August 3, 2026

Via the Commission's Internet Comment Form

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Securities and Exchange Commission
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Re: Comments of Public Interest Organizations on Proposed Rescission of Climate-Related Disclosure Rules, 91 Fed. Reg. 33,296 (June 3, 2026); File No. S7-2026-19

Environmental Defense Fund, Clean Air Task Force, Earthjustice, Natural Resources Defense Council, and Sierra Club respectfully submit the following comments to the Securities and Exchange Commission ("SEC" or "Commission") in response to its request for feedback regarding its proposal titled *Rescission of Climate-Related Disclosure Rules*, 91 Fed. Reg. 33,296 (June 3, 2026) (the "Proposal").[1] In this action, the SEC proposes to rescind vital rules it adopted just two years ago based on an extensive and robust rulemaking record: *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 89 Fed. Reg. 21,668 (Mar. 28, 2024) (the "Disclosure Rules").

The signatories are non-profit public-interest organizations that share a common assessment that climate-related impacts present significant and growing financial risks and opportunities to investors, capital markets, and the U.S. financial system. We are attuned to such risks based on organizational expertise on climate-related impacts on society, companies, the economy, and the financial system. Our organizations and members have a shared interest in ensuring that the Disclosure Rules go into effect to provide markets with information that will enable better understanding and management of climate-related financial risks and opportunities.

As detailed below, the Proposal, if finalized, would harm American investors—including anyone with a retirement account or other invested savings—who depend on and benefit from transparent and efficient capital markets. In an abrupt reversal of its longstanding interpretations, the SEC now grossly misreads the scope of its statutory authority as precluding the Disclosure Rules. In fact, the Disclosure Rules are well within the Commission's authority, consistent with its mandatory disclosure practices spanning decades, and critical for investor protection, market efficiency and capital formation. The Proposal further misapplies materiality considerations, the federalism canon, and the major questions doctrine. In addition to severely misconstruing the securities laws, the Proposal is based on inadequately explained, unsupported, and unreasonable factual findings, conclusions, and changes in position that render it arbitrary and capricious.

In light of the myriad legal and factual errors detailed below, as well as the enormous harms and costs that it would inflict, the SEC should abandon this Proposal.

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[1] The documents cited to and relied on in these comments are hereby incorporated by reference as part of the rulemaking record. For ease of access, commenters are submitting to this docket via email PDFs of all cited documents, other than legal documents such as laws, regulations, Federal Register entries, and court cases.

TABLE OF CONTENTS

BACKGROUND

The Securities Act of 1933, 15 U.S.C. § 77a et seq. ("Securities Act") and the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. ("Exchange Act") were created to protect investors by promoting full and fair disclosure. The SEC first promulgated disclosure requirements shortly after the Acts' passage in the 1930s, and ever since, has periodically modified its disclosure framework when different information became important to investment and shareholder voting decisions.

Under the federal securities laws, the SEC can require issuers to disclose 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. § 77g(a)(1); *see also id.* §§ 78l(b)(1), 78m. In carrying out its statutory delegation of authority, the Commission has required issuers to disclose specific environment-related information since the early 1970s.[2] For example, in 1971, the Commission first provided guidance about the circumstances in which its existing regulations called "for disclosure of legal proceedings and descriptions of registrant's business" related to "material matters involving the environment and civil rights." *See* Disclosures Pertaining to Matters Involving the Environment and Civil Rights, 36 Fed. Reg. 13,989, 13,989 (July 29, 1971). Two years later, the Commission adopted regulations requiring disclosure of the material effects of compliance with environmental laws on capital expenditures, earnings, and competitive position, as well as any environmental proceedings under a governmental authority. *See* Disclosure With Respect to Compliance With Environmental Requirements and Other Matters, 38 Fed. Reg. 12,100 (May 9, 1973). The SEC has modified or proposed to modify these requirements from time to time, as it did in the 1980s when it proposed to limit disclosures about environmental litigation to proceedings involving fines over a certain threshold. *See* Proposed Amendments to Item 5 of Regulation S-K Regarding Disclosure of Certain Environmental Proceedings, 46 Fed Reg. 25,638, 25,639 n.17 (May 8, 1981). It has never, however, reversed its position that it has statutory authority to require such disclosures.

For many years, the SEC explicitly recognized the materiality of climate-related information. By 2010, the SEC had received petitions for climate-related disclosures from "large institutional investors and other investor groups;" it had received information from stakeholders including investors and state officials "regarding climate risk disclosure in SEC filings;" and the New York Attorney General's Office had "entered into settlement agreements with three energy companies under its investigation regarding their disclosures about their greenhouse gas emissions and potential liabilities to the companies resulting from climate change and related regulation." Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6,290, 6,290-92 & n.20 (Feb. 8, 2010) ("2010 Guidance"). In response, the SEC issued its 2010 Guidance outlining its "views with respect to our existing disclosure requirements as they apply to climate change matters ... to assist companies in satisfying their disclosure obligations under the federal securities laws and regulations." *Id.* at 6,290.

The SEC's 2010 Guidance explained that issuers may need to disclose some climate-related information pursuant to existing requirements of Regulation S-K, discussing "the most

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[2] *See* Working Group on Securities Disclosure Authority Comment Letter 2-5 (June 16, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131670-302060.pdf (bipartisan group of former SEC officials and securities experts supporting the SEC's authority to promulgate the Disclosure Rules).

pertinent rules and "their application to disclosure of certain specific climate change related matters." 75 Fed. Reg. at 6,293. In particular, the SEC explained that climate-related disclosures may be required in an issuer's description of its business, discussions of legal proceedings and risk factors, and the management discussion and analysis, among other items. *Id.* at 6,293-97. It further described how topics for disclosure could include the impacts of legislation and regulation, international accords, and the physical impacts of climate change. *Id.* At the time of the 2010 Guidance's release, even a dissenting commissioner still observed that the SEC's "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."[3]

The SEC reviews and responds to changes in how investors use information over time and adjusts disclosure requirements in light of market developments. For instance, continuing its practice of regularly evaluating emerging risks and their relevance to investment and voting decisions, and considering the adequacy of disclosures in light of changing market circumstances, the SEC sought comment in 2016 on adjusting Regulation S-K to reflect emerging topics relevant to issuers' business and financial condition and investment and voting decisions. *See* Business and Financial Disclosure Required by Regulation S-K, 81 Fed. Reg. 23,916 (Apr. 22, 2016). Recognizing that the issues material to the reasonable investor evolve over time, the Commission reiterated that disclosure requirements must do so as well, noting that "the task of identifying what information is material to an investment and voting decision is a continuing one in the field of securities regulation." *Id.* at 23,971. The SEC sought comment on the sufficiency of climate-related disclosures, responding to evidence of remaining inadequacy years after the 2010 Guidance. *Id.* at 23,971. These comments informed the SEC of the growing gap between the information investors needed and the information then available in corporate disclosures.

In 2021, the SEC undertook several actions to assess the adequacy of climate-related disclosures: the Acting Chair directed the SEC's Division of Corporation Finance to enhance review of compliance with the 2010 guidance and to learn how the market managed climate-related risks; the SEC's Division of Examinations prioritized climate-related risks in examinations of proxy voting policies and practices; the SEC's Division of Enforcement created a task force to identify gaps or misstatements in climate risk disclosures; and the Commission issued a request for public comment on climate-related disclosures.[4] The Commission then proposed the Disclosure Rules in 2022, and, following its consideration of the overwhelming investor support and other evidence in the extensive public comment file, adopted the final version of the Disclosure Rules in 2024.

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[3] Kathleen L. Casey, *Speech by SEC Commissioner: Statement at Open Meeting — Interpretive Release Regarding Disclosure of Climate Change Matters*, SEC, Jan. 27, 2010, https://www.sec.gov/news/speech/2010/spch012710klc-climate.htm.

[4] *See* Allison Herren Lee, *Statement on the Review of Climate-Related Disclosure*, SEC (Feb. 24, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-statement-review-climate-related-disclosure; *SEC Division of Examinations Announces 2021 Examination Priorities*, SEC (Mar. 3, 2021), https://www.sec.gov/newsroom/press-releases/2021-39; *SEC Announces Enforcement Task Force Focused on Climate and ESG Issues*, SEC (Mar. 4, 2021), https://www.sec.gov/newsroom/press-releases/2021-42; Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures*, SEC (Mar. 15, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-climate-change-disclosures.

DETAILED COMMENTS

I. The Disclosure Rules Are Well Within the Commission's Authority.

The novel statutory interpretation set forth in the Proposal as a basis for rescinding the Disclosure Rules is wrong. The Disclosure Rules amply meet the statutory criteria for disclosure requirements under the Securities Act and Exchange Act, as the Commission explained in its 2024 rulemaking. The Commission's unjustifiably narrow new interpretation is plainly not the "best reading" of these Acts. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). But even if the Commission's proposed new interpretation were correct (which it is not), the Disclosure Rules would still fall well within the bounds of the Commission's claimed authority because the information they require concerns registrants' business or financial characteristics. As discussed below, the Proposal also misapplies materiality considerations, the federalism canon, and the major questions doctrine, further underscoring its flawed statutory reading. There is no statutory basis for repealing the Disclosure Rules, and the SEC should abandon this misguided Proposal.

A. The Disclosure Rules Meet the Statutory Criteria for New Disclosure Requirements Under the Securities Act and Exchange Act.

Relying on an unjustifiably narrow interpretation of its mandatory disclosure authority, the Commission proposes that the Disclosure Rules must be rescinded. Under this novel theory, any disclosures required by the Commission must be "'channel[ed]' by and comparable to the kinds of disclosures recited in the statutes." 91 Fed. Reg. at 33,302. More specifically, the Commission argues that it is only authorized to require additional disclosures that are similar to the enumerated items in Schedule A of the Securities Act and the categories of information listed in Section 12(b)(1) of the Exchange Act. *Id.* However, the Commission's "channeling" interpretation is irreconcilable with the text, structure, and history of the Acts, as well as the SEC's longstanding practice.

Congress charged the SEC with protecting investors, including by requiring and facilitating disclosures needed for informed investment decisions. Under the Securities Act, the SEC can require that issuers disclose 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. § 77g(a)(1). The Exchange Act similarly authorizes the SEC to require information for the protection of investors. *See id.* § 78l(b) (information requirements for exchange registration); *id.* § 78m (periodic and other reports).

The Proposal's ostensible new "interpretation" is impermissible. It entails reading into the relevant statutory text words of limitation that simply are not there. Congress provided Schedule A as an initial template for items to be included in financial statements filed with the Commission. 15 U.S.C. § 77g(a)(1). At the same time, Congress expressly authorized the SEC to require that issuers include in a registration statement "such other information" it deems "necessary or appropriate in the public interest or for the protection of investors," without reference to the items enumerated in Schedule A. *Id.* There is no explicit or implicit directive that such additional disclosures be "related" or "similar" to those in Schedule A, qualifiers that

Congress frequently deployed elsewhere in the Act.[5] Indeed, the open-ended "such other information" language does not appear adjacent to the reference to Schedule A. Indeed, the two sentences in Section 7(a)(1) are separated by language regarding the filing of written consent of professionals involved in the preparation of a registration statement. Thus, reading the phrase "such other information" in context reveals that it is an independent grant of rulemaking authority governed by its own limiting principle, that disclosure rules must be in "the public interest or for the protection of investors." 15 U.S.C. § 77g(a)(1).

Section 12(b)(1) of the Exchange Act is similar. The provision authorizes the Commission to require disclosure of information "as necessary or appropriate in the public interest or for the protection of investors" with respect to certain enumerated categories, the last of which is a catch-all that encompasses "any further financial statements which the Commission may deem necessary or appropriate for the protection of investors." 15 U.S.C. §§ 78l(b)(1); (b)(1)(L). Notably, the catch-all category of "any further financial statements" is not qualified by language suggesting similarity or comparability to the other listed categories, in contrast to the use of such qualifiers elsewhere in Section 12(b).[6] Section 13 of the Exchange Act requires issuers to file reports "in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security," including updates to registration information and "such annual reports … and such quarterly reports … as the Commission may prescribe." *Id.* § 78m(a)

Beyond the clear text and structure of the individual provisions, the core purposes of the Securities Act and the Exchange Act further affirm that the Commission is authorized to promulgate rules that facilitate the disclosure of information important for investor protection and decisionmaking. *See* 91 Fed. Reg. at 33,302 ("the words [of the statute] take meaning from the purposes of the regulatory legislation"). The preamble to the Securities Act emphasizes the need for "full and fair disclosure of the character of securities sold." As the Supreme Court has explained, the Securities Act is designed to "protect investors by promoting full disclosure of information thought necessary to informed investment decisions." *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953). Similarly, one of the Exchange Act's "central purposes" is to "protect investors through the requirement of full disclosure by issuers of securities." *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967).

Responding to Congress's directives, the SEC first exercised its authority to promulgate disclosure requirements shortly after the Acts' enactment in the 1930s, and ever since, has periodically modified them in furtherance of its investor protection mission. In some cases, the

[5] *See, e.g.*, 15 U.S.C § 77z-2(h) ("Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise *similar* authority or to adopt *similar* rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority." (emphasis added)); 15 U.S.C § 77c(b)(2)(G)(i) (authorizing the Commission to adopt "a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any *related* documents, in such form and with such content as prescribed by the Commission" (emphasis added)).

[6] *See, e.g.*, 15 U.S.C. § 78l(b)(2) (disclosure of "[s]uch copies of articles of incorporation, bylaws, trust indentures ... underwriting arrangements, and other *similar* documents of ... the issuer ... as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.") (emphasis added); 78l(c) (authorizing the SEC to determine that certain information is inapplicable to a class or classes of issuers and to "require in lieu thereof the submission of such other information of *comparable* character as it may deem applicable to such class of issuers" (emphasis added)).

Commission has removed certain outdated items that are no longer of financial salience.[7] In others, "the Commission has also expanded the disclosure regime to cover a number of matters that are not expressly addressed by Schedule A or subsequent acts of Congress," including "executive compensation, related-party transactions, asset-backed securities, and various technical industry-specific items."[8] These iterative modifications to the disclosure regime undermine the Proposal's notion that Congress meant for resemblance to Schedule A items to operate as an independent limitation, disabling the Commission from requiring disclosures needed to protect investors and promote the proper functioning of capital markets.

B. Even Under the Proposal's Novel Theory, the Disclosure Rules Would Be Well Within the Bounds of the Commission's Congress-Conferred Authority.

Even if Schedule A operated as a constraint on the SEC's disclosure authority, as the Proposal claims, its arguments for why the Disclosure Rules violate that constraint do not hold up to scrutiny; the Disclosure Rules are authorized under any plausible reading of the law.

The Proposal asserts that because the enumerated items in Schedule A "refer to a registrant's business or financial characteristics," the Rules exceed delegated authority in requiring mandatory disclosure of climate-related information that it alleges does not relate to a registrant's business or financial characteristics. 91 Fed. Reg. at 33,302. To the extent the Proposal is suggesting that Congress meant to prohibit disclosures beyond a registrant's basic identifying details (name, principal place of business) and balance sheet figures, nothing about Schedule A or the SEC's past rulemakings supports that contention. On the contrary, as Congress surely understood and the Commission has always recognized, information may relate to a registrant's business or financial characteristics in the sense of describing conditions that could affect a registrant's future business or financial prospects or providing context around financial metrics. The Disclosure Rules elicit certain types of climate-related information *because* they relate to registrants' business or financial condition and thus easily meet that test.

To begin with, Schedule A includes many items, not all of which relate to basic information about a registrant's business or its financial metrics. As the Proposal itself highlights, Schedule A includes several disclosures that Congress had designed "to address concerns with managerial self-dealing." 91 Fed. Reg. at 33,303 (citing items 14, 20, 22, and 24 of Schedule A and 15 U.S.C. § 78l(b)(1)(F)-(D)). As discussed above, these items (such as item 24, requiring disclosure of every contract by or with a public utility company) focused on specific risks that Congress thought salient at the time of the Securities Act's passage, notwithstanding the fact that the particular information elicited was arguably neither a business nor a financial characteristic of the registrant.

Many longstanding and indisputably authorized disclosure requirements the SEC has previously adopted seek information that is not itself a financial metric but that nonetheless has significance for the registrant's current and long-term financial prospects or risks—and therefore to investment decisions. Like these other requirements, the Disclosure Rules seek to elicit information about climate-related risks, the impact of those risks, and company responses to

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[7] *See* Fisch, Georgiev, Nagy & Williams Comment Letter 7 (June 6, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20130354-297375.pdf (noting that the SEC has walked back Schedule A items related to disclosure of public utility contracts, which were originally aimed at addressing risks that were salient in the 1930s).
[8] *See* Fisch, Georgiev, Nagy & Williams Comment Letter, *supra*, at 7.

those risks, issues that "significantly affect the company's financial performance and position." 89 Fed. Reg. at 21,669.

For example, in 1947, the Commission added a requirement to disclose the relative importance of companies' varying lines of business and general competitive conditions in their industries, which is qualitative information not directly related to financial results. *See* Miscellaneous Amendments, 12 Fed. Reg. 224 (Jan. 15, 1947). In 1970, the Commission required disclosure of legal proceedings involving management. *See* Form 10, 17 C.F.R. § 249.210, 35 Fed. Reg. 16,537 (Oct. 23, 1970). In 1980, the Commission required issuers to provide a narrative explanation of the company's financial performance, referred to as "management's discussion and analysis," which aimed to enable "an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance." Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides, 45 Fed. Reg. 63,630, 63,643-44 (Sep. 25, 1980); *see also* Concept Release on Management's Discussion and Analysis of Financial Condition and Operations, 52 Fed. Reg. 13,715, 13,717 (Apr. 24, 1987). Then, in 1982, the Commission adopted rules requiring issuers to disclose "risk factors" in connection with an offering and discussion of the "principal factors" behind that risk. Summary Information, Risk Factors, and Ratio of Earnings to Fixed Charges, 47 Fed. Reg. 11,423, 11,423 (Mar. 16, 1982). In 2009, the Commission proposed disclosures about the board's role in risk management, stating that "recent market events ha[d] demonstrated" that "the capacity to assess risk and respond to complex financial and operational challenges can be important attributes" for directors, Proxy Disclosure and Solicitation Enhancements, 74 Fed. Reg. 35,076, 35,082-83 (July 17, 2009), and stated upon finalization that this information would "enhance [investors'] ability to make informed voting and investment decisions." Proxy Disclosure Enhancements, 74 Fed. Reg. 68,334, 68,334 (Dec. 23, 2009). Other SEC rulemakings have required disclosure of environment-related information where such information would provide insight on issuers' finances or risk exposure and improve investors' ability to make informed investment and voting decisions.[9]

The 2024 Adopting Release explained how the Disclosure Rules advanced the SEC's mission to protect investors and the functioning of capital markets and how the information elicited would shed light on registrants' business and financial condition. The Commission explained that "climate-related risks can affect a company's business and its financial performance and position in a number of ways." 89 Fed. Reg. at 21,685. The SEC noted that a "growing number of investors across a broad swath of the market consider information about climate-related risks to be important to their decision-making" and had "expressed the need for more reliable information" about climate-related risks to issuers' businesses, and how registrants consider and respond to such risks. 89 Fed. Reg. at 21,685. The Disclosure Rules met this need, the Commission explained, by "providing investors more reliable and decision-useful disclosure of strategies and risks that a registrant has determined will likely materially impact its business,

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[9] *See, e.g.*, 36 Fed. Reg. at 13,989 (guidance about the circumstances in which its existing regulations called "for disclosure of legal proceedings and descriptions of registrant's business" related to "material matters involving the environment and civil rights."); 38 Fed. Reg. at 12,100 (regulations requiring disclosure of the material effects of compliance with environmental laws on capital expenditures, earnings, and competitive position, as well as any environmental proceeding brought by a governmental authority); Conclusions and Final Action on Rulemaking Proposals Relating to Environmental Disclosure, 41 Fed. Reg. 21,632, 21,632 (May 27, 1976) (requiring "disclosure of capital expenditures for environmental compliance purposes").

results of operations, or financial condition." 89 Fed. Reg. at 21,685; *see also id.* at 21,686 ("we believe the final rules will allow investors to make better informed investment or voting decisions"). Finally, the Adopting Release articulated with specificity the ways in which improving the quality and comparability of climate-related information available to investors through mandatory disclosure helps facilitate market efficiency, competition, and capital formation. 89 Fed. Reg. at 21,888-91; *see also* 15 U.S.C. §§ 77b(b), 78c(f).

Although the Proposal announces a different (and inaccurate) view as to the Rules' expected effects on investor protection and capital markets, and whether these benefits justify compliance burdens on registrants, such objections go to the particulars of the exercise of, not the existence of, the Commission's statutory authority.

C. The Materiality of Climate Risk Information Reinforces that the Disclosure Rules Are Clearly Within the SEC's Statutory Authority.

The Proposal mischaracterizes and misapplies materiality considerations in a manner that conflicts with judicial precedent, the Commission's own regulations, and longstanding agency practice. Contrary to the Proposal's assertions, the Disclosure Rules sit comfortably within the Commission's authority and tradition and align with the principle of materiality by soliciting information important to investor decisionmaking.

As a threshold matter, while the Proposal calls materiality "a key part of the Commission's application of legal authority" and invokes the term in various ways when claiming that the Rules exceed that authority, 91 Fed. Reg. at 33,303-05, neither the federal securities laws nor precedent enshrine materiality as a limit on the SEC's disclosure rulemaking.[10] Accordingly the SEC has often established generally applicable disclosure requirements that, by the Commission's own admission, will sometimes obligate companies to disclose information not specifically material for them.[11] In any event, climate risk information *is* material, as investors have resoundingly confirmed.

