ROBERT A. MOSS

June 16, 2022

Submitted via e-mail to rule-comments@sec.gov

The Hon. Gary Gensler
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, S7-10-22

Dear Chairman Gensler:

I am pleased to submit the following comments concerning this proposed rule.[1] However, I write with grave concern about the negative impacts these intended climate-related disclosures will have on our economy, our nation's 4,000-plus public companies,[2] and their tens of millions of shareholders across the country.

For the past 49 years, I have been a trader focused on energies, metals, foreign exchange, interest rates, grains, and all other commodities. For more than 27 of those years, I served as founder and president of RAM Management Group, Ltd. As an expert alternative investments trader and trading system developer, I also formerly served as an advisory council member of Apex Fund Services Ltd.

In my five decades of experience in the markets, I have never seen a SEC rulemaking as pervasive and troubling as this proposed rule. As such, I strongly concur with a recent editorial in the Wall Street Journal that argues your agency's rule amounts to staging a climate coup. The editorial board writes, "Neither securities law nor the Constitution lets the SEC mandate whatever public disclosures some investors or politicians want."[3] Indeed, I also believe that this proposed rule's thinly veiled mission is to "make it easier for left-leaning asset managers like BlackRock, public pension funds and trial lawyers to bully companies."[4]

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[1] Securities and Exchange Commission, Proposed Rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, (S7-10-22), March 21, 2022, accessed: https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.
[2] McKinsey & Company, "Reports of corporates' demise have been greatly exaggerated", October 21, 2021, accessed: https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/reports-of-corporates-demise-have-been-greatly-exaggerated.
[3] Wall Street Journal, Editorial Board, "Gary Gensler Stages a Climate Coup", March 21, 2022, accessed: https://www.wsj.com/articles/gary-gensler-stages-a-climate-coup-securities-and-exchange-commission-blackrock-11647899043.
[4] Ibid.

Notwithstanding the many worrisome provisions in this rulemaking, coupled with its more than 200 wide-ranging questions, the most problematic theme that has emerged from my reading of the rule is that the SEC is radically overstepping its role and responsibilities. I share in both the confusion and opposition expressed by 19 U.S. senators in their comment letter to you on April 5. To iterate, they explain, "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."[5]

Further regarding the SEC's authority, I would like to highlight a critical point raised by 22 finance and law professors in their comments on this proposed rule. Investor demand has always been a concrete basis for SEC regulation. This proposed rule invokes the term "investor demand" no less than 54 times.[6] Using this rationale implies there is broad agreement across a wide spectrum of investors voicing concern or demanding action pertaining to an issue or event. These professors maintain correctly, however, that "on divisive political topics of uncertain and inchoate corporate significance, like climate change, such a consensus is elusive. Therefore, asserting 'investor demand' from the most vocal segment of the investment industry provides a dubious basis for the SEC to claim exercise of its statutory authority in the name of "investor protection."'"[7]

This proposed rule's facilitation of the SEC's divergence from its enabling duties will also hurt those your agency is charged to protect: namely, retail investors, as well as professional investors like me. I would like to draw your attention to past comments made by your predecessor Mary Jo White at a lecture at Fordham Law School. She said, "When disclosure gets to be too much or strays from its core purposes, it can lead to 'information overload' – a phenomenon in which ever-increasing amounts of disclosure make it difficult for investors to focus on the information that is material and most relevant to their decision-making as investors in our financial markets."[8] Her remarks are especially salient today, as they reinforce how disruptive and far afield this proposed rule's disclosures would be if implemented.

The overload of information as prescribed for in this rulemaking will harm investors in specific ways. First, shareholders will ultimately bear the costs of these regulations through lower returns and dividends. At a time when shareholders have lost roughly $5 trillion in equities value, this is not the time for such a dramatic proposed rule. Since the rule contains no real clarity on how much these climate disclosures will cost companies, returns and dividends would be further

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[5] Sens. Kevin Cramer, Pat Toomey, Mike Crapo, Tim Scott, Steve Daines, Thom Tillis, John Kennedy, Bill Hagerty, Jerry Moran, Michael Rounds, Shelley Moore Capito, James Inhofe, Cynthia Loomis, Richard Shelby, John Boozman, Roger Wicker, Dan Sullivan, Joni Ernst, Lindsey Graham, Comment Letter, April 5, 2022, accessed: https://www.sec.gov/comments/s7-10-22/s71022-20122544-278541.pdf.

[6] Lawrence Cunningham, et al, "File No. S7-10-22 Proposal on Climate-Related Disclosures for Investors", April 25, 2022, accessed: https://www.sec.gov/comments/s7-10-22/s71022-20126528-287180.pdf.

[7] Ibid.

[8] SEC Chairman Mary Jo White, "The Importance of Independence", 14th Annual A.A. Sommer, Jr. Corporate Securities and Financial Law Lecture, Fordham Law School, October 3, 2013, accessed: https://www.sec.gov/news/speech/spch100113mjw.

jeopardized. Second, these climate disclosure requirements will make it harder for investors to understand the real state of a public company's business, profit and loss, and balance sheet. Finally, this proposed rule would require a deluge of extensive information, data that does not matter to a majority of investors when they are considering their investments.

Furthermore, should the Congress continue its recalcitrance in enacting the environmental policies established by this proposed rule, then they should be considered by an environmental agency of the Executive Branch – not the SEC. The Pacific Research Institute's Wayne Winegarden makes these points clear. He states, "The inclusion of Scope 2 and Scope 3 emissions raise concerns that, even if unintentional, the regulations are primarily an environmental regulation rather than a regulation geared toward ensuring efficient financial markets."[9] Winegarden continues, "It is the legislative branch of government that is responsible for making the laws, including the laws that govern the national approach to global climate change."[10] He then says, "The questions these proposed regulations address are more appropriately debated and implemented by the EPA or other environmental regulatory agency. The SEC's proposed rule is, essentially, a backdoor scheme to regulate climate change and duplicate the mandate already underway by the EPA."[11]

In closing, I would like to highlight comments from 131 Members of Congress – nearly one-third of the House of Representatives – that were submitted this week regarding this rulemaking. They write, "It is Congress' job to set our environmental policy, not the job of unelected regulators. The SEC should focus on its core mission…rather than a far-left social agenda."[12] I could not agree more. If Democrat majorities in Congress cannot pass their climate change agenda, that does not mean the SEC should serve as fallback. Using financial regulation to block investments in certain industries targeted by a vocal minority is an affront to the SEC's legacy and reputation.

Thank you in advance for your serious consideration of my comments.

Sincerely,

Robert A. Moss
Former President
RAM Management Group, Ltd.

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[9] Wayne Winegarden, PhD, "File Number S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors", June 7, 2022, accessed: https://www.sec.gov/comments/s7-10-22/s71022-20130535-299088.pdf.
[10] Ibid.
[11] Ibid.
[12] Rep. Patrick McHenry, et al, "File No. S7-10-22, the Enhancement and Standardization of Climate-Related Disclosures for Investors", June 15, 2022, accessed: https://www.sec.gov/comments/s7-10-22/s71022-20131300-301417.pdf.