regulatory penalties and disallowances," and "damage [to] the business reputation" of the defendants.[18]

- The owner of a dam in Brazil was sued on the first full day of business after the dam's collapse.[19]

And these cases are only a few examples of what has become a significant trend.

B. COVID-19 Securities Cases Have Already Been Filed, With Many More Expected In The Coming Months.

Past crises have precipitated event-based securities class actions. For example, plaintiffs' lawyers filed a spate of securities class actions in the wake of the financial crisis, with the percentage of filings increasing by nearly 20 percent in 2008 alone.[20]

If past history provides any lessons, the pandemic itself, which has already wreaked havoc on the stock market, has resulted in and will continue to cause significant securities litigation activity, including frivolous claims.

There are a number of ways in which the securities class action process can be abused to bring unjustified lawsuits linked to the COVID-19 pandemic:

- Suits based on allegations that a company made pre-pandemic statements indicating that it was prepared for emergencies, and alleging that those statements were false given the pandemic's impact on the company, that they were made recklessly, and that the company's stock price declined once the "true facts" were known.

- Suits based on a company's post-pandemic statements about the prospects for resuming business, and earning associated revenues, that don't materialize as a result of the fast-moving changes to the health and business environment.

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[17] Compl., *Ostroff v. Boeing Co.*, No 1:18-cv-07853 (Dkt. No. 1) (N.D. Ill. Nov. 28, 2018).

[18] Compl. ¶ 29, *Barnes v. Edison Int'l*, No. 2:18- cv-09690 (Dkt. No. 1) (C.D. Cal. Nov. 16, 2018).

[19] Kevin LaCroix, *Latest Brazilian Dam Disaster Leads to Event-Driven Securities Suit* (Jan. 29, 2019), https://www.dandodiary.com/2019/01/articles/securities-litigation/latest-brazilian-dam-disaster-leads-event-driven-securities-suit/.

[20] *See* Cornerstone Research, *Securities Class Action Filings (2008: A Year in Review)* at 2, http:// securities.stanford.edu/research-reports/1996-2008/Cornerstone-Research-Securities-Class-Action-Filings-2008-YIR.pdf.

- Suits based on statements relating to other pandemic-related interruptions and business impacts that were affected by subsequent events.

- Suits based on alleged misstatements in financial statements. In particular, there are a large number of financial statement elements that rely on the assessment of current market conditions and projections, all of which are tremendously uncertain due to the pandemic and therefore are highly susceptible to second-guessing in litigation if things don't turn out in accordance with the estimates embodied in the financial statements. For example, plaintiffs' lawyers may seize on asset impairment, including for inventory, goodwill, investments, as well as other assets; fair value measurement; loss contingency disclosures; going concern evaluations; and impact of subsequent events on financial statement estimates, among other things.

At the outset of the pandemic, prominent plaintiffs' lawyers denied that they planned to bring reflexive COVID-19-related securities lawsuits.[21] But in fact, many COVID-related securities cases have already been filed. One experienced observer recently put the current tally at 20.[22]

These lawsuits already cover defendants in a variety of industries, not just those companies in the healthcare business or that have experienced outbreaks of COVID-19 in their facilities (such as cruise lines). For example, one lawsuit was recently filed against an animal supply company alleging that the company failed to adequately warn investors about a significant revenue downturn due to the tightening of the supply chain caused by the COVID-19 pandemic.[23] As *The D&O Diary*'s Kevin LaCroix put it, "it is rare that I have the reaction that I had to reading this complaint—that is, I have no idea what the plaintiff thinks the fraud is here. ... Not only that, it is going to be difficult for the court to find in the complaint any allegations of scienter, much less the kind of allegations necessary to meet the requirements of the heightened standards for pleading scienter."[24]

Another lawsuit was filed against an exchange-traded fund designed to track daily changes in the spot price of oil, alleging that the fund knew but failed to adequately disclose its inability to achieve its investment objectives because of the sharp economic downtown, particularly to the oil industry, caused by COVID-19.[25] One respected commentator on securities litigation has concluded that it is inevitable that "we will see many more lawsuits" of this kind,

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[21] Alison Frankel, *Shareholders' class action lawyers: we're not rushing to bring COVID-19 cases*, Reuters (Mar. 17, 2020).

[22] Kevin LaCroix, *Two Companies Hit with COVID-19-Related D&O Lawsuits* (Aug. 25, 2020), https://www.dandodiary.com/2020/08/articles/coronavirus/two-companies-hit-with-covid-19-related-do-lawsuits/.

[23] Compl., *Hunter v. Elanco Animal Health Inc.*, No. 20-cv-1460 (Dkt. No. 1) (S.D. Ind. May 20, 2020).

[24] Kevin LaCroix, *COVID-19-Related Securities Suit Filed Against Animal Supply Company* (May 25, 2020), https://www.dandodiary.com/2020/05/articles/coronavirus/covid-19-related-securities-suit-filed-against-animal-supply-company/.

[25] Compl., *Lucas v. United States Oil Fund, LP*, No. 20-cv-04740 (Dkt. No. 1) (S.D.N.Y. June 19, 2020).

