State of California
Office of the Attorney General

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June 17, 2022

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042, 34-94478; File No. S7-10-22

Dear Secretary Countryman:

On behalf of the undersigned Attorneys General, we submit this letter in response to the Securities and Exchange Commission's ("SEC") proposed rule, titled *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, File Number S7-10-22 ("Proposed Rule"). Many of the undersigned Attorneys General wrote in support of climate-related disclosures in a June 14, 2021 comment letter to the SEC ("June 2021 Attorney General Letter").[1] We write again to support the Proposed Rule, which will ensure that investors have specific, comparable disclosures about publicly-registered companies' climate-related risks and impacts. We provide general comments supporting the Proposed Rule, as well as responses to specific requests for comment.

I. SUMMARY

We write in support of the Proposed Rule not only for the protection of our state residents who invest their retirement savings, college funds, and life savings, but also for the benefit of states as investors that safeguard the pensions under their control. With the Proposed Rule, the SEC has offered a solution to the long-standing and critical problem of registered companies

[1] Letter from Rob Bonta, Cal. Atty. Gen., et al., to Gary Gensler, Chair, SEC (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8915221-244800.pdf ("Atty. Gen. Letter").

facing material climate-related impacts to their business operations that are not transparent to investors.

The physical risks and impacts of climate change already threaten registered companies and their operations. Extreme weather events caused or exacerbated by climate change, such as hurricanes, wildfires, extreme heat, and extreme drought, have caused a number of material and costly impacts on company operations. As those events increase in intensity and frequency, their effects on companies will only grow. To head off the worst climate change outcomes, as well as to mitigate the unavoidable effects, governments at all levels are already regulating to reduce greenhouse gas ("GHG") emissions and to bolster climate resilience. Those transition risks are not a future hypothetical; registered companies face those risks and are incurring related costs right now. The Proposed Rule's mandatory disclosures are necessary to ensure investors, and the market broadly, can price in those risks.

Investors have been clear that for their decision-making they need specific, comparable disclosures about climate-related risks, as well as about registered companies' management of those risks. In the absence of a mandatory disclosure regime, investors have been left to piece together climate-related information from a variety of sources that does not allow them to meaningfully compare companies. They are also vulnerable to the effects of greenwashing,[2] which the Proposed Rule promises to address through its mandatory disclosures. In short, we believe the Proposed Rule is well-structured to deliver to investors what they need to make informed investment decisions.

The Proposed Rule falls well within the SEC's statutory authority, in light of these circumstances and given the impact that climate-related disclosures will have on market stability, which underpins capital formation and investor protection. The Proposed Rule's mandatory disclosures address harmful informational imbalances to protect investors, markets, and the third parties that rely on market efficiency.[3]

We encourage the SEC to consider strengthening the Proposed Rule in the final regulations to ensure a sufficiently robust disclosure regime. We have the following specific recommendations: 1) define certain undefined terms; 2) require smaller reporting companies ("SRCs") that have adopted transition plans with "Scope 3" greenhouse gas ("GHG") emissions reductions to report on those emissions; 3) require all registered companies to have independent

[2] For purposes of this comment letter, we consider "greenwashing" to be the exaggeration of climate change-addressing and/or environmentally friendly actions, as well as the obscuring of climate change-causing and/or environmentally harming actions, with the goal of appealing to investors. *See* Miriam Cherry, *The Law & Econ. of Corp. Social Responsibility & Greenwashing*, 14 UCDBLJ 281, 284-87 (2014) (attempting to define "greenwashing"); *see also* SEC, *Prop. Rule: Enhanced Disclosures by Certain Inv. Advisors & Inv. Cos. About Env'l, Social, & Governance Inv. Practices* 8 (May 25, 2022) (describing greenwashing in context of investment funds).

[3] Notably, in addition to investors, Congress explicitly sought to protect third parties who rely on market efficiency in their operations (such as lenders that use securities as collateral) through the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act").

attestations for their "Scope 1" and "Scope 2" GHG emissions disclosures; and 4) shorten the compliance dates.

We appreciate the work and thought that the SEC put into the Proposed Rule, and we support its adoption.

II. GENERAL COMMENTS

A. States Have an Interest in Registered Companies Making the Climate-Related Disclosures the SEC Has Proposed.

We support adoption of the Proposed Rule for the benefits it will provide to the vast numbers of our states' residents who rely on investment savings. As of 2019, approximately 53% of U.S. households had stock holdings with a per-household average value of $371,390.[4] Many state residents rely on investment plans for college savings, as evidenced by the approximately 13.8 million 529 plan accounts holding just under $400 billion.[5] A significant portion of Americans have investments through their health savings accounts ("HSAs"), with 25 million HSAs and $10 billion in investments in those accounts as of 2018.[6] Fifty-six percent of U.S. workers participate in employer-sponsored retirement savings, such as public and private pensions and 401(k) plans.[7] A significant percentage of U.S. households—37%—have individual retirement accounts ("IRAs").[8] In total, approximately 75% of all non-retired adults have at least some retirement savings, which are likely to constitute a significant portion of their future retirement income.[9]

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[4] Fed. Rsrv., *Survey of Consumer Fin.*, Stock Holdings by All Families (2019), https://www.federalreserve.gov/econres/scf/dataviz/scf/table/#series:Stock_Holdings;demographic:all;population:all;units:have.

[5] Inv. Co. Inst., *529 Plan Program Stat., Dec. 2020* (Mar. 23, 2021), https://www.ici.org/research/stats/529s/529s_20_q4.

[6] Devenir Rsch., *2018 Year-End Devenir HSA Rsch. Rep.* (Feb. 27, 2019), https://www.devenir.com/research/2018-year-end-devenir-hsa-research-report/.

[7] Bureau of Lab. Stat., *Nat'l Comp. Surv.: Emp. Benefits in the U.S., Mar. 2021* 4 (Sept. 2021), https://www.bls.gov/ncs/ebs/benefits/2021/employee-benefits-in-the-united-states-march-2021.pdf.

[8] Inv. Co. Inst., *ICI Rsch. Persp.: The Role of IRAs in U.S. Households' Sav. for Ret., 2020* 1 (Jan. 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789270#:~:text=In%20mid-2020%2C%2037%20percent%20of%20US%20households%20owned,plan%20accumulations%20or%20had%20defined%20benefit%20plan%20coverage.

[9] Fed. Rsrv., *Rep. on the Econ. Well-Being of Ams. in 2020* (May 2021), https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-retirement.htm ("Fed. Rrv. Am. Well-Being Report"). Current retirees already rely on retirement savings, with 68% of current retirees receiving income from pensions. Retiree income from pensions and retirement accounts constitute at least 17% of total income for individuals 65 years and older. *Id.*; *see also* Daniel Thompson & Michael D. King, *U.S. Census Bur., Income Sources of Older Households: 2017* 6-7 (Feb. 2022), https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70br-177.pdf.

The Proposed Rule, if adopted, will benefit states' residents by ensuring more transparency about registered companies' exposure to climate-related risks over both the short- and long-term. That transparency, in turn, will allow investors to more accurately price those risks and thereby improve market efficiency.[10] The Proposed Rule's disclosures will also allow investors to more effectively diversify their portfolios.[11] States will benefit from the Proposed Rule's impacts, as more efficient markets and better informed investors will likely result in improved financial outcomes for our residents. Those better financial outcomes will have tangible benefits for states by maintaining or increasing tax revenue from successful investment plans.[12]

The Proposed Rule's benefits will redound to states in another way: states are themselves investors. Our public pension funds having significant holdings in registered companies and stand to benefit from the Proposed Rule's mandatory climate-related disclosures. Among the undersigned states, for example, Oregon has $21.3 billion invested, Massachusetts has $95.7 billion invested, New York State has $136 billion invested, and California has $336 billion

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[10] Create & BNY Mellon Inv. Mgmt., *Future 2024: Future-Proofing Your Asset Allocation in the Age of Mega Trends* 4 (2019), https://www.bnymellonim.com/uploads/2019/09/9d78652e263adc2110ae32f544157770/bny-mellon-full-report-future-24-whitepaper.pdf (93% of institutional investors in survey "regard climate change as an investment 'risk' that has yet to be priced in by all the key financial markets globally"); CFTC, *Managing Clim. Risk in the U.S. Fin. Sys.: Rep. of the Clim.-Related Mkt. Risk Subcomm., Mkt. Risk Advisory Comm. of the U.S. CFTC* 87 (Sept. 2020), https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf ("comprehensive climate disclosure" allows investors to "better assess a more refined measure of the long-term cost of capital, as well as risks to firms, margins, cash flow and valuations") ("CFTC Report").

[11] Mercer, *Inv. in a Time of Clim. Change* 7 (2015), https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/climate-change-to-affect-investment-returns; Fred Wellington & Amanda Sauer, Ceres & World Resources Inst., *Framing Clim. Risk in Portfolio Mgmt.* 3 (May 2005), https://www.wri.org/framing-climate-change-risk-portfolio-management.

[12] John Waggoner, Am. Ass'n of Retired People, *12 States that Won't Tax Your Ret. Distribs.*, AARP.org (Mar. 29, 2022), https://www.aarp.org/money/taxes/info-2020/states-that-dont-tax-retirement-distributions.html (thirty-eight states tax retirement distributions in some form). When retirement income is insufficient, states often step in to protect residents with social safety net programs. *See* N.Y. State Assemb., Comm. on Aging, *2020 Ann. Rep*. 2 (Dec. 15, 2021), https://nyassembly.gov/comm/?id=1&sec=story&story=100691 ($143 million for services for elderly residents); State of California, *Cal. State Budget: 2021-2022* 85-88 (2021), https://ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf ($233 million for services for elderly residents); D.C., Dep't of Aging & Cmty. Living, *Fiscal Year 2021 Budget* 1 (2020), https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/by_dacl_chapter_2021a.pdf ($53 million for services for elderly residents).

invested through their respective pension programs.[13] And those pension funds have articulated their need for the climate-related information the Proposed Rule will require.[14]

B. Physical and Economic Impacts from Climate Change Are Already Occurring and Will Increase as Climate Change Accelerates.

Fifteen years ago, the U.S. Supreme Court stated that "the harms associated with climate change are serious and well-recognized."[15] Two years later, the Environmental Protection Agency ("EPA") determined that greenhouse gases endanger public health and welfare by significantly contributing to global warming.[16] Since that time, the scientific evidence has become only more concrete that climate change is already occurring and will accelerate unless GHG emissions are dramatically reduced.

The 2022 report from the United Nations' Intergovernmental Panel on Climate Change ("IPCC") was blunt: "Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature

[13] *See* Ore. Inv. Council, *Ore. Pub. Emp. Ret. Fund Monthly Rep.* (Apr. 2022), https://www.oregon.gov/treasury/invested-for-oregon/Documents/Invested-for-OR-Performance-and-Holdings/2022/OPERF-04302022.pdf; N.Y. State & Local Ret. Sys., *2020 Comprehensive Ann. Fin. Rep. for Fiscal Year Ended Mar. 31, 2021* 90 (Sept. 30, 2021), https://www.osc.state.ny.us/files/retirement/resources/pdf/comprehensive-annual-financial-report-2021.pdf; Mass. Pension Rsrv. Inv. Trust Fund, *Ann. Comprehensive Fin. Rep. for Fiscal Year 2021* 4 (Dec. 2021), https://www.mapension.com/wp-content/uploads/2021/12/ACFR_Fiscal_Year_2021.pdf; Cal. Pub. Emp. Ret. Sys., *PERF Monthly Update*, https://www.calpers.ca.gov/docs/perf-monthly-update.pdf (Apr. 30, 2022); Cal. State Tchr. Ret. Sys., *Inv. Portfolio*, https://www.calstrs.com/investment-portfolio#:~:text=Investment%20Portfolio%20%20%20%20Asset%20%20,%20%201.41%25%20%206%20more%20rows%20 (Apr. 30, 2022).

[14] *See, e.g.*, Letter from Marcie Frost, CEO, Cal. Pub. Empl. Ret. Sys. to Vanessa Countryman, Secretary, SEC (June 12, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8916192-245002.pdf ("CalPERS Letter"); Letter from Scott Stringer, N.Y.C. Comptroller to Vanessa Countryman, Secretary, SEC (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8916910-245044.pdf ("N.Y.C. Comptroller Letter"); Letter from Thomas DiNapoli, N.Y. State Comptroller to Vanessa Countryman, Secretary, SEC (June 8, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8895795-241275.pdf ("N.Y. State Comptroller Letter"); Letter from Tobias Read, Ore. State Treasurer to Vanessa Countryman, Secretary, SEC (June 3, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8882891-240188.pdf ("Ore. State Treasurer Letter").

[15] *Mass. v. EPA*, 549 U.S. 497, 521 (2007).

[16] 74 Fed. Reg. 66,496 (Dec. 15, 2009). EPA's determination was upheld by the D.C. Circuit, and the Supreme Court denied petitions for review of that decision in 2012. *Coal'n for Responsible Reg. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), cert. denied in relevant part, 571 U.S. 951 (2013).

and people, beyond natural climate variability."[17] The IPCC's assessment is supported by data showing that the number and intensity of extreme weather events has increased over the last several decades. According to the National Oceanic and Atmospheric Administration's ("NOAA") calculations, in 2021, there were twenty extreme weather disasters that had economic costs of $1 billion or more, a significant increase from an average of 3.1 events per year in the 1980s.[18] The average cost per year from these climate disasters has significantly increased, even when adjusted for inflation: the average cost per year in the 1980s was $19.5 billion; the average cost per year in the 2010s was $89.2 billion; and the cost in 2021 was $148 billion.[19]

The economic impacts from the changing climate go beyond the primarily physical economic costs that NOAA calculates.[20] Wildfires, for example, often result not only in massive costs from physical destruction, but also in considerable healthcare costs from the impact of wildfire smoke on respiratory and cardiovascular health. In 2017, the EPA estimated that for wildfires between 2008 and 2012, the short-term exposure healthcare costs were $63 billion and the long-term exposure healthcare costs were $450 billion (both in 2016 dollars).[21] Those numbers have likely grown in the ensuing decade as the number and size of wildfires has increased.[22] Chronic weather events, like drought and increased heat, similarly have impacts that reverberate through the U.S. economy, including from higher healthcare costs, reduced labor

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[17] IPCC, *Clim. Change 2022: Impacts, Adapt. & Vulner'y Summ. for Pol'ymakers* 11 (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf ("IPCC 2022 Clim. Change Impacts Report").

[18] NOAA, *Billion-Dollar Weather & Clim. Disasters*, Nat'l Ctrs. for Env't Info. (2021), https://www.ncdc.noaa.gov/billions/summary-stats. NOAA defines "weather and climate disasters" as drought, flooding, freeze, severe storm, tropical cyclone, wildfire, and winter storm.

[19] *Id.*; *see also* Jessica Whitt & Scott Gordon, Barclays, *Gloomy Forecast: The Econ. Costs of Extreme Weather* (May 4, 2022), https://www.cib.barclays/our-insights/extreme-weather/The-economic-costs-of-extreme-weather.html ("While extreme events have increased more than five times over the same number of decades, our Research analysts note the cost of extreme events has increased nearly eight times globally, inflation-adjusted, since the 1970s.").

[20] NOAA's calculations include "physical damage to residential, commercial, and municipal buildings; material assets (content) within buildings; time element losses such as business interruption or loss of living quarters; damage to vehicles and boats; public assets including roads, bridges, levees; electrical infrastructure and offshore energy platforms; agricultural assets including crops, livestock, and commercial timber; and wildfire suppression costs, among others." NOAA, *Billion-Dollar Weather & Clim. Disasters: Overview*, https://www.ncei.noaa.gov/access/monitoring/billions/ (last visited May 23, 2022). They do not include "natural capital or environmental degradation; mental or physical healthcare related costs, the value of a statistical life (VSL); or supply chain, contingent business interruption costs." *Id.*

[21] EPA, *Rsch. Shows Health Impacts & Econ. Costs of Wildland Fires* (Sept. 28, 2017), https://www.epa.gov/sciencematters/research-shows-health-impacts-and-economic-costs-wildland-fires.

[22] Nat'l Interagency Fire Ctr., *Wildfires & Acres*, https://www.nifc.gov/fire-information/statistics/wildfires (last visited May 23, 2022).

productivity, and crop failures.[23] In this context, the physical impacts of climate change have a range of economic consequences for registered companies, from destruction and damage at their facilities, to increased insurance or self-insurance costs, to added energy expenses, to diminishment of worker health, safety, and productivity, to adverse macroeconomic conditions that threaten market demand and stability.[24] In short, climate change is here, and so are its economic impacts.

The physical and economic impacts of climate change will worsen in the coming years, even if societies take further, dramatic actions to reduce GHG emissions. The IPCC's 2022 report made clear: "Global warming, reaching 1.5°C in the near-term, would cause unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans (very high confidence)."[25] Capping global warming at 1.5°C will require momentous changes to reduce GHG emissions, and every degree over 1.5°C will result in far more destructive acute and chronic weather events.[26] In light of the IPCC's projections about the impacts of climate change on human health, municipal infrastructure, and climate-related displacement, the economic impacts from future climate change are expected to be staggering.[27] Investors need information about whether and how registered companies are managing these enormous risks.

C. As Governments at All Levels Address Climate Change, New Regulations and Policies, as well as Related Technological and Market Transformations, Present Risks for Registered Companies.

Climate change also poses transition risks, which arise from policy, technology, market, and reputational changes as part of the move toward a low-carbon economy as well as legislation and regulation to mitigate the effects of climate change.[28] These changes present substantial risks for registered companies as their operations may face new costs and economic impacts from GHG emissions reduction requirements, clean energy mandates, and related market shifts.

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[23] Atl. Council, *Extreme Heat: The Econ. & Soc. Conseq. for the U.S.* 2 (Aug. 2021), https://www.atlanticcouncil.org/wp-content/uploads/2021/08/Extreme-Heat-Report-2021.pdf ("Extreme heat-related labor productivity losses already affect all regions and sectors of the US economy."); EPA, *Clim. Change Indicators: Heat Waves*, https://www.epa.gov/climate-indicators/climate-change-indicators-heat-waves (last visited May 23, 2022); Dale Manning, et al., *An Analysis of the Impact of Drought on Agric., Local Econ., Pub. Health, & Crime Across the W. U.S.* 2 (Sept. 2021), https://www.drought.gov/sites/default/files/2021-09/Analysis-Drought-Impacts-Western-US-September2021.pdf ("Prolonged drought has a negative and statistically significant impact on corn, hay, sorghum and wheat production.").

[24] *See generally* CFTC Report at 25-39; Task Force on Clim.-Related Fin. Discl. ("TCFD"), *Final Rep.: Recomms. of the Task Force on Clim.-Related Fin. Discl.* 10 (2017) ("TCFD Recommendations"), https://tinyurl.com/5m9ncwa2.

[25] IPCC 2022 Clim. Change Impacts Report at 17.

[26] *Id.* at 16.

[27] *Id.* at 17.

[28] *See* TCFD Recommendations at 5-6.

Transition risks from policy changes at all levels, from the international to the municipal, are already occurring and are likely to continue.

1. State and Municipal Policy

States are dramatically changing the regulatory landscape through legislation and regulation that, among other things, require significant reductions in GHG emissions; create incentives for low- and zero-emission industries, products, and services; and mandate that the permitting of major facilities take into account physical risks from climate change.

Over the past few years, a growing number of states have passed legislation requiring economy-wide GHG emissions reductions between 80 to 100 percent (thereby virtually eliminating such emissions) by 2045 to 2050.[29] Over half of U.S. states have already released climate action plans, detailing high-level approaches to meeting GHG and clean energy targets, as well as laying out strategies to increase clean energy, energy efficiency, and climate resilience.[30] To meet these targets, states are implementing—and will continue to implement—new suites of regulations to achieve target reductions. These proposed regulations include, for example, sector-specific GHG emissions reduction requirements.[31] Similarly, California, as well

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[29] *See* Colo. Clim. Action Plan to Reduce Pollution, H.B. 19-1261 (2019), http://leg.colorado.gov/sites/default/files/2019a_1261_signed.pdf (requiring 50% reduction in statewide GHG emissions by 2030, 90% reduction in statewide GHG emissions by 2050); Act Concerning Conn. Global Warming Solutions, 2008 Conn. Acts 98 (Reg. Sess.), https://www.cga.ct.gov/2008/ACT/PA/2008PA-00098-R00HB-05600-PA.htm (80% GHG emissions reduction by 2050); 2021 Mass. Acts. Ch. 8 §§ 8–10, https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter8 (net zero economy-wide GHG emissions by 2050); Clim. Solutions Now Act of 2022, 2022 Md. Laws Ch. 38, https://mgaleg.maryland.gov/2022RS/Chapters_noln/CH_38_sb0528e.pdf (net-zero GHG emissions by 2045); New Jersey Global Warming Response Act, N.J. Stat. Ann. § 26:2C-37 *et seq.* (West 2007), https://www.nj.gov/dep/aqes/docs/gw-responseact-07.pdf (reduce GHG emissions by 80% by 2050); N.Y. Env't. Conserv. Law § 75-0107 (McKinney 2020), https://www.nysenate.gov/legislation/laws/ENV/75-0107 (reduce GHG emissions by 85% from 1990 levels by 2050); 42 R.I. Gen. Laws § 42-6.2-9 (West 2021), webserver.rilin.state.ri.us/Statutes/TITLE42/42-6.2/42-6.2-9.htm (achieve net-zero emissions by 2050); Wash. Rev. Code § 70A.45.020 (2020), https://apps.leg.wa.gov/rcw/default.aspx?cite=70A.45.020#:~:text=RCW%2070A.45.020%20Greenhouse%20gas%20emissions%20reductions%20%E2%80%94%20Reporting,achieve%20the%20following%20emission%20reductions%20for%20Washington%20state%3A (reduce overall GHG emissions in the state by 95% from 1990 levels by 2050).

[30] Ctr. For Clim. & Energy Solutions, *State Clim. Policy Maps* (May 5, 2022), https://www.c2es.org/content/state-climate-policy/; *see also, e.g.*, Mont. Clim. Solutions Council, *Mont. Clim. Solutions Plan* (Aug. 2020), https://deq.mt.gov/files/DEQAdmin/Climate/2020-09-09_MontanaClimateSolutions_Final.pdf; Ore. Exec. Order No. 20-04, *Directing State Agencies to Take Actions to Reduce & Regulate GHG Emissions ("Ore. Clim. Action Plan")* (2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf.

