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SCOTT FITZPATRICK
MISSOURI STATE TREASURER

June 17, 2022

U.S. Securities and Exchange Commission
Attn: Secretary Vanessa Countryman
100 F Street, N.E.
Washington, D.C. 20549

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors (File No. S7-10-22)

Dear Secretary Countryman:

As the Treasurer of the State of Missouri and the highest financial officer in the state, I write to express my concern regarding the recently proposed rules entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" ("the Proposal"). The Proposal's unprecedented breadth and intrusiveness, and its drastic deviation from the Commission's mandate and appropriate role, is likely to harm the investors, workers, and retirees of the State of Missouri without any significant corresponding benefit to the public.

In the name of "consistent, comparable, and reliable" information about "climate-related risks,"[1] the Commission proposes hundreds of pages of detailed climate disclosures that, while they may be useful to climate activists and climate-conscious investors, have no conceivable relevance to informed financial investment decisions. Material climate-related risks, as others have rightly pointed out,[2] and as the Commission acknowledged in 2010,[3] are already covered by existing disclosure obligations. Indeed, the Proposal dispenses with even the pretense that it would result in the disclosure of nonduplicative material information, acknowledging that "[a] number of existing disclosure requirements may elicit disclosures about climate-related risks."[4] Hence, the Commission's reliance on purported "investor demand" for "consistent, comparable, and reliable" climate-related information.[5] While demand from some investors to enhance their business models

[1] 87 Fed. Reg. at 21335.
[2] See Hester Peirce, We are Not the Securities and Environment Commission – At Least Not Yet, SEC (Mar. 21, 2022), https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321#_ftnref1 (Sec. I).
[3] Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 8, 2010).
[4] 87 Fed. Reg. at 21413; *see also* id. ("The 2010 Guidance emphasized that if climate-related factors have a material impact on a firm's financial condition, disclosure may be required under current Item 101 (Description of Business), Item 103 (Legal Proceedings), Item 105 (Risk Factors), or Item 303 (MD&A) of Regulation S-K.").
[5] 87 Fed. Reg. at 21394; 21424-25.

or particular interests may be a business or personal opportunity, it is not a valid basis for wide-ranging regulation.

Nevertheless, the Proposal would require, among other things, disclosure of Scopes 1, 2, and in some cases Scope 3 greenhouse gas (GHG) emissions;[6] disclosure of climate-related "physical risks" and "transition risks" on any line item in the registrant's financial statements, positive or negative, that constitute 1% or more of the line item in question;[7] and voluminous climate-related governance disclosures and risk management disclosures.[8] None of this information is likely to be financially material to a reasonable investor; nevertheless, the costs, burdens, and unintended consequences of requiring such disclosures will have significant effects on the State of Missouri and its residents.

At the outset, I observe that the Proposal unduly interferes with corporation law, which is traditionally the province of the states.[9] Though nominally a disclosure regulation, the Proposal would effectively regulate registrants' internal affairs, requiring massive investments in systems to track and collect information that some outside investors want and that is not necessary to run a business or report to any competent government environmental entity, to the detriment of effective corporate management and remaining investors. Forcing management to prepare immaterial environmental disclosures would necessarily reallocate corporate resources and management efforts toward climate-related issues at the expense of other corporate business. This is particularly true in light of the fact that the Proposal requires the disclosures to be filed with the Commission, rather than furnished, with the attendant level of liability exposure.[10] Given the demands of vocal special interest groups, the Proposal's requiring disclosure of board members' climate expertise,[11] could effectively require yet another "single purpose" director, *i.e.*, one with "climate expertise," restricting the ability of corporations to manage themselves as they see fit under state corporate law. If the General Assembly wanted to alter internal corporate affairs, it would have done so. The Proposal represents an unwarranted curtailment of the state legislature's prerogative.

Perhaps more significantly, the huge volume of information the Proposal would cover would be extremely costly to produce, yet the Commission does not engage in a serious cost-benefit analysis. By the Commission's own estimates, the Proposal would more than double the total cost and the amount of employee time required to comply with the disclosure requirements for the set of ten major Commission reports the Proposal would affect.[12] The true costs, however,

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[6] 87 Fed. Reg. at 21374, 21377

[7] 87 Fed. Reg. at 21365-66.

[8] 87 Fed. Reg. at 21359-62.

[9] CTS Corp. v. Dynamics Corp., 481 U.S. 69, 89 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations."); Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 479 (1977) ("Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation." (quotation omitted)).

[10] See Elad L. Roisman, Putting the Electric Cart Before the Horse: Addressing Inevitable Costs of a New ESG Disclosure Regime (June 3, 2021), available at https://www.sec.gov/news/speech/roisman-esg-2021-06-03#_ftnref1.

[11] 87 Fed. Reg. at 21447 ("Some registrants may respond by giving more weight to climate expertise when searching for directors, which may lead them to deviate from the board composition that would have been in place absent the proposed rules.").

[12] 87 Fed. Reg. at 21461.

are likely to run much higher than the Commission's estimates. Yet, the Commission does not even attempt to assess the benefits of the Proposal qualitatively, much less quantitatively. Rather, throughout the Proposal, the Commission merely asserts that its proposed disclosures "could" or "may" be of value to investors, belying its neglect of any rigorous consideration of the purported benefits of the Proposal. Moreover, the costs of the Proposal run well beyond the costs to registrants of providing the information required in the reports. Thus, the Proposal is likely to cause changes across the economy, potentially skewing capital allocation and investment against the economic interests of the people of Missouri. The Commission acknowledges this fact,[13] but still does not engage in a cost-benefit analysis.

As an elected official of Missouri, I am particularly concerned about the costs the Proposal would impose upon companies in Missouri, the effect such costs would have on the competitiveness of American companies in general, and the harm that is likely to come to retirees in Missouri as a result of the Proposal.

The cost to the companies that literally power our state and nation to produce this information will be high and will hamper their ability to create value and generate jobs, and will ultimately result in higher costs for consumers who are already facing the financial burden of record inflation. Even worse, requiring Scopes 1, 2, and possibly 3 GHG emissions disclosures and climate-related financial statement metrics—all of which are likely to be overstated due to the specter of securities liability—will subject these companies to undue political influences, wasting resources and distracting them from production and job creation.

The burden will fall not only on publicly traded companies, but also on companies that purchase from or provide goods and services to these companies. Public companies will require extensive information from their customers and suppliers in order to compile the data necessary to comply with the Proposal. Such companies, particularly small, privately held companies and family businesses, may not have the resources to absorb these additional costs, and may lose important business relationships with public companies as a result. Indeed, the Commission seems to explicitly contemplate this result, stating that "a firm may choose to change some suppliers or disengage with certain clients due to the effect that they may have on the firm's Scope 3 emissions."[14] Yet the Commission fails to quantify these costs or even discuss what the impact might be, particularly on small business.

The cost burden and economic dislocations that are likely to result could have the follow-on effect of reducing the international competitiveness of American companies. Foreign companies that do not list securities in American markets and are not subject to the Proposal's extensive compliance costs will gain a competitive advantage over American firms. American firms have led the way regarding reporting on and improving their environmental impact – it would be a tragic unintended consequence of this SEC proposal, premised on disclosure of material financial information, to increase the market share of environmentally dirtier foreign firms. The Commission is specifically directed to consider the impact of its rules on competition, but devotes scarcely one page to the analysis, which merely rubber-stamps the Proposal.[15]

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[13] 87 Fed. Reg. at 21447-48.
[14] 87 Fed. Reg. at 21448.
[15] 87 Fed. Reg. at 21446-47.

The wide-ranging costs of the proposal and hampering of American businesses also has the potential to harm Missouri retirees. Missouri public pensions are heavily invested in American public companies and depend upon their long-term financial well-being to fund future benefits. The Proposal's heavy cost and potentially deleterious effects on American competitiveness places our retirees' financial security at risk. As Treasurer, these consequences are particularly concerning to me, given my role on the Board of Trustees of the Missouri State Employees' Retirement System.

Finally, in my view, excessive disclosure of immaterial information is likelier to harm investors in my state than help them. As the Supreme Court has observed, excessive disclosure, particularly of immaterial information, is likely to "bury [investors] in an avalanche of trivial information—a result that is hardly conducive to informed decision-making."[16] Inundating investors with large quantities of immaterial information is likelier to confuse than enlighten them, and obscure other, more significant disclosures that are likely to have a financial impact on their investment. For Missouri consumers, the Proposal could not come at a less opportune time. Consumers are already struggling with inflation, driven in significant part by the rising cost of energy. The Proposal will burden energy producers more heavily than any other industry, which is likely to exacerbate the problem.

For all of these reasons, I urge the Commission to withdraw the Proposal, abandon its misguided venture into climate-related disclosures, which lie outside its expertise, and return to its core mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

Sincerely,

Scott Fitzpatrick

Scott Fitzpatrick
State Treasurer of Missouri

[16] See TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-49 (1976); *see also* Business and Financial Disclosure Required by Regulation S-K, 81 Fed. Reg. 23916, 23919 (April 22, 2016) ("There is also a possibility that high levels of immaterial disclosure can obscure important information or reduce incentives for certain market participants to trade or create markets for securities").