Institute For Policy Innovation
IPI
Freedom
Innovation
Growth

June 16, 2022

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

Washington D.C.

RE: File Number S7-10-22

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC. 20549

Dear Ms. Countryman:

Thank you for this opportunity to comment on the Commission's proposed rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (File Number S7-10-22).

The Institute for Policy Innovation (IPI) is a non-profit, non-partisan public policy "think tank" based in Irving, Texas, and founded in 1987 to research, develop and promote innovative and non-partisan solutions to today's public policy problems. IPI is recognized by the IRS as a 501(c)(3) non-profit organization.

IPI supports the mission of the SEC "to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The SEC strives to promote a market environment that is worthy of the public's trust."

That's why we oppose the proposed rule: Because it *exceeds* the Commission's mandate, because it will *inhibit* capital formation, and because it *distorts* the information investors and shareholders depend on to make informed decisions.

We will share only our most pressing concerns in these comments; be assured that there are many more concerns, which we are gratified have been pointed out in other comments.

1. **The proposed rule exceeds the mandate of the Commission, overlaps and\or conflicts with the mandates of other federal agencies, and the Commission lacks statutory authority to enact such a rule and thus will be subject to protracted legal action at taxpayer expense.**

1320 Greenway Drive, Suite 820 • Irving, Texas 75038 • 972.874.5139
www.ipi.org

We find ourselves in agreement with Commissioner Hester M. Peirce, who entitled her response to the rulemaking "We are not the Securities and Environment Commission—at least not yet."

First, the Commission lacks the statutory authority to enact this rule. There is already a clear, working, principles-based standard for disclosing climate risks, and there is no evidence that Congress intended for the Commission to begin regulating a significant portion of the American economy based on climate and environmental considerations. Stay in your lane. It is enough for the Commission to make sure that issuers of securities are honest and transparent in their disclosures in a way that informs investors but doe not drown them in unnecessary minutiae; indeed, most investors toss Commission-mandated mailings and disclosures in the trash because they already do not meet the test of clarity. The Commission would be better served to spend its time simplifying and clarifying its regulations rather than piling new, statutorily suspect disclosure regulations on top of the existing mess.

*The Commission should limit its disclosure requirements to those material to the prospect of financial returns.*

Second, other federal agencies already have authority in these areas and greater subject matter expertise than the SEC, and thus the proposed rule is in some instances duplicative and in other instances contradictory to rules already enforced by those agencies.

The SEC, for instance, is not an accounting standards-setter. That function belongs to the Financial Accounting Standards Board (FASB). For the SEC to intrude into FASB areas of expertise and to require that certain disclosures be included in financial statements is at the very least confusing and clearly unnecessary.

Further, the Environmental Protection Agency (EPA) already collects greenhouse gas emissions data from fossil fuel companies through its Greenhouse Gas Reporting Program. The EPA is where this expertise is housed; for the SEC to create duplicative reporting requirements simply adds unnecessary and costly expenses to businesses.

2. **The proposed rule likely violates First Amendment protections against compelled speech.**

The First Amendment protection against government compelled speech is a precious liberty that belongs both to individuals and to groups of individuals in the form of businesses and corporations. We agree with Commissioner Peirce and with leading First Amendment scholars that the proposed rule likely violates First Amendment protections against compelled speech because the rule compels disclosures that are not only controversial, but which are also likely immaterial in the majority of cases.

And we remind the Commission that the Supreme Court has consistently taken an expansive view of First Amendment protections.

3. **The proposed rule substitutes political criteria for shareholder return and shareholder value.**

Savers and investors are looking for maximum return on their investments, whether they are saving for retirement, education for their children, buying a new home, or passing on an estate to their beneficiaries. Our securities markets make a myriad of choices available to investors, not only providing an almost unimaginable number of sector options, but also combinations of income, growth and income, aggressive growth, and speculative options. Investors can already choose from options that exclude certain industries, and investors can even choose to invest in dedicated ESG funds should they choose, although that would be a poor choice, since key ESG fund SUSA is currently down 15% this year, while ExxonMobil is up 63%.[1]

The fact that a key ESG fund is down 15% while ExxonMobil is up 63% is more than amusing—that's a 78% spread in investment results and an example of the harm that ordinary investors are experiencing if their investments are being distorted by ESG policies. The proposed rule would institutionalize these distortions across the economy.

ESG related policies are already having a harmful effect on the economy. Despite President Biden's demands that oil and gas companies begin producing more, the administration's ESG efforts, as well as those of progressive activists, have resulted in an environment where oil and gas companies have been cut off from traditional sources of investment capital.[2] Clearly, ESG pressures and requirements distort the industrial mix by disfavoring certain industries and favoring other industries.

4. **The proposed rule is intentionally designed to discourage capital formation in politically disfavored industries.**

---

[1] https://infonomena.substack.com/p/not-so-stranded-assets?sd=pf&s=r
[2] "Why Energy Companies Won't Produce," The Wall Street Journal, June 8, 2022.

