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MASSACHUSETTS

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April 28, 2020

The Honorable Walter Joseph "Jay" Clayton III
Chairman
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Clayton:

I write in regard to the Securities and Exchange Commission's (SEC or the Commission) proposed rule "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information"[1] to amend Regulation S-K, which establishes disclosure and reporting requirements for publicly traded companies. The Federal Register notes that the proposed amendments are intended to "modernize, simplify, and enhance certain financial disclosure requirements in Regulation S-K… for the benefit of investors,"[2] and reports describe the proposal as a move "to give executives more flexibility in what they share with investors."[3] I am concerned that, while you have acknowledged that "[t]he issue of environmental and climate-related securities law disclosures has received increasing attention from various regulators, investors and other market participants and non-market participants during my tenure as Chairman,"[4] the SEC's proposed rule does not include needed climate disclosure provisions. As health professionals and public health officials work to combat the ongoing coronavirus disease 2019 (COVID-19) pandemic, and as governments throughout the world work to address the associated economic collapse, we cannot also afford to lose sight of climate-related threats to our health and economic well-being.

The climate crisis will have a significant impact on our economy,[5] and without meaningful requirements for companies to disclose their exposure to climate change risk, I am

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[1] Securities and Exchange Commission, Federal Register Notice, "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information," February 28, 2020, https://www.federalregister.gov/documents/2020/02/28/2020-02313/managements-discussion-and-analysis-selected-financial-data-and-supplementary-financial-information.
[2] *Id.*
[3] Wall Street Journal, "SEC Proposes Amending Corporate Disclosure Rules," Mark Maurer, January 31, 2020, https://www.wsj.com/articles/sec-proposes-amending-corporate-disclosure-rules-11580510076.
[4] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[5] New York Times, "Climate Change's Giant Impact on the Economy: 4 Key Issues," Neil Irwin, January 17, 2019, https://www.nytimes.com/2019/01/17/upshot/how-to-think-about-the-costs-of-climate-change.html; Brookings Institution, "Ten facts about the economics of climate change and climate policy," Ryan Nunn, Jimmy O'Donnell,

concerned that the proposed rule would not give investors and the public the information needed to make well-informed investment decisions.

In a statement regarding the proposed amendments to Regulation S-K, you stated, in a discussion of climate-related disclosures, that you are "pleased with the Commission's approach to this [climate] issue to date" and argued that disclosures should remain based on materiality.[6] SEC Commissioner Allison Herren Lee, however, addressed your concerns regarding materiality in stating that "Investors have been clear that this information is material to their decision-making process, and a growing body of research confirms that," that "the broad, principles-based 'materiality' standard has not produced sufficient disclosure to ensure that investors are getting the information they need—that is, disclosures that are consistent, reliable, and comparable," and that the SEC's "routine disclosure review process could be used to improve disclosure under the materiality standard."[7] Furthermore, Commissioner Lee acknowledged, "investors are overwhelmingly telling us, through comment letters and petitions for rulemaking, that they need consistent, reliable, and comparable disclosures of the risks and opportunities related to sustainability measures, particularly climate risk."[8]

Additionally, a 2018 Government Accountability Office report found that "[i]mpacts from a changing climate can pose serious risks to the global economy and affect many economic sectors" and that "SEC reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings."[9] While the SEC has issued guidance for considering effects of climate change,[10] the agency has not mandated disclosures for how climate risk materially affects returns. Indeed, several stakeholders, regulators, and companies have acknowledged the various economic and financial risks and have urged the SEC and other regulators to better incorporate the various climate-related risks in mandatory disclosures,[11] yet the SEC has thus far declined to take this opportunity to require climate disclosures in this proposed rulemaking.

Currently, investors lack access to basic information about the potential risk of the climate crisis on American companies, which is why former Vice President Al Gore has argued that "By overlooking a known material-risk factor, investors are exposing their portfolios to an

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Jay Shambaugh, Lawrence Goulder, Charles Kolstad, and Xianling Long, October 23, 2019, https://www.brookings.edu/research/ten-facts-about-the-economics-of-climate-change-and-climate-policy/.

[6] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.

[7] Securities and Exchange Commission, "'Modernizing' Regulation S-K: Ignoring the Elephant in the Room," Allison Herren Lee, January 30, 2020, https://www.sec.gov/news/public-statement/lee-mda-2020-01-30.

[8] *Id.*

[9] Government Accountability Office, "CLIMATE-RELATED RISKS: SEC Has Taken Steps to Clarify Disclosure Requirements" February 2018, https://www.gao.gov/assets/700/690197.pdf.

[10] Securities and Exchange Commission, "Commission Guidance Regarding Disclosure Related to Climate Change," February 8, 2010, https://www.sec.gov/rules/interp/2010/33-9106.pdf.

[11] Congressional Research Service, "Climate-Related Risk Disclosure Under U.S. Securities Laws," Eva Su and Nicole Vanatko, September 10, 2019, https://fas.org/sgp/crs/misc/IF11307.pdf.

externality that should be integrated into the capital allocation process."[12] These risks are likely to have significant impacts on investments and the broader economy, with studies estimating that "the current value of direct private investor losses globally due to the physical risks of climate change is between $4.2 trillion and $13.8 trillion, depending on the warming scenario" and that climate change may lead to "permanent damage that would far eclipse the scale of the 2007-2008 financial crisis."[13] A 2018 report by 13 federal agencies also found that without significant climate action, as much as ten percent of the American economy, or more than double the losses of the Great Recession, may be wiped out by the end of the century.[14] Additionally, a separate Moody's report argued that climate change may lead to tens of trillions of dollars in global damages by the end of the century and that the climate crisis will "universally hurt worker health and productivity."[15] While you have stated that the proposed regulation, "if adopted, would substantively benefit investors and our capital markets more generally,"[16] it cannot do so if it lacks meaningful mandatory requirements to provide investors with information about public companies' exposure to material climate-related risks.

For these reasons, I have introduced *The Climate Risk Disclosure Act of 2019* as a standard climate disclosure regime in order to require public companies to disclose their climate-related risks so investors can accurately assess climate-related environmental and financial threats.[17] My legislation requires rigorous disclosures of critical information about climate-related risks by all public companies, including companies' direct and indirect greenhouse gas emissions; assets related to fossil fuel that companies own or manage; how companies' financial valuations would be affected under various climate scenarios; and companies' risk management strategies related to the physical and transition climate change risks.[18] The House Financial Services Committee passed the House version of this legislation last year.[19] As I work with my

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[12] Wall Street Journal, "The Coming Carbon Asset Bubble," opinion, Al Gore and David Blood, October 29, 2013, https://www.wsj.com/articles/the-coming-carbon-asset-bubblethe-coming-carbon-asset-bubble-1383076555.

[13] Center for American Progress, "Climate Change Threatens the Stability of the Financial System," Gregg Gelzinis and Graham Steele, November 21, 2019, https://www.americanprogress.org/issues/economy/reports/2019/11/21/477190/climate-change-threatens-stability-financial-system/.

[14] New York Times, "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy," Coral Davenport and Kendra Pierre-Louis, November 23, 2018, https://www.nytimes.com/2018/11/23/climate/us-climate-report.html; U.S. Global Change Research Program, "Fourth National Climate Assessment," November 23, 2018, https://nca2018.globalchange.gov/.

[15] Moody's Analytics, "The Economic Implications of Climate Change," Chris Lafakis, Laura Ratz, Emily Fazio, and Maria Cosma, June 2019, https://www.moodysanalytics.com/-/media/article/2019/economic-implications-of-climate-change.pdf.

[16] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.

[17] Climate Risk Disclosure Act of 2019, S. 2075, https://www.congress.gov/bill/116th-congress/senate-bill/2075.

[18] Office of U.S. Senator Elizabeth Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill to Require Every Public Company to Disclose Climate-Related Risks," July 10, 2020, https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks.

[19] Office of U.S. Representative Sean Casten, "Casten, Warren 'Climate Risk Disclosure' Act Passes House Financial Services Committee," July 17, 2019, https://casten.house.gov/media/press-releases/casten-warren-climate-risk-disclosure-act-passes-house-financial-services; Climate Risk Disclosure Act of 2019, H.R. 3623, https://www.congress.gov/bill/116th-congress/house-bill/3623.

colleagues to enact *The Climate Risk Disclosure Act of 2019*, I urge the SEC to review the requirements under this legislation as you consider potential changes to the existing disclosure regime.

In your statement about the proposed amendments to Regulation S-K, you stated that the SEC's efforts thus far "have improved issuer disclosures of material information, allowing investors to make better capital allocation decisions" and that in terms of considering climate-related risks, "[t]he Commission's and the SEC staff's focus on and work in this area will continue."[20] This proposed rule, despite the SEC's intention to "modernize and enhance"[21] financial disclosures, however, does not take the opportunity to incorporate climate risk that has the potential to "destroy billions of dollars in property and to displace millions of people" and lead to "economic losses and social disruption."[22]

As the SEC considers potential changes to financial disclosures, it is imperative that the Commission include mandatory climate disclosures. Because the Trump administration has continued to aggressively weaken environmental safeguards in ways that will further exacerbate the climate crisis,[23] it is more important than ever that the SEC ensure that investors and the public have the tools and information they need to assess climate-related risks and make well-informed investment decisions.

Thank you for your consideration of this important matter.

Sincerely,

Elizabeth Warren
United States Senator

[20] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[21] Securities and Exchange Commission, Federal Register Notice, "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information," February 28, 2020, https://www.federalregister.gov/documents/2020/02/28/2020-02313/managements-discussion-and-analysis-selected-financial-data-and-supplementary-financial-information.
[22] Freddie Mac, "Life's a Beach," April 2016, http://www.freddiemac.com/research/insight/20160426_lifes_a_beach.page.
[23] New York Times, "95 Environmental Rules Being Rolled Back Under Trump," Nadja Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, December 21, 2019, https://www.nytimes.com/interactive/2019/climate/trump-environment-rollbacks.html.

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August 12, 2020

The Honorable Walter Joseph "Jay" Clayton III
Chairman
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Clayton:

I write in regards to recent reports detailing both significant climate-related financial risks in the fossil fuel industry and concerns from investors about risks associated with the climate crisis. It is distressing that by ignoring these climate risks, the Securities and Exchange Commission (SEC or the Commission), under your leadership, is not fulfilling its mission to "protect investors" and "maintain fair, orderly, and efficient markets."[1] I urge you to take immediate measures, including those found in my *Climate Risk Disclosure Act*,[2] to implement standard climate risk disclosures so that investors and the public can accurately assess and address climate-related environmental and financial threats.

In April 2020, I submitted a public comment letter to the SEC regarding a proposed rule to amend disclosure and reporting requirements for publicly traded companies under Regulation S-K.[3] In my letter, I expressed significant concerns that the SEC was not taking strong and necessary measures to include climate disclosure provisions, particularly given climate change's significant impact on our economy,[4] as well as a 2018 Government Accountability Office report that found that "[i]mpacts from a changing climate can pose serious risks to the global economy and affect many economic sectors" and that "SEC reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings."[5] While the SEC declined to improve required disclosures through climate risk reporting, it appears that the concerns I raised are increasingly being shared to you by major institutional investors, nonprofit organizations, and other stakeholders.[6] Reports also highlight the fossil fuel industry's inability or unwillingness to

[1] Securities and Exchange Commission, "About the SEC," November 22, 2016, https://www.sec.gov/about.shtml.
[2] Climate Risk Disclosure Act of 2019, S. 2075, https://www.congress.gov/bill/116th-congress/senate-bill/2075.
[3] Letter from Senator Elizabeth Warren to Securities and Exchange Commission Chairman Clayton, April 28, 2020, https://www.warren.senate.gov/imo/media/doc/File%20Number%20S7-01-20%20-%2004.28.2020%20Letter%20from%20Senator%20Warren%20to%20SEC%20Chairman%20Jay%20Clayton.pdf.
[4] New York Times, "Climate Change's Giant Impact on the Economy: 4 Key Issues," Neil Irwin, January 17, 2019, https://www.nytimes.com/2019/01/17/upshot/how-to-think-about-the-costs-of-climate-change.html.
[5] Government Accountability Office, "CLIMATE-RELATED RISKS: SEC Has Taken Steps to Clarify Disclosure Requirements," February 2018, https://www.gao.gov/assets/700/690197.pdf.
[6] New York Times, "Climate Change Poses 'Systemic Threat' to the Economy, Big Investors Warn," Christopher Flavelle, July 21, 2020, https://www.nytimes.com/2020/07/21/climate/investors-climate-threat-regulators.html; New

account for climate risks both within their own companies and for climate risks in the broader economy, which are largely due to the lack of transparency about climate-related risks that I have raised with the Commission.[7]

Economic Threats Caused by the Climate Crisis

Investors and the public currently lack sufficient information about the threats of the climate crisis on their investments, though the risks to our economy posed by the climate crisis continue to grow. A comprehensive international review released earlier this month found that "[t]he current pace of human-caused carbon emissions is increasingly likely to trigger irreversible damage to the planet" and that "[t]here is basically little or no chance that we are going to get lucky and find that the warming caused by our activities turns out to be minor."[8] These findings add to concerns raised by other studies that have estimated that "the current value of direct private investor losses globally due to the physical risks of climate change is between $4.2 trillion and $13.8 trillion, depending on the warming scenario" and that climate change may lead to "global economic losses [that] could mount to $23 trillion per year—permanent damage that would far eclipse the scale of the 2007-2008 financial crisis."[9]

Research also shows that the increasingly rising global temperatures and its effects will "universally hurt worker health and productivity,"[10] that they will "increasingly disrupt and damage critical infrastructure and property,"[11], and that they pose threats to national security and the ability of the Department of Defense to carry out its mission.[12] The devastation caused by the climate crisis will also be disproportionately felt by communities of color, low-income communities, and other frontline communities that have already withstood the worst environmental justices.[13]

Rather than working to address the climate crisis and protect our communities, economies, and future generations, however, the Trump administration has taken steps that will

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York Times, "BlackRock C.E.O. Larry Fink: Climate Crisis Will Reshape Finance," Andrew Ross Sorkin, February 24, 2020, https://www.nytimes.com/2020/01/14/business/dealbook/larry-fink-blackrock-climate-change.html.

[7] National Whistleblower Center, "Exposing a Ticking Time Bomb: How fossil fuel industry fraud is setting us up for a financial implosion – and what whisteblowers can do about it," July 2020, https://www.whistleblowers.org/wp-content/uploads/2020/07/NWC-Climate-Risk-Disclosure-Report.pdf.

[8] Washington Post, "Major new climate study rules out less severe global warming scenarios," Andrew Freedman and Chris Mooney, July 22, 2020, https://www.washingtonpost.com/weather/2020/07/22/climate-sensitivity-co2/.

[9] Center for American Progress, "Climate Change Threatens the Stability of the Financial System," Gregg Gelzinis and Graham Steele, November 21, 2019, https://www.americanprogress.org/issues/economy/reports/2019/11/21/477190/climate-change-threatens-stability-financial-system/.

[10] Moody's Analytics, "The Economic Implications of Climate Change," Chris Lafakis, Laura Ratz, Emily Fazio, and Maria Cosma, June 2019, https://www.moodysanalytics.com/-/media/article/2019/economic-implications-of-climate-change.pdf.

[11] *Id.*

[12] Government Accountability Office, "CLIMATE RESILIENCE: Actions Needed to Ensure DOD Considers Climate Risks to Contractors as Part of Acquisition, Supply, and Risk Assessment," June 2020, https://www.warren.senate.gov/imo/media/doc/climate%20change%20contractors%20report.pdf.

[13] Brookings Institution, "Ten facts about the economics of climate change and climate policy," Ryan Nunn, Jimmy O'Donnell, Jay Shambaugh, Lawrence Goulder, Charles Kolstad, and Xianling Long, October 23, 2019, https://www.brookings.edu/research/ten-facts-about-the-economics-of-climate-change-and-climate-policy/.

exacerbate the climate crisis or weaken the ability to address climate change. Reports show that the Trump administration has reportedly worked to embed climate denial in scientific research.[14] Throughout the Trump administration's tenure, the administration has worked to eliminate or weaken over 100 environmental safeguards, including those on "planet-warming carbon dioxide emissions from power plants and from cars and trucks, and rolled back many more rules governing clean air, water and toxic chemicals."[15] Given the dire economic consequences caused by climate change and an administration that makes these problems worse, the SEC should listen to investors and stakeholders and act swiftly to protect our economy from these worsening effects by giving the public the tools necessary to assess the impacts and risks on individual companies and throughout the economy.

Investors and Stakeholders Urge the SEC to Require Standard Climate Risk Disclosures

Earlier this month, a group of institutional investors and fund managers, businesses, and former regulators and lawmakers sent you a letter about the "systemic threat to financial markets and the real economy, with significant disruptive consequences on asset valuations and our nation's economic stability" posed by the climate crisis.[16] The group also sent similar letters to the heads of the Federal Reserve System Board of Governors, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Commodity Futures Trading Commission, Federal Insurance Office, Federal Housing Finance Agency, Financial Stability Oversight Council, and various state regulators.[17] The letter calls on you to "implement a broader range of actions to explicitly integrate climate change across your mandates" and states, "[s]uch actions are needed to protect the economy from any further disruptive shocks."[18]

The group of stakeholders, which include "some of the largest pension funds in the country,"[19] also urged you to consider recommendations in Ceres's June 2020 report, which states that, among other steps, the SEC should:

- "Analyze climate risk impacts on the securities markets and on the SEC mandate, and consider establishing a cross-divisional taskforce to allow for coordinated responses.
- "Make clear that consideration of material environmental, social and governance (ESG) risk factors, such as climate change, is consistent with investor fiduciary duty.

