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Statement of the Shadow Financial Regulatory Committee on

Specialized Corporate Disclosure Provisions in the Dodd-Frank Act

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The 1933 and 1934 Securities Acts delegate authority to the Securities Exchange Commission (SEC) to regulate US securities markets in the interest of investor protection. This authority includes the responsibility to design and monitor reporting by security issuers. Although one may question the success of the SEC's process in the context of specific disclosures, the resulting reporting environment is viewed as one of the best in the world. Capital issuers from other jurisdictions choose to adhere to the higher quality accounting and reporting standards in the US in order to lower their cost of raising capital.

The Dodd-Frank Act of 2010 intrudes on the SEC's well-established process by including several provisions that require the SEC to formulate certain corporate disclosures. Two problems arise from Congressional intervention in this process.

First, the mandated disclosures have no clear relationship to either financial reform or consumer protection. Title XV of the Act ("Specialized corporate disclosure provisions"), for example, mandates disclosure requirements for conflict minerals (Section 1502), coal mine health and safety violations (Section 1503), and payments to governments by firms in the resource extraction industry (Section 1504). The fact that the Act delegates implementation of disclosure rules for these items to the SEC, rather than controlling these activities directly through legislation, allows Congress to promote social causes (e.g., discouraging support for rebels from conflict mineral mining in foreign countries) in the guise of investor protection while avoiding any on-budget costs.

Second, Dodd-Frank overrides the cost/benefit analysis that is an important component of the SEC's process in mandating disclosures. Indeed, these disclosures were mandated without regard for whether they would withstand a careful cost/benefit analysis by the SEC. A recent judicial decision illustrates this concern. Rule 14a-11 regarding shareholder proxy access for director nominations, another result of Dodd-Frank's provisions, was successfully challenged in the District of Columbia Circuit Court of Appeals in the Business Roundtable v. SEC case on the grounds that it was not supported by a careful evaluation of the costs and benefits.

In summary, Congressional mandates for disclosure circumvent the established due diligence process at the SEC and saddle publicly-traded corporations with disclosure requirements that are not based on discernible benefits to investors, but that needlessly impose costs on them.