

**GREGORY E. LAU**



June 16, 2022

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**RE: S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478**

Dear Ms. Countryman:

Thank you for this opportunity to provide the following comments regarding the Commission's Proposed Rule concerning climate-related disclosures.<sup>1</sup>

Over the past 40 years, I have devoted my career to corporate governance. During my tenure at General Motors, I served in various capacities, including as head of global compensation and corporate governance. I am past member of the board of directors of the National Association of Corporate Directors (NACD), and I am an NACD Board Leadership Fellow.

Additionally, I am a former member of the advisory board for the Weinberg Center for Corporate Governance and member and past chairman of The Conference Board's Council on Executive Compensation and Global Human Resources Management. I have also served on the boards of directors of WorldatWork, General International Ltd., and MIC Insurance Holdings. I currently serve as an advisor to public and private company boards of directors.

I have taken a keen interest in the SEC's rulemaking for years, as well. For example, back in January 2020, I submitted comments on another Proposed Rule issued by the Commission, "Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice."<sup>2</sup>

Unfortunately, this Proposed Rule is unwarranted. As written, this ruling stands to hurt retail investors, overwhelm public companies with impossible directives (e.g., "Scope 3" emissions reporting), and obfuscate meaningful action to address the nation's climate goals. In this light,

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<sup>1</sup> U.S. Securities and Exchange Commission (SEC), Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors", March 21, 2022, <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

<sup>2</sup> Gregory E. Lau, "Comment – File Number S7-22-19", January 9, 2020, <https://www.sec.gov/comments/s7-22-19/s72219-6632602-203100.pdf>.

I agree wholeheartedly with Commissioner Hester Peirce. In her dissenting statement, she writes, “Contrary to the hopes of the eager anticipators, the proposal will not bring consistency, comparability and reliability to company climate disclosures ... We cannot make such fundamental changes to our disclosure regime without harming investors, the economy and this agency.”<sup>3</sup>

There are two primary reasons why I oppose the implementation of this Proposed Rule. First, in attempting to appease a small, politically motivated, and well-heeled subsection of the nation, the Commission is deviating widely from its three-part mandate of investor protection, maintenance of orderly markets, and facilitation of capital formation. This month marks the 88<sup>th</sup> anniversary of the enactment of the Securities Exchange Act of 1934. Section 4 of this Act established the Commission.<sup>4</sup> Having re-read the Commission’s charter and responsibilities set forth by this legislation, there is no power granted to require climate-specific disclosures, nor to set federal environmental policy. The latter most certainly is the duty of the Congress. In no uncertain terms, the Commission has ventured far outside of its authority by endeavoring with this Proposed Rule to become a climate regulator.

As Commissioner Peirce alluded to, this expedition into the realm of climate regulation will also undermine the Commission’s credibility. Moreover, given this overreach, this Proposed Rule will face its day in court. Attorneys Jacqueline Vallette and Kathryn Gray highlight this point for the Harvard Law School Forum on Corporate Governance:

“[T]here is...intense interest in, and scrutiny of, the SEC’s asserted authority to regulate the new territory of climate change, a subject matter arguably outside its mission and mandate, without any additional congressional grant of authority... Should the Proposal eventually be adopted in its current form (or in any form without substantial revision), significant litigation challenges will likely follow.”<sup>5</sup>

On this topic of overreach, I found a recent *Wall Street Journal* column by former Commission Chairman Jay Clayton and Rep. Patrick McHenry compelling. They argue, “Setting climate policy is the job of lawmakers, not the SEC, whose role is to facilitate the investment decision-making process... Taking a new, activist approach to climate policy—an area far outside the SEC’s authority, jurisdiction and expertise—will deservedly draw legal challenges.”<sup>6</sup> At a time

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<sup>3</sup> The Hon. Hester M. Peirce, Statement, “We are Not the Securities and Environment Commission - At Least Not Yet”, March 21, 2022, <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>.

<sup>4</sup> Securities Exchange Act of 1934 [As Amended Through P.L. 116–283, Enacted January 1, 2021], <https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf>.

<sup>5</sup> Jacqueline M. Vallette, Kathryn M. Gray, “SEC’s Climate Risk Disclosure Proposal Likely to Face Legal Challenges”, Harvard Law School Forum on Corporate Governance, May 10, 2022, <https://corpgov.law.harvard.edu/2022/05/10/secs-climate-risk-disclosure-proposal-likely-to-face-legal-challenges>.