[14] New York Times, "A Trump Insider Embeds Climate Denial in Scientific Research," Hiroko Tabuchi, March 2, 2020, https://www.nytimes.com/2020/03/02/climate/goks-uncertainty-language-interior.html.
[15] New York Times, "The Trump Administration Is Reversing 100 Environmental Rules. Here's the Full List.," Nadja Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, July 15, 2020, https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks.html.
[16] Ceres, "40 investors with nearly $1 trillion to join other leaders to urge U.S. financial regulators to act on climate," press release, July 21, 2020, https://www.ceres.org/news-center/press-releases/40-investors-nearly-1-trillion-join-other-leaders-urge-us-financial.
[17] *Id.*
[18] Letter from Ceres and other nonprofits, investors, businesses, and individuals to Securities and Exchange Commission Chairman Clayton, July 21, 2020, https://www.ceres.org/sites/default/files/Federal%20Regulators%20Letter.pdf.
[19] New York Times, "Climate Change Poses 'Systemic Threat' to the Economy, Big Investors Warn," Christopher Flavelle, July 21, 2020, https://www.nytimes.com/2020/07/21/climate/investors-climate-threat-regulators.html.

- "Issue rules mandating corporate climate risk disclosure, building on the framework established by the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD)…
- "Direct the Public Company Accounting Oversight Board (PCAOB), overseen by the SEC, to assess whether firm audits adequately detect climate risks, and issue guidance to help auditors better understand how climate risk affects audits and accounting…
- "Encourage the Financial Accounting Standards Board to drive consistency in the way that climate risk is disclosed in financial statements.
- "Issue guidance encouraging credit raters to provide more disclosure on how climate risk factors are factored in rating decisions [and] examine the extent to which climate risk is considered by credit raters, and summarize findings in annual examination reports."[20]

These recommendations are largely in line with the findings by a House Select Committee on the Climate Crisis staff report, which found that "shareholders, investors, and regulators [increasingly] demand climate-related information" and which recommends that Congress enact legislation to direct your agency to "require public companies to report climate risks in their financial disclosures."[21] The SEC can take these steps without new legislation,[22] and I urge you to immediately direct the Commission to review these recommendations and take steps to require disclosures of climate-related risks in mandatory SEC disclosures.

While you have stated that disclosures should remain based on materiality,[23] SEC Commissioner Allison Herren Lee has addressed these concerns about climate-related disclosures, stating that "[i]nvestors have been clear that this information is material to their decision-making process, and a growing body of research confirms that," but that "the broad, principles-based 'materiality' standard has not produced sufficient disclosure to ensure that investors are getting the information they need—that is, disclosures that are consistent, reliable, and comparable," and that the SEC's "routine disclosure review process could be used to improve disclosure under the materiality standard."[24] Commissioner Lee also acknowledged that "investors are overwhelmingly telling us, through comment letters and petitions for rulemaking, that they need consistent, reliable, and comparable disclosures of the risks and opportunities related to sustainability measures, particularly climate risk."[25]

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[20] Ceres, "Addressing Climate As a Systemic Risk: A call to action for U.S. financial regulators: Executive Summary," June 1, 2020, https://www.ceres.org/sites/default/files/2020-05/Financial%20Regulator%20Executive%20Summary%20FINAL.pdf.
[21] House Select Committee on the Climate Crisis, "Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America," June 30, 2020, https://climatecrisis.house.gov/sites/climatecrisis.house.gov/files/Climate%20Crisis%20Action%20Plan.pdf.
[22] New York Times, "Climate Change Poses 'Systemic Threat' to the Economy, Big Investors Warn," Christopher Flavelle, July 21, 2020, https://www.nytimes.com/2020/07/21/climate/investors-climate-threat-regulators.html.
[23] Securities and Exchange Commission, "Statement on Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Public Statement by Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[24] Securities and Exchange Commission, "'Modernizing' Regulation S-K: Ignoring the Elephant in the Room," Public Statement by Allison Herren Lee, January 30, 2020, https://www.sec.gov/news/public-statement/lee-mda-2020-01-30.
[25] *Id.*

Possibility of Deception in Fossil Fuel Industry Disclosures

A lack of climate risk disclosure by public companies also provides perverse incentives for companies, particularly those in the fossil fuel industry, to limit or downplay the physical and transition risks associated with the climate crisis in their SEC disclosures. A new report by the National Whistleblower Center also shows that the systemic risks caused by the climate crisis are worsened by deception and potential fraud in the fossil fuel industry.[26] According to the report, "[c]oncealment of climate risks is a matter of great public interest because when it is successful, it harms investors, the environment and the economy. Investors who provide capital to these companies suffer because they invest based on a false sense of the companies' readiness for the transition to a low-carbon economy and for the physical shocks of climate change."[27] It also states, "[t]he fossil fuel sector is a prime example of an industry sector with incentives to commit fraud given that its financial stability and profitability are greatly threatened by industry conditions and larger economic trends."[28]

Without mandatory, uniform risk disclosure standards, fossil fuel companies are therefore able to limit transparency regarding how they are preparing for transitions to a clean energy economy, their justifications for optimistic price assumptions, their plans to remove greenhouse gases from their emissions, and climate-related damage to assets and infrastructure. Financial statements of fossil fuel companies may therefore omit information about risks that may materially impact returns. Requiring public companies to include information about climate-related risks in their mandatory SEC filings would better allow the Commission to mitigate the incentives for deception regarding climate risks and give the SEC stronger tools to take enforcement actions to protect investors and the economy.

