STATE OF UTAH

SPENCER J. COX
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

DEIDRE M. HENDERSON
LIEUTENANT GOVERNOR

April 19, 2022

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

On March 21st, The U.S. Securities and Exchange Commission (SEC) proposed the adoption of a detailed set of disclosure requirements on climate change risks and greenhouse gas emissions (GHG) by publicly traded companies. The requirements risk inundating investors with non-material information and will do little to help, and may even detract from, efforts by companies to lower GHG, and represent a departure from established practice for investor disclosures that will result in harm to both investors and public companies. In addition, the proposed rules, steeped in areas lacking political consensus, risk not lasting multiple administrations and therefore bring regulatory uncertainty to our economy.

I. The proposed rule harms investors by introducing information into disclosure statements that does not materially impact business operations

Disclosures on ascertainable climate change risks by public companies are nothing new. Under existing SEC regulations, some companies must provide their investors with information about the risks and opportunities associated with climate change and the company's greenhouse gas footprint. But, climate-risk or GHG information is only required to be included in mandated public investor disclosures if that information is material to, i.e. would significantly impact, a company's operations and therefore the value and risk of the company's securities. The proposed rule essentially replaces the judgment of the business and imposes materiality on a host of climate-related issues.

Materiality has been, and should remain, the benchmark standard for disclosures to investors. The materiality standard allows businesses to make rational decisions about what to list as significant risks and opportunities faced by the company that would affect their bottom line and the potential value of any investment. Materiality protects investors from a deluge of red herring or non-sequitur information intended to hide or minimize risks or circumstances that must not be ignored in making informed investment decisions.

Some businesses do not need to disclose as much climate-related information because their operations are not materially affected by these issues. The proposed SEC rule labels a host of climate change information as material by forcing businesses to disclose that information whether they actually are material to investors or not. Without the business being allowed to decide impartially, shareholders will be harmed because the SEC is dictating to them that climate-related risks are always material. Under the new rule, a software business headquartered on the side of a desert mountain in Lehi, Utah, would have to report on the risk of severe flooding due to climate change, and speculate on the amount of indirect GHG generated by its consumers when using their software. Publicly traded accounting firms in Minneapolis would be forced to conduct scenario analysis speculating on the risks of a 1.5° C temperature increase for a business that spends most of its year heating its office building. The proposed rule would harm an investor trying to decide which investments would make an appropriate investment for their retirement accounts because, as noted above, the investors will be drowned with immaterial climate related data distracting from areas that will materially affect the money-making ability of the business.

Although some investors may make investment decisions based on personal values, disclosures tailored specifically to these values are not an area suited for SEC mandates or intervention due to their often immaterial or unquantifiable nature. For example, there are investors who choose to avoid investments that have tobacco or alcohol holdings for moral or health reasons. Others may avoid companies that have ties to countries with a history of censorship or civil rights violations. And, of course, some investors want to choose companies that have a smaller GHG footprint.

Investor individual moral preferences are marketable, and drive demand for business information that does not materially relate to a businesses' profitability or risk. Some businesses choose to provide climate information to consumers and investors outside of SEC requirements because of this demand. While businesses may choose to publicly provide information on moral issues that are not material to the investors' investment risk and opportunity, these disclosures are better left outside of official regulatory filings mandated by the animating securities laws.

II. The new rule harms businesses by imposing costly regulations, opening businesses up to liability for predictions made with highly speculative information, chilling incentives to set effective GHG reduction goals, and interfering with business management

The list of disasters one should consider in the new SEC rule belies the inherent difficulty and expense of its reporting requirements. Will climate change lead to "severe weather," or "drought?" "Flooding," or "wildfires?" A "1.5° C," "2.0° C," or "3.0° C" increase in global temperature? The new rule would cause public businesses to spend a great deal of time and money trying to navigate a new body of climate change regulations. The overall effect of the effort will be deleterious to national investment and productivity and result in economic waste with little benefit - a host of bright minds toiling to apply scientifically uncertain information to businesses that are only tangentially impacted by climate risk.

