RE: The European Union's Corporate Sustainability Directive

Dear President Trump:

We, the undersigned state officials, are responsible for stewarding our states' financial resources and protecting our states' investments. Over the last several years, we have highlighted the ways in which both private actors and government regulators have attempted to distort financial markets, starving critical industries of much-needed capital, to advance ideological social and environmental agendas rather than prudent investment. This well-documented "ESG" trend—collusion among the world's largest asset managers, non-governmental organizations, and financial regulators—undermines our states' financial positions and our ability to protect the investments we manage for our states.

We write with enthusiasm to thank and commend you for the steps that you and your administration are taking to remove "burdensome and ideologically motivated regulations" that "have impeded the development" of the "energy and natural resources" with which "America is blessed."[1] As you rightly note, under the previous administration, "[c]limate extremism…exploded inflation and overburdened businesses with regulation."[2] Such regulations included American financial regulators' various efforts to compel ESG investing and to allow the use of the corporate proxy machinery to advance ideological interests divorced from shareholder value. We are grateful you have prioritized the elimination of these rules.

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[1] *Unleashing American Energy*, Exec. Order No. 14154, 90 Fed. Reg. 8353, 8353 (Jan. 29, 2025), https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-01956.pdf.

[2] *Initial Rescissions of Harmful Executive Orders and Actions*, Exec. Order No. 14148, 90 Fed. Reg. 8237, 8237 (Jan. 28, 2025), https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf.

You have also withdrawn the United States from the Paris Agreement and directed **a review of international "agreements and initiatives" that "unduly or unfairly burden the United States."**[3]

As part of this review, we would ask that you direct the United States Trade Representative ("USTR") to investigate the European Union's Corporate Sustainability Directive, along with the overall European "Green Deal" and related taxes, subsidies, and directives. The Corporate Sustainability Directive imposes onerous ESG reporting and supply chain requirements on companies with operations in the European Union ("EU")—including many American companies—with no discernible benefit to investors or the U.S. economy. The Directive would regulate the activities of such companies beyond the EU's borders, including such companies' domestic operations in the United States. Even within Europe, this directive is controversial, and the President of France has asked the EU to indefinitely postpone its implementation.[4] As the EU debates whether to modify or withdraw the directive, the United States has a crucial opening to express its clear opposition.

Under the Corporate Sustainability Due Diligence Directive ("CS3D") any company organized or doing business in the EU must adopt a "risk-based" approach to due diligence.[5] Companies will be required to implement a Paris Agreement-compliant "climate transition" plan (whether or not their home country is a signatory to the Paris Agreement). Companies will also be required to adopt a system to assess and address supposed up- and down-stream climate and social risks in their supply chains.[6] This will allow European bureaucrats to dictate a nearly infinite range of in-scope issues American companies will be required to address, including in their domestic operations.

Similarly, the Corporate Sustainability Reporting Directive ("CSRD") subjects companies listed on EU-regulated stock exchanges and other non-listed companies with EU operations to a sweeping set of ESG-related disclosures.[7] The directive embraces the novel and overreaching notion of "double materiality," which requires not only disclosure and measurement of sustainability-related issues that are not

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[3] *Putting America First in International Environmental Agreements*, Exec. Order No. 14162, 90 Fed. Reg. 8455, 8455 (Jan. 30, 2025), https://www.govinfo.gov/content/pkg/FR-2025-01-30/pdf/2025-02010.pdf.

[4] Giorgio Leali & Marianne Gros, Politico (Jan. 23, 2025), https://www.politico.eu/article/france-urges-brussels-to-indefinitely-delay-eu-green-rules-for-business/.

[5] CS3D art. 1, § 1(c).

[6] *Id.* para. 39; *id.* art. 5.

[7] Directive (EU) 2022/2464, 2022 O.J. (L 322/15), 16.12.2022, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2464.

only "financially material" – i.e., materially affect the company's financial well-being – but also those that may have a "material" impact on a broad set of stakeholders. This concept of "impact materiality" is ill-defined, completely foreign to U.S. issuers that are accustomed to the Supreme Court's longstanding definition of "materiality," and entirely unrelated to investor needs. [8] In other words, under the CSRD, American businesses will be compelled to conform their corporate disclosures to the broad wish list of European bureaucrats driving an ideological agenda.

In addition to the compliance liability, we are concerned that the disclosures will be exploited by American plaintiffs' lawyers in tort litigation against American companies. The EU directives, built on unscientific assumptions about the nature of climate change impacts and ignoring the reality that the world's economy remains reliant on fossil fuels for the foreseeable future, will force companies to incriminate themselves.

While EU member states are key American trading partners and geopolitical allies, this partnership cannot come at the cost of subjecting American companies to unbounded regulatory requirements that will only weaken the economies of both Europe and the United States. By reaching into domestic business operations, the directives serve as a direct assault on American sovereignty.

The EU's directives will accelerate the misallocation of capital that ESG policies impose on financial markets, even while your Administration is correcting these dynamics domestically. This will harm the financial interests of the states that we are charged with protecting.

Because the EU's sustainability directives are so overreaching and undermine key American interests, including energy dominance and economic stability, we ask that you direct USTR to open an investigation under Section 301 of the Trade Act of 1974. Section 301 authorizes the President to take specific economic actions to protect American trade relations with countries that violate agreements or restrict U.S. commerce in unjustified, unreasonable, or discriminatory ways. Given the breadth and scope of the EU's directives, USTR would have ample justification to open an investigation to assess whether such actions are warranted. We also ask that you consider the impact of these extraterritorial directives as part of any overarching trade initiatives you undertake with respect to the EU.

Our aim is to enhance trade relations with the EU's member states—some of our country's strongest allies and best trading partners. The EU's aggressive ESG agenda

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[8] Eur. Comm'n, *Sustainable Finance* (July 26, 2022), https://ec.europa.eu/newsroom/fisma/items/754701/en.

has crippled European economic growth[9] and threatens to undermine that of the United States. This is intolerable. We hope that strong action, including a Section 301 investigation, motivates the EU to reconsider its sustainability directives.

Sincerely,

J. Andrew Sorrell

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[9] Joshua Kirby, *Eurozone Economy Stagnates as It Braces for Fresh Blow From Trump Tariffs*, Wall St. J. (Jan. 30, 2025), https://www.wsj.com/economy/french-economy-shrinks-amid-political-mire-bde5e2f2.

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