The Commission's regulations implementing the Securities Act and Exchange Act each define information as material when "there is a substantial likelihood that a reasonable investor would attach importance [to it] in determining whether" to buy or sell a security. 17 C.F.R. §§ 230.405, 240.12b-2. The Supreme Court's holding in *TSC Industries, Inc. v. Northway* similarly held that information is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." 426 U.S. 438, 449 (1976); *see also Basic Inc. v. Levinson*, 485 U.S. 224 (1988). *TSC Industries* further confirms that importance to shareholder voting decisions, not only buying and selling decisions, supports materiality: "An omitted fact is

[10] *See* Fisch, Georgiev, Nagy & Williams Comment Letter, *supra*, at 13 (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (defining materiality in the context of a proxy fraud action under Rule 14a-9) and *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (adopting the *TSC Industries* materiality formulation in the context of securities fraud actions under Rule 10b-5)).

[11] Numerous existing SEC disclosure requirements contain a percentage or dollar-based bright-line threshold, *see, e.g.*, 17 C.F.R. §§ 210.5-03.1, 210.12-13, 229.404(d)(1), 229.402(c)(2)(ix)(A), or no explicit limitation at all, *see, e.g.*, 17 C.F.R. §§ 229.101(c)(1)(xiii), 229.404(b)(1), 17 C.F.R. § 229.601(b)(17), 229.703—in some cases, accompanied by a specific acknowledgment in the corresponding adopting release that this may result in disclosure of non-material information.

material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." 426 U.S. at 449. Materiality is "a mixed question of law and fact." *Id.* at 450.

Under those standards, climate risk information is plainly material. Investors regularly seek—and expend resources on—information on two categories of climate-related financial risks: physical and transition. Climate-related physical risks can affect a company's business activities and its current and longer-term financial performance by damaging assets, disrupting operations, and increasing costs. Additionally, as society responds to climate change, including by shifting to lower-carbon products, practices, and services, companies confront transition risks—or opportunities, depending on their readiness, business models, and strategies—which can have a material impact on their financial condition. Investors use greenhouse gas (GHG) emissions data to track corporate risk management strategies over time[12] and to design index fund composition and weighting.[13] To enable investor assessment of climate-related risks, it is essential that registrants provide information on how they are measuring and responding to such risks.[14] The absence of appropriate disclosures could lead to a "climate bubble," in which asset values do not reflect firms' exposure and efforts (or lack thereof) to manage such risks. Upon bursting, a bubble of this nature could send shockwaves through the economy.[15]

The Proposal claims that the Disclosure Rules would not provide investors with material climate-related information because existing requirements already ensure any such information is disclosed, 91 Fed. Reg. at 33,305, but the record says otherwise. Indeed, investors managing assets totaling trillions of dollars informed the Commission themselves that climate impacts are already causing significant disruptions to the U.S. economy and that better information is needed to navigate these developments. 89 Fed. Reg. at 21,679 n.137. For example, in comments on the proposed Disclosure Rules, Pacific Investment Management Company stated, "[W]e believe climate risks often pose a material financial risk, and therefore, investors need disclosure of climate risks that is complete, reliable, and consistent in order to analyze how climate-related risks may affect a company's business or overall financial performance."[16] Wellington Management agreed that "issuers face new risks relating to climate change—specifically,

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[12] *See, e.g.*, *How Rising Carbon Prices Could Cut Company Profits*, Schroders, https://perma.cc/VP28-YU6H (describing the "Carbon Value at Risk" model used by asset managers to calculate how future climate policy could affect company profits and investor returns).
[13] *See, e.g.*, S&P Dow Jones Indices, S&P Carbon Efficient Select Index Series Methodology (Mar. 2026), https://www.spglobal.com/spdji/en/documents/methodologies/methodology-sp-carbon-efficient-select-index-series.pdf.
[14] *See* Emirhan Ilhan et al., *Climate Risk Disclosure and Institutional Investors*, 36 Rev. Fin. Stud. 2617, 2619 (2023) (survey of 439 large institutional investors finding that 79% believed climate risk reporting was as important as existing types of financial reporting) (additional findings cited in Disclosure Rules).
[15] *See* Rostin Behnam, Comm'r, Commodity Futures Trading Comm'n, Opening Statement of Commissioner Rostin Behnam Before the Market Risk Advisory Committee (June 12, 2019), https://perma.cc/C37G-497S; Hoover Institution et al., 2024 Institutional Investor Survey on Sustainability 4 (2024), https://hoover-s3-website.s3.us-west-2.amazonaws.com/s3fs-public/2024-05/2024-cgri-msci-sustainability-survey-FINAL.pdf ("The world's largest investors overwhelmingly believe that climate change will impact portfolios, but do not think climate risks are fully reflected in asset prices.").
[16] PIMCO Comment Letter 3 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132331-302894.pdf.

transition risk and physical risk—and that these risks necessitate enhanced issuer disclosure."[17] It further observed that not addressing transition risk "could result in the company missing strategic opportunities for growth or the ability to address vulnerabilities in its business model, which, over time, could threaten its profitability or even its ability to continue to operate its business."[18] Citing comment letters from Calvert, Fidelity, C. Howard, Impax Asset Management, and Morningstar, the Commission found that the Disclosure Rules would help investors understand the "financial impacts that transition risk may have on a registrant's business and financial condition, including on its own liquidity and capital resources." 89 Fed. Reg. at 21,730.

In sum, the Proposal mischaracterizes and misapplies the Commission's materiality considerations. While materiality has never been a legal limit on the SEC's disclosure rulemakings, climate risk information is plainly material and financially relevant, and the Disclosure Rules fall well within the Commission's statutory authority. In addition, as discussed further in Part II *infra*, the Commission fails to explain its change in position from its prior findings and conclusions regarding the materiality of climate risk information, and fails to justify its new positions in the Proposal in the face of robust and growing evidence that climate risk information is material. Materiality considerations support the Disclosure Rules and do not support the Proposal.

D. The Major Questions Doctrine Has No Relevance Whatsoever.

The Proposal posits that "the major questions doctrine further demonstrates that the Commission lacked authority to promulgate the [Disclosure] Rules." 91 Fed. Reg. at 33,307. This claim is manifestly incorrect.

In *West Virginia v. EPA*, the Supreme Court described the contours of the "major questions doctrine," an interpretive tool applicable only in "extraordinary cases" to ascertain "whether Congress in fact meant to confer the power [an] agency has asserted." 597 U.S. 697, 700, 721 (2022) (cleaned up). An agency action is "extraordinary," the Court held, when it exhibits each of three attributes: The first is whether the action breaks with the agency's own regulatory practice, wherein it purports to locate for the first time some "unheralded power" in a "long-extant statute." *Id.* at 700. The second relates to regulatory breadth, such that the action at issue represents a "transformative expansion" of the agency's authority. *Id.* The third considers material outcomes: the action must, as a practical matter, have "vast economic and political significance." *Id.* at 716. When all three indicia are present, a court will insist on "clear congressional authorization" before sustaining the action. *Id.* at 700.

Despite the Commission's claims in the Proposal, the Disclosure Rules meet none of the criteria for major questions treatment. And even if that were not the case, the doctrine would still be unavailing, because, as discussed above, the SEC's authorizing statutes unambiguously permit it to adopt such disclosure requirements. The major questions doctrine posed no obstacle to the Disclosure Rules and lends no support to the Proposal.

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[17] Wellington Mgmt. Comment Letter 3 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131856-302305.pdf.
[18] *Id.*

i. The Disclosure Rules Are Consistent with the SEC's Regulatory History.

Contrary to the Proposal's claims, the Disclosure Rules did not "stray into areas far beyond the Commission's comparative expertise," 91 Fed. Reg. at 33,307, or rely on some unheralded power lurking in an obscure or long-dormant statutory provision. Rather, the Rules are fully consistent with longtime Commission practice under the marquee provisions charging the SEC with developing disclosure requirements that inform investors and enhance market efficiency. Like numerous other SEC actions over the last 90 years, and based on the same core statutory provisions, the Disclosure Rules update the agency's public company reporting framework to ensure that investors have material information to help guide their buying, selling, and voting decisions. More granularly, the SEC's history of disclosure requirements contains analogs for the subject matter and design of the Disclosure Rules.[19]

Multiple previous SEC rules have required public companies to disclose information similar in kind to what the Disclosure Rules elicit. For example, the Commission's longstanding corporate governance-focused disclosure requirements seek information on the existence and functions of certain board committees; various attributes of directors, offices, and other key persons; and compensation metrics and policies beyond the items specified in Schedule A. *See* 17 C.F.R. §§ 229.401, 229.402, 229.407. Numerous established SEC disclosure requirements bear on registrants' assessments of various kinds of risk, from availability of raw materials to market risks to performance incentives. *See, e.g.*, 17 C.F.R. §§ 229.101(c), 229.303, 229.305(a)(1), 229.407. Regulation S-K is replete with disclosures that, while not facially financial,[20] nonetheless bear upon "a registrant's business, results of operations, or financial condition." 91 Fed. Reg. at 33,305; *see also* Section I.B, *supra*. Thus, in requiring companies to disclose how they are addressing climate-related risks, including through information on internal corporate operations and governance, the Disclosure Rules are fully in line with many decades of regulatory precedent.

Moreover, the SEC has since the early 1970s required registrants to disclose their exposure to environmental enforcement actions and other environment-related financial risks, for reasons quite similar to those supporting the Disclosure Rules' provisions on GHG emissions data and other indicators of transition risk.[21] The Proposal attempts to downplay these analogs by asserting that "[t]he dominant themes from the Commission at the time were doubts about its powers and how investors would use Commission mandated environmental disclosures," and that these rules were "adopted ... in response to a specific congressional directive contained in the National Environmental Policy Act of 1969 ('NEPA'), which required the Commission and

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[19] For further discussion of regulatory precedents for the Disclosure Rules, *see generally* Comment Letter of Inst. for Pol'y Integrity at NYU Sch. of Law, Env't Def. Fund & Madison Condon (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132109-302592.pdf.

[20] Indeed, the SEC describes Regulation S-K as "the central repository for its non-financial statement disclosure requirements." 81 Fed. Reg. at 23,917.

[21] *See* 17 C.F.R. § 229.103; 36 Fed. Reg. at 13,989; 38 Fed. Reg. at 12,100; Securities Act Release No. 5385 (Apr. 20, 1973); Environmental and Social Disclosure, 40 Fed. Reg. 51,656 (Nov. 6, 1975); Conclusions and Final Action on Rulemaking Proposals Relating to Environmental Disclosure, 41 Fed. Reg. 21,632 (May 27, 1976); Environmental Disclosure, 44 Fed. Reg. 56,924 (Oct. 3, 1979); Proposed Amendments to Item 5 of Regulation S-K Regarding Disclosure of Certain Environmental Proceedings, 46 Fed. Reg. 25,638, 25,641 (May 8, 1981); *Modernization of Regulation S-K Items 101, 103, and 105*, 85 Fed. Reg. 63,726, 63,742 (Oct. 8, 2020).

other Federal agencies to develop procedures to consider environmental values in decisionmaking." 91 Fed. Reg. at 33,306. But the Commission's original rationale in 1971 for requiring environmental disclosures had nothing to do with NEPA, focusing instead on the fact that "compliance with statutory requirements with respect to environmental quality, e.g. various air, water, and other antipollution laws, may necessitate significant capital outlays, may materially affect the earning power of the business, or may cause material changes in the registrant's business done or intended to be done." 36 Fed. Reg. at 13,989.[22] This mirrors the basis for the Disclosure Rules.

