



TREASURY DEPARTMENT
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PA 17120

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TREASURER

June 17, 2022

Via Email Transmission (rule-comments@sec.gov)

The Honorable Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Secretary Countryman:

Please accept these comments, submitted in my official capacity as the Pennsylvania Treasurer, to the proposed Climate-Related Disclosure Rules. Specifically, I write to express several concerns pertaining to the impact and application of the proposed rules entitled “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (“the Proposal”). I am concerned that the Proposal’s broad scope, including its deviation from a traditional materiality standard, has the potential to harm the workers, investors, and industries of the Commonwealth of Pennsylvania without a clearly identified corresponding benefit to the public.

As custodian of Pennsylvania’s public funds, I seek to share the perspective of a fiduciary who possesses oversight responsibilities over more than \$150 billion, with independent investment management authority over \$40 billion. These public funds include Pennsylvania’s Oil and Gas Lease Fund, which receives gas and oil royalties from the leasing of Commonwealth lands, the proceeds of which benefit land conservation initiatives; the state Game Fund, which investment proceeds are used for habitat improvement and protection; and the Motor License Fund, which is funded by a state fuel tax to support road construction and public transit projects. It is my responsibility to ensure that these funds are safeguarded and managed so that they are available to support their intended public purposes for the benefit of all Pennsylvania residents.

To this end, I share the Commission’s objective of providing investors and stakeholders measurable and materially impactful information concerning climate risks that could directly impact the ability of certain businesses to meet their financial commitments. However, the proposed financial statement metrics are speculative and not feasible, undermine the stated goals of the Commission, and would impose unreasonable costs on Pennsylvania businesses.

Material climate-related risks, as others have rightly pointed out¹ and as the Commission acknowledged in 2010,² are already covered by existing disclosure obligations. Indeed, the Proposal dispenses with even the pretense that it would result in the disclosure of nonduplicative material information, acknowledging that “[a] number of existing disclosure requirements may elicit disclosures about climate-related risks.”³

The Proposal would require, among other things, disclosure of Scopes 1, 2, and in some cases Scope 3 greenhouse gas (GHG) emissions.⁴ Scope 1 are GHG emissions directly from operations that are owned or controlled by the reporting company such as building onsite energy use and company vehicles fuel consumed by owned and leased vehicles. Scope 2 are indirect GHG emissions from the generation of purchased or acquired electricity, steam, heating and cooling for own use. Scope 3 are all indirect emissions not included in scope 2 that occur in the value chain of the reporting company, including both upstream and downstream emissions including the purchased of goods and service and employee commuting.⁵

The disclosure includes ambiguously defined climate-related “physical risks” and “transition risks” on any line item in the registrant’s financial statements, positive or negative, that constitute 1% or more of the line item in question;⁶ and voluminous climate-related governance disclosures and risk management disclosures.⁷ Importantly, there is no financial materiality standard to include such risks; as a consequence, it is unlikely to be useful to a prudent investor. Nonetheless, requiring such disclosures will impose additional costs on all firms, including those based in Pennsylvania. It is self-evident that some or all of the additional costs will be passed onto consumers as higher prices for goods and services.

The Proposal provides general costs estimates for company disclosures.⁸ For non-SRC (smaller reporting company) registrants, the costs in the first-year compliance are estimated to be \$640,000 with subsequent annual costs of \$530,000. For SRC registrants, the costs in the first-year compliance are estimated to be \$490,000 with annual costs of \$420,000.

The huge volume of information required by the Proposal would be costly to produce, yet the Commission does not engage in a serious cost-benefit analysis. By the Commission’s own estimates, the Proposal would more than double the total cost and the amount of employee time required to comply with the disclosure requirements for the set of ten major Commission reports the Proposal would affect.⁹

Nevertheless, throughout the Proposal the Commission asserts that its proposed disclosures “could” or “may” be of value to investors, belying its neglect of any rigorous consideration of the purported benefits

¹ See Hester Peirce, We are Not the Securities and Environment Commission – At Least Not Yet, SEC (Mar. 21, 2022), https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321#_ftnref1 (Sec. I).

² Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 8, 2010).

³ 87 Fed. Reg. at 21413; *see also* id. (“The 2010 Guidance emphasized that if climate-related factors have a material impact on a firm’s financial condition, disclosure may be required under current Item 101 (Description of Business), Item 103 (Legal Proceedings), Item 105 (Risk Factors), or Item 303 (MD&A) of Regulation S-K.”).

⁴ 87 Fed. Reg. at 21374, 21377

⁵ Anthesis: <https://www.anthesisgroup.com/scope-1-2-3-emissions/>

⁶ 87 Fed. Reg. at 21365-66.

⁷ 87 Fed. Reg. at 21359-62.

⁸ 87 Fed. Reg. at 21439.

⁹ 87 Fed. Reg. at 21461.

of the Proposal. Moreover, the costs of the Proposal run well beyond the costs to registrants of providing the information required in the reports.

As an elected official in Pennsylvania, I'm particularly concerned about the costs the Proposal would impose on companies doing business, creating jobs and generating tax revenue in Pennsylvania.

Pennsylvania's energy infrastructure is thriving, as evidenced by the continued expansion of the natural gas industry, including multi-billion-dollar projects in Beaver and Luzerne counties that will spur increased employment in mostly rural communities. According to the *Pennsylvania State Profile and Energy Estimates* by the U.S. Energy Information Administration, as updated on October 21, 2021:

- Pennsylvania's marketed natural gas production, primarily from the Marcellus Shale, reached a record 7.1 trillion cubic feet in 2020, and the state is the nation's second-largest natural gas producer.
- Pennsylvania is the third-largest coal-producing state in the nation, and it is the second-largest coal exporter to foreign markets.
- Pennsylvania is the third-largest net supplier of total energy to other states.
- Over half of Pennsylvania households use natural gas as their primary home heating fuel, and the state's 49 underground gas storage sites – the most for any state – help meet regional heating demand in winter.
- In 2020, natural gas-fired power plants were the largest provider of in-state electricity generation for the second consecutive year.
- The residential sector is the largest consumer of electricity in Pennsylvania, accounting for nearly two-fifths of the state total.
- About one in four Pennsylvania households use electricity as their primary heating source.
- The industrial sector is the second largest, accounting for more than one-third, followed by the commercial sector with one-fourth.

The cost to companies in these industries to produce this information will be high and will hamper their ability to create value and generate jobs. In addition, requiring Scopes 1, 2, and possibly 3 GHG emissions disclosures and climate-related financial statement metrics – all of which are likely to be overstated due to the specter of securities liability – will subject these companies to undue political influences, wasting resources and distracting them from production and job creation.

The burden will fall not only on publicly-traded companies, but also on companies that purchase from or provide goods and services to these companies. Public companies will require extensive information from their customers and suppliers in order to compile the data necessary to comply with the Proposal. Such companies, particularly small, privately held companies and family businesses, may not have the resources to absorb these additional costs, and may lose important business relationships with public companies as a result. Indeed, the Commission seems to explicitly contemplate this result, stating that “a firm may choose to change some suppliers or disengage with certain clients due to the effect that

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they may have on the firm's Scope 3 emissions."¹⁰ Yet the Commission fails to quantify these costs or even discuss what the impact might be, particularly on small business.


The cost burden and economic dislocations that are likely to result could have the follow-on effect of reducing the international competitiveness of American companies, particularly Pennsylvania's natural gas and coal industries. Foreign companies that do not list securities in American markets and are not subject to the Proposal's extensive compliance costs will gain a competitive advantage over American firms. The Commission is specifically directed to consider the impact of its rules on competition, but devotes scarcely one page to the analysis, which merely rubber-stamps the Proposal.¹¹

Finally, excessive disclosure of immaterial information is likelier to harm investors in my state than help them. As the Supreme Court has observed, there comes a point when investors become "[buried] in an avalanche of trivial information – a result that is hardly conducive to informed decision making."¹² Inundating investors with large quantities of immaterial information will confuse, rather than enlighten, them.

For consumers throughout Pennsylvania and the United States, the Proposal could not come at a less opportune time. Consumers are already struggling with inflation, driven in significant part by the rising cost of energy. The Proposal will burden energy producers more heavily than any other industry, which is likely to exacerbate the problem.

For all of these reasons, I urge the Commission to withdraw the Proposal, abandon its misguided venture into climate-related disclosures, which lie outside its expertise, and return to its core mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

Sincerely,



Stacy Garrity
State Treasurer

¹⁰ 87 Fed. Reg. at 21448.

¹¹ 87 Fed. Reg. at 21446-47.

¹² See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976); *see also* Business and Financial Disclosure Required by Regulation S-K, 81 Fed. Reg. 23916, 23919 (April 22, 2016) ("There is also a possibility that high levels of immaterial disclosure can obscure important information or reduce incentives for certain market participants to trade or create markets for securities").