<sup>6</sup> Jay Clayton, The Hon. Patrick McHenry, “The SEC’s Climate-Change Overreach”, *Wall Street Journal*, March 20, 2022, <https://www.wsj.com/articles/the-secs-climate-change-overreach-global-warming-risks-lawmakers-invertors-market-data-11647801469>.

of staggering inflation, soaring energy costs, and volatile equity markets, now is the worst time to add further pain for workers, investors, and companies. In fact, no one would be spared by this Proposed Rule's sprawling regulatory provisions. Messrs. Clayton and McHenry went on to say, "[I]mplementing an economywide emissions-reduction policy will have a profound impact on the domestic energy, labor, transportation and housing markets, among others... Even if the long-term benefits outweigh the costs, near-term stresses on working Americans are inevitable and will be distributed unequally."<sup>7</sup>

The second reason underpinning my opposition to this Proposed Rule is the enormous burdens – especially compliance costs – that will be placed on U.S. businesses. As I referenced above, there are currently no standardized mechanisms or metrics that enable a company to compile, let alone synthesize and report, "Scope 3" emissions. Without question, compliance with disclosure requirements of Scope 3 emissions would impose significant costs on issuers. According to the Commission, the costs in the first year of compliance with the Proposed Rule are estimated to be \$640,000, while annual costs in the subsequent five years are estimated to be \$530,000.<sup>8</sup> Recalling past experiences with compliance costs at the nation's 25<sup>th</sup>-largest corporation, these figures are underestimated.

For small- and medium-sized businesses, as well as those new to this type of reporting, the compliance challenges will be even more daunting. David Lynn, a partner at Morrison & Foerster and a former official at the Commission, offered reporters Jean Eaglesham and Paul Kiernan these thoughts last month. For companies that are starting from scratch in reporting climate data, complying with the rules could be more expensive than the SEC estimates, he said. It will involve creating new systems to collect, analyze and report the data needed and potentially hiring new staff, consultants, and auditors. The costs are difficult to estimate and could be well higher than the SEC believes.<sup>9</sup>

Concerning compliance burdens, particularly with regard to "Scope 3" emissions, another comment letter on this Proposed Rule submitted to the Commission caught my attention. J.W. Verret, a former member of the Commission's Investor Advisory Committee (IAC) and an associate professor at George Mason University's Antonin Scalia Law School, shines light on how difficult adhering to the ruling's mandates will be and how the Commission arrived at its misguided "Scope 3" decision. He writes:

"Scope 3 emissions are highly speculative and beyond anything contemplated by the securities laws. It appears that the compromise struck was to require Scope 3 emissions disclosures, but only to the extent that Scope 3 emissions are "material," and provide

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<sup>7</sup> Ibid.

<sup>8</sup> Pg. 373, Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors", <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

<sup>9</sup> Jean Eaglesham, Paul Kiernan, "Fight Brews Over Cost of SEC Climate-Change Rules", Wall Street Journal, May 17, 2022, <https://www.wsj.com/articles/fight-brews-over-cost-of-sec-climate-change-rules-11652779802>.

no guidance about when such emissions are material. Instead, the proposal drops that uncertainty onto registrants trying to comply. Rather than threading the needle, this compromise ties the thread into knots. The uncertainty created by this compromise renders the proposed rule arbitrary and capricious because it provides no concrete standard for compliance. Registrants will be left to guess about what disclosures are required and face a torrent of agency comments on their future filings, pushing for more Scope 3 disclosures.”<sup>10</sup>

It is also worth noting another comment letter addressed to you on this Proposed Rule from 21 state attorneys general. Combined, they represent 118,706,943 citizens.<sup>11</sup> These attorneys general write, “These disclosures will have serious real-world effects on the thousands of public companies in the United States.” They continue, “The States and others should have the real chance to explain how these proposed disclosures could harm investors, companies, and the market as a whole.”<sup>12</sup> Should the Commission finalize this Proposed Rule, it will apply an entire new level of red tape that would hinder commercial activity nationwide.

In sum, if this more than 500-page regulatory scheme is not significantly revised or withdrawn, it will wreak havoc across our entire economy in the name of an injudicious attempt to address climate change. I, therefore, urge the Commission to return to its important mission, relinquish its quest to become a climate regulator, and spare companies large and small the compliance nightmares enshrined in this ruling. Thank you again for this opportunity to provide these comments. I hope you and the Commission’s staff find them helpful.

With best wishes,

Respectfully,



Gregory E. Lau  
Former Executive Director  
Global Compensation and Corporate Governance  
General Motors Company

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<sup>10</sup> J.W. Verret, “[Release No. 33-11042; File No. S7-10-22]; Comments on Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors”, June 8, 2022, <https://www.sec.gov/comments/s7-17-22/s71722-20129970-296455.pdf>.

<sup>11</sup> World Population Review, “U.S. States Ranked by Population 2022”, U.S. Census, <https://worldpopulationreview.com/states>.

<sup>12</sup> The Hon. Patrick Morrissey, et al, “Request for Extension of Time to Provide Comments on Proposed Rule Amendments titled “The Enhancement and Standardization of Climate-Related Disclosures for Investors” by the States of West Virginia, Alaska, Arizona, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming (SEC File Number S7-10-22)”, April 15, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20123878-280047.pdf>.