June 15, 2022

Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE: Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22

Dear Chairman Gensler:

Western Energy Alliance and the U.S. Oil & Gas Association are struck by the magnitude of the climate change disclosure rule proposed by the Commission and the breathtaking assumption of authority to regulate in this sphere. We appreciate the opportunity to comment on the vast structure SEC is attempting to erect. However the time allotted is inadequate for a rule of this scope and complexity with such far-ranging effects on the economy and financial system. Our comments focus on the underlying intention of the rule, which is to elevate hypothetical risks from climate change decades into the future over material financial factors today as a way to ultimately decapitalize the oil and natural gas industry and deny humanity the countless benefits of our products. We strongly believe the achievement of that goal would be catastrophic to humanity. Further, SEC is positing climate change *policy* risk that is of a greater threat to pensions and other investments than is climate change over the time horizon germane to today's pensioners and investors.

Western Energy Alliance represents 200 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

The US Oil & Gas Association is the only national association with Divisions in the states along the vital Gulf of Mexico. Because of the Gulf region's importance to our current and future domestic energy supplies, national policy debates often center on the Gulf of Mexico, making our coordination of national and regional activities an important industry asset. The most distinguishing characteristic of the US Oil & Gas Association is the strong support it receives from a membership covering the full spectrum of the domestic petroleum industry.

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A. Lack of Statutory Authority

SEC should recognize its lack of statutory authority to regulate in this space. Certainly the commission must respond to changing market and financial industry conditions, but its powers are not unlimited. SEC appears to be going down the path of regulation despite the fact that the representatives of the American people in Congress have not passed into law legislation granting SEC authority to regulate climate change or compel a noncarbon transition. Until such time as Congress acts, SEC should not enact climate regulation as an end-run around Congress.

The proposed rule exceeds the regulatory authority Congress granted to SEC. SEC's rulemaking authority is provided by Section 7(a) of the Securities Act of 1933 and Section 12(b) of the Securities and Exchange Act of 1934. Under these statutes, Congress granted SEC the authority to promulgate regulations requiring the disclosure of information as "necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. §§ 77g(a)(1), 78l(b)(1). In terms of examining the "public interest," Congress required SEC to examine "whether the action will promote efficiency, competition, and capital formation." 15 U.S.C. §§ 77g(a)(1), 78l(b)(1). These factors articulated by Congress in the SEC's organic statutes provide the parameters and limitations on the SEC's ability to develop new regulations.

Congress did not grant SEC unlimited authority to develop disclosure regulations that the agency may deem as broadly in the "public interest." Instead, Congress narrowly focused SEC's mission to protect investors and promote the public interest by requiring disclosure of information pertinent to company valuation, financial forecasting, and capital formation. The proposed climate disclosure rule goes far beyond the regulatory parameters and limitations Congress provided to the agency. SEC has not articulated a rational or lawful basis for it to develop the proposed disclosure rules.

Moreover, SEC's proposed climate disclosure rule is contrary to established U.S. Supreme Court legal precedent. In the context of the governing parameters for regulatory authority granted to a federal agency by Congress, the Supreme Court has held that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general welfare . . . [r]ather, the words take meaning from the purpose of the regulatory legislation." NAACP v. Federal Power Commission, 425 U.S. 662, 669-71 (1976) (holding that the term "public interest" in the Federal Power Act and Natural Gas Act require the Federal Power Commission to promote the orderly production of plentiful supplies of electric energy and natural gas at just and reasonable rates, and do not constitute a directive to the agency to seek to eradicate racial discrimination).

Similarly here, SEC's proposed climate disclosure rule is seeking to mandate disclosure of information in the context of informing the public on company emissions and activities that may influence climate change, but this interpretation far exceeds the narrowly defined "public interest" that Congress articulated in the two statutes that created SEC and its limited regulatory mandate.

Major Questions Doctrine

SEC runs afoul of the "major questions" doctrine by attempting to use this proposed rule to do what Congress will not. SEC cannot create a national greenhouse gas emissions and climate change policy via rulemaking absent a clear delegation of authority by Congress to do so. The U.S. Supreme Court addressed this issue in *Utility Air Regulatory Group v. EPA* 134 S. Ct. 2427 (2014). In the decision, Justice Antonin Scalia explained that in adhering to the major questions doctrine, courts expect Congress to "speak clearly" if it wishes to assign to an agency "decisions of vast economic and political significance." Under this doctrine, an agency cannot, "claim to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy." Discovering an unheralded power to bring about a transition to a net-zero economy through financial disclosure is just such an overreach that the Supreme Court rejected and SEC attempts with this proposed rule.

With this proposed rule, SEC would be expanding its regulatory authority beyond investor protection and capital formation into becoming the major regulator of climate change. This is not just mission creep, but mission leap. Such a vast expansion of power is inappropriate in a democracy. While SEC states that its "…mission [is] to protect investors, maintain fair, orderly and efficient markets, and promote capital formation, not to address climate-related issues more generally" (p. 21336) this proposed rule does exactly that, regulate climate-related issues. The rule would require companies to conduct detailed greenhouse gas (GHG) emissions analysis and climate change planning in order to report it in financial filings. How can a company report on something that it is otherwise not compelled to do by the government except through this rule? SEC is assuming EPA authority.

The U.S. Supreme Court recently overturned a similar overreaching agency mission leap by the Occupational Safety and Health Administration (OSHA) when it ruled that OSHA's Covid vaccine mandate was unlawful because it "significantly expand[ed] OSHA's regulatory authority without clear congressional authorization" particularly given the "vast economic and political significance" of such an agency mandate. National Federation of Independent Business v. OSHA, 142 S. Ct. 661 (2022).

Similarly, SEC's proposed climate disclosure rule would have vast economic and political significance and present major policy questions reserved for Congress to address via legislation. In addition to being contrary to the major questions doctrine, SEC's proposed rule also violates the fundamental constitutional principle of separation of powers. As an agency within the Executive Branch, SEC cannot act in the role of the Legislative Branch and promulgate a far-reaching national policy on climate in the absence of a legislative directive from Congress to do so. Congress did not delegate any authority to the SEC to regulate climate.

SEC must determine whether a disclosure rule is "necessary or appropriate in the public interest or for the protection of investors." But the public interest in the context of SEC's statutory authority does not reach so far as to encompass the environment and GHG emissions regulation. SEC's mission is to protect investors, not protect the environment.

Likewise, where is SEC's statutory authority to mandate disclosures that serve to redirect capital flows to "environmentally sustainable" firms with lower overall returns? SEC's governing statute does not give it authority to promulgate regulations to protect the environment at the expense of protecting the financial interests of investors.

The "public interest" does not include buttressing large investment managers who offer "climate-friendly" or ESG investments and have a pecuniary interest in pressing for a new disclosure regime that will help inflate the value of those assets. SEC repeatedly indicates (e.g., proposed rule Section I.C.) such large investors are the ones calling for climate change disclosure and are supportive of this rule, not retail investors, as we have demonstrated in Section C below. In fact, this proposed rule raises concerns of potential market abuse at the expense of the actual returns of the ordinary investor that SEC claims to be most concerned about.

First Amendment

SEC also runs afoul of the First Amendment. By compelling the disclosure of climate information and GHG emissions, SEC is exposing companies to harassment for those emissions. SEC knows full well there is a vast network of climate change activists who boycott, protest, and attempt to force divestment from oil and natural gas companies. SEC has cited several groups in Section I.C. that agitate against or work to divest from fossil fuels, many of which interact with radical climate activists directly or indirectly by funding them. Western Energy Alliance has written a white paper with information about the seven groups SEC cites to frequently within the rule, which we have attached to this comment letter as Appendix A.[1] SEC is compelling companies to provide information that it knows such activists will use to harass them. Several of our public member companies have been harassed for years by activist shareholders who collaborate with such groups.

Examples of harassment abound. Climate Action 100+ is the world's largest investor engagement initiative on climate change with 700 investors focused on ensuring 166 of the world's largest corporate GHG emitters align their business strategies with the goals of the Paris Agreement, including focusing corporate governance on climate change, reducing GHG emissions, and strengthening climate-related financial disclosures.[2] Follow This is an organization that attempts to harass companies through the exercise of a small minority of shares:

> "We encourage supporters of Follow This to buy one share, because this makes the biggest impact. As small shareholders in Shell, our influence doesn't necessarily lie in the percentage of the company we own (that will always remain a small percentage), but in how effectively we are able to organise shareholder support for the company to commit to the Paris agreement. We do this in particular through encouraging large investors to vote for the Follow This climate resolutions. The more shareholders in

[1] *The Activist Network Behind Climate Change Disclosure Regulation*, Western Energy Alliance White Paper, June 2022.
[2] Information on Climate Action 100 is at https://www.climateaction100.org/.

> Shell we represent, the more importance Follow This carries as a discussion partner and the more weight is given to our arguments. This means that, in general, we achieve more impact if many people buy one share than if one person buys many shares."[3]

Many individuals and organizations engage in harassing tactics toward companies that they believe contribute to global warming. This conduct has included picketing, vandalism, and repeatedly disrupting shareholder meetings with the objective, in one protester's words, of seeking to "embarrass" the companies and "hold them to account." Targets of this activity have included, among others, oil companies and financial institutions with business relationships with oil companies. A leading climate organization openly acknowledges that obtaining "disclosures" from companies enables the organization to then "pressure" companies whose activities are perceived to harm the environment. A shareholder advocacy group has sought the ouster of the chairman and another board member of Chevron not on financial grounds but on GHG emissions. Activist firm Engine No. 1 with only a .02% stake in Exxon won three board seats on the basis of climate change disclosure, not financial concerns. An activist with 350.org is not shy about revealing that the playbook of harassment is not based on facts but is a campaign to degrade the reputation of the industry. And the significance of the disclosures themselves can be the subject of controversy and disagreement, as in one dispute between an activist at a company's annual meeting and the company's CEO.[4] These are but a handful of examples.

Several state attorneys general have engaged in climate change lawsuits against the major oil companies, including Connecticut, Delaware, Massachusetts, New York, Rhode Island, and Vermont that can be characterized as advocacy through the courtroom and even harassment.[5] Several of the state AG offices have been staffed by activist lawyers from the State Energy & Environmental Impact Center, a program of New York University funded by billionaire Michael

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[3] Follow This FAQs at https://www.follow-this.org/faq/.

[4] "Shareholders asked oil giant Chevron to cut emissions. Now some want the chairman ousted", *The Washington Post,* March 8, 2022; "Climate Activists Protest Outside Chevron Headquarters in San Ramon", *NBC*, September 27, 2019; "Engine No. 1 wins at least 2 Exxon board seats as activist pushes for climate strategy change", CNBC, June 2, 2021; "States took Big Tobacco to court and won. Can they now beat Big Oil?", Frederick Hewett, *WBUR,* June 6, 2022; "'We will stop you!': Singing climate protesters disrupt Shell shareholder meeting", *CNN,* May 24, 2022; "Singing "We will, we will stop you," climate change activists disrupt Shell shareholders meeting; some glued themselves to seats", *CBSNews,* May 24, 2022; "Climate protestors break windows at JPMorgan offices in London", September 1, 2021; "Police Overreaction to Climate Protest Reveals City's Misplaced Priorities", *KnockLA*, May 20, 2022; "With sponges and petitions, climate activists take on insurers", *Reuters,* November 26, 2021; "Climate Action 100+ Net Zero Company Benchmark Shows an Increase in Company Net Zero Commitments, but Much More Urgent Action is Needed to Align with a 1.5°C Future", Climate Action 100+, March 30, 2022; "Ben van Beurden and Mark van Baal debate Shell's climate ambitions during the AGM", Follow This, May 29, 2018.

[5] "Court Ruling Vindicates ExxonMobil In New York 'Climate Change' Fraud Case", *Forbes,* December 10, 2019; "It's Official: New York's Case Against ExxonMobil is Over", *Energy in Depth,* January 13, 2020.

Bloomberg, himself a well-known climate activist.[6] Bloomberg is not only the driving force behind the Sustainability Accounting Standards Board (SASB) which advocates for climate change disclosure, but has also funded the Asia Investor Group on Climate Change (AIGCC), CDP, Ceres, and the Investor Group on Climate Change (IGCC). We detail below in Section C and in our attached white paper how these groups are not disinterested groups of investors but activists that have organized a network to promote a policy position outside normal democratic processes. These AGs are using litigation to drive an activist policy agenda through the courts rather than working through Congress. Even if the desired rulings to hold oil companies responsible for climate change are not achieved, litigants intentions behind these lawsuits and others from counties and municipalities include harassment.[7] Aspects of the proposed rule such as those regarding internal carbon pricing seem designed to help state AGs bring such suits in the future. Many who advocate for climate change disclosure do it specifically for purposes of harassment, as they have been unable to advance their political agenda through normal political processes.

Further, SEC cites several times to presidential order. For example, in footnote 178, SEC states, “A National Climate Taskforce created by the president established commitments to reduce economy-wide net greenhouse gas emissions by 50-52% by 2030 as compared to 2005 levels, and to reach net zero emissions by 2050.” Of course a president has the authority to set policies for his administration, but these powers are bounded. A presidential order has nowhere near the legal heft to serve as the basis for such a breathtakingly sweeping rule intended to displace fossil fuels and upend financial markets. A presidential order is a meager thread to hang an entire system for economy-wide net zero and depriving Americans of the energy that supplies 70% of their needs. Until Congress passes a law requiring a transition to zero emissions by 2050 *and* determines that SEC is the vanguard agency for implementing such a vision, SEC has well stepped out of its bounds.

B. GHG Emissions Reporting

Congress did not delegate authority to SEC to regulate under the Clean Air Act (CAA). Congress reserved this authority for the Environmental Protection Agency (EPA). In the summary of the proposed rule, SEC states that a registrant’s GHG emissions are a commonly recognized metric to assess its climate change risk. By choosing that metric, SEC is unlawfully infringing upon and duplicating EPA’s air quality regulation under the CAA, but without the rigor and guidance provided by EPA.

The use of this GHG metric seems logically flawed to us. To illustrate, we point to a hypothetical sea level rise example, as that is commonly considered a risk of climate change. A

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[6] “State AGs rebuked for 'soliciting billionaires' in climate cases”, *Politico Pro*, June 30, 2022; “Judge Dismisses Suit Against Oil Companies Over Climate Change Costs”, *The New York Times*, June 25, 2018; “’This Whole Scenario Raises Obvious Ethical and Legal Concerns’: GOP AGs Blast Bloomberg’s Legal Fellows,” *Energy In Depth,* January 13, 2020.

[7] “Harassing Energy: The Latest in Climate Litigation”, *MasterResource*, August 13, 2020; “Three Colorado Communities File Climate Lawsuit Against ExxonMobil, Suncor”, *Western Wire,* April 17, 2018.

chain of coastal resorts could do everything to reduce its GHG emissions to the bare minimum and faithfully disclose to SEC under this rule, but it is much more exposed to climate change risk than a land-locked Oklahoma based oil and natural gas company, however much that Oklahoma company may or may not have faithfully disclosed and reduced its emissions. That is a simple but obvious example. (We'll leave aside the hypothetical risk of tornados for this example, not only because the IPCC has found low confidence in human climate influence on tornados,[8] but also to keep our example simple.) This rule would seem to disadvantage companies like our hypothetical coastal resort chain because of their location, as they would be hypothetically vulnerable no matter how much they reduce their emissions.

In actuality, and as this example reflects, we submit that GHG emissions information is sought to gauge a company's purported impact on the environment, not the environment's impact on the company. The intention of this rule is to serve as a means to compel GHG reductions, which is well outside SEC's jurisdiction. Moreover, by requiring companies to publicly report and speculate on the cause, pace, and consequences of climate change, and about whether specific instances of extreme weather were caused by climate change, the rule is forcing those companies to speak publicly on controversial topics that are being actively debated in the political arena and are the subject of proposed legislation.

If the intention of the rule is to bring about a carbon-constrained world where GHG emissions do indeed becoming limiting to the growth of that Oklahoma-based company because it has a carbon "budget" it cannot exceed, then the lack of legal authority becomes even more acute. SEC has neither the authority to regulate a reduction of GHGs nor to assign carbon limitations to companies. Without Congress passing climate change legislation that codifies such policies, SEC cannot be used as a substitute to do so. Further, at what point does a company become penalized for providing goods and services, which inherently use energy and resources. Short of driving production of American goods and services to zero, what is the goal? In fact, since U.S. manufacturing is performed more efficiently than in many other countries, shifting U.S. production overseas to countries without such carbon-constrained policies could increase global GHG emissions. Likewise, American oil and natural gas is some of the most sustainably produced in the world with lower GHG emissions profiles. Transferring production overseas would have a net-negative effect on the environment and climate change.
Natural gas produced in the United States has lower emissions than that produced in most other countries. For example, Russian gas transported via pipeline to Europe has 41% higher emissions than U.S. Liquefied Natural Gas (LNG), even considering the shipping emissions.[9] By purposefully suppressing American oil and natural gas production as this rule does, SEC would actually be creating a situation whereby U.S. production is replaced by overseas production, such as to Russia, where emissions are higher. Rather, SEC should be encouraging the

[8] *Sixth Assessment Report, Working Group 1: Climate Change 2021: The Physical Science Basis*, IPCC, Chapter 11: Weather and Climate Extreme Events in a Changing Climate, 2021, p. 1532.
[9] "Life Cycle GHG Perspective on Exporting LNG From the U.S. 2019 Update," Selina Roman-White et al., National Energy Technology Laboratory, September 2019.

production of American oil and natural gas, as increased LNG exports to Europe could achieve a 72 MMt-CO2e reduction annually, the equivalent of taking 16 million cars off the road.[10]

The Payne Institute at the Colorado School of Mines and the World Bank published the 2022 Global Gas Flaring Tracker Report that finds that U.S. oil has one of the lowest flaring intensities in the world, having reduced flaring intensity by 46% over the last decade.[11] The International Energy Agency's methane tracker finds that fugitive methane emissions are 30% higher in Russia and 652% higher in Venezuela than in the United States.

Further, SEC is proposing GHG reporting that goes even further than what is required under CAA regulation. SEC lacks the technical expertise of EPA, yet is requiring vastly more emissions data than even the agency granted authority by Congress to regulate air quality seeks to request. With none of the rigor of the CAA processes mandated by Congress and none of the technical guidance, SEC seeks to conjure emissions data from companies. The vast effort SEC is requiring on Scope 1, 2, and 3 GHG reporting with no specification of the techniques, measurement requirements, and estimation methods for deriving those metrics is the exact opposite of the approach EPA has more judiciously taken. EPA, the agency with air quality expertise, recognizes the scale of the effort and that standard methods must be developed in order to garner standardized data that is meaningful. SEC promotes its rule as a means to provide standardized data without providing any means to actually acquire standardized data. SEC does not adequately recognize the huge level of effort required to gather the data nor the cost to do so.

In order to collect, calculate, and report their direct Scope 1 emissions, companies use emissions factors and other techniques that have been developed through EPA's rigorous regulatory processes under the CAA over many years. There is a reason EPA's GHGRP is very complex and extensive. Measuring and estimating GHG emissions is not a trivial task. To arrive at meaningful data, it requires highly technical emissions factors and measurement techniques that are often based on scientific analysis. Yet with this proposed rule, SEC is assuming EPA-like authority without any of the rigor involved. The six pages of GHG emissions "methodology" discussed in Section II.G.2 is a meager substitute. SEC is proposing to wave its regulatory magic wand to materialize GHG reporting that even an expansive EPA does not require.

We have seen what happens when an agency without EPA's expertise attempts to regulate climate change and GHG emissions. In recent years, the Bureau of Land Management (BLM) has attempted to update its environmental reviews of oil and natural gas lease sales on federal lands to incorporate a comprehensive analysis of the potential impacts of leasing on climate change and global greenhouse gas emissions. In response to lawsuits filed by environmental groups opposed to all leasing, BLM's analysis currently attempts to calculate not only the specific emissions produced at the wellhead, but also any potential associated midstream and downstream emissions.

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[10] "U.S. Fossil Fuels Should Play a Crucial Role in Reducing Global Emissions," George David Banks, et. al., CRES Forum. 2022.
[11] "2022 Global Gas Flaring Tracker Report," Global Gas Flaring Reduction Partnership, The World Bank.

Because of the total uncertainty about future production levels on leases that have not yet been purchased and the end use of any oil and natural gas that may or may not be produced on those leases, BLM's analysis has become speculative in nature. The agency has further responded to the litigation pressure by assuming that all leases will be developed, produce oil and natural gas, and ultimately lead to downstream combustion, meaning the analysis is overly expansive.

Nevertheless, the same groups that initially challenged lease sales beginning in 2015 have continued to file lawsuits and procedural protests against the updated analysis. Substantially all federal leases issued since 2015 are currently subject to ongoing litigation or supplemental environmental reviews required by a settlement agreement. In fact, a recent settlement agreement in the District Court for the District of Columbia requires BLM to conduct new reviews for 61 sales covering 3,610 leased parcels on more than 4 million acres of lands across the West. Many of these leases are currently producing, meaning the supplemental environmental reviews will have zero impact on overall emission levels—they will simply create more paperwork for BLM staff. Likewise, SEC's proposed rule will not have an effect on climate change, as American oil and natural gas production will simply get displaced by foreign production, but energy prices will be higher as the $6.378 billion in additional cost to comply with this rule, as well as costs not anticipated by SEC, get passed onto the consumer directly or through higher prices caused by artificially suppressed supply.

The lesson from BLM's experience over the past decade is that requiring cumulative greenhouse gas analyses that are far removed from the individual impacts of a project fails to provide meaningful information for federal agencies and the public. Further, it has simply become a tool through which activists who are opposed to all domestic production can challenge and create substantial uncertainty around oil and natural gas projects. Expanding this practice to the entirety of a company's development plans and the associated impacts from midstream and downstream uses of their products will only serve to create further business uncertainty for impacted companies, while doing nothing to decrease greenhouse emissions or better inform the public.

The federal courts were unkind to BLM when, as SEC is attempting to do with the proposed rule, it assumed for itself EPA-like air quality control. The US. District Court for the District of Wyoming overturned BLM's waste prevention rule by regulating GHG from the venting and flaring of oil and natural gas wells, finding that EPA, as delegated to the states, not only has sole authority for regulating GHGs, but was already doing so via its New Source Performance Standards for the Oil and Gas Sector (OOOOa) under the CAA.[12]

Even though EPA's GHGRP is more modest in scope than SEC's Scope 1, 2, and 3 proposal, as it sensibly requires companies to report just their direct emissions, its recently released rule revision dwarfs SEC's proposed rule by 314 pages. That is on top of the hundreds of pages of regulation already codified. However, with none of the guidance, measurement techniques,

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[12] Ruling of Judge Scott W. Skavdahl, U.S. District Judge re: *Western Energy Alliance v. Sally Jewell,* Case No. 2:16-CV-0280-SWS, October 8, 2020.

emissions factors, and implementation assistance, SEC simply asserts that companies report these emissions, including those under the 25,000 MMT-CO2e threshold EPA set to avoid collecting an absurdly low-level of detail and piles of meaningless data. SEC blows past that threshold and goes straight through to Scope 2 and 3. By duplicating and then exceeding EPA emissions reporting requirements, SEC has overstepped its regulatory authority by leaps and bounds.

Yet despite all the rigors of EPA's GHGRP, on p. 21341 SEC cites to third-party climate reporting frameworks from the Global Reporting Initiative (GRI), CDP, Climate Disclosure Standards Board (CDSB), Value Reporting Foundation, SASB, and the International Integrated Reporting Council (IIRC)), and Task Force on Climate-Related Financial Disclosures (TCFD). Rather than looking to these bodies, some of which are activists themselves, SEC should look down the street to EPA.

In addition, SEC would require an attestation requirement for accelerated filers and large accelerated filers regarding Scope 1 and 2 GHG emissions. (p. 21345) EPA does not require third-party attestation for its GHGRP and neither should SEC. The requirement is yet another way SEC is creating a large new, bureaucratic industry of climate change consultants that will divert resources away from the productive development and delivery of goods and services that Americans actually need and want. It is also another example of how climate change *policies* create regulatory risk that suppresses financial returns to investors.

We are interested to see that SEC does not require an attestation for Scope 3 emissions, which are of necessity widely speculative and impossible to verify, but Scope 2 emissions also require guesswork that leads to dubious accuracy and verifiability. But fundamentally, the attestation requirement should not even be required for Scope 1 emissions, as such is not required for EPA's GHGRP. We also wonder if the logic behind requiring Scope 3 emissions in the rule and hence, determining they are material, is not undermined by the recognition that Scope 3 emissions are largely guesswork and therefore, unable to be attested and deserving of safe harbor.

In short SEC should not be duplicating EPA's GHG emissions reporting and going far beyond. SEC should not require GHG emissions data beyond that required by EPA's GHGRP and at the same threshold. And to repeat, SEC should not require the reporting of climate or GHG-related information that is not material to the issuer. Should SEC persist regardless, we would recommend reporting at less frequency than annually because of the huge burden involved, for example, once every five years with updates if the issuer is aware of a change in its practices that would have a material impact on its GHG emissions. Below are specific comments on the three scopes.

Scope 1

Oil and natural gas companies that emit GHGs above the 25,000 MMT-CO2e must already report their emissions, in the SEC rule termed "Scope 1", to EPA under the GHG Reporting Program (GHGRP). Generally, the public companies subject to SEC's proposed rule are of the size that also have to report to the GHGRP. Rather than assuming the regulatory authority of EPA in requiring air emissions reporting and duplicating EPA's GHGRP, SEC should simply require companies to report, where material, the same emissions numbers reported to EPA's GHGRP in §229.1504. For the oil and natural gas industry, that would be 40 CFR Part 98 Subpart W 98.230-98.232. SEC should not be requiring collection and reporting of Scope 1 emissions outside EPA's GHGRP program by requiring emissions data below the 25,000 MMT-CO2e threshold.

Scope 2 Emissions

Requiring companies to report emissions beyond their control becomes an exercise in guesswork. While a company's electricity use is straightforward, having to take the amount from each of its various facilities, determine what the particular mix of each power company is, apply emissions factors based on that mix, and calculate overall emissions is a tedious and time-consuming task. The SEC reporting company is dependent on the electricity mix provided in the area, so other than cutting energy use which is always desirable, the number crunching is a pointless exercise. The most virtuous, electricity-reducing company can cut to the bone but if in an area with a large proportion of coal generation would be at a disadvantage to a company that happens to operate at less efficiency but in an area with majority hydropower, for example.

Because they are beyond the control of the reporting company, Scope 2 emissions suffer from data quality and accuracy problems. Is there any other circumstance where the SEC requires public reporting and attestation about another company, not the issuer? Here, a reporting company must make assumptions about the power grids they are on and the providers' mix of natural gas, coal, hydro, nuclear, etc. Because of a lag in data availability, they would likely have to estimate 2021 emissions, for example, using the electricity grid's mix in 2020. What is the point of estimating the emissions rather than just reporting electricity use? Data on the GHG emissions from the electricity sector is better coming from EPA's annual GHG inventory rather than figuring out emissions down to the individual consuming company.

Scope 3 Emissions

While we find the entire proposed rule beyond SEC's authority, the requirement for Scope 3 emissions disclosure takes overreach to an extreme level. By requiring Scope 3 reporting for those companies that voluntarily set Scope 3 goals or disclose them to shareholders, SEC is discouraging other companies who do not currently do so to ever start. In effect, SEC is punishing companies that have taken the initiative in the past and locking them into regulatory reporting and all the compliance burden and liability that entails.

Scope 3 emissions collection, estimation, and reporting are highly complex and a relatively recent discipline. Standards bodies and companies have been struggling with determining how to do so in a meaningful way that allows comparison across companies. The problems we identify in Section D. Standardization above apply especially to Scope 3 emissions. SEC imposing Scope 3 reporting before meaningful data standards have been developed is premature and will result in the opposite effect than intended; rather than resulting in standardized information, SEC will obtain information collected and estimated using vastly different methods and of vastly different quality.

Further, it is not at all clear that the minutiae of information required to calculate Scope 3 emissions as defined in § 229.1500 (r) is even possible to measure, collect, or otherwise estimate. SEC would be requiring companies to determine emissions data that are not available from their suppliers, who may or may not have to report to SEC. If large SEC filers start to require such data from all their suppliers, as is likely, they would be acting as agents of SEC to compel companies not subject to this rule to report. The rule would incentivize SEC reporting companies to favor large suppliers who have the wherewithal to determine and provide their emissions while disfavoring small suppliers that cannot. SEC has not considered the impact of the rule on small businesses that are not SEC filers.

In the absence of data from all suppliers, companies would have to use emissions factors and other estimation tools to determine emissions data from their suppliers. Of course, they must use such techniques to estimate emissions from their customers. Gathering the data is not only prohibitively time-consuming, but because third-party suppliers may not have the requirement to collect such data, companies will have to make compounding assumptions that may or may not approximate to reality. Without the rigorous measures and methods developed by EPA for Scope 1 emissions, expecting Scope 3 emissions to have any data accuracy or integrity is a pipe dream. Without standard techniques, the information will be meaningless and arbitrary.

Scope 3 Approaches a GHG Emissions Inventory

Taken to its logical conclusion, the collection of companies' Scope 3 emissions will lead to double, triple, ten-fold, or even 100-fold counting of the same emissions in different contexts, as suppliers report their Scope 1 emissions and their customers report their suppliers' emissions as Scope 3. Even EPA acknowledges that, "scope 3 emissions for one organization are the scope 1 and 2 emissions of another organization."[13] Scope 3 emissions reporting on an economy-wide scale logically approaches a country-wide or global GHG emissions inventory, except one derived from the bottom-up. EPA already develops GHG inventories for the United States, as do other countries and the International Energy Agency globally in its annual *Global Energy Review*. Country-wide GHG inventories are better done from the top down and by air quality experts and scientists, not by financial regulators through a bottom-up approach. Companies will be counting the same emissions many times over using different techniques and assumptions, with estimation error being compounded many times over.

One wonders if all this time and effort spent collecting, tracking, calculating, estimating, and reporting GHG emissions won't divert time and attention from more productive and fruitful activities like the technological innovation that actually reduces GHG emissions, not to mention delivering products and services that consumers need and want. Once again belying

[13] *Scope 3 Inventory Guidance*, EPA web page accessed June 13, 2022.

SEC's contention that the rule does not "…address climate-related issues more generally," the only possible use of GHG reporting is to drive reductions in GHG emissions. Prof. Jerry Patchell at Hong Kong University of Science and Technology sums it up best:

> Achieving Scope 3's intent of a full audit of value chain emissions GHG, however, is a much more complicated affair and according to the CDP, scope 3 is much less successful. This lack of success challenges the premise and purpose of the standard, especially, the expectation that the power of MNCs [multi-national corporations] can be used to leverage reporting and reductions through the value chain.[14]

C. Activism Does Not Substitute for Statutory Authority

Given its lack of statutory authority, SEC is at pains to make the alternative case that there is overwhelming demand for climate disclosure. On page 21337, SEC states "Governments around the world have made public commitments to transition to a lower carbon economy…" Section I.C.1 contains details of various investors "demanding" climate-related information, including several international initiatives. On page 21343 SEC notes, "Several jurisdictions, including the European Union, are developing or revising their mandatory climate-related disclosure regimes to provide investors with more consistent, useful climate-related financial information…" Further on p. 21376 SEC states that: "As previously mentioned, several large institutional investors and financial institutions, which collectively have trillions of dollars in assets under management, have formed initiatives and made commitments to achieve a net-zero economy by 2050, with interim targets set for 2030." There are several other such references to international governments and initiatives.

This enumeration of all those demanding climate change disclosure is all very interesting but completely irrelevant. All such references should be struck from the final rule. SEC and any other U.S. agency's rules and regulations are not set by international initiatives and demands from a minority of investors. SEC rules are established under legal authority. If these investors wish to impose regulations on American corporations, they need to engage in advocacy to convince the American people and their elected representatives to pass legislation to require such regulations. In the absence of legislation, all these demands and wishes are just that.

SEC begins Section I.C arguing that "significant investor demand for information about how climate conditions may impact their investments. That demand has been increasing in recent years." "As a result, these investors have sought to include and consider climate risk as part of their investment selection process." Has SEC considered why these large investment managers are advocating for the rule? Perhaps it is because the fees on index funds are low while those on ESG funds are higher. The rule is a way for asset managers to force public companies to subsidize the asset managers' research.

To support this supposed investor demand, SEC cites a well-known letter to BlackRock investors by Chairman and Chief Executive Officer Larry Fink in January 2020 that:

[14] "Can the implications of the GHG Protocol's scope 3 standard be realized?", Jerry Patchell, *Journal of Cleaner Production,* Vol. 185, June 2018, pp. 941-958.

> "…announced a number of initiatives to place sustainability at the center of our investment approach, including: making sustainability integral to portfolio construction and risk management; exiting investments that present a high sustainability-related risk, such as thermal coal producers; launching new investment products that screen fossil fuels; and strengthening our commitment to sustainability and transparency in our investment stewardship activities."[15]

Yet reality set in. As gasoline prices rose steadily throughout 2021 and their impacts on inflation throughout the economy became obvious, Mr. Fink warned about the costly impacts associated with short-term climate policies that restrict fossil fuels: "Inflation, we are in a new regime. There are many structural reasons for that. Short-term policy related to environmentalism, in terms of restricting supply of hydrocarbons, has created energy inflation and we are going to be living with that for some time."[16] Likewise, in March of this year, BlackRock President Rob Kapito stressed that:

> "BlackRock is the biggest investor in oil and gas. Nothing about our strategy with respect to the energy industry has changed. Not because of the new bill, not because of the media. We gotta get over a lot of the media hype—we are investing in fossil fuels. People talk a lot about the transition, but this is not a transition. It's an evolution."[17]

We urge SEC to likewise adjust to the changing realities that make this proposed rule particularly ill-timed.

Activists Advancing a Climate Change Agenda

Furthermore, a fundamental premise for SEC's proposed regulation is entirely inaccurate and not supported by credible evidence. The activists and investors SEC is relying on are overwhelmingly foreign and organized for advocacy by a small group of international organizations. Section I.C. contains a long discussion of the organizations pushing climate change disclosure and the various international initiatives they have started to engage investors. SEC cites to: the UN Principles for Responsible Investment (PRI) with its 4,000 signatories; the Global Investor Statement to Governments on Climate Change of 630 investors of; the Investor Agenda's 2021 Global Investor Statement to Governments on the Climate Crisis, signed by 733 global institutional investors with $52 trillion in assets; the Net Zero Asset Managers Initiative of 128 signatories and $43 trillion in assets; Climate Action

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[15] *A Fundamental Reshaping of Finance*, Blackrock, Chairman and CEO Larry Fink, January 2020.
[16] *BTG's Esteves, Pimco Warn Inflation's Not Transitory*, Bloomberg, Salma El Wardany, October 26, 2021.
[17] *BlackRock President Denies Accusations of Fossil Fuel Divestment at Texas Oil and Gas Convention*, *The Texan*, Brad Johnson, March 29, 2022.

100+, comprised of 617 investors managing $60 trillion in assets;[18] and the Glasgow Financial Alliance for Net Zero with 450 financial institutions managing $130 trillion in assets.[19]

The list and assets under management appear very compelling, if not overwhelming. However, SEC has failed to provide context. How many investors are represented multiple times in the laundry list, signing onto multiple of these initiatives? It is not clear. Perhaps those investors that are well on board with net-zero and the climate disclosure agenda are promiscuous joiners, signing onto multiple of these initiatives. And how many investors are there overall to put these numbers in context? Perhaps they are just a minority of investors. SEC fails to provide the context. Likewise, given that there are about $250 trillion in global investable assets,[20] those advocating for climate change disclosure may represent a minority of global assets. Indeed, in footnote 56 SEC acknowledges, "There is some overlap in the signatories to the listed initiatives." It is not clear what the overlap is in terms of both number of investors and total assets managed, but perhaps that obfuscation is intended.

SEC's out-of-context numbers fail to prove that the market is truly clamoring for this rule. Further, digging deeper into these initiatives and their hundreds of investors that SEC cites in section I.C.1., there are seven main climate change non-profit advocacy organizations behind them all: the AIGCC, CDP (formerly Carbon Disclosure Project), Ceres, IGCC, Institutional Investors Group on Climate Change (IIGCC), United Nations Principles for Responsible Investment (UNPRI), and the United Nations Environmental Program (UNEP), the groups listed in the letter SEC cites to in footnote 58. These activist groups have done a good job of advancing their agenda, pulling together many investors and issuing press releases and reports to make their case. SEC gamely uses their work to imply there is broad consensus and support for climate change disclosure.

Yet the fact that these seven activist groups have been successful in signing up investors is largely irrelevant because the vast majority of investors they represent are foreign. Across the climate initiatives cited in I.C.1 and the global network of activist organizations that support them, there are 5,798 companies that provide country of origin. Only 19% of them are from the United States. More than half are in Europe. Chart 1 below has the breakdown.

Foreign companies do not set United States policy. SEC is skating on very thin ice when it uses foreign companies organized into initiatives by seven climate change activist organizations to justify a regulation that would impose a $10.235 billion cost on American society.

Further diving into the numbers, the 1,124 American asset management companies participating in the climate change disclosure advocacy that these seven groups are orchestrating represent a mere 7% of the 16,127 registered investment companies in the

[18] https://www.climateaction100.org/about/
[19] Rule footnote 23.
[20] https://www.bcg.com/press/10june2021-despite-covid-19-global-financial-wealth-soared-record-high-250-trillion-2020

United States.[21] Therefore, SEC's implied "consensus" of investment companies clamoring for disclosure falls apart at just 7%. That is pretty thin ice for a rule with such wide-ranging implications.

Chart 1: Asset Management Companies Supporting Climate Change Disclosure

Asset Managers by Region	Number of Companies	Percentage
Europe	3,095	53.4%
North America	1,378	23.8%
- United States	1,124	19.4%
- Canada	254	4.4%
Asia Pacific	820	14.1%
Latin America & Caribbean	317	5.5%
Africa & Middle East	188	3.2%
Total	**5,798**	**100%**

The gruel becomes even thinner after examining the groups themselves. SEC cites to CDP in particular several times. After decades of organizing institutional investors to pressure companies to disclose their GHG emissions, CDP has been successful in organizing 168 global investment firms with $17 Trillion in assets to target 1,300 companies worldwide to disclose their emissions,[22] or about 7% of the total global investable assets of $250 Trillion.[23] According to CDP, 572 U.S. public companies,[24] or about 10% of the total,[25] have reported some climate data to CDP.[26] While many of these companies have been compelled by the same activist investors that CDP represents, it is certainly their prerogative to do so. The fact that they represent a small minority of global assets and have only been able to convince a minority of companies to disclose is illustrative.

Further, the citations to the value of assets managed is actually quite irrelevant. An investment management team that signs a climate change pledge is speaking for itself, not for the thousands or millions of individual small investors behind them, unless the related investment instrument specifically has a stated climate change policy that investors

[21] https://www.icifactbook.org/21_fb_ch2.html#companies the Investment Company Institute trade association
[22] https://www.cdp.net/en/articles/media/a-record-168-investors-with-us17-trillion-of-assets-urge-1300-firms-to-disclose-environmental-data
[23] https://www.bcg.com/press/10june2021-despite-covid-19-global-financial-wealth-soared-record-high-250-trillion-2020
[24] https://www.sec.gov/comments/climate-disclosure/cll12-8906810-244152.pdf
[25] https://www.benzinga.com/news/20/10/18026067/the-number-of-companies-publicly-traded-in-the-us-is-shrinking-or-is-it estimates about 6,000 publicly traded companies.
[26] https://www.sec.gov/comments/climate-disclosure/cll12-8906810-244152.pdf

consciously select into. We are not skating on thin ice by stating that there is just as much a policy split among those millions of investors as there is in the population at large. Investment teams asserting political goals based on the value of the investments they manage is certainly no substitute for an actual political process. Investors should not be pushing a political agenda that their investors may or may not subscribe to, and SEC should not be helping them do so. There are certainly ESG funds that like-minded investors can invest in, but that choice should not be foisted upon all investors.

To summarize this section, despite the case laid out in the rule in Section I.C., there is a split in opinion regarding whether or not the time-consuming, in-depth climate change disclosure contemplated by SEC would indeed prove worthwhile to actual investors or that the market is truly clamoring for it. We have found by digging into the information SEC provides that there is actually only a small 7% minority of American investment managers that ascribe to the agenda of the groups SEC cites. That policy split in the investment community is shared by the American population overall, as indicated by their elected representatives in Congress, which has to failed to pass climate change legislation to support the policies SEC is obliquely advancing with this rule or to even grant SEC the authority to promulgate this rule. No tally of international investors and climate change activists who support this action displaces the fact that Congress has failed to act.

Russian Influence Behind Climate Activism

One further cautionary note: several of the activist groups and their initiatives that SEC cites to extensively are funded by the Sea Change Foundation. Sea Change funds the Asia Investor Group on Climate Change, Ceres, Investor Group on Climate Change, and UN Principles for Responsible Investment. The foundation is accused of being a front group for Russian influence over U.S. energy and climate policies over the past decade. Most recently, Sea Change was prominently featured in a March 31, 2022 letter from 20 members of Congress to House Oversight Committee Chairwoman Carolyn Maloney (D-NY) requesting a hearing, "on the coordinated attempts by Russian entities to buy influence and finance U.S. environmental non-governmental organizations (NGO) in an effort to reduce the energy security of the United States."[27] The lawmakers wrote (emphasis added):

> "In the 115th Congress, Representatives Lamar Smith and Randy Weber detailed a concerning example of this in a letter to former Secretary of Treasury Steven Mnuchin. The letter described how a Bermudan shell corporation known as Klein Ltd. was used to siphon millions of dollars to an environmental NGO called the Sea Change Foundation. This shell company was specifically tied to the Russian government through one of its directors, Nicholas Hoskins. Prior to his role with Klein Ltd., Hoskins was a director at a hedge fund management firm that "invested heavily in Russian oil and gas" and vice president at a law firm with a direct connection to the state-owned Russian oil company Rosneft.

[27] *Comer, Norman, Davidson Sound Alarm Over Russia's Attempts to Infiltrate U.S. Environmental Groups*, House Committee on Oversight and Reform, March 31, 2022.

> According to IRS tax filings from 2010 and 2011, Klein Ltd. donated $23 million to the Sea Change Foundation and was responsible for almost 50 percent of contributions made to the organization during those years. This organization gave $100 million in grant money to environmental groups, such as the Sierra Club, the Center for American Progress, the US Climate Action Network, and the Natural Resource Defense Council, with the purpose of reducing "reliance on high carbon energy." Given the impact that Russia's control of the European energy market has had in the lead up and prosecution of the war in Ukraine, it is critical that Congress gains a better understanding of the role that Russian financing has had in shaping American environmental policy and sentiment."[28]

SEC should not further compound the situation by advancing financial regulations designed to limit American producers, the same agenda advanced by a Russian front group.

D. Standardization and Reliability of Information

SEC is claiming the main function of the rule is to provide standardized climate-related information so that investors can compare risks among companies. However, this rule requires information standardized in name only, especially with regard to Scope 3 emissions. Because any one company's Scope 3 emissions permeate among potentially many hundreds or even thousands of companies and millions of consumers, they are amorphous and nearly impossible to measure, calculate, or otherwise estimate. Likewise, the assessment of the nebulous risks from natural disasters and transition risks will be anything but consistent and comparable as SEC hopes, as both are subjective. The only thing consistent will be the blanks on the SEC report in which to plug in the resultant numbers. The collection and calculation to fill these blanks will be anything but "consistent, comparable, and reliable", per the rule's introduction.

Various standards bodies have been attempting for several years to develop metrics and measurement techniques that could provide useful information on climate change. It has been only relatively recently that advocates for reporting started to demand such reporting, particularly on Scope 3 emissions. The reason these various standards bodies have failed to arrive on one standard is because it is a very difficult problem to solve.

Rather than letting this constructive work continue, SEC is proposing to come in and gloss over that complexity with a one-size-fits-all approach. Rather than lamenting the lack of one standard as it does on page 21341, SEC should recognize that the fact that these various standards bodies have not yet coalesced around a single standard is not from a flaw in the process of discovery, but rather a function of the extreme difficulty in developing this information. It will take time to determine the best metrics and methodologies that will actually provide useful information. SEC's impatience in letting these standards get ironed out means that the resultant rule will be cumbersome, time-consuming, and expensive without

[28] Representatives James Comer and Warren Davidson Letter to Chairwoman Carolyn Maloney, House Committee on Oversight and Reform, March 31, 2022.

providing investors with useful information. SEC cannot just wave its regulatory wand and make the problem disappear by codifying an impractical rule.

By imposing a standardized rule at this stage, SEC will discourage the positive work that these standards bodies are doing as they attempt to develop systems of reporting tailored to various industrial sectors. Enabling voluntary disclosure and industry-specific sectors to develop mutually agreed-upon standards is preferable to a one-size-fits-all approach from SEC. With disclosure and ESG reporting in their infancy compared to well-established material financial disclosures, it is better for competing systems to continue to evolve before the federal government imposes a bureaucratic straitjacket.

SEC should recognize the good work being done and the voluntary incentives that already exist. The oil and natural gas industry, along with many other industries, has embraced ESG reporting. Many companies include reporting of their efforts to reduce methane emissions, for example. With market incentives present to encourage reporting, why does SEC need to regulate? Companies will naturally cater to those investors for whom climate change disclosure is important. SEC should rather recognize that there exist other non-regulatory incentives for climate disclosure. If disclosures truly are important to investors, companies that make the disclosures will attract capital more readily than companies that do not, causing those companies' stock to be devalued accordingly. This is particularly true given the demand for this information from the handful of companies—Blackrock, State Street, and Vanguard—that control a large portion of the voting securities at most U.S. public companies. Importantly, SEC cannot claim that companies that decline to provide the information will pose undisclosed risk to shareholders, because SEC has failed to establish that companies today are failing to disclose material climate-related risk.

Multiple industries and groups of consumers already operate successfully under competing voluntary frameworks. There are voluntary certifications in various fields, such as organic, sustainable seafood, and kosher in the food industry. The oil and natural gas industry has banded together under The Environmental Partnership to share best practices and technology to reduce methane emissions. It is far too premature to settle on one framework in the climate disclosure space.

Further, the calculation and reporting of the types of information SEC would require in the rule are very industry-specific. The volume of data and complexity of measurement argue in favor of industry-specific approaches rather than a one-size-fits-all approach. As to how it should be developed and implemented, systems are already evolving that should be allowed to continue progressing.

Advocates for regulation, who are rarely the ones regulated that must figure out how to practically comply with red-tape mandates, often argue for one-size-fits-all standards. Such standards are rarely if ever efficient, practical or effective for most situations. In the relatively new realm of climate disclosure, a single framework would be particularly pernicious, as it would stifle innovation and the search for the best metrics, reporting mechanisms, and methodologies. Multiple competing and evolving systems are much preferable in new fields. From competition arise to the top the best solutions.

SEC should also be concerned that the rule explicitly provides disincentives to earnest, proactive efforts by companies to comprehensively analyze their climate change risks and reduce their Scope 3 emissions. By virtue of experimenting with scenario analysis and setting Scope 3 emissions reductions targets, companies would bind themselves into regulatory reporting of such positive efforts, opening themselves to legal liability and compliance risk. What company would choose to take such positive actions knowing that their good deed would not go unpunished?

At this point, SEC should continue to let standards bodies work through disclosure issues to enable the best solutions to rise to the top. At the point in the future when adopting a standard would be more judicious, SEC should do so only after engaging in a rigorous public process drawing upon the work of such groups that has been shown to be reasonable, flexible, and practical. Many oil and natural gas companies have been successful reporting under the SASB and TCFD frameworks, as they have reasonable metrics and flexibility to account for differences in companies and their operations. The fact that these various organizations are working through these difficult issues in a constructive way is a positive endeavor, not a flaw that SEC needs to correct.

On the question of reliability of information, SEC should be concerned about the regulatory burden of producing volumes of information that may or may not be useful and actionable. SEC should be cautious of requiring data that do not help with decision-making and relevant assessments of risk. Kenneth Pucker, former chief operating officer at Timberland, points out that "the impact of the measurement and reporting movement has been oversold," going so far as to say that "the focus on reporting may actually be an obstacle to progress."[29] Despite a dedication to the goals of sustainability and ESG, Pucker describes how his company was unable to create meaningful quantitative measurements.

SEC has failed to provide evidence that the rule will indeed provide quality information that will serve to protect investors. Ordinary investors have limited bandwidth for assessing information relating to the risk and returns of a given security, and SEC has not shown how the additional data it mandates will be meaningful. This vast, new disclosure regime will likely crowd out the capacity of investors to assess existing information. What analysis has SEC done to ensure that the new information generated and provided will actually improve an investor's ability to assess the putative financial performance of a firm? Rather, the proposed new disclosure regime may instead serve merely to enrich current holders of "environmentally-friendly" or "sustainable" asserts and cause a movement of investment capital to suboptimal firms from a financial performance perspective because they are "doing good." The rule is arbitrary and capricious without substantial evidence demonstrating that climate-related information actually improves investment returns for investors.

[29] "Overselling Sustainability Reporting", Kenneth P. Pucker, *Harvard Business Review,* May-June 2021.

E. Materiality

SEC is asserting that GHG emissions are always material and elevates GHG data even above material financial factors although the risks from GHGs are diffuse and the effects far into the future. Materiality has always had a financial focus, but by elevating one concern, whether or not it is indeed material to a company, the rule turns materiality on its head. The demands for this information by a minority of investors does not make climate change information material. Companies subject to SEC regulation already are required to disclose financially material information about their operations and plans for the future on any range of topics that could affect the value of their shares in the future. Many oil and natural gas companies already disclose climate-related information for that very reason. SEC has used a "principles-based" approach to materiality, whereby a company assesses the risks and opportunities it and its shareholders consider most important.

The proposed rule would substitute that principles-based approach with prescriptive requirements rather than ones based on general materiality. With this proposed rule, SEC is assuming that anything climate related is material. As SEC Commissioner Hester Peirce put it, the rule "tells corporate managers how regulators, doing the bidding of an array of non-investor stakeholders, expect them to run their companies." SEC is imposing substantive environmental regulation in the guise of financial reporting.

Appropriate Time Horizon

Climate-related information is often not material, especially when viewed in the context of an appropriate time horizon and discounted from future to present value. The International Panel on Climate Change (IPCC) itself caveats the science it summarizes in terms of uncertainties and confidence levels. For example, the estimations of anthropogenic contributions to climate change are subject to various error ranges and the effects on natural disasters all carry confidence levels, which are often low.[30] As it relates to materiality, besides the uncertainties regarding the degrees of warming and the impacts on natural disasters and sea level rise, the impacts are projected far into the future and well outside any meaningful investor timeline.

Most corporate financial planning exists on a time-scale of a few years into the future, with long-range planning at the five- to ten-year scale. Business planning much beyond those timeframes can easily be rendered meaningless with changes in consumer behavior and technology. One need only observe changes over just the last five years in how news and entertainment are consumed, with the continued rise of social media and Netflix, to understand that much planning beyond a few years is more likely than not to be upended.

The timescale for assessing climate policy is generally to the year 2100, 80 years into the future. Thinking about planning from the 1940s forward 80 years to today seems like a meaningless exercise, as nobody could have predicted the information technology revolution

[30] *Sixth Assessment Report, Working Group 1: Climate Change 2021: The Physical Science Basis*, IPCC, Chapter 11: Weather and Climate Extreme Events in a Changing Climate, 2021.

or the pace of technological change in many other fields. Many analysts were predicting peak oil just a few decades ago and then the shale revolution happened. Besides the practical necessity of short- and medium-range predictions for most business decisions, an even more confounding dilemma is the uncertainty in the scientific projections of risks from climate change, with IPCC using various modeling scenarios that can only guess at the as-yet unknowable future. Making meaningful business decisions under those uncertainties is difficult at best, if not impossible. Considering all those risks material to today's investors seems to stretch considerably the bounds of materiality.

F. Net-Zero Transition

SEC assumes it is a given that a net-zero or low-carbon transition is the goal. While we are agreed in the oil and natural gas industry that lowering greenhouse gas emissions is necessary to address climate change, it is by no means true that America is agreed on what net-zero means, whether it is desirable or achievable in the continued absence of viable alternative energy sources, and that there is a willingness amongst the general public to make the sacrifices necessary to achieve it if such a goal is defined as the elimination of oil and natural gas. Indeed, even those in favor of the target disagree about how to achieve it.[31]

A net-zero transition is a major policy question that has in no way been settled, and certainly not if net-zero is interpreted as the elimination of oil and natural gas. Were it settled, Congress would have passed legislation, which of course, it has not. On the contrary, when Senators John McCain (R-AZ) and Joe Lieberman (D-CT) introduced three successive "Climate Stewardship" Acts in 2003, 2005, and 2007, they all failed to garner the necessary support of their elected colleagues, despite extensive lobbying. A similar defeat greeted the Lieberman-Warner Climate Security Act in 2008 and while the Waxman-Markey "American Clean Energy and Security Act (ACES)" cap-and-trade bill in 2009 was the first time either house of Congress had approved a bill, however narrowly, meant to curb GHGs, the Democrat-majority Senate refused to even bring it to the floor for a vote. The Build Back Better Act, with it's $550 billion in climate change initiatives, remains stalled in a Democratic Congress. Until such time as Congress acts, SEC should not enact climate regulation as an end-run around Congress. Congress has not just failed to pass legislation, but has decisively passed regulation to the contrary. The Senate, for example, unanimously approved the Byrd-Hagel Resolution in 1997 by a vote of 95-0, calling for the rejection of the Kyoto Protocol, which President Clinton signed as part of the United Nations Framework Convention on Climate Change treaty process. Certainly Congress has passed no law granting SEC the authority to enact climate change regulation.

Activist groups have been able to convince neither the American people nor the majority of their representatives in Congress to stop using oil and natural gas before a viable alternative is found, as it would mean fundamentally altering their healthy, safe, and prosperous lifestyles. Knowing that they cannot get Congress to pass laws that prevent people from using our products or that prevent us from producing them, activists have shifted to pressuring

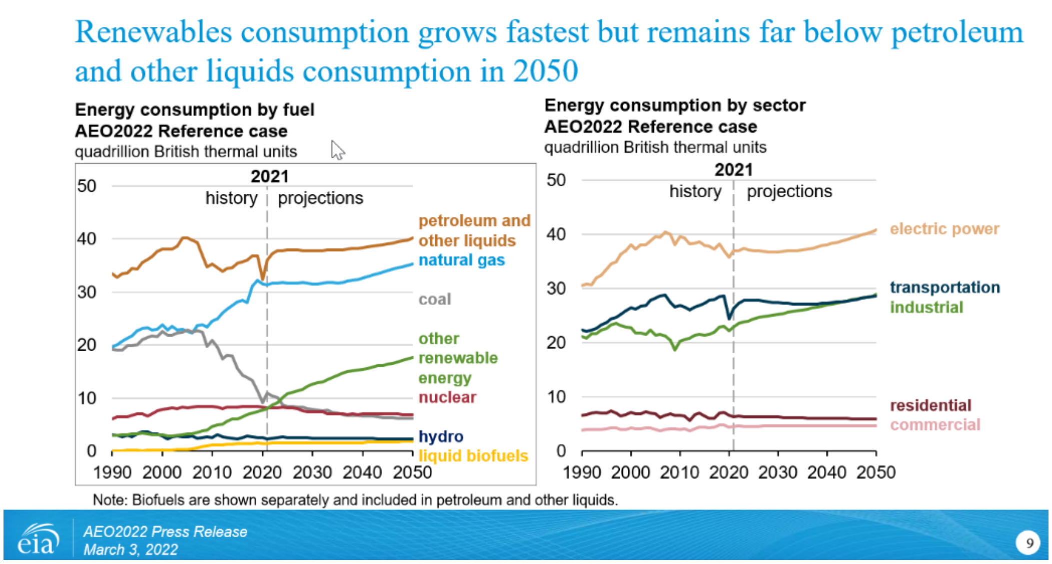
[31] *The problem with net-zero emissions targets*, Duncan McLaren, Lancaster University, September 30, 2019.

companies, pension funds, and investors to divest from fossil fuels, including divestments from government pensions undertaken by San Francisco, New York, and other jurisdictions.

Likewise but rarely discussed is whether it is feasible or practical to do so with current technology. While SEC speaks extensively about the "transition", it is necessary to have something to transition to. Wind, solar, and other renewables are not scalable, reliable, and affordable enough to meet all of Americans energy needs by 2035, 2050, or some other arbitrary round-number year that has not been codified into statute. Without major technological advances, net-zero as interpreted by many to mean no fossil fuels would mean energy scarcity, economic collapse, and the end of modern society as we know it.

Our associations are not alone in saying this. The Energy Information Administration's most recent projections show that oil and natural gas consumption will continue to rise globally through 2050 and beyond, continuing to outpace renewables, as shown in Chart 2.[32] Since that is the case, why is SEC advancing a rule meant to decapitalize the American oil and natural gas industry? Or as SEC puts it on page 21362, why is SEC encouraging companies to "…reduce[ing] its medium and long range fossil fuel exploration and production…" The result would be either to shift production overseas to meet this energy demand or to deprive Americans of the energy they need to heat their homes, power their vehicles, and keep the lights on, among many other uses. Since Americans and their elected officials would not stand for being deprived of energy, the result is displacement to other countries. Given that the White House asked Russia and OPEC last summer and more recently Venezuela to increase their production in reaction to high gasoline, we have recent evidence indeed that displacement occurs when American production is kept artificially low. SEC should not add to that displacement with this rule.

Chart 2. EIA Projection of Energy Consumption



[32] *Annual Energy Outlook 2022*, EIA, March 3, 2022.

The Social Benefits of Oil and Natural Gas

To extend the discussion of whether the GHG metric is logically sound, one must consider the benefits commensurate with those emissions. Presumably SEC and other serious climate change advocates are concerned about the impacts of climate change on humans as well as the planet in the abstract. If so, then it must be acknowledged that humans would not use fossil fuels if they did not provide a benefit to them. If SEC looks at GHG emissions as it does in this rule without considering the benefits attendant to those emissions, it has not conducted a cost-benefit analysis that is honest about the impact its regulation would have if taken to its ultimate conclusion, that is as a means to de-finance the American oil and natural gas industry.

Of course the burning of oil and natural gas produces greenhouse gas emissions, but would humanity be better off without them? Without an alternative that does everything that oil and natural gas do 24/7, a modern, healthy, secure and yes, environmentally protective mode of existence is not possible. Our industry not only heats homes, provides mobility, and powers all facets of the economy, but puts food on the table, medicine in the cabinet, and delivers clean drinking water to the tap. Without the energy and products we provide, modern life is not possible. Providing more oil and natural gas to the world will bring those benefits to the billion people without sufficient energy and help lift them out of poverty.

Oil and natural gas also provide a net benefit to the environment. Countries with greater access to reliable, affordable energy not only have higher standards of living, but also cleaner environments and healthier populations. Increased use of natural gas electricity generation leads to lower levels of air pollution and offers a tangible solution for climate change. Fuel switching to natural gas in the electricity sector is the number one reason the United States has reduced more greenhouse gas emissions than any other country since 2005.[33] Intermittent wind and solar energy are not possible without backup, with natural gas electricity being the best backup source. Agencies should recognize that the balance of benefits from oil and natural gas heavily outweigh the impacts.

SEC should not overlook the increasing wealth, health, and safety achieved by countries like the United States that have abundant access to fossil fuels. The past 80 years have been marked by unprecedented improvements in life expectancy, prosperity, food security, infant mortality, and many other health and welfare factors. Deaths from malaria, the most consequential climate-sensitive disease, declined by 52% from 2000 to 2015 with the aide of petroleum-based pharmaceuticals. In the developing world where a billion people lack access to electricity, reliable power is needed to lift them out of poverty. Only natural gas, coal, nuclear, and hydropower reliably provide 24/7 power, yet all are opposed by activists who promote climate change disclosure schemes as a way to limit their use.

We suggest that SEC should also be assessing the risk it is itself imposing with this rule. Should SEC's rule become finalized in its current form, it would become the government's primary

[33] *Inventory of US Greenhouse Gas Emissions and Sinks,* Environmental Protection Agency (EPA), April 2020, p. ES-4; *Global CO2 Emissions in 2019,* IEA, Paris, February 2020; U.S. Energy-Related Carbon Dioxide Emissions, 2019, U.S. Energy Information Administration (EIA), September 2020.

tool for eliminating oil and natural gas. Therefore, SEC should disclose the risk it is introducing by denying Americans of reliable, affordable energy to meet their daily needs.

Knowing that SEC will not take us up on that offer, we alternatively suggest the following set of metrics that show the benefits of oil and natural gas. We believe these would bring integrity to any cost-benefit analysis that includes the social costs of GHGs or regulations like SEC's that aim to eliminate oil and natural gas. These metrics help quantify and qualify the positive benefits of oil and natural gas while also help explain why the world, including climate change activists and politicians making promises of net-zero decades after they will be out of office, continues to use oil and natural gas to meet over 70% of energy needs now and well beyond 2050. The estimation necessary to construct our metrics could also be useful for estimating Scope 3 emissions, which for the producers we represent, is a speculative exercise, as producers do not know how their oil and natural gas will be ultimately used.

Metrics on the Social Benefit of Oil and Natural Gas

As currently envisioned in the SEC rule which focuses on GHG emissions as the primary metric, oil and natural gas are by definition negative because they create GHG emissions. It would seem obvious that Americans continue to consume oil and natural gas because they provide a net benefit. In fact, as SEC notes on page 21435:

> "Scope 3 emissions [sic] GHG emissions can represent the majority of the carbon footprint for many companies, in some cases as high as 85% to 95%. For example, according to Morgan Stanley Capital International (MSCI), the Scope 3 emissions of the integrated oil and gas industry are more than six times the level of its Scope 1 and 2 emissions."

That comparison between Scope 3 and Scopes 1/2 demonstrate that the societal benefits of oil and natural gas vastly outweigh the "costs" of producing them, by a factor of six times.

To restore integrity to analyses of the costs, the benefits must also be considered. Therefore, we propose the following metrics on the social benefits of oil and natural gas, presented as a series of metrics. These metrics are geared towards the upstream producers that our associations represent.

Personal Mobility Metrics: Personal mobility not only enables freedom of movement, but is fundamental to quality of life. Personal mobility enables people to: get to work to provide for their families; attend school to better their lives; travel to conferences, business meetings, and other work-related settings to enable the sharing of information and formation of networks to solve societal problems and develop life-enhancing products and services; travel on vacation to enrich their lives; and visit and care for relatives and friends to maintain the fabric of society, to name but a few benefits of travel and mobility. To calculate these metrics, multiply the total barrels of oil produced by the company times the 55% of the barrel that is used to make gasoline and jet fuel.

A vehicle miles traveled metric can be expressed by multiplying 55% times 42 gallons per barrel and then by 24.9 miles per gallon, which is the average fuel efficiency for the entire U.S. fleet to get the metric of how many miles traveled the company has enabled with its production.[34]

An air passengers transported metric can be estimated by taking that 55% of the company's production, again multiplying it by 42 gallons, and then again by 64 mpg to get passenger miles transported, based on the airline industry average of 64 miles flown per seat per gallon.[35]

As it is impossible for a producer to know how much its barrels of oil actually go to gasoline or jet fuel, the above two metrics on vehicle miles traveled and air passenger miles transported are either mutually exclusive or the producer could estimate the percentage of each that goes to gasoline and jet fuel and allocate its barrels accordingly.

Transportation & Production of Goods Metric: Diesel enables food to be sowed, tilled and harvested. It enables the distribution of goods that meet all basic human needs including food, clothing, shelter, medicines, and medical devices. Diesel is also a primary source of fuel for public transportation that enables mobility for those who cannot afford personal vehicles as well as those looking to reduce their personal carbon footprint. Since 26% of each barrel of oil is used for transportation of goods, operation of farm machinery, and other mobile industrial sources, multiple the company's oil production by 26%, convert to gallons by multiplying by 42, and then by 7.2 mpg (average for a semi-truck) to get the potential miles of goods transported metric.[36]

Lower-Emission Public Transportation Metric: Over 12,000 natural gas-powered buses operate in the United States, each one reducing nitrogen oxides (NOx) by 4,078 pounds compared to older vehicles at a more affordable cost to municipalities of $129 per pound of NOx reduced.[37] Each bus also delivers between 11% and 17% lower GHG emissions than traditional diesel-powered buses.[38] Since the average transit bus consumes 2,300 diesel gallon equivalents,[39] and each cubic foot of natural gas produced is equivalent to .0292 liters of diesel, multiply total production times .0292 and then convert liters to gallon at .264 liters per gallon to determine how much potential low-emission public transportation is supported by the company's natural gas production.

GHG Reductions in the Electricity Sector Metric: Natural gas, as acknowledged by the U.S. Energy Information Administration (EIA) and the International Energy Agency (IEA), is the number one reason the United States has reduced more greenhouse gas emissions than any other country over more than a decade.[40] Fuel switching from coal to natural gas in the electricity sector has reduced more greenhouse gas emissions than have wind and solar energy combined. Because natural gas has 55% lower carbon

[34] "U.S. vehicle fleet fuel efficiency fell in 2019 to 24.9 mpg", *Reuters,* Jan. 2, 2021.
[35] "A Prius with Wings vs. A Guzzler in the Clouds, *The Wall Street Journal,* Aug. 12, 2010.
[36] *How Many Miles Per Gallon Do Semi-Trucks Get?,* Milla Hanson, Oct. 8, 2019.
[37] *Transit Buses* information sheet, NGVAmerica.
[38] NGVAmerica web page on the environment accessed Nov. 22, 2021. 11% lower for compressed natural gas (CNG) and 17% lower for liquefied natural gas (LNG).
[39] *Transit Buses* information sheet, NGVAmerica.
[40] *Global CO2 Emissions in 2019*, IEA, Paris, February 2020; U.S. Energy-Related Carbon Dioxide Emissions, 2019, U.S. Energy Information Administration (EIA), September 2020.

dioxide emissions than coal, it delivers huge GHG reductions in the electricity sector, where emissions are nine times higher.[41] Natural gas has delivered 61% of the reduction in greenhouse gases resulting from fuel switching in the electricity sector, removing 3,351 million metric tons of carbon dioxide equivalents (MMT CO2e) since 2005. In contrast, wind and solar have reduced GHG emissions by 2,125 MMT CO2e or 39% of the total reduction.[42]

For this metric, take the ratio of annual marketed U.S. production for the last year for which EPA GHG inventory data are available (36,446,918 Million cubic feet (MMcf) in 2019) compared to the annual GHG reduction (525 MMT CO2e in 2019) in the electricity sector as calculated by EIA, and multiple it by the company's production to arrive at the company's proportional share in reducing electricity sector GHGs, expressed in tons of CO2e avoided. Every 69,423 MMcf of natural gas results in one MMT-CO2e reduction in the electricity sector.

<u>Electricity Metric</u>: Natural gas provided 38% of U.S. electricity generation in 2021.[43] The benefits of electricity generation are perhaps too obvious and numerous to mention here and it must be recognized that natural gas, along with coal, nuclear, and hydro, provides the baseload electricity that ensures reliable, affordable power to meet American demand. Further, as wind and solar energy are intermittent only, with between 20% and 30% of operational capacity in the best-case scenarios and much below that or zero in certain weather conditions or at night, natural gas is the most efficient backup that can be ramped up quickly when the wind doesn't blow and the sun doesn't shine. Other baseload electricity cannot be easily ramped up and down to meet the fluctuating demand as intermittent renewables fall off. This metric is calculated by multiplying a company's gas production by 1,075 BTUs per cubic foot and then multiplying by .000293, the conversion factor to kilowatt hours (kWh), to calculate potential electricity generated.

Figure 10. CO2 emmissions reductions in electricity generation from changes in the fuel mix since 2005

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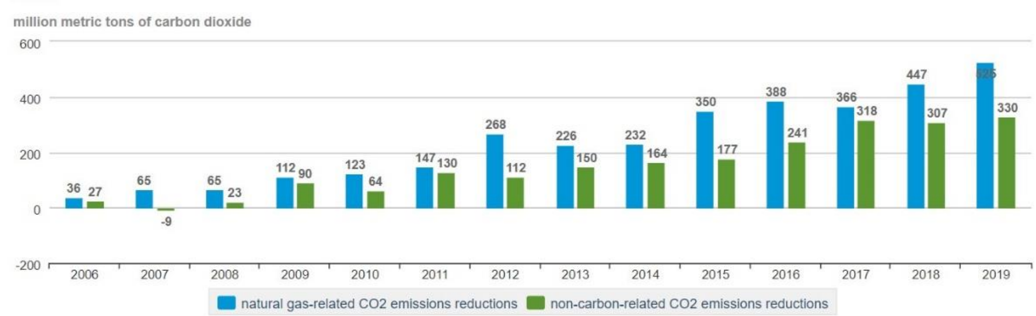

Sources: U.S. Energy Information Administration, *Monthly Energy Review*, August 2020, Table 11.6, Carbon Dioxide Emissions From Energy Consumption: Electric Power Sector and calculations made for this analysis based on Table 7.3c, Consumption of Selected Combustible Fuels for Electricity Generation: Commercial and Industrial Sectors (Subset of Table 7.3a). Distributed solar generation from Table 10.6, Solar Electricity Net Generation is added to generation values from Table 7.2a, Electricity Net Generation: Total (All Sectors). See Table 2 on page 16 for carbon dioxide values for the commercial and industrial sectors.

Note: This analysis includes estimated CO2 emissions from electricity generated in all sectors. Non-carbon electricity generation includes small-scale solar. CO2 refers to carbon dioxide.

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41 *Cost and Performance Baseline for Fossil Energy Plants*, Department of Energy, July 2015.
42 EIA, September 2020, p. 14.
43 https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php

Home Heating Days Metric: According to the American Gas Association, 69 million homes use natural gas for heating, with the average home using 175 cubic feet daily. To derive the total number of home heating days, divide the company's production by 175.

Heating – Lives Saved Metric: Heat deaths make up about 1% of global fatalities a year, about 600,000 deaths, but cold kills eight times as many at 4.5 million deaths annually. As temperatures have risen since 2000, today about 116,000 more people die from heat each year but 283,000 fewer die from cold, resulting in about 166,000 fewer temperature-related fatalities annually.[44] In the United States, lower natural gas prices have been shown to save 11,000 lives annually.[45] This metric is calculated by using the percentage of natural gas the company's production represents (dividing total annual marketed natural gas production by the total for the United States, 37,011,455 MMcf in 2021)[46] and multiplying that by 11,000 to determine the potential cold-weather fatalities avoided by the company.

Air Conditioning – Lives Saved Metric: Likewise, natural gas saves lives by providing reliable cooling. Air conditioning has been found to save 18,000 American lives annually.[47] This metric is calculated by using the percentage of natural gas the company's production represents (dividing its total annual marketed natural gas production by the total for the United States, 37,011,455 MMcf in 202)[48], multiplying by the percentage of electricity generated nationally by natural gas (38%), and then by 18,000 to determine the potential hot-weather fatalities avoided by the company from providing air conditioning

Manufacturing: Oil and natural gas provide about 80% of industrial energy.[49] While we were unable to come up with a neat metric to estimate how much of a company's production could contribute to the domestic manufacturing base because the available data do not enable teasing out such numbers succinctly, we thought it worth mentioning nevertheless. Again, a producer has no control over how its oil and natural gas is used. That basic fact also helps explain why Scope 3 emissions are impossible to calculate other than in very gross terms and assuming otherwise unknowable percentages of company production go to which of the multiple possible uses.

Feedstock Metric - Oil: Likewise, there is not a pat unit in which to express feedstock, since oil and natural gas are used in so many different products. At best, a producing company could multiple its total barrels of oil equivalents produced by 19%, which is the percentage of each barrel that is used as feedstock for asphalt, lubricants, petrochemicals, etc. Oil is the feedstock for petrochemicals that enable thousands of products from the computer chip to cell phones, pharmaceuticals to medical devices, and clothing to hygiene products. A partial list is included below. Since so many different products are produced with various amounts of feedstock, this metric operates more as an index than as a concrete

[44] "Climate Change Saves More Lives Than You'd Think", Bjorn Lomborg, *The Wall Street Journal*, Sept. 16, 2021.
[45] *Inexpensive Heating Reduces Winter Mortality*, Janjala Chirakijja, et. al., National Bureau of Economic Research, March 2019.
[46] *Natural gas production data*, EIA, accessed 5/23/22.
[47] "Adapting to Climate Change: The Remarkable Decline in the US Temperature-Mortality Relationship over the Twentieth Century," Alan Barreca, et. al., March 8, 2017.
[48] *Natural gas production data*, EIA, accessed 11/22/21.
[49] Calculated from EIA's *Monthly Energy Review* (April 2021), Tables 1.3, 1.11b, and 2.2—2.6.

quantifier. However, to illustrate the vast usefulness and benefits provided to humanity, Table 1 gives a flavor of the myriad products made from oil and natural gas feedstock.

Environmental Justice – Jobs Supported Metric: One of the best ways to provide meaningful environmental justice is by providing decent, well-paying job opportunities available to all, no matter race, religion, or sex. The oil and natural gas industry supports 10.3 million jobs nationwide. These aren't just direct jobs in the industry, but indirect and induced jobs that support the livelihoods of millions of people outside the industry and provide $1.7 trillion in GDP, or 7.9% of the national total.[50] Using the multiplier contained in the PWC study of the economic impact of the industry, multiple the total number of employees for the company times 4.5 to determine the total jobs supported across all sectors of the U.S. economy.[51]

[50] *Impacts of the Oil and Natural Gas Industry on the US Economy in 2019*, PriceWaterhouseCoopers LLP for the American Petroleum Institute, 2021.
[51] *Id. p. E-2.*

Table 1. A Sampling of Products Made from Oil and Natural Gas

Electronics	Life Jackets	Shower Curtains
Bearing Grease	Rubbing Alcohol	Guitar Strings
Ink	Linings	Luggage
Sterile Packaging	Skis	Aspirin
Computer Chips	Food Packaging	Safety Glasses
Floor Wax	Cabinets	Antifreeze
Ballpoint Pens	Rugs	Sporting Equipment
Football Cleats	Electrician's Tape	Eyeglasses
Upholstery	Tool Racks	Clothes
Sweaters	Battery Cases	Toothbrushes
Heart Valves	Epoxy	Footballs
Boats	Paint	Combs
Insecticides	Mops	Detergents
Bicycle Tires	Insect Repellent	Vaporizers
Medicines	Fertilizers	Balloons
Wind Turbines	Hair Coloring	Unbreakable Glass
Nail Polish	Roofing	Tents
Fishing lures	Toilet Seats	Crayons
Dresses	Solar Panels	Parachutes
Tires	Fishing Rods	Cell Phones
Perfumes	Lipstick	Enamel
Dishwasher parts	Denture Adhesive	Pillows
Toolboxes	Linoleum	Dishes
Electronics	Ice Cube Trays	Cameras
Motorcycle Helmet	Synthetic Rubber	Anesthetics
Caulking	Speakers	Artificial limbs
Surgical Masks	Clothing	Bandages
Antiseptics	Electric Blankets	Dentures
Electric Vehicles	Glycerin	Hand Sanitizer
Ventilators	Tennis Rackets	Movie film
Window Coverings	Rubber Cement	Soft Contact lenses
Food Preservatives	Fishing Boots	Drinking Cups
Soap	Syringes	Medical Devices
Vitamin Capsules	Nylon Rope	Shaving Cream
Antihistamines	Candles	Ammonia
Purses	Trash Bags	Refrigerators
Shoes	Water Pipes	Diapers
Dashboards	Lotion	Engine Coolants
Cortisone	Outdoor Gear	Insulation
Deodorant	Shampoo	Toothpaste
Dyes	Wheels	Backpacks
Refrigerant	Paint Rollers	Personal Protective Equipment
Percolators	Vaccinations	

G. Speculative Risk Analysis

The SEC rule would elevate one risk, that from climate change, above the many risks that businesses face. The proposed rule would require companies to assess their risk from the physical impacts of climate change as well as the transition risks they face from climate policies. Yet it is the climate policies themselves, such as this rule, that pose the transition risks by devaluing and ultimately stranding oil and natural gas assets.

Objective quantification and measurement of a company's climate change risks is virtually impossible. Climate risk assessments typically depend on multiple assumptions fraught with uncertainties, and are of little financial value to investors. Boston University professor Madison Condon's paper *Market Myopia's Climate Bubble* has been influential.[52] Even though she is advocating for mandatory disclosure and quantification of climate change risks, Condon is honest about the myriad challenges:

> "Evaluating climate risk involves forecasting macroeconomic energy demand, guessing on the success of carbon regulation and future technologies, modeling the relationship between atmospheric gas concentrations and global temperatures, predicting how temperature rise will change the earth's climate systems, and calculating how those changes impact physical economic assets. The task requires skills beyond that of a typical financial analyst, colossal amounts of data, and models that have only begun to be built. Each step of estimation adds layers of uncertainty to risk projections. In some cases, particularly those longer-term and macroeconomic, the estimation of the economic impact of climate change may be dwarfed by this uncertainty."

In short, the complexity and uncertainty of assessing climate risk and the misalignment of climate change time horizons with those of today's investors renders the elevation of climate change to a materiality factor on par with traditional risk-return inappropriate and overtly political.

Fundamentally, SEC is focusing on risks that are either exaggerated or outside the purview of SEC regulation. SEC refers to the Financial Stability Oversight Council's (FSOC) Report on Climate-Related Financial Risk 2021, which asserts that "businesses, financial institutions, investors, and households may experience direct financial effects from climate-related risks," (p. 21336). However, the peer-reviewed science compiled by the IPCC shows a relatively modest financial risk from climate change, whereas the climate *policy* risk may be greater.

A recent study that examined, "Scenarios set out under the UN Climate Panel (IPCC) show human welfare will likely increase to 450% of today's welfare over the 21st century. Climate damages will reduce this welfare increase to 434%."[53] That amounts to a 3.6% reduction in total GDP out to 2100 in a world that is much wealthier than today's world. Additionally, the predictions from the integrated assessment models, the central one being the William Nordhaus' Dynamic Integrated Climate and Economy Model, for which he won the Nobel Prize in Economics in 2018, estimates that global GDP in 2100 would vary about 3%, a small amount considering how much richer society will be in 2100.[54] Such a

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52 "Market Myopia's Climate Bubble," Madison Condon, *SSRN*, May 15, 2021.
53 "Welfare in the 21st century: Increasing development, reducing inequality, the impact of climate change, and the cost of climate policies", Bjorn Lomborg, *ScienceDirect, Volume 156,* July 2020.
54 "*DICE 2013R: Introduction and User's Manual*," Yale University, Department of Economics, October 2013.

relatively small economic impact out well beyond a time horizon that is operative for today's investors is well beyond SEC's statutory concern and fails the materiality test.
On the other hand, the increased costs of all goods and services from excess regulation such as the proposed rule would cause very near-term economic harm to Americans today, who are overall 434% less wealthy than their future brethren. SEC shows a $10.325 billion economic impact to society today, which will affect today's investors. Further, that $10.325 billion impact is an inadequate assessment because SEC economic impact analysis focuses just on the data collection and reporting aspects of the rule and does not even contemplate the wide-ranging impacts of the rule as it attempts to compel a transition away from fossil fuels.

SEC identifies several risks to companies' financial performance that the rule is meant to address.

> "Severe and frequent natural disasters can damage assets, disrupt operations, and increase costs. Transitions to lower carbon products, practices, and services, triggered by changes in regulations, consumer preferences, availability of financing, technology and other market forces, can lead to changes in a company's business model. Governments around the world have made public commitments to transition to a lower carbon economy, and efforts towards meeting those greenhouse gas ("GHG") reduction goals have financial effects that may materially impact registrants." (p. 21336-21337)

Nearly all those risks are political risks, whether "triggered by changes in regulations" or government "commitments". SEC itself is engaged in introducing more political risks through the regulatory process. The others are natural disasters, of which we have more to say below, or normal market risks, which companies have long been adept at responding to. Here again, we are concerned that SEC is forcing our members to publicly report and speculate on controversial political matters, namely, climate-related legislation that politicians may or may not enact or require regulators to adopt.

<u>Normal Market Risks</u>

There are many sources of market risk such as changing consumer tastes and technological change that cause companies to change their business models or even force them out of business. SEC regulations are not meant to remove all risks from the market, but rather to ensure financial information is reported transparently so that investors have the information they need to assess those risks and determine if a company is investment-worthy.

But with this regulation, SEC is focusing on one particular source of risk, which is arguably not the biggest risk most companies face within a reasonable investment horizon. In particular, SEC seems to concern itself with oil and natural gas companies which may become obsolete at some point in the future. However, it is highly unlikely that oil and natural gas will become quickly obsolete with some breakthrough technology that immediately can replace 70% of global energy supply. Conversely, the possibility of that happening to other businesses well before oil and natural gas becomes obsolete is a very real possibility. Just ask Blockbuster how quickly technology can render a company obsolete. Yet SEC is hyper-focused on one scenario with this rule, related to fossil fuels. But oil and natural gas entail vast distributed infrastructure systems and pervade every aspect of society and the economy. Were they subject to the whims of consumer sentiment and easily replaceable by wind and solar, that would have happened long ago, given the trillions governments have invested in wind and solar and the public's and politicians' supposed preference for them. It is highly unlikely that this vast infrastructure could be rendered useless in such a short timeframe that investors do not have time to adapt.

It does not take oil and natural gas reporting the reams of data this rule would require to understand that the combustion of oil and natural gas create GHGs and if another energy source is found that could replace it, it would be replaced. The slow transformations that will be necessary to some as-yet-undiscovered replacement do not require companies reporting today on hypothetical risks of that happening. When breakthrough discoveries are made, investors are able to analyze them on the macro level and decide how to respond accordingly for the sector that is affected. Investors make those assessments as they follow broad issues and changes in society and technology overall, not because each individual company did scenario planning, was clairvoyant in anticipating the changes, and reported what-if scenarios for years leading up to them.

Certainly, companies do become obsolete. For example, investors long ago recognized that Kmart was failing to stay up with technology and consumer preferences. It was obvious as Kmart bled investors and capital over many years until arriving at its current state. Investors did not wake up suddenly last month to discover Kmart was down from 2,000 to three stores nationwide because Kmart hadn't reported to them 30 years ago that it was struggling with technological adaptation.[55]

Just as investors started to divest from Blockbuster when streaming services became viable and consumers were making the switch, so will investors adjust their behavior when that hypothetical replacement is found. In the meantime, EIA projects oil and natural gas production to grow through 2050. SEC regulation is not intended to foresee all potential technological transfers and protect investors from them; the regulation is meant to ensure the financial information reported is accurate and transparent. Blockbuster was not compelled to report on the possibilities of other technologies that could replace it any more that oil and natural gas companies should peer into their crystal balls about some as-yet undiscovered technology that will replace them.

Risks from Natural Disasters

Turning now to the other risks that SEC purports to address with this rule, natural disasters. SEC is assuming risks to business from natural disasters are all related to climate change rather than weather, as if companies are not vulnerable to risks from weather in the absence of climate change. In fact, costs to the economy from natural disasters are going down along with number of deaths.

The trend of weather-related damages from 1990 to 2020 declined from 0.26% of global GDP to 0.18%. Global average mortality and economic loss rates from weather events have dropped 6.5 times and nearly 5 times, respectively.[56] In the 1920s, almost half a million people died on average each year from

[55] "Kmart down to last 3 stores," *Axios*, April 11, 2022.
[56] "Empirical evidence of declining global vulnerability to climate-related hazards", Guiseppe Formetta, et. al., *Science Direct, Vol. 57*, July 2019.

storms, floods, droughts, wildfires and extreme temperatures. Over the next 10 decades, global annual deaths from these causes declined 96%, to 14,000 in 2020 even as the global population has quadrupled.[57]

Bjorn Lomborg's study of the IPCC literature reveals that the IPCC finds no trend in global hurricane frequency and has low confidence in attribution of changes to human activity, while the United States has not seen an increase in landfalling hurricanes since 1900. Global costs from extreme weather have declined 26% over the last 28 years.[58] This is not to say that there is no risk to businesses, but that the focus on them with this rule over many other business risks is misplaced.

Likewise, the proposed rule requires companies to assess the risk of sea level rise. When IPCC discusses studies that project greater damage from sea level rise, these studies specifically leave out adaptation and so state, whereas other studies show that adaptation can avoid nearly all the risk.[59]

Our point here is not to evaluate the science on sea level rise or guess at the potential adaptation that governments and companies will undertake to minimize those risks. Rather, it is to point out that the unknowns in the science and the speculation about how governments will adapt to climate change are far beyond the capabilities of companies to guess and far beyond what should be considered useful analysis in an SEC filing. Such questions are better left to governments and scientists for analysis at the macro level, not for speculative micro-level analysis by companies that are not climate change experts. The result would be information of dubious value to shareholders, even if companies hire the armies of climate consultants SEC would require with this rule. (See Section H below.)

