



June 17, 2022

Submitted via Electronic Delivery
at rule-comments@sec.gov

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

Re: File Number S7-10-22
The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Ms. Countryman:

The Texas Bankers Association (TBA) is the nation's oldest and largest state banking trade association, consisting of approximately 400 federally insured depository institutions headquartered or conducting business in the State of Texas. Twenty-four Texas-headquartered banks are publicly traded, with assets ranging from \$750 million to \$90 billion. We take this opportunity to submit comments on the above-referenced File Number and to express our strong opposition to the Securities and Exchange Commission's (SEC) proposed rules in Release No. 33-11042. We believe the proposed rules are of questionable legal authority, would impose massive costs on the banking sector, and would result in a number of unintended consequences.

The proposal mandates the collection and reporting of climate data, which is beyond the statutory mission of the SEC of investor protection, maintaining fair, orderly and efficient markets, and facilitating capital markets. The SEC is not an environmental regulator. We also believe the proposed rules may violate the non-delegation doctrine. The SEC's claim of broad authority in this area to mandate disclosure requirements is in conflict with the separation of powers doctrine, specifically the requirement that bars Congress from transferring its powers to another branch. See *Gundy v. United States*. Furthermore, there are potential First Amendment violations in the compulsion of speech that "cannot be justified by a mere showing of some legitimate governmental interest." See *Buckley v. Valeo*.

The proposed rule the SEC is seeking to adopt is part of the Administration's climate change goal of achieving the reduction of greenhouse gases by 50% by 2030 compared to 2015 levels. It is not a proposal consistent with the SEC specific and limited authority to protect the interests of investors. The President has issued agency-wide executive orders and international pledges. For the banking industry, these proposals fall far outside the scope of protecting the safety and soundness of Americans' deposits and assets. Yet, in addition to the SEC's proposed rules, the Financial Stability Oversight Council passed a climate resolution, and the Federal Deposit Insurance Corporation (FDIC) recently requested comments on its proposed climate policy

statement. In TBA's response to the FDIC "Principles for Climate-Related Financial Risk Management", we likewise cautioned that the FDIC was acting outside of its legal capacity to enact a costly climate-change reporting regime. It is apparent that what the Administration cannot achieve in the legislative arena, it is improperly seeking to accomplish by regulatory fiat.

Compliance costs for publicly traded banks will increase dramatically if the SEC's proposal goes into effect as published. Covered institutions' SEC filings will shift from being focused on financial and operating performance to filings resembling what an environmental regulator might require. Compliance costs combined with the threat of third-party harassment, such as shareholder activism, will most likely result in fewer banks entering public markets and be an incentive for existing banks to move to private ownership.

Investors will not benefit from this proposal. Decades long assumptions of what is material information for retail or institutional investors will be hampered by the deluge of new climate data, often in granular form.

FDIC-insured institutions are already highly regulated. While the proposed disclosures will apply to all publicly traded banks, they do not take into account the significant size and resource differences between institutions. A bank of \$750 million in assets, for example, has vastly different resources to manage the additional regulatory burden than an institution of \$90 billion or more. Regulators rarely, if ever, make assessments in this regard, not to mention the overall impact of differential federal regulatory regimes on the organization (regardless of size) as well as the impact on consumers.

It is our request that the SEC withdraw this proposal and that the agency stay within its statutory powers.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Furlow", written in a cursive style.

Chris Furlow
President & Chief Executive Officer