Comment letter submitted by the Competitive Enterprise Institute, et al.
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In the matter of the proposed rule
"The Enhancement and Standardization of Climate-Related Disclosures for Investors"
Securities and Exchange Commission
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Prepared by:

Richard Morrison, Senior Fellow
Competitive Enterprise Institute

Co-signed by:

Paul Teller, Executive Director
Advancing American Freedom

Bethany Marcum, CEO
Alaska Policy Center

John Droz, Jr., Founder
Alliance for Wise Energy Decisions (AWED)

Samuel Buchan, Director, Center for Energy Independence & the Environment
Jim Carter, Director, Center for American Prosperity
America First Policy Institute

Dick Patten, President
American Business Defense Foundation

Richard Manning, President
Americans for Limited Government

Craig Rucker, President
Committee for a Constructive Tomorrow (CFACT)

Dr. Steven J. Allen, Vice Chairman
The Conservative Caucus

E. Calvin Beisner, Ph.D., President
The Cornwall Alliance for the Stewardship of Creation

Craig Richardson, President
Energy & Environment Legal Institute (E&E Legal)

Rob Schilling, Executive Director
Energy Policy Advocates

Siri Terjesen, Ph.D., Phil Smith Professor of Entrepreneurship
Florida Atlantic University

Beverly McKittrick, Director, Regulatory Action Center
FreedomWorks Foundation

James Taylor, President
The Heartland Institute

Garrett Bess, Vice President
Heritage Action for America

Thomas Pyle, President
Institute for Energy Research

Tom Giovanetti, President
Institute for Policy Innovation

Andrew Langer, President
Institute for Liberty

Brian Balfour, Senior Vice President of Research
John Locke Foundation

Brandon C. Johnson, CFA, CEO
Johnson Financial Group

Seton Motley, President
Less Government

Charles T. Moran, President
Log Cabin Republicans

Scott Shepard, Director, Free Enterprise Project
National Center for Public Policy Research

Kevin Freeman, Founder
National Security Investment Consultant Institute (NSIC)

Donna Jackson, Director of Membership Development
Project 21

Bette Grande, CEO
Roughrider Policy Center

Kenneth A. Haapala, President
Thomas P. Sheahen, Ph.D., Chairman
Science and Environmental Policy Project (SEPP)

David L. Black, Ph.D., Founder and Chairman
2ndVote

Saulius "Saul" Anuzis, President
James L. Martin, Founder and Chairman
60 Plus Association

Frank Lasee, President
Truth in Energy and Climate

James Stephenson, Chairman
Yancey Bros. Co.

Carla Sands, U.S. Ambassador to the Kingdom of Denmark (Ret.)

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Introduction

The Competitive Enterprise Institute (CEI) and the co-signers of this comment letter are pleased to have the opportunity to comment on the Securities and Exchange Commission's (SEC) current notice of proposed rulemaking, "The Enhancement and Standardization of Climate-Related Disclosures for Investors."[1] CEI has published research in support of free markets and limited government since 1984 and has long advocated policies that increase investor choice and reduce barriers to accessing capital. CEI policy experts frequently comment on regulatory policy covering a wide variety of topics, including finance, energy, environmental quality, and labor and pension issues.

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[1] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," *Federal Register*, Vol. 87, No. 89 (April 11, 2022), pp. 21334-21473, https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors

In response to the SEC's request for information of March 15, 2021, CEI and co-signers submitted two comment letters in response to then-Acting Chair Allison Herren Lee's notice containing extensive commentary and analysis of the questions posed. The first, by Richard Morrison, focused on finance and governance issues.[2] The second, by Marlo Lewis, Jr., focused on topics related to energy policy and environmental quality.[3]

Background

The concept known as environmental, social, and governance (ESG) investing has gained an increasingly high profile in recent years, with advocates producing a large volume of publications, conferences, corporate policies, and even entire new organizations dedicated to advancing it. The general premise of ESG theory is that corporations should deemphasize their traditional responsibility to maximize value for shareholders and instead make new, binding commitments to multiple alternative stakeholder groups. Some of those stakeholder groups are traditional and easy to define, like employees and suppliers, while others are more amorphous, like "the local community," "the global environment," or "society at large."[4]

The most high-profile topic under the umbrella of ESG theory is climate change.[5] While there is no single source of authority for what qualifies as an ESG issue, the primacy of climate change has been widely championed by ESG advocates, including organizations dedicated to the integration of climate change goals into corporate and government policy, such as the Task Force on Climate-Related Financial Disclosures and the Sustainability Accounting Standards Board.[6]

ESG advocacy has long involved both independent and overlapping efforts by government agencies, nonprofit organizations, corporations, and trade associations. For example, many ESG frameworks are based on the Sustainable Development Goals developed by the United Nations and promoted by U.N.-affiliated organizations like the Principles for Responsible Investment.[7] In the United States and the

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[2] Richard Morrison, "Public Input on Climate Change Disclosures: Questions for Consideration," Competitive Enterprise Institute, June 11, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-8911811-244422.pdf.
[3] Marlo Lewis, Jr., "Comments of the Competitive Enterprise Institute, et al.," Competitive Enterprise Institute, June 11, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-244373.pdf.
[4] Richard Morrison, "Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights," *Profiles in Capitalism* No. 6, Competitive Enterprise Institute, May 2021, pp. 14-27, https://cei.org/esg.
[5] "Climate change tops investors' ESG priorities as COP26 continues," Association of Investment Companies, November 3, 2021, https://www.theaic.co.uk/aic/news/press-releases/climate-change-tops-investors-esg-priorities-as-cop26-continues
[6] The Financial Stability Board, an international body of financial regulators, created the Task Force on Climate-related Financial Disclosures to develop recommendations on the types of climate-related information that companies should disclose publicly. Similar organizations mentioned by the SEC as being influential in ESG and climate-specific policy making include the Global Reporting Initiative, CDP (formerly the Carbon Disclosure Project), Climate Disclosure Standards Board, and Value Reporting Foundation (formed through a merger of the Sustainability Accounting Standards Board and the International Integrated Reporting Council). Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," RIN 3235-AM87, pp. 28-29, https://www.sec.gov/rules/proposed/2022/33-11042.pdf.
[7] Principles for Responsible Investment, "Investing with SDG outcomes: a five-part framework," June 15, 2020, https://www.unpri.org/download?ac=10795.

European Union, many environmental and social activist organizations such as Ceres, As You Sow, and the Natural Resources Defense Council have influenced the direction of current voluntary frameworks and now support having such rules mandated by government agencies.[8] Non-profit organizations led by business executives and CEOs, like the World Economic Forum and the Business Roundtable, have also endorsed the adoption of ESG goals related to climate change and environmental sustainability.[9]

The Commission's current proposal is similar to much previous ESG activism in that it uses the language of business and financial management in order to suggest that it seeks practical, prosperity-enhancing goals, but is actually animated by environmental theory that is hostile to hydrocarbon energy and industrial development *per se* for moral and ideological reasons.[10]

The proposed rule is also troubling for other reasons. The Commission's lacks both constitutional and statutory authority to issue such a rule. Furthermore, the proposed rule would enable rent-seeking by interested economic actors seeking to gain an advantage through favorable legislation and regulation rather than through successful competition in the market.

I. The Commission Lacks the Statutory Authority to Enact This Rule

The current proposal goes beyond the agency's legitimate powers and would dramatically change to its standard operating procedure. The SEC's existing authority to require public companies to make disclosures of financially material information does not extend to environmental and social topics like climate change. Congress has acted multiple times since the SEC was created to give it authority to require disclosures on additional topics. It has done this because the SEC does *not* have the plenary authority to make such additional demands on its own. Congress can act at any time to legislate further on climate change and on the financial system, but it has not done so in this case.[11]

The need for clear, specific legislative authority for agency action is not merely a case of bureaucratic box-checking that can be covered with boilerplate references to "the public interest." While many contemporary legal scholars have criticized excessive delegation of authority from Congress to executive agencies, at least authority in those cases was actually delegated.[12] It is far more concerning and subversive to the rule of law—and to public confidence in the constitutional order—for agencies to

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[8] Frederic Louis, et al., "ESG: The EU's agenda for 2022 – What You Need to Know," Wilmer Hale, February 10, 2022, https://www.wilmerhale.com/en/insights/client-alerts/02102022-esg-the-eu-agenda-for-2022-what-you-need-to-know.

[9] "Addressing Climate Change: Principles and Policies," Business Roundtable, September 2020, https://s3.amazonaws.com/brt.org/Business-RoundtableAddressingClimateChangeReport.September2020.pdf.

[10] Energy expert Alex Epstein describes this as an "anti-impact" outlook that demonizes fossil fuels because of an idealized and sentimental view of the natural world as pristine and fragile. Alex Epstein, *Fossil Future: Why Global Human Flourishing Requires More Oil, Coal, and Natural Gas—Not Less*, pp. 89-95, 315-316 (New York: Penguin Random House, 2022).

[11] Andrew N. Vollmer, "The SEC Lacks Legal Authority to Adopt Climate-Change Disclosure Rules," Mercatus Center, April 12, 2022, https://www.mercatus.org/publications/financial-regulation/sec-lacks-legal-authority-adopt-climate-change-disclosure-rules.

[12] Federalist Society, "Restoring the Legislative Power to Congress: The Role of the Nondelegation Doctrine and Legislative Vetoes," recorded webinar, April 28, 2020, https://fedsoc.org/events/restoring-the-legislative-power-to-congress-the-role-of-the-nondelegation-doctrine-and-legislative-vetoes.

redefine their own mandates without any input from Congress. The agency's mission must respond to changing market and finance industry conditions, but it cannot be infinitely elastic.

Section 13(a) of the Securities Exchange Act of 1934 gives the SEC authority to prescribe rules that are "necessary or appropriate for the proper protection of investors and to insure fair dealing in the security," but does not mention advancing non-financial policy goals, as the agency is currently attempting to do with climate change. SEC Rule 10b-5 also stipulates a definition of "material," parallel to that formulated by the Supreme Court in *TSC Industries Inc. v. Northway Inc.* (1976): that materiality applies to information about which there is "a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered."[13] Again, there is no mention of non-financial public policy goals as a basis for creating a new disclosure requirement.

Given how widely and frequently bills related to greenhouse gases, environmental quality, and energy use have been proposed and debated in Congress over the years, the SEC's lack of specific authority over climate is not an oversight. It is a conscious policy choice by the legislative branch of government. It is not the place of the SEC to overrule Congress, no matter how pressing the agency's commissioners believe a given issue to be. Even someone who supports more corporate disclosure of climate-related data should acknowledge that the SEC currently lacks the statutory authority to issue such a requirement. If there was ever an instance of clear regulatory overreach in the context of "major question" (or "major rule") jurisprudence, it is this.[14]

The Commission also exceeds its legitimate authority with the proposal's provisions relating to registrant firms' Scope 3 greenhouse gas (GHG) emissions. The rule will require companies to disclose emissions that "are generated from sources that are neither owned nor controlled by the company," which in turn will require them to exert pressure on their suppliers, distributors, contractors, and other business partners to provide that information.[15] A large number of those firms will be non-public, non-registrant firms outside of the Commission's jurisdiction. The data and analysis that will be required of these smaller firms would impose a disproportionate and unjustified burden on them. As finance expert Aaron Brown wrote in a May 2022 *Washington Post* op-ed, "Nestle can fill out long forms about its carbon emissions at a cost that is a negligible fraction of its revenue. But a farmer selling crops to Nestle could find filing those disclosures prohibitively costly."[16]

II. Requiring Subjective and Disparaging Disclosures Is Unconstitutional

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[13] Jonathan D. Brightbill and Jennifer Roualet, "Evaluating Challenges to SEC's ESG Disclosure Proposal," Winston & Strawn, LLP, August 25, 2021, https://www.winston.com/en/winston-and-the-legal-environment/evaluating-challenges-to-secs-esg-disclosure-proposal.html. *TSC Indus., Inc. v. Northway, Inc*., 426 U.S. 438 (1976), https://supreme.justia.com/cases/federal/us/426/438/.

[14] Michael Sebring, "The Major Rules Doctrine," *Georgetown Journal of Law and Public Policy*, September 17, 2018, https://www.law.georgetown.edu/public-policy-journal/blog/the-major-rules-doctrine/.

[15] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," p. 39.

[16] Aaron Brown, "SEC Proposals for ESG Ignore 80 Years of Financial Science," *The Washington Post*, May 31, 2022, https://www.washingtonpost.com/business/secproposals-for-esg-ignore-80-years-of-financial-science/2022/05/31/35e4879c-e0de-11ec-ae64-6b23e5155b62_story.html.

In addition to lacking statutory authority for issuing the current rule, the SEC also risks violating the First Amendment rights of regulated firms. The disclosures that the SEC is proposing would constitute compelled speech on the part of public companies. The federal government's authority to compel speech by corporations is generally limited to information that is "purely factual and uncontroversial."[17] That is clearly not the case with the SEC's proposed climate rule.

Such a regulation is especially questionable when considering that it would require a firm to make statements about itself that are both subjective and disparaging. [18] The number of assumptions about climate science and policy that would be required on the part of firms would make substantial portions of the information produced subjective, and since ESG advocates' goal in requiring disclosure of climate-related information is to drive capital away from energy-intensive firms, the disclosures themselves would be inherently disparaging.

There is strong precedent for federal courts taking these First Amendment protections seriously. In *National Association of Manufacturers v. SEC*, a federal appeals court invalidated the "conflict minerals" disclosure mandate in Section 1502 of the Dodd–Frank Wall Street Reform and Consumer Protection Act on compelled-speech grounds. The court held that requiring manufacturers to declare their products to be "conflict-free"—specifically, regarding involvement in the Congolese civil war—carried political and moral implications that went beyond the agency's power to compel commercial speech.[19] The opinion read:

> By compelling an issuer to confess blood on its hands, the statute interferes with that exercise of the freedom of speech under the First Amendment.[20]

Even when the ostensible rationale for regulation is highly sympathetic, the federal government does not have unlimited authority to compel public disclosure of information from corporations.[21] Moreover, the disclosure of the information the SEC is demanding in its current proposal presents risks that the SEC has either not acknowledged, not attempted to quantify, or unduly downplayed.

A movement made up of pro-ESG activists, NGOs, academics, and policymakers seeks to weaponize corporate data against certain companies in order to promote its climate policy agenda, with little

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[17] "Compelled Speech: Overview," Legal Information Institute, Cornell Law School, accessed May 8, 2022, https://www.law.cornell.edu/constitution-conan/amendment-1/compelled-speech-overview. The controversial nature of climate disclosures can be seen in a recent debate between the CEO of Shell and the head of an advocacy organization at Shell's annual meeting, during which the two strongly disagree about what Shell's disclosures mean: Mark van Baal, "Ben van Beurden and Mark van Baal debate Shell's climate ambitions during the AGM," Follow This, May 29, 2018, https://www.follow-this.org/agm-2018-debate/.

[18] John Berlau, "First Ever Constitutional Ruling against Dodd-Frank Voids Destructive 'Conflict Minerals' Section," *OpenMarket*, Competitive Enterprise Institute, April 14, 2014, https://cei.org/blog/first-ever-constitutional-ruling-against-dodd-frank-voids-destructive-conflict-minerals-section/.

[19] *Nat'l Ass'n of Manufacturers v. SEC*, 800 F.3d 518, 547 (D.C. Cir. 2015), https://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/$file/13-5252-1488184.pdf.

[20] Ibid.

[21] "*National Association of Manufacturers v. SEC*: D.C. Circuit Limits Compelled Commercial Disclosures to Voluntary Advertising," *Harvard Law Review*, Vol. 129, No. 3 (January 11, 2016), pp. 819-826, https://harvardlawreview.org/2016/01/national-assn-of-manufacturers-v-sec.

concern about sabotaging investor value in the process.[22] Even if we assume the SEC's good faith intention of merely seeking reliable data about climate risk, under this proposed rule the efforts of highly motivated third parties could create a hostile environment for shareholders.[23]

While the SEC's ostensible rationale for the current proposal is enhanced disclosure by public companies, the acknowledged goal of climate finance policymaking writ large is to drive investment capital away from energy-intensive firms on the way to achieving a net-zero greenhouse gas emissions economy. That mission is claimed to be necessary for the achievement of global environmental goals, regardless of its effect on markets, financial stability, and individual investors' material well-being. If the SEC's proposal would aid that effort, the agency needs to acknowledge and consider that impact. Better yet, it should refrain from imposing the disclosure requirement entirely.

According to President Biden's May 2021 executive order on climate-related financial risk, his administration aims to address the "failure of financial institutions to appropriately and adequately account for and measure [climate] risks."[24] That suggests that the administration has already decided on what constitutes an appropriate approach to addressing climate risk.

That seems more likely when considering that some senior administration officials seek to direct federal policy to the disadvantage of energy-intensive firms, regardless of the negative financial impact on individual firms, industries, and U.S. investors as a whole.

President Biden's 2021 nominee to serve as Comptroller of the Currency, Saule Omarova, told a public audience that the bankruptcy of hydrocarbon energy companies should be a stated goal of climate finance policy, not just a side-effect of investors reassessing their own risk tolerance:

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[22] Climate activist groups like 350.org routinely target specific firms for anti-corporate activism based on their legal and financially reasonable investments in hydrocarbon energy projects: Robbie Gillett, "Defund Fossil Fuels," 350.org, July 2018, https://350.org/wp-content/uploads/2018/07/Defund_Fossil_Fuels-guide_EN_WEB_pages-July-2018.pdf. Other examples include the Rainforest Action Network (https://www.ran.org/campaign/defund-climate-change/) and Earth Guardians (https://www.earthguardians.org/divest-defund). In September 2021, three Democratic members of the House of Representatives introduced Fossil Free Finance Act, which would "force the Federal Reserve to break up banks if they do not reduce the carbon emissions they finance in line with the Paris climate accord." Sylvan Lane, "Democratic bill would force Fed to defund fossil fuels," *The Hill*, September 15, 2021, https://thehill.com/policy/finance/572444-democratic-bill-would-force-fed-to-defund-fossil-fuels/.

[23] For examples of anti-corporate (and anti-shareholder) climate activism, see Sharon Katsuda, "Climate Activists Protest Outside Chevron Headquarters in San Ramon," NBC Bay Area, September 27, 2019, https://www.nbcbayarea.com/news/local/climate-activists-protest-chevron-headquarters/182070/ and Jack Guy, "'We will stop you!': Singing climate protesters disrupt Shell shareholder meeting," CNN, May 24, 2022, https://www.cnn.com/2022/05/24/europe/climate-protesters-shell-meeting-intl/index.html. Climate activists have been protesting financial institutions over their relationships with fossil fuel companies. See Harriet Habergham, "Climate protestors break windows at JPMorgan offices in London," *Fortune*, September 1, 2021, https://fortune.com/2021/09/01/climate-protesters-break-windows-at-jpmorgan-offices-in-london/ and Tom Sims, "With sponges and petitions, climate activists take on insurers," Reuters, November 26, 2021, https://www.reuters.com/business/cop/with-sponges-petitions-climate-activists-take-insurers-2021-11-26/.

[24] "Executive Order on Climate-Related Financial Risk," White House, May 20, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/.

> A lot of the smaller players in [coal, oil and gas] industry are going to probably go bankrupt in short order. At least we want them to go bankrupt if we want to tackle climate change, right?[25]

Omarova was not the only administration nominee to share this outlook. Sarah Bloom Raskin, nominated to be vice chair of supervision at the Federal Reserve, proposed, in a May 2020 *New York Times* op-ed, that hydrocarbon energy companies should be excluded from economy-wide economic recovery measures passed by Congress. Raskin insisted that oil and gas companies "spent the past decade recklessly expanding production even as they failed to turn a profit" and predicted "the inevitable decline of an industry that can no longer sustain itself."[26] But how would she know that?

It is a cliché of investing that it is extremely difficult to "time the market" by anticipating rising and falling prices rather than simply investing for long-term value. Policymakers are subject to the same cognitive limitations as day traders. Raskin's motivated reasoning and hostility to hydrocarbon energy led her to paint oil and gas as a failing industry without a future that should be excluded from any supportive government policy response. However, her prediction of poor investment returns to energy companies turned out to be almost comically backwards.

Raskin insisted that fossil fuels are an investing dead end based on some high-profile declines in energy stocks. The online version of her *Times* op-ed links to a then-recent May 2020 news story in which investor Warren Buffett laments his poor return on a large investment he made in Occidental Petroleum Corp. the previous year.[27] At that point, he had realized a significant loss relative to his initial 2019 buy, with Occidental shares trading at $15.24. However, as of this writing, the price of Occidental shares is $70.06. That means that someone who had invested the week that Raskin's op-ed was published would have realized an over 450 percent return in two years.[28]

The more serious problem with Raskin's reasoning is not simply that it was incorrect, but that it could have become a self-fulfilling prophecy. Denying pandemic relief support to only oil and gas firms when they were provided to every other company in America—at a time when the industry was experiencing a cyclical downturn—could have had a significant negative market impact on the excluded companies. In such a scenario, policymakers like Raskin could easily claim they had been correct, rather than take the blame for kneecapping a specific industry.

The Commission risks putting itself in a similar situation. The agency seems to presume that future climate risks are dangerous liabilities that must be disclosed in minute detail by every registrant firm. But the prejudicial nature of the proposed rule could create a damaging cycle of investor aversion to energy-intensive firms, even when there is no fundamental underlying threat to long-term value creation. That is especially true considering parallel actions by other financial regulators, including at the

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[25] Alec Schemmel, "Biden financial nominee discusses how to bankrupt fossil fuel industry," ABC 4 News, November 10, 2021, https://abcnews4.com/news/nation-world/biden-financial-nominee-discusses-how-to-bankrupt-fossil-fuel-industry.

[26] Sarah Bloom Raskin, "Why Is the Fed Spending So Much Money on a Dying Industry?," *The New York Times*, May 28, 2020, https://www.nytimes.com/2020/05/28/opinion/fed-fossil-fuels.html.

[27] Corbin Hiar, "Warren Buffett regrets $10B bet on oil," *Politico Pro*, May 5, 2020, https://subscriber.politicopro.com/article/eenews/1063050681.

[28] Occidental Petroleum share price as of June 3, 2022: https://www.google.com/search?q=occidental+petroleum+share+price&rlz=1C1ONGR_enUS930US931.

Federal Reserve,[29] Federal Deposit Insurance Corporation,[30] and Office of the Comptroller of the Currency.[31]

Even though Omarova and Raskin were not confirmed to the positions for which they were most recently nominated, they were the administration's hand-picked choices for those positions and appear to be closely aligned with the administration's policy goals and strategy. Their perspective—that the federal government should target energy firms for financial disadvantage in order to facilitate a transition to a lower-emissions economy—is at the heart of the Biden administration's "whole of government" approach to climate change policy. One explicit formulation of this approach calls for "Mobilizing financing to drive the net-zero transition and adapt to climate change," in order to "promote the flow of capital toward climate-aligned investments and away from high-carbon investments."[32]

It is not the role of the federal agencies to decide which legal investments Americans should make. It is not the role of the SEC to "steer" capital toward any given sector or non-financial policy goal. This same problem can be seen in the Federal Reserve's own emerging version of climate policy, including its decision to join the Central Banks and Supervisors Network for Greening the Financial System, which has a goal to "mobilize mainstream finance to support the transition toward a sustainable economy."[33] As economist John Cochrane testified before the Senate Banking Committee in 2021, "financial regulators are not allowed to 'mobilize' the financial system, to choose projects they like and de-fund those they disfavor."[34]

The Commission, whether it wishes to acknowledge it or not, has proposed a rule that would accelerate this process of weaponizing financial regulation to target politically disfavored firms and industries. That is not a legitimate role for the SEC, or for any government agency. In fact, it recalls another effort in the recent past to use federal finance regulation to achieve unrelated policy goals selected by bureaucrats. It was called "Operation Choke Point."

The Obama administration launched Operation Choke Point to target "high-risk" banking industry customers. It attempted to demonize legal businesses in politically disfavored industries, negatively affecting their ability to access financial services. This multi-agency effort by the Department of Justice, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation, among others, went after businesses, like firearms dealers, which activists and members of Congress had repeatedly

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[29]Federal Reserve, "Federal Reserve Board issues statement in support of the Glasgow Declaration by the Network of Central Banks and Supervisors for Greening the Financial System," news release, November 3, 2021, https://www.federalreserve.gov/newsevents/pressreleases/other20211103a.htm.

[30] Federal Deposit Insurance Corporation, "Request for Comment on Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions," March 30, 2022, https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html.

[31] Office of the Comptroller of the Currency, "OCC Seeks Feedback on Principles for Climate-Related Financial Risk Management for Large Banks," news release, December 16, 2021, https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138.html.

[32] White House, "FACT SHEET: President Biden's Leaders Summit on Climate," April 23, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/23/fact-sheet-president-bidens-leaders-summit-on-climate/.

[33] Central Banks and Supervisors Network for Greening the Financial System, "Origins and Purpose," accessed May 26, 2022, https://www.ngfs.net/en.

[34] John Cochrane, "Testimony on financial regulation and climate change," *The Grumpy Economist*, March 18, 2021, https://johnhcochrane.blogspot.com/2021/03/testimony-on-financial-regulation-and.html.

tried, and failed, to target legislatively. Unable to gain the necessary authority from Congress, regulators in the above agencies attempted to intimidate the banks they were charged with regulating into cutting off commercial customers that some policymakers disliked. In the words of an *American Banker* report on documents relating to Choke Point released in 2018, "government officials illegally targeted lawful businesses in an ideological crusade based on personal disdain."[35] As the Competitive Enterprise Institute's Iain Murray wrote of Choke Point in 2014:

> Shifting the costs onto supervised bodies is not an acceptable principle of governance. Businesses need to be allowed to make their own business decisions without the threat of being required by their regulators to do their job for them.[36]

The Commission's proposal is only slightly less bold. The underlying theory of Operation Choke Point was to suggest that banks had a responsibility to shun disfavored clients, like small dollar lenders, coin dealers, and fireworks companies, because there was a risk on the part of the banks in being associated with them. That is similar to the Commission's contention that firms should be worried about future reputational risk related to climate change.[37] But ultimately, the biggest source of such risk is government policy. None of the banks targeted by Operation Choke Point claimed that their clients put them at risk of harm to their reputations; it was the regulators who created the hazard about which they were supposedly "warning" financial institutions.

In other words, the Commission's effort is actually climate policy advocacy in the guise of investor protection. Consider a similar, hypothetical scenario. Imagine that a federal agency decides that firms need to disclose their plans for the transition to a single-payer health care system. Health care providers, insurance companies, and private hospitals would be the most affected, just like oil and gas producers under the current proposal. But virtually every company would be affected, as current tax law provisions favor employer-provided health insurance.

Advocates of such disclosure requirements would be correct in suggesting that a transition to a single-payer system would include significant financial risks for the shareholders of publicly held health care companies. The upstream risk to those companies' vendors and clients would also be significant. Proponents of such a policy could accurately point out that several countries are "ahead" of the United States in making that transition. And venerable international organizations, such as the United Nations and the World Health Organization, have long recognized a "right to health."[38]

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[35] Dennis Shaul, "BankThink: There's no downplaying the impact of Operation Choke Point," *American Banker*, November 28, 2018, https://www.americanbanker.com/opinion/theres-no-downplaying-the-impact-of-operation-choke-point.

[36] Iain Murray, "Operation Choke Point: What It Is and Why It Matters," Issue Analysis 2014 No. 1, Competitive Enterprise Institute, July 2014, https://cei.org/studies/operation-choke-point.

[37] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," pp. 58, 62, 68, 77, 106, 119, 458, 464.

[38] "Fact Sheet No. 31: The Right to Health," United Nations Office of the High Commissioner for Human Rights, June 2008, https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf. The right to health was even enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights, a global treaty to which 171 nations are parties. "Chapter IV, Human Rights: International Covenant on Economic, Social and Cultural Rights" United Nations Treaty Collection, accessed May 27, 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4.