Speaking of which, it is obvious that the intent of the proposed rule is to further pressure companies that produce fossil fuels or which rely upon fossil fuels into transitioning or failing.

It is not within the purview of the Commission to rig the game in favor of certain industry segments and in opposition to other industry segments. The Commission is not charged with influencing the industrial mix, and the Commission is not charged with implementing the political agenda of a particular administration. If Congress means to disfavor certain industries, it has the power to do so. If Congress chooses to not act, that is also the proper domain of Congress, not of regulation. The Commission should not assert this authority absent legislative direction.

5. **The proposed rule transforms the mission of the SEC into something entirely other than that which the agency claims for itself and that which is authorized in statute.**

   We have already noted that, in our opinion and the opinion of many others, the Commission lacks the statutory authority to enact this rule. It somewhat logically follows that, if enacted, such a rule would expand the authority and mission of the Commission. We like Commissioner Peirce's formulation that the proposed rule would create an alternate mission for the SEC: "protection of stakeholders, facilitating the growth of the climate-industrial complex, and fostering unfair, disorderly, and inefficient markets."

   Of course, we believe this is entirely intentional. We believe the purpose of the rule is to create a legal and regulatory framework to facilitate and implement a radical climate change agenda that has not as of yet succeeded through legislation, which is how a self-governing people agrees upon the rules for society.

6. **The proposed rule suffers from serious deficiencies related to materiality**.

   We leave it to others to concentrate on this issue; suffice it to say that many experts, including Commissioner Peirce, have focused on the fact that the proposed rule disregards materiality considerations in defiance of the existing clear standard as determined in *TSC Industries v. Northway*. If Chairman Gensler enjoys departing from the materiality standard described by legendary Justice Thurgood Marshall, he is more cavalier than most. Justice Marshall found that an item is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. The reasonable investor envisioned by Justice Marshall is interested in maximum financial return on an investment and is not a political idealogue. Regarding materiality considerations, as well as other considerations, it is clear that the proposed rule ignores rather than serves the needs of a reasonable investor.

7. **The Scope 3 emissions requirements defy common sense**.
The SEC has acknowledged that most companies in the S&P 500 would be required to follow the reporting requirements for Scope 3 emissions, and that for most large issuers, Scope 3 emissions are likely material.

This matters because the Scope 3 emissions reporting requirement defies common sense. As The Wall Street Journal reports,[3] Scope 3 emissions include the greenhouse gas output of both a company's consumers and of their supply chains.

This requirement that a company quantify and disclose the greenhouse gas emissions of companies it interacts with while producing and distributing its products and services defies common sense, and essentially makes a company liable for estimating and reporting the behaviors of other parties.

8. **The Commission should not prioritize the political agenda of a small handful of enormously powerful asset managers over the interests of ordinary, Main Street investors. The Commission should not allow itself to be captured by elite, powerful money managers at the expense of ordinary investors.**

According to The Wall Street Journal,[4] SEC Chairman Gensler, a longtime Democratic operative (who, in full disclosure, once spoke at an IPI event[5]), says that "asset managers representing tens of trillions of dollars" have asked for these types of disclosures. Of this we have no doubt. It is well known that Blackrock Chairman Larry Fink has decided to use his management of enormous investor funds to further his personal political agenda.

But the job of the Commission is not to facilitate the whims and preferences of the most elite money managers. It is to protect investors, and we all understand that the intent of the statute and of Congress is for this to mean individual investors. Elite money managers like Larry Fink do not need to be "protected" by the Commission; in fact, there

---

[3] "SEC Floats Mandatory Disclosure of Climate-Change Risks, Emissions." The Wall Street Journal, March 21, 2022.
[4] Ibid.
[5] https://www.ipi.org/ipi_issues/detail/event-transcript-trade-and-the-race-for-the-white-house

is enormous danger of regulatory capture whereby the Commission thinks its obligations are to stakeholders like Larry Fink instead of to ordinary, middle-class workers contributing to 401ks and IRAs.

We think it is obvious that the proposed rule represents regulatory capture of the Commission to the political agenda of the party currently in control of the Executive Branch, and to the personal political preferences of elite institutional money managers like Larry Fink, and at the expense of ordinary, Main Street investors.

**Conclusion**

Clearly, it our belief that the proposed rule is political in nature, driven by ideological considerations rather than by shareholder needs, instigated at the demands of a tiny number of very powerful, elite money managers rather than by the demands of the general public, and being forced through by a Chairman pushing a political agenda, ignoring the statutory limitations on the Commission.

For these and other reasons, we oppose the proposed rule, and urge the Commission to dial back its aspirations and stay in its lane. And we commit to doing everything within our power to draw public attention to the many problems and threats posed by this proposed rule.

Sincerely,

Tom Giovanetti
President
Institute for Policy Innovation