August 2, 2026

ELECTRONIC SUBMISSION

Attn: File No. S7-2026-19

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

RE: Rescission of Climate-Related Disclosure Rules

Dear Ms. Countryman:

On June 3rd, 2026, the U.S. Securities and Exchange Commission (SEC) published the proposed rule, "Rescission of Climate-Related Disclosure Rules."[1] In this Notice, the SEC proposed to rescind amendments adopted by the SEC in 2024,[2] which would impose extensive climate information disclosure requirements on public companies in their registration statements and annual reports.

Based on its statutory authorities,[34] the SEC maintains a tripartite mission, to: (1) protect investors; (2) maintain fair, orderly, and efficient markets; and (3) facilitate capital formation.[5] The disclosures required in the SEC's 2024 Final Rule exceed the statutory remit, and in so doing undermine the SEC's core mission. The required disclosures undermine the SEC's goal of investor protection, insofar as the required "avalanche"[6] of immaterial information confuses rather than informs investors by distracting them from and obscuring the information that is actually relevant to the strength (or weakness) investment in question.[7] These disclosures also

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[1] U.S. Securities and Exchange Commission, "Rescission of Climate-Related Disclosure Rules," *Federal Register*, Vol. 91, No. 106 (June 3, 2026), p. 33,296.
[2] U.S. Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," *Federal Register*, Vol. 89, No. 61 (March 28, 2024), p. 21,668.
[3] Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (codified as amended at 15 U.S.C. §§ 77a-77aa).
[4] Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881 (codified as amended at 15 U.S.C. §§ 78a-78qq).
[5] U.S. Securities and Exchange Commission, "What We Do: Introduction," *SEC.gov*, https://www.sec.gov/about/mission.
[6] *TCS Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976).
[7] Colleen Honigsberg, Robert J. Jackson, Jr., & Yu-Ting Forester Wong, *Mandatory Disclosure and Individual Investors: Evidence From the JOBS Act*, 93 Wash. U. L. Rev. 293 (2015), https://law.stanford.edu/wp-content/uploads/2016/06/Honigsberg-Jackson-and-Wong-Mandatory-Disclosure-and-Individual-Investors-93-Wash-U-L-Rev-293.pdf.

undermine the statutory goal of facilitating capital formation, insofar as the burdensome disclosure requirements discourage companies from registering with the SEC and listing their shares to trade publicly.

Moreover, these disclosure requirements do not just undermine the SEC's statutory goals, but they also are unnecessary, given that publicly listed companies are required to disclose material information even absent the 2024 Final Rule. As such, we commend this rulemaking project, and appreciate the opportunity to comment in support of SEC's proposed rescission of the 2024 climate disclosure requirements.

Discussion

The SEC's proposal to rescind the 2024 climate disclosure Rule reflects the best understanding of its legal obligations, as reflected both in Supreme Court caselaw and in an objective reading of its authorizing statutes. There are no reliance interests to prevent the SEC from acting on its proposal in full, and as a matter of policy, preexisting environmental disclosure requirements render both the 2024 Final Rule and the SEC's 2010 guidance unnecessary. Finally, rescinding the climate disclosure rule will help the SEC fulfill its statutory responsibilities to facilitate capital formation, and will benefit both the efficiency of our country's securities markets and the American economy more generally.

Accordingly, we strongly support the SEC's proposal, and appreciate the opportunity to comment.

I. The SEC Should Follow Through on its Proposal to Rescind the 2024 Climate Disclosure Rules in Full, in order to Fulfill its Obligations to Discern the "Single, Best Meaning" of its Authorizing Statutes, and Because Congress Never Delegated to the SEC the Discretion to Mandate Immaterial Climate Disclosures

In June of 2024, just months after the SEC finalized the climate disclosure rule at question in this proposal, the Supreme Court decided *Loper Bright Enterprises v. Raimondo*, which overruled the longstanding *Chevron* regime that had been in place when the SEC issued its 2024 climate disclosure rule.[8] In so doing, the Supreme Court effectively replaced the previous deference regime, which allowed for broad agency discretion to interpret claimed ambiguities in the authorizing statute, with a requirement that the agency apply the "single, best meaning"[9] of the statute in question. This means that after the 2024 rule was finalized, the SEC's legal obligation changed from selecting its preferred interpretation of the laws it implements to the

[8] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).
[9] *Loper Bright*, 603 U.S. at 400.

single best interpretation of those laws. As such, the SEC's decision here to revisit the creative but flawed interpretation that gave rise to the 2024 Rule is correct, not only as a matter of policy, but also, and perhaps more importantly, as a matter of law. The language of the statute,[10] informed by ordinary tools of interpretation, confirms that the SEC had authority to issue the 2024 rule.

a. The Plain Language of the Authorizing Statutes Limits SEC Disclosure Requirements to Information that is Material to Investors

When promulgating the 2024 climate disclosures, the SEC asserted its statutory authority by citing Sections 7(a)(1) of the Securities Act and 12(b)(1)(l) and 13(a) of the Securities Exchange Act.[11] Neither of those statutes granted the SEC the authority claimed.

"As always, we start with the statutory text."[12] Section 7(a)(1) of the Securities Act states that "The registration statement … shall contain the information … specified in Schedule A … [and] shall contain 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."[13] In 2024, the SEC took the reference to "public interest" as a broad grant of discretion to mandate disclosures that a majority of Commissioners felt might serve the public interest. Yet this language is constrained by at least two factors, as the SEC's current proposal rightly points out: first, that the added requirements must be of a similar nature to those specified in Schedule A, and second, that "public interest" is meant to constrain the scope of the SEC's jurisdiction to add new disclosure requirements, not to serve as an independent basis for such requirements. In other words, the reference to "public interest" does not broaden the SEC's discretion, but instead narrows the scope of the SEC's authority.

On the first point, precedent shows us that open-ended statutory language should be similar to those categories as the statute had previously specified.[14] The SEC's 2024 interpretation had no limiting principle; it could, under the same statutory interpretation, mandate disclosures related to any political priorities that a majority of commissioners deem in the "public interest," irrespective of the relationship of those priorities to the Congressional intent and purposes of the statute. This is particularly a concern in the context of the previous administration's explicit agenda to "organize and deploy the full capacity of [Federal] agencies to combat the climate crisis to implement a Government-wide approach...in every sector of the

[10] *E.g., U.S. v. Cargill*, 602 U.S. 452 (2024); *see also Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) (stating that, when interpreting statutes, "we begin by analyzing the statutory language").
[11] U.S. Securities Exchange Commission, "*T*he Enhancement and Standardization of Climate-Related Disclosures for Investors," *Federal Register,* Vol. 91, No. 61, p. 21,668 at 21,683-87 (Mar. 28, 2024).
[12] *E.g., U.S. v. Cargill*, 602 U.S. 406, 415 (2024).
[13] *Securities Act of 1933* § 7(a)(1), 15 U.S.C. § 77g(a)(1) (2024).
[14] *FCC* v. *Consumers' Rsch*., 606 U.S. 656, 690 (2025); *see also Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001) (open-ended terms in a statutory provision should be "controlled and defined by reference to the enumerated categories" in that provision, covering only objects "similar in nature" to those enumerated categories).

economy."[15] The "coordinated approach" announced in this Executive Order,[16] taken to its logical conclusion, could (and did) elevate the specific policy goals of the Administration above the scope of the authority that Congress actually delegated to the agencies in question, including the SEC.