Costly and uncertain direct and indirect GHG emissions data will be required of all qualifying public businesses. These disclosures include not only emissions from direct operations, but also indirect emissions from the purchase of acquired electricity, heating, or cooling. Beyond those indirect costs, businesses that cannot show they are not "material" must report on "Scope 3 emissions," an incredibly broad capture of GHG emissions related to upstream (GHG emissions by the company's suppliers) and downstream (GHG emissions by the company's customers) activities in the registrant's value chain. Some businesses' employees affect GHG generation while working less than they would if they were at home watching streaming television, but will be required to report on it anyway. The SEC estimates costs between $490,000-$640,000 per registrant, but these underestimate the compliance cost, especially in consideration of unprecedented scope 3 emissions (Statement, *We are Not the Securities and Environment Commission - At Least Not Yet*, Commissioner Hester M. Pearce).

Worse than the cost of compiling the data will be the money spent defending against the liability the new rules create. Current rules make companies and their officers responsible for the accuracy of the information they disclose in their public filings, and the new rule does not change this. Following a natural disaster impacting the business, investors could consult with lawyers to determine if such a risk should have been disclosed or if the disclosures were inaccurate. Highly speculative questions, like whether a government entity will enact "regulations that restrict emissions" or whether consumers will begin to "chang[e] consumer preferences" would now be in the purview of material disclosures by the business. "Even risks related to regulatory change in the distant future," the rule filing declares, "could be priced today." (p. 372). Businesses taking as broad an approach as possible to avoid liability will still miss disclosing some highly uncertain risk that can be tied to climate change or GHG emissions, resulting in costly litigation.

Liability from the rule would actually have a chilling effect on businesses setting public GHG reduction goals, undermining progress on climate change. Under the rule, a business must "disclos[e] . . . if it has set any targets or goals related to the reduction of GHG emissions." If it has, new requirements kick in and the SEC will require the businesses' disclosures of information on scope, units of measurement, and a defined time horizon of the goal target. Climate change goals will now be a matter of investor liability and potential SEC investigation if such goals are not met. Aspirational goals will be eliminated or become less lofty in practice. The safest bet will be to avoid such statements altogether, ironically curtailing businesses' efforts to promote a culture of emissions reductions.

The rule also interferes with business management decisions through its new disclosures. By requiring businesses to disclose whether they have an expert in climate change on their board of directors, businesses will have to consider placing an expert not needed for business operations on the board, or face being embarrassed by answering that they do not have such an expert (p. 477). The same is true with the frequency of meetings to discuss climate issues and the process by which employees become educated on climate risks. The proposed rule will tend to spur businesses, even those with minimal or tangential climate impact, to spend resources and management time on issues that it would not make business sense to do so outside of these regulations resulting in a loss of productivity and focus which ultimately will hurt investor returns.

III. The new rules exceed the reasonable bounds of SEC authority and lack political consensus, and will lead to regulatory whiplash for public businesses if passed

The market as an institution has access to far more information than a government agency. It is inherently highly motivated to accurately assess risk of all kinds and remains the best platform for protecting investors, rewarding companies with a low risk from climate change and hedging against companies that may be at higher risk.

If policy changes are necessary to mitigate the risk and harm of climate change, such changes are best made through the legislative process that drives consensus. Agency rules, more so than codified statutes, are subject to changes by subsequent administrations and may be subject to selective or lax enforcement. Because the proposed requirements are driven by current political pressures and not a part of consensus legislation, they are unlikely to survive the next Republican administration. Enacting rules that are likely to be short-lived will lead to massive uncertainty for businesses and investors as they navigate an expensive and lengthy set of new regulations and ultimately result in wasted time, effort, and resources.

As the SEC acknowledged, global demand for GHG and climate accountability in public companies is on the rise. The market will continue to respond affirmatively to that demand. The SEC does not need to interfere in that movement by creating liability and uncertainty for businesses that want to make climate targets nor for the investors looking to make investment decisions.

Sincerely,

Spencer J. Cox
Governor