Data on natural disasters show steadily decreasing deaths over more than a century,[60] and economic impacts as a percentage of GDP are also on a long-term decline.[61] A Federal Reserve report found that weather disasters over the last quarter century had insignificant effects on U.S. banks.[62] Wildfires are within historic norms and where they have been more extreme, such as in California, they have been shown to be affected much more by the proximate cause of poor forest management than climate change.[63] Effects of sea level rise have been low and projections that claim our coastal cities will be flooded completely ignore basic mitigation strategies that have been employed by the Dutch for over a millennium. In short, climate risks are projected so far into the future that they do not rise to the level

[57] "We're Safer from Climate Disasters than Ever Before", Bjorn Lomborg, *The Wall Street Journal,* Nov. 3, 2021.
[58] "Welfare in the 21st century: Increasing development, reducing inequality, the impact of climate change, and the cost of climate policies"*,* Bjorn Lomborg, *ScienceDirect, Volume 156,* July 2020.
[59] "A Rapidly Closing Window to Secure a Livable Future", Roger Pielke, Jr., *Substack*, March 2, 2022, referencing IPCC WGII Sixth Assessment Report and highlighting Hirabayashi et al. 2021, Dottori et al. 2018, Alfieri et al. 2017, and (Winsemius et. al. 2015).
[60] Our World in Data, see chart Decadal average: Number of deaths from natural disasters.
[61] *Testimony to the Committee on Banking, House and Urban Affairs*, Dr. Roger Pielke, Jr., University of Colorado, Boulder, July 20, 2021.
[62] *How Bad Are Weather Disasters for Banks*, Federal Reserve Bank of New York Staff Report, Nov. 16, 2021.
[63] "Global Trends in Wildfire and Its Impacts: Perceptions Versus Realities in a Changing World," Stefan H. Doerr and Cristina Santin, *Philosophical Transactions of the Royal Society of London*, Series B, Biological Sciences 371, no. 1696, 2016.

necessary to be considered material for most companies, and certainly not to be elevated so prominently over other risks that companies face.

Further, the type of analysis that SEC would require from companies about their physical risk from climate-related events would be extremely difficult and fraught with uncertainty. Rather than producing standardized information that investors could use to compare amongst companies, the analysis would by necessity result in wildly speculative information, if not altogether nonsensical. As SEC asks in question 63, p. 21369, how are companies to determine which weather events are climate-related and which are the result of natural variability in each area where their facilities are located. It is hard enough to speculate on that for past weather events, but to guess at weather in the future and the impact on material risk becomes quickly absurd. Even climate scientists who devote their lives to studying weather events are unable to determine the precise anthropogenic impact for past events while projections of what could happen under various temperature scenarios years and decades hence are just that, projections. So to answer the questions posed in 63, yes, SEC should provide detailed scenarios of how to determine which severe weather events are climate-related in a multitude of different climates for multiple locations and multiple ranges of rainfall, drought, hurricane and tornado strength, etc. so that it would understand the impossibility of requiring a company to do so and remove the requirement to perform such speculative analysis from the final rule.

Political Risks

Finally in this section, we turn to the political risks, termed "transition" risk in the rule. Through this rule, SEC would be requiring companies to analyze risks from hypothetical policies aimed at transitioning off oil and natural gas and to an ill-defined net-zero future. See our discussion in Section F above. In effect, SEC is requiring companies to anticipate and publicly speculate about often controversial policies that have not been passed by Congress, regulations that have not been developed, and the results of elections that have not been held. How are companies to assess the uncertainty arising from the political system itself and the actors in it?

SEC is holding companies responsible for guessing at and speaking out about the vicissitudes of the government itself and the often messy democratic process. How can companies provide meaningful information to investors by attempting to anticipate the whims of the voters, the vacillations of politicians, and the outcomes of rulemakings that have yet to be made. Certainly such uncertainties cannot be considered material. Dr. Condon again provides some words of wisdom on just this subject:

> "No amount of regulatory or corporate governance intervention can give shareholders and managers the ability to foresee the future—the outcomes of national elections, for example, are both largely uncertain and hugely influential in determining the strength of future climate policy."[64]

The current administration has made it clear that it is using its myriad regulatory levers to upend the current financial system and put oil and natural gas and other politically disfavored industries at

[64] Condon, p. 6.

substantial disadvantage or even out of business.[65] In this regard, it is the government itself that is the source of the risk, not anything inherent in a sober assessment of climate risks. By advancing policies, however unrealistic or costly, to eliminate fossil fuels or to increase the regulatory burden on them, the government is the very source of the risk to investments that SEC purports to address on behalf of investors with this rule.

Certainly we acknowledge the 2010 Guidance quoted in the proposed rule on p. 21338 that "certain climate-related issues that companies may need to consider in making their disclosures, including the direct and indirect impact of climate-related legislation or regulations, international agreements". However, the guidance specifically requires disclosure (emphasis added), "[w]ith respect to **existing** federal, state and local provisions which relate to greenhouse gas emissions" (2010 Guidance p. 6295) and only "**may** require risk factor disclosure" for pending legislation or regulation (2010 Guidance p. 6296). The "pending" legislation that compelled the Guidance to be issued was the Waxman-Markey bill.[66] Ironically, that history provides good guidance to companies on how much effort they should put into assessing the risk of "pending" legislation, since the Waxman-Markey bill failed to even engender a vote in the Senate.

We take particular issue with the suggestion on page 21362 that, "…an energy company might discuss how, due to actual or **potential regulatory constraints**, it intends to take advantage of climate-related opportunities by…reducing its medium and long range fossil fuel exploration and production…" So based on **potential** regulatory constraints, a company should voluntarily plan on reducing the very product it produces and hence, reducing revenue and returns to investors in order to meet voluntary GHG reduction goals. Clearly SEC has gone far afield from its mission of capital formation to becoming the "Securities and Environment Commission."[67]

The Government Accountability Office (GAO) inadvertently has shown how climate change energy transition policies would cause U.S. public pension plans to be 6% lower in 2050 than without such policies. GAO finds that:

> "In 2016, a consulting firm knowledgeable about climate risks estimated that **the total value of assets in an average U.S. public pension portfolio could be 6 percent lower by 2050 than under a business-as-usual scenario due largely to transition risks associated with climate change**… These data resulted from an analysis of projected returns from 2015 to 2050 for a model public

[65] For example, President Biden's original nominees as Comptroller of the Currency has said of oil, gas and coal companies, "We want them to go bankrupt if we want to tackle climate change." The original nominee as Vice Chair of the Federal Reserve, Sarah Bloom Raskin, has written and spoken extensively on using financial regulatory levers, similar to this proposed rule, to decapitalize fossil fuels. While both have since withdrawn their nominations, they indicate the administration's intentions.

[66] From the 2010 Guidance, p. 6290: "Climate change related legislation is currently pending in Congress. The House of Representatives has approved one version of a bill, and a similar bill was introduced in the Senate in the fall of 2009. This legislation, if enacted, would limit and reduce greenhouse gas emissions through a ''cap and trade'' system of allowances and credits, among other provisions."

[67] "We are Not the Securities and Environment Commission - At Least Not Yet", Commissioner Hester M. Peirce, March 21, 2022.

> pension plan under a scenario where global warming is limited to 2 degrees Celsius above pre-industrial levels by 2100 and compared to a business-as-usual scenario where efforts to mitigate climate change remain fragmented and warming reaches 4 degrees Celsius by 2100. The climate scenarios estimate the effects of both transition and physical risks from climate change. **The study noted that the worst physical impacts from climate change are not expected for decades (2100 and later) and therefore beyond the study's time horizon for effects on investment returns.**"[68] (emphasis added)

Note from the emphasis added to the GAO quote above, that the study showing 6% lower returns specifically didn't attempt to assess the *actual* physical impacts from climate change, since those happen in 2100 or later, *beyond the time horizon for effects on investment returns*. SEC would do well to heed GAO's sound advice and not implement regulation meant to address an impact relevant 80 years hence to turn-of-the-century investors, well beyond the horizon for today's and even tomorrow's investors.

The 6% climate change *policy* risk represents a higher loss by 2050 than the 3% economic impact that IPCC projects out to the end of the century, far beyond the timelines that should be the purview of current regulation.[69] With this regulation and other policies, the government itself is the source of large risk to investors and lower returns. Surely SEC would want to guard against contributing to that 6% decline via this rule. SEC should acknowledge that this rule is increasing the risk from climate change policies by itself elevating climate change disclosure above material market factors.

Besides the government itself introducing inherent political/transition risks from climate change, the actors in the political process also create the risks. Climate change activists have become adept at developing financially savvy activist groups (such as the seven groups discussed in Section C above) who have been successful in creating the very political/transition risks to businesses we are speaking of. SEC inappropriately uses these activist groups' and their biased work to justify this rule.

The climate change disclosure movement is not merely a disinterested participant in solving the "problem" of reducing climate risk but an active contributor to raising political risks themselves. By advocating for policies, however unrealistic, to get rid of oil and natural gas or to increase the regulatory burden on them, they are the very source of the risks they purport to address. These activists seek to deny the industry access to capital through agencies such as SEC and by pressuring financial institutions to divest, thereby seeking to strand the very assets they purport to be so worried about on behalf of investors. It is unlikely they have the best interests of investors in mind as much as a particular a political agenda. SEC should not involve itself in such efforts aimed at decapitalizing the industry that supplies over 70% of the world's energy needs.

For example, UNPRI, the largest climate initiative cited extensively by SEC, makes a call to action that:

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[68] '*Retirement Savings: Federal Workers' Portfolios Should Be Evaluated For Possible Financial Risks Related to Climate Change*', GAO, GAO-21-327, 2021, page 11, citing to a Mercer and Center for International Environmental Law study in footnote 19.

[69] Nordhaus reference

> "Investors therefore need to engage on an explicit net-zero agenda, looking at how oil and gas companies, and the sector as a whole, can rapidly decarbonize over the short, medium and long term. To deliver real-world outcomes, investors need to enhance their stewardship, particularly where companies are not acting in line with expectations. This includes exploring a range of escalation tools when necessary, such as: multi-asset class engagement, shareholder resolutions, proxy voting, engagement with policy makers and standard setters and/or public statements."[70]

If engagement strategies do not succeed, then investors should move toward escalating their tactics. They themselves are introducing the "transition" risk that they and SEC claim to be so concerned about.

On a side note, Section 4.B.1 of the proposed rule describes a sudden upshift in concern about climate change risk, as reported by PWC. Might we humbly suggest that PWC, which stands to profit handsomely from providing climate disclosure consulting, may not be the best source of unbiased information for SEC to use to make this case. Might we also note that the statistics referenced, 39% of asset management CEOs reporting concern for climate change risk in ***2016*** jumping to 70% in ***2021***, (p. 21424) demonstrates a reaction to the ***political*** risk calculus changing from obviously different election outcomes. Companies, who must shift in the wind to respond to their changing political environment just might have changed their tune on climate in response to a survey based on the result of the 2020 election. This supposed evidence of "investor demand" for SEC's rule is not convincing. Further, by misstating the PWC study, SEC appears to be purposefully conflating actual physical risks from climate change with climate change *policy* risk. Note how SEC paraphrases PWC as (emphasis added):

> "PWC reported in their Annual Global CEO Survey that in 2016, only 39% of asset and wealth management CEOs reported that they were concerned about the **threats posed by physical risks brought about** [sic] **climate change**, whereas this figure increased to 70% in 2021." (p. 21424)

Here is the direct quote from PWC (emphasis added) that shows SEC has mischaracterized the PWC report:

> "As recently as 2016, for example, only 39% of asset and wealth management (AWM) CEOs we surveyed as part of PwC's 19th Annual Global CEO Survey were concerned about the **threats posed by climate change**. Five years later, almost 70% of AWM CEOs expressed concern about climate in PwC's 24th Annual Global CEO Survey, released in March 2021."

Clearly PWC didn't separate out the physical risks from the political risks, which increased greatly in 2021, in the United States at least, from climate change *policy*. SEC should fix that reference in the final rule since it is not an accurate characterization of the PWC survey.

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[70] Engaging oil and gas companies on climate: results of the PRI collaborative engagement, UNPRI, November 26, 2020

H. Cost-Benefit Analysis

In the economic analysis, Section IV, SEC only contemplates the compliance costs and not the societal costs that result from making the supply of energy and other goods more expensive and limited. Likewise, SEC only contemplates the benefits to human health and the environment from decreased emissions but fails to address the societal benefits of the activities and products being regulated. (Please refer to our Section F above that documents some of the benefits of oil and natural gas.) As such the cost-benefit analysis is superficial and inadequate for a rule of this magnitude. SEC should not move forward with this rule without conducting a true cost-benefit analysis that examines fully all comprehensive costs.

Further, by only considering the costs of compliance to the public companies that are required to file, SEC misses completely the costs to companies that supply SEC filers, the largest being the induced requirement to gather and report their GHG emissions to the filing company as a condition of their supply relationship. As we discuss in Section B on Scope 3 emissions above, because filing companies will have to undertake the herculean task of estimating their Scope 3 emissions, they will have no other choice but to require their suppliers to provide their GHGs, even if those suppliers have no regulatory requirement otherwise to report to SEC or EPA.

But even considering just the limited cost-benefit calculations that SEC presents in the rule, the increase in cost from today's reporting of $3.857 billion to $10.235 billion represents a 2.7-fold increase. That indicates climate change disclosure is 2.7 times more important than all the current reporting on material financial information to date, a factor indicating that the proposed rule is out of proportion.

While the price tag for compliance from this rule is already too large, it needs to be expanded to account for the true compliance costs. There is considerable evidence in the public sphere that the rule will spin off a multi-billion dollar "climate-industrial complex" as the accounting industry gears up, the costs of which SEC has not considered. Per pages 21469-21471, CFR sec. 229.1505, SEC would require "GHG emissions attestation providers" that would lock in companies to spending collectively billions on consultants. The Big Four accounting firms report plans to hire hundreds of thousands of employees and invest billions to develop their climate-change auditing and consulting capabilities. KPMG reports it will spend $1.5 billion over the next three years. Ernst & Young will spend $10 billion over three years, while PWC will spent $12 billion over five years and hire 100,000 new employees.[71] Just these three companies report costs of $23.5 billion dollars over a short period of time, roughly at $6.23 billion annually for three years. These costs will all be passed along to companies and ultimately to consumers.

Companies themselves will have to spend internally as well on auditors and consultants. For example, to determine if any one line item required by the rule meets the 1% threshold, systems would have to add up all the positive and negative impacts for each financial statement line item and sum them. Each invoice and cost item would have to be coded as to whether it is climate-related or not and whether the impact is positive or negative. The amount of effort and accounting systems changes required would be extremely costly for each company. Based on discussions with public companies, projects of this nature

[71] "Auditors Assess Complex New Climate Disclosures," *The Wall Street Journal*, March 29, 2022.

could easily cost over $100 million for large companies when considering not just the new systems but the staff training required.

Another member company reports already having to hire consultants to perform Scope 2 calculations and others to prep for Scope 3 prep. Other consultants the company has had to hire include climate change advisors to help with setting company policy, identifying carbon offsets, providing communications, conducting sustainability reporting, designing and installing ESG software, conducting stationary methane detection, certifying responsibly sourced gas, and performing analytics. The company has also hired full-time ESG staff. All such consulting and staff contribute to high overhead rather than revenue generating activities that enhance return to investors.

SEC has not assessed the full cost nor recognized the full level of effort required by this rule.

Our associations appreciate the opportunity to comment. For all the reasons articulated above, we strongly believe SEC should not finalize this rule, especially in light of the high energy prices that are in part the result of climate change policies over the last year and a half. The detrimental effects of these climate change policies on inflation should cause the administration to reverse course in its attempts to deny the oil and natural gas industry access to capital and otherwise suppress American production. More fundamentally, the economy and indeed our entire modern society would cease to function without oil and natural gas and SEC should not be seeking their demise.

Sincerely,

Kathleen M. Sgamma
President
Western Energy Alliance

Timothy Stewart
President
U.S. Oil & Gas Association

Appendix A
Western Energy Alliance White Paper
The Activist Network Behind Climate Change Disclosure Regulation

The Activist Network Behind Climate Change Disclosure Regulation

White Paper

June 2022

Key Points

- To justify the proposed climate disclosure rule, the Securities and Exchange Commission (SEC) is relying on the work of activists, foreign investor groups, and global climate initiatives.
- Our analysis shows 81% of asset managers cited by SEC in support of climate change disclosure are foreign, while only 7% of American asset managers actively support disclosure.
- Groups cited by SEC collaborate with often violent Keep-It-in-the-Ground activist groups that have threatened public safety and government employees, with some even funded by Russian oligarchs.
- Global climate groups cited by SEC have threatened U.S. corporations and lobbied to revoke the First Amendment rights of political opponents.

Introduction

Fiduciary responsibility is the legal and ethical responsibility of an individual or organization to look out for the best financial interests of their client whose assets they manage. It is the bond upon which trust between two parties is established when one is managing the other's money. It is the promise made by community bankers and trillion-dollar portfolio managers on Wall Street alike.

Similarly, it should also be the foundation for the watchdogs of the financial industry, regulators such as SEC. In order for blue-collar workers, retirees, single moms, and young families to give their full faith and credit to overseers of the banking and finance industry, they need to count on regulators to provide all the relevant facts and information.

Unfortunately, SEC has fallen short of this requisite standard in the recently proposed climate change disclosure rule. While the justifications used by the SEC for the rule appear to be built on the demands of credible, non-partisan financial institutions and asset managers for standard climate information, the reality is quite different. Analysis conducted by Western Energy Alliance reveals what SEC is not sharing: the proposed rule relies on the work of a global network of activist organizations—not a majority of American investors or institutions—that have been collaborating for several years to end the use of oil and natural gas around the world.

