TAXPAYERS PROTECTION ALLIANCE

June 16, 2022

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090
Submitted via electronic mail to rule-comments@sec.gov

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (File Number S7-10-22; Document Number: 2022-06342)

Secretary Countryman:

The Taxpayers Protection Alliance ("TPA") appreciates the opportunity to provide a comment and our perspectives on the U.S. Securities and Exchange Commission ("SEC" or the "Commission")'s proposal on the Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposal).[1] The Proposal asks companies to provide financial statements containing climate-related financial impact and expenditure metrics, report their greenhouse gas emissions, and disclose details of how climate change is affecting their businesses.

With the average investor in mind, TPA has fundamental concerns regarding the Proposal, particularly in consideration of the statutory limits of the SEC's jurisdiction. Though the Commission has identified potential benefits from the Proposal for investors, we do not see a scenario where this rule is fit for its purported purpose. This rule will most likely not help in the fight against climate change, but instead impose massive costs, create unprecedented levels of red tape for America's business community, complicate investing for everyday Americans, and cause irrevocable disruption to the SEC's existing disclosure framework.[2] In addition, with this new Proposal the SEC has deviated far outside its congressionally mandated authority by imposing a climate agenda. This overreach is a classic example of mission creep.

This rule will ultimately result in a chilling effect on the American capital markets and every day investors. We ask that the Commission consider our concerns carefully before making drastic and consequential changes to its disclosure framework.

The Commission's Proposal would Pose Significant Costs to American Investors.

In the Proposal, the Commission admits that it would more than double the costs to companies in filing the already extensive and required information *(see PRA Table 4, page 440)*. As with many new regulatory requirements, the costs are typically borne by the investing public through lower dividends, diminished returns, and higher costs of entry.

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[1] File No. S7-10-22; RIN 3235-AM87, available at: https://www.sec.gov/rules/proposed/2022/33-11042.pdf.

[2] Commissioner Hester M. Peirce, "We are Not the Securities and Environment Commission – At Least Not Yet" (March 21, 2022), available at: https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.

Furthermore, though the Commission is able to propose potential calculable costs it does not quantify the supposed benefits for the investing public. The Proposal comes at a time when investors in the S&P 500 have lost nearly $5 trillion in stock value.[3] We find it very possible and likely that these supposed benefits will pale in comparison to the costs incurred by American companies and ultimately the American public.

The Commission would Unnecessarily Complicate the Existing Disclosure Framework

The Proposal's overly broad nature invites a number of complications with the Commission's existing framework. For one, the Commission has a longstanding disclosure regime rooted in a combination of statutory, regulatory, and judicial determinations. We fear that the Proposal fails to recognize the existing construct and the methodical balance of these considerations. These determinations have served the American business community and investing public well, and disrupting them without thorough consideration of the long-lasting effects would jeopardize the American economy.

Specifically, the Proposal would make it harder for public companies to discern what is "material" for the purposes of investment decision-making. The ultimate effect of which will lead some companies to over-disclose, which would effectively saturate investors with information not relevant to investments, or under-disclose, which would lead to additional compliance and regulatory burdens. This would have the unintended effect of making it harder for investors to understand the real state of a company's business and profits and could curb overall investment.

The Proposal Undermines the Commission's Foundational Use of Materiality

The concept of materiality has been described as "the cornerstone" of the disclosure system.[4] However, this Proposal would muddy the waters around the materiality-based reporting framework the Commission has historically used. Commissioner Hester Peirce asserts in her statement that the Proposal, "proposes to mandate a set of climate disclosures that will be mandatory for all companies without regard for materiality" and that the Commission "recasts materiality to encompass information that investors want based on interests other than their financial interest in the company doing the disclosing."

The standards of materiality would be replaced by a mandate to include information not material and in some cases not consistently measured across the industry. For example, the Proposal would require a company to report on Scope 3 greenhouse gas emissions (not otherwise included in Scope 1 and 2) that pertains to indirect emissions that occur throughout a company's value chain; these emissions occur from sources not controlled by a company. However, the Commission admits in the Proposal "the calculation and disclosure of Scope 3 emissions may pose difficulties…" They also acknowledge that it will likely be necessary "to rely heavily on estimates and assumptions to generate Scope 3 emissions data."

There will obviously be inherent difficulties in obtaining this data from third parties. It will not only require substantial internal and external resources to compile but it opens the disclosure up to methodological uncertainties that could make information unreliable or expose companies to liability.

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[3] CNBC, "Stocks have been a horror show. Here's how to tell when the market is near capitulation," By Karen Firestone, May 4, 2022: https://www.cnbc.com/2022/05/04/op-ed-stocks-have-been-a-horror-show-heres-how-to-tell-when-the-market-is-near-capitulation.html.

[4] File No. S7-06-16; RIN 3235-AL78, available at: https://www.sec.gov/rules/concept/2016/33-10064.pdf

Furthermore, it is entirely likely the materiality threshold the Commission suggests companies use (1 percent) to determine inclusion in a disclosure will be challenged in courts of law. This will lead to more confusion among taxpayers and further increase accounting and bureaucratic costs for the companies in which taxpayers invest. Former SEC Chair Jay Clayton and ranking member of the House Financial Services Committee Rep. Patrick McHenry from North Carolina alluded to this in a *Wall Street Journal* op-ed stating "the debate will shift not to Congress, where it belongs, but to the courts. The commission's chosen path will allow the political buck-passing to continue and delay thoughtful, appropriate and democratically accountable policy."[5]

The Commission is Operating Outside its Authority

Finally, the Commission should recognize its operating outside of its statutory authority.

In a comment to the Commission, sixteen state attorneys general question the agency's authority to require information that is not financially material. They argue that existing SEC rules prohibiting misrepresentation of material information is "not a freestanding source of authority for the Commission to require climate change disclosures—at least without a showing that they are needed to prevent misleading or fraudulent representations." [6]

The role of the Commission should be to inform Congress about necessary rule changes that could advance appropriate solutions during the policy-making process and subsequently implement Congressional mandates in their respective areas of expertise.

Conclusion

Commissioner Peirce put it succinctly when she titled her statement on the proposed rule, "We are not the Securities and Environment Commission...." TPA believes the Proposal outlining new climate-change disclosures brings the Commission into areas of public policy for which it has no mandate or authority and threatens the value of taxpayers' investments. We ask that you reconsider the Proposal in light of potential negative impacts to capital markets and the investing public.

Thank you for your consideration of our comments.

Sincerely,

David Williams
President
Taxpayers Protection Alliance

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[5] Wall Street Journal, "The SEC's Climate-Change Overreach" by Jay Clayton and Patrick McHenry, March 20, 2022: https://www.wsj.com/articles/the-secs-climate-change-overreach-global-warming-risks-lawmakers-invertors-market-data-11647801469?mod=article_inline

[6] SEC: https://www.sec.gov/comments/climate-disclosure/cll12-8915606-244835.pdf.

TAXPAYERS PROTECTION ALLIANCE

CC:

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