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February 8, 2021

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
rule-comments@sec.gov
Washington, D.C.

PETITION FOR RULEMAKING == TRUTH IN EQUITY

Dear Ms. Countryman,

Text of the proposed rule change

Section 243:100 (c) In any press release or statement relating to civil rights, diversity, equity and inclusion, equal opportunity or topics reasonably deemed to be related, it shall be material for listed companies to disclose:

- a) their most current EEO-1 report; whether it has been reviewed by its board of directors and any remedial steps taken by the chief executive and board consistent with the Civil Rights Act of 1964
- b) whether the firm has voluntarily complied with the Joint Standards of the Federal Financial Institutions Examination Council pursuant with the Dodd-Frank Act and to provide submitted information on employee diversity, board diversity, supplier diversity and diverse investment managers, including submissions to local and state agencies and institutional investors.

- c) any outstanding legal decisions, regulatory filings or settlements, sealed or unsealed, relating to employee discrimination, fair housing, fair credit, labor standards and environmental discrimination
- d) companies may comply by aggregating this information in a single online location and referring to that location in subsequent communications

Petitioner's Interest and Rationale for Rulemaking

Publicly-traded companies and investment firms regulated by the SEC often make statements in support of equal opportunity, a term defined by the Civil Rights Act of 1964. However, they rarely admit any deficiencies in this area in those lofty aspirations. With institutions owning 80 percent of equity markets (\$21 trillion of the Russell index and \$18 trillion of the S&P)¹, investors have no standards to evaluate the risk to firms from non-compliance or to engage investment screens in an effective way.

Acting Chair Allison Lee states, "For one thing, when companies have to formulate disclosure on topics it can influence their treatment of them, something known as the "what gets measured, gets managed" phenomenon. Moreover, when companies have to be transparent, it creates external pressure from investors and others who can draw comparisons company to company.

The Commission has long-recognized that influencing corporate behavior is an appropriate aim of our regulations, noting that "disclosure may, depending on determinations made by a company's management, directors and shareholders, influence corporate conduct" and that

¹ <https://www.pionline.com/article/20170425/INTERACTIVE/170429926/80-of-equity-market-cap-held-by-institutions>

“[t]his sort of impact is clearly consistent with the basic philosophy of the disclosure provisions of the federal securities laws.”

SEC officials are left to discern scattered shareholder proxies with no rhyme or reason. In the larger economy, the pension funds of African-American public employees have little way to prevent themselves from investing in firms which engage in systematic employment, environmental injustice and consumer discrimination against them.

African-Americans have a unique status in American public policy. The Constitution allowed them to be held in uncompensated bondage from 1787 to 1865 while counting their bodies for apportionment. In return for their service on behalf of the Union in the Civil War, as demonstrated in the African-American Civil War Memorial at Vermont and 14th Street which inscribes the names of 209,145 U.S. Troops of African Descent, Congress and state legislatures approved the 13th Amendment by Dec. 6, 1865 – the most important event in African-American history.

After the pardoning of Confederates by Andrew Johnson, an effort to evade public debt led to the passage of the 14th Amendment in 1868. Its provisions include the most well-known equal protection of the law, but more importantly to the economy, the pledge of the full faith and credit of the United States for public debt, the underpinning for the modern financial markets.

The importance of rectifying the impact of *de jure* discrimination is underscored that all three amendments were ratified by the legislatures of every state in the Union at the time and each was ratified in less than a year. As a result, 3.6 million persons counted as slaves in the 1860 Census were among the 4 million African-Americans counted as citizens in the 1870 Census. The U.S. Department of Justice was formed in 1870 to protect their rights through the three Foree Acts.

It would be 56 years before another Constitutional amendment was ratified. The financial markets cover the entire sweep of the American republic's history and must embrace its responsibilities as vigorously as its benefits.

The petitioner is author of the comprehensive trilogy of books on the 13th, 14th and 15th Amendments, and a business editor for 42 years who was the first journalist to analyze Home Mortgage Disclosure Act filings in 1978. Since 1980, he has conducted a longitudinal study of African-American neighborhoods nationally, described in the book *Come This Far By Faith: African-Americans 1980-2020*. As the first African-American editor of a business newspaper at the *San Jose Business Journal*, he is one of the most veteran observers of technology industries, issuing the *Silicon Ceiling: Equal Opportunity in High Technology* report for the past 20 years. He testified on these issues to the Senate and House Judiciary Committees beginning in 1998 up to this year. A fourth generation Presbyterian Ruling Elder whose ancestors date to 1780 in the denomination, he was advocate on behalf of the National Capital, New York City, San Francisco and Puebla Presbyteries for the 2018 overture by the PCUSA General Assembly honoring Rev. Henry Highland Garnet, first African-American to speak in the U.S. Capitol. Since 2004, honoring the death of his younger brother in police custody, he has researched all 50 states to develop the annual State of Black Business report each May, which recommends each year the National Black Business Month in August to shape policy discussions about this sector, which includes seven percent of all U.S. firms. Because of the lack of national data on these firms, the author collects data from a variety of sources including Social Security actuarial data, disparity studies and direct interaction with entrepreneurs. Findings were presented in

testimony to four committees during the passage by two-thirds of the California Assembly and Senate of Assembly Constitutional Amendment 5 in June 2020. Throughout the year, findings are published in the monthly *Journal of Black Innovation*, now in its sixth year. The *Journal* holds an annual Innovation&Equity Symposium each year on the birthday of Dr. Martin Luther King Jr. to refine best practices and pinpoint growth catalysts. His Our10Plan: the African-American economic strategy for achieving ten percent of GDP by the end of the International Decade for Peoples of African Descent was unveiled at the 2015 conference of the National Black Caucus of State Legislators.

During a 120 year period, the three Reconstruction Amendments are the only additions to the Constitution, making their rapid acceptance in less than a year respectively all the more significant. They constitute a compact between a grateful nation and the four million Africans who chose the Union over the Confederacy that their descendants would enjoy the blessings of the unified country. Politically, the interests of financiers and freedmen converged during that five year period.

One hundred fifty years later, the House Financial Services Committee² found in February 2020:

“Banks and other financial services firms claim to agree with the underlying premise that diverse, inclusive organizations can be more profitable and productive. But despite the known benefits, the financial services industry, including our nation’s banks, remains mostly white and male. This

² <https://docs.house.gov/meetings/BA/BA13/20200212/110498/HHRG-116-BA13-20200212-SD003-U1.pdf>

is not only true of banks' workforces and executive ranks, but is also true for banks' boards of directors, suppliers, and asset managers.

“There is little relevant data in this space because banks and other financial services firms do not fully disclose their diversity and inclusion data or policies. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the Offices of Minority and Women Inclusion (OMWI) in part to begin to hold industry accountable for diversity and inclusion.

“Despite this explicit authority, the prudential regulators, including the Federal Reserve Board of Governors, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC), issued guidance (known as the Joint Standards) that permits banks and other institutions to comply with the OMWIs' requests for diversity and inclusion data voluntarily. Since the adoption of the Joint Standards, banks have only marginally participated in requests from the OMWIs. Further, the little data that is collected is not publicly available.

“Because of the lack of bank diversity data, House Financial Services Committee Chairwoman Maxine Waters, and Diversity and Inclusion Subcommittee Chair Joyce Beatty, asked America's 44 largest bank holding companies and savings and loan holding companies—those with \$50 billion in assets or greater—to share their diversity data directly with the Committee. Although all 44 institutions responded to the request, not all institutions fully responded to each of the questions posed in the letter.

The Committee staff analyses found that:

- Banks' boards of directors are not diverse;
- Banks' senior employees are not diverse; and,
- Banks have limited spending and investments with diverse firms.”

The Committee's Subcommittee on Diversity followed up on Feb. 4, 2021 with testimony from the OMWI directors of the financial regulators. During both Februarys, most of the regulated entities are advertising their support for "Black History" and what they're doing for African-American consumers and businesses.

Like the 14th Amendment, the financial stability provisions of the Dodd-Frank are paired with equal protection provisions. African-Americans faced the brunt of the damage from the 2008 financial meltdown, although the \$10 trillion bailout went to financial services firms which caused the crisis.

The petitioner has published blackmoney.com, a financial news daily, since 1995. In July 2020, it published an analysis of PPP loans, finding that \$550 million of \$561 billion went to African-American firms³, one-thousandth of the total. Most observers assigned the cause for the disparity to the lack of relationships between African-American businesses and most banks. Bloomberg reports that only 25 of the top 100 public firms are willing to disclose their equal opportunity hiring record.⁴

Additionally, companies regularly enter into settlements of serious litigation or regulatory actions, particularly on employment discrimination and environmental justice concerns. These events are never disclosed when those same firms make "Lake Wobegon" statements about their commitment to "racial equity."

³ blackmoney.com

⁴ <https://www.bloomberg.com/graphics/diversity-equality-in-american-business/?srnd=premium>

The petitioner is Chairman of the Board of the Central Brooklyn Economic Development Corp., serving the densest population of African-Americans in the nation in Brownsville in the largest concentration of Blacks in any metropolitan area. One in ten of all Blacks live in the New York metropolitan area breathing the same air as the largest concentration of the financial services industry.

Recently, his executive director was approached by an international consulting firm with an offer of assistance. Just days later, New York State's attorney general announced a major settlement with that firm over its role in the opioid epidemic.

This petition for rulemaking is filed in conjunction with two complaints to the San Francisco office of the Securities and Exchange Commission.

As the rare original content provider in the explosion of online media, the graduate of the Stanford Professional Publishing Course has been a leader in intellectual property protection particularly for small presses, with 34 years as a book publisher and film producer. While monitoring his properties in July, he discovered that Facebook was appropriating his longitudinal economic initiative in the days before a troublesome hearing in front of the House antitrust subcommittee on July 25, 2020. The petitioner had testified before the same subcommittee in January about the anti-competitive impacts of network monopolies on Black businesses and before the House Small Business Committee in November 2019.

Facebook faced an array of issues which could fit the blues song "If It Wasn't for Bad Luck, I'd Have No Luck At All." In July, it was facing:

- 1) an advertiser boycott led by Color of Change, NAACP Legal Defense Fund, Anti-Defamation League⁵
- 2) a shareholder lawsuit over its poor equal opportunity employment⁶
- 3) a Senate Intelligence Committee report on the 2016 election detailing how it was used to suppress black voter turnout⁷
- 4) the largest civil rights fine in history, a \$5 billion penalty from the U.S. Department of Housing and Urban Development for violating the Fair Housing Act by discriminating against African-Americans
- 5) In June, Facebook's own equity audit was critical of the company's performance

Yet it attempted to promote itself for the first time as the sponsor of the 17-year-old National Black Business Month in a press release to the advertising trade magazine AdWeek. After a cease and desist letter, it changed to "Black Business August" and advertised a spot during August with a single Los Angeles restaurant as a sign of its commitment to Black businesses.

The real intent was to counter the negative impact of the boycott.

Despite those negative developments, a \$5 billion privacy penalty by the Federal Trade Commission and a subsequent anti-trust suit by more than 40 state attorneys general,

⁵ <https://www.npr.org/2020/07/01/885853634/big-brands-abandon-facebook-threatening-to-derail-a-70b-advertising-juggernaut>

⁶ <https://www.law.com/therecorder/2020/07/08/meet-the-lawyers-who-want-to-overhaul-oracle-and-facebooks-boardrooms/>

⁷ <https://www.pbs.org/newshour/politics/senate-panel-finds-russia-interfered-in-the-2016-us-election>

Facebook’s market value rose. It is likely that investment managers were unaware of those developments or didn’t connect them with investment risk.

The House Financial Services panel reported:

“Because compliance with the Joint Standards is voluntary, participation by banks in the requested self- assessments from financial regulators has been low. Committee staff review of a sample of bank regulators’ OMWI reports reveals low response rates by requesting agency:

- FDIC – 16.7% response rate.
- OCC – 9.3% response rate.
- Federal Reserve – 5% response rate.

Banks also varied in the extent to and frequency with which they publicly disclose their diversity statistics and policies. Committee staff found that 23 of the 44 banks publicly share diversity statistics. In June 2017, Fortune Magazine also noted that even if they were ranked among the best at diversity, only three percent of Fortune 500 companies publicly share their full diversity.”

By any analysis, the nation’s publicly-traded companies do not take the Civil Rights Act seriously, even to Congress or financial regulators.”⁸

The report noted that the regulatory agencies chose to make the standards voluntary although requested in Section 342(e) of Dodd-Frank.