Western Energy Alliance represents 200 member companies engaged in all aspects of environmentally responsible exploration and production (E&P) of oil and natural gas in the West. The Alliance represents independent oil and gas producers, the majority of which are small businesses with an average of fourteen employees. In the course of developing our comments on the rule, we found that SEC is justifying the rule based on the demands of mostly foreign investors with only a very small minority of American investment managers.

SEC's Weak Bedrock Includes BlackRock

SEC reasons that the proposed climate disclosure rule is necessary to meet a growing demand by investors and asset managers. Under the section header "The Growing Investor Demand for Climate-Related Risk Disclosure and Related Information," the SEC begins by arguing that "significant investor demand for information about how climate conditions may impact their investments. That demand has been increasing in recent years." Based on that, the SEC states, "As a result, these investors have sought to include and consider climate risk as part of their investment selection process."

SEC cites to a well-known letter to investors from BlackRock Chairman and Chief Executive Officer Larry Fink as proof of this supposedly overwhelming investor demand:

> "…BlackRock announced a number of initiatives to place sustainability at the center of our investment approach, including: making sustainability integral to portfolio construction and risk management; exiting investments that present a high sustainability-related risk, such as thermal coal producers; launching new investment products that screen fossil fuels; and strengthening our commitment to sustainability and transparency in our investment stewardship activities."[1]

Absent, however, from this section is any reference to the robust public debate and criticism of BlackRock's letter and continued investments in coal and oil sectors. Mr. Fink's letter is presented by the SEC as though it is widely popular and uncontroversial, and that cannot be further from the truth.

Yet a coalition of major climate activist groups, known as #BlackRocksBigProblem, has criticized the asset management firm's supposedly seminal letter to investors and lack of action. The group has accused BlackRock of still being "one of the leading investors in fossil fuel and deforestation companies."[2] The coalition includes the Sierra Club, Oil Change International, Rainforest Action Network, the Indigenous Environmental Network, the Union of Concerned Scientists, and several other well-known climate groups.[3] They cited a report by Reclaim Finance and Urgewald that states, "BlackRock holds $85 billion in coal companies, $24 billion of which are invested in companies planning to expand their coal business." The coalition also notes, "In late 2021, BlackRock finalized a $15 billion deal with Saudi Aramco to acquire 49% of the oil & gas major's gas pipeline subsidiary."[4]

BlackRock has also been heavily criticized by members of Congress working to advance climate policies. Most notably, Sen. Sheldon Whitehouse and Rep. Jesús G. "Chuy" García (IL-04) protested BlackRock's "negative impact on human rights and our climate" in New York City in May 2020.[5] In December 2020, Sen. Whitehouse tweeted additional criticism of BlackRock's letter to investors, posting, "After splashy letter, not much action from @blackrock. Tenth of ten — DFL. Nothing from these guys in Congress

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[1] *A Fundamental Reshaping of Finance*, Blackrock, Chairman and CEO Larry Fink, January 2020.
[2] *BlackRock's 2022 letter to CEOs: Trying to please all sides, Fink stalls on climate*, #BlackRocksBigProblem, January 18, 2022.
[3] *About*, #BlackRocksBigProblem.
[4] *BlackRock's 2022 letter to CEOs: Trying to please all sides, Fink stalls on climate*, #BlackRocksBigProblem, January 18, 2022.
[5] *This Shareholder Season, Investors Are Pushing Wall Street on Climate Action*, Sierra Club, Ben Cushing, May 27, 2020.

either."[6] This is a noteworthy comment by the senator from Rhode Island, who has staked out climate policy a central pillar of public service and recently delivered his 280th speech on the floor of the U.S. Senate on the issue.[7]

The State of Texas pushed back on Blackrock in 2021 by passing legislation instructing the state's comptroller to pull state money out of Blackrock and other investment firms that deny financing to oil and natural gas companies.[8] The bill impacts six public investment funds in the state with more than a quarter-trillion dollars, including the Employees Retirement System, Permanent School Fund, and Teacher Retirement of Texas.[9]

Besides the criticism from both sides of the aisle, reality set in. In October 2021, as gasoline prices continued to reach new record highs and inflation was casting a pall over the wallets of American consumers and the minds of their elected representatives, Larry Fink warned about the costly impacts associated with short-term climate policies that restrict fossil fuels:

> "Inflation, we are in a new regime. There are many structural reasons for that. Short-term policy related to environmentalism, in terms of restricting supply of hydrocarbons, has created energy inflation and we are going to be living with that for some time."[10]

In March 2022, BlackRock President Rob Kapito stressed to the Texas Independent Producers and Royalty Owners' (TIPRO) annual convention in Austin that:

> "BlackRock is the biggest investor in oil and gas. Nothing about our strategy with respect to the energy industry has changed. Not because of the new bill, not because of the media. We gotta get over a lot of the media hype—we are investing in fossil fuels. People talk a lot about the transition, but this is not a transition. It's an evolution."[11]

While BlackRock has adjusted to reality and the need for oil and natural gas, SEC seems not to have learned the lessons of high energy prices and continues in its quest to stifle American production by denying it of financing through this rule. At a minimum, SEC should strike all references to the original BlackRock letter, as it is not legitimate evidence to support the rule.

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[6] Twitter @SenWhitehouse, Sen. Sheldon Whitehouse (D-RH) December 11, 2020.
[7] With Climate Bill Stalled, Whitehouse Delivers 280th 'Time To Wake Up' Speech, Sen. Sheldon Whitehouse press release, February 2, 2022.
[8] *Prohibition on Investment in Financial Companies That Boycott Certain Energy Companies*, Texas State Legislature, Senate Bill 13, 2021.
[9] *Texas Legislature Directs Pension Funds to Divest From BlackRock Over Climate Investing*, *Honest Austin*, May 4, 2021.
[10] *BTG's Esteves, Pimco Warn Inflation's Not Transitory*, Bloomberg, Salma El Wardany, October 26, 2021.
[11] *BlackRock President Denies Accusations of Fossil Fuel Divestment at Texas Oil and Gas Convention*, *The Texan*, Brad Johnson, March 29, 2022.

SEC Advances Europe's Agenda, Not America's

To further build the case for investors' supposedly pent-up demand for climate change disclosure, SEC includes a long discussion of organizations and the various international initiatives they have started, citing to the:

- United Nations Principles for Responsible Investment (UNPRI) has 4,000 signatories with $120 trillion in assets
- Global Investor Statement to Governments on Climate Change signed by 630 investors with $37 trillion in assets
- Investor Agenda's 2021 Global Investor Statement to Governments on the Climate Crisis, signed by 733 global institutional investors with $52 trillion in assets
- Net Zero Asset Managers Initiative of 128 signatories and $43 trillion in assets
- Climate Action 100+ comprised of 617 investors managing $60 trillion in assets[12]
- Glasgow Financial Alliance for Net Zero with 450 financial institutions managing $130 trillion in assets.[13]

The list and assets under management appear very compelling, if not overwhelming. However, SEC has failed to provide context. How many investors are represented multiple times in the laundry list, signing onto multiple of these initiatives? It is not clear. Perhaps those investors that are well on board with net-zero and the climate disclosure agenda might be promiscuous joiners, signing onto multiple of these initiatives. How many investors are there overall to put these numbers in context? Perhaps they are just a minority of investors. SEC fails to provide the context.

Likewise, given that there are about $250 trillion in global investable assets,[14] those advocating for climate change disclosure may represent a minority of global assets. Indeed, in Footnote 56 of the rule SEC acknowledges, "There is some overlap in the signatories to the listed initiatives." It is not clear what the overlap is in terms of both number of investors and total assets managed, but perhaps that obfuscation is intended. Regardless, it indicates a split in opinion regarding whether or not the time-consuming, in-depth climate change disclosure contemplated by SEC would indeed prove worthwhile or that the market is truly clamoring for it.

Digging deeper into the numbers SEC cites, there are seven main climate change non-profit advocacy organizations behind them:

- Asia Investor Group on Climate Change (AIGCC)
- Carbon Disclosure Project (CDP)
- Ceres
- Investor Group on Climate Change (IGCC)
- Institutional Investors Group on Climate Change (IIGCC)

[12] *About Climate Action 100+*, Climate100+.
[13] Rule footnote 23.
[14] *Despite COVID-19, Global Financial Wealth Soared to Record High of $250 Trillion in 2020*, Boston Consulting Group, June 10, 2021.

- United Nations Principles for Responsible Investment (UNPRI)
- United Nations Environmental Program (UNEP).

Yet an examination of how these groups are interrelated further calls into question any broad consensus for climate disclosure. The multiple international groups cited by SEC are not operating independently from each other, but rather are working in close collaboration. The following chart shows that, across the board, each initiative is comprised of the same small group of members. There is very little to differentiate the Global Investor Statement from the Net Zero Asset Managers Initiative or from any of the others. These groups are so intertwined that it is not at all clear they represent anything other than a minority of investors advancing a particular policy agenda. SEC has failed to provide data that there is a broad consensus among the financial community for climate change disclosure.

Intertwined Network of Climate Initiatives Cited by SEC and Non-Profit Advocacy Groups

Investor Agenda Founding Partners	Global Investor Statement	UNPRI	Net Zero Asset Managers Initiative	Climate 100+	Glasgow Financial Alliance for Net Zero
Asia Investor Group on Climate Change (AIGCC)	☑	☑	☑	☑*	☑
Carbon Disclosure Project (CDP)	☑	☑	☑	-	☑*
Ceres	☑	☑	☑	☑*	☑*
Investor Group on Climate Change (IGCC)	☑	☑	☑	☑	☑
Institutional Investors Group on Climate Change (IIGCC)	☑	☑	☑	☑	☑*
UN Principles for Responsible Investment (UNPRI)	☑	☑	☑	☑*	☑
UN Environmental Programme Finance Initiative (UNEP)	☑	☑*	-	-	☑*

*denotes involvement within the organization's leadership, such as a seat on a board or advisory panel

However intertwined these groups and initiatives are, a more fundamentally fatal flaw in the use of their work by SEC is the fact that the vast majority of investors they represent are foreign. Across those seven climate initiatives and the global network of non-profit organizations that support them, only 19% are American. More than half are European.

Asset Management Companies Supporting Climate Activism

Asset Managers by Region	Number of Companies	Percentage
Europe	3,095	53.4%
North America	1,378	23.8%
- United States	1,124	19.4%
- Canada	254	4.4%
Asia Pacific	820	14.1%
Latin America & Caribbean	317	5.5%
Africa & Middle East	188	3.2%
Total	**5,798**	**100%**

Western Energy Alliance analyzed data on the 6,991 companies included in these initiatives. For the 5,800 companies that provide country of origin locations, a more than representative sample, only 1,124 are American. [15]

Foreign companies do not set United States policy. SEC is skating on very thin ice when it uses foreign companies organized into initiatives by seven climate change activist organizations to justify a regulation that would impose a $10.235 billion cost on American society.

Further diving into the numbers, the 1,124 American asset management companies participating in the climate change disclosure advocacy that these seven groups are orchestrating represent a mere 7% of the 16,127 registered investment companies in the United States.[16] Therefore, SEC's implied "consensus" of investment companies clamoring for disclosure falls apart at just 7%. That is pretty thin ice for a rule with such wide-ranging implications.

The gruel becomes even thinner after examining the groups themselves. SEC cites to CDP in particular several times. After decades of organizing institutional investors to pressure companies to disclosure their greenhouse gas emissions, CDP has been successful in organizing 168 global investment firms with $17 trillion in assets to target 1,300 companies worldwide to disclose their emissions,[17] or about 7% of the total global investable assets of $250 trillion.[18] According to CDP, 572 U.S. public companies,[19] or about 10% of the total,[20] have reported some climate data to CDP.[21] While many of these companies have been compelled by the same activist investors that CDP represents, it is certainly their prerogative to do so. The fact that CDP has only been able to convince a small minority of companies with a small percentage of assets to disclose is illustrative.

The citations to the value of assets managed is actually quite irrelevant. An investment management team that signs a climate change pledge is speaking for itself, not for the thousands or millions of individual small investors behind them, unless the related investment instrument specifically has a stated climate change policy that investors consciously select into. There is just as much a policy split among those millions of investors as there is in the population at large.

A recent poll taken by Public Opinion Strategies on behalf of NBC News showed that 69% of likely voters would support a "candidate who supports expanding domestic oil and natural gas production to keep our gasoline and energy prices lower"[22] Another NBC News poll goes further, showing that voters

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[15] *Annual Report 2019*, UNPRI, p. 63-68; *Our Members*, UNEP; *Partners*, The Net Zero Asset Managers Association; *Investor Signatories*, Climate Action 100+; *Our progress and plan towards a net-zero global economy*, Glasgow Financial Alliance for Net Zero, p. 97-102.

[16] *2021 Investment Company Fact Book*, The Investment Company Institute trade association.

[17] *A record 168 investors with US $17 trillion of assets urge 1300+ firms to disclose environmental data*, CDP, June 21, 2021.

[18] *Despite COVID-19, Global Financial Wealth Soared to Record High of $250 Trillion in 2020*, Boston Consulting Group, June 10, 2021.

[19] CDP Letter to SEC Chairman Gary Gensler, CDP, June 11, 2022

[20] *The Number Of Companies Publicly Traded In The US Is Shrinking—Or Is It?*, *Benzinga*, Spencer Israel, October 30, 2020.

[21] CDP Letter to SEC Chairman Gary Gensler, CDP, June 11, 2022

[22] The most popular — and unpopular — 2022 candidate qualities, NBC News, Chuck Todd, March 30, 2022.

prioritize increasing American oil and natural gas production over fighting climate change.[23] Both polls show these views were held by a majority of Democrats, Republicans, and independents.

Investors should not be pushing a political agenda that their investors may or may not subscribe to, and SEC should not be helping them do so. There are certainly ESG funds that like-minded investors can invest in, but that choice should not be foisted upon all investors.

Activist groups have been able to convince neither the American people nor the majority of their representatives in Congress to stop using oil and natural gas before viable alternatives can be found, as it would mean fundamentally altering their healthy, safe, and prosperous lifestyles. Knowing that they cannot get Congress to pass laws that prevent people from using oil and natural gas or that prevent companies from producing them, activists have shifted to pressuring investment managers, banks, and other financial entities. Likewise elevating climate change considerations over material market factors is not supported by statute.

Pulling Back the Curtain on Climate Initiatives and the Global Activists Network

Significant crossover exists among the organizations funding the seven climate initiatives cited in the SEC rule as well as the global network of non-profits that are pushing their implementation. The financial backing comes from numerous well-known activist philanthropies and climate groups that have pushed Keep-It-in-the-Ground policies for several years.

We conducted a review of the publicly available information on the websites of the initiatives and non-profit organizations and found the following environmental, philanthropic, and corporate organizations that also fund the climate movement: Bloomberg Philanthropies, Carbon War Room, Ceres, Children's Investment Fund, ClimateWorks Foundation, Environmental Defense Fund (EDF), European Climate Foundation, Gordon and Betty Moore Foundation, Grantham Foundation for the Protection of the Environment, Growald Foundation, HighTide Foundation, KR Foundation, MacArthur Foundation, Myer Foundation, National Fish and Wildlife Foundation, New Venture Fund (NVF), Park Foundation, Patagonia, Rockefeller Brothers Fund, Rockefeller Foundation, Sea Change Foundation, The Nature Conservancy, Tides Foundations, Turner Foundation, We Mean Business Coalition, William and Flora Hewlett Foundation, and WWF.

Russian Influence over U.S. Climate Activism

Notable among this group is the Sea Change Foundation, which is a funder of the Asia Investor Group on Climate Change, Ceres, Investor Group on Climate Change, and UN Principles for Responsible Investment. The foundation is accused of being a front group for Russian influence over U.S. energy and climate policies over the past decade. Most recently, Sea Change was prominently featured in a March 31, 2022 letter from 20 members of Congress to House Oversight Committee Chairwoman Carolyn Maloney (D-N.Y.) requesting a hearing "on the coordinated attempts by Russian entities to buy influence

[23] "March 2022 Public Opinion Strategies National Poll & NBC News Poll: Gas and Oil Production Data, March 31, 2022.

and finance U.S. environmental non-governmental organizations (NGO) in an effort to reduce the energy security of the United States."[24] The lawmakers wrote:

> "In the 115th Congress, Representatives Lamar Smith and Randy Weber… described how a Bermudan shell corporation known as Klein Ltd. was used to siphon millions of dollars to an environmental NGO called the Sea Change Foundation. This shell company was specifically tied to the Russian government through one of its directors, Nicholas Hoskins… According to IRS tax filings from 2010 and 2011, Klein Ltd. donated $23 million to the Sea Change Foundation and was responsible for almost 50 percent of contributions made to the organization during those years. This organization gave $100 million in grant money to environmental groups, such as the Sierra Club, the Center for American Progress, the US Climate Action Network, and the Natural Resource Defense Council, with the purpose of reducing 'reliance on high carbon energy.' Given the impact that Russia's control of the European energy market has had in the lead up and prosecution of the war in Ukraine, it is critical that Congress gains a better understanding of the role that Russian financing has had in shaping American environmental policy and sentiment."[25]

Since Russia's invasion of Ukraine in February, the world has become painfully aware that a consequence of relying on Russian oil and natural gas is the financial support that's offered to the Russian military.[26] It is regrettable enough that President Joe Biden actively lobbied Russia to increase its already record imports of crude oil into the United States in the months leading up to the invasion in Ukraine. Today, after the atrocities that have been committed by Russia, the SEC under this Administration should not compound the situation by advancing financial regulations designed to further limit American producers and benefit Russian producers, and therefore the Russian military. Certainly not when the basis of those regulations is built in part on advocacy from a Russian front group nor at a time when elected representatives in Congress seek to investigate that group. Before moving forward with this rule, the SEC should allow lawmakers to conduct appropriate oversight so the agency can fully understand the scope of influence our strategic adversaries have in advancing climate global initiatives.