In this context, guardrails that tie the authority of the agency to the terms of the authorizing statute become more, not less, important. Yet treating the "public interest" so expansively allows the Commissioners to use disclosure requirements to advance the Administration's policy priorities, without reference to any other language within the enabling statute, would turn what should be a restraining factor into an open invitation to substitute the Commissioners' policy preferences over the Congressional mandate. Indeed, it is well-established that the term "public interest" adds a qualifier to the information the SEC may mandate companies disclose, not an independent basis. The "public interest" or "protection of investors" entails something which may be meaningfully relevant to investors, and that language does not give the SEC cover to effectively legislate the Commission's political interests.[17] Oddly, the SEC used "public interest" as its own basis for the Rule,[18] whilst ignoring the constraints imposed by cornerstone materiality considerations, the language of the statute, and past agency interpretations.

A similar result applies under Section 12(b) of the Securities Exchange Act. Under Section 12(b), the SEC may mandate disclosures relating to 12 different categories of information. Some of the language may sound expansive at first glance, but there is a fundamental limiting factor to this list, which the SEC essentially ignored in 2024. The entire list consists of backward-looking financial results, and existing legal arrangements. In a sentence, the list consists of the difference between accounting and financial projection (or, to an MBA student, it is the difference between the coursework in Accounting and Finance).

In other words, this statutory provision effectively requires companies to disclose certain objective, verifiable past results to investors, both in the interests of fraud prevention and to equip investors with the information that they need to understand how the business has performed in the past. However, this statutory list leaves to the investor the responsibility to make any projections about future performance. Yet the SEC ignored this distinction, and in fact turned it on its head, when the SEC used this list of verifiable, current and previous information, to justify a requirement that the corporation estimate and disclose the *future* effects of climate

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[15] Exec Order No. 14,008, "Tackling the Climate Crisis at Home and Abroad," *Federal Register*, Vol. 86, No. 19, p. 7,619 at 7,622 (February 1, 2021).
[16] *Id.*
[17] *Nat'l Fed'n of Indep. Bus.* v. *Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 126 (2022) (Gorsuch, J. concurring) (citing *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495, 551 (1935) (Cardozo, J, concurring)).
[18] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Securities Act Release No. 33-11275, Exchange Act Release No. 34-99678, 89 Fed. Reg. 21,668, 21,727 (Mar. 28, 2024); *supra* note 18.

change, which is properly the province of the investor, rather than the company making the disclosure.

Even the catchall section at the end of the statutory list, requiring disclosure of "any further financial statements which the Commission may deem necessary or appropriate for the protection of investors,"[19] leads to the same result. The statute does not actually define "financial statements," but these statements most traditionally include the balance sheet, income statement, and cash flow statement, and occasionally the statement of shareholders' equity. The SEC in its own guidance acknowledges this.[20] These financial statements are all accounting documents that provide investors with information about the cumulative effects of past transactions, and the current financial condition of the company. These are not models that attempt to project future performance.

Similarly, Section 13(a)(1) of the Securities Exchange Act does nothing to alleviate these problems underlying the 2024 Rule, instead only giving the SEC authority over "such information and documents … as the Commission shall require to keep reasonably current … to be included in or filed with an application or registration statement filed pursuant to section 12."[21] In fact, if anything the same limitations should apply, as this language incorporating the requirements of Section 12 necessarily incorporates the limiting principles of that Section as well.

In securities law, the provenance of the corporation is to provide accurate information as to the current state of its finances and the past transactions that led to this current state. Meanwhile, it is the provenance of the investor to predict, to the best of his abilities, the future performance of the companies in which he might invest, and to make his investment decisions accordingly. This division is fully supported by the plain language of the SEC's enabling statutes. While there are material risks that companies should disclose to help investors make their decisions, the climate disclosures required by the 2024 Final Rule fall well outside that category, and the SEC's rescission of those disclosure requirements therefore complies with the "single, best meaning" of the authorizing statutes.

b. The SEC's 2024 Climate Disclosure Requirements Interfere with Congressional Prerogatives that the Supreme Court has Repeatedly Reinforced Through the Major Questions Doctrine

In 2022, in *West Virginia v. EPA*, the Supreme Court gave the Major Questions Doctrine (MQD) new life as a strong and independent test, when the Court struck down a regulation in which the U.S. Environmental Protection Agency (EPA) attempted to use emissions regulations

[19] 15 U.S.C. Sec. 78I(b)(1)(L).
[20] U.S. Securities and Exchange Commission. (2007). *Beginner's Guide to Financial Statement.* Office of Investor Education and Advocacy. https://www.sec.gov/about/reports-publications/investorpubsbegfinstmtguide
[21] *Securities Exchange Act of 1934* § 13(a)(1), 15 U.S.C. § 78m(a)(1) (2026).

to force the electrification of the national electricity grid for the non-statutory purpose of combating global warming. There, the Court held that Congress's grant that the EPA regulate air pollution did not authorize such an all-embracing rule.[22] The Supreme Court has subsequently used the MQD in several other cases to strike down agency rules that intruded upon Congress's legislative prerogative, including to strike down President Biden's student loan forgiveness under the HEROES Act,[23] an OSHA vaccine mandate on roughly 84 million workers,[24] and most recently President Trump's tariffs under IEEPA.[25]

The MQD offers a two-part test, in which the Supreme Court has invalidated agency action when (1) the underlying claim of authority concerns an issue of "vast 'economic and political significance,'"[26] and (2) Congress has not clearly empowered the agency with authority over the issue.[27] As the Supreme Court held in *West Virginia*, in "'extraordinary cases' in which the 'history and breadth of the authority that [the agency] has asserted,' and 'the economic and political significance of that assertion,' provide a 'reason to hesitate before concluding that Congress meant to confer such authority." We take each of the two elements of the test in turn.

Second, we consider what Congress must do to "clearly empower" an agency with authority over an issue. We read this language to entail *de novo* review of the statute from a court (that is to say, review independent of the agency's own interpretation).[28] If the clear meaning of the statute enables an agency to promulgate such a rule, then whether the underlying subject is a major question is immaterial; however, if the meaning is vague, courts ought to strike down the rule at issue.

i. <u>The 2024 Climate Disclosures Intrude Upon an Area of "Vast Economic and Political Significance."</u>

First, we consider what constitutes a question of vast (major) "economic and political significance."[29] Justice Gorsuch's concurrence in *West Virginia* sets out three ways this standard may be met. Those include the following: (1) an action that touches on "a matter of great 'political significance' … or end[s] an 'earnest and profound debate across the country,'" (2) "regulate[s] 'a significant portion of the American economy,' … or require[s] 'billions of dollars in spending' by private persons or entities," or (3) "when an agency seeks to 'intrud[e] into an area that is the particular domain of state law.'"[30] While

[22] *West Virginia v. EPA*, 597 U.S. 697 (2022).
[23] *Biden v. Nebraska*, 600 U.S. 477 (2023).
[24] *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109 (2022).
[25] *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026).
[26] *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014).
[27] *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 594 U.S. 758, 764 (2021).
[28] *See, e.g., Kate R. Bowers, The Major Questions Doctrine, Cong. Rsch. Serv. In Focus No. IF12077 (Nov. 2, 2022), see also* Kate R. Bowers & Daniel J. Sheffner, *The Supreme Court's "Major Questions" Doctrine: Background and Recent Developments*, Cong. Rsch. Serv. Legal Sidebar No. LSB10745 (May 17, 2022).
[29] *Id.*
[30] *West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022) (Gorsuch, J., concurring); *supra* note 3.

Justice Gorsuch's criteria come in a concurrence and as such is persuasive rather than controlling, his concurrence remains the most detailed description from the Court regarding what might constitute a "major question" in the first place.[31]

First, the 2024 rule does touch on a matter of political significance by requiring highly controversial climate disclosures. The Rule does not engage in a deep scientific debate regarding the extent and effects of climate change; instead, it wades into waters traditionally occupied by Congress as it answers inherently political questions, such as how capital should be allocated, who is responsible for dealing with any effects of climate change, how those responsibilities are apportioned between the Government and private sector, and within the private sector, and the way in which the private sector should plan for and address potential climate risks, and even whether the private sector has a responsibility to address those risks in the first place.

Merely gesturing to some shows of public support, as the SEC attempted to do when it issued the 2024 rule,[32] does not change the fact that these are value-laded policy questions that fall within the Congressional prerogative, rather than technical questions that can be conclusively answered by bureaucrats. Indeed, that public support is limited and controversial at best, and probably within minority.[33] While some investors may seek to invest based on climate-oriented goals, most do not, and SEC disclosure requirements should not be based on the requests or demands of specific investors, untethered to the actual requirements of the authorizing statutes, or to the materiality standard that has historically governed mandatory disclosures.

Second, the Rule regulates a question of major economic significance that explicitly meets Justice Gorsuch's definition by requiring billions of dollars in private spending. Even after removing the most controversial provisions from the proposal, like the Scope 3 emissions requirement, the final rule still would have saddled companies with billions in compliance costs.[34] Requiring billions in private spending, as the Rule does, is thus necessarily a question of major economic significance. Its ramifications on the economy, above and beyond those that the SEC identified in the Regulatory Impact Analysis that accompanied the 2024 Final Rule, also render the disclosure requirements economically significant, and cool economic growth by adding costly burdens to companies and investors alike.

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[31] *Compare Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring).

[32] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Securities Act Release No. 33-11042, Exchange Act Release No. 34-94478, 87 Fed. Reg. 21,334 (proposed Apr. 11, 2022).

[33] *See, e.g.,* Lauren Foster, Investors Know Little About ESG, a New Study Finds, Barron's (Apr. 12, 2022), https://www.barrons.com/articles/esg-meaning-sustainable-in vesting-study-51649719876, *see also Hoover Institute, et al., 2023 Survey of Investors, Retirement Savings, and ESG 3, https://www.hoover.org/sites/default/files/research/docs/ESG%20Survey% 202023%20-%20FINAL.pdf.*

[34] *See, e.g.,* Danielle Zanzalari, *SEC's Climate Disclosure Rule Will Brutally Raise the Cost of Doing Business*, RealClearMarkets (Apr. 8, 2024), https://www.realclearmarkets.com/articles/2024/04/08/secs_climate_disclosure_rule_will_brutally_raise_the_cost_of_doing_business_1023567.html, *see also* Stone Washington, *Big Problems with SEC Climate Disclosure Mandate: Expensive, Legally Thorny, and Counter to the Agency's Historic Mission*, Competitive Enter. Inst., OnPoint No. 291 (Jan. 31, 2024).

Third, as the SEC pointed out in its rescission proposal, the 2024 Rule also impedes areas of state law, a clear violation of Justice Gorsuch's third category.[35] Although the Rule is framed around disclosures, it forces new governance frameworks and systems that go far beyond ordinary disclosures. Matters of corporate governance such as these are reserved for the states unless Congress speaks explicitly. And since Congress did not do so, the SEC had no authority to promulgate the 2024 Rule.[36] Thus, the fact that the 2024 rule violates all the criteria that Justice Gorsuch identified is strong evidence that it qualifies as a major question that falls within Congress's jurisdiction, without an express grant of authority.

ii. <u>Congress Never Granted the SEC the Authority to Mandate the Climate Disclosures Required in the 2024 Rule.</u>

When a major question has been established, the Supreme Court is "reluctant to read into ambiguous statutory text" major delegations of the power that lies within Congress's prerogative.[37]As discussed above, none of the statutory sections that the SEC cited in its 2024 Final Rule offer the explicit and concrete grant of authority the SEC would need to pass scrutiny under MQD analysis. In fact, if anything, the plain meaning and structure of the statute make it clear that immaterial climate disclosures are not covered within the authorizing statutes. This is particularly clear given that the SEC has long required material disclosure in any event, including for environmental information, long before the SEC ever promulgated the 2024 Final Rule. To the extent that the 2024 Final Rule purports to require disclosure beyond those material to understand the current strength of the company in question, the 2024 climate disclosures lack any basis in the form of the Congressional delegation found in the Securities Act of 1933 and the Securities Exchange Act of 1934.

Having established that the 2024 Rule intruded upon a question is of major political and economic significance, the SEC would need strong and clear authorization from Congress to promulgate such a rule. After all, Congress "does not … hide elephants in mouseholes,"[38] but finding that the SEC has authority in these provisions would take Congress to do exactly that. The SEC should therefore repeal the 2024 climate disclosure rule as far exceeding any express Congressional delegation of power found in the enabling statutes.

c. Additional Canons Show the SEC Does Not Have Authority for the 2024 Rule

Several other factors weigh heavily against the SEC's authority to issue the climate rule. One major consideration is the context in which the Securities Act and the Exchange Act were passed.

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[35] *Rescission of Climate-Related Disclosure Rules*, Securities Act Release No. 33-11421, Exchange Act Release No. 34-105572, File No. S7-2026-19, at 33 (proposed May 29, 2026), https://www.sec.gov/files/rules/proposed/2026/33-11421.pdf.
[36] See also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 247-51 (2012) (describing the constitutional-avoidance canon).
[37] *West Virginia v. EPA*, 597 U.S. at 723 (citing *Utility Air*, 573 U.S. at 324).
[38] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

Each was passed at the height of the Great Depression to address concerns of corporate fraud and lack of corporate transparency in the aftermath of the stock market crash of 1929,[39] echoes of which also inspired the amendments offered under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) after the 2008 Global Financial Crisis.[40] This history confirms the role of these statutes as protecting investors by ensuring their access to accurate financial information that goes to the health of the underlying business, rather than to shine a light on how a business might perform in the future, in the event that selected climate models prove accurate.

This line of thinking leads well into another major fault of the 2024 rule: the development of the materiality standard. The Supreme Court's decision in *TSC Industries v. Northway* offers us a north star that centers considerations around a "reasonable investor."[41] SEC's guidance in SAB 99 offers further considerations, including weighing both quantitative and qualitative factors that may mislead investors if not included in disclosures.[42] We therefore ask whether the failure to include the climate disclosures the SEC mandated would mislead investors—and again answer that it would not. It can be relevant to investors, for example, how companies must conform to environmental laws and regulations, as the 1982 rule required.[43] Yet the 2024 rule is different: it mandates that companies effectively predict the weather down to the scruples of the Commission, all while calculating climate impacts that the SEC had never regulated and has no power to regulate, among a long list of other burdensome and immaterial requirements.[44] Since companies have no crystal ball that gives them unique insight into the financial ramifications of unknown, future weather and climate patterns, the companies have nothing on which they may mislead investors relating to the climate risks the SEC mandated in the existing rule.

It is finally worth considering that courts are far more skeptical of agency actions where an agency has not previously regulated the subject in question or where an agency's rulemaking explicitly departs from its own precedent. These factors further enhance our MQD analysis (specifically relating to step one), as the Supreme Court previously considered that operating in an area that an agency has historically left unregulated may constitute a major question.[45] We also weigh them as independent considerations against the SEC's rule. All of the SEC's previous

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[39] *Securities Law History*, Legal Info. Inst., Cornell L. Sch., https://www.law.cornell.edu/wex/securities_law_history (last reviewed Oct. 2023).
[40] Celia R. Taylor, *Conflict Minerals and SEC Disclosure Regulation*, Harv. Bus. L. Rev. Online (Jan. 10, 2012), https://journals.law.harvard.edu/hblr/conflict-minerals-and-sec-disclosure-regulation/.
[41] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).
[42] Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45,150 (Aug. 19, 1999).
[43] Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Securities Act Release No. 6383, Exchange Act Release No. 18,524, 47 Fed. Reg. 11,380, 11,381–82 (Mar. 16, 1982).
[44] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 11,280, Exchange Act Release No. 99,778, 89 Fed. Reg. 21,668, 21,679–82 (Mar. 28, 2024) (to be codified at 17 C.F.R. pt. 229); *id*. at 21,707–15 (to be codified at 17 C.F.R. § 210.14-02).
[45] *See, e.g., Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014), *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000), *West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

guidance and publications, both on environmental disclosure and on climate disclosure more specifically, created a framework that rested on the "bedrock" of materiality.[46]

In fact, the National Resources Defense Council (NRDC) sued the SEC to force disclosures similar to the ones implemented by this rule in the 1970's, but the Commission argued—correctly—that such disclosures were immaterial and thus not subject to the agency's rule-making authority. The D.C. Circuit ultimately agreed with the Commission,[47] and the agency refused to take up the disclosure rules—until 2024, 90 years after the Securities and Securities Exchange acts were enacted. Given the added skepticism with which the Supreme Court has approached such actions as this one that directly contradict an agency's previous and long-standing interpretation of its own authority, the SEC should repeal this rule for lack of authority.[48]

II. <u>There are No Reliance Interests Sufficient to Prevent SEC from Finalizing the Proposed Rule</u>

For the following reasons, there are no reliance interests on the part of any relevant parties that should prevent the SEC from acting on its proposal to rescind the 2024 climate disclosure requirements.

First, the 2024 Final Rule never became effective, because the SEC issued a stay of the rule in response to litigation.[49] The SEC has statutory discretion to stay its rules pending judicial review both specifically under the Securities Exchange Act[50] and generally under the Administrative Procedure Act,[51] and the SEC exercised that discretion less than a month after the 2024 rule was finalized and before the rule became effective. As a result, there are no parties that could reasonably argue that they came to rely on a rule that never came into effect.

Second, even before the SEC decision to stay the 2024, that rule was subject at the outset to extensive litigation, with petitions seeking review filed across no fewer than six separate courts of appeal.[52] Given the contentious history of the 2024 Final Rule and the widespread

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[46] "Statement Before the Open Commission Meeting on Disclosure Related to Business or Legislative Events on the Issue of Climate Change by SEC Chairman Mary Schapiro," January 27, 2010, available at https://www.sec.gov/news/speech/2010/spch012710mls-climate.htm
[47] *Natural Resources Defense Council, Inc. v. SEC*, 606 F.2d 1031 (D.C. Cir. 1979).
[48] *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014); *West Virginia v. EPA*, 597 U.S. 697 (2022); *supra* note 28.
[49] In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 33-11280, Securities Exchange Act Release No. 34-99908 (April 4, 2024), https://www.sec.gov/files/rules/other/2024/33-11280.pdf
[50] Securities Exchange Act of 1934, Pub. L. No. 73-291, § 25(c)(2), 48 Stat. 881 (codified at 15 U.S.C. § 78y(c)(2)).
[51] Administrative Procedure Act, Pub. L. No. 79-404, § 705, 60 Stat. 237 (codified at 5 U.S.C. § 705).
[52] *NRDC v. SEC*, No. 24-707 (2nd Cir. filed March 12, 2024); *Liberty Energy Inc. v. SEC*, No. 24-60109 (5th Cir. filed March 6, 2024), *Louisiana v. SEC*, No. 24-60109 (5th Cir. filed March 7, 2024), *Texas Alliance of Energy Producers v. SEC*, No. 24-60109 (5th Cir. filed March 11, 2024), *Chamber of Commerce of the United States of America v. SEC*,

litigation that resulted, it would simply not be reasonable for *any* person or entity in the United States to rely on the continuation of that rule.

Third, rescinding the 2024 rule before it comes into effect is in fact necessary to prevent the formation of reliance interests. If the 2024 rule were ever imposed, the establishment of a compliance ecosystem around the climate disclosure requirements, along with a professional lobby of economists, accountants, attorneys, and compliance officers with economic interests in the maintenance of these requirements, would predictably arise. Particularly given the illegality in the climate disclosure requirements, which the SEC has identified in its proposed rule, and also given the undesirable policy implications of the disclosure requirements, which the SEC has also identified, it is critical that the SEC rescind the 2024 disclosure requirements now, before any reliance interests come into being.

Fourth, to the extent that any reliance interests were somehow found to exist, oxymoronically in the context of a rule that never actually went into effect, the Government is entitled to "conclude that reliance interests in benefits that it views as unlawful are entitled to no or diminished weight."[53] Even in less controversial contexts, administrative agencies possess the inherent authority to reconsider their decisions.[54] Here, where the SEC's proposed action here is based not only in the imprudence, but also in the illegality of the 2024 Final Rule, and also given that, as noted above, the SEC's authority and rulemaking in the area of climate disclosures has been subject to litigation since the initial promulgation of the 2024 Final Rule, the case for subjecting any alleged reliance interests to diminished weight is particularly strong.

Fifth, and finally, even when an agency "ultimately concludes that the reliance interest rank as serious, they are but one factor to consider."[55] Balancing the totality of considerations weighed in the Proposed Rule and in these comments, along with the factors that weigh against reliance as listed above, the SEC should find that there are no reliance interests sufficient to bar the proposed rescission of the 2024 Final Rule and its resulting climate disclosure requirements.

III. Preexisting Disclosure Requirements Already Elicit Adequate Disclosure Regarding Material Matters, Including Those Related to Climate, Making the 2024 Final Rule and the SEC's 2010 Guidance Unnecessary.

No. 24-60109 (5th Cir. filed March 14, 2024); *Ohio Bureau of Wokers' Compensation v. SEC*, No. 24-3220 (6th Cir. filed March 13, 2024); *Iowa v. SEC*, No. 24-1522 (8th Cir. filed March 12, 2024); *West Virginia v. SEC*, No. 24-10679 (11th Cir. filed March 6, 2024); *Sierra Club v. SEC*, No. 24-1067 (D.C. Cir. filed March 13, 2024).

[53] *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 32 (2020).

[54] *See, e.g., Spanish Int'l Broadcasting Co.,* 385 F.2d 615, 621 (1967); *Sierra Club v. Antwerp*, 560 F. Supp. 2d 21, 23 (2008), *ConocoPhillips Co. v. EPA*, 612 F.3d 822, 832 (5th Cir. 2010).

[55] *DHS v. Regents*, 591 U.S. at 32 (2020).

It is hardly original for us to note that the SEC already requires companies to disclose material climate information,[56] and has done so for decades. If anything, it is slightly disappointing that in the current Notice, SEC has solicited comments on whether to revise its 2010 Guidance[57] to provide updated guidance, rather than to consider rescission of the 2010 Guidance entirely.[58]

In the best case scenario, the 2010 Guidance was unnecessary. The materiality standard required by the SEC's authorizing statutes for all contexts, and not just climate, had already been fleshed out by Supreme Court caselaw in the 1970's[59] and 1980's.[60] In fact, the SEC already had already had already addressed the disclosure of material environmental issues, including the financial impact of compliance with environmental laws, in a longstanding 1982 release,[61] which represented the SEC's final, longstanding guidance on material environmental disclosure until the publication of the 2010 Guidance. The 1982 release, in turn, represented a thoughtful, considered approach by the SEC, and the culmination of more than a decade of evaluation and experience with the question of environmental disclosures by publicly listed corporations,[62] going back to 1971.[63]

Thus, materiality had been the cornerstone of environmental disclosure for half a century leading up to the SEC's 2024 Final Rule, and for 40 years leading up to the 2010 Guidance. Thus, to answer the SEC's fifth request for comments,[64] it is clear as a matter of straightforward, black letter law that existing disclosure requirements served to elicit adequate disclosure about material, climate-related matters, not just before the 2024 Final Rule, but even before the SEC's 2010 Guidance, unless somebody would make the novel argument that climate risk is somehow not included within the scope of environmental disclosures on which the SEC had been issuing both binding and interpretive guidance since the 1970's.

In fact, if anything, the preexisting requirements, as finally established in 1982, was vastly superior to anything in the 2010 Guidance. Reading the regulatory and legislative background that SEC drafted for the 2010 Guidance, it is striking to reflect, not only how

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[56] *See, e.g.*, Senator Pat Toomey et al, Letter to John F. Kerry, Special Presidential Envoy for Climate, April 20, 2021. https://www.banking.senate.gov/imo/media/doc/toomey_gop_members_letter_to_kerry.pdf
[57] U.S. Securities and Exchange Commission, "Commission Guidance Regarding Disclosure Related to Climate Change," *Federal Register*, Vol. 75, No. 25 (February 8, 2010), p. 6,290.
[58] 91 *Fed. Reg.* at 33,314.
[59] *TSMC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).
[60] *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).
[61] U.S. Securities and Exchange Commission, "Adoption of Integrated Disclosure System," *Federal Register*, Vol. 47, No. 51 (March 16, 1982), p. 11,380.
[62] Interpretive Release 33-6130 (providing a summary of legal and administrative actions taken by the SEC with regard to environmental disclosure over the course of the 1970's).
[63] U.S. Securities and Exchange Commission, "Disclosures Pertaining to Matters Involving the Environment and Civil Rights," *Federal Register*, Vol. 36, No. 146 (July 29, 1971), p. 13,989.
[64] 91 *Fed. Reg.* at 33,314.

outdated that section is, but how thoroughly the legislative and regulatory developments that they highlighted either failed to pass in the first place, or have been reversed. When reviewing State efforts to combat climate change, the 2010 Guidance starts with a footnote referencing the Regional Greenhouse Gas Initiative, Western Climate Initiative (including seven Western States and four Canadian provinces), and the Midwestern Greenhouse Gas Reduction Accord.[65] Yet the Midwestern Greenhouse Gas Reduction Accord has since become defunct,[66] and the Western Climate Initiative is a husk of its former ambitions, as five of the original seven Western States left the initiative, along with three of the four Canadian provinces.[67] Only the Regional Greenhouse Gas Initiative lives on at its former scale, notwithstanding the questionable Constitutionality of these compacts.[68]

The 2010 Guidance could not discuss enacted legislative developments, of which there were not any, but did discuss the Cap-and-Trade bill in the Senate.[69] As the 2010 Guidance notes, “This legislation, if enacted, would limit and reduce greenhouse gas emissions through a ‘cap and trade’ system of allowances and credits, among other provisions.”[70] Suffice it to say that the bill in question was never enacted, but in fact failed in the Senate,[71] and many of the Representatives who did vote for the failed bill lost their subsequent election.[72] The 2010 Guidance also discusses how in January of 2010, EPA began to require large emitters of greenhouse gases to collect and report their greenhouse gas emissions data,[73] but EPA has recently proposed to terminate the Greenhouse Gas Reporting Program for almost all source categories.[74]

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[65] 75 *Fed. Reg.* at 6,290 n.7.

[66] Cusick, D. (2018, November 12). Blue Wave in Midwest Could Resurrect Climate Compact. *Scientific American*. https://www.scientificamerican.com/article/blue-wave-in-midwest-could-resurrect-climate-compact/ (saying of the Midwestern Greenhouse Gas Reduction Accord, “The band broke up years ago.” Spoiler Alert: the article discusses the possibility that the compact would revive, but it didn’t).

[67] Western Climate Initiative. (2025, December 19). *Participating Jurisdictions Overview* [Fact Sheet]. https://wcitestbucket.s3.us-east-2.amazonaws.com/amazon-s3-bucket/participatingjurisdiction-comparativetable-en.pdf

[68] U.S. Const. art. I, § 10, cl. 3.

[69] American Clean Energy and Security Act of 2009 (Waxman-Markey Bill), H.R. 2454, 111th Cong. (as passed by House, June 26, 2009).

[70] 75 *Fed. Reg.* at 6,290.

[71] The Failed Effort to Enact Cap and Trade Legislation to Fight Global Warming, *Harvard Magazine* (2013, February 15). https://www.harvardmagazine.com/2013/02/environmentalist-failure-to-pass-cap-and-trade

[72] Samuelsohn, D. & Bravender, R. (2010, November 3). *Day of Reckoning for Climate Vote.* Politico. https://www.politico.com/story/2010/11/day-of-reckoning-for-climate-vote-044617

[73] U.S. Environmental Protection Agency, “Mandatory Reporting of Greenhouse Gases,” *Federal Register*, Vol. 74, No. 209 (October 30, 2009), p. 56,260.

[74] U.S. Environmental Protection Agency, “Reconsideration of the Greenhouse Gas Reporting Program,” *Federal Register*, Vol. 90, No. 177 (September 16, 2025), p. 44,591.

The 2010 Guidance's citations to international treaties fares no better. The 2010 Guidance cites, for example, to the Kyoto Protocol,[75] which the Guidance acknowledges that the U.S. never ratified.[76] The 2010 Guidance also cites to the U.S. participation in the United Nations Climate Conference in Copenhagen,[77] but no binding treaty resulted from those talks, and the SEC could not have known that the U.S. would ultimately withdraw from the Paris Agreement negotiated in successor talks,[78] as well as from the broader United Nations framework under which the negotiations leading to the climate agreements occurs.[79]

In other words, the legal developments, which the SEC cited as the legislative and regulatory background for the 2010 Guidance, has proven to be almost entirely erroneous. Every Federal statute or regulation that the SEC used to justify the 2010 Guidance either never became enacted, or has been proposed for reversal. If anything, this could be a cardinal example at minimum of why agencies should wait for statutes to be enacted, and for agreements to be adopted, rather than to try and predict the legal environment proactively. In this 2010 Guidance, the SEC effectively called on private actors to provide disclosures about the effects of upcoming legal and regulatory developments and risk, which the SEC itself almost entirely failed to predict. This is particularly notable given that, in the context of a 3-2 decision to promulgate the guidance, at least one of the SEC commissioners voting in favor of the 2010 Guidance specifically cited the "backdrop of…changing legislative and regulatory landscapes."[80]

In this context, the arguments of Commissioner Kathleen Casey, who dissented from the vote adopting the Guidance, is prescient: "The issuance of this release, however, at a time when the state of the science, law and policy relating to climate change appear to be increasingly in flux, makes little sense."[81] In addition, as Commissioner Casey noted, "our disclosure regime related to environmental issues including climate change is highly developed and robust, and registrants are well aware of, and have decades of experience complying with, these disclosure requirements."[82] Given the existence of a robust, decades-old environmental disclosure regime decades before the issuance of the 2010 Guidance, as discussed above, along with the

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[75] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 2303 U.N.T.S. 162 (entered into force Feb. 16, 2005).
[76] 75 *Fed. Reg.* at 6,290.
[77] *Id.* at 6,291.
[78] Exec Order No. 14,162, "Putting America First in International Agreements," *Federal Register*, Vol. 90, No. 19 (January 20, 2025), p. 8,455.
[79] Memorandum on Withdrawing the United States From International Organizations, Conventions, and Treaties That Are Contrary to the Interests of the United States, *Federal Register*, Vol. 91, No. 11), p. 2,281.
[80] Luis A. Aguilar, Comm'r, SEC, "Speech: Responding to Investors' Requests for SEC Guidance on Disclosures of Risk Related to Climate Change" (January 27, 2010), https://www.sec.gov/news/speech/2010/spch012710laa-climate.htm.
[81] Kathleen L. Casey, Comm'r, SEC, "Speech: Statement at Open Meeting – Interpretive Release Regarding Disclosure of Climate Change Matters" (January 27, 2010), https://www.sec.gov/news/speech/2010/spch012710klc-climate.htm.
[82] *Id.*

demonstrably disproven legal and regulatory context on which the 2010 Guidance was based, it makes little sense to return to the 2010 Guidance, which in principle is nonbinding anyway, rather than to the environmental disclosure regime that has applied since the early 1980's.

The fact that the 2010 Guidance is redundant and unnecessary is by itself sufficient reason to rescind that guidance. However, the 2010 Guidance is actively harmful, to the interests of both investors and especially publicly traded companies, when compared to the 1982-era regime that governs all other environmental disclosures. As such, the SEC should take this opportunity to rescind, not only the 2024 Rule, but the 2010 interpretive guidance as well. Given that Federal agencies are able to change interpretive (as opposed to binding) guidance without going through notice and comment,[83] and indeed adopted the 2010 Guidance in the first place without undergoing notice and comment, there would be no hurdles for SEC to take this approach.

The 2010 Guidance requires unreasonable speculation from corporate registrants in terms of predicting climate change and weather patterns, the specific effects of that climate change on the company's financial performance, and the probability of various climate statutes, regulations, and treaties being enacted. As discussed above, the SEC itself in its 2010 Guidance spectacularly failed to predict the long-term U.S. legal developments in the context of climate change, and climate models have consistently proven to be inaccurate, with observed warming consistently underperforming modeled projections.[84] Given the SEC's own demonstrable failure to predict legal developments, and the consistent failure of scientists to predict warming patterns, it is unreasonable for SEC to issue guidance that not only expects corporations to predict these items, but to do so with a level of precision that accurately translates to the corporation's bottom line, years into the future.

Moreover, creating such disclosure requirements create significant liability risk for publicly traded companies, and leaves them in a Catch-22 situation; they could potentially be sued for not disclosing such speculative risks, or otherwise if they do disclose, they could be subject to litigation for miscalculating the effect of such risk. In addition, notwithstanding the fact that the 2010 Guidance is couched as an interpretive rule, agency guidance sits in a strange grey area, where regulated stakeholders can see the guidance as binding, even when it in fact is not. Thus, even interpretive guidance can have a coercive effect, even without requiring comment-and-notice rulemaking in the first place.[85]

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[83] *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015) (unanimously overturning *Paralyzed Veterans of Am. v. DC Arena, L.P.*, 117 F.3d 579 (D.C. Cir. 1997)).

[84] Spencer, R. (2024, January 24). *Global Warming: Observations vs. Climate Models*. Backgrounder No. 3809, The Heritage Foundation. https://www.heritage.org/sites/default/files/2024-01/BG3809_0.pdf

[85] *See* Mark Seidenfeld, *The Problem with Agency Guidance – or Not*, Yale J. on Reg.: Notice and Comment (May 3, 2019), https://www.yalejreg.com/nc/the-problem-with-agency-guidance-or-not-by-mark-seidenfeld/.

Indeed, some of the arguments made by supportive SEC commissioners, such as describing the guidance as informing companies "what our existing rules currently require,"[86] and stating that companies would be obligated to know their specific emissions information in order to apply, only make sense if the 2010 Guidance is seen as binding in at least some respects.[87] If anything, these pressures are only magnified by the fact that the SEC is citing the 2010 Guidance as justification to rescind a mandatory reporting scheme. Finally, by avoiding notice and comment in the first instance, the SEC effectively avoided having to consider the fact that its 2010 Guidelines would likely add to costs by requiring expanded disclosure, with the additional costs and burdens inherent in determining what disclosures would meet the materiality standard in the first place.[88]

This added burden on publicly listed companies makes little sense, not just absent Congressional authorization, but also given that the legal and regulatory developments that the SEC cited as the background justifying the 2010 Guidance has failed to come to fruition in the first place. The failure of those legal developments to come to fruition would, at best, be a straightforward argument against agencies trying to predict legal developments, rather than respond to them. However, it is hard not to imagine a different agenda on the SEC's part.

> "With legislative progress on climate change having stalled, this guidance suggests an attempt by the SEC to promote a political agenda through regulation. The guidance reaches beyond the SEC's expertise and will impose potentially significant compliance costs on issuers with little apparent benefit to investors."[89]

To be clear, the 2010 Guidance, for all its faults, is vastly superior to the climate disclosure requirements that the SEC promulgated in the 2024 Final Rule. As such, the SEC's proposal to rescind the 2024 Final Rule and restore the 2010 Guidance represents a substantial improvement. However, for the reasons above, an even better approach would be to rescind the 2010 Guidance as well, so that climate disclosures continue to be bound by the same rules that have governed all environmental disclosures for decades, stretching back to 1982.

IV. Rescinding the 2024 Climate Disclosure Requirements is Necessary to Advance the SEC's Statutory Goal of Facilitating Capital Formation by Encouraging Companies to List Publicly

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[86] Luis A. Aguilar, Comm'r, SEC, "Speech: Responding to Investors' Requests for SEC Guidance on Disclosures of Risk Related to Climate Change" (January 27, 2010), https://www.sec.gov/news/speech/2010/spch012710laa-climate.htm.

[87] *Id.*

[88] *See* Camden D. Burton, "An Inconvenient Risk: Climate Change Disclosure and the Burden on Corporations," *The Administrative Law Review*, vol. 62, no. 4, 2010, pp. 1287-90.

[89] U.S. Congress, Office of Spencer Bachus, "Bachus Criticizes SEC's Climate Change Guidance," press release, February 3, 2010, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=227687.

Under the SEC's statutory charge, "Whenever pursuant to this title the Commission is engaged in rulemaking…and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."[90] Given the SEC's statutory role to facilitate capital formation by providing an investment avenue for companies that list publicly, the SEC should be deeply concerned by the pronounced, long-term decline in the number of publicly listed companies subject to its regulations. This is particularly true given how deeply intertwined the concerns of investor welfare and capital formation actually are.

The number of publicly traded companies has decreased approximately 50 percent since 1997, when more than 7,300 U.S. companies were listed publicly, compared to approximately 3,700 today.[91] Concerningly, this trend is largely restricted to the U.S. public markets; over this timeframe, the rest of the world, both developed countries excluding the U.S., and undeveloped countries, have seen the official counts of public firms increase significantly.[92]

This also been reflected in the fact that companies are staying private for much longer; the median age of tech-sector companies undergoing Initial Public Offerings (IPOs) in the 2020s has been 11.2 years, up from 5.6 years in the 1980's.[93] In many ways, this understates the problem that retail investors face, given that the top 10 companies in the S&P 500 make up 40 percent of S&P's market capitalization.[94] Essentially, even investing in a broad-based index gives retail investors exposure to a much narrower range of the market than 30 years ago.

Given that investments in unregistered securities are limited to accredited investors,[95] which in the case of non-professional investors is limited to those with a net worth of over $1 million[96] or an annual income exceeding $200,000 individually or $300,000 jointly with a spouse in each of the prior two years,[97] the decreasing number of registered public companies significantly reduces the scope of investments available to all but the most affluent of retail investors. This concern is magnified by the fact that over 10- and 25-year periods, top-tier

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[90] Securities Act of 1933 § 2(b), 15 U.S.C. § 77b(b); and Securities Exchange Act of 1934 § 3(f), 15 U.S.C. § 78c(f).
[91] Center for Research in Security Prices. (2025, September 19). *What "Owning the Market" Really Means.* https://www.crsp.org/what-owning-the-market-really-means/
[92] Eckbo BE, Lithell M. Merger-Driven Listing Dynamics. *Journal of Financial and Quantitative Analysis*. 2025;60(1);209-257. Doi:10.1017/S0022109023001394.
[93] Munafo, C. (2026, May 28). *Companies Are Staying Private Longer: Why it Matters*. VanEck. https://www.vaneck.com/us/en/blogs/private-markets/companies-are-staying-private-longer-why-it-matters/
[94] The Editorial Board. Trump Wants to Liberate 401(k)s. (2026, April 5). Editorial. *Wall Street Journal*. https://www.wsj.com/opinion/donald-trump-401ks-private-equity-department-of-labor-unions-6e601e66?eafs_enabled=false
[95] 17 CFR 230.501(a).
[96] 17 CFR 230.501(a)(5).
[97] 17 CFR 230.501(a)(6).

private buyout funds have consistently outperformed major public indices such as the S&P 500 and MSCI World indices.[98] Indeed, private equity achieved an average annual return of 15.1 percent between 1984 and 2024, compared to 11.7 percent for the S&P 500.[99] To some extent, this differential is a natural and unavoidable outgrowth of various factors, including the liquidity premium[100] and typically elevated risk profiles for private investments;[101] however, this differential also reinforces that reducing the scope of investment opportunities on the public markets actively harms retail investors, by limiting their investment opportunities.

The increased disclosure requirements that burden public companies with additional compliance requirements, and thereby discourage SEC registration and public listing, are to some extent inevitable, to the degree that they reflect statutory developments. As the most prominent example, the Sarbanes-Oxley statute significantly increased the cost and burden for companies to list publicly, particularly smaller and mid-sized companies, which faced the same increased disclosure requirements as their larger competitors.[102] Nonetheless, given that the U.S. stands virtually alone in narrowing the scope of investments available to the general public, as measured by the dwindling number of publicly traded companies, the SEC should refrain from significantly increasing disclosure requirements in contexts, such as the 2024 climate disclosures, that lack a clear Congressional mandate.

V. <u>There are Additional Cost and Benefits Associated with the Proposed Rescission Beyond Those that the SEC Identified in its Analysis</u>

The proposal likely understates several categories of economic benefits that are difficult to quantify but nevertheless represent meaningful compliance costs that should be considered.

Under the 2024 Final Rule, firms would devote substantial effort to implementing new reporting systems, reviewing disclosures, and maintaining ongoing compliance. Redirecting these personnel toward core business operations is itself an economic benefit that is not fully captured by direct compliance cost estimates.

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[98] *E.g.*, McKinsey & Co. (2026). *Global Private Markets Report 2026: Private Equity—Clearer View, Tougher Terrain* (February 10, 2026). https://www.mckinsey.com/industries/private-capital/our-insights/global-private-markets-report/private-equity#/

[99] The Editorial Board. Trump Wants to Liberate 401(k)s. (2026, April 5). Editorial. *Wall Street Journal*. https://www.wsj.com/opinion/donald-trump-401ks-private-equity-department-of-labor-unions-6e601e66?eafs_enabled=false

[100] Longstaff, F.A. (1995), How Much Can Marketability Affect Security Values?. The Journal of Finance, 50: 1767-1774. https://doi.org/10.1111/j.1540-6261.1995.tb05197.x

[101] John Y. Campbell and Luis Viceira, "The Term Structure of the Risk-Return Tradeoff," NBER Working Paper 11119 (2005), https://doi.org/10.3386/w11119.

[102] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 15 U.S.C. and 18 U.S.C.).

In addition, the proposal may understate the indirect costs associated with collecting climate-related information from suppliers and other third parties and implementing any new systems required.[103] These costs are particularly relevant for companies with complex domestic and international supply chains, where obtaining reliable information may require significant contractual, technological, and administrative investments. In many cases, the information are not readily available or readily calculable[104], further increasing compliance burdens and costs.[105]

Rescission would also provide value by reducing regulatory uncertainty.[106] Prescriptive disclosure requirements for something as vague and often incalculable as emissions and climate risks create uncertainty regarding evolving compliance expectations, future enforcement, and potential litigation. Companies may face litigation risk when investors, advocacy groups, or other stakeholders allege that climate-related disclosures are incomplete, misleading, or inaccurate, even when those disclosures are based on reasonable assumptions and good-faith estimates. Because many climate-risk assessments rely on forecasts, scenario analyses, and complex emissions calculations that lack universally accepted methodologies, firms may be exposed to challenges regarding the adequacy or accuracy of their disclosures.[107] [108] The prospect of defending against such claims can increase compliance costs and deter productive investment. Reducing that uncertainty allows firms to make long-term investment decisions with greater confidence and improves the efficiency with which capital is allocated, which should be considered a benefit of rescission.

The risk of litigation may also encourage firms to adopt overly cautious disclosure practices or devote excessive resources to legal review and compliance efforts rather than productive business activities, further increasing the costs associated with the 2024 Final Rule.[109]

The economic benefits of rescission are likely to be greatest for smaller reporting companies, emerging growth companies, recently public issuers, and firms with relatively limited compliance resources. Many compliance obligations associated with the 2024 Final Rule

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[103] ERM & SustainAbility Institute, Cost of Climate Disclosure Survey Fact Sheet (Apr. 2022), https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/climate-disclosure-survey_fact-sheet-april-2022.pdf.

[104] Lee Reiners et al., The Cost of Climate Disclosure: Three Case Studies on the Cost of Voluntary Climate-Related Disclosure, Climate Risk Disclosure Lab, Duke University School of Law (Dec. 2021), https://econ.duke.edu/sites/econ.duke.edu/files/documents/The%20Cost%20of%20Climate%20Disclosure.pdf.

[105] U.S. Securities and Exchange Commission, "Rescission of Climate-Related Disclosure Rules," *Federal Register*, Vol. 91, No. 106 (June 3, 2026), p. 33,296, 33,299.

[106] Id., p. 33,296, 33,299–300.

[107] Kevin D. Dayaratna, Ph.D., "Methods and Parameters Used to Establish the Social Cost of Carbon," testimony before the Subcommittee on Environment and Oversight, Committee on Science, Space, and Technology, U.S. House of Representatives, February 24, 2017, https://docs.house.gov/meetings/sy/sy18/20170228/105632/hhrg-115-sy18-wstate-dayaratnak-20170228.pdf.

[108] U.S. Securities and Exchange Commission, "Rescission of Climate-Related Disclosure Rules," *Federal Register*, Vol. 91, No. 106 (June 3, 2026), p. 33,296, 33,298-299.

[109] Id., p. 33,296, 33,299–300.

require substantial fixed investments, including reporting systems, outside consultants, legal review, internal controls, and assurance services. Because these costs do not increase proportionately with firm size, they represent a significantly greater burden for smaller issuers. The proposed rescission therefore provides proportionally greater relief to those firms.

Companies operating in industries with extensive physical operations or complex supply chains likewise would have faced comparatively greater compliance costs under the 2024 climate disclosure requirement. Rescission appropriately relieves these firms of obligations that may provide limited incremental value to investors while imposing significant implementation costs.

Although some multinational issuers may continue to collect climate-related information to comply with foreign or state disclosure requirements, those firms would nevertheless benefit from avoiding duplicative SEC-specific reporting obligations and the associated compliance and liability costs.[110]

The SEC's cost savings estimates appear reasonable, but in several respects they may be overly conservative.

The proposal appropriately identifies substantial reductions in direct compliance costs associated with preparing climate-related disclosures, collecting emissions data, developing reporting systems, obtaining third-party assurance, and satisfying new governance and financial reporting requirements. These estimates provide a reasonable basis for evaluating the principal economic benefits of rescission.

At the same time, certain categories of compliance costs are inherently difficult to monetize and therefore may not be fully reflected in the SEC's analysis. These include opportunity costs associated with redirecting capital away from productive investment, defensive compliance practices to avoid litigation, and the cumulative burden associated with overlapping disclosure regimes.

Accordingly, although precise quantification is necessarily subject to uncertainty, the SEC's estimates likely represent a conservative assessment of the overall economic benefits associated with rescinding the climate disclosure requirements and more could be done to factor these into the SEC's cost analysis.

VI. There are Additional Benefits in Terms of Efficiency, Competition, and Capital Formation Beyond Those Identified by the SEC in its Analysis.

While the SEC has appropriately identified many of the impacts from removing the 2024 Final Rule there are further benefits not identified or fully fleshed out in its analysis.

The SEC reasonably concludes that rescinding the climate disclosure requirements would reduce significant compliance costs for registrants. The proposal, however, may understate the

[110] Id., 33,297.

broader economic benefits associated with reducing unnecessary regulatory obligations. Compliance activities require substantial financial and managerial resource investment, and those resources could instead be directed toward productive ends such as research and development, capital expenditures, hiring, business expansion, and investor returns. Allowing firms greater flexibility in allocating these resources is likely to improve productive efficiency across a wide range of industries. The analysis should more fully account for the opportunity costs associated with these sorts of compliance expenditures.[111] Resources devoted to greenhouse gas inventories, legal review, internal controls, etc., necessarily reduce the resources available for productive business activities. Estimating these forgone investments would provide a more complete assessment of the proposal's economic effects.

The proposed rescission may also produce additional benefits for capital formation beyond those identified in the proposal.[112] The 2024 Final Rule would have imposed significant fixed compliance costs that are largely independent of firm size had it been implemented on schedule. These costs fall disproportionately on smaller companies and factor into decisions around whether firms go public. To the extent these costs discourage firms from becoming or remaining public, rescission of the 2024 Final Rule would likely improve access to U.S. capital markets, reduce barriers to entry, and enhance competition among public companies.

Further, regulatory requirements that exceed what is necessary to protect investors increase the cost of participating in U.S. securities markets. A disclosure framework focused on financially material information rather than speculative climate disclosures is more likely to promote efficient capital allocation while preserving the attractiveness of investing in U.S. markets and improving the competitiveness of U.S. businesses. The SEC should consider whether existing empirical literature on initial public offerings[113], public company exits, [114] and regulatory compliance costs could inform estimates of the effect that reducing disclosure obligations may have on capital formation.[115] Although precise estimates may not be possible, available evidence may provide a useful basis for evaluating these effects and should be considered in the analysis.

As a final note, the SEC may also wish to consider quantifying reductions in litigation and liability exposure associated with rescinding highly prescriptive disclosure requirements. Reduced litigation risk may lower both direct legal expenses and the incentives for firms to adopt

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[111] Id., 33,298.
[112] Id., 33,296, 33,298.
[113] Nischala P. Reddy, Ben Le & Donna L. Paul, *Impact of Sarbanes Oxley Act on Initial Public Offerings: New Evidence from Reverse Leveraged Buyouts*, 21 Journal of Financial Reporting and Accounting 575 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4884882.
[114] Ehud Kamar, Pinar Karaca-Mandic & Eric Talley, *Going-Private Decisions and the Sarbanes-Oxley Act of 2002: A Cross-Country Analysis*, 25 Journal of Law, Economics & Organization 107 (2009), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2410&context=faculty_scholarship.
[115] Andres Almazan, Nathan Swem, Sheridan Titman & Gregory Weitzner, *Access to Capital and the IPO Decision: An Analysis of U.S. Private Firms, Federal Reserve Board Finance and Economics Discussion* Series No. 2025-102 (2025), https://www.federalreserve.gov/econres/feds/files/2025102pap.pdf.

unnecessarily costly compliance practices. This would produce efficiency improvements as well as improving the ability to compete more effectively in markets.

Conclusion

The SEC should be commended for its proposal to rescind the climate disclosure requirements that the SEC mandated in its 2024 Final Rule. The 2024 Final Rule was already on shaky legal ground at the time of publication, as indicated by the number of lawsuits launched immediately in the aftermath of its promulgation, the years of legal disputes ever since, and the SEC's own decision in the previous administration to stay the final rule until the legal outcome became clear. Since the promulgation of that Final Rule, the legal ground for the climate disclosures has only grown weaker with the *Loper-Bright* decision, the demise of *Chevron* deference, and the requirement that agencies administer the "single, best meaning" of their authorizing statutes.

The correctness of the legal approach that guides this Notice is further reinforced by the strong policy arguments behind rescission of the 2024 climate disclosure requirements. Given that material disclosures on environmental matters have been required at least since 1982, any further requirements subject investors with a growing mass of immaterial information through which they need to sift in order to understand the finances and prospects of the company in which they are considering whether to invest. Such speculative disclosures further misallocate company resources, wrongly involve the SEC in decisions involving the allocation of capital, and require companies to make projections involving events that regulators (including the SEC) and scientists struggle and fail to predict accurately, never mind corporate finance analysts.

We are therefore encouraged by the SEC's proposed rescission, and only hope that the SEC goes further in rescinding its misconceived 2010 guidance as well. Thank you for the opportunity to comment.

Respectfully yours,

Trevar D. Kolodny
Visiting Fellow
The Heritage Foundation[116]

Sarah Wagoner
Policy Analyst, Environmental and Energy Policy
The Heritage Foundation[117]

Michael Bicksel
Intern
The Heritage Foundation[118]

[116] Institutional affiliation provided for identification purposes only. These comments do not necessarily represent the views of The Heritage Foundation.
[117] *Id.*
[118] *Id.*