Solution for Lack of Standardized Climate Risk Disclosure

The *Climate Risk Disclosure Act*, and a companion bill led by Representative Sean Casten (D-IL-06) that passed the House Financial Services Committee last year,[29] would address many the issues raised by investors and reduce the possibility of deception found in the fossil fuel industry by requiring rigorous disclosures of critical information about climate-related risks by all public companies.[30] These disclosures would include:

- Companies' direct and indirect greenhouse gas emissions;
- The total amount of assets related to fossil fuel that companies own or manage;

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[26] National Whistleblower Center, "Exposing a Ticking Time Bomb: How Fossil Fuel Industry Fraud is Setting Us Up for a Financial Implosion – and What Whistleblowers Can Do About It," July 23, 2020, https://www.whistleblowers.org/news/new-report-warns-that-fossil-fuel-industry-deception-about-climate-risks-represents-a-ticking-time-bomb-threatening-the-global-financial-system/.
[27] *Id.*
[28] *Id.*
[29] Office of Representative Sean Casten, "Casten, Warren 'Climate Risk Disclosure' Act Passes House Financial Services Committee," press release, July 17, 2019, https://casten.house.gov/media/press-releases/casten-warren-climate-risk-disclosure-act-passes-house-financial-services.
[30] Climate Risk Disclosure Act of 2019, S. 2075, https://www.congress.gov/bill/116th-congress/senate-bill/2075.

- How companies' valuations would be affected if climate change continues at its current pace or if policymakers successfully restrict greenhouse emissions to meet the 1.5 degrees Celsius above pre-industrial levels goal in the Paris Agreement;[31] and
- Companies' risk management strategies related to the physical and transition risks posed by the climate crisis.[32]

These disclosures, however, do not require legislation. The SEC can require them using its current authority under Section 13 of the *Securities Exchange Act of 1934*.[33] While I am disappointed that the SEC did not implement these requirements as it considers potential changes to financial disclosures, such as proposed amendments to Regulation S-K,[34] and while I will work to make my bill law, I urge you to take immediate action to require mandatory climate disclosures and ensure that investors and the public have the tools and information they need to assess climate-related risks, prevent deception about fossil fuel assets, and make well-informed investment decisions.

In order to better understand how the Commission views climate-related risks and the concerns raised by institutional investors and other stakeholders, as well as my *Climate Risk Disclosure Act*, I urge you to respond to the following questions no later than Wednesday, August 26, 2020.

1. The group of stakeholders that wrote to you on July 21, 2020, regarding the systemic threat of climate change, which include "some of the largest pension funds in the country,"[35] urged you to consider recommendations in Ceres's June 2020 report.[36]
    a. Please explain your views on each of the following recommendations included in the June 2020 Ceres report:
        i. "Analyze climate risk impacts on the securities markets and on the SEC mandate, and consider establishing a cross-divisional taskforce to allow for coordinated responses.
        ii. "Make clear that consideration of material environmental, social and governance (ESG) risk factors, such as climate change, is consistent with investor fiduciary duty.

[31] United Nations Framework Convention on Climate Change, "The Paris Agreement," Accessed August 7, 2020, https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement.
[32] Office of Senator Elizabeth Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill to Require Every Public Company to Disclose Climate-Related Risks," press release, July 10, 2019, https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks.
[33] 15 U.S.C. 78m.
[34] Letter from Senator Elizabeth Warren to Securities and Exchange Commission Chairman Clayton, April 28, 2020, https://www.warren.senate.gov/imo/media/doc/File%20Number%20S7-01-20%20-%2004.28.2020%20Letter%20from%20Senator%20Warren%20to%20SEC%20Chairman%20Jay%20Clayton.pdf.
[35] New York Times, "Climate Change Poses 'Systemic Threat' to the Economy, Big Investors Warn," Christopher Flavelle, July 21, 2020, https://www.nytimes.com/2020/07/21/climate/investors-climate-threat-regulators.html.
[36] Ceres, "Addressing Climate As a Systemic Risk: A call to action for U.S. financial regulators: Executive Summary," June 1, 2020, https://www.ceres.org/sites/default/files/2020-05/Financial%20Regulator%20Executive%20Summary%20FINAL.pdf.

iii. "Issue rules mandating corporate climate risk disclosure, building on the framework established by the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD)…
iv. "Direct the Public Company Accounting Oversight Board (PCAOB), overseen by the SEC, to assess whether firm audits adequately detect climate risks, and issue guidance to help auditors better understand how climate risk affects audits and accounting…
v. "Encourage the Financial Accounting Standards Board to drive consistency in the way that climate risk is disclosed in financial statements.
vi. "Issue guidance encouraging credit raters to provide more disclosure on how climate risk factors are factored in rating decisions [and] examine the extent to which climate risk is considered by credit raters, and summarize findings in annual examination reports."[37]

2. In your public statement regarding proposed amendments to Regulation S-K, you stated that disclosures should remain based on materiality.[38] SEC Commissioner Allison Herren Lee, however, addressed your concerns about climate-related disclosures, stating that "[i]nvestors have been clear that this information is material to their decision-making process, and a growing body of research confirms that," that "the broad, principles-based 'materiality' standard has not produced sufficient disclosure to ensure that investors are getting the information they need—that is, disclosures that are consistent, reliable, and comparable," and that the SEC's "routine disclosure review process could be used to improve disclosure under the materiality standard."[39]
    i. Do you believe that understanding which assets of public companies may be materially affected by climate change may help investors make more informed decisions about the risk of their investments?
    ii. Do you agree that information concerning the impacts of climate on public company assets and business is material to the proper valuation of investments by investors and markets?
    iii. Do you believe it would be useful for investors to understand public companies' contributions to greenhouse gas emissions and their exposure in the event of a government- or market-mandated transition towards a lower-carbon economy?