That sounds similar to the Commission's approach to climate, for good reason. The same analysis could be applied to any major change that federal policymakers would like to see. The Department of Labor might want companies to disclose the risks they face from a $30 federal minimum wage. The Equal Employment Opportunity Commission might like to see their plans for the transition to a mandatory 50 percent female workforce. Future policymakers could just as easily ask firms whether they have planned for a future in which all firearms are banned and employers are required to pay for abortions, or public sector unions are abolished and gender reassignment surgeries are banned.

The problem with that approach is that officials engaging in such demands for disclosure are often not responding to actual risks, but projecting their policy preferences onto a highly speculative future and, in the process, *creating* new political and market risks. It might be possible that, at some point in the future, Congress will pass, and the president will sign, some of the above policies into law. Political scientists and pollsters can certainly debate the likelihood of that, but a government mandate to plan for such an eventuality is not simply asking for disclosure; it is an activist strategy for implementing that policy.

It is not the proper role of any federal agency to lobby for such changes while pretending to be protecting investors, and it is not the role of the SEC to do so in regard to climate policy, as with its current proposed rule.

III. The Proposed Rule Will Enable Rent-Seeking by Interested Parties

The Commission goes out of its way to portray the proposal as reasonable and in the interests of investors by listing the various organizations that have made climate-related pledges and the impressively large volume of assets they manage. The Glasgow Financial Alliance for Net Zero, an association of over 450 financial firms controlling assets of over $130 trillion, is "focused on promoting the transition to a net zero global economy".[39] Matching up those two figures suggests that many of those institutions are, on their own, very large asset managers.

This points to a frequently overlooked aspect of claims about the supposed "demand" for climate disclosure data: It is driven by an elite constituency of asset managers, financial analysts, consultants, and accountants who directly stand to benefit financially from the proposal. The billions of dollars of annual compliance costs will be borne by all registrant firms, their business partners, and their shareholders, while a huge new database of information will be available to analysts and financial managers at no cost to them, courtesy of the SEC. Meanwhile, the firms not benefiting from the additional disclosure of information will profit by being paid to produce it on behalf of the registrant firms.

The climate and ESG-focused investing industry—not the investments themselves, just their secondary analysis—is already an over $1 billion a year industry.[40] Major players in the consulting and accounting world, taking note of this trend, have announced massive investments in the area, anticipating growing business. In June 2021, PwC announced that it would invest $12 billion and hire 100,000 new

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[39] Ibid., p. 14.
[40] Hazel Bradford, "ESG data market poised to hit $1 billion in 2021—report," *Pensions & Investments*, March 10, 2020, https://www.pionline.com/esg/esg-data-market-poised-hit-1-billion-2021-report.

professionals to assist clients with ESG reporting, citing climate and diversity issues in particular.[41] At the end of last year the *Journal of Accountancy* noted that demand for such services has risen dramatically in recent years, calling it "a trend in ESG services that CPA firms can take advantage of in the coming years."[42]

The Commission's proposal includes a lot of citations to comment letters and research produced by firms and associations that would stand to directly benefit from the proposal's provisions, but does not acknowledge these conflicts of interest. For instance, the proposal's economic analysis section states that "The importance of assurance for climate-related information" has been determined by the International Federation of Accountants.[43] It should come as no surprise that a professional association of accountants has come out in favor of a new guaranteed source of demand for accounting services.

If we look at the millions of individual investors in the market, the supposed demand for more detailed climate disclosure largely evaporates. A 2020 study, by Austin Moss of the University of Iowa, James P. Naughton of the University of Virginia, and Clare Wang of the University of Colorado at Boulder, found that individual investors pay essentially no attention to ESG disclosures. That is not because they are too unsophisticated to pay attention to public announcements about their holdings in general; even individuals who ignore ESG information still make trades based on newly announced data on traditional topics like earnings.[44] Another 2020 study, by Robin Döttling of Erasmus University in the Netherlands and Sehoon Kim of the University of Florida, found that demand for ESG-themed investment products by individuals is wide, but shallow; that is, it is likely to evaporate under situations of economic stress, which suggests that most investors consider it more of a bull market luxury than an essential part of their long-term financial strategy.[45] The lopsided impression of demand for additional climate disclosures is also, in part, the result of a data gap. Unlike with institutional and professional investors, few surveys have even attempted gauge the true interest of individuals.[46]

The volume of data to which fund managers would have access would be extremely valuable to them, though whether it would protect investors is uncertain. ESG-themed funds are an especially lucrative market opportunity for big asset management firms, as the analysis used to select and manage component holdings is used to justify fees far higher than more conservative, traditional funds. Take the market leader in asset management, BlackRock. Traditional index investing, which currently accounts for roughly two-thirds of BlackRock's business, is an extremely competitive, low-margin market.[47] The

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[41] Jessica DiNapoli, "PwC planning to hire 100,000 over five years in major ESG push," Reuters, June 15, 2021, https://www.reuters.com/business/sustainable-business/pwc-planning-hire-100000-over-five-years-major-esg-push-2021-06-15/.

[42] Ken Tysiac, "ESG assurance opportunities likely to grow for CPA firms," *Journal of Accountancy*, December 16, 2021, https://www.journalofaccountancy.com/news/2021/dec/esg-assurance-opportunities-cpa-firms-growth.html.

[43] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," p. 362.

[44] Austin Moss, James P. McNaughton, and Clare Wang, "The Irrelevance of ESG Disclosure to Retail Investors: Evidence from Robinhood" May 19, 2020, https://ssrn.com/abstract=3604847.

[45] Robin Döttling and Sehoon Kim, "Sustainability Preferences Under Stress: Evidence from Mutual Fund Flows During COVID-19," May 23, 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3656756.

[46] Jennifer J. Schulp, "Wide World of ESG: Understanding Investor Demand," *Cato at Liberty*, Cato Institute, July 28, 2021, https://www.cato.org/blog/wide-world-esg-understanding-investor-demand.

[47] Palash Ghosh, "No end in sight to BlackRock's growth as it approaches $10 trillion," *Pensions & Investments*, November 19, 2021, https://www.pionline.com/money-management/blackrock-surging-toward-10-trillion-assets.

higher fees of ESG funds make them especially desirable offerings for asset managers. For example, BlackRock's iShares Global Clean Energy ETF (ICLN), a large ESG fund, comes with a management fee of 42 basis points.[48] That's an eye-watering comparison to BlackRock's S&P 500 ETF (IVV), with a fee of just 3 basis points.[49] The data the SEC proposes to extract from registrant firms will likely benefit big asset managers' marketing and product development arms far more than ordinary investors seeking to optimize their risk allocation.

In a normal market, customers can refuse to do business with firms that do not provide them with the mix of price and features that they would prefer. That is true of consumers looking to purchase a car or a pair of shoes. It is also true when the customer is a financial firm and the item for sale is equity shares. If large financial firms—such as the ones that signed the agreements impressively listed by the Commission in the preamble to the proposal—thought that the lack of climate risk disclosure among public firms was actually unacceptable, they could simply refuse to hold shares from firms that do not sufficiently disclose, but they have not done so.

As with BlackRock, many of the largest asset managers have very large passive positions that would make divesting from a particular basket of specific firms impossible. A manager cannot offer a S&P 500 fund if the investment company has boycotted the shares of dozens or hundreds of constituent companies for their lack of climate disclosure. This is why BlackRock, while leading the asset management industry in its rhetorical support for climate change-related initiatives, has famously refused to divest from fossil fuel companies, preferring to focus its efforts on shareholder engagement.[50]

Having chosen an investment strategy that precludes it from exerting the market pressure it would otherwise have available should not entitle large asset management firms to have the federal government exert that pressure instead. Management companies can still use influence with the active portion of their portfolios, as can ESG-motivated activist investors. If that measure of pressure is not sufficient to produce the level of disclosure they prefer, investment managers are free to move from providing index-based investment to more active portfolios. If institutional investors are not willing to divest any of their holdings in the service of making market demands of the companies they hold, however, that sends a clear signal. If divestment is off the table as a means of market disclosure discipline, the theoretical risks allegedly hiding in undisclosed climate data are clearly not as significant as the Commission or the sources it cites would have us believe.

IV. The Proposed Disclosures Are Climate Policy Masquerading as Materiality

Companies subject to SEC regulation have long had to disclose financially material information about their structure, operations, and plans for the future. That information does not have to fall into any specific topic or category; anything that could affect the value of the firm's shares in the future can be considered material. In recognition of this, the SEC uses a "principles-based" approach to materiality,

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[48] "iShares Global Clean Energy ETF," BlackRock, Inc., accessed May 27, 2022, https://www.blackrock.com/us/individual/products/239738/ishares-global-clean-energy-etf.

[49] "iShares Core S&P 500 ETF," BlackRock, Inc., accessed May 27, 2022, https://www.blackrock.com/us/individual/products/239726/.

[50] Betsy Vereckey, "BlackRock's Larry Fink: Don't divest fossil fuels, stay in the game," MIT Sloan, November 2, 2021, https://mitsloan.mit.edu/ideas-made-to-matter/blackrocks-larry-fink-dont-divest-fossil-fuels-stay-game.

under which a company's management draws attention to the risks and opportunities that it considers most important to that particular company. This allows for, as the SEC's Walter Hinman described in a 2019 speech, a disclosure regime that "keeps pace with emerging issues ... without the need for the Commission to continuously add to or update the underlying disclosure rules as new issues arise."[51]

Unfortunately, the new proposal would go in the opposite direction. By introducing specific, prescriptive requirements rather than ones based on general materiality principles, the agency is trying to suggest that anything climate-related should be considered presumptively 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."[52] [Emphasis in original]

Climate-related financial risks that are truly material, as some might well be, is already covered by existing SEC rules and guidance. What the agency is now proposing is to impose substantive environmental regulation thinly disguised as financial reporting. That does not protect investors. Instead, it picks legal, but politically disfavored, industries and targets them for destruction.

V. The Rule Does Not Pass Any Reasonable Cost-Benefit Test

The SEC admits that the costs associated with complying with the proposed rule would be "significant," but tries to downplay the burden by pointing to the large volume of information that some companies already disclose voluntarily. That may count in the agency's favor in terms of relative costs incurred, but it also cuts against the agency's claims of benefits generated.

The SEC cannot credit the proposed rule for all of the climate-related information disclosed in the future by public firms. At best, the rule can only take credit for the additional increment of information that would have gone undisclosed in its absence. The agency acknowledges that voluntary climate disclosure is widespread and increasing, so future compliance costs can only be spread across the small additional benefit conveyed by the new rule. Given the trajectory of climate disclosure over the past few years, the difference between voluntary and mandatory disclosure will be far too small to justify the costs involved in the current proposal.

But even this stance—that companies that already disclose climate-related risks will only face a small burden—fundamentally misunderstands the incentive structure that firms would face under the rule going forward. The legal and reputational threat of being officially found non-compliant dramatically increases the amount of time, money, and professional expertise required, compared to voluntary disclosures. That means that the most likely outcome of the proposal would be the worst of both worlds – a small additional volume of useful information made available at an extremely high cost.

The Commission does a poor job of acknowledging this. Even when it comes to specific quantitative requirements like measuring greenhouse gas emissions, the agency's proposal states, "we are unable to

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[51] Walter Hinman, "Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks," Securities and Exchange Commission, March 15, 2019, https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519.

[52] Hester Peirce, "We are Not the Securities and Environment Commission—At Least Not Yet," Securities and Exchange Commission, March 21, 2022, https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.

fully and accurately quantify these costs."[53] The fact that the SEC staff is forced to admit this after more than a year of working on this proposal sends the signal that they are not taking their own cost-benefit analysis seriously.

The agency also insists that firms report on their internal management processes, which suggests that climate policy should be developed and approved at the highest possible level—involving the input of senior executives—in order to be considered legitimate. That would also increase the costs of compliance and pull corporate managers away from their functional, product-focused roles within the company. Traditional accounting and audit assurance could also suffer as the personnel involved in those functions take their focus off of the firm's financials in order the comply with the SEC's new requirements for climate-related topics.

The SEC's proposal also notes that companies will see additional indirect costs in terms of "heightened litigation risk and the potential disclosure of proprietary information."[54] That includes revealed trade secrets, disclosure of companies' most profitable customers and markets to competitors, and exposure of operating weaknesses to competing firms and to labor unions.

Perhaps the weakest part of the economic analysis, however, is the premise that this information generated would be useful for decision-making by investors seeking to maximize risk-adjusted returns. The track record of methodological rigor when it comes to ESG and climate-themed analysis is extremely poor, and there is little reason to believe it will improve in the near future. Even full-time professionals cannot agree when a firm or a fund is ESG compliant or not.

Time and again, researchers have found little correlation between different rating agencies' use, interpretation, and weighing of the same criteria. ESG ratings frequently display biases based on size, geographical location, and industry, yielding very different scores for firms that are objectively similar and vice versa.[55] The connection between firm-level data and reliable outputs in much ESG investing analysis is so low there is a question whether the federal government would be allowed to use such models for its own policymaking.[56]

The costs of complying with this rule will be piled on top of the existing array of federal regulations with which firms must already comply. Managers of public companies are already working under a staggering burden of federal and state requirements. That accumulated weight has significant economic effects on individual firms, particular industries, and the U.S. economy as a whole. Recent research by scholars affiliated with the Mercatus Center at George Mason University also suggests that regulatory growth within an industry disproportionately burdens small businesses relative to their larger competitors.[57]

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[53] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors."

[54] Ibid., p. 371.

[55] Richard Morrison, "Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights," pp. 37-42.

[56] *Sierra Club v. EPA*, 356 F.3d 296, 307 (D.C. Cir. 2004) and its reference to *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, 923 (D.C. Cir. 1998)("An agency's use of a model is arbitrary if that model bears no rational relationship to the reality it purports to represent.").

[57] Dustin Chambers, Patrick A. McLaughlin, and Tyler Richards, "Regulation, entrepreneurship, and firm size," *Journal of Regulatory Economics*, Vol. 61 (April 11, 2022), pp. 108-134, https://doi.org/10.1007/s11149-022-09446-7.

The Competitive Enterprise Institute's Wayne Crews estimates that the current total cost burden of U.S. federal regulation comes to nearly $2 trillion per year.[58] That accumulated burden also harms innovation, kills jobs, and slows economic growth, resulting in a smaller economy and lower investment returns.[59] The SEC's own estimates suggest that the current "external cost burden" of disclosure and compliance for public companies will rise from approximately $3.8 billion per year to over $10.2 billion—a more than 250 percent increase, based on this rule alone.[60] The agency has in no way demonstrated that the massive burden it is seeking to impose would generate equivalent benefits.

VI. Estimates of Physical Climate Risk Are Exaggerated

Advocates of climate risk disclosure often hype the physical dangers posed by climate change and the future financial liability that that physical risk might cause. In case after case, however, the underlying analyses rely on overheated climate models that dramatically overestimate future warming, and with it, its hypothetical downstream economic impacts.

A 2018 study by Ross McKitrick of the University of Guelph in Ontario and John Christy of the University of Alabama in Huntsville found that the most frequently used climate models predicted significantly more warming than scientists have observed in the actual temperature record. They conclude: "Comparing observed trends to those predicted by models over the past 60 years reveals a clear and significant tendency on the part of models to overstate warming."[61] Therefore, any economic forecasting based on such assumptions will dramatically overstate the long-term downside risk from production and use of hydrocarbon energy.

One of the underlying causes of the overheated models is that they are based on inflated emission scenarios. Before scientists can estimate how much warming we will see in the future, they have to make assumptions about what volume of greenhouse gases will be emitted over the next several decades.

As Roger Pielke, Jr. of the University of Colorado at Boulder and Justin Ritchie of the University of British Columbia wrote in 2021, the emissions scenarios used by the United Nations Intergovernmental Panel on Climate Change (IPCC) are based on assumptions that are no longer realistic—and perhaps never were. For instance, the IPCC's most frequently relied upon scenario assumes that global per capita coal use will grow six-fold by 2100, despite most energy researchers agreeing that coal consumption has likely peaked and will decline in the future. Major changes in the global energy mix, including a shift

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[58] Wayne Crews, *Ten Thousand Commandments 2021: An Annual Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute, June 2021, https://cei.org/studies/ten-thousand-commandments-2021/.

[59] Patrick A. McLaughlin, Nita Ghei, and Michael Wilt, "Regulatory Accumulation and Its Costs: An Overview," *Policy Brief*, Mercatus Center, November 2018, https://www.mercatus.org/publications/regulation/regulatory-accumulation-and-its-costs.

[60] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," p. 459-460.

[61] Ross McKitrick and John Christy, "A Test of the Tropical 200- to 300-hPa Warming Rate in Climate Models," *Earth and Space Science*, Vol. 5, No. 9 (September 2018), pp. 529-536, https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2018EA000401.

from coal to natural gas, have gone largely unrecognized by the emissions scenarios that are still being used by the UN and many climate modelers.[62]

In addition, those analyses also ignore the dramatic long-term decline in weather-related mortality during the past century, as greenhouse gases have been accumulating in the atmosphere. The total number of deaths from climate-related events such as wildfires, floods, hurricanes, and other natural disasters has decreased by approximately 99 percent over the past century, even as the Earth's population has increased by 400 percent. Statistician Bjorn Lomborg points out that misleading estimates of increasing weather-related disasters are due in part to better global communications and record-keeping—in other words, the same impacts, in many parts of the world, would have simply gone unrecorded in previous eras.[63] The next 100 years are far more likely to resemble this staggering increase in human well-being, made possible by economic growth and innovation, than the predictions of widespread doom advanced by many climate alarmists.

That is also true of the relative economic impact of extreme weather events. Recent research by European researchers Giuseppe Formetta and Luc Feyen demonstrates "a clear decreasing trend in both human and economic vulnerability, with global average mortality and economic loss rates that have dropped by 6.5 and nearly 5 times, respectively, from 1980-1989 to 2007-2016." Also, while there is still a significant gap between resilience to extreme weather in rich and poor countries, that gap is narrowing over time, creating "a convergence in vulnerability between higher and lower income countries."[64]

On a related note, the frequent suggestion that hurricanes and wildfires are becoming more expensive generally ignores changes in economic development, population growth, and residential construction trends. Such disasters have a bigger price tag today because there are more people and structures in harm's way—due to more residences being built on the coasts and in exurbs nearer to the urban-wildlife interface—not because their intensity or frequency is actually greater.[65] Significant increase in wildfire risk in particular is actually due to federal and state land use policies that prevent proper forest and rangeland management. While climate change is often blamed for wildfire damage, land management experts have been correctly attributing it to poor government land management for decades.[66]

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[62] Roger Pielke and Justin Ritchie, "How Climate Scenarios Lost Touch with Reality," *Issues in Science and Technology*, Vol. 37, No. 4 (Summer 2021), pp. 75-83, https://issues.org/climate-change-scenarios-lost-touch-reality-pielke-ritchie/.

[63] Bjorn Lomborg, "We're Safer From Climate Disasters Than Ever Before," *The Wall Street Journal*, November 3, 2021, https://www.wsj.com/articles/climate-activists-disasters-fire-storms-deaths-change-cop26-glasgow-global-warming-11635973538.

[64] Giuseppe Formetta and Luc Feyen, "Empirical evidence of declining global vulnerability to climate-related hazards," *Global Environmental Change*, Vol. 57 (May 2019), https://www.researchgate.net/publication/333507964_Empirical_evidence_of_declining_global_vulnerability_to_climate-related_hazards.

[65] Lomborg.

[66] Robert H. Nelson, *A Burning Issue: A Case for Abolishing the U.S. Forest Service* (Lanham, MD: Rowman & Littlefield, 2000). See also Myron Ebell, "Man-made Policies, Not Man-Made Climate Change, Fueling Wildfires," *The Press of Atlantic City*, September 9, 2020, https://cei.org/opeds_articles/man-made-policies-not-man-made-climate-change-fueling-wildfires-says-myron-ebell-2/ and Epstein, pp. 271-275.

Disclosure activists also overestimate the costs of climate change by underestimating mankind's demonstrated capacity for adaptation. Predictions of higher future temperatures often come with extremely large estimates of future financial impact. But many such studies simply use linear extrapolations to calculate estimated future impacts, while assuming no efforts being made to adapt to those changing conditions. That is like assuming that sea level rise would cause mass drowning because people living in coastal areas would simply sit in place and let the water rise over their heads. As a 2018 Manhattan Institute study points out:

> Many recent temperature-study-based estimates of climate-change cost overextend models constructed from small short-term effects and make untenable no-adaptation assumptions; the large harms that they forecast often represent aggregations of implausible local predictions. When results do account for adaptation and are presented in context, they point toward low and manageable climate-related costs.[67]

A policy of maximizing supplies of affordable energy would be the best insurance policy against future physical climate risks, an aspect of the climate policy debate that the Commission fails acknowledge.

VII. Estimates of Climate Policy Transition Risk Are Exaggerated

Even as the proposal exaggerates the certainty and magnitude of physical climate risk, it also overestimates the prospects for transition risk via policy change. The agency's proposal repeatedly references the possibility of "changes in regulations" and "increased costs attributable to climate-related changes in law or policy."[68] The agency also cites the expertise of the United Nations-affiliated group Principles for Responsible Investment, which has echoed many climate finance and environmental activist organizations by claiming that there will be an "inevitable policy response" to climate change from governments around the world. Even if greenhouse gas restrictions and other climate-related policies have not been implemented yet, they are inevitable and likely coming soon, we are assured. PRI writes that "it is inevitable that governments at national and international levels will be forced to act more decisively than they have so far."[69]

Putting aside the fact that no set of political outcomes can be described as inevitable, the idea that significantly stricter climate regulations are even likely is debatable. The chances of the U.S. Congress enacting major climate legislation—whether a carbon tax, a national cap-and-trade program, or a national "clean electricity standard"—are extremely small. After the midterm elections in November 2022 and the start of the 118th Congress in 2023, they will likely be smaller still.[70] If anything, the odds of

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[67] Oren Cass, "Overheated: How Flawed Analyses Overestimate the Costs of Climate Change," Manhattan Institute, March 11, 2019, p. 17, https://www.manhattan-institute.org/html/overheated-how-flawed-analyses-overestimate-costs-climate-change-10986.html.

[68] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," p. 58.

[69] Principles for Responsible Investment, "What is the Inevitable Policy Response?" United Nations Principles for Responsible Investment website, accessed May 25, 2022, https://www.unpri.org/inevitable-policy-response/what-is-the-inevitable-policyresponse/4787.article.

[70] Henry Olsen, "The GOP midterm wave is set—and Democrats can't do anything about it," *The Washington Post*, June 1, 2022, https://www.washingtonpost.com/opinions/2022/06/01/gop-midterm-wave-is-set-democrats-cant-do-anything-about-it/.

such major legislation advancing today are weaker than at almost any point in the last quarter-century.[71] A look back to the history of proposed federal climate policy makes this clear.

The policy changes that the SEC is warning registrant firms about have been repeatedly rejected both legislatively and administratively. When Sens. John McCain (R-AZ) and Joe Lieberman (D-CT) introduced three successive "Climate Stewardship" bills in 2003, 2005, and 2007, they all failed to garner the necessary support of their elected colleagues, despite extensive debate, news coverage, and lobbying. A similar defeat greeted the Lieberman-Warner Climate Security Act in 2008. [72] The American Clean Energy and Security Act of 2009, co-sponsored by Reps. Henry Waxman (D-CA) and Edward Markey (D-MA), failed, as did the American Clean Energy Leadership Act of 2009, the Carbon Limits and Energy for America's Renewal Act, the Practical Energy and Climate Plan, and the Clean Energy Standard Act.[73]

Later, under President Barack Obama, the Environmental Protection Agency (EPA) proposed an ambitious new program to regulate carbon emissions from the power sector, the Clean Power Plan (CPP). Consistent with President Obama's famed 2014 boast that he would pursue a program of unilateral executive policymaking via "pen and phone," the CPP essentially sidestepped Congress entirely.[74] As the Competitive Enterprise Institute's William Yeatman wrote at the time, "If finalized, the rule would constitute an unprecedented usurpation of power by the EPA from the states and fundamentally overhaul the electric industry. In fact, Congress never approved such a gross expansion of the regulatory state."[75]

The Clean Power Plan was challenged by a group of states and industry groups, led by West Virginia, and the Supreme Court granted an unprecedented stay to plaintiffs, stopping enforcement.[76] In August 2018, the EPA proposed a replacement, the Affordable Clean Energy (ACE) rule, which became final in June 2019. In January 2021, the D.C. Circuit vacated the ACE rule and the case was remanded to the Environmental Protection Agency for further proceedings consistent with its opinion.[77] While the EPA

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[71] Marlo Lewis, "SEC Ignores the Easiest Way to Reduce Climate Policy Risks—Oppose the NetZero Agenda," *OpenMarket*, Competitive Enterprise Institute, April 12, 2022, https://cei.org/blog/sec-ignores-the-easiest-way-to-reduce-climate-policy-risks-oppose-the-netzero-agenda/.

[72] Marianne Lavelle, "John McCain's Climate Change Legacy," *Inside Climate News*, August 26, 2018, https://insideclimatenews.org/news/26082018/john-mccain-climate-change-leadership-senate-cap-tradebipartisan-lieberman-republican-campaign/.

[73] "Congress Climate History," Center for Climate and Energy Solutions, accessed May 25, 2022, https://www.c2es.org/content/congress-climate-history/.

[74] Juliet Eilperin, "Obama promises to use a 'pen and a phone' to push his agenda," *The Washington Post*, January 14, 2014, https://www.washingtonpost.com/news/post-politics/wp/2014/01/14/obama-promises-to-use-a-penand-a-phone-to-push-his-agenda/.

[75] William Yeatman, "EPA's Illegitimate Climate Rule: Hidden from Voters, Contrary to Congressional Intent, and Crafted by Special Interests," *OnPoint* No. 196, Competitive Enterprise Institute, July 28, 2014, https://cei.org/studies/epas-illegitimate-climate-rule/.

[76] Courtney Scobie, "Supreme Court Stays EPA's Clean Power Plan," American Bar Association, February 17, 2016, https://www.americanbar.org/groups/litigation/committees/environmental-energy/practice/2016/021716-energy-supreme-court-stays-epas-clean-power-plan/.

[77] Environmental Protection Agency, "Affordable Clean Energy Rule," accessed May 25, 2022, https://www.epa.gov/stationary-sources-air-pollution/affordable-clean-energy-rule.

did produce a technical white paper examining technologies for reducing greenhouse gas emissions in April 2022, it has yet to produce a successor proposal to the CPP and the ACE rule.[78]

This unimpressive record of legislative and administrative policymaking sees its parallel in the world of international agreements. The Kyoto Protocol, negotiated pursuant to the U.N. Framework Convention on Climate Change, was finalized in 1997 and signed by President Bill Clinton on behalf of the United States in 1998.[79] Even before Clinton applied his signature, the U.S. Senate had already voted 95-0 to reject the treaty.[80] It was never ratified by the U.S., and President George W. Bush withdrew the U.S. from it in 2001. In terms of signatories meeting their emissions reduction targets since then, the Kyoto Protocol is largely considered a failure even by its supporters.[81]

In 2016 the Paris Climate Agreement came into force, effectively succeeding the Kyoto Protocol, amid great public fanfare. President Barack Obama signed on behalf of the United States, but in June 2017 President Donald Trump announced that he would withdraw the United States from the agreement.[82] The Trump administration formally notified the United Nations in November 2019.[83] As the Competitive Enterprise Institute argued at the time, the agreement was both flawed on policy grounds and was adopted in a manner that unconstitutionally, bypassed Senate ratification.[84] President Joe Biden brought the U.S. back into the Paris Agreement on January 2021, but with all of the previously identified flaws intact.[85] The Biden administration has not attempted to achieve Senate ratification of the Paris Climate Agreement, nor has Congress made any attempt to pass legislation that would support the nation's nationally determined contribution (NDC), as prescribed by the treaty.

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[78] Environmental Protection Agency, "White Paper: Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Combustion Turbine Electric Generating Units," April 21, 2022, https://www.epa.gov/stationary-sources-air-pollution/white-paper-available-and-emerging-technologies-reducing.

[79] Clinton Digital Library, "Signing the Kyoto Protocol," National Archives, https://clinton.presidentiallibraries.us/exhibits/show/green-building/kyoto-protocol, accessed May 24, 2022.

[80] S. Res. 98 – "A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on greenhouse gas emissions under the United Nations Framework Convention on Climate Change," 105th Congress, First Session, July 24, 1997, https://www.congress.gov/bill/105th-congress/senate-resolution/98.

[81] Kenneth P. Green, an environmental scientist at the Fraser Institute, told Canada's *National Post*: "'You have to judge Kyoto to have been a failure. Just on the merits of what was done as a result of the agreement and countries not actually living up to their commitments or staying with the agreement." National Post Staff, "Kyoto Protocol, 10 years later: Did deal to combat greenhouse emissions work and what of its future?" *National Post*, February 14, 2005, https://nationalpost.com/news/world/kyoto-protocol-10-years-later-was-the-deal-to-combat-greenhouse-emissions-successful-and-what-of-its-future.

[82] "President Trump Announces U.S. Withdrawal From the Paris Climate Accord," National Archives, Trump White House, June 1, 2017, https://trumpwhitehouse.archives.gov/articles/president-trump-announces-u-s-withdrawal-paris-climate-accord/.

[83] Lisa Friedman, "Trump Serves Notice to Quit Paris Climate Agreement," *The New York Times*, November 4, 2019, https://www.nytimes.com/2019/11/04/climate/trump-paris-agreement-climate.html.

[84] Christopher C. Horner and Marlo Lewis, Jr., "The Legal and Economic Case Against the Paris Climate Treaty: Canceling U.S. Participation Protects Competitiveness and the Constitution," *Issue Analysis* 2017, No. 6, Competitive Enterprise Institute, May 2017, https://cei.org/content/legal-and-economic-case-against-parisclimate-treaty.

[85] Joseph R. Biden, Jr., "Paris Climate Agreement," January 20, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/paris-climate-agreement/.

Moreover, in the approximately six years since the Paris Climate Agreement went into effect, performance in meeting the treaty's country-by-country NDCs toward greenhouse gas reduction has been so poor that even the agreement's most enthusiastic backers have publicly wondered whether it, too, is doomed to fail.[86, 87, 88] Supporters of the Paris treaty, including the SEC, proudly note that it has been signed by 191 nations. Those signatures are a non-trivial commitment, but they are not self-effectuating. When the climate activist group Climate Action Tracker evaluated the actual legislation and policy of the countries with the largest economies—and thus with the most significant compliance burden under the terms of the treaty—in 2021, its researchers found little action backing these announced goals.[89]

Given all that, the goals of the Paris Agreement are a puzzling choice as the default target for climate action. The agency references the treaty multiple times in the present notice of proposed rulemaking, pointing toward compliance with it as an example of the kind of information it expects registrant firms to disclose.[90] Yet, this constitutionally dubious treaty has not been ratified by the Senate, has not been supported by any congressional action that would facilitate its goals, has not inspired equivalent policymaking by other signatories, and is frequently criticized by its own supporters for being ineffective. So why would U.S. regulators be setting it up as the default framework to follow?

All of that history might simply be a disappointing footnote for environmental policymakers had the SEC not made successful future implantation of climate policy one of the most important assumptions in its current proposal. The agency repeatedly cites future policy changes as climate risks, but does not make the case for why such changes are likely. To the contrary, the last twenty-five years of relevant policymaking history of suggest that major climate change policy initiatives will not be forthcoming.

Just in the time that the Commission has been working on its initial request for information and the current proposal, political opposition to ESG and climate-themed policy has grown dramatically.[91]

Kentucky Attorney General Daniel Cameron issued a memo in May 2022 clarifying that ESG-themed investments are not compatible with the expectation of fiduciary duty to the state's pension beneficiaries,[92] and the American Legislative Exchange Council is promoting model legislation calling for investment managers at state pension funds to focus solely on improving returns to beneficiaries rather than on attempting to advance unrelated environmental and social goals, such as mitigating climate

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[86] David Roberts, "The Paris climate agreement is at risk of falling apart in the 2020s," Vox, November 5, 2019, https://www.vox.com/energy-and-environment/2019/11/5/20947289/paris-climate-agreement-2020sbreakdown-trump.

[87] Oliver Milman, "Governments falling woefully short of Paris climate pledges, study finds," *The Guardian*, September 15, 2021, https://www.theguardian.com/science/2021/sep/15/governments-falling-short-paris-climate-pledges-study.

[88] Nicholas Kusnetz, "Why the Paris Climate Agreement Might Be Doomed to Fail," *Inside Climate News*, July 28, 2021, https://insideclimatenews.org/news/28072021/pairs-agreement-success-failure/.

[89] Ivana Kottasova, "Not a single G20 country is in line with the Paris Agreement on climate, analysis shows," CNN, September 16, 2021, https://www.cnn.com/2021/09/15/world/climate-pledges-insufficient-cat-intl/index.html.

[90] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," pp. 74, 102, 269.

[91] Richard Morrison, "The ESG Backlash," *National Review*, March 9, 2022, https://www.nationalreview.com/2022/03/the-esg-backlash/.

[92] Office of the Attorney General, "Opinion of the Attorney General," Commonwealth of Kentucky, May 26, 2022, https://ag.ky.gov/Resources/Opinions/Opinions/OAG%2022-05.pdf.

change.[93] Recently proposed legislation in Congress would also stop the federal Thrift Savings Plan from including ESG-themed investments.[94]

Regarding the Commission's current proposal, 16 governors[95] and members of relevant committees of jurisdiction in both the House and Senate have publicly expressed their opposition,[96] while one House member has introduced a bill that would specifically invalidate the proposal.[97] Former Senate Banking Committee chairman Phil Gramm recently called stakeholder capitalism and ESG activism a danger to freedom and democracy.[98]

Last year, the State of Texas enacted a new law refusing state and local government contracts to banks that have decided to "boycott" oil and gas investments,[99] leading major firms like BlackRock and JPMorgan to insist that they are not actually adopting anti-fossil fuel policies, despite previous climate-themed announcements arguably to the contrary.[100] In January 2022, West Virginia Treasurer Riley Moore, in a rebuke to BlackRock's net zero investment strategy, announced that $8 billion of the state's money would no longer be managed by BlackRock Inc.[101] In April, over two dozen members of the State Financial Officers Foundation signed a letter urging the Biden administration to reconsider its anti-fossil fuel policies and reaffirming that "oil, gas, coal, and nuclear are currently the most reliable and plentiful baseload power sources for America and much of the rest of the world."[102]

Many of the aforementioned changes in political attitudes surrounding ESG and climate-themed investing do not directly impact the Commission, but they all affect what policies are possible, reasonable, and likely to come into existence in the future. The backlash against climate finance policies is large and growing. The political transition risks the Commission regards as disclosure-worthy are becoming less likely by the day.

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[93] Richard Morrison, "Protecting Pensions from Politicized Mismanagement," *OpenMarket*, April 22, 2022, https://cei.org/blog/protecting-pensions-from-politicized-mismanagement/.

[94] Brian Anderson, "GOP Launches Last-Ditch Efforts to Block Major TSP Changes Set for June 1," *401K Specialist*, May 31, 2022, https://401kspecialistmag.com/gop-launches-last-ditch-efforts-to-block-major-tsp-changes-set-for-june-1/.

[95] Dominic Pino, "GOP Governors Come Out against SEC Climate Rule," *National Review*, May 31, 2022, https://www.nationalreview.com/2022/05/gop-governors-come-out-against-sec-climate-rule/.

[96] Richard Morrison, "Members of Congress Push Back on SEC Climate Proposal," *OpenMarket*, April 15, 2022, https://cei.org/blog/member-of-congress-push-back-on-sec-climate-proposal/.

[97] Richard Morrison, "Rep. Van Duyne Confronts Excesses of Climate Policy at SEC," *OpenMarket*, April 11, 2022, https://cei.org/blog/rep-van-duyne-confronts-excesses-of-climate-policy-at-sec/.

[98] Phil Gramm and Mike Solon, "The 'Stakeholder Capitalism' War on the Enlightenment," *The Wall Street Journal*, May 23, 2022, https://www.wsj.com/articles/stakeholder-capitalism-enlightenment-blackrock-esg-index-fund-passive-invest-elizabeth-warren-bernie-sanders-retirement-11653313715?mod=e2fb.

[99] Richard Morrison, "In Texas, ESG Virtue-Signaling Is a Risky Investment," *National Review*, January 17, 2022, https://www.nationalreview.com/2022/01/in-texas-esg-virtue-signaling-is-a-risky-investment/.

[100] Ross Kerber, "BlackRock, JPMorgan, others tell Texas they don't boycott energy companies," Reuters, May 19, 2022, https://www.reuters.com/business/finance/blackrock-jpmorgan-others-tell-texas-they-dont-boycott-energy-companies-2022-05-19/

[101] WDTV News Staff, "Treasurer Moore: Board of Treasury investments ends use of BlackRock Investment Fund," WDTV, January 17, 2022, https://www.wdtv.com/2022/01/17/treasurer-moore-board-treasury-investments-ends-use-blackrock-investment-fund/.

[102] "State Financial Officers Foundation Letter to President Biden Regarding American Energy Production," State Financial Officers Foundation, April 5, 2022, https://treasurer.utah.gov/wp-content/uploads/SFOF-Letter-Declaration-of-Americas-Energy-Independence.pdf.

VIII. Estimates of Market Transition Risk Are Exaggerated

When describing the transition risks that registrant firms might face in the future, the Commission's proposal cites "changing consumer, investor, and employee behavior and choices," and other similar formulations.[103] While it is certainly possible that changing consumer behavior might disadvantage products from greenhouse emissions-intensive firms in the future, the Commission has not even attempted to show how this is a likely and significant enough threat to serve as the basis for a proposed rule so expensive, complex, and invasive.

Given that the proposal is based on the idea that investors will inevitably steer their dollars away from firms with more energy-intensive operations and lifecycles, we should expect to see that phenomenon already in action. While the Commission would no doubt maintain that investors currently lack access to enough information available to fine-tune their allocation decisions across the entire market, investors should certainly be able to move away from the firms with the most obvious carbon footprints. That, however, does not seem to be the case. For example, the Energy Select Sector SPDR ETF (XLE), with major holdings in Exxon Mobil, Chevron, ConocoPhillips, and Marathon Petroleum, is up 36 percent over the last five years and almost 70 percent over the past year as of May 2022.[104] If large investors have continued flocking to major oil companies during the time the Commission claims they were becoming increasingly spooked by climate risk, it leaves a puzzled market observer to wonder which signal to believe.

The fact that obviously GHG-intensive firms and sectors are not already seeing declines in prices and investor enthusiasm is likely to cause some skepticism about the Commission's entire undertaking. Surely the extraordinarily fine-grained data about firms with a much lower carbon intensity will have an even more diffuse effect on market prices and capitalization than the widespread knowledge of which firms are the largest hydrocarbon producers. The Commission's demands seem to be targeted at a chimerical investor—one who is strongly motivated by ESG concerns and capable of understanding, digesting, and making investment decisions based off of complex regulatory filings, but is somehow still unaware that a major oil company has a large carbon footprint.

Moreover, the predicted change in consumer preferences is not based on any meaningful research. Interest detected in consumer surveys for products with claimed environmental attributes can be significant, but are not predictive of actual consumer behavior. Economists have long cautioned market observers not to confuse an individual's or group's expressed preferences—what they say they value—with their revealed preferences—what their behavior shows they value. Consumer preferences for things like "environmentally friendly" products are weak and vanish almost entirely if those consumers are asked to make a non-trivial sacrifice in price or quality.[105]

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[103] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," p. 55.

[104] "Energy Select Sector SPDR ETF," MarketWatch, accessed May 27, 2022, https://www.marketwatch.com/investing/fund/xle.

[105] Aindrila Biswas, "A Study of Consumers' Willingness to Pay for Green Products," *Journal of Advanced Management Science*, Vol. 4, No. 3 (May 2016), http://www.joams.com/uploadfile/2015/0424/20150424101656659.pdf.

The idea that registrant firms will face significant transition risk based on shifting consumer preferences is based on little other than wishful thinking of the part of climate activists. We can see this even more clearly when we look at the predicted costs of policy interventions. A poll conducted by the Competitive Enterprise Institute in 2021 asked 1,200 registered voters about their willingness to spend out-of-pocket to mitigate climate change. Only 5 percent of respondents said they would spend over $200 per month, while 35 percent of respondents said they would not spend even one dollar. Another 15 percent said they would spend no more than $10 of their own money on climate change policies.[106] Given that major legislation addressing climate change like the Green New Deal would end up costing Americans tens of thousands of dollars per household, this demonstrates an extremely low level of enthusiasm.[107]

ESG and climate-themed investing methodologies are also just beginning to see a backlash that will likely expand dramatically. Major figures in the corporate world have questioned the entire premise on which the Commission's rule is based, which is that climate risk is a significant and meaningful financial risk for investors, and that institutional frameworks like the TCFD and SASB are the appropriate ways to address it.

Marc Andreessen, co-founder of Netscape and venture capital firm Andreessen Horowitz, mocked the shifting views of defense and energy firms in March 2022, writing "ESG funds will invest in defense companies to make the weapons required to fight wars with hostile regimes we buy energy from, because ESG funds won't invest in energy companies." Roivant Sciences founder Vivek Ramaswamy wrote that "The idea that ESG represents the 'free market' is a lie," and has co-founded a new "anti-ESG" investment firm with Pershing Square Capital founder and CEO Bill Ackman.[108]

Academia also has its ESG critics. New York University Finance Professor Aswath Damodaran wrote in March 2022, "ESG is, at its core, a feel-good scam that is enriching consultants, measurement services and fund managers, while doing close to nothing for the businesses and investors it claims to help, and even less for society."[109] He emphasizes not only that industry advocates of ESG are self-interested, but that CEOs of individual firms frequently elevate vaguely defined ESG topics as a means to evade accountability and distract from underperformance and even fraud.[110] Critiques like Damodaran's are becoming increasingly common, as scandals involving questionable ESG strategies in the global finance

[106] Kent Lassman and Myron Ebell, "More than One-third of Registered Voters Are Unwilling to Spend $1 Per Month on Climate Change Policies," news release, Competitive Enterprise Institute, May 25, 2021, https://cei.org/news_releases/more-than-one-third-of-registered-voters-are-unwilling-to-spend-1-per-month-on-climate-change-policies/.

[107] Daniel Turner and Kent Lassman, "What the Green New Deal Could Cost a Typical Household," Competitive Enterprise Institute, July 29, 2019, https://cei.org/studies/what-the-green-new-deal-could-cost-a-typical-household/.

[108] Thomas Barrabi, "Bill Ackman, Peter Thiel back investment firm taking on 'woke' capitalism," *New York Post*, May 10, 2022, https://nypost.com/2022/05/10/bill-ackman-peter-thiel-back-investment-firm-taking-on-woke-capitalism/.

[109] Aswath Damodaran, "ESG's Russia Test: Trial by Fire or Crash and Burn?," *Musings on Markets*, March 28, 2022, https://aswathdamodaran.blogspot.com/2022/03/esgs-russia-test-moment-to-shine-or.html.

[110] Aswath Damodaran, "The ESG Movement: The Goodness Gravy Train Rolls On!," *Musings on Markets*, September 14, 2021, https://aswathdamodaran.blogspot.com/2021/09/the-esg-movement-goodness-gravy-train.html.

world have been making headlines, like the high-profile resignation of Deutsche Bank's Asoka Woehrmann amid allegations that a DB subsidiary made misleading claims about ESG funds.[111]

The most noteworthy recent case of a high-profile finance professional questioning the necessity of climate-focused analysis is Stuart Kirk, the global head of responsible investments for HSBC, who made waves in May 2022 with a public presentation titled "Why Investors Need Not Worry about Climate Risk."[112] Kirk referred to his perspective as "heresy" in the world of ESG-themed and sustainable investing, but it may not as heretical as he might think.

Kirk's analysis is reinforced by a November 2021 report by the Federal Reserve Bank of New York. The report's title asks the question "How Bad Are Weather Disasters for Banks?" The paper's abstract answers with a two-word sentence, "Not very." The New York Fed's analysis found that, "Disasters increase loan demand, which offsets losses and actually boosts profits at larger banks."[113] Federal Reserve Chairman Jerome Powell, despite public enthusiasm for "climate stress tests" on banks and acquiescence to other climate policy entanglements, told attendees at a recent conference that "climate change is not a main consideration for monetary policy."[114]

Conclusion

The Securities and Exchange Commission's proposed climate disclosure rule threatens to take the Commission in a radical and misguided new direction. This foray into environmental policymaking by proxy is outside of the SEC's jurisdiction and competency. Worse, it threatens to impose massive, widespread costs on American public companies for the benefit of a small handful of the largest asset management, accounting, and consulting firms. The staggering volume of resulting bureaucratic busywork will cost billions of dollars and generate little useful information that could not have been produced by market forces and voluntary disclosure.

That would be bad enough. But the assumptions underlying the rule and the incentives it will create will accomplish the exact opposite of its goal—it will result in capital allocation decisions that will increase risk and result in lower returns for investors.

The SEC is attempting to take a level playing field for different firm types and energy sources and tilt it in a particular political direction, despite ample evidence that current climate models and emissions scenarios are overstating risk and understating resiliency.

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[111] Rochelle Toplensky, "Time to Take the 'E' Out of ESG Investing," *The Wall Street Journal*, June 1, 2022, https://www.wsj.com/articles/time-to-take-the-e-out-of-esg-investing-11654088792.
[112] "HSBC's Stuart Kirk tells FT investors need not worry about climate risk," *FT Live*, May 20, 2022, https://www.youtube.com/watch?v=bfNamRmje-s.
[113] Kristian S. Blickle, Sarah N. Hamerling, and Donald P. Morgan, "How Bad Are Weather Disasters for Banks?," Federal Reserve Bank of New York Staff Reports, no. 990, November 2021, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr990.pdf.
[114] Jeff Cox, "Powell says climate change is not a main factor in the Fed's policy decisions," CNBC, June 4, 2021, https://www.cnbc.com/2021/06/04/powell-says-climate-change-is-not-a-main-factor-in-the-feds-policy-decisions.html.

The agency should abandon this rulemaking and restate its current position that climate-related risks need only be disclosed by registrant firms if they meet the traditional definition of being financially material to investors.[115]

[115] "SEC Issues Interpretive Guidance on Disclosure Related to Business or Legal Developments Regarding Climate Change," Securities and Exchange Commission, January 27, 2010, https://www.sec.gov/news/press/2010/2010-15.htm.