In 1998, the petitioner conducted the first Silicon Ceiling: Equal Opportunity in High

Technology report, requesting through a Freedom of Information Act request, EEO-1 forms for

⁸ <https://docs.house.gov/meetings/BA/BA13/20200212/110498/HHRG-116-BA13-20200212-SD003-U1.pdf>

1,200 northern California employers. Only 200 of them even filed a report, even though it is required for all employers with more than 100 employees.

In the 2017 Silicon Ceiling report, the petitioner surveyed the recruitment sites for 235 San Francisco technology employers. Only 20 had photos of African-Americans on the web pages.

IMPACT OF FINANCIAL MARKETS ON ECONOMIC INEQUALITY

The cobblestones of Wall Street hold the legacy of those who laid them. The African Burial Ground⁹ at 290 Broadway describes the 15,000 Africans buried in lower Manhattan from the 1600s who built the Broadway seawall and Wall Street, site of the first federal government.

From the 1600s to 1990, the most recognized stock index, the Dow Jones Industrial, reached a high of 1,000. The petitioner was editor of the *San Jose Business Journal*, Silicon Valley's leading business newspaper in 1987 during the stock market crash created by the tactics of Drexel Burnham Lambert.

The federal government bailed out the financial industry. The Financial Institutions Reform and Recovery Act¹⁰ created the Resolution Trust Corp., which along with the Federal Deposit

⁹ <https://www.nps.gov/afbg/index.htm>

¹⁰ <http://www.workingre.com/wp-content/uploads/2013/08/cost-of-SL.pdf>

Insurance Corp., closed more than 1,000 savings and loans institutions with \$105 billion in Congressional appropriations..

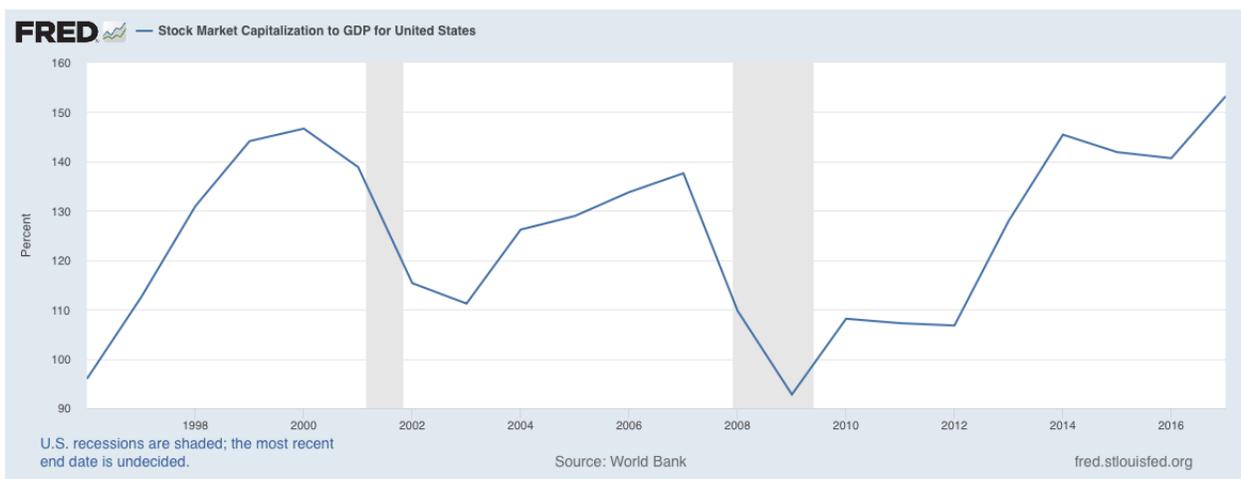
In 2003, in a *San Jose Mercury News* interview, the petitioner predicted a replay of the crisis because the wrong lesson had been drawn with the deregulation of financial markets.

By 2008, his prediction had come to pass. The Troubled Asset Recovery Program had a cost to the federal government of \$498 billion.¹¹

But for African-American households, the impact was staggering and targeted.¹² They lost half of their wealth due to policy changes they had largely been unaware of. Even in Prince George's County, MD, the most affluent majority Black county in the nation, home values dropped \$100,000.¹³

In contrast to the decline in Black wealth, the liquidity of the national economy expanded greatly. The Federal Reserve balance sheet never exceeded \$1 trillion until the 2008 crisis, expanding from \$870 billion in 2007 to \$2.23 trillion by 2009.¹⁴ Now, the balance sheet has expanded beyond \$7 trillion.

