



Texas Public Policy Foundation

June 16, 2022

Via <https://www.sec.gov/rules/submitcomments.htm>
and email rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

**RE: Supplemental Comments of the Texas Public Policy Foundation Regarding
The Enhancement and Standardization of Climate-Related Disclosures for
Investors, RIN 3235 – AM87, File Number S7-10-22**

Dear Ms. Countryman:

This letter is a supplement to the comments submitted in the referenced matter by Texas Public Policy Foundation, dated June 10, 2022.

The entire basis of the securities disclosure laws enacted by Congress is to ensure that material information regarding potential investment performance is divulged to the public by corporations whose stock is publicly traded. The term “material” is not defined in those securities laws, although SEC’s regulations limit the term to “information . . . as to which an average prudent investor ought reasonably to be informed before buying or selling any security of [a] particular company.” 17 CFR 270.8b(g). Questions of when climate risks become legally material for purposes of disclosure are significant topics of conversation among corporate and financial actors, and such questions have long been addressed by current SEC regulations set forth in 17 CFR 229.101(c)(1) and 17 CFR 229.103. Those regulations and others require disclosure of environmental emissions and environmental litigation when they are or foreseeably may be material to investment decisions made by the public. The existing regulations do not require publicly traded companies to speculate regarding the extent to which potential global climate changes may impact company operations. And there is a very good reason for that. Put plainly, the securities laws do not authorize the SEC to require speculation in connection with public disclosures.

The proposed regulations would go well beyond the SEC’s congressionally delegated authority by requiring companies to predict an unknown and unknowable future in connection with climate risks. For example, the extent to which a facility located in Texas may be impacted by potential rising sea levels attributable to climate change is beyond the competence of professional

Vanessa A. Countryman

June 16, 2022

Page 2

climatologists, let alone Board members of publicly traded companies. And requiring disclosure of potential litigation regarding any such possible climate impacts to specific corporate assets would be even further afield of any reasonably conceivable legal standard of materiality, including that set forth in 17 CFR 270.8b(g). The securities laws do not permit the SEC to require publicly traded companies to resort to crystal ball gazing. Accordingly, the proposal is *ultra vires* because it impermissibly goes well beyond the bounds of materiality and should be withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore Hadzi-Antich". The signature is fluid and cursive, with a long horizontal stroke at the end.

Theodore Hadzi-Antich

Senior Attorney