

Wendell Minnick

Chief Executive Officer

June 17, 2022

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

Re: Proposed Rule: File Number S7-10-22; Release No. 33-11042

Dear Ms. Countryman:

This Securities and Exchange Commission proposed rule, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,”¹ puts the Commission on a dangerous path to political advocate, rather than its current mandate of financial regulator. I oppose the implementation of this rule. Thousands of companies, millions of investors, and the integrity of the Commission would be endangered should the Commission finalize this rulemaking. I recommend that the Commission withdraws this proposed rule immediately.

For the better part of the past 40 years, I have been active in raising capital for both private and public companies. I am also the former founder and manager of four companies that were acquired by public companies and venture capital firms. This experience leads me to comment on my first contention with this rule, which is that it will unduly harm businesses – from large public corporations to small private companies – with arduous compliance requirements.

A recent letter from the National Association of Manufacturers emphasizes this dilemma. Charles Crain, the association’s senior director for tax and domestic economic policy, writes:

“The proposed rule...institutes a wide-ranging mandate for public companies to generate and report pages upon pages of information, much of which is not material to their operations or financial performance. In many instances the required information is not even available. Further, the proposed rule is so prescriptive in its approach that it will necessitate a breadth and granularity of data collection, analysis, tracking, assurance, and disclosure far out of step with current business practices and thus will substantially increase compliance costs and legal risks for public companies.”²

¹ Securities and Exchange Commission, “The Enhancement and Standardization of Climate-Related Disclosures for Investors”, Federal Register, 87 FR 29059, accessed: <https://www.federalregister.gov/documents/2022/05/12/2022-10194/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors>.

² Charles Crain, “File No. S7-10-22; Release Nos. 33-11042, 34-94478: The Enhancement and Standardization of Climate-Related Disclosures for Investors”, June 6, 2022, accessed: <https://www.sec.gov/comments/s7-10-22/s71022-20130306-296969.pdf>.

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Regarding the availability of information as Mr. Crain notes, disclosing Scope 3 emissions for many companies would be next to impossible. The Environmental Protection Agency defines Scope 3 emissions as being “the result of activities from assets not owned or controlled by the reporting organization, but that the organization indirectly impacts in its value chain.”³ I am hard pressed to believe how a new regulatory regime of this magnitude can require, and properly account for, the emissions a Fortune 500 company’s small parts supplier produces, or how a publicly traded automobile manufacturer can account for the emissions produced by its customers on the road.

What is also problematic with these Scope 3 disclosures is the all-but-certain double counting that will occur. As the EPA further points out, “The Scope 3 emissions for one organization are the scope 1 and 2 emissions of another organization.”⁴ Registrants of all sizes will find it extraordinary difficult to manage these calculations, with substantial liability hanging over their heads.

While these climate-related disclosures are being proposed for public companies, small businesses will not be spared this regulatory overreach either. Overstock.com’s Chief Legal Officer E. Glen Nickle offered the Commission excellent insight regarding smaller businesses, the compliance costs of this proposed rule, and how this rulemaking will be deleterious for investors. He writes that, upon smaller reporting companies seeing the compliance price tag, “Their analysis might lead them away from public markets. And such a decision would deny public investors access to promising growth companies which may, because of this additional public market gateway cost, choose private financing.”⁵ Mr. Nickle continues by saying, “Smaller companies must have a reasonable path to the option of going public, for their own benefit and that of investors seeking to promote and profit from investment in upcoming technologies and successful business models.”⁶

My second serious concern with this proposed rule is that the Commission does not have the authority to construct such a far-reaching rule without an explicit connection to investor protection, as well as the other two pillars of its tripartite mission. Congress has attempted time and again to enact a politically polarizing climate agenda. Due to its significant economic costs, as well as voters displeasure, it has not passed. But now some Democrats are attempting to use financial regulation as a means to block investment in companies they deem inappropriate. The *Wall Street Journal’s* Editorial Board has set the record straight, writing, “Neither securities

³ Environmental Protection Agency, Center for Corporate Climate Leadership, “Scope 3 Inventory Guidance”, accessed: <https://www.epa.gov/climateleadership/scope-3-inventory-guidance>.

⁴ Ibid.

⁵ E. Glen Nickle, “File No S7-10-22, The Enhancement and Standardization of Climate-Related Disclosures for Investors”, May 13, 2022, accessed: <https://www.sec.gov/comments/s7-10-22/s71022-20128721-294396.pdf>.

⁶ Ibid.

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law nor the Constitution lets the SEC mandate whatever public disclosures some investors or politicians want.”⁷

I also agree enthusiastically with Andrew Vollmer, a senior scholar at the Mercatus Center, when he states, “Changes of such significance raise a question about the SEC’s current legal authority to adopt systematic climate-change disclosures and are a reason that Congress should first give the necessary rulemaking power in express terms to the SEC.”⁸ Indeed, it is Congress’ role to set federal climate policy; the Commission does not have carte blanche to do so. To further stress how this proposed rule departs from the Commission’s duties, I draw your attention to a comment letter this week from 24 state attorneys general, representing every corner of our nation. “The Proposed Rule seeks to recast the Commission’s statutory role and remake the federal securities disclosure regime, all in an ill-advised misadventure into environmental regulation. Though ‘Congress created the SEC to protect investors and financial markets,’ the Proposed Rule does nothing to ‘protect’ either,” they assert. “Instead, it pushes naked policy preferences far afield of the Commission’s market-focused domain.”⁹

As inflation and energy costs soar, and consumer sentiment plummets, the Commission’s effort to force new climate-related disclosures on companies could not come at a worse time. This proposed rule will saddle businesses with unbearable compliance requirements and costs, and it is entirely outside of the Commission’s scope of responsibility. I hope the Commission ultimately abandons this imposition of its political will. We cannot afford back-door financial regulation, nor the mission creep of our country’s main market regulator.

Thank you, and I appreciate your consideration of my comments.

Sincerely yours,



Wendell Minnick
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Advanced Energy Holdings

⁷ Editorial Board, *Wall Street Journal*, “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>.

⁸ Andrew Vollmer, “The SEC Lacks Legal Authority to Adopt Climate-Change Disclosure Rules”, April 12, 2022, accessed: <https://www.sec.gov/comments/s7-10-22/s71022-20123525-279742.pdf>.

⁹ Attorneys General of the States of West Virginia, Arizona, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, Virginia, and Wyoming, “Comments on Proposed Rule Amendments titled “The Enhancement and Standardization of Climate-Related Disclosures for Investors”, June 15, 2022, accessed: <https://www.sec.gov/comments/s7-10-22/s71022-20131409-301574.pdf>.