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[37] Ceres, "Addressing Climate As a Systemic Risk: A call to action for U.S. financial regulators: Executive Summary," June 1, 2020, https://www.ceres.org/sites/default/files/2020-05/Financial%20Regulator%20Executive%20Summary%20FINAL.pdf.
[38] Securities and Exchange Commission, "Statement on Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Public Statement by Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[39] Securities and Exchange Commission, "'Modernizing' Regulation S-K: Ignoring the Elephant in the Room," Public Statement by Allison Herren Lee, January 30, 2020, https://www.sec.gov/news/public-statement/lee-mda-2020-01-30.

3. A 2018 Government Accountability Office report found that "[i]mpacts from a changing climate can pose serious risks to the global economy and affect many economic sectors" and that "SEC reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings."[40] While the SEC has issued some guidance for considering climate effects,[41] it has not mandated disclosures for how that risk materially affects returns.
    a. What is the SEC doing to address the concerns raised by the Government Accountability Office report?
    b. If federal regulators do not have the information needed to fully understand public companies' climate-related risks under current rules, do investors have the adequate information needed to make informed decisions about companies' risks, as well as exposure in the event of a government- or market-mandated transition towards a lower-carbon economy?

4. The July 2020 National Whistleblower Center report stated, "[t]he fossil fuel sector is a prime example of an industry sector with incentives to commit fraud given that its financial stability and profitability are greatly threatened by industry conditions and larger economic trends."[42]
    a. Without standard, mandatory climate risk disclosures, how is the SEC addressing potential harmful incentives and conflicts of interest in the disclosure of material climate-related risks in the fossil fuel industry?

5. My *Climate Risk Disclosure Act* would require rigorous disclosures of critical information about climate-related risks by all public companies, including companies' direct and indirect greenhouse gas emissions; assets related to fossil fuel that companies own or manage; how companies' financial valuations would be affected under various climate scenarios; and companies' risk management strategies related to the physical and transition climate change risks.[43] The SEC, however, can issue rules using its authority under Section 13 of the *Securities and Exchange Act of 1934*,[44] requiring these disclosures without new legislation.
    a. The most recent volume of the National Climate Assessment, a scientific report issued by 13 federal agencies in November 2018, stated that climate

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[40] Government Accountability Office, "CLIMATE-RELATED RISKS: SEC Has Taken Steps to Clarify Disclosure Requirements," February 2018, https://www.gao.gov/assets/700/690197.pdf.
[41] Securities and Exchange Commission, "Commission Guidance Regarding Disclosure Related to Climate Change," February 8, 2010, https://www.sec.gov/rules/interp/2010/33-9106.pdf.
[42] National Whistleblower Center, "Exposing a Ticking Time Bomb: How Fossil Fuel Industry Fraud is Setting Us Up for a Financial Implosion – and What Whistleblowers Can Do About It," July 23, 2020, https://www.whistleblowers.org/news/new-report-warns-that-fossil-fuel-industry-deception-about-climate-risks-represents-a-ticking-time-bomb-threatening-the-global-financial-system/.
[43] Office of Senator Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill to Require Every Public Company to Disclose Climate-Related Risks," press release, July 10, 2019, https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks.
[44] 15 U.S.C. 78m.

change may cause losses of up to 10 percent of the U.S. economy by 2100.[45] Additionally, a 2015 report from the Economist Intelligence Unit wrote that, of the world's current stock of manageable assets, the expected losses due to climate change are valued at $4.2 trillion by the end of the century.[46]

i. Given these threats to the economy, please provide information about the steps, if any, that the SEC is taking to address the disclosure of the physical and transition risks associated with the climate crisis, including exposure in the event of a government- or market-mandated transition towards a lower-carbon economy, for publicly traded companies.

Thank you for your consideration of this important issue, and I look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

[45] New York Times, "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy," Coral Davenport and Kendra Pierre-Louis, November, 23, 2018, https://www.nytimes.com/2018/11/23/climate/us-climate-report.html.
[46] The Economist Intelligence Unit, "The cost of inaction," 2015, p. 41, https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction_0.pdf.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE CHAIRMAN

October 13, 2020

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

Thank you for your recent letters regarding the potential impacts of climate-related risks on investments and the importance of climate-related disclosures by public companies. I appreciate your concern that investors in our markets would like to have more specific climate change disclosures than certain companies currently provide.

Commission Approach to Climate-Related Disclosure: Background and Framework

The Commission has been actively engaged in climate-related disclosure issues for over a decade and remains committed to ensuring that investors are receiving accurate and adequate information about the companies in which they are investing. I am satisfied with the Commission's approach to this complex issue to date and believe it has been consistent with our ongoing commitment to ensure that our disclosure regime continues to provide investors with a mix of information that facilitates well-informed capital allocation decisions. This commitment has been, and in my view should remain, focused on providing investors with information material to an investment decision, including in areas involving future risks and uncertainty, such as climate change. This includes providing investors with insight regarding the issuer's assessment of, and plans for addressing, material risks to its business and operations. [1]

I want to emphasize that disclosure and materiality are at the heart of the Commission's regulatory approach. Our principles-based disclosure requirements should elicit disclosure that provides investors with insight regarding an issuer's assessment of, and plans for addressing, material risks to its business operations but also keeps pace with emerging issues, like climate change, without the need for the Commission to continuously add to or update the underlying disclosure rules as new issues arise.[2] Let me be absolutely clear—investors must have the information necessary to understand the material risks posed to an issuer's business and financial

[1] Statement on Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure, Chairman Jay Clayton (Jan. 30, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[2] William Hinman, Director, Division of Corporation Finance, Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks, Mar. 15, 2019, *available at* https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519.

performance. Climate-related issues can, depending on the facts and circumstances, be material to an issuer, and if so, our rules are designed to elicit disclosures that are appropriately tailored to the particular issuer. This approach is important, particularly when the risks and uncertainty are not uniform. In these circumstances, issuers are generally in the best position to assess their particular facts and circumstances to determine whether an issue such as climate change presents a material risk, and what disclosures are required based on those facts and circumstances.