Ties to the Violent Keep-It-in-the-Ground Movement

The litany of philanthropies and foundations above are also major financial supporters of the most aggressive activist groups within the Keep-It-in-the-Ground movement, including many that have a well-documented pattern of extremism over the past decade. [27]

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[24] *Comer, Norman, Davidson Sound Alarm Over Russia's Attempts to Infiltrate U.S. Environmental Groups*, House Committee on Oversight and Reform, March 31, 2022.

[25] Representatives James Comer and Warren Davidson Letter to Chairwoman Carolyn Maloney, House Committee on Oversight and Reform, March 31, 2022.

[26] *Buying Russian gas and oil has funded Putin's war, says top EU official*, *The Guardian*, Daniel Boofey, March 9, 2022.

[27] *The Sky's Limit: No New Fossil Fuel Development*, KeepItInTheGround.org, November 2016; *Break Free From Fossil Fuels*, Break Free 2016, May 2016; *Join Us in Washington, D.C. To Demand a Fossil Free Future*, People v. Fossil Fuels, October 2021.

Beneficiaries of millions of dollars in grants provided by the philanthropic groups above include 350.org, Center for Biological Diversity, Center for Western Priorities, Colorado Conservation, EarthJustice, EarthWorks, Extinction Rebellion, Food & Water Watch, Friends of the Earth, Greenpeace, League of Conservation Voters, Natural Resources Defense Council, Oil Change International, Rainforest Action Network, San Juan Citizens Alliance, Sierra Club, Sunrise Movement, Taxpayers for Common Sense, The Nature Conservancy, Union of Concerned Scientists, and Western Environmental Law Center.[28]

Examples of the extreme activities of these activist groups include the People vs. Fossil Fuels protest on October 14, 2021, in which hundreds of protesters gathered in front of the White House and at the Department of the Interior headquarters. The day of action was not peaceful. Numerous protesters invaded Interior's building and were arrested.[29] This is not an isolated incident, but rather the *modis operandi* of these activist groups over the past several years.

In July 2019, 18 months before the January 6, 2021, invasion of the U.S. Capitol, Extinction Rebellion organized a climate protest to disrupt lawmakers on Capitol Hill. Activists were arrested by Capitol Police after blocking lawmakers from making their way to the House chamber to vote.[30] A month before January 6th the group again organized protests that disrupted the streets of Washington, D.C., resulting in several arrests.[31]

Going back to 2015 and 2016, most of these activist groups—enabled by millions of dollars in grants from philanthropic groups connected to the global investor climate initiatives cited by the SEC—organized numerous protests of quarterly federal oil and natural gas lease sales held by the Bureau of Land Management (BLM) and created unrest in places like Salt Lake City, Denver, Santa Fe, Cheyenne, Billings, Reno, and Boise.[32] The security situation became so overwhelming, BLM postponed lease sales in Salt Lake, Denver, and Albuquerque.

When the quarterly lease sales resumed, BLM's state offices began holding the auctions offsite as a safety precaution. However, that still did not prevent protesters from disrupting the sale process in Salt Lake City, which ultimately led police to remove protesters. In another instance, even though BLM held a lease sale offsite in Denver, a massive protest was organized by the activist groups.[33] BLM responded by

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28 Data accessed on InfluenceWatch.org, Capital Research Center, April 2022.
29 *Police and climate activists hurt in clashes at Interior Dept.*, *Washington Post*, Ellie Silverman, October 14, 2021.
30 *Extinction Rebellion protesters confront politicians at US Capitol*, *The Guardian*, July 23, 2019.
31 *Extinction Rebellion Doubles Down on Blowing Up Pipelines Threat*, Energy In Depth, December 1, 2021.
32 *Activists disrupt Utah oil, gas auction*, *St. George News*, February 22, 2016; *BLM Auction Cancelled, Event to Oppose Sale of Federal Land Leases Still Held*, *KNUG.org*, February 12, 2016; *Hundreds protest BLM drilling lease auction in Santa Fe*, *Santa Fe New Mexican*, Rebecca Moss, April 20, 2016; *Keep It in the Ground' Rally to Target BLM's Oil, Gas Auction in Cheyenne*, WildEarth Guardians, February 1, 2016; *BLM Oil and Gas Lease Draws Protesters*, *Billings Gazette*, Tim Lutey, August 21, 2016; *Protesters Rant at BLM Nevada Oil, Gas Lease Sale, But the Market Speaks Louder*, *Natural Gas Intelligence*, March 9, 2016; *Keep It in the Ground: Idaho BLM Oil & Gas Lease Protest 2 Report*, Wild Idaho Rising Tide, August 3, 2016.
33 *Protesters Disrupt BLM Auction*, *KUER Radio*, May 17, 2016; *Protesters Tell Feds: 'Keep It in the Ground' at Utah Oil, Gas Lease Sale*, *eNews Park Forest*, May 19, 2016; *Hundreds swarm BLM auction in Lakewood to protest oil, gas drilling*, *Denver Post*, Bruce Finley, May 12, 2016.

hiring a large police force that reportedly included undercover federal agents.[34] Offshore lease sales were similarly targets of protesters, including in the March and August 2016.[35]

In light of the serious security threats to federal employees and the public posed by these climate groups, the BLM Director under President Barack Obama, Neal Kornze, testified in a hearing of the House Oversight and Government Reform's Subcommittee on the Interior in March 2016 that BLM field offices were threatened by "an abnormal security situation." Mr. Kornze equated the threats by Keep-It-in-the-Ground groups to the threats his agency faced from armed militia groups. He added,

> "We are concerned about safety and so a situation which we are not used to separating out, who's a bidder and who's not in a routine way, you know, gives us some pause and led us to take a half step back and say, how do we do this in the very near future and do it in a reasonable way that ensures the safety of everyone involved?"[36]

Delaying quarterly lease sales and moving them away from BLM offices was a temporary solution implemented by Mr. Kornze. But after he discovered that would not deter the extremist actions of the Keep-It-in-the-Ground groups, Mr. Kornze permanently moved the quarterly auctions from the traditional in-person events to online sales in order to protect his staff, the public, and bidders.

Megaphones Traded In for Decorum

Moving from the streets to the boardroom, the statements by the seven climate groups cited in the SEC rule make clear their goal is the same as the Keep-In-the-Ground movement. The global climate initiatives and the activist groups behind them are part of the broad global network funded and choreographed by the billion-dollar philanthropies listed above. It's the game of good cop/bad cop, with a complex network between them to ensure the good philanthropists aren't sullied by the street-fighting radicals.

The tactics used by the seven climate groups are more subtle and couched in language appropriate for the corporate world of finance. After all, outrageous rhetoric and aggressive actions do not open doors within the investment community. Yet the language still carries a sinister undercurrent of coercion, denoted by our bolding in the quotes below.

UNPRI, the largest climate initiative cited in the SEC rule with more than 4,000 asset manager signatories, articulates this dynamic:

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34 *Federal Agents Went Undercover to Spy on Anti-Fracking Movement, Emails Reveal*, *The Intercept*, Lee Fang, July 19, 2019.

35 *Protestors turn a federal offshore oil auction into a circus*, *Grist,* Melissa Cronin, March 23, 2016; *Gulf oil and gas lease sales become focus of protests*, *NOLA.com*, Diana Samuels, August 19, 2016.

36 *Examining BLM Public Lands*, House Committee on Oversight and Reform's Subcommittee on the Interior, Hearing Transcript, March 23, 2016, p. 14-15.

> "Rather than hoping for activists alone to swoop in and offer them an alternative, institutional investors will instead need to **step up their scrutiny of boards' performance** on environmental and social issues."[37]

In other words, to have a seat at the corporate table to compel change, one must use decorum and enroll people from within the finance world, not rambunctious activists.

Megaphones get traded in for boardroom engagement and shareholder resolutions. Organizations like Ceres, UNPRI, and the others SEC likes to cite won't be organizing street-level protests but instead guiding investors on anti-fossil fuel investment strategies. Extreme language is shrewdly substituted with a nomenclature that stresses transition, net zero, decarbonization, and other terms that appeal to the methodical decision-making approaches taken by investors.

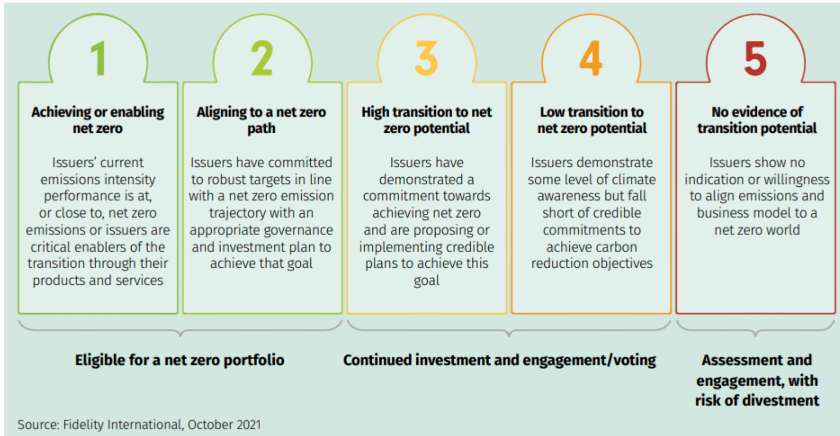
AIGCC underscores the advantage of being nuanced and meeting the investment community where it's at, stating "rather than divesting their high carbon assets, investors are focusing emissions reduction over a pledged timeline." AIGCC points to the case study of Asset Management One (AM One), and suggests:

> "Rather than simply divesting from the companies that are not yet fully aligned with net zero scenario [sic], the priority is to actively engage with these companies. AM One's goal is to gain a holistic understanding of the company which allows them to have a **constructive dialogue that will bring about improvement and positive changes**."[38]

In other words, the end game of halting investments in fossil fuels comes through engagement, dialogue, and understanding, not through blunt, aggressive tactics.

AIGCC drives the point home by spotlighting a case study on corporate engagement by Fidelity International. Like AM One, Fidelity begins by engaging with board members of companies in order to advocate for net-zero policies and carbon reductions. Through its engagement process, Fidelity uses a climate rating scoring system based on a target company's willingness to comply. If and when it becomes clear a target company is not interested in implementing the desired climate policies, Fidelity downgrades the company to code red. The genteel rating system that seemed less aggressive quickly becomes a cudgel to coerce divestment from oil and natural gas. [39]

[37] *How should responsible investors secure better boards?*, UNPRI, July 30, 2021.
[38] *Pursuit of Ambitions: Net Zero Investment in Asia*, AIGCC, February 2022, p. 11-12.
[39] *Id*, AIGCC, February 2022, p. 23-24.



UNPRI makes the point in a 2020 report summarizing its campaign to engage with 25 oil and natural gas companies:

> "Investors therefore need to engage on an explicit net-zero agenda, looking at how oil and gas companies, and the sector as a whole, can rapidly decarbonise over the short, medium and long term. To deliver real-world outcomes, investors need to enhance their stewardship, particularly **where companies are not acting in line with expectations**. This includes exploring **a range of escalation tools** when necessary, such as: multi-asset class engagement, shareholder resolutions, proxy voting, engagement with policy makers and standard setters and/or public statements."[40]

Global Climate Initiatives Trample the U.S. Constitution

Activism by the climate groups is also clearly manifested in their calls to silence political opponents, even as far as limiting their constitutional rights to free speech and association. They shrewdly use the fake-news/misinformation meme of the past several years to their advantage but describe it with their own euphemism: negative climate lobbying.[41]

The climate groups see a threat from organizations like Western Energy Alliance that represent hundreds of oil and natural gas companies and thousands of workers and communicate directly with elected officials and the investment community. These are a few examples:

- Ceres suggested in 2021, during debate in Congress on the Build Back Better Act (BBB), that lobbying by oil and natural gas industry groups is a threat, telling its members, "We can't let trade associations allow the entrenched interests of the fossil fuel industry to undermine the huge economic opportunities this plan promises."[42]

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[40] Engaging oil and gas companies on climate: results of the PRI collaborative engagement, UNPRI, November 26, 2020

[41] *Time must be called on negative climate lobbying*, UNPRI, August 12, 2021.

[42] *COP26 is over. Now it's up to investors, companies, and governments to raise their climate ambition*, Ceres, November 19, 2021.

- UNPRI explained to its members in the debate around air quality and methane regulations, that "an important consideration is the lobbying actions of other groups. Trade associations and industry third-party organisations can hinder policy action aimed at mitigating wider climate change risk. The policy positions that these organisations take often contradict those of their members."[43] As if UNPRI understands oil and natural gas companies better than their direct trade associations.

- UNPRI also suggested to asset managers that a failure to anticipate what it perceives as negative lobbying could result in non-compliance with its guidelines, stating, "As 'emerging' climate regulations become ratified, strategically opposed or misaligned climate lobbying could be a red flag for lack of readiness or even non-compliance."[44]

The climate groups take issue with Western Energy Alliance's and other trade associations' comments on the SEC's rule. UNPRI's expressed displeasure includes:

> "The US oil and gas industry has redoubled its lobbying pursuits, specifically targeting the SEC and aiming to cripple its reformed disclosure requirements. They are lobbying to significantly dilute forward-looking elements of the Task Force on Climate-Related Financial Disclosures (TCFD) regulation and there is also concern about whether they may be supporting third parties' legal actions to block climate disclosure regulation in the courts. Working both solely and collectively, some of the biggest names in the industry have made their opposition to the Biden administration's stronger stance on climate abundantly clear."[45]

UNPRI does not simply disagree with industry associations as a matter of policy, but must shut them down:

> "The trade associations, think tanks and other third-party organisations of which many corporations are members wield significant power and influence as political stakeholders. Just a year and a half ago we saw this playing out at the SEC as corporate lobbying groups applied pressure on the Commission (under the Trump administration) regarding rules which would undermine long-standing shareholder rights and weaken investor voices. The ability of corporate lobbying groups to delay and disrupt climate legislation is significant."[46]

To do so, these groups pursue a strategy that begins with putting pressure on publicly traded companies to disclose the trade associations they're members of. Once that information is out in the open, they apply pressure on the companies to suspend those memberships and prevent the associations from lobbying on public policies. It's the tactic of doxing a political opponent, just on a larger scale.

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[43] *Methane momentum gathers pace in oil and gas sector*, UNPRI, March 22, 2019.
[44] *Converging on Climate Lobbying*, UNPRI, 2018, p. 10.
[45] *Time must be called on negative climate lobbying*, UNPRI, August 12, 2021.
[46] *Ibid.*

AIGCC states, “All oil and gas companies must also disclose precisely how they are working with and via trade associations to address misalignments on climate policy.”[47] UNPRI warns of the perceived risks if publicly traded companies do not disclose memberships in industry trade associations:

> “Even if a company has disclosed a positive stance on climate science, significant risk of misalignment with indirect lobbying practices may be highlighted through: no transparency on memberships of trade associations or other industry-backed and tax exempt organisations (especially those with a reputation of having a negative stance on climate change); and no disclosure of level of funding to these organisations.”[48]

The next step is to halt the lobbying of industry trade groups on behalf of their member companies on the SEC rule and all other climate-related policies. As UNPRI states:

> “It’s clear the time has come to go further on reforming negative corporate climate lobbying. This is not just about financial disclosure rules but restricting and regulating lobbying efforts entirely... It’s time to confront negative climate lobbying from every link in the chain, from the funding by corporations to the lobbying organisation and ultimately to the closed-door undermining of climate action.”[49]

Here is an arm of the United Nations openly advocating for “restricting and regulating lobbying” of American companies and industry trade associations. The United Nations is seeking to prevent Americans from exercising their rights to freedom of speech, freedom of association, and “to petition the Government for a redress of grievances,” as guaranteed by First Amendment of the Constitution.

Conclusion

In the course of analyzing SEC’s proposed rule and developing public comments, Western Energy Alliance has found ample evidence that the supposedly broad demand for climate change disclosure regulations from the investment community simply does not exist. There is only a small minority of American investment managers that ascribe to the agenda cited by SEC, while the pressure comes primarily from investors in Europe.

SEC instead cites to the work of a global activist organizations that have been collaborating for several years to end the use of oil and natural gas. The network of Keep-It-in-the-Ground groups has even gone so far as to threaten the public and federal employees while upending the will of Congress and official business of federal agencies. They attempt to deny American corporations and trade associations their First Amendment rights and use coercive strategies to advance their agenda. These organizations are not credible and should not be used as the justification for a major rulemaking that will reduce American energy and increase our reliance on foreign sources.

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[47] *Investor Climate Compass: Oil and Gas*, AIGCC, July 2017, p. 16.
[48] *Converging on Climate Lobbying*, UNPRI, 2018, p. 13.
[49] *Ibid.*