



## U.S. CHAMBER OF COMMERCE

### Comments on the European Commission’s Consultation on the Renewed Sustainable Finance Strategy

July 2020

The U.S. Chamber of Commerce (“Chamber”) welcomes the opportunity to respond to the European Commission’s (“Commission”) *“Consultation on the Renewed Sustainable Finance Strategy (“Consultation”)*.

The Chamber is a longtime advocate for strong commercial ties between the United States and the European Union. According to a recent Chamber study, the U.S. and EU are jointly responsible for more than one-third of global gross domestic product, and transatlantic trade and investment supports 16 million jobs on both sides of the Atlantic.<sup>1</sup> In the U.S. and globally, we advance balanced policy frameworks that support economic growth, promote consumer protection, and foster innovation. The Chamber is also a leading business voice on the capital markets.

#### Introduction

The Chamber’s members, many of whom are heavily invested in Europe and maintain global operations, represent a key stakeholder base as the Commission considers its ambitious Green Deal agenda. As a supporter of U.S. participation in the Paris Agreement, the Chamber has followed with interest the EU’s implementation efforts, including *inter alia* the 2018 Sustainable Finance Action Plan, EU Taxonomy, Non-Financial Reporting Directive, and the International Platform on Sustainable Finance.

In broad terms, the Chamber believes that sustainability and sustainable finance policies should follow several core principles:

- Focus on functioning markets and creation of deep, sound, and liquid markets. Economic return must be an important factor for investors.

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<sup>1</sup> U.S. Chamber of Commerce & AmChamEU, [The Transatlantic Economy 2020](#).

- Balance market demand for sustainable finance solutions with the primary objectives of unhampered market functioning, value creation, and financial stability.
- Consider ways to minimize market fragmentation and where possible, work toward enhanced international cooperation to minimize compliance challenges arising from varying requirements in different countries.
- Allow companies to disclose relevant information regarding environmental, social, and governance (“ESG”) issues in a voluntary format. Each company should maintain flexibility to determine which ESG factors and related metrics are relevant and what disclosure is meaningful for its stakeholders. Policymakers should enable the development of market-led standards and guidelines to meet the need of companies and their stakeholders, allowing flexibility in the delivery of relevant ESG disclosures and related metrics.
- ESG disclosures should discuss a company’s approach to risk management, making the connection between the ESG factors on which it reports and the company’s long-term value creation strategy. Any mandated disclosures should always be guided by the principle of materiality to ensure that investors receive decision-useful information and are not harmed by information overload.

These themes are incorporated below as we comment on several specific areas of the Commission’s Consultation.

## **Market-driven Approach**

While there appears to be growing market demand for sustainable finance, the Chamber believes that the market should ultimately drive this important agenda to the benefits of investors and consumers alike, which requires flexibility in the integration of sustainability considerations into investment decisions and the advisory process.<sup>2</sup>

The Chamber is also concerned about the use of investor savings vehicles to meet objectives that may not always be tied to economic returns. We understand that the Commission has recently published amended delegated acts of MIFID II and

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<sup>2</sup> Center for Capital Markets Competitiveness, Comment Letter to the European Commission, August 23, 2018, [https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/08/USChamber\\_Comments\\_EuropeanCommission\\_Directive2016\\_2341.pdf](https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/08/USChamber_Comments_EuropeanCommission_Directive2016_2341.pdf)

IDD, which will require investment advisors to ask retail investors about their sustainability preferences. Investors should be allowed choice in their investments based on their stated preferences, including a preference not to consider ESG factors in their investments. Investments that prioritize ESG priorities over other factors should be voluntary options.

Offering incentives to either issuers or investors could boost the market for sustainable investments, though there is also a risk that such measures could effectively penalize those investors whose main priority is to invest for return on investment (ROI) as part of a long-term retirement strategy. In addition, offering incentives for ESG investments, which may not necessarily offer the highest return, could create a new risk and liability to the fiduciary duty of a broker-dealer or investment advisor.

Given the prescriptive nature of the proposals being formulated, there is a risk that the reforms could hinder the effective allocation of capital within EU economies and act as a deterrent to adoption given the risk they may inhibit innovation and investment. Social and economic development should not be deemed secondary to the EU's policy objectives on climate change, rather as complementary with scope for more balanced approaches to develop, reflecting the varied needs of all stakeholders.

## **Fiduciary Duty**

The consultation also invites comments on whether to adapt rules on fiduciary duties and the best interests of investors to consider and integrate adverse impacts of investment decisions on sustainability. In the case of U.S. regulation, broker-dealers and investment advisers may not subjugate investment returns for other objectives when making recommendations to clients.

The Chamber has held a series of discussions on sustainability and sustainable finance with various market participants. In some cases, aligning client objectives with sustainability may not be in the best interest of a client. Allocating capital to produce positive ESG outcomes does not necessarily translate to strong financial performance for companies.

Accordingly, requiring investment representatives to act in the best interest of their customers while taking into account both ROI and sustainability objectives could create confusion and new legal risks for those advisers. The Chamber remains concerned about integrating sustainability factors into fiduciary duties if there exists a tradeoff between generating return and supporting sustainability. In order to mitigate

such risks, the Chamber suggests that investment representatives be provided with a safe harbor from litigation or other claims upon satisfaction of reasonable conditions such as standardized disclosure and client consent.