That expansion has enabled the growth of the Dow Jones Industrial from 1,000 in 1987 at the beginning of the first bailout to 30,000 after the third bailout in 30 years.



The growth did not flow to African-American households, according to the Federal Reserve 2019 Survey of Consumer Finances.¹⁵ “Black families’ median and mean wealth is less than 15 percent that of White families, at \$24,100 and \$142,500.”

In addition to the steering of monetary policy towards whites, the federal government hastened the growth of cutting edge technologies which have turned into publicly traded companies. “In 2018, the U.S. government awarded \$92.8 billion for R&D to nongovernment researchers, with the disbursements as follows: Private industry and its research centers received 47.2 percent of the funding; universities, colleges, and their research centers got 39.3 percent; and other nonprofits were awarded 9.1 percent of the funds.”¹⁶

Of Small Business Innovation Grants, 0.3 percent went to African-American firms. Historically Black colleges and universities received 0.2 percent of National Science Foundation research awards.

State and local governments that receive federal funding are required to comply with the Civil Rights Act of 1964 and Executive Orders on equal opportunity and supplier diversity.

Department of Transportation grantees must complete disparity studies as a condition of receipt of awards. This contrast creates a situation in which African-American employment in public entities meets or exceeds workforce availability.

¹⁵ <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>

¹⁶ <https://www.americanprogress.org/issues/race/reports/2020/08/18/489609/redesigning-federal-funding-research-development/>

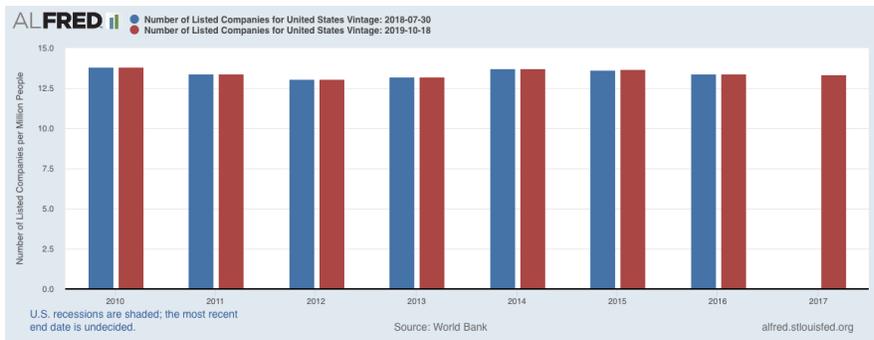
The House Financial Services Diversity subcommittee, led by Congressional Black Caucus Chair Rep. Joyce Beatty, D-OH, sought data on workforce diversity, board diversity, supplier diversity, pay equity and investing with diverse asset managers.

Given the significant public investment undergirding many publicly-traded companies, it is appropriate to require the same transparency as is provided by public entities. The federal assistance to private entities in 2020 through the Payroll Protection Program exceeds the outlays for the 1987 and 2008 bailouts combined.

A compelling state interest exists to insure that the protections of the Civil Rights Act of 1964 and the mandate of Dodd-Frank become real for African-Americans in the private workforce.

There are more than 13 million public employees paying into public pension funds.

Their savings are funding more than 13,000 listed companies in the United States, but we don't



have the same transparency about those firms' compliance with the Civil Rights Act of 1964.

The recent NASDAQ

filing on board diversity indicates a growing industry consensus that action is both morally right and good for the bottom line. A letter by a group of corporate counsel who are women of color

noted that the average legal costs for an EEOC complaint are \$250,000¹⁷, making the EEO-1 report all the more material.

The Jan. 20 Executive Order by President Biden calls for a whole of government approach to racial equity, in which the entire burden of policing employment and business bias is not left to the EEOC and Department of Justice.

Our analysis indicates that the market mechanisms are substantially fueling an unprecedented concentration of wealth. The last such concentration of wealth in the “Gilded Age” led to the onset of Jim Crow.

Market forces also led to the 13th, 14th and 15th Amendments. American democracy calls for this age to hew to that standard.

¹⁷ <https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081-8177982-227045.pdf>