"particularly in the industries that have been hardest hit" by COVID-19, "[g]iven the extraordinary circumstances in which every business is now operating, and the plaintiffs' bar's clear enthusiasm for filing event-driven lawsuits."[26]

Moreover, there is every reason to believe that these cases represent only the tip of a much larger iceberg and that "most of the coronavirus-related lawsuits are yet to come."[27] The "number of items that plaintiffs' lawyers might try to characterize as misrepresentations is growing" as companies continue (as required) to make "statements about the pandemic's impact on their finances, operations, and business prospects."[28] "In addition, as the duration of the pandemic lengthens into the uncertain future, the pandemic's grinding impact on companies' revenues, liquidity, ability to service debt, ability to maintain supply chains and distribution networks and so on will increase the stress companies are experiencing"—inevitably leading to lawsuits by investors disappointed with the companies' performance.[29]

In short, the Commission can "expect to see more such cases in the future as plaintiffs lawyers seek to capitalize on a volatile stock market and unprecedented market changes."[30]

C. The Commission Has The Authority Under The PSLRA To Protect Against Unjustified COVID-19 Claims.

Among the reforms enacted by the PSLRA was the introduction into both the Securities Act and the Exchange Act of safe harbors for certain forward-looking statements—generally those that are accompanied by "meaningful cautionary statements" or are immaterial.[31] The statutory safe harbor also requires the plaintiff to satisfy a heightened scienter standard—that the forward-looking statement was made with "actual knowledge that the statement was false or misleading."[32]

But a number of holes remain in the PSLRA's statutory safe harbor provisions. For example, quite a few transactions are expressly excluded from safe-harbor protections—

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[26] Kevin LaCroix, *Do These Two New Lawsuits Belong on the List of COVID-19-Related Securities Suits?* (June 23, 2020), https://www.dandodiary.com/2020/06/articles/coronavirus/do-these-two-new-lawsuits-belong-on-the-list-of-covid-19-related-securities-suits/.

[27] Kevin LaCroix, *Two Companies Hit with COVID-19-Related D&O Lawsuits* (July 19, 2020), https://www.dandodiary.com/2020/07/articles/coronavirus/covid-19-and-do-insurance-july-update/.

[28] *Id.*

[29] *Id.*

[30] Richard Zelichov and Christine Costley, *COVID-19 Securities Class Actions May Hinge On Disclosures*, Law360 (Apr. 15, 2020), https://www.law360.com/articles/1259356/covid-19-securities-class-actions-may-hinge-on-disclosures; *see also, e.g.*, Nathan Bull et al., *COVID-19 Update: Anticipating Securities Litigation in Response to the Pandemic*, National Law Review (Apr. 16, 2020), https://www.natlawreview.com/article/covid-19-update-anticipating-securities-litigation-response-to-pandemic ("[E]vent-driven stock-drop suits will factor prominently in the COVID-19 litigation landscape as well....[S]ecurities litigation premised on similar theories has already begun to materialize in response to COVID-19.").

[31] 15 U.S.C. § 77z-2; 15 U.S.C. § 78u-5.

[32] 15 U.S.C. § 77z-2(c)(1); 15 U.S.C. § 78u-5(c)(1).

including financial statements prepared according to generally accepted accounting principles, initial public offerings, tender offers, and a variety of other transactions.[33] And statements that are not forward-looking—or even potentially the parts of otherwise forward-looking statements that refer to present or historical facts—are not entitled to the safe harbor either.

Moreover, recent experience demonstrates that the statutory safe harbors, on their own, are insufficient to deter the filing of meritless securities claims. Former Commissioner and Stanford Law Professor Joseph Grundfest put it well: "The PSLRA was designed to deter plaintiffs from filing low-quality complaints, but th[e] surge in complaints that are dismissed with greater frequency suggests that the law is no longer having its intended quality-enhancing effect. Policymakers should, I think, study these data carefully and ask whether the time is nigh for further reform."[34]

Congress empowered the Commission to act. The PSLRA itself provides:

> In addition to the exemptions provided for in this section [the section dealing with forward-looking statements], **the Commission may, by rule or regulation, provide exemptions** from or under any provision of this title, **including with respect to liability that is based on a statement or that is based on projections or other forward-looking information**, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.[35]

The PSLRA's legislative history confirms that the statutory safe harbors were meant to be a "starting point" and that the Commission can and should consider adopting regulatory reforms.[36] As we next discuss, there are a number of steps the Commission could take under the rulemaking authority conferred in the PSLRA to curtail unjustified securities class action lawsuits arising out of the COVID-19 pandemic.

D. The Commission Should Exercise Its Authority To Protect Businesses From Unjustified But Costly COVID-19 Lawsuits.

We recognize that Commission staff has provided helpful guidance to companies in making disclosures about COVID-19 and its impacts.[37] And we appreciate the Commission's

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[33] 15 U.S.C. § 77z-2(b); 15 U.S.C. § 78u-5(b).

[34] Cornerstone Research, *Securities Class Action Filings Reach Record High for Second Straight Year* (Jan. 30, 2018), https://www.cornerstone.com/Publications/Press-Releases/Securities-Class-Action-Filings-Reach-Record-High.