Commission and Staff Action

Commission Guidance. The Commission and its staff have taken a number of steps to make sure that issuers are aware of their climate-related disclosure obligations. In 2010, the Commission issued guidance to public companies regarding the Commission's existing disclosure requirements as they apply to environmental and climate-related matters.[3] Among other things, the 2010 Guidance noted that regulatory and legislative developments could, for some companies, have a significant effect on operating and financial decisions, including those involving capital expenditures to reduce emissions and, for companies subject to regulatory or legislative developments, expenses related to purchasing allowances where reduction targets cannot be met. The 2010 Guidance also noted that disclosure decisions concerning trends, demands, commitments, events and uncertainties generally should involve the: (1) consideration of financial, operational and other information known to the registrant; (2) identification, based on this information, of known trends and uncertainties; and (3) assessment of whether these trends and uncertainties will have, or are reasonably likely to have, a material impact on the registrant's liquidity, capital resources or results of operations.

Staff Review of Annual and Periodic Reports and Other Disclosures. Since the issuance of the 2010 Guidance, SEC staff has continued to consider these matters, including as part of regular reviews of annual and periodic reports and other company filings by the Division of Corporation Finance. Consistent with this guidance, the staff has generally found robust efforts to comply with the disclosure requirements, but also has issued comments questioning the sufficiency and consistency of the disclosures in certain instances. These staff reviews of issuer filings and, as necessary or appropriate, provision of comments in this space, will continue. As mentioned below, in 2018, the Government Accountability Office (GAO) reviewed the SEC's disclosure review process for climate-related disclosures and did not propose any changes to this process. Further, our staff in the Office of Compliance Inspections and Examinations is reviewing disclosures of investment advisers and issuers regarding funds and other products that pursue environmental or climate-related investment mandates to help ensure that investors are receiving accurate and adequate information about the material aspects of those strategies.

Engagement with Investors and Other Market Participants. In addition to considering environmental and climate-related issues as part of regular filing reviews, SEC staff frequently engages in environmental and climate-related disclosure topics through staff trainings, meetings with investors and market participants, and outside speaking engagements. In recent years, these efforts have been particularly focused on: (1) better understanding the environmental and climate-related information investors currently use and how they analyze that information to make investment decisions on both an issuer- and industry-specific basis and more generally; (2)

[3] Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010) [82 FR 6290 (Feb. 8, 2010)].

better understanding the extent to which (and how) issuers identify, assess and manage environmental and climate-related risks in their particular business and industry; and (3) reminding issuers and other market participants of how the Commission's principles-based disclosure requirements apply to environmental or climate-related matters and, as circumstances change (for example, as a result of changes in environmental regulation or changes in costs of operations), that prior disclosures may require modification.[4]

Personal Engagement on Climate-Related Issues. Since the early days of my tenure, I have been engaged with fellow regulators, investors and other market participants on climate-related matters and, in particular, have sought to make the engagement between investors and companies, as well as investors and providers of financial products and services, substantive and further the dissemination of material information. This engagement includes work within the Financial Stability Board (FSB), including with its staff and current and former Chairmen (Randy Quarles and Mark Carney) and the International Organization of Securities Commissions (IOSCO), including participating in its Sustainability Finance Network (Network). I have supported the work of the FSB's Task Force on Climate-Related Financial Disclosures (TCFD) and the Network, and they have issued several recent reports.[5] I also have engaged with the Investor Advisory Committee[6] and our Asset Management Advisory Committee[7] on these topics and have encouraged each to do their part to improve the investor-registrant and investor-provider dialogue. Further, I have made my view on improving disclosure in these areas clear and welcomed input in various other fora.[8]

<u>Specific Questions in Your August 12, 2020 Letter</u>

In your August 12, 2020 letter, you include a series of specific questions directed to me. You first ask about Ceres's June 2020 Report[9] and the recommendations contained therein. I appreciate the work and analysis of Ceres and the various other private sector actors in this space. The Ceres recommendations highlight the many different market participants that play a role in considering climate-related issues and investments, which is consistent with the

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[4] William Hinman, Director, Division of Corporation Finance, Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks, Mar. 15, 2019, *available at* https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519.

[5] *See e.g.* Financial Stability Board, Stocktake of Financial Authorities Experience in Including Physical and Transition Climate Risks as Part of Their Financial Stability Monitoring (July 22, 2020), *available at* https://www.fsb.org/wp-content/uploads/P220720.pdf; Task Force on Climate-related Financial Disclosures: Status Report (June 2019), *available at* https://www.fsb-tcfd.org/wp-content/uploads/2019/06/2019-TCFD-Status-Report-FINAL-053119.pdf ; "Sustainable Finance and the Role of Securities Regulators and IOSCO (Apr. 2020), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf;

[6] *See, e.g.*, Chairman Jay Clayton, Remarks to the SEC Investor Advisory Committee (Nov. 7, 2019), *available at* https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-110719; Chairman Jay Clayton, Remarks to the SEC Investor Advisory Committee (Dec. 13, 2018), available at https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-meeting-121318.

[7] *See* Remarks at Asset Management Advisory Committee Meeting (May 27, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-amac-opening-2020-05-27.

[8] *See, e.g.*, FCLTGlobal, "A Conversation with SEC Chairman Jay Clayton: Long-term Investing, Sustainability, and the Role of Disclosures" (June 23, 2020), *available at* https://www.fcltglobal.org/resource/jay-clayton-sec-webinar/.

[9] Ceres, "Addressing Climate As a Systemic Risk: A call to action for U.S. financial regulators: Executive Summary," June 1, 2020, https://www.ceres.org/sites/default/files/2020-05/Financial%20Regulator%20Executive%20Summary%20FINAL.pdf.

Commission's cross-disciplinary approach to climate-related issues. As discussed above, in addition to considering climate-related issues across the Commission, SEC staff and I actively participate in climate-related disclosure and other work streams with many of our international counterparts through the FSB, IOSCO and in certain cases, bilaterally. This activity provides us with diverse perspectives on a wide range of issues, including those raised by the Ceres recommendations.

You also ask: (1) whether I believe that an understanding of which assets of public companies may be materially affected by climate change may help investors make more informed decisions about the risk of their investments; (2) whether I agree that information concerning the impacts of climate on public company assets and business is material to the proper valuation of investments by investors and markets; and (3) whether I believe it would be useful for investors to understand public companies' contributions to greenhouse gas emissions and their exposure in the event of a government- or market-mandated transition towards a lower-carbon economy. Our disclosure framework is designed to provide investors with material information about climate-related issues, including, without limitation, those outlined above. For example, companies are required to disclose material trends and uncertainties,[10] and the most significant factors that make an investment in the registrant or offering speculative or risky.[11] This includes the material impacts of climate-related issues on public companies' operations and financial condition, including, as just a few examples, current and future tax and regulatory actions, consumer preferences, risks to plant, property and equipment and whether these risks can be insured or otherwise mitigated. These and other issues are outlined in the Commission's 2010 Guidance. Here I note that, for example, regulatory or legislative developments may have a significant effect either directly or indirectly on a company's operating and financial decisions, and if so, would be required to be disclosed. Until those developments manifest themselves, they can be identified but are—like many forward-looking issues—difficult to quantify.

To your questions regarding the GAO Report[12] and a 2020 National Whistleblower Report (Whistleblower Report)[13] and whether these reports present concerns with respect to climate-related disclosures, climate-related issues can, depending on the facts and circumstances, be material to a company, and if so, our rules are designed to elicit appropriately tailored disclosures. Companies have liability under the federal securities laws for the disclosure that they provide (or in some cases fail to provide) to investors and bear ultimate responsibility for assessing their particular facts and circumstances to determine what information is material and therefore required disclosure. Consistent with the discussion above, it is important to recognize that, for both issuers and investors, capital allocation decisions based on, or materially influenced by, climate-related factors are substantially forward-looking and likely involve estimates and assumptions regarding complex and uncertain matters that are both issuer- and industry-specific, as well as regional, national and multi-national/jurisdictional, in nature.

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[10] Item 303(a) of Regulation S-K [17 CFR 229.303(a)];
[11] Item 105 of Regulation S-K [17 CFR 229.105].
[12] Government Accountability Office, "CLIMATE-RELATED RISKS: SEC Has Taken Steps to Clarify Disclosure Requirements," February 2018, https://www.gao.gov/assets/700/690197.pdf.
[13] National Whistleblower Center, "Exposing a Ticking Time Bomb: How Fossil Fuel Industry Fraud is Setting Us Up for a Financial Implosion – and What Whistleblowers Can Do About It," July 23, 2020, https://www.whistleblowers.org/news/new-report-warns-that-fossil-fuel-industry-deception-about-climate-risksrepresents-a-ticking-time-bomb-threatening-the-global-financial-system/.

Although companies are ultimately responsible for the disclosure they provide, the Division of Corporation Finance selectively reviews filings made under the Securities Act of 1933 and Securities Exchange Act of 1934 both to monitor and to enhance compliance with disclosure and accounting requirements. The Division concentrates its review resources on disclosures that appear to be inconsistent with Commission rules or applicable accounting standards, or that appear to be materially deficient in their rationale or in clarity. When reviewing a company's filing, staff focuses on disclosure items that are most significant to a particular company, taking into consideration a number of factors such as the industry and jurisdictions in which a company operates, as well as recent events and macroeconomic trends. In the course of a filing review, staff may issue comments to a company to elicit better compliance with applicable disclosure requirements, based on the evaluation of the company's disclosure as well as other publicly available information. In response to those comments, the staff may direct a company to revise its financial statements or amend its disclosure to provide additional or enhanced information or to revise its financial statements or provide such other disclosures in future filings. Where appropriate, the Division refers matters to the Division of Enforcement.

Our flexible, principles-based disclosure framework combined with our robust disclosure review program and strong enforcement capabilities give me confidence in our approach, and I do not believe that any issues raised by the GAO Report or Whistleblower report are cause for changes to our programs or approach. I have consulted with our senior staff on these matters and they have expressed to me their view that, as a general matter, disclosures are idiosyncratic by necessity.

Finally, you ask about the *Climate Risk Disclosure Act*, and specifically about disclosure of physical and transition risks in the event of a government- or market-mandated transition to a lower carbon economy. Our principles-based disclosure framework is designed to be flexible and reflect changing circumstances, regulatory or otherwise. I would expect companies to consider any significant changes to their regulatory environment as they evaluate their disclosure obligations, and I expect they currently do so. For example, companies operating primarily in the European Union have different regulatory considerations than those operating in the United States, and I expect companies to consider these differences as they evaluate their disclosure obligations.

Moving Forward

I want to be clear that the Commission's and the SEC staff's focus on and work in this area will continue, and I have encouraged market participants to keep engaging with us. We have added your April 28, 2020 letter to the comment file for the proposed amendments to our disclosure requirements for Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information. On August 26, 2020, the Commission adopted amendments to Regulation S-K, modernizing our public company business disclosure rules for the first time in over 30 years. Many of these amendments reflect the Commission's longstanding commitment to a principles-based, registrant-specific approach to disclosure. These disclosure requirements, while prescriptive in some respects, are rooted in materiality and are designed to facilitate an understanding of each registrant's business, financial condition, and prospects. This approach has proven extremely beneficial to investors and our markets over the past eight decades.

In conclusion, as the Commission presses ahead with its initiatives to improve our disclosure regime and make it more effective, we will consider the issues raised in your April 28, 2020 and August 12, 2020 letters as we continue to evaluate whether current requirements elicit disclosures that provide insight into a company's assessment of, and plans for addressing, material risks—including those related to climate change—to its business, operations, and financial condition.

Thank you again for your letter, and I look forward to continued engagement on climate-related issues. Please do not hesitate to contact me at (202) 551-2100, or have a member of your staff contact Holli Heiles Pandol, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010 if you have any questions or comments.

Sincerely,

Jay Clayton
Chairman