## **ESG Disclosure**

The Chamber understands that views on ESG disclosure are diverse. We strongly believe that materiality is the bedrock of corporate reporting, setting the threshold for what public companies are mandated to disclose, while realizing that firms can always choose to disclose more voluntarily. Disclosure should focus on what investors most need to know about an investment, which could include a discussion about environmental, social or governance factors.

We encourage the Commission to avoid a one-size-fits-all approach to ESG disclosure that risks becoming more of a “check the box” exercise rather than focusing on material information.<sup>3</sup> What is material for one company or sector may not be material for another. As a result, companies should be allowed to maintain flexibility in determining which ESG factors and related metrics are most relevant to their stakeholders.

In fact, companies are already leading the way on how to approach ESG reporting and in a way that provides the most relevant data to investors without overloading them with immaterial information. To cite one example: the Edison Electric Institute and the American Gas Association worked with issuers and investors to develop an ESG reporting template to help electric and gas companies provide more uniform and consistent sustainability data to the financial sector. In addition, asset managers already are conducting analyses and reporting on material risks and negative externalities to investors as a result of particular environmental, social, or governance issues. These private sector-led solutions are already working in practice and should not be stifled by a one-size-fits-all mandate.

## **Credit Ratings**

The Consultation Paper includes a chapter on (i) credit rating agencies (“CRAs”), and another on (ii) sustainability research and ratings. These are different services that speak to different investor needs.

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<sup>3</sup> The 2020 EU Consultation on the [Review of the Non-Financial Reporting Directive](#) included a discussion regarding how a materiality standard would be applied to non-financial reporting under the Directive.

The Chamber recognizes that in recent years CRAs have taken steps in order to explore the transparency and effectiveness of the integration of ESG factors into their credit ratings. CRAs are increasingly demonstrating how ESG can be a factor in their credit ratings by providing more transparency and disclosure.

We agree with ESMA's findings in its July 2019 report on the matter that CRAs "are considering ESG factors in their ratings."<sup>4</sup> We also recognize ESMA's finding that "the extent to which ESG factors are being considered can vary significantly across asset classes, based on each CRA's methodology."<sup>5</sup> However, we agree with ESMA's conclusion that "given the specific role that credit ratings have in the EU regulatory framework for the purposes of assessing credit risk, it would be inadvisable to amend the CRA Regulation to explicitly mandate the consideration of sustainability characteristics in all rating assessments."<sup>6</sup> We also believe that it is important that the methodologies of credit rating agencies remain free from political interference and should remain focused on credit quality, including in relation to ESG factors where relevant to creditworthiness. Where ESG factors have an impact on credit quality this should be disclosed in line with ESMA's guidance which took effect in March 2020.

## **ESG Ratings and Scores**

We urge the Commission to avoid a conflation of credit ratings with sustainability assessments. The fact that an investment is considered "green" does not *per se* mean that it is more or less creditworthy than a "non-green" investment. Such a conflation would instead be confusing to the market.

ESG ratings or scores, which are different from credit ratings, typically evaluate and / or rank companies based on their individual ESG performance and disclosures to provide investors with a summary of a company's performance and / or ESG preparedness in relation to its peer group. Investment firms are increasingly viewing ESG ratings or scores as data points they review when considering their investment decisions.

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<sup>4</sup> ESMA Advises on Credit Ratings Sustainability Issues and Sets Disclosure Requirements, July 18, 2019, <https://www.esma.europa.eu/press-news/esma-news/esma-advises-credit-rating-sustainability-issues-and-sets-disclosure>

<sup>5</sup> European Commission, Consultation on the Renewed Sustainable Finance Strategy, page 35, [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2020-sustainable-finance-strategy-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-sustainable-finance-strategy-consultation-document_en.pdf)

<sup>6</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-advises-credit-rating-sustainability-issues-and-sets-disclosure>

Companies have encountered challenges from non-transparent methodologies as well as the tendency of some ESG rating or score providers to adapt their ranking methodologies from year to year. Here again, the Chamber would favor the private sector taking the lead in developing such methodologies, given its better understanding of the varying factors that affect different sectors of the economy.

## **Timing of Sustainability Initiatives**

The Consultation reflects the view that “the financial system as a whole is not yet transitioning fast enough.”<sup>7</sup> We appreciate the urgency with which the EU would like to pursue these issues but respectfully suggest that implementation of the 2018 Sustainable Finance Action Plan be prioritized and any technical issues addressed before broadening the agenda. Measures spelled out in the 2018 action are not yet fully operational and harmonized, and more work is required on regulations related to disclosure, suitability, taxonomy, and benchmarks. Financial institutions, on whom the Commission has placed the onus for the transition to sustainability, are analyzing existing policy and reviewing effectiveness. We encourage the Commission to make sure current measures are effective before adopting new and potentially confusing regulations.

## **Conclusion**

We thank the Commission for the opportunity to provide these comments and look forward to continued dialogue as the EU develops its sustainable finance initiatives.

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<sup>7</sup> European Commission, Consultation on the Renewed Sustainable Finance Strategy, page 4, [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2020-sustainable-finance-strategy-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-sustainable-finance-strategy-consultation-document_en.pdf)