[35] 15 U.S.C. § 77z-2(g) (emphasis added); 15 U.S.C. § 78u-5(g) (emphasis added).

[36] S. REP. NO. 98, 104th Cong., 1st Sess. 17 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 696; H. R. CONF. REP. No. 67, 104th Cong., 1st Sess. 46 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 745 ("The committee intends for its statutory safe harbor provisions to serve as a starting point and fully expects the SEC to continue its rulemaking proceedings in this area.").

[37] SEC, Division of Corporate Finance, *CF Disclosure Guidance: Topic No. 9* (Mar. 25, 2020), https://www.sec.gov/corpfin/coronavirus-covid-19; SEC, Division of Corporate Finance, *CF Disclosure Guidance: Topic No. 9A* (June 23, 2020), https://www.sec.gov/corpfin/covid-19-disclosure-considerations.

reminder that it may be possible in some circumstances for companies to provide forward-looking information in a manner that is entitled to protection under the PSLRA's safe harbors.[38]

Nonetheless, the Commission can and should go further to limit unjustified COVID-19 lawsuits—meaning lawsuits that turn on disclosures related to COVID-19 or its impacts, or allegations that the enormous changes wrought by COVID-19 made pre-pandemic statements untrue or misleading. The actions discussed below will serve the public interest and protect investors by avoiding the squandering of company time resources on the defense and settlement of illegitimate lawsuits—especially given the incredible burdens placed on company management and company resources by the pandemic.

1. The Commission's authority under the PSLRA should be used, for example, to bar liability for statements about a company's plans or prospects for getting back to business, resuming sales or profitability, or other statements about the impacts of COVID-19, whether forward-looking or not—as long as suitable warnings were attached. Such warnings will remind investors of the tremendous uncertainty inherent in the ongoing pandemic, which has led to fast-moving changes to the health and business environment—while at the same time protecting companies already facing economic hardship and uncertainty from Monday-morning quarterbacking by plaintiffs' lawyers seeking to bring securities class actions just because the company's stock price dropped post-pandemic.

2. Alternatively, the Commission should consider limiting liability for all such statements to circumstances in which the plaintiff can prove that the speaker had actual (subjective) knowledge of its falsity.[39] In other words, the Commission would be treating such statements as the equivalent of statements of opinion for purposes of securities fraud claims.[40] The analogy is an appropriate one: the impact of COVID-19 on business operations and profitability is so uncertain that any statement necessarily incorporates a subjective assessment that should not be actionable unless this heightened scienter standard is satisfied.

That approach would have the benefit of eliminating, or at least limiting, the ability of plaintiffs' lawyers to seize upon generalized pre-pandemic statements of emergency preparedness to argue that the company misrepresented its readiness and therefore is liable for stock price drops post-pandemic. Even in the early stages of the pandemic, there was a lack of consensus about the projected severity and duration of COVID-19—with scientists and government officials providing widely varying assessments.[41] Requiring actual knowledge of the falsity of pre-pandemic statements will help ensure that the focus properly remains on the issuer's knowledge at the time the statement was made, not how well the statement holds up after-the-fact.

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[38] SEC, *Topic No. 9*, *supra* note 37.

[39] *Cf.* 15 U.S.C. § 77z-2(c)(1); 15 U.S.C. § 78u-5(c)(1) (requiring "actual knowledge of falsity" for liability based on forward-looking statements covered by the statutory safe harbors).

[40] *See Omnicare v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 182-86 (2015) (discussing statements of opinion made in a registration statement filed in connection with a public offering).

[41] *See* Richard Zelichov and Christina Costley, *COVID-19 Securities Class Actions May Hinge On Disclosures*, *supra* note 30.

3. There is also a risk of COVID-19-related litigation based on alleged misstatements in financial statements themselves—which do not receive any protection from the PSLRA's statutory safe harbors. After all, many of the items included in financial statements are heavily reliant on current market conditions and projections, all of which are tremendously uncertain due to the pandemic and therefore are highly susceptible to second-guessing in litigation if things do not turn out in accordance with the estimates embodied in the financial statements.

To address this risk, a reasonable solution would be for the Commission to require inclusion in financial statements a statement reminding financial statement users that a number of the elements of financial statements are determined on the basis of projections of future business or market conditions or by applying "mark to market" standards and stating that due to the tremendous uncertainties flowing from the pandemic and its effect on the economy, there is a greater possibility of variation than in the past. The Commission should then bar liability for claims based on statements that satisfy these warnings, or alternatively, treat them as the equivalent of opinions that require proof of subjective knowledge of falsity in order to be actionable.

This limitation on liability would not necessarily preclude all litigation, but it would address unjustified financial statement-based liability by limiting circumstances in which a lawsuit could be filed. Such warnings would also make it somewhat more difficult to establish reliance as well as impact on the market price for these types of securities lawsuits.

Given the importance and time-sensitivity of the issues raised in this petition, the Chamber requests that the Commission consider this issue expeditiously and initiate the rulemaking process as soon as possible.

We, of course, would be happy to provide any additional information that would be useful to the Commission or its staff in consideration of this matter.

Sincerely,

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