[31] *See, e.g.*, Mass. Exec. Off. of Energy & Env't Affairs, *Mass. Clean Energy & Clim. Plan for 2025 & 2030* (Dec. 30, 2020), https://www.mass.gov/doc/interim-clean-energy-and-climate-plan-for-2030-december-30-2020/download (proposing regulatory and other strategies for each major sector of

as seventeen other states, have adopted stringent emissions caps for light-duty vehicles,[32] and California, Oregon, and Washington have adopted standards that require fuel producers to reduce the carbon intensity of their fuels.[33]

Many states are working to rapidly decarbonize the electric sector. New York and Oregon have passed laws requiring that their states' entire electricity sector be free of carbon in less than two decades, by 2040.[34] New Jersey Governor Murphy issued an executive order in 2018 directing the completion of a 2019 Energy Master Plan that provides a comprehensive blueprint to convert New Jersey's energy production profile to 100% clean energy sources by 2050.[35] Thirty-eight states and the District of Columbia have adopted renewable portfolio standards, which are "designed to increase the use of renewable energy sources for electricity generation."[36]

Multiple states now operate in carbon cap and trade markets, which further impact markets and make climate disclosures critical. The states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia participate in the Regional Greenhouse Gas Initiative ("RGGI") to "cap and reduce CO_2 emissions from the power sector."[37] California operates an economy-wide cap and trade program for GHG emissions.[38] Washington's new Climate Commitment Act

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economy to move toward 2050 net-zero GHG emissions target); Cal. Exec. Order N-79-20 (Sept. 2020), https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf (setting goal of zero sales of combustion engine vehicles in California by 2035).

[32] Cal. Air Res. Bd., *Advanced Clean Cars Prog.* (last visited June 3, 2022), https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program; Cal. Air. Res. Bd., *States That Have Adopted Cal.'s Veh. Stds. Under Section 177 of the Fed. Clean Air Act* (May 13, 2022), https://ww2.arb.ca.gov/sites/default/files/2022-05/%C2%A7177_states_05132022_NADA_sales_r2_ac.pdf

[33] Cal. Air Res. Bd., *Low Carbon Fuel Std.* (last visited June 3, 2022), https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard/about; Wash. Dep't of Ecology, *Clean Fuel Std.*, (last visited June 3, 2022), https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard; Ore. Dep't of Env'l Quality, *Clean Fuels Program Overview* (last visited June 3, 2022), https://www.oregon.gov/deq/ghgp/cfp/Pages/CFP-Overview.aspx.

[34] Press Release, State of Ore., *Gov. Kate Brown Signs Clean Energy Bills, Sets Goal for 100% Clean Energy by 2040* (July 27, 2021), https://www.oregon.gov/newsroom/pages/newsdetail.aspx?newsid=64162.

[35] N.J. Exec. Order No. 28 (May 23, 2018) https://www.nj.gov/infobank/eo/056murphy/pdf/EO-28.pdf.

[36] U.S. Energy Info. Admin., *Renewable Energy Explained: Portfolio Stds* (last visited June 3, 2022), https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php.

[37] *See* Reg'l GHG Initiative, https://www.rggi.org/ (last visited May 24, 2022).

[38] Cal. Air Res. Bd., *Cap-and-Trade Program* (2022), https://ww2.arb.ca.gov/our-work/programs/cap-and-trade-program/about.

establishes a "cap-and-invest" program that sets a cap on all entities that emit at least 25,000 metric tons of greenhouse gases per year, and then distributes a declining number of emissions allowances to those entities each year.[39] Revenue generated by this program will go to the state's climate mitigation and adaptation efforts, including electrification of public transit.[40]

Heavily emitting companies face increasing competitive disadvantages as state government incentives and investments move to climate-friendly businesses. For example, Connecticut (like many other states) offers rebates for the purchase or lease of zero-emitting vehicles[41] and offers rebates and favorable financing for home energy upgrades.[42] Similarly, Delaware offers tax incentives for businesses and industry to transition away from high-emitting refrigerants, such as hydrofluorocarbons.[43]

In addition to laws requiring GHG emissions reduction, states have begun to mandate that permitting entities consider the physical risks of climate change when deciding whether to issue (or renew) facility permits. For example, New York requires consideration of threats from sea-level rise, flooding,[44] and severe weather to facilities in its environmental permitting requirements.[45] Connecticut requires flood and disaster analysis in permitting some kinds of

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[39] *See* Wash. Rev. Code § 70A.65 *et seq.* (2021); *see also* Wash. Dep't Ecol., *Clim. Commitment Act* (last visited May 24, 2022), https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Climate-Commitment-Act; David Roberts, *Wash. State Now Has the Nation's Most Ambitious Clim. Pol'y*, Canary Media (May 6, 2021), https://www.canarymedia.com/articles/policy-regulation/washington-state-now-has-the-nations-most-ambitious-climate-policy ("Roberts, Wash. State Now Has the Nation's Most Ambitious Clim. Pol'y").

[40] Roberts, Wash. State Now Has the Nation's Most Ambitious Clim. Pol'y.

[41] Conn. Dep't of Energy & Env't Prot., *Elec. Vehicle & Charging Equip. Incentives* (Feb. 16, 2022), https://portal.ct.gov/DEEP/Air/Mobile-Sources/EVConnecticut/EVConnecticut---Incentives#:~:text=The%20Connecticut%20Hydrogen%20and%20Electric,cell%20electric%20vehicle%20(EV).

[42] Energize Conn., *List of Fin. Options* (last visited May 24, 2022), https://www.energizect.com/your-home/solutions-list/home-energy-solutions-core-services.

[43] Press Release, Del. Dep't Nat. Res. & Env't Control, *DNREC to Launch Refrigerant Incentive Program* (Feb. 24, 2020), https://news.delaware.gov/2020/02/24/dnrec-to-launch-refrigerant-incentive-program/.

[44] 6 N.Y. Comp. R. & Regs. tit 6, § 502.2 (2021).

[45] Section 17-b of the recently-passed Climate Leadership and Community Protection Act ("CLCPA") provides that "major permits for the regulatory programs of . . . the Environmental Conservation Law shall require applicants to demonstrate that future physical climate risk has been considered. In reviewing such information, [DEC] may require the applicant to mitigate significant risks to public infrastructure and/or services, private property not owned by the applicant, adverse impacts on disadvantaged communities, and/or natural resources in the vicinity of the project." S. 6599 (New York 2019).

hazardous waste facilities.[46] New Jersey is developing regulations pursuant to an executive order that will require certain major facilities to prepare climate resiliency plans that evaluate mitigation measures to prevent accidents resulting from climate change.[47] Connecticut, New Hampshire, and Oregon have state-level hazard mitigation elements in state land-use planning legislation.[48] A majority of states (32 in total) have either optional or mandatory hazard-mitigation components in state or local land-use planning legislation,[49] and 14 states require natural hazard planning to be integrated into local comprehensive plans (include collecting data on or mapping disaster-prone areas).[50]

Like states, municipalities throughout the country are adopting ambitious GHG emissions reduction policies, laws, and regulations. New York City, for example, has committed to citywide GHG emissions reduction of 40 percent by 2030 and 80 percent by 2050.[51] In pursuit of that goal, the city requires most buildings over 25,000 square feet to meet energy efficiency

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[46] Dep't Emergency Servs. & Pub. Prot., *2019 Conn. Nat. Hazards Mitigation Plan Update*, Dep't Energy & Env't Prot. 429 (Jan. 2019), https://portal.ct.gov/-/media/DEMHS/_docs/Plans-and-Publications/EHSP0023--NaturalHazardMitPlan.pdf; *see Hazardous Waste Facility*, CT.GOV (June 2017), https://portal.ct.gov/DEMHS/Emergency-Management/Resources-For-Officials/Hazard-Mitigation.

[47] *See* N.J. Exec. Order No. 100 (Jan. 27, 2020), ¶ 1.c, https://nj.gov/infobank/eo/056murphy/pdf/EO-100.pdf (directing the New Jersey Department of Environmental Protection to adopt regulations protecting against climate threats, including by "integrat[ing] climate change considerations, including sea level rise, into its regulatory and permitting programs.").

[48] Am. Plan. Ass'n, *Survey of State Land Use & Nat. Hazards Laws* 7 (2017), https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Survey-of-State-Land-Use-and-Natural-Hazards-Planning-Laws.pdf.

[49] *Id.*

[50] *See*, *e.g.*, Ore. Rev. Stat. § 197.230(c)(H), *Id.* §§ 455.447(1)(a)-(e), 455.447(4) & Ore. Admin. R. 660-015-0000(7) (requiring natural hazard analysis considering floods (both coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires and recommending local governments identify and plan for other natural hazards when siting facilities storing hazardous materials); Cal. Gov. Code § 65302(g)(1) (explicitly contemplating risks from climate change in land use planning); Haw. Rev. Stat. § 226-13(b)(5) (same); Wash. Rev. Code Ann. §§ 36.70.330, 36.70A.070(1), (5)(c)(iv), 365-196-445 (recommending counties and cities "give strong consideration" to including several additional elements, including "natural hazard reduction," in their plans); Utah Code Ann. § 79-3-202(1); Idaho Code Ann. § 67-6508 (g); Ariz. Rev. Stat. Ann. § 9-461.05 (E)(8); Vt. Stat. Ann., tit. 24, § 4382(a)(12)(A) (considering risks stemming from flooding); Md. Code Ann., Land Use §§ 3-102(a)(1)(vi) a, § 3-102(b)(iii); Va. Code Ann. §§ 15.2-2223.2, 15.2-2223.3, 15.2-2223.2 (requiring local consideration of sea level rise and flooding in coastal areas); Conn. Gen. Stat. Ann. § 8-23(d) (same); N.C. Gen. Stat. Ann. § 113A-110 (same); S.C. Code Ann. § 163.3178 (same).

[51] N.Y.C., N.Y., Local Law 97 (Apr. 2019), https://www1.nyc.gov/assets/buildings/local_laws/ll97of2019.pdf.

and GHG emissions limits by 2024, with stricter limits imposed in 2030.[52] In Massachusetts, the Green Communities Act authorizes towns and cities to be designated "Green Communities" if they commit to various municipal energy efficiency and emissions reduction targets.[53] The overwhelming majority of municipalities in the Commonwealth have opted into this program, with some now clamoring for a net-zero building code option.[54] And multiple jurisdictions, including Washington State, New York City, and the City of Berkeley, have banned natural gas hookups in new construction in an effort to transition away from use of those fuels.[55]

As these examples reflect, states and municipalities have already taken concrete regulatory and legislative steps to address climate change, and those steps are having and will continue to have impacts on registered companies.

2. Federal Policy

Within the United States, the federal government is also acting to reduce emissions in ways that will impact registered companies. In May 2021, President Biden issued an executive order acknowledging "the global shift away from carbon-intensive energy sources and industrial processes" and directing the development of a "comprehensive, Government-wide" climate risk financial strategy for a net-zero economy by 2050.[56] This executive order reinforces the low-carbon future signaled by the United States having rejoined the Paris Agreement[57] and the

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[52] *See* N.Y.C. Sustainable Blds., *Local Law 97* (last visited May 24, 2022), https://www1.nyc.gov/site/sustainablebuildings/ll97/local-law-97.page.

[53] *See* Green Cmties. Div., Mass. Dep't of Energy Res., *Becoming a Designated Green Cmty.*, Mass.gov, https://www.mass.gov/guides/becoming-a-designated-green-community, (last visited May 24, 2022).

[54] *See* Energy Efficiency Div., Mass. Dep't of Energy Res., *Stretch Energy Code Dev. 2022*, Mass.gov, https://www.mass.gov/info-details/stretch-energy-code-development-2022 (last visited May 24, 2022).

[55] David Iaconangelo, *Bldg. Codes: The New Natural Gas Battlefront?*, Energy Wire (May 3, 2022), https://www.eenews.net/articles/building-codes-the-new-natural-gas-battlefront/; Emma Newburger, *N.Y.C. Is Banning Natural Gas Hookups for New Bldgs. to Fight Clim. Change*, CNBC (Dec. 15, 2021), https://www.cnbc.com/2021/12/15/new-york-city-is-banning-natural-gas-hookups-for-new-buildings.html; City of Berkeley, *Green Bldg. Reqts.*, https://berkeleyca.gov/construction-development/permits-design-parameters/design-parameters/green-building-requirements (last visited May 24, 2022).

[56] Exec. Order No. 14,030, 86 Fed. Reg. 27,967 (May 25, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/.

[57] Antony J. Blinken, *The U.S. Officially Rejoins the Paris Agmt.*, U.S. Dep't of State (Feb. 19, 2021), https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/.

International Energy Agency's dramatic net-zero transition framework,[58] among other developments.

The United States has introduced several new regulations over the last year to address climate change and as part of its obligations under the Paris Climate Agreement,[59] including restrictions on hydrofluorocarbon and methane emissions; stricter federal standards on GHG emissions for light-duty vehicles starting with model year 2023; and explicitly permitting ERISA plan administrators to consider environmental, social, and governance ("ESG") factors in selecting retirement plan funds.[60] The federal government has also "significantly reformed" its oil and gas leasing program, including by reducing leasable acreage and increasing the royalty rate for new competitive leases.[61] In addition, Congress passed an infrastructure bill last year that includes billions in funds to improve the climate resiliency of American infrastructure.[62]

3. International Policy

In response to climate change, the international community has adopted policies that, if successful, will result in "nothing less than a complete transformation of how we produce, transport, and consume energy."[63] Legislation and regulation advancing those goals are likely to increase costs for some companies, reduce demand for high-emission products and services, and

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[58] *See generally* Int'l Energy Agency, *Net Zero by 2050: A Roadmap for the Glob. Energy Sector* 13 (2021), https://www.iea.org/reports/net-zero-by-2050 ("IEA Roadmap Report").

[59] The U.S. recently submitted its "Nationally Determined Contribution," which outlines how the U.S. will reduce its GHG emissions in line with the goals of the Paris Climate Agreement. *See* U.S., *The U.S. Nat'ly Determined Contrib*. 1, 6 (2021), https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%2021%202021%20Final.pdf.

[60] *See* 86 Fed. Reg. 55,116 (Oct. 5, 2021) (final rule mandating phasedown of hydrofluorocarbon emissions through an allowance-trading program); 86 Fed. Reg. 63,110 (Nov. 15, 2021) (proposed federal standards limiting methane pollution from oil and gas sector sources); 86 Fed. Reg. 74,434 (Feb. 28, 2022) (final rule increasing stringency of limits on greenhouse gas emissions from light-duty vehicles for 2023 and later model years); 86 Fed. Reg. 57,272 (Oct. 14, 2021) (proposed rule allowing ERISA fiduciaries to consider ESG factors in plan selection).

[61] U.S. Dep't of Int., *Int. Dep't Announces Significantly Reformed Onshore Oil & Gas Lease Sales* (April 15, 2022), https://www.doi.gov/pressreleases/interior-department-announces-significantly-reformed-onshore-oil-and-gas-lease-sales.

[62] Coral Davenport & Christopher Flavelle, *Infrastr. Bill Makes First Major U.S. Inv. in Clim. Resilience*, N.Y. Times (Nov. 6, 2021), https://www.nytimes.com/2021/11/06/climate/infrastructure-bill-climate.html; The White House, *Fact Sheet: The Bipartisan Infrastr. Deal* (Nov. 6, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/.

[63] IEA Roadmap Report.

diminish available capital.[64] These regulatory changes—and shifting market expectations around them—are likely to trigger asset re-pricing, write-offs, and impairments, as well as early retirement of existing facilities—all of which impact registered companies and the value of their securities.

Broadly, the warming limits in the 2015 Paris Climate Agreement effectively necessitate global GHG emissions to reach net zero by 2050.[65] The 2021 Glasgow Climate Change Conference resulted in new global agreements on emissions reductions, climate change adaptation, and regulations regarding carbon-emissions credit trading.[66] To meet these targets, national and supranational governments are increasingly legislating, regulating, and investing toward a low- and zero-carbon future.

At the supranational level, the European Union ("EU") is moving aggressively to address climate change. In June 2021, the EU adopted the European Climate Law, which creates a framework for the EU to reach net-zero carbon emissions by 2050.[67] This was followed in July 2021 by an ambitious package of proposed changes to the EU's climate, energy, transport and taxation policies.[68] Among these, the EU adopted a proposal for a Carbon Border Adjustment Mechanism that would impose fees on imports from countries with less aggressive climate-mitigation policies.[69]

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[64] *See* Kenneth Gillingham, *Carbon Calculus*, Int'l Monetary Fund Fin. & Development (Dec. 2019), https://www.imf.org/Publications/fandd/issues/2019/12/the-true-cost-of-reducing-greenhouse-gas-emissions-gillingham#:~:text=The%20short%2Dterm%20cost%20of,various%20ways%20of%20reducing%20emissions; CDP, *Transparency to Transformation: A Chain Reaction, CDP Global Supply Chain Rep. 2020* 4 (Feb. 2019), https://cdn.cdp.net/cdp-production/cms/reports/documents/000/005/554/original/CDP_SC_Report_2020.pdf?1614160765.

[65] U.N. Framework Convention on Clim. Change ("UNFCCC"), *Adoption of the Paris Agmt., U.N. Doc. FCC/CP/2015/L.9/Rev.1* (Dec. 12, 2015), https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement; IEA Roadmap Report.

[66] UNFCCC, *COP26 Reaches Consensus on Key Actions to Address Clim. Change* (Nov. 13, 2021), https://unfccc.int/news/cop26-reaches-consensus-on-key-actions-to-address-climate-change; *The Glasgow Clim. Pact, Annotated*, Wash. Post (Nov. 13, 2021), https://www.washingtonpost.com/climate-environment/interactive/2021/glasgow-climate-pact-full-text-cop26/.

[67] Regul. (EU) 2021/1119, of the Eur. Parl. & of the Council of 30 June 2021 Establishing the Framework for Achieving Clim. Neutrality & Amending Reguls. (EC No 401/2009 and (EU) 2018/1999, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1119&from=EN ("Eur. Clim. Law").

[68] Eur. Comm'n, *Delivering the Eur. Green Deal*, https://ec.europa.eu/clima/eu-action/european-green-deal/delivering-european-green-deal_en (last visited May 24, 2022).

[69] Eur. Clim. Law; Eur. Comm'n, *Carbon Border Adjustment Mechanism*, https://ec.europa.eu/taxation_customs/green-taxation-0/carbon-border-adjustment-mechanism_en (last visited May 24, 2022).

The national governments of the world's largest economies have also set ambitious benchmarks toward decarbonization. The United Kingdom ("UK") passed binding legislation in 2019 that commits to achieving net zero emissions by 2050.[70] In October 2021, the UK released its plan to achieve net zero GHG emissions, which incorporates key principles including "ensur[ing] the biggest polluters pay the most for the transition through fair carbon pricing."[71] Japan also committed in October 2020 to achieving net zero GHG emissions by 2050, which it enshrined into law in May 2021.[72] China—the country with the highest emissions as well as the largest developing economy—aims to achieve carbon neutrality before 2060,[73] including through its first national emissions trading scheme, which it launched in July 2021.[74]

These examples highlight the steps governments at all levels are taking right now to incorporate climate change into regulations, policies, and market transformations affecting all sectors of the economy. Those steps are impacting and will continue to impact registered companies' operations.

D. Investors Consider the Information in the SEC's Proposed Rule Material to Their Investment Decisions.

There is no question that the disclosures mandated by the Proposed Rule are material to investor decisions. Investors, both institutional and individual, are pursuing climate-responsive investing in increasing numbers and are increasingly considering ESG factors like climate risk when making their investment decisions. According to one study, as of 2021, 51% of American retail investors said they have been influenced by ESG factors in making investments (versus

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[70] Clim. Change Act 2008 (2050 Target Amend.) Order 2019, 2019 No. 1056 (UK), https://www.legislation.gov.uk/uksi/2019/1056/contents/made.

[71] Dept. for Bus., Energy & Indus. Strategy, *Net Zero Strategy: Build Back Greener, Presented to U.K. Parliament pursuant to Section 14 of the Clim. Change Act 2008* 16 (Oct. 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf.

[72] Ministry of Econ., Trade & Indus., *Japan's 2050 Carbon Neutral Goal* (Nov. 11, 2020), https://www.meti.go.jp/english/policy/energy_environment/global_warming/roadmap/report/20201111.html; Gov. of Japan, The Long-Term Strategy Under the Paris Agmt. 3-4 (Oct. 2021), https://unfccc.int/sites/default/files/resource/Japan_LTS2021.pdf.

[73] People's Rep. of China, *China's Achievements, New Goals & New Measures for Nat'ly Determined Contributions* 2 (Oct. 28, 2021), https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/China%20First/China%E2%80%99s%20Achievements,%20New%20Goals%20and%20New%20Measures%20for%20Nationally%20Determined%20Contributions.pdf.

[74] Int'l Inst. for Sustainable Dev., *Trading Begins under China's Nat'l ETS* (July 19, 2021), https://sdg.iisd.org/news/trading-begins-under-chinas-national-ets/.

26% in 2003).[75] Retail investor engagement with ESG investing is expected to increase,[76] with one study estimating that half of retail investors will move some of their investments (including pensions) into ESG vehicles this year.[77]

Institutional investors likewise seek out ESG data, such as climate-related risk information, in their decision-making. Morningstar reported in 2020 that to "meet investor demand," it was formally integrating ESG factors into its analysis of stocks, funds, and asset managers, using a matrix that includes climate-related metrics.[78] Fitch Ratings announced a similar ESG rating system in 2019 following engagement with investors.[79] More broadly, institutional investors consider climate change to be a material factor in their investment decisions, with a majority viewing climate as a material risk or opportunity across their total investment portfolio.[80]

Both institutional and individual investors have a significant stake in ensuring they have access to information they deem material to their decision-making. At the end of 2021, Americans held $7.3 trillion in 401(k) plans and $13.2 trillion in IRAs,[81] and pension funds

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[75] GlobeScan, *Retail Invs. Show Strong & Growing Interest in ESG* (Dec. 14, 2021), https://globescan.com/2021/12/14/retail-investors-show-strong-and-growing-interest-in-esg/.

[76] Carolyn Bao, *When It Comes to ESG Inv'g, There's No Going Back*, NASDAQ (Mar. 16, 2022), https://www.nasdaq.com/articles/when-it-comes-to-esg-investing-theres-no-going-back.

[77] FinTech Global, *50% of Retail Invs. to Shift Funds into ESG in 2022* (Mar. 7, 2022), https://member.fintech.global/2022/03/07/50-of-retail-investors-to-shift-funds-into-esg-in-2022/.

[78] Press Release, Morningstar, *Morningstar Formally Integrates ESG into Its Analysis of Stocks, Funds, & Asset Managers* (Nov. 17, 2020), https://newsroom.morningstar.com/newsroom/news-archive/press-release-details/2020/Morningstar-Formally-Integrates-ESG-into-Its-Analysis-of-Stocks-Funds-and-Asset-Managers/default.aspx.

[79] Press Release, Fitch Ratings, *Fitch Ratings Launches ESG Relevance Scores to Show Impact of ESG on Credit* (Jan. 7, 2019), https://www.fitchratings.com/research/corporate-finance/fitch-ratings-launches-esg-relevance-scores-to-show-impact-of-esg-on-credit-07-01-2019.

[80] Geraldine Ang & Hannah Copeland, OECD, *Integrating Clim. Change-Related Factors in Instit. Inv.* 13 (Feb. 2018), https://www.oecd.org/sd-roundtable/papersandpublications/Integrating%20Climate%20Change-related%20Factors%20in%20Institutional%20Investment.pdf ("[T]he majority of [] asset owners (81%) and asset managers (68%) already view climate change as a material risk or opportunity across their entire investment portfolio."); *see also* CalPERS Letter; Letter from Sandra Boss, et al, BlackRock to Vanessa Countryman, Secretary, SEC (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8906794-244146.pdf ("BlackRock Letter").

[81] Ted Godbout, *U.S. Ret. Assets Held Steady in Third Quarter*, Nat'l Ass'n of Plan Advisors (Dec. 29, 2021), https://www.napa-net.org/news-info/daily-news/us-retirement-assets-held-steady-third-quarter#:~:text=Assets%20in%20individual%20retirement%20accounts,the%20second%20quarter%20of%202021.

provided income to 68% of retirees aged 65 or older as of 2021.[82] As we described above,[83] a significant proportion of Americans have investment savings in college savings plans and HSAs as well. Given these stakes, investors are entitled to greater transparency and more reliable and consistent disclosures about information they deem material—and investors consider climate-related information material.

Institutional investors' desire for climate-related information is particularly relevant.[84] Those investors inhabit a powerful position that makes them integral to the market's efficiency—their role means they can "improve price discovery [and] increase allocative efficiency," but only with "access to complete and reliable information."[85] Ensuring institutional investors have access to the reliable, comparable climate-related information they seek not only will help in their investment decisions but, critically, will improve market accuracy and efficiency. Access to meaningful climate-related information is relevant not only to the return of a given company but to the overall risk management strategy of investors and the market as a whole.

E. The Proposed Mandatory Disclosures Provide Key Information About Registered Companies' Consideration, or Lack Thereof, of the Physical and Transition Risks from Climate Change in Their Business Strategies.

We support the Proposed Rule as an effective means of ensuring that investors receive specific, comparable details about registered companies' climate-related risks and impacts. Only 20% of North American companies make any climate-related disclosures, and a bare majority of companies around the world—52%—disclose their climate-related risks and opportunities.[86] With the information the Proposed Rule promises, investors and the market broadly can more readily assess the risks of holdings, price that risk, and make better-informed investment decisions. As such, the Proposed Rule aligns with the SEC's congressionally-mandated goal of protecting investors and ensuring efficient markets.[87]

We believe the disclosure regime that the SEC has proposed strikes a balance between providing investors with specific, reliable information they consider material while not overburdening either investors or companies with unnecessary details. As we explain in more detail below, we support the Proposed Rule's requirements for companies to disclose 1) climate-related financial impacts in their audited financial statements; 2) narrative descriptions of risk management, risk assessment, and material risks; and 3) Scope 1, Scope 2, and Scope 3 GHG

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[82] Fed. Rsrv. Am. Well-Being Rep.

[83] *See*, *supra*, Section I.A.

[84] *See, e.g.*, CalPERS Letter; N.Y.C. Comptroller Letter; N.Y. State Comptroller Letter; Ore. State Treasurer Letter; BlackRock Letter.

[85] Luis A. Aguilar, Comm'r, SEC, *Instit. Invs.: Power & Responsibility* (Apr. 19, 2013), https://www.sec.gov/news/speech/2013-spch041913laahtm#P35_6851.

[86] TCFD, *2021 Status Report* 30 (Oct. 2021), https://www.fsb.org/wp-content/uploads/P141021-1.pdf.

[87] *See, e.g.*, 15 U.S.C. § 78b.

emissions. We also support the proposal to require these disclosures from all industries and from companies of all sizes.

We support the proposal to require financial statement disclosures of climate-related financial impacts and expenditures above a one-percent aggregate threshold because it will provide investors with information about whether and how climate change has meaningfully affected registered companies.[88] That the proposed disclosures will appear in registered companies' audited financial statements will provide investors with additional confidence in that information.

We consider the Proposed Rule's narrative disclosures likewise to be structured to provide investors with the necessary details to assess the climate-related risk profile of investing in a particular company. The governance and risk management disclosures inform investors whether and how registered companies are evaluating climate-related risks, which is essential context for investors to assess the reliability of registered companies' other climate-related disclosures.[89] The strategy, business model, and outlook disclosures are appropriately principles-based, allowing registered companies to determine whether climate-related risks are "reasonably likely to have a material impact," and if so, to provide details about those material impacts.[90] We also consider it appropriate for the SEC to require registered companies to disclose details about transition plans they have adopted and internal metrics they use for their own climate-related risk assessments, such as internal carbon prices and scenario analyses.[91] These details contextualize companies' determinations about what climate-related information is material and help investors assess the reliability of those determinations.

We agree with the SEC's determination that registered companies' Scope 1 and Scope 2 GHG emissions represent material information that investors need to assess registered companies' climate-related transition risks.[92] As discussed above, transition risks will arise from regulation of GHG emissions from company operations, as well as regulation of registered companies' upstream suppliers and downstream customers. We also agree with the SEC's decision to require large accelerated filers to have an independent expert attest to the calculation of their Scope 1 and Scope 2 GHG emissions; that attestation will provide investors with additional certainty about the risks these large registered companies face.[93]

We support the SEC's decision to require large accelerated filers to disclose their Scope 3 GHG emissions if those emissions are material or if those emissions are part of a transition plan. Many registrants' Scope 3 GHG emissions are by far the most significant portion of the GHG

[88] 87 Fed. Reg. at 21,363.

[89] *Id.* at 21,359.

[90] *Id.* at 21,353.

[91] *Id.* at 21,355-56, 21,361.

[92] *Id.* at 21,373-77.

[93] *Id.* at 21,392.

emissions associated with their business.[94] The disclosure of Scope 3 GHG emissions will help inform investment decisions by permitting meaningful comparisons and benchmarking among companies, especially those in the same industry. Scope 3 GHG emissions disclosures also will help investors understand registered companies' progress in achieving their climate risk management strategies and emission reductions plans and targets, including any net-zero goal that encompasses Scope 3 emissions. And Scope 3 GHG emissions disclosures will help avoid gamesmanship and greenwashing by registrants that artificially limit their Scope 1 and 2 GHG emissions by transferring higher-emission activities and their climate-related risks to third parties.

Scope 3 GHG emissions already present substantial transition risks based on national, regional, and state limitations on GHG emissions. The RGGI, for example, has had an adverse effect on coal mining companies, which have substantial Scope 3 GHG emissions based on the ordinary use of their products by power generation facilities and other industrial customers. The RGGI's region-wide limits on power plant CO_2 emissions, along with other market and regulatory forces, is reducing power plant demand for coal throughout the region.[95] Similarly, the New York Legislature is considering a bill that would require apparel and footwear companies to determine the GHG emissions of at least 50% of their supply chain and develop plans to reduce those emissions in line with the 2015 Paris Climate Accords.[96] If passed, this legislation will require numerous companies to reduce their Scope 3 GHG emissions, likely resulting in financial and operational impacts. The Proposed Rule's Scope 3 GHG emissions disclosure requirements are key to ensuring that investors have information about these types of material risks and impacts.[97]

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[94] *See, e.g.*, Apple, *Env'l Progress Report* 13 (2022), https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2022.pdf (Scope 1 and 2 GHG emissions account for 0.02% of their emissions from operations; Scope 3 GHG emissions account for 99.98% of their emissions from operations); ExxonMobil, *Scope 3 Emissions* (2022), https://corporate.exxonmobil.com/-/media/Global/Files/Advancing-Climate-Solutions-Progress-Report/2022/Scope-3-emissions.pdf#:~:text=Scope%203%20emissions%20primarily%20refer%20to%20the%20indirect,IPIECA%E2%80%99s%20Category%2011%20were%20540%20million%20metric%20tons (Scope 3 GHG emissions were 540 million metric tons); ExxonMobil, *Mitigating Emissions in Co. Operations* (2021), https://corporate.exxonmobil.com/Sustainability/Energy-and-Carbon-Summary/Strategy/Mitigating-emissions-in-our-operations (Scope 1 and Scope 2 GHG emissions were 112 million tons).

[95] *See, e.g.*, Jared Anderson, *U.S. Coal-Fired Power Output Decline Continues with last PSEG Coal Plant Ret.*, S&P Global (June 11, 2021), https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/electric-power/060121-us-coal-fired-power-output-decline-continues-with-last-pseg-coal-plant-retirement; Jonathan Randles, *Coal Bankrs. Pile Up as Utils. Embrace Gas, Renewables*, Wall St. J. (Oct. 13, 2019), https://www.wsj.com/articles/coal-bankruptcies-pile-up-as-utilities-embrace-gas-renewables-11570971602.

[96] Vanessa Friedman, *N.Y. Could Make History with a Fashion Sustainability Act*, N.Y. Times (Jan. 7, 2022), https://www.nytimes.com/2022/01/07/style/new-york-fashion-sustainability-act.html.

[97] The Proposed Rule's Scope 3 GHG emissions requirements do not present a meaningful "double-counting" concern. Scope 3 GHG emissions disclosures are not intended to capture or

We also endorse the SEC's overall approach of requiring climate change-related disclosures from all industries. As noted in the June 2021 Attorney General Letter and reiterated here, physical and transition risks from climate change are already impacting and will continue to impact all industries in various ways. Although the climate change challenges confronting certain industries, such as the oil and gas industry and the utility sector, are obvious,[98] many other industries also are facing significant transition and physical risks from climate change. The airline industry, for example, must address how to transition away from a carbon-intensive technology, and adjust to the impact of extreme weather events on scheduling and routes.[99] The tourism and hospitality industries similarly are evaluating how chronic and acute severe weather are already affecting leisure and business travel and how they will account for larger and more numerous disruptions in the future.[100] And the technology sector, often considered an industry at low risk from climate change,[101] has considerable exposure to climate change risks, such as from the electricity necessary to power data centers and GHG emissions in their upstream and downstream supply chains.[102]

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characterize all economy-wide emissions or to provide aggregated numbers for a regulatory purpose. Although there are certain situations where double-counting could be a concern, such as the financed emissions of investment firms, the Proposed Rule requires that any overlaps within a registered company's reported Scope 3 GHG emissions be identified and explained, so that investors and other registrants can incorporate that information into their assessments. 87 Fed. Reg. at 21,388. Registered companies can also look to the GHG Protocol and other systems for determining Scope 3 GHG emissions as a resource for methodologies for developing accurate emission estimates and avoiding double-counting issues. *See, e.g.*, Greenhouse Gas Protocol, *Corp. Value Chain (Scope 3) Acct. & Rep. Standard, Suppl. to the GHG Protocol Corp. Acct. & Rep. Standard* (Sept. 2011), https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-AccountingReporing-Standard_041613_2.pdf; P'ship for Carbon Acct. Fins., *Global GHG Acct. & Rep. Standard for the Fin. Indus.* (2020), https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf; *see also* Press Release, GHG Protocol, *New Std. Dev. to Help Fin. Indus. Measure & Rep. Emissions* (Mar. 18, 2021), https://ghgprotocol.org/blog/new-standard-developed-help-financial-industrymeasure-and-report-emissions.

[98] *See* TCFD Recommendations at 16 (listing sectors TCFD identified as highest risk for financial impact from climate change).

[99] Niraj Chokshi & Clifford Krauss, *A Big Clim. Problem with Few Easy Solutions: Planes*, N.Y. Times (June 2, 2021), https://www.nytimes.com/2021/05/28/business/energy-environment/airlines-climate-planes-emissions.html; Shibao Pek & Ben Caldecott, Univ. of Oxford Sustainable Fin. Prog., *Physical Clim.-Related Risks Facing Airports: An Assessment of the World's Largest 100 Airports* 4-6 (Sept. 2020), https://www.smithschool.ox.ac.uk/sites/default/files/2022-04/Physical-climate-risks-facing-airports-briefing-paper-September-2020.pdf.

[100] World Travel & Tourism Council, *A Net Zero Roadmap for Travel & Tourism: Proposing a New Target Framework for the Travel & Tourism Sector* 8 (Nov. 2021), https://wttc.org/Portals/0/Documents/Reports/2021/WTTC_Net_Zero_Roadmap.pdf.

[101] *See* TCFD Recommendations at 16.

[102] *See, e.g.,* Off. of Energy Efficiency & Renewable Energy, *Data Centers & Servers*, https://www.energy.gov/eere/buildings/data-centers-and-servers (last visited June 6, 2022); Amazon,

We also support the SEC's proposal to require the mandatory disclosures for registered companies of all sizes. Climate change-related risks pose unique challenges to small companies.[103] Small companies may have fewer resources to absorb the impact of physical impacts from climate change or to research and develop mitigation methods or lower-carbon-intensive solutions.[104] Conversely, smaller companies may have smaller carbon footprints or may be adopting innovative technologies to address climate-related risks and therefore be at lower transition risk—information that is of substantial value to investors in comparing firms.[105] Requiring registered companies of all sizes to disclose whether and how they are addressing climate change-related risks is critical to enabling investors to understand their investment risks.

F. The Proposed Disclosures Will Help Prevent Greenwashing.

Given the significant interest in sustainable investing, the Proposed Rule promises not only to provide all investors with material information about climate-related risks but also to counter greenwashing by registered companies.

The SEC's action against Volkswagen, which alleged that Volkswagen misleadingly omitted to disclose in statements to its investors that it had equipped its diesel engine cars with a "defeat device" that lowered their reported emissions, illustrates that risk.[106] According to the SEC's complaint, the alleged securities fraud started in earnest after Volkswagen's then-CEO "announced a bold and aggressive plan to make VW the biggest, most profitable, and most environmentally-friendly car company in the world by 2018."[107] As part of that campaign, Volkswagen raised money through bond sales in which the company allegedly "touted its

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Carbon Footprint, https://sustainability.aboutamazon.com/environment/sustainable-operations/carbon-footprint (last visited May 24, 2022) (absolute carbon emissions grew 19%, emissions sources include transportation, electricity, packaging, devices sold); Don Anair, et al., Union of Concerned Scientists, *Ride-Hailing Climate Risks: Steering a Growing Indus. Toward a Clean Transp. Future* 7 (Feb. 25, 2020), https://www.ucsusa.org/sites/default/files/2020-02/Ride-Hailing%27s-Climate-Risks.pdf ("A typical ride-hailing trip is about 69 percent more polluting than the trips its replaces, and can increase congestion during peak periods.").

[103] *See SBA's Role in Clim. Solutions: Hearing Before the Subcomm. On Oversight, Investigations, & Reg. of the H. Comm. on Small Bus.*, 117th Cong. (2021) (hearing memorandum, testimony of Lynn Abramson, President, Clean Energy Business Network), https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=3842 ("SBA's Role in Clim. Solutions Hrg."); Small Bus. Majority, *Clim. Change Preparedness & the Small Bus. Sector* 3 (July 2013), https://smallbusinessmajority.org/sites/default/files/research-reports/072513-Climate-Change-Preparedness-and-the-Small-Business-Sector.pdf ("Clim. Change Preparedness & the Small Bus. Sector").

[104] Clim. Change Preparedness & the Small Bus. Sector at 3.

[105] SBA's Role in Clim. Solutions Hrg.

[106] Am. Compl., *SEC v. Volkswagen*, 3:19-cv-01391-CRB (N.D. Cal. Sept. 4, 2020) (*VW* Am. Compl.).

[107] *Id.* at ¶5.

continuing commitment to and dependence on developing energy-efficient vehicles and the reduction of vehicle emissions."[108] Only years later—and after Volkswagen had sold billions in bonds—did regulators uncover the existence of the defeat devices on Volkswagen cars.[109] Nor was Volkswagen the only culpable automobile manufacturer; both Daimler AG and Fiat Chrysler Automobiles have reached settlements for similarly using defeat devices to mislead regulators about automobile emissions.[110]

The *Volkswagen* case is an egregious example, but more insidious are instances of subtle greenwashing, in which registered companies tout their commitment to addressing climate change, while operating in ways that contradict those pronouncements. In one recent study of climate change-related language from BP, Shell, Exxon, and Chevron, the authors observed an increase in such language among all four companies.[111] The authors found, however, that "[t]he analysis of financial behavior [by the four companies] generated a picture even more sharply misaligned with tendencies toward increased green discourse."[112] In sum, the analysis "failed to show any major [oil company] comprehensively transitioning its core business model away from fossil fuels."[113] Registered companies that overstate their commitment to transitioning to lower carbon emissions—or omit contradictory facts about their businesses—may mislead investors into believing they are better positioned to deal with transition risks like current and proposed climate change regulations or market transformation. This kind of greenwashing also confuses the market by undermining the value to investors of similar commitments by registered companies that actually follow through on those commitments.[114]

We believe the Proposed Rule is well-structured to combat both greenwashing and the skepticism it engenders even around registered companies' legitimate commitments. The proposed mandatory disclosures about the use of carbon offsets, renewable energy offsets, and internal carbon pricing will provide investors with insight into the degree to which registered

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[108] *Id.* at ¶9.

[109] *Id.* at ¶¶147-48.

[110] Press Release, Dept. of Justice, *The U.S. Reaches $1.5 Billion Settlement with Daimler AG Over Emissions Cheating in Mercedes-Benz Diesel Vehicles* (Sept. 14, 2020), https://www.justice.gov/opa/pr/us-reaches-15-billion-settlement-daimler-ag-over-emissions-cheating-mercedes-benz-diesel; CNBC, *Stellantis Fiat Chrysler Auto. Unit Reaches Plea Deal in U.S. Emissions Probe* (May 25, 2022), https://www.cnbc.com/2022/05/25/stellantis-fiat-chrysler-automobiles-unit-reaches-plea-deal-in-us-emissions-probe.html.

[111] Mei Li, et al., *The Clean Energy Claims of BP, Chevron, ExxonMobil & Shell: A Mismatch Between Discourse, Actions & Inv.*, PLOS ONE (Feb. 16, 2022), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596#sec023.

[112] *Id.*

[113] *Id.*

[114] Daniel C. Esty, Quentin Karpilow, *Harnessing Inv. Interest in Sustainability: The Next Frontier in Env'l Info. Reg.*, 36 Yale J. on Reg. 625, 664-65 (2019) ("Harnessing Inv. Interest in Sustainability").

companies are changing their operations versus simply changing their emissions accounting. Likewise, the proposed requirement that registered companies disclose their progress on transition plans, including Scope 3 GHG emissions, is a meaningful way not only to hold registered companies accountable for those plans, but also to provide investors with details about how those plans are affecting registered companies' operations and financial status.

G. The Proposed Rules Fall Within the SEC's Statutory Authority.

The SEC has ample statutory authority to adopt the Proposed Rule.[115] In each of the statutory provisions delineating the SEC's authority to require disclosures from registered companies, the lodestar is the SEC's determination that the rule is "necessary or appropriate in the public interest or for the protection of investors" or "to insure fair dealing in the security."[116] As explained in this letter, and as the SEC recognized in its Proposed Rule, mandatory disclosures of climate-related risks and related risk management are necessary and appropriate for investor protection. Registered companies already face numerous physical and transition risks and impacts from climate change; those risks will only grow in number and intensity as climate change accelerates. Numerous sophisticated investors, as well as many retail investors, have indicated that they consider the information in the Proposed Rule to be key to their investment decision-making.[117] This record is more than sufficient to establish that these disclosures are "necessary" and "appropriate" for investor protection.

In passing the Securities Act and the Exchange Act and creating the SEC, Congress identified a problem: information asymmetries in securities sales created circumstances where markets could be manipulated and investors could be injured, and those effects had spillover consequences in the broader economy.[118] Notably, in addition to investor protection, Congress identified as one of the reasons for the legislation:

> The prices established and offered in [securities] transactions are generally disseminated and quoted throughout the United States and foreign countries and constitute a basis for determining and establishing the prices at which securities are bought and sold, the

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[115] *See, e.g.*, 15 U.S.C. § 77g(a)(1) (SEC can mandate "such other information…as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors."); 15 U.S.C. § 78l(b)(1) (For companies registered with a national exchange, SEC can mandate disclosure of "[s]uch information, in such detail, as to the issuer…as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors" with respect to the "organization, financial structure, and nature of the business."); 15 U.S.C. § 78m(a) (for issuers registered to trade on national exchanges, the SEC can mandate ongoing reporting of "such information and documents…as the Commission shall require to keep reasonably current the information and documents" required under the Section 12, "as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.").

[116] *See, e.g.*, 15 U.S.C. § 77g(a)(1); 15 U.S.C. § 78l(b)(1).

[117] *See, supra*, Section II.D.

[118] 15 U.S.C. § 78b(2).

> amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.[119]

With this provision, Congress made clear that securities pricing and market efficiency have implications beyond investor transactions, meaning Congress intended for the registration regime for securities transactions to have broader implications.

Congress created a solution to the problem it identified: to sell securities, registered companies would be required to satisfy a disclosure regime that aimed to alleviate these information asymmetries.[120] Congress tasked the SEC with filling in the details of that disclosure regime, as well as using its expertise to adjust disclosures to achieve Congress's ultimate goal of protecting investors, markets, and affected third parties through adequate registered company disclosures in response to a changing landscape.[121]

The SEC has recognized for many years that pollution from companies' operations can have material impacts on its business. Nearly fifty years ago, the SEC adopted a rule that required the disclosure of "material effects that compliance with federal, state, or local provisions regulating the discharge of materials into the environment or otherwise relating to protection of the environment, may have upon the capital expenditures, earnings, and competitive position of the registrant."[122] This and related actions were "based on the recognition of the importance of environmental information to informed investment and voting decisions and the unique mandate to consider the environment which was imposed on all federal agencies by NEPA."[123] In 1982, following enforcement taken by the Division of Corporation Finance against Occidental Petroleum for its failure to disclose environmental liabilities associated with its cleanup obligations at Love Canal in New York and other sites,[124] the SEC expanded disclosure requirements for legal proceedings arising under laws regulating the discharge of materials into the environment.[125] And after the Supreme Court's decision in

[119] *Id.*

[120] *See generally* 15 U.S.C. §§ 77f, 77g, 78l.

[121] *See, e.g.,* 15 U.S.C. § 77g(a)(1); 15 U.S.C. § 78l(b)(1).

[122] *See* 38 Fed. Reg. 12,100 (Apr. 20, 1973) (Release No. 5386); *see generally Nat. Res. Def. Council, Inc. v. SEC*, 606 F.2d 1031 (D.C. Cir. 1979) (discussing history).

[123] 46 Fed. Reg. 25,638, 25,639 (May 8, 1981).

[124] *In re Occidental Petroleum Corp.*, Release No. 34-16590 (July 2, 1980); *see Occidental Told to List Liabilities*, Wash. Post (July 3, 1980), https://www.washingtonpost.com/archive/business/1980/07/03/occidental-told-to-list-liabilities/72fc05e1-05da-4587-9e07-583d9fa633d1/.

[125] *See* 47 Fed. Reg. 11,380 (Mar. 3, 1982) (Release No. 33-6383), which adopted 17 C.F.R. § 229.103. In that same rulemaking, the SEC adopted 17 C.F.R. § 229.101(c)(1)(xii), which required registrants to discuss, as part of their business description, material effects that compliance with federal, state, or local provisions regulating the discharge of materials into the environment (or otherwise related to the environment) has upon the registrant's capital expenditures, earnings and competitive position.

Massachusetts v. EPA and in recognition of investor demand for additional information related to risks associated with worsening climate change, the SEC issued guidance in 2010 acknowledging that registered companies' GHG emissions could result in material impacts on operations.[126] The Proposed Rule thus logically flows from long-standing SEC precedent to ensure that investors have sufficient information regarding material risks associated with pollution from companies' operations. And, as with these examples of earlier SEC disclosure mandates, it is imperative that investors and the markets have the information the Proposed Rule will require to price in climate-related risks to registered companies—information they currently lack.[127]

H. The Proposed Rule Does Not Implicate the "Major Questions Doctrine."

Critics of the Proposed Rule incorrectly suggest that it runs afoul of the "major questions doctrine,"[128] which they claim prohibits federal agencies from promulgating regulations "of vast economic and political significance" without a clear congressional mandate.[129] The doctrine's purpose is to ensure that agencies do not "assume responsibilities far beyond [their] initial assignment."[130]

The "major questions doctrine" does not apply here because the Proposed Rule deals with *disclosure* obligations, which, as we explained above, are central to the SEC's mandate. Nor does the Proposed Rule's technically complex obligations—such as quantification of GHG emissions—suggest that the SEC exceeded its authority. While it is true that it is not the SEC's responsibility to provide independent scientific assessment of risks that are beyond its technical expertise, the SEC *is* responsible for ensuring corporations disclose material information that will allow investors to make their own assessments. The Proposed Rule reflects nothing more than the SEC acting on that responsibility. Nor is it the first time that the SEC has required disclosure of material risks in areas of technical complexity. For example, the SEC has longstanding regulations—most recently updated in 2009—that set forth a specialized disclosure

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[126] *See Comm'n Guidance Re: Disclosures Related to Clim. Change*, Release No. 33-9106 (Feb. 2, 2010), 75 Fed. Reg. 6,290 (Feb. 8, 2010).

[127] CFTC Report at 26; Madison Condon, *Market Myopia's Clim. Bubble*, 1 Utah L. Rev. 63, 73 (2022) ("Market Myopia"); *see also* Renato Faccini, et al, *Dissecting Clim. Risks: Are They Reflected in Stock Prices?* 29 (Sept. 30, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3795964.

[128] *See, e.g.,* Jacqueline M. Vallette & Kathryne M. Gray, Mayer Brown, *U.S. SEC's Clim. Risk Disclosure Proposal Likely to Face Legal Challenges* (Apr. 21, 2022), https://www.mayerbrown.com/en/perspectives-events/publications/2022/04/us-secs-climate-risk-disclosure-proposal-likely-to-face-legal-challenges ("Clim. Risk Disclosure Proposal Likely to Face Legal Challenges").

[129] *Nat'l Fed'n of Indep. Bus. v. DOL*, 595 U.S. ---, 142 S. Ct. 661, 668 (2022) (Gorsuch, J., concurring).

[130] *Id.*

framework for oil and gas extraction activities.[131] The fact that the SEC is not an energy regulator has not prevented it from crafting regulations that provide investors with a more meaningful and comprehensive understanding of oil and gas reserves to help them evaluate the relative value of oil and gas companies. Similarly here, the SEC is not setting emission limits as an environmental regulator would, but requiring registrants to disclose levels of pollution that directly affect the value of their business.

I. The Proposed Rule Does Not Offend the First Amendment.

Critics of the Proposed Rule have also suggested that the proposal compels speech in a manner that runs afoul of the First Amendment.[132] We reject that premise. The U.S. Supreme Court has stated that "the State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity," and the "exchange of information about securities" is the type of "communication[] that [is] regulated without offending the First Amendment."[133] As the D.C. Circuit aptly stated: "If speech employed directly or indirectly to sell securities were totally protected [under the First Amendment], any regulation of the securities market would be infeasible—and that result has long since been rejected."[134]

As an exercise of the SEC's statutory authority to mandate the "exchange of information about securities,"[135] the Proposed Rule is permissible because it requires disclosure only of "factual and uncontroversial" information that is not "unjustified or unduly burdensome."[136] Although there may be debate about the best way to address climate change, there is no scientific controversy about its existence or the physical impacts it is having and will continue to have and the resulting impacts on companies.[137] The Proposed Rule requires disclosure of accurate, factual information about companies' climate-related impacts, the risks they face, and the risk management steps they have taken. This type of disclosure is not subject to heightened First

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[131] *See* SEC, *Modernization of Oil & Gas Reporting; Final Rule*, 74 Fed. Reg. 2,158 (Jan. 14, 2009).

[132] *See, e.g.,* Letter from Patrick Morissey, W.V. Atty. Gen., et al., to Gary Gensler, Chair, SEC (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8915606-244835.pdf; Hester Peirce, Comm'r, SEC, *We Are Not the Sec. & Env't Comm'n—At Least Not Yet* (Mar. 21, 2022), https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321; Clim. Risk Disclosure Proposal Likely to Face Legal Challenges.

[133] *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 456 (1978).

[134] *SEC v. Wall Street Pub. Instit., Inc.*, 851 F.2d 365, 372-73 (1988).

[135] *Ohralik*, 436 U.S. at 456.

[136] *See Zauderer v. Office of Disciplinary Counsel of Supreme Ct. of Ohio*, 471 U.S. 626, 651 (1985).

[137] CFTC Report at 25-39 (detailing current and likely future economic impacts from climate change); IPCC 2022 Clim. Change Impacts Report at 11.

Amendment protection: "The right of a commercial speaker not to divulge accurate information regarding [their] services is not…a fundamental right."[138]

Nor is the Proposed Rule "unjustified or unduly burdensome." The economic impact to companies from climate change already is significant and is only likely to grow as climate change accelerates.[139] As we noted above, millions of Americans have investment savings that they rely on for college savings, healthcare costs, retirement savings, and life savings.[140] The only way for those investors to get comparable, specific information about the risks that their investments face is to require disclosure of that information.

Even if the Supreme Court's more rigorous "exacting scrutiny" standard applied (and it should not),[141] the Proposed Rule would easily satisfy it. Under that standard, "disclosure regimes" need only have a "substantial relation" to a "sufficiently important" government interest and must be "narrowly tailored to the government's asserted interest."[142] The government's interests in requiring registered companies to disclose the climate-related risks they face and whether and how they are evaluating these risks[143] are to help protect investors from fraudulent misrepresentations and omissions, promote efficiency in national markets, and help protect additional parties, such as banks that use securities as loan collateral, that rely on market efficiency as part of their economic actions. These interests are "sufficiently important" to satisfy the "exacting scrutiny" standard.[144]

The Proposed Rule's mandatory disclosures bear a "substantial relation" to those important government interests. As discussed above, the disclosures provide investors with factual information about registered companies' climate-related governance and risk management as well as information about material climate-related risks and impacts. The GHG

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[138] *Zauderer*, 471 U.S. at 651 n.14.

[139] CFTC Report at 25-39.

[140] *See, supra,* Section I.A.

[141] In *Americans for Prosperity Foundation v. Bonta*, in an opinion joined by only two other justices, Chief Justice Roberts stated that the standard for "compelled disclosures" is "exacting scrutiny." 594 U.S. ---, 141 S. Ct. 2373, 2383 (2021). The remaining six justices were split on this issue, with Justice Thomas asserting that strict scrutiny should apply to compelled disclosures; Justices Alito and Gorsuch finding that there was no need to establish that standard because the compelled disclosures at issue (disclosures of donors to charitable organizations) did not satisfy either exacting or strict scrutiny; and Justices Sotomayor, Breyer, and Kagan disagreeing with Justice Roberts' formulation of the "exacting scrutiny" standard. *Id.* at 2390, 2391-92, 2396.

[142] *Id.* at 2383.

[143] As discussed, *supra*, Sections II.B and II.C, issuers are already facing significant climate-related physical and transition risks that will increase in number and intensity in the future.

[144] *Ams. for Prosperity Found.*, 141 S. Ct. at 2386 ("It goes without saying that there is a substantial governmental interest[] in protecting the public from fraud.") (internal citations and quotations omitted); *see also Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 568 (1980) (energy conservation was "substantial" state interest).

emissions disclosures are necessary to assist investors and the market in understanding the physical and transition impacts and risks that registered companies face from current and future government regulation, as well as preventing greenwashing by registered companies. The proposed disclosures will help alleviate the information asymmetry between investors and registered companies, thereby aiding in preventing fraudulent misrepresentations and omissions, supporting broader investor trust in the national markets, and promoting efficient national markets that price in risks from climate change.

The Proposed Rule also is narrowly tailored to address the government's important interests. The only means of alleviating climate-related information asymmetries between investors and registered companies is by requiring registered companies to disclose information. Without mandatory disclosures, registered companies are incentivized to selectively disclose only information that supports an appearance of preparedness for climate-related risks, or to not disclose anything at all.[145] Selective disclosure (or worse, greenwashing) undermines investor confidence in registered companies' voluntary statements.[146] Notably, for the past decade, the SEC has attempted to incentivize registered companies to disclose climate-related information through guidance; but this resulted in inadequate and inconsistent disclosures and a failure of the market more broadly to sufficiently price in climate-related risks.[147]

The SEC therefore is well within its authority to adopt the Proposed Rule, and it should do so.

III. RESPONSES TO SPECIFIC REQUESTS FOR COMMENT

In addition to our general comments in support of the Proposed Rule, we also have responses to several of the SEC's specific requests for comment. Although we support the Proposed Rule and encourage the SEC to adopt it, as reflected below, we believe the SEC should strengthen the rule in certain respects to protect investors and the broader market consistent with the SEC's statutory duties. We also respond to requests for comment where we believe the SEC should not amend the Proposed Rule for alternatives that the SEC identifies.

A. The SEC Should Add a New Subpart to Regulation S-K and a New Article to Regulation S-X as Proposed. (Request for Comment No. 1)

We believe the SEC's proposal to include the Proposed Rule's provisions within Regulation S-K and Regulation S-X, as applicable, reflects the fact that information about climate-related risks is essential to investors' decision-making. As we explained in detail above, climate-related risks—both physical and transition risks—already are affecting registered companies and will continue to do so. In addition, presentation of climate-related disclosures alongside registered companies' other mandatory disclosures allows investors to contextualize the information. For example, whether an investor considers a registered company's climate-

[145] Harnessing Inv. Interest in Sustainability at 664-65.

[146] *Id.*

[147] Market Myopia at 73.

related governance structure to be adequate may turn on the company's operations and other risk factors. By consolidating this information into a single filing—rather than including it in multiple publications from the company—investors can more easily access all relevant details.

B. Current SEC Reporting Requirements Are Not Providing Investors with Specific, Comparable Information About Registered Companies' Climate Change-Related Risks. (Request for Comment No. 4)

As noted in the June 2021 Attorney General Letter, despite the SEC's 2010 guidance to registered companies about climate-related disclosures, the majority of registered companies were not making any climate-related disclosures at all.[148] Although the Task Force on Climate-Related Financial Disclosures ("TCFD") reports that the number of companies making climate-related disclosures has increased in the past year, the SEC's current disclosure regime is not producing adequate disclosures. The TCFD found that, as of 2020, the most common climate-related disclosure was risks and opportunities, with only 52% of companies disclosing that category.[149] No other category of the TCFD's recommended disclosures exceeded 50%; most hovered between 30% and 45%.[150] North American registered companies remained the least likely to make any climate-related disclosures, with only 20% of companies making such disclosures in 2020.[151]

Given these statistics, the SEC should move forward with its proposed mandatory climate-related disclosures rather than offering additional administrative guidance as a substitute.

C. The SEC Should Define "Flood Hazard Area" and "High Water Stressed Region." (Requests for Comment Nos. 13, 14)

Although the Proposed Rule instructs registered companies to determine if they are exposed to material physical risks from a "flood hazard area" and/or a "high water stressed region," the rule does not define those terms. It is critical that investors have information about how those terms are defined both to compare between registered companies and to understand registered companies' materiality determinations. The SEC can solve this issue by defining the term in an amendment to the Proposed Rule.

D. The SEC Should Not Provide Additional Liability Safe Harbors for Internal Carbon Pricing, Scenario Analyses, and Transition Plan Disclosures. (Requests for Comment Nos. 28, 31, 51)

The Private Securities Litigation Reform Act ("PSLRA") would protect from liability forward-looking statements within the proposed internal carbon pricing, scenario analysis, and transition plan disclosures. We do not believe that additional safe harbors for these disclosures

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[148] Atty. Gen. Letter.

[149] TCFD, *2021 Status Report* 30 (Oct. 2021), https://www.fsb.org/wp-content/uploads/P141021-1.pdf.

[150] *Id.*

[151] *Id.*

are warranted. Additional safe harbors would essentially insulate registered companies from liability for statements about whether they are in fact using internal carbon prices or scenario analyses, or whether they are making progress on their transition plan. We believe false or misleading statements in those circumstances should remain subject to liability.[152] As we noted above, key benefits of the Proposed Rule are preventing greenwashing and providing confidence to investors that climate-related disclosures are reliable; adding safe harbors for these three types of disclosures would undermine those benefits.

E. The SEC Should Require SRCs that Have Set Targets or Goals for Reducing Emissions that Include Scope 3 GHG Emissions to Disclose Their Scope 3 GHG Emissions. (Request for Comment No. 134)

Similarly, to prevent greenwashing, we believe the SEC should amend the Proposed Rule to require SRCs that have set emissions reduction targets or goals that include Scope 3 GHG emissions to monitor and disclose their Scope 3 GHG emissions. By setting Scope 3 GHG emissions targets or goals, SRCs have essentially committed themselves to monitoring those emissions; having them report those emissions should not result in significant additional cost. And if SRCs have made such commitments but are not monitoring and disclosing their Scope 3 GHG emissions, those commitments may constitute unlawful greenwashing. Under those circumstances, the additional monitoring and disclosure requirement we recommend would help deter SRCs from greenwashing or expose SRCs that have already engaged in it.

F. The SEC Should Require All Registered Companies to Include Independent Attestations for Their Scope 1 and 2 GHG Emissions. (Request for Comment No. 138)

Although we appreciate the SEC's concerns about the impact on SRCs, we nevertheless believe the SEC should require all registered companies to include independent attestations for Scope 1 and 2 GHG emissions, instead of limiting it to large accelerated filers as proposed. As we explained above, GHG emissions are a key metric for determining climate-related transition risks, and those risks are likely to impact small companies as well as large companies.[153] As such, we do not believe that exempting SRCs from an independent attestation requirement is logical.

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[152] Notably, Section 18(a) of the Exchange Act provides a defense to liability if defendants show that they "acted in good faith and had no knowledge that such statement was false or misleading." 15 U.S.C. § 78r(a).

[153] Small- and medium-sized companies often appear in the supply chains of larger companies, meaning their Scope 1 and Scope 2 GHG emissions may be part of a larger company's Scope 3 GHG emissions. *See* SME Clim. Hub, *New Data Reveals Two-Thirds of Surveyed Small Bus. Concerned Over Navigating Clim. Action* (Feb. 23, 2022), https://smeclimatehub.org/new-survey-reveals-small-business-barriers-climate-action/. Those larger companies face transition requirements to lower their Scope 3 GHG emissions, which in turn adds transition risks to small- and medium-sized companies regarding their Scope 1 and Scope 2 GHG emissions.

To address burdens on SRCs, we recommend a longer phase-in period for SRCs than for large accelerated filers, with the expectation that as independent attestation services become more mainstream, competition will increase and costs will come down.

G. The SEC Should Require Scope 1 and Scope 2 GHG Emissions Attestations from Independent Third Parties. (Requests for Comment Nos. 146, 165)

We support the Proposed Rule's requirement that the third party attesting to registered companies' Scope 1 and Scope 2 GHG emissions be independent from the issuer. There is already a proliferation of potentially and actually conflicted operators in this space. Companies that rate registered companies on their climate-related policies are also offering consulting services about how registered companies can improve those ratings.[154] A mandatory independent third party attestation protects against further conflicts of interest and provides investors with better assurances of accuracy in registered companies' filings.

H. The SEC Should Not Exempt SRCs from All Climate-Related Disclosures. (Request for Comment No. 175)

We discourage the SEC from amending the Proposed Rule to exempt SRCs from all climate-related disclosures. As noted above,[155] climate-related risks and impacts do not and will not discriminate based on company size, and such risks for SRCs may be substantial. Notably, SRCs are not necessarily "small" companies, given that companies with a public float up to $700 million and annual revenues up to $100 million qualify.[156] In this context, we strongly support the SEC's current approach of requiring climate-related disclosures from all public companies.

I. The SEC Should Not Exempt Companies Going Through IPOs from Climate Change-Related Disclosures. (Request for Comment No. 179)

We also discourage the SEC from amending the Proposed Rule to exempt companies going through IPOs. The SEC asks whether mandatory climate-related disclosures might dissuade private companies from going public or incentivize them to delay going public. While we acknowledge and share the SEC's concerns about the relative sizes of the private and public markets, we do not believe that exempting companies going through IPOs is the solution. First, as a logical matter, an exemption for companies going through IPOs merely delays when they have to report; assuming the SEC adopts the Proposed Rule, it does not change the overall difference in disclosure requirements between the private and public markets. Second, and importantly, lowering investor and market protections in the public markets is counterproductive

[154] *See* Jean Eaglesham, *Wall St.'s Green Push Exposes New Conflicts of Interest*, Wall St. J. (Jan. 29, 2022), https://www.wsj.com/articles/wall-streets-green-push-exposes-new-conflicts-of-interest-11643452202.

[155] *See, supra*, Section II.E.

[156] *See* 17 C.F.R. § 229.10(f)(1).

and contrary to the SEC's mission and purpose. We therefore encourage the SEC to maintain the Proposed Rule's applicability to companies going through IPOs.

J. The SEC Should Require that Climate Change-Related Disclosures Be "Filed" for Purposes of Liability. (Request for Comment No. 194)

By requiring the mandatory disclosures in the Proposed Rule to be "filed" rather than "furnished," the SEC appropriately equates climate-related disclosures with other disclosures the SEC already mandates for investor protection. That treatment is warranted as a means of deterring greenwashing as well as of promoting trust in climate-related disclosures.

Registered companies may be concerned about litigation risks related to having climate-related disclosures "filed" rather than "furnished," but, as we explain below, we do not believe those risks will increase under the Proposed Rule. Even if there is an increase in litigation risk, we believe the deterrent effects from requiring climate-related disclosures to be "filed" justifies the additional risk. Investors need this information to better assess their investment risks in light of the impact climate change already is having. Allowing liability under Section 18(a) to attach to false or misleading statements under the Proposed Rule's mandatory disclosures is a way not only to build trust in those disclosures among investors but also communicate to registered companies the importance of those disclosures and deter them from greenwashing or otherwise making misleading statements.

K. The SEC Should Set Earlier Compliance Dates. (Request for Comment No. 197)

In light of the importance of these disclosures to investors as well as the immediacy of current climate-related risks and impacts, we recommend that the SEC shorten the compliance phase-in periods. Assuming that the Proposed Rule is adopted by December 2022, we propose that the SEC move up by one year all of the compliance dates (other than the compliance date for large accelerated filers for the proposed disclosures other than Scope 3 GHG emissions, which the SEC already proposes for reporting in 2024 for fiscal year 2023).

Specifically, we encourage the SEC to require accelerated and non-accelerated filers to start their climate-related disclosures (other than Scope 3 GHG emissions) in their 2024 filings for fiscal year 2023; and for SRCs to start their climate-related disclosures in 2025 for fiscal year 2024. We further propose that large accelerated filers, accelerated filers, and non-accelerated filers that need to report their Scope 3 GHG emissions under the Proposed Rule should have to disclose their Scope 3 GHG emissions in their 2025 filings for fiscal year 2024. To the extent the SEC adopts our recommendation to require SRCs that have included Scope 3 GHG emissions in a transition plan to disclose their Scope 3 GHG emissions, we encourage the SEC to require those SRCs to begin disclosure of their Scope 3 GHG emissions in 2026 for fiscal year 2025.

We believe this timetable is more appropriate than the one in the Proposed Rule, given the importance of these disclosures to investor protection and market efficiency.

L. The SEC Should Reassess Registered Companies' Litigation Risks in the Economic Analysis. (Request for Comment on Economic Analysis)

We believe the SEC's baseline for registered companies' litigation risks fails to account for the litigation risks that companies already face regarding climate-related risks and impacts, as well as the effect that bright-line rules and the proposed safe harbor will have on potentially reducing litigation risk. Securities fraud lawsuits alleging misleading representations regarding preparedness in the face of severe weather events have already emerged against registered companies.[157] The economic analysis does not account for current litigation risks and the degree to which additional disclosures and bright line rules may actually lessen such risks.

The economic analysis also attributes heightened litigation risk to the risk of "inadvertent non-compliance."[158] In addition to the PSLRA safe harbor and the Proposed Rule's additional safe harbor, the economic analysis should consider the degree to which the affirmative defense in Section 18(a) of the Exchange Act could alleviate increased litigation risk for such "inadvertent non-compliance." That section has an affirmative defense where registered companies can show a statement was made "in good faith" and with "no knowledge that such statement was false and misleading."[159] The SEC should consider how this affirmative defense may shield registered companies concerned about litigation over good faith but ultimately mistakenly inaccurate statements in their filings.

IV. CONCLUSION

We appreciate the opportunity to comment on this important proposal. For all of the reasons discussed above, we support the Proposed Rule and encourage the SEC to adopt it, along with the recommended improvements.

Sincerely,

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[157] *See, e.g., Barnes v. Edison Int'l, et al*, No. 2:18-cv-09690-CBM-FFM (C.D. Cal. May 10, 2019) (shareholder lawsuit regarding defendants' role in California wildfires); *Vataj v. Johnson, et al*, No. 4:19-cv-06996-HSG (N.D. Cal. Apr. 17, 2020) (shareholder lawsuit regarding PG&E's wildfire preparation); *Mass. v. ExxonMobil Corp.*, 187 N.E.3d 393 (Mass. 2022).

[158] 87 Fed. Reg. at 21,444.

[159] 15 U.S.C. § 78r(a).

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