The Proposal further quotes the SEC's statement in its 1975 release that "it is generally not authorized to consider the promotion of social goals unrelated to the objectives of the Federal securities laws," 91 Fed. Reg. at 33,306 (quoting 40 Fed. Reg. at 51,656), intimating that this proposition condemns the Disclosure Rules. But that misses the point: The Adopting Release is clear that the Disclosure Rules were appropriate and necessary for advancing the core investor protection and market efficiency objectives of the Federal securities laws, as shown by a vast, comprehensive, and sophisticated evidentiary record. Indeed, the 1975 release specifically contemplated the potential need to add disclosure requirements over time, as "business relationships, supply conditions and a host of other factors which could not be foreseen in 1933 and 1934 may today have a significant impact on the financial condition of companies and the priorities of investors." 40 Fed. Reg. at 51,659. And the Proposal's observation that the earlier requirements "do not pressure or require registrants to create and maintain dedicated risk management systems that prioritize one category of risks above all others," 91 Fed. Reg. at 33,305, likewise describes the Disclosure Rules. Again, the Disclosure Rules do not require registrants to do *anything* other than disclose information. Nor do they "pressure" them—a registrant that truthfully reports (for example) that it has no board committee addressing climate risks is no less compliant with the Rules than one whose disclosures describe intensive efforts. Registrants may, in response to these disclosure requirements, voluntarily modify their behavior going forward in order to better appeal to investors' interests, but that is a rational, market-based business decision, not a regulatory requirement.

As Congress intended, the SEC has amended its disclosure rules time and again in response to investor interest or market developments that change the salience of information. The Disclosure Rules align with this extensive history and are consistent with the Commission's longtime understanding of the securities laws. The Proposal thus falls far short of demonstrating that the Rules represent the kind of historical break that would implicate the major questions doctrine.

ii. The Disclosure Rules Do Not Transform the Breadth of the SEC's Authority.

The Proposal similarly errs in claiming that the Disclosure Rules represent "a transformative expansion [of] ... regulatory authority" by "stray[ing] into areas far beyond the

[22] While some of the Commission's releases did invoke NEPA, it made clear that NEPA considerations were "supplementary" to its power derived from the securities laws, 40 Fed. Reg. at 51,661 (citing 42 U.S.C. § 4335), and that it was issuing environmental disclosure requirements "*under [its] existing authority*." 40 Fed. Reg. at 51,661 (emphasis in original) (citing 115 Cong. Rec. 40926 (Dec. 22, 1969)). Any "doubts" it expressed were related to whether NEPA supplied the Commission with authority to go *beyond* what the securities laws already permitted.

Commission's comparative expertise." 91 Fed. Reg. at 33,307. On the contrary, the Rules simply require informational disclosures from public companies for the purpose of investor protection, staying squarely within the SEC's wheelhouse. While the Commission had not, prior to the Disclosure Rules, specifically required disclosure of climate-related risks, this does not amount to a "transformative expansion" of the SEC's authority for major questions purposes: all new regulations necessarily cover *some* new ground. Instead, to implicate the major questions doctrine, a regulation must fall so far outside the agency's core competency as to lack a workable analogy in prior regulations issued by the agency.

In this regard, the Disclosure Rules come nowhere close to major questions territory. Congress expressly authorized the SEC to issue, amend, and add to disclosure requirements for registrants as necessary or appropriate for investor protection. As described above, the agency has done so regularly since its founding, establishing real expertise in this area. *See* 597 U.S. at 729. In the SEC's own words, defending the Rules in the Eighth Circuit: "Ensuring that market participants have appropriate information to make investment and voting decisions 'is what [the Commission] does.'" Brief for Respondent at 56, *Iowa v. SEC*, No. 24-1522 (8th Cir. Aug. 6, 2024) (quoting *Biden v. Missouri*, 595 U.S. 87, 95 (2022) (per curiam)). And far from vague, ancillary, or little-used, the same clear, core statutory provisions that the SEC cited for the Disclosure Rules (Securities Act Sections 7, 10, 19(a), and 28 and Exchange Act Sections 3(b), 12, 13, 15, 23(a), and 36), 89 Fed. Reg. at 21,912, have undergirded disclosure requirements for decades. *See, e.g.*, 12 Fed. Reg. at 224; 38 Fed. Reg. at 12,101; 45 Fed. Reg. at 63,647; Executive Compensation and Related Person Disclosure, 71 Fed. Reg. 53,158, 53,228 (Sep. 8, 2006); Asset-Backed Securities Disclosure and Registration, 79 Fed. Reg. 57,184, 57,311 (Sep. 24, 2014). *Cf.* 597 U.S. at 724 (counseling skepticism when an agency premises transformative expansion on an "ancillary provision" of a statute "designed to function as a gap filler").

The Proposal incorrectly asserts that the Disclosure Rules overstep by "effectively mandating certain risk management practice." *See* 91 Fed. Reg. at 33,307. But as discussed above, by their plain terms, the Rules do *not* require any action from registrants other than information disclosure—and indeed, expressly affirm that the SEC "remains agnostic about whether or how registrants consider or manage climate-related risks." 89 Fed. Reg. at 21,671. As the SEC explained in a prior rule, even if a disclosure requirement may result indirectly in some companies voluntarily adjusting their conduct to appeal to investors, that does not undercut the rule's "valid informational purpose." *See* 43 Fed. Reg. 58,522, 58,527 (Dec. 14, 1978). Potential effects of disclosure requirements on corporate behavior have been accepted dating back to the passage of the Acts.[23] Moreover, if the Rules' disclosure requirements *were* to result in changes in investor actions and, in response, corporate actions, that would be proof positive that the Rules further a core purpose of the securities laws: providing investors with decision-useful information.

[23] *See, e.g.*, Felix Frankfurter, *The Federal Securities Act*, Fortune (Aug. 1933), at 53, 55 (reprinted at 78 Cong. Rec. 853, 854 (1934)) ("[S]ocial standards newly defined [may] establish themselves as new business habits.")); William O. Douglas, *Directors Who Do Not Direct*, 47 Harv. L. Rev. 1305, 1324 (1934) ("[A detailed annual report] will go far as a corrective of conditions which have been constantly recurring in our corporate history. Its prophylactic effects will equal in importance any other single measure which can be adopted.").

Finally, unlike some prior regulations invalidated on major questions grounds,[24] the Disclosure Rules do not extend the agency's oversight to previously unregulated entities. Rather, they require certain additional information from publicly traded companies, all of which have acceded to the SEC's longstanding, regularly updated disclosure framework in exchange for broader access to capital. To trigger the major questions doctrine, a regulation must carve out entirely new swaths of agency authority; the Disclosure Rules do nothing of the kind.

iii. The Disclosure Rules Do Not Have Vast Economic and Political Significance.

Lastly, the Proposal fails in its claim that the Disclosure Rules carry the kind of "vast economic and political significance" necessary to raise major question concerns. 91 Fed. Reg. at 33,307 (cleaned up).

In the very same sentence of the Proposal containing this assertion, the Commission admits that the Rules' requirements consist of nothing more than company disclosures. *Id.* (citing *West Virginia,* 597 U.S. at 729). In this regard, the Proposal's appeal to *West Virginia v. EPA* is particularly misplaced. In *West Virginia*, the Court rejected an EPA interpretation of the Clean Air Act that it concluded would entail "vast economic and political significance" by attempting to "balanc[e] the many vital considerations of national policy implicated in how Americans will get their energy." *West Virginia,* 597 U.S. at 716, 729. The Court based this conclusion on its finding that the EPA policy in question would have "forc[ed] a shift throughout the power grid from one type of energy source to another" by "announcing what the market share of coal, natural gas, wind, and solar must be, and then requiring plants to reduce operations or subsidize their competitors to get there." *Id.* at 727-28, 731 n.4. That in no way resembles the SEC's requirement that companies simply report information on climate-related risks they face.

The "economic significance" prong tends to consider whether the action expands the agency's authority to newly regulated entities or parts of the economy (which the Disclosure Rules do not) rather than dollars in isolation. *See Util. Air Regul. Grp.*, 573 U.S. at 328. As explained above, in the Disclosure Rules, the SEC regulated the same aspect of the economy (public company reporting), in the same manner (informational disclosure requirements), and for the same reason (investor protection) as Congress expressly directed it in 1930s legislation and as it has done since—including for over half a century with regard to environment-related risks.

In any event, the estimated costs of the Disclosure Rules do not rise close to the level needed for major questions applicability. The Proposal cites annual cost estimates of "less than $197,000 to over $739,000" per registrant. 91 Fed. Reg. at 33,307. These costs amount to the hiring of at most a handful of additional employees (and as few as a single one) per company to handle reporting obligations. The Proposal's aggregated $4.9 billion annual cost total, *id.* at 33,307-08 (which, as discussed in Section II.E, *infra*, is very likely substantially overstated), does not change the analysis. This figure is, for example, around 1% of the $469-$519 billion estimated cost of the student loan forgiveness program that the Supreme Court deemed

[24] *See, e.g., Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 322 (2014) (rejecting EPA interpretation of the Clean Air Act that would have increased the number of sources required to have permits from "fewer than 15,000 to about 6.1 million" entities); *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 765 (2021) (striking down eviction moratorium that applied to "millions of landlords across the country," none of whom had previously been subject to the agency's requirements).

economically significant in *Biden v. Nebraska*, 600 U.S. 477, 502 (2023), and around 10% of the $50 billion estimated cost of the eviction moratorium the Supreme Court deemed economically significant in *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021). Moreover, it is less than 0.1% of the $62 trillion (as of the end of 2023) total market capitalization of companies registered with the SEC,[25] and is of the same order of magnitude as the estimated compliance costs of various other SEC regulations.[26] The Disclosure Rules' costs simply do not reach the extraordinary heights that could trigger the major questions doctrine.

In terms of "political significance," the Disclosure Rules address the matter of ensuring public companies disclose certain information on financial risks related to climate change, not the matter of addressing climate change itself. The Proposal's selective invocations of Congress's failure to pass legislation specifically requiring the types of disclosures in the Disclosure Rules[27]—a weak and ambiguous signal at most (*see Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 648-51 (1990))—lose any persuasive value in light of the fact that Congress has also failed to pass legislation *forbidding* such disclosure requirements. *See* H.J. Res. 127, 118th Cong. (2024); S.J. Res. 72, 118th Cong. (2024); H.J. Res. 88, 117th Cong. (2022); H.R. 8589, 117th Cong. (2022).

In sum, the Disclosure Rules do not reflect vast economic and political significance, a power unheralded in the SEC's history, nor a transformative expansion of agency authority, all of which would be required to trigger the major questions doctrine. Moreover, even if the doctrine were triggered (which it is not), the Securities Act and Exchange Act provide clear congressional authorization for the Disclosure Rules.

E. The Disclosure Rules Do Not in Any Way Alter the Federal-State Balance.

The Proposal also cites supposed federalism concerns as a basis for rescinding the Disclosure Rules, 91 Fed. Reg. at 33,300-01, 33,305-06, asserting that they interfere with the role of the States in regulating corporate governance, and invoking the principle that clear congressional authorization is required to disrupt the federal-state regulatory balance. *Id.* at 33,306. These concerns are wholly misplaced. To reiterate, the Rules are disclosure requirements only; they do not mandate any changes in corporate governance or operations and thus do nothing to impinge on States' traditional authority to set the rules for corporate governance.

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[25] Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Firm Reporting, 89 Fed. Reg. 96,712, 96,727-28 n.89 (Dec. 5, 2024).

[26] *See, e.g.*, Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, 81 Fed. Reg. 84,696, 84,801, 84,863 (Nov. 23, 2016) (estimating that the reporting requirements under the SEC's Consolidated Audit Trail Plan would impose $2.4 billion in aggregated initial costs and $1.7 billion in recurring costs, with previous estimates of $3.2-$3.6 billion in initial costs and $2.8 billion-$3.4 billion in recurring costs); Pay Ratio Disclosure, 80 Fed. Reg. 50,104, 50,160-61 (Aug. 18, 2018) (estimating aggregated initial compliance costs of the SEC's pay ratio disclosure requirements to be approximately $1.3 billion, with average per-firm costs ranging from $156,444 for registrants with U.S.-only operations to $714,099 for registrants with foreign operations); 79 Fed. Reg. at 57,247 (estimating that initial costs of the SEC's asset-backed securities disclosure requirements would be approximately $1.45 million per sponsor/firm); Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 Fed. Reg. 33,318, 33,443-44 (July 12, 2019) (estimating $1.5 billion in aggregated initial compliance costs for the SEC's broker-dealer standard of conduct, amounting to over $500,000 per firm given the 2,766 reported figure for the total number of broker-dealers).

[27] 91 Fed. Reg. at 33,308 n.158 (citing S. 1217, 117th Cong. (2021); H.R. 2570, 117th Cong. (2021); H.R. 1187, 117th Cong. (2021); S. 3481, 115th Cong. (2018)).

As explained above, the SEC has authority under the federal securities laws to require public companies to disclose information. Over fifty years ago, the Supreme Court explained that the "fundamental purpose, common to" the New Deal-era securities laws "was to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry." *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 186 (1963). The federal securities law do not "define or create the internal corporate relationship between directors and shareholders, but [] make that relationship better for shareholders," primarily "through greater disclosure requirements."[28] Requiring companies to disclose information about their financial health and operations is distinct from setting corporate governance rules—and courts have distinguished between those two areas when discussing the SEC's authority.

In *Chamber of Commerce v. SEC*, the D.C. Circuit rejected an argument that a Commission rulemaking on independent directors intruded on state authority, finding that the regulation was consistent with the "purposes" of a statute and the "means" that Congress provided to the Commission. 412 F.3d 133, 139 (D.C. Cir. 2005). Here, too, the purpose of the rule—to inform voting and investment decisions—accords with the means Congress selected: disclosure to investors. Similarly, in *Sante Fe Industries, Inc. v. Green*, the Supreme Court rejected an argument that the anti-fraud provisions of the Exchange Act reached breaches of corporate fiduciary duties: "[O]nce full and fair disclosure has occurred, the fairness of the terms of the transaction is at most a tangential concern of the statute." 430 U.S. 462, 478 (1977). And in rejecting an SEC rule prohibiting securities exchanges from listing shares with dual class voting structures, the D.C. Circuit emphasized that the proxy regulation provisions of the Exchange Act were concerned with disclosure, not with the substantive terms of what shareholders were permitted to vote on. *Bus. Roundtable v. SEC*, 905 F.2d 406, 410 (D.C. Cir. 1990) ("it is not seriously disputed that Congress's central concern was with disclosure" when giving the SEC the authority to regulate proxy statements). Existing parts of Regulation S-K require companies to disclose the structure and operations of the board of directors with no apparent controversy about whether the SEC is intruding on state authority. Item 407, for example, requires registrants to disclose whether their audit committee has a charter and whether it is led by an independent director; whether the board has a compensation committee and, if not, why it is appropriate not to have such a committee; and whether the company has a process for shareholders to communicate with the board. 17 C.F.R. § 229.407(d)-(f). The SEC's newfound concerns about board-related disclosures clash with its longstanding view of the securities laws.

In any event, the Proposal loses sight of the distinction between regulating disclosure and regulating corporate governance. The Disclosure Rules require public companies to disclose information but do not impose changes on corporate governance or practices. For example, the Rules require public companies to disclose "any oversight by the registrant's board of directors of climate-related risks and any role by management in assessing and managing material climate-related risks," 89 Fed. Reg. at 21,670, but companies could comply with those requirements by disclosing that their board and management engage in no such oversight. Similarly, the Rules require public companies to disclose any "transition plans, scenario analysis or internal carbon prices to manage a material climate-related risk," *id.*, but companies could likewise comply by

[28] Robert B. Thompson, *Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to Vote, Sell, and Sue*, 62 Law & Contemp. Probs. 215, 219 (1999).

disclosing that they do not use any of those tools. In both cases, if the actual answer is "none," then the answer required to be disclosed is "none." Regardless of the merits of such a practice, the Rules are satisfied simply by its disclosure. If there were a state rule that addressed—or required or prohibited—one of the governance practices, the Rules requiring disclosure would have no effect on it.

The Proposal nonetheless insists that the prospect that information disclosure might indirectly induce changes in public company behavior should itself be viewed as state law displacing. The Proposal says little about how or why this would happen. But even if it did, this argument confuses an inducement with a requirement. "The very concept of inciting, inducing, or encouraging an action presumes the actor's freedom to choose whether to perform it." *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1123 (6th Cir. 2025). Many disclosure requirements could affect underlying corporate behaviors. For example, Regulation S-K has long required registrants to disclose corporate perquisites, even though that may dissuade some of them from providing perquisites. 17 C.F.R. § 229.402. Similarly, registrants must disclose share repurchases, even if that requirement may influence the pace and timing of such repurchases. *Id.* § 229.703. But here, as in those cases, an obligation to disclose neither requires nor forbids the underlying corporate behavior, and in no way alters States' authority to specify particular governance practices.

The Disclosure Rules maintain the pre-existing balance between federal and state governments and so the SEC needed no "clear statement" specific to climate-related disclosures to adopt them. The clear statement rule applies if "Congress intends to alter the 'usual constitutional balance between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (quoting *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985)). When it does, "it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Id.* It does not apply to statutes or rules that maintain the status quo balance. *Bluebeard's Castle, Inc. v. Gov't of Virgin Islands*, 321 F.3d 394, 400 (3d Cir. 2003) ("The 'clear statement' rule ordinarily applies when Congress seeks to change the relationship between federal and state governments, not when it maintains the status quo."). The Rules amend Regulation S-K and Regulation S-X, two longstanding regulations issued pursuant to the federal government's authority to regulate interstate commerce by setting rules for securities sales and exchanges. The "status quo balance" was set by the federal securities laws in the 1930s. If a clear statement were required for the Commission to adopt corporate disclosure rules (which it is not), the original Acts provide it, *see* Section I, *supra*, and no further statement from Congress is required. The federalism principles the Proposal invokes have absolutely no application here and supply no support whatsoever for it.

II. The Proposal Is Arbitrary and Capricious and an Inadequately Explained Change in Position.

In addition to its basic misunderstanding of the securities laws, the major questions doctrine, and the federalism canon, the Proposal is unsupported and unsupportable by record evidence, inadequately explained, and riddled with errors. The APA prohibits the SEC from finalizing rules that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," or "without observance of procedure required by law." 5 U.S.C. § 706. The Proposal fails on these fronts.

To be lawful, an agency action must be "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *see also FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 567-69 (2025) (citing *Encino Motorcars, L.L.C. v. Navarro*, 579 U.S. 211, 221-22 (2016); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Specifically, the agency must "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The agency cannot "rel[y] on factors which Congress has not intended it to consider" or "entirely fail[ ] to consider an important aspect of the problem." *Id.* Nor can it "offer[ ] an explanation for its decision that runs counter to the evidence before the agency." *Id.* The agency's decision must be "justified by the rulemaking record," *id.*, and "its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (quoting *State Farm*, 463 U.S. at 51). To the extent the agency uses a cost-benefit analysis, such analysis must be reasonable. *See Window Covering Mfrs. Ass'n v. Consumer Prod. Safety Comm'n*, 82 F.4th 1273, 1288 (D.C. Cir. 2023) ("'an unreasonable assessment of social costs and benefits' can render a rule arbitrary and capricious" (quoting *Thompson v. Clark*, 741 F.2d 401, 405 (D.C. Cir. 1984)).

When departing from prior positions, an agency must provide "a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Fox Television*, 556 U.S. at 515-16. Accordingly, if an agency's "new policy rests upon factual findings that contradict those which underlay its prior policy," the agency must provide a "more detailed justification than what would suffice for a new policy created on a blank slate." *Id.* at 515; *Wages & White Lion*, 604 U.S. at 568; *Regents*, 591 U.S. at 22; *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802, 810-12 (5th Cir. 2024). An "'[u]nexplained inconsistency' in agency policy is 'a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.'" *Encino Motorcars*, 579 U.S. at 222 (quoting *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005)).

As we discuss below, the Proposal does not and cannot meet the standard for reasoned agency decisionmaking laid out in the APA and the many cases interpreting it.

A. The Proposal Fails to Grapple with the Commission's Prior Findings and Increasing Evidence that Climate Risks Are Material.

When the SEC finalized the Disclosure Rules in 2024, it considered and incorporated ample evidence on the materiality of climate risk, finding that "many commenters, including both investors and registrants, stated that climate-related risks can have material impacts on companies' financial position or performance." 89 Fed. Reg. at 21,677. The Proposal does not acknowledge, let alone justify its departure from, the Commission's prior factual findings or the evidence underlying them, nor offer any reason for this failure to do so. *See Fox Television*, 556 U.S. at 515-16 (if an agency's "new policy rests upon factual findings that contradict those which underlay its prior policy," the agency must provide a "more detailed justification than what would suffice for a new policy created on a blank slate"); *Wages & White Lion*, 604 U.S. at

568; *Regents*, 591 U.S. at 22-23. Indeed, the Commission could not reasonably find that climate risk information is immaterial, as recent evidence only further bolsters the Commission's 2024 rulemaking record and underscores its prior materiality findings.

As the Adopting Release explained, commenters on the proposed Disclosure Rules indicated that "when it is available, information about climate-related risks is currently used to assess the future financial performance of public companies and inform investment decision-making." 89 Fed. Reg. at 21,677. For example, AllianceBernstein stated that climate-related risks are "fundamental financial factors that impact company cash flows and the valuation investors attribute to those cash flows."[29] Another asset manager, Wellington Management, stated that "accurate and comparable information about climate risk is critical" to informed investment decisions.[30] State pension funds likewise supported the Rules because they would "make it easier for [their] investment staff to assess a company's individual risk from climate change and evaluate the financial impacts."[31]

Further, the Commission noted that commenters indicated that the adoption of mandatory, climate-related disclosure rules would "improve the timeliness, quality, and reliability of climate-related information, which would facilitate investors' comparison of climate-related risks and lead to more accurate securities valuations." 89 Fed. Reg. at 21,677. These improvements were needed, given that many commenters found reporting under the SEC's 2010 Guidance to be insufficient, with registrants providing only "boilerplate" information or "greenwashing." *Id.* The SEC also noted commenters' views that "more consistent and reliable climate-related disclosure has become particularly important" to "help investors assess the reasonably likely financial impacts to a registrant's business, results of operations, and financial condition" of new governmental policies and voluntary pledges. *Id.*

Based on these and other comments, as well as other sources including surveys of investors and academic studies, *see, e.g.*, *id.* at 21,846-47 nn. 2,720-21, the SEC rightly concluded that "investors seek to assess the climate-related risks that registrants face and evaluate how registrants are measuring and responding to those risks." *Id.* at 21,672. And given the significant and increasing relevance of climate-related information for investor decisionmaking, the SEC found that it has an appropriate and vital role to play in improving the consistency, reliability, and usefulness of this data from public companies. *Id.* at 21,679. The Proposal fails to adequately explain the Commission's reversal in position or to provide the "good reasons" and "more detailed justification" necessary for its changed factual positions. *Fox Television*, 556 U.S. at 515-16.

Nor could the Commission reasonably do so. The materiality of the information covered by the Disclosure Rules has been underscored further by events since the Rules' adoption. Recent climate change-driven disasters are posing significant financial threats to companies across the United States. Increases in the frequency and severity of events like hurricanes,

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[29] AllianceBernstein Comment Letter 1 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131813-302250.pdf.
[30] Wellington Mgmt. Comment Letter, *supra*, at 1.
[31] Cal. State Tchrs.' Ret. Sys. Comment Letter 2 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132337-302902.pdf.

storms, floods, and wildfires have spiked the number of "billion-dollar" disasters.[32] Last year alone, there were 23 weather and climate disasters that caused at least $1 billion of damages each.[33] In turn, property insurance premiums have increased dramatically,[34] and major insurance companies are discontinuing core forms of coverage or exiting markets entirely.[35] Physical climate impacts damage companies' assets, disrupt their operations, and result in the failure of critical infrastructure on which they depend.[36]

To give some examples, in January 2025, Los Angeles experienced a devastating series of wildfires resulting in significant economic and property losses, with total property damages estimated between $28.0 billion and $53.8 billion.[37] Earlier this year, in March 2026, the central and eastern U.S experienced back-to-back thunderstorms, affecting more than two dozen States in those regions.[38] These storms produced historic rainfall and several tornadoes across the area, resulting in widespread property damage, record-setting hail, and straight-line wind damage.[39] The March 10-12 storm is expected to cost insurers at least $2.3 billion; just a few days later, on March 15-16, severe winds spread across more than two dozen States in the central and eastern United States, with losses expected to exceed $1 billion.[40]

Tornadoes are now intensifying more quickly and occurring in clusters more often, extending the severity of impacts.[41] In May 2025, a major tornado outbreak swept across the central and eastern U.S., producing more than 60 tornadoes and causing severe infrastructure

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[32] Climate Central, U.S. Billion-Dollar Weather and Climate Disasters in 2025 7-10 (2026), https://downloads.ctfassets.net/cxgxgstp8r5d/1c7a1aKVzgh2GoLO74NZYN/32c28a9dbf1c5110929bf3ec2478b0f6/US_Billion-Dollar_Disasters_2025.pdf; *see also* Nat'l Ctrs. for Env't Info., *Billion-Dollar Weather and Climate Disasters: United States Summary*, Nat'l Oceanic & Atmospheric Admin., https://www.ncei.noaa.gov/access/billions/state-summary/US (last visited Aug. 1, 2026).

[33] *Id.* at 1; *see also* Simmone Shah, *Climate and Weather Disasters Cost the U.S. $115 Billion in 2025*, TIME (Jan. 8, 2026), https://time.com/7344568/2025-billion-dollar-climate-disasters/ ("NOAA began tracking billion-dollar disasters in 1980. Since then the U.S. has sustained 426 billion-dollar disasters, with a total cost exceeding $3.1 trillion. But they are occurring with increasing frequency—2023 and 2024 broke previous records with 28 and 27 billion-dollar disasters, respectively, with 2025 ranking third with 23 events.").

[34] Bloomberg Intelligence, *The Climate Economy 2025 Outlook*, Bloomberg Intelligence, 11 (June 16, 2025), https://assets.bbhub.io/promo/sites/16/ClimateEconomyDeepDiveFINAL_PRINT.pdf ("The rise in fires, floods and storms has forced insurers to reprice risk, raising rates as much as 22% in 2023 and pushing total multi-peril premiums (home, fire, commercial, farmer and allied lines) above $300 billion.").

[35] *See* Ceres, The 2025 Progress Report: Climate Risk Reporting in the U.S. Insurance Sector 12 (2025), https://www.ceres.org/download/d16dea0f-bfa4-498f-a742-87ecd9e06c25; Zoya Teirstein, *They survived the hurricane. Their insurance company didn't.*, Grist (Nov. 4, 2025), https://grist.org/economics/insurance-company-bankrupt-hurricane-ida-louisiana/.

[36] *See, e.g.*, Bob D'Angelo, *Boating retail giant West Marine files for bankruptcy, closes 59 stores*, Cox Media Group (June 15, 2026), https://www.wpxi.com/news/trending/boating-retail-giant-west-marine-files-bankruptcy-closes-59-stores/YGPCDQNHFZGJVKMPKKG7N7MBGM.

[37] Matt Horton et al., *Impacts Of 2025 Los Angeles Wildfires and Comparative study*, Los Angeles County Economic Development Corporation, 4 (Feb. 2025), https://laedc.org/wp-content/uploads/2025/02/LAEDC_2025-LA-Wildfires-Study_090525-UPDATE.pdf.

[38] Gallagher Re, Q1 2026 Natural Catastrophe and Climate Report 19 (Apr. 21, 2026), https://www.ajg.com/gallagherre/-/media/files/gallagher/gallagherre/news-and-insights/2026/april/natural-catastrophe-and-climate-report-q1-2026.pdf.

[39] *Id.*

[40] *Id.*

[41] Lauren A. Kiefer et al., *The Climatological Relationship between U.S. Tornadoes and Extratropical Cyclones*, 154 Monthly Weather Rev. 247, 247 (2026), https://doi.org/10.1175/MWR-D-25-0049.1.

damage totaling $6.3 billion.[42] The outbreak also produced widespread hail, thunderstorms, and winds, causing 600,000 homes to be without power.[43] Severe weather events like these cause significant financial harm to companies through direct damage to assets, operational disruptions, destruction of critical infrastructure, customer liability, and increased insurance premiums.[44] In addition to direct damage costs, companies may also incur expenses to enhance adaptation and resilience for or mitigate costs of those physical impacts. With the costliness of these events already high and growing, investors more than ever need information about companies' physical climate risks and approaches to managing them.

Companies will also encounter transition risks and opportunities, as state, federal, and other policy changes, market and technology shifts, consumer preferences, and liability risks are likely to affect corporate assets, operations, and strategy. To give some examples, a number of states have adopted or have proposed adopting "climate superfund laws," which aim to require fossil fuel companies whose products are responsible for historic climate emissions to pay into a fund for climate-related adaptation expenses.[45] Litigants are seeking to hold companies liable for failing to mitigate their climate impacts, to properly adapt to climate change, or to sufficiently disclose material financial risks.[46] Meanwhile, "[c]ompanies that proactively manage their emissions are often better positioned" to succeed.[47] As governments, markets, and the public continue to take action on climate, investors need information on how companies are managing increasing compliance, legal, and other transition risks or opportunities.

The Proposal disregards the staggering evidence of climate-related financial risk that underlay the Disclosure Rules and has emerged since their adoption, and furthermore fails to explain why, rendering the Proposal arbitrary and capricious.

B. Preexisting Requirements and Protections Are Insufficient to Protect Investors.

The Proposal asserts that "the [Disclosure] Rules are unnecessary because existing disclosure requirements already elicit information about the material effects of climate-related matters." 91 Fed. Reg. at 33,309; *see also* 91 Fed. Reg. at 33,316-17 (citing existing U.S.

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[42] Climate Central, *supra*, at 5; Hanna Park et al., *Tornado-spawning storms leave 25 dead in 2 states and swaths of destruction across central US*, CNN (May 19, 2025), https://www.cnn.com/2025/05/17/weather/tornadoes-severe-weather-deaths-climate-hnk.
[43] Climate Central, *supra*, at 5-6.
[44] *See* Madison Condon et al., *Mandating Disclosure of Climate-Related Financial Risk*, 23 NYU J. Legis. & Pub. Pol'y 745, 751-57 (2022).
[45] *Companies face financial risks from growing climate damage litigation*, Zero Carbon Analytics (Mar. 3, 2025), https://zerocarbon-analytics.org/energy/companies-face-financial-risks-from-growing-climate-damage-litigation/. Additionally, Europe's Corporate Sustainability Due Diligence Directive (CSDDD), which entered into force in 2024, mandates that companies conduct thorough due diligence on human rights and environmental impacts across their entire value chain. *Corporate sustainability due diligence*, Eur. Comm'n, https://commission.europa.eu/topics/business-and-industry/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en (last visited Aug. 1, 2026).
[46] Joyeeta Gupta & Sharon Burrow, *Climate litigation is evolving - and businesses should take notice,* World Econ. Fm. (Jan. 13, 2026), https://www.weforum.org/stories/climate-action/climate-litigation-business-risk/.; *see also* Zero Carbon Analytics, *supra*.
[47] Robert Furdak et al., CFA Inst. Rsch. & Pol'y Ctr., The Scope of Net Zero: The Use of Carbon Emission Data to Achieve Portfolio Goals 90 (2024), https://rpc.cfainstitute.org/sites/default/files/docs/research-reports/nzg_5_scopeofnetzero_furdak_online.pdf.

securities laws, rules, and guidance; other agencies' and jurisdictions' climate-related reporting programs; and voluntary practices). This asserted rationale for rescinding the Rules is patently arbitrary and capricious and unsupported by the record. The Disclosure Rules and the supporting record made one thing very clear: the Commission issued the Disclosure Rules in response to the needs of investors. Comment after comment reiterated that climate-related information is necessary for investors to make informed financial decisions, and that no existing framework provides such information sufficiently. There is no reasonable basis for the Commission to change its position and reject its prior findings and conclusions now.

In 2010, the SEC issued guidance on the implications of climate change for securities disclosures. 75 Fed. Reg. 6,290 (Feb. 8, 2010). While the 2010 Guidance detailed how climate-related issues applied to then-existing requirements, it did not establish any new disclosure requirements. However, the Guidance detailed how climate-related information was becoming more pertinent to companies and investors and cited multiple calls from investors for instituting specific climate-related disclosures.[48] The SEC additionally observed that "much more information is publicly available outside of public company disclosure documents filed with the SEC as a result of voluntary disclosure initiatives or other regulatory requirements." 75 Fed. Reg. at 6,292. Unfortunately, such voluntary initiatives lacked and continue to lack the consistency, reliability, and pervasiveness necessary for truly informed investment decisions. Since the SEC issued the 2010 Guidance, investors have again and again made the case for why additional required climate-related disclosures are necessary.[49]

Disclosures required by other agencies and jurisdictions are similarly not adequate to fulfill the needs of U.S. investors and capital markets or the SEC's mission. For example, the Environmental Protection Agency's (EPA) longstanding GHG emissions reporting framework, the Greenhouse Gas Reporting Program (GHGRP), covers only direct GHG emissions from facilities with over 25,000 tons per year of CO_2 equivalents, does not cover mobile sources, does not aggregate data at the company or parent-company level, and does not provide any other climate-related information (such as internal carbon prices, corporate officers or committees geared toward climate adaptation, or exposure to physical climate risks). *See* 40 C.F.R. Part 98, Subpart A. The fact that the GHGRP only collates a subset of climate-related information (certain emissions) for a subset of companies and presents that data in a disaggregated fashion

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[48] 75 Fed. Reg. at 6,291 ("There have been increasing calls for climate-related disclosures by shareholders of public companies. This is reflected in the several petitions for interpretive advice submitted by large institutional investors and other investor groups."); Pet. for Interpretive Guidance on Climate Risk Disclosures 2, File No. 4-547 (Sep. 19, 2007), http://www.sec.gov/rules/petitions/2007/petn4-547.pdf ("Recent scientific, legal, and regulatory developments make it unavoidably clear that the risks and opportunities many corporations face in connection with climate change fall squarely within the category of material information that is required to be analyzed and disclosed in many corporate filings. Yet corporate disclosures of the risks and opportunities created by climate change lag behind these developments, and investors are left with little or in some cases no useful information about corporate exposure to these risks."); Supp. Pet., File No. 4-547 (June 12, 2008), http://www.sec.gov/rules/petitions/2008/petn4-547-supp.pdf; Second Supp. Pet., File No. 4-547 (Nov. 23, 2009), http://www.sec.gov/rules/petitions/2009/petn4-547-supp.pdf.

[49] *See, e.g.,* AllianceBernstein Comment Letter, *supra,* at 2 ("The variability and gaps in current disclosures frequently fail to capture material, financial climate risks faced by issuers and markets, thereby preventing investors from implementing efficient capital allocation and effective risk management.").

makes it insufficient for investment decisionmaking.[50] Moreover, EPA has proposed to effectively repeal the entire program, save for a handful of requirements that have been significantly delayed.[51] Additionally, key reporting maintained by the Energy Information Administration (EIA) has recently been discontinued. 91 Fed. Reg. 31,869, 31,874 (May 29, 2026). Other jurisdictions' cross-sectoral climate risk disclosure requirements—including those of California, the European Union's Corporate Sustainability Reporting Directive (CSRD), and the International Sustainability Standards Board (ISSB)—are more akin to the Disclosure Rules, but will not cover all of the same entities or information. *See* 89 Fed. Reg. at 21,831-35.

While voluntary reporting mechanisms have created important outlets for relevant disclosures and advanced issuer reporting readiness, their voluntary character, the fact that such reports are selective and potentially self-serving, that they are not independently verified, and that they present information in non-standardized, idiosyncratic ways significantly impairs their utility for investment decisionmaking. Investors benefit from being able to compare disclosed information between entities, apples to apples.[52] In the absence of reliable, comprehensive, and comparable publicly available company information, investors must—and actually do—expend significant resources on inefficient, massively duplicative efforts to assemble the information necessary to make decisions, information that in many cases is at the company's fingertips.[53] The Disclosure Rules remedy these shortcomings by making more consistent, comparable, and reliable information available to all investors.

C. Market Forces Alone Will Not Fill the Investor-Protection Gap.

The Proposal asserts that "the purported benefits" of improving consistency, comparability and reliability of climate-related disclosures for investors do not justify the Disclosure Rule's adoption and that existing disclosure requirements and voluntary practices already elicit sufficient information about the material effects of climate-related matters. 91 Fed. Reg. at 33,309. However, ample evidence illustrates that current disclosure requirements are insufficient to satisfy investor demand for climate risk information, and that multiple kinds of market failures make a cohesive framework of mandatory climate risk disclosure essential. Therefore, because the Commission did not adequately consider the mountain of evidence

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[50] *See* U.S. EPA Comment Letter 1-2 (June 18, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132508-302990.pdf ("[T]he GHGRP … informs the development of greenhouse gas policies and programs under the Clean Air Act, and serves as an important tool for the Agency and the public to understand greenhouse gas emissions from facilities covered…. This is distinct from the purposes of the SEC's Proposed Rule, which is intended to enhance and standardize climate-related disclosures to address investor needs and help issuers more efficiently and effectively disclose climate-related risks[.]").

[51] *EPA Releases Proposal to End the Burdensome, Costly Greenhouse Gas Reporting Program, Saving up to $2.4 Billion*, EPA (Sep. 12, 2025), https://www.epa.gov/newsreleases/epa-releases-proposal-end-burdensome-costly-greenhouse-gas-reporting-program-saving-24.

[52] PGIM Comment Letter 2 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132230-302751.pdf ("The variability that currently exists in company approaches to climate-related disclosure inhibits the ability of investors to analyze and compare investments.").

[53] AllianceBernstein Comment Letter, *supra*, at 2 ("Despite the [2010 Guidance], disclosures currently do not support, and often undermine, [] investor efforts and therefore also the effective functioning of capital markets. As a result, investors expend significant resources to identify, collect, estimate and manage climate disclosures and data."); LGIM America Comment Letter 2-4 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20129965-296443.pdf.

pointing to significant market failures and the critical need for more consistent, comparable and reliable climate risk information, its Proposal is arbitrary and capricious.

The current shortcomings of climate risk disclosure are a significant problem for investors and capital markets. As a result of market failures, the landscape of climate risk disclosure and sustainability reporting is filled with selective disclosures, inadequate information, boilerplate text, and greenwashing. Investors themselves affirm the need for more and better climate risk information than existing requirements have produced, as described above. The primary market failures negatively impacting investors include principal-agent problems, information asymmetries, and collective action problems. Because of these market failures, firms will not produce the optimal level of climate risk information unless disclosure is mandatory.

First, there is the principal-agent problem between corporate officers and investors, which occurs when corporate officers have incentives that are not aligned with maximizing the long-term value of the corporation. For example, because managers are often compensated with stock options, which become worthless if the stock drops below the strike price, managers are "indifferent to the difference between a 'bad' and a 'worse' event."[54] Thus managers may be under-incentivized to spend on "insurance against low-probability high-impact events."[55] The same logic applies to climate risk disclosures. Just as managers have a disincentive to make up-front expenditures to manage long-term risks, they also have a disincentive to disclose information that could lead to investor pressure to make such expenditures. For example, an investigation into the coal company Peabody Energy by the New York Attorney General found that the company "denied its ability to reasonably predict the future impact of any climate change regulation on its business," while internally, "the company and its consultants projected severe impacts from certain potential regulations that would materially affect Peabody."[56] Because other companies' managers face similar incentives to under-investigate, ignore, or even suppress material climate risks, investors will not consistently obtain accurate and decision-useful climate risk information without greater regulation.

Second, the principal-agent problem also contributes to the market failure of information asymmetry.[57] Because a company's climate risk exposure is possible to evaluate only with information that is internal to the company, such as locations of capital infrastructure and their resilience to increased hazard, investors are at an information disadvantage relative to issuers.[58] Existing disclosure regulations and guidance have proven insufficient to address this asymmetry.

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[54] Madison Condon, *Market Myopia's Climate Bubble*, 1 Utah L. Rev. 63, 85 (2022).
[55] John Armour et al., *Taking Compliance Seriously*, 37 Yale J. on Reg. 1, 25 (2020).
[56] Condon, *supra*, at 86 (quoting Clifford Krauss, *Peabody Energy Agrees to Greater Disclosures of Financial Risks*, N.Y. Times (Nov. 8, 2015) (internal quotations omitted), https://perma.cc/68J7-HZHA); *see also* James W. Coleman, *How Cheap Is Corporate Talk? Comparing Companies' Comments on Regulations with Their Securities Disclosures*, 40 Harv. Env't. L. Rev. 47 (2016) (empirically demonstrating that conflicting incentives cause oil companies to engage in "cheap talk," tailoring different messages to regulators and investors).
[57] Jeff Schwartz, *Fairness, Utility, and Market Risk*, 89 Or. L. Rev. 175, 208-13 (2010); Ronald J. Gilson & Reinier H. Kraakman, *The Mechanisms of Market Efficiency*, 70 Va. L. Rev. 549, 581 (1984); Robert J. Shiller, Irrational Exuberance 197 (3d ed. 2015) ("[I]f indeed one knew today that the market would do poorly over the next ten or twenty years, but did not know exactly *when* it would begin [to] do poorly and could not prove one's knowledge to a broad audience, then there would be no way to profit significantly from this knowledge.").
[58] Condon, *supra*, at 79-89.

In a 2020 study of climate risk disclosures in 10-K filings, the Brookings Institution concluded that though "[d]isclosure has risen sharply," "[m]ore firms are disclosing more general information that is essentially of no utility to the marketplace."[59]

Because "investors can only price the risks they are aware of,"[60] inadequate disclosures contribute to asset prices that do not accurately reflect issuers' varying degrees of vulnerability to the physical and transitional effects of climate change.[61] For this reason, over 93% of investors surveyed "view climate change as an investment risk that has yet to be priced in by all the key financial markets globally."[62] Correcting mispricing can mitigate the extent by which climate risk poses a systemic risk to the economy, as informed investors will be better equipped to engage in hedging that could diminish their overall exposure to climate-related risks.[63] And, importantly, even investors who do not personally review disclosures benefit from the more accurate asset pricing and lower volatility that are characteristic of a better-informed market. Thus, in a very real sense, the financial security of American workers and retirees with savings invested in the market depends upon the SEC's continuing to improve the consistency, comparability, and reliability of corporate climate risk disclosures.

Third, the Disclosure Rules address a well-known collective action problem.[64] Even though consistent, comparable, and reliable climate risk data would benefit companies too, many companies decline to voluntarily provide such information. One reason is that managers have disincentives to disclose unfavorable information because it could lead investors to prefer competitors, as scholars have explained.[65] Mandatory disclosure creates a level playing field where "corporate managers can benefit from information sharing, while avoiding the penalties and backlash that may have come with unilateral disclosure."[66]

Oddly, the Proposal argues that the Disclosure Rules would cause registrants to err on the side of *over*-disclosure, despite the Rules' many explicit materiality qualifiers, with a resulting

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[59] Parker Bolstad et al., Brookings Inst., Flying Blind: What Do Investors Really Know About Climate Change Risks in the U.S. Equity and Municipal Debt Markets? 3 (2020), https://www.brookings.edu/wp-content/uploads/2020/09/WP67_Victor-et-al.pdf.

[60] Condon, *supra*, at 76.

[61] *See, e.g.*, Int'l Monetary Fund, Global Financial Stability Report: Markets in the Time of COVID-19 85 (2020) (concluding that "climate change physical risk does not appear to be reflected in global equity valuations"), https://www.imf.org/-/media/files/publications/gfsr/2020/april/english/text.pdf; Nora Pankratz et al., *Climate Change, Firm Performance, and Investor Surprises*, Wharton Rsch. Data Servs. (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3443146 (concluding that "investors do not anticipate the economic repercussions of heat as a first-order physical climate risk"); Tord Kjellstrom et al., Int'l Labour Org., Working on a Warmer Planet: The Impact of Heat Stress on Labour Productivity and Decent Work 13 (2019), https://perma.cc/7KGS-PEZA (demonstrating that greater heat exposure resulted in a greater deviation between analysts' estimates and the corporation's actual financial performance).

[62] *Climate Change and Artificial Intelligence Seen as Risks to Investment Asset Allocation, Finds New Report by BNY Mellon Investment*, BNY (Sep. 16, 2019), https://www.bny.com/corporate/global/en/about-us/newsroom/press-release/climate-change-and-artificial-intelligence-seen-as-risks-to-investment-asset-allocation,-finds-new-report-by-bny-mellon-investment-management-and-create-research-130070.html.

[63] Condon, *supra*, at 76.

[64] Merritt B. Fox, *Retaining Mandatory Securities Disclosure: Why Issuer Choice is Not Investor Empowerment*, 85 Va. L. Rev. 1335, 1352 (1999).

[65] *Id.*; Madison Condon et al., *Mandating Disclosure of Climate-Related Financial Risk*, 23 NYU J. Legis. & Pub. Pol'y 745, 777-83 (2022).

[66] Condon et al., *supra*, at 789.

abundance of information the Proposal claims will not be useful for investors. 91 Fed. Reg. at 33,310. But as discussed throughout these comments, the resounding message from investors is that they need more and better information than the current regime provides. Moreover, the Proposal's speculations do not account for how investors actually process information today, in 2026. Investors do not need to read disclosures cover-to-cover for the information disclosed to be useful. They can use technology to extract and analyze the disclosures that matter most to them.

The Proposal ignores these overlapping market failures, leaving unaddressed essential reasons why investors need comparable, consistent, and decision-useful information on climate risk, and invokes unsupported concerns about an oversupply of information. Because the Proposal does not acknowledge the clear evidence of these market failures or explain why it no longer thinks they would be an issue, it is arbitrary and capricious.

D. The Proposal Mischaracterizes Recent Developments in Other Climate-Related Disclosure Frameworks, Which Do Not Support It.

The Proposal claims that there has been "a noticeable effort to step back" from climate disclosure standards, citing recent amendments to the ISSB standards and CSRD. 91 Fed. Reg. at 33,311. But the Commission mischaracterizes how those reporting efforts have changed and draws the wrong conclusions about them. These other standards were (and still are) much more comprehensive than what the SEC asked companies to disclose in the Disclosure Rules. The ISSB and the European Union have adjusted the mechanics of how companies make disclosures and the scope of companies required to report but have not altered the majority of their disclosure items. Neither development supports the proposed wholesale rescission of the Disclosure Rules.

The Proposal notes recent revisions to the ISSB's climate disclosure standard, IFRS S2. 91 Fed. Reg. at 33,311. Those amendments related to discrete issues with "the measurement and disclosure of Scope 3 Category 15 greenhouse gas emissions" (emissions from investments), "the use of the Global Industry Classification Standard" when disclosing information about financed emissions, "relief from using the GHG Protocol Corporate Standard for measuring greenhouse gas emissions" if an authority or exchange requires a different method, and "the use of the global warming potential values based on a 100-year time horizon from the latest Intergovernmental Panel on Climate Change assessment."[67] The Proposal does not explain why these changes amount to the ISSB retreating from the standards as a whole, and the ISSB emphasized in the same release that it will "consider an amendment to [its] Standards only if … the amendment would not result in a significant loss of useful information" and "would not unduly disrupt entities' processes for implementing, or jurisdictional processes for adopting or otherwise using" the standards.[68]

The European Union's revisions to the CSRD raised the threshold for reporting companies, but the standards will still apply to EU companies with more than €450 million in annual turnover and an average of 1,000 employees during the financial year, and non-EU companies (including publicly traded companies based in the U.S.) if they have "€450 million of

[67] ISSB, Amendments to IFRS S2, IFRS Sustainability Disclosure Standard, Amendments to Greenhouse Gas Emissions Disclosures ¶ BC80A (2025), https://www.ifrs.org/content/dam/ifrs/publications/amendments/english/2025/issb-2025-1-amendments-ifrs-s2.pdf.
[68] *Id.* ¶ BC80C.

net turnover generated in the EU at group or individual level for each of the last two consecutive financial years, and €200 million of net turnover generated by an EU subsidiary or a branch in the preceding financial year."[69] And the content of the CSRD framework remains more detailed than the Disclosure Rules. For example, the recent CSRD updates create some exemptions from value chain reporting,[70] whereas the Disclosure Rules exclude Scope 3 emissions from reporting entirely. 89 Fed. Reg. at 21,675. Here, too, the European Union is not abandoning its reporting program, which will continue to apply to large publicly-traded companies operating in the EU.

Moreover, the Proposal fails to acknowledge and consider that jurisdictions around the world continue to *adopt* climate reporting requirements for the protection of investors. Twenty-one jurisdictions have adopted some form of the ISSB standards and begun reporting, and 16 others have announced plans to adopt them.[71] Just in the last quarter of 2025, jurisdictions including Japan, Chile, and Qatar, adopted some kind of standard based on ISSB, and the United Kingdom began work on such a standard in the first quarter of 2026.[72] These developments demonstrate that the Proposal's conclusions on supposed trends in other reporting frameworks are arbitrary and capricious (and of course also mean that large companies operating in those jurisdictions will have already incurred much of the cost of gathering and organizing the climate risk information that the Rules would require them to disclose to the SEC and investors in U.S. securities—*see infra*).

The large and growing number of companies publicly releasing climate-related information further attests to the continued robust investor demand for climate-related information. As of 2024, approximately 90% of S&P 500 companies disclosed Scope 1 and Scope 2 emissions; the percentage was lower for the broader Russell 3000, but a majority of those companies likewise disclosed both.[73] As of 2025, over 55% of S&P 500 companies had announced a net-zero or carbon-neutrality goal, and about 25% have disclosed a climate transition plan.[74] The policy concerns motivating the Disclosure Rules—that information about climate-related risks "is inconsistent and often difficult for investors to find and/or compare across companies"—still pertain. 89 Fed. Reg. at 21,669. It is arbitrary and capricious for an agency to "offer[] an explanation for its decision that runs counter to the evidence before the agency," and a complete assessment of recent disclosure trends does not support the SEC's proposed rescission of the Disclosure Rules. *State Farm*, 463 U.S. at 43.

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[69] *EU Sustainability Reporting Revamp: Key Updates to the CSRD and the CS3D from the Omnibus I Directive*, Crowell & Mooring LLP (Mar. 10, 2026), https://www.crowell.com/en/insights/client-alerts/eu-sustainability-reporting-revamp-key-updates-to-the-csrd-and-the-cs3d-from-the-omnibus-i-directive.
[70] *Id.*
[71] Jennifer Laidlaw, *January 2026 – Where does the world stand on ISSB adoption?*, S&P Global (Feb. 6, 2026), https://www.spglobal.com/sustainable1/en/insights/research-reports/issb-january-2026.
[72] *Id.*
[73] Matteo Tonello, *Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets*, Harvard Law School Forum on Corporate Governance (May 3, 2025), https://corpgov.law.harvard.edu/2025/05/03/corporate-climate-disclosures-and-practices-risk-emissions-and-targets/.
[74] Magali A. Delmas et al., *The State of Corporate Sustainability Disclosure 2025*, UCLA Inst. of the Env't & Sustainability (2025), https://www.ioes.ucla.edu/project/the-state-of-corporate-sustainability-disclosure-2025/.

E. The Disclosure Rules' Costs Are Reasonable and the Rules Deliver Large Informational Benefits, Which the Proposal All But Ignores.

The Proposal cites "[t]he significant costs of the Final Rules" as "a separate, compelling reason to rescind them in their entirety." 91 Fed. Reg. at 33,312. But the Proposal gets both sides of the equation wrong. It overstates the costs of the Disclosure Rules, diverting, without any explanation, from the estimates the SEC published two years ago. And it systematically fails to consider the informational benefits of the Rules, overlooking abundant findings and compelling evidence in the massive and recent prior administrative record about how investors will use the information disclosed under the Rules. The SEC's failure to support the Proposal with a reasonable economic analysis violates its obligation to consider the effects of a regulation on "efficiency, competition, and capital formation," and establishes that the Proposal is arbitrary and capricious. 15 U.S.C. §§ 77b(b), 77c(f); *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011) (finding the SEC's decision was "arbitrary" where, among other flaws, the SEC "inconsistently and opportunistically framed the costs and benefits of the rule."); *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 177 (D.C. Cir. 2010); *Chamber of Com. of United States v. SEC*, 85 F.4th 760, 777-79 (5th Cir. 2023).

i. The Proposal Arbitrarily Overstates the Benefits of Rescinding the Disclosure Rules.

The Proposal's economic analysis touts reductions in the costs of reporting information compared to what the Rules require. These values appear to be derived from estimates in the original rule, 89 Fed. Reg. at 21,897 tbl.3, adjusted upward by 5.37% to account for inflation. 91 Fed. Reg. at 33,329 tbl.8. Yet these claimed cost reductions rely on questionable assumptions about individual and aggregate compliance costs, and therefore cannot support the Proposal:

- First, the SEC's new economic analysis assumes that all regulated entities face all compliance costs. The aggregate cost metric presented in Table 12 totals most cost elements and then simