

April 5, 2022

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

Dear Chair Gensler:

We are writing regarding the Securities and Exchange Commission's (SEC) new proposed rule on climate-related disclosures, which would require publicly-traded companies to disclose their greenhouse gas (GHG) emissions and other information related to climate change. We thoroughly oppose the proposed rule and urge the SEC to withdraw the new disclosure requirements.

The proposed rule is not within the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. It is unclear from where the SEC has derived this drastic change in authority. The SEC is not tasked with environmental regulation, nor has Congress amended the SEC's regulatory authority to pursue the proposed climate disclosures. Further, there are serious questions about whether the SEC has the technical expertise to assess climate models and underlying assumptions used in companies' metrics and disclosures. Without such technical expertise, the SEC will likely review submissions arbitrarily, leading to uneven or unfair application.

Existing securities regulations already require companies to disclose material risks irrespective of the source of the risk, through annual and periodic reporting. For example, registrants must identify and disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial or operating performance.¹ Additionally, through voluntary disclosure, many companies already provide substantial amounts of information regarding their sustainability practices that are subject to existing statutory prohibitions against false and misleading statements.

The concept of materiality has been described as "the cornerstone" of the disclosure system established by federal securities law.² The materiality standard as defined by the U.S. Supreme Court states "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available."³ This standard has given investors and issuers confidence that information disclosed by companies is relevant, and in turn, helpful for promoting efficient

¹ See 17 CFR 229.303 (management's discussion and analysis of financial condition and results of operations).

² See Securities and Exchange Commission, *Business and Financial Disclosure Required by Regulation S-K*, 78 FR 23916, 23924 (Apr. 22, 2016).

³ *TSC Industries, Inc. v. Northway*, 426 U.S. 438, 448-49 (1976).

capital markets. The proposed new required disclosures fail the materiality test and undermine this important standard. Moreover, requiring the disclosure of non-material information runs afoul of the First Amendment prohibition against compelled speech.

After failed attempts to enact radical climate policy via legislation, this rule is yet another example of the Biden Administration's efforts to have unelected bureaucrats implement its preferred agenda through regulation. To make matters worse, the SEC is limiting the public's input on this proposed rule by restricting the comment period to only 60 days, which is insufficient for such an enormously complex and consequential rule.

This proposal comes with enormous costs for employers. As described in the SEC's proposal, public companies would face billions in new compliance costs to meet the new requirements, which will likely reduce the amount of capital that could otherwise be deployed in the U.S. economy. Investors will face harm, too, in the form of reduced shareholder returns.

Moreover, the SEC's quantified cost estimates do not even include the substantial compliance costs that will be imposed on suppliers and vendors, many of which are small non-public companies, when public companies demand that they provide information on Scope 3 GHG emissions. Small non-public companies will be harmed by facing higher compliance costs as public companies request non-material information on Scope 3 GHG emissions, or risk the loss of business if they fail to provide such information.

Another consequence from the new disclosures would be fewer companies willing to be publicly-traded. By adding further compliance burdens, the trend of decreasing public companies is likely to intensify. Fewer public companies means ordinary investors are denied opportunities to invest, inhibiting America's growth potential.

The proposed rule comes against a backdrop of high inflation, skyrocketing energy prices, and immense efforts to cut off Russian energy supplies. Whether it is putting forth radical nominees to important financial regulatory positions or proposing burdensome regulations like the proposed rule on climate-related disclosure, this administration's hostility towards fossil fuels is having serious consequences throughout the entire economic value chain and on our domestic energy resources and national security.

This anti-energy rhetoric and policy coming from the Biden Administration is having a chilling effect on markets and long-term investments, starving the American oil, gas, and mining industries of access to the credit and capital they need to grow production while reducing their GHG emissions. This proposed rule will only further allocate capital away from domestic fossil fuel producers, increase the costs of energy for everyday Americans, and transfer investment to dirtier sources of energy overseas.

Addressing climate issues is a complex task with widespread consequences across the U.S. economy. We believe devising climate policy is the job of elected lawmakers, not unelected regulators at the SEC.

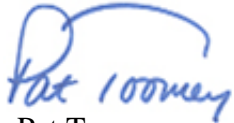
Sincerely,



Kevin Cramer
United States Senator



Shelley Moore Capito
United States Senator



Pat Toomey
United States Senator



James M. Inhofe
United States Senator



Mike Crapo
United States Senator



Cynthia M. Lummis
United States Senator



Tim Scott
United States Senator



Richard Shelby
United States Senator



Steve Daines
United States Senator



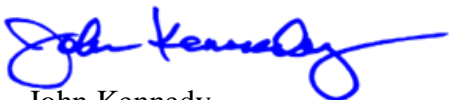
John Boozman
United States Senator



Thom Tillis
United States Senator



Roger F. Wicker
United States Senator



John Kennedy
United States Senator




Dan Sullivan
United States Senator



Bill Hagerty
United States Senator



Joni K. Ernst
United States Senator



Jerry Moran
United States Senator



Lindsey Graham
United States Senator



M. Michael Rounds
United States Senator

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner