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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

June 15, 2022

The Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Gensler:

We are writing to request information regarding the Securities and Exchange Commission's (SEC's) proposed rule on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (climate disclosure rule), which would require publicly-traded companies to gather and report global warming data, almost none of which is material to a business's finances.¹ This sweeping, close to 500-page proposed rule is unnecessary and inappropriate, exceeds the SEC's mission and expertise, will harm consumers, workers, and the entire U.S. economy at a time when energy prices are skyrocketing, and hijacks the democratic process in determining U.S. climate policy.

It is neither necessary nor appropriate for the SEC to promulgate securities regulations to address global warming. Federal securities laws already require publicly-traded companies to make extensive disclosures regarding their businesses, properties, legal proceedings, and risk factors. These disclosures must include any material climate change information and may not be misleading under the circumstances.² In other words, to the extent climate change will have a material impact in any of these areas, companies are already legally required to disclose this information.

While some investors and advocates for more global warming disclosure claim this information would be valuable for investment purposes, non-material disclosures are highly unlikely to have any effect on investment decisions. Rather, climate activists without a fiduciary duty to a company and its shareholders want this information to aid in their efforts to impose their policy preferences on publicly-traded companies (and the nation at large) after having failed to enact these changes through the legislative process. Activists will then use this information to run political pressure campaigns against companies to the detriment of shareholders. This activism is coincidentally aided by some Wall Street asset managers, who claim to be acting on behalf of retail investors. However, it is important to note that some of these firms' business models rely on developing and selling new climate-oriented investment products with higher fees under the guise of "doing good for the climate" even though such products will do little, if anything, to reduce aggregate global greenhouse gas emissions.

¹ *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Proposed Rule of the Securities and Exchange Commission (proposed Mar. 21, 2022), <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

² See, e.g., 17 C.F.R. § 240.10b-5; 17 C.F.R. § 240.12b-20.

Furthermore, the SEC's sweeping proposed climate disclosure rule will impose enormous costs on the entire U.S. economy if it goes into effect. Coupled with Biden administration policies that have been hostile to traditional energy, the SEC's proposed rule will discourage capital investment in oil, natural gas, and other energy industries at a time when inflation is at a 40-year high and energy prices are skyrocketing. It will also force significant job losses within one sector of the economy when it is not the proper role of the SEC to be directing capital allocation.

Regardless of one's views on the merits and foreseeable economic effects of the SEC's proposed climate disclosure rule, it is not the province of unelected financial regulators to dictate U.S. climate policy. The SEC is neither equipped nor authorized by Congress to engage in climate-related policymaking. By attempting to use its rulemaking powers to force all publicly-traded companies, and all private companies in the upstream or downstream value chain of publicly-traded companies, to gather and report detailed climate data, regardless of the materiality of such data to their business's finances, the SEC is venturing far outside its mission and area of expertise.

Unfortunately, the SEC's proposed climate disclosure rule is just the latest example of a financial regulator hijacking the democratic process by straying into a contentious public policy issue wholly unrelated to its mission and expertise. Addressing matters like global warming requires political decisions involving tradeoffs. In a democratic society, those tradeoffs must be made by elected representatives, who are accountable to the American people, not unelected financial regulators.

Finally, outside of the written comment letters submitted in response to the March 15, 2021 request for public input issued by then-Acting Chair Allison Herren Lee, there appears to be limited transparency concerning communications between SEC staff in the Office of the Chairman and any climate activists before the issuance of the proposed climate disclosure rule. The SEC's website has a specific page that lists the large number of meetings held with Commissioners Lee and Caroline Crenshaw and SEC staff at the Division of Corporation Finance prior to the rule's issuance, but that page does not list any meetings involving you or SEC staff in the Office of the Chairman.³ In fact, to date, we have identified only four meetings that have been publicly disclosed involving the Office of the Chairman before the issuance of the proposed rule.⁴

In light of the SEC's decision to advance the proposed climate disclosure rule, we request that you provide answers to the following questions by no later than June 29, 2022:

1. Has the SEC considered the impact that the proposed climate disclosure rule would have on energy prices and any other costs associated with the rule?
 - a. If so, what costs, such as higher energy prices, has the SEC identified? Please provide all analyses pertaining to any such costs that the SEC has considered.

³ Comments on Climate Changes Disclosures, U.S. Securities and Exchange Commission (last accessed June 15, 2022), <https://www.sec.gov/comments/climate-disclosure/cll12.htm#meetings>.

⁴ Comments for The Enhancement and Standardization of Climate-Related Disclosures for Investors, U.S. Securities and Exchange Commission (last accessed June 15, 2022), <https://www.sec.gov/comments/s7-10-22/s71022.htm#meetings>.

2. The proposed climate disclosure rule raises First Amendment concerns because it would appear to compel speech. What efforts, if any, has the SEC made to minimize any First Amendment concerns associated with this proposed rule?
 - a. Please provide any legal memoranda that the SEC is relying on to justify the constitutionality of this proposed rule with respect to the First Amendment.
3. Has the SEC coordinated with any other Federal agencies on the policies contained in the proposed climate disclosure rule?
 - a. If yes, with which agencies has the SEC coordinated, and with respect to which policies contained in the proposed rule? Please provide a comprehensive list.

In addition, we request that you promptly preserve all records related to the proposed climate disclosure rule and provide the following information by no later than June 29, 2022:

1. All emails and text messages related to the proposed climate disclosure rule that were sent between any relevant SEC person⁵ and any individual or entity outside the Executive Branch between January 20, 2021 and the present;
2. All emails and text messages related to the proposed climate disclosure rule that were sent between any relevant SEC person and any individual in the Executive Office of the President between January 20, 2021 and the present;
3. All emails and text messages related to the proposed climate disclosure rule that were sent between any relevant SEC person and any individual in an agency that is a member of the Financial Stability Oversight Council between January 20, 2021 and the present;
4. All emails and text messages related to the proposed climate disclosure rule that were sent between any relevant SEC person and any individual in the U.S. Environmental Protection Agency between January 20, 2021 and the present;
5. All calendar entries (including electronic calendars) associated with any relevant SEC person that relate to the proposed climate disclosure rule and were created or generated between January 20, 2021, and the present;
6. A list of all relevant SEC persons who have worked on the proposed climate disclosure rule to date;

⁵ The term “relevant SEC person” means an (1) SEC official, employee, contractor, academic or professional fellow, or intern who has served at any point between January 20, 2021 and the present (i) in the Office of the Chairman (during the tenure of Chairman Gensler and/or Acting Chair Allison Herren Lee), including, but not limited to, Chairman Gensler and Acting Chair Lee; or (ii) in the Office of Commissioner Lee, including, but not limited to, Commissioner Lee; and/or (2) any SEC official, employee, contractor, academic or professional fellow, or intern who worked on the proposed climate disclosure rule in the Division of Corporation Finance, the Division of Economic and Risk Analysis, or the Office of the Chief Accountant.

7. All records⁶ sufficient to show the extent of the costs that are expected to occur in connection with the proposed climate disclosure rule, including, but not limited to, the impact that the proposed rule is expected to have on energy prices; and
8. All records sent, received, or created by any relevant SEC person between January 20, 2021 and the present that contain any of the following key words or key word combinations:
 - a. “climate” & “disclos!”;
 - b. “sustain!” & “disclos!”;
 - c. “climate justice”;
 - d. “global warming”;
 - e. “green new deal”;
 - f. “climate” & “close hold”;
 - g. “sustain!” & “close hold”.⁷

Thank you for your attention to this matter.

Sincerely,



Pat Toomey
U.S. Senator



Richard Shelby
U.S. Senator



Mike Crapo
U.S. Senator



Tim Scott
U.S. Senator



M. Michael Rounds
U.S. Senator



Thom Tillis
U.S. Senator



John Kennedy
U.S. Senator



Bill Hagerty
U.S. Senator

⁶ The term “records” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

⁷ The symbol “!” denotes a root expander.



Cynthia Lummis
U.S. Senator



Jerry Moran
U.S. Senator



Kevin Cramer
U.S. Senator



Steve Daines
U.S. Senator

cc: The Honorable Sherrod Brown, Chairman, Senate Committee on Banking, Housing, and Urban Affairs
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner