June 16th, 2022

Vanessa A. Countryman
Secretary
Attention: File Number S7-10-22
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Ms. Countryman:

Comments in opposition regarding the proposed rule;

"The Enhancement and Standardization of Climate-Related Disclosures for Investors"
Securities and Exchange Commission
***File No:* S7-10-22**

This proposed rule would dramatically—and in unprecedented fashion—expand the SEC's regulatory authority and impose an extraordinary burden on American employers, fuel the fires of inflation, disproportionately harm small businesses, for little to no environmental benefit.

1) The Commission Lacks Specific Statutory Authority to Enact This Rule

This proposed regulation far exceeds SEC's legitimate lawful powers. The SEC's existing authority to compel public companies to make disclosures of financial information does not extend to environmental and social topics like hypothetical man-made climate change.

Congress has passed laws multiple times since the SEC was created to give it additional authority to require disclosures on additional specific topics. It has done this because the SEC does not have plenary authority to make additional demands on its own. Congress can at any time legislate further on climate change and the financial system, but it has not done so in this case.

Sources:

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-thelegal-environment/evaluating-challenges-to-secs-esg-disclosure-proposal.html.

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/seclacks-legal-authority-adopt-climate-change-disclosure-rules

2) The Proposed Disclosures Are Climate Policy Pretending To Be Materiality

Companies subject to SEC regulation must disclose financially material information about their structure, operations, and plans for the future. That information doesn't 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.

By requiring specific, prescriptive requirements rather than ones based on general materiality principles, the SEC is suggesting anything climate related should be considered presumptively material. This allows for, as the SEC's Walter Hinman, Director of Corporation Finance, described in a speech 2019 and again November 18th, 2020, 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."

Unfortunately, this proposed rule goes in the opposite direction.

As SEC Commissioner Hester Peirce states, the rule "tells corporate managers how regulators, doing the bidding of an array of non-investor stakeholders, expect them to run their companies." Climate-related financial risk that is truly material, as some might be, is already covered by existing SEC rules and guidance.

This proposed rule will impose substantial environmental regulation disguised as financial reporting. That does not protect investors. Instead, it picks legal, politically out of favor industries and targets them for destruction.

Source:

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

3) The Rule Does Not Pass Any Reasonable Cost-Benefit Test

The SEC admits that the costs OF complying with the proposed rule would be "significant," but attempts to downplay the burden by pointing to the information that some companies already voluntarily disclose. The legal and reputational threat of non-compliance dramatically increases the amount of time, money, and professional expertise required, compared to voluntary disclosures.

This proposed rule will greatly increase industries' expenses by requiring climate and carbon dioxide reporting. There will be substantial costs of compliance. Requiring new consultants and professional's climate measurements and climate accounting methods.

Compared to voluntary disclosures the legal and reputational risks of non-compliance dramatically increases the amount of time, money, and attention required. Even when it comes to specific quantitative requirements like measuring greenhouse gas emissions, the agency's proposal states, "we are unable to fully and accurately quantify these costs."

Take the popular products sold by Nike for instance.

Most of Nike's 500,000 assorted products are made by more than a million workers, in 785 factories in China, Vietnam, and Indonesia. Products made from or with hydrocarbons.

After they are manufactured, they are loaded on diesel fueled ships with products from other companies to be distributed around the world. Each ship taking a different length of time, route and using a different amount of fuel.

Nike's climate reporting is going to be a nightmare and cost far more than a million dollars.

Where does the upstream and downstream climate risk reporting stop?

How much of the carbon footprint of all stores where Nike products are sold have to be included?

Does any of the carbon footprint of their end users, such as high school, college, and professional athletes, have to be included? Do the arenas and stadiums that athletes play in need to be figured in? What about all the hydrocarbons used for TV broadcast and the Internet where these sports are watched, or Nike commercials are run?

This rule requires companies to report on their internal management processes, suggesting 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. This will also increase the costs of compliance and pull corporate managers away from their functional, product and service focused roles within the company.

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." That includes trade secrets that would be revealed, disclosure of companies' most profitable customers and markets to competitors, and exposure of operating weakness to competing firms and to labor unions.

Will this further expose them to communist Chinese or other national companies that will not play by the same regulatory rules, if any at all? Will foreign companies honestly report? Or use the same standards and rules? Will those companies, that this rule applies to be responsible for the accuracy of the foreign non-regulated by companies' climate reporting data? Will the courts be needed to answer the above questions?

In addition to the specific costs of complying with this particular rule—which will certainly run into billions of dollars per year— the existing universe of federal regulations must be added. Managers of public companies are already working under a staggering burden of federal and state requirements.

Sources:

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/

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

University of Ohio, Manufacturing Processes, Nike Shoes, https://u.osu.edu/nikeshoes/manufacturing-process/

University of Ohio, Raw Materials, Nike Shoes, https://u.osu.edu/nikeshoes/raw-materials/

4) Estimates of Climate Change Risks, Both Physical and Political, are Wildly Exaggerated

Those who advocate for climate risk disclosure exaggerate the physical dangers posed by climate change. It is difficult to assign man’s percentage of the present gently warming the world has experienced since that end of the Little Ice Age a.k.a. preindustrial times. Warming beginning about 1850, long before CO2 could have been much of a factor.

In case after case, overheated climate models with inflated unrealistic emission scenarios, produce unrealistically high warming forecasts. In addition, those analyses ignore the dramatic long-term declines in both weather-related mortality and the relative economic impact of extreme weather events. Climate disclosure activists overestimate the costs of climate change by ignoring mankind’s remarkable ability to adapt.

In addition, disclosure advocates exaggerate the certainty and magnitude of climate change risk. They ignore the fact that there are no trendlines according to the IPCC in floods or droughts. The long-term historic trend lines for tornadoes, hurricanes, and wildfires worldwide are declining, not increasing. No honest person can predict if and when the trends of these climate risks will reverse or change direction.

Sea level has been rising about an inch a decade, since reasonably good records began about 1880. There has been a slight acceleration of sea level rise, since we began measuring it by satellite 30 years ago. Some attribute the change in methodology, from tidal gauges to satellite, for this slight acceleration. Some question the ability to accurately measure to within a millimeter, worldwide ocean level, considering that the ocean is always in motion and there are upwellings and downwellings frequently.

Sources:

Oren Cass, “Overheated: How Flawed Analyses Overestimate the Costs of Climate Change,” Manhattan
Institute, March 11, 2019, https://www.manhattan-institute.org/html/overheated-how-flawedanalyses-
overestimate-costs-climate-change-10986.html

Giuseppe Formetta, “Empirical evidence of declining global vulnerability to climate-related hazards,”
Global Environmental Change, May 2019,
https://www.researchgate.net/publication/333507964_Empirical_evidence_of_declining_global_vulner
ability_to_climate-related_hazards

Marlo Lewis, “Comment Letter Responding to the Securities and Exchange Commission’s ‘Public Input
Welcomed on Climate Risk Disclosures,’” Competitive Enterprise Institute, June 11, 2021,
https://cei.org/regulatory_comments/climate-risk-disclosure-marlo-lewis-cei-free-market-groups-6-11-
2021/

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-changecop26-glasgow-global-warming-11635973538

Ross McKitrick and John Christy, “A Test of the Tropical 200- to 300-hPa Warming Rate in Climate
Models,” Earth and Space Science, September 2018,
https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2018EA000401

Roger Pielke and Justin Ritchie, “How Climate Scenarios Lost Touch With Reality,” Issues in Science and
Technology, Summer 2021,
https://issues.org/climate-change-scenarios-lost-touch-reality-pielke-ritchie/.

5) This will disproportionately harm small businesses in an economically uncertain time

This proposed rule will unjustly disproportionately harm small businesses because of the reporting requirements. This rule requires that other companies that both supply and purchase products and services, from those companies required to report, to provide their emissions and climate risks.

Small businesses are ill-equipped to generate these types of information. They will be forced to hire outside expertise and internally track these metrics. I suspect many will forego working for large reporting companies. They will suffer an additional economic harm at time when many have not recovered from Covid rules and are still struggling.

6) This rule will increase inflation

Reporting companies will pass along their increased costs to consumers causing inflation. These companies will be less efficient in providing their goods and services to consumers because of the reasons cited above. This will also increase costs because managers and employees will be diverted from seeking to satisfy customers to an additional increased regulatory burden imposed on them by this rule.

Summary

Truth in Energy and Climate respectfully requests that the SEC does not impose this rule on reporting entities at this time. It will have negative consequences that far outweigh any benefits, which remain unproven and unknowable. In addition, there will be unanticipated issues and expense of compliance, there always are. Particularly in an area that is as complex and not easily measured as scope 1, 2 and 3 emissions, as well as long-term and short-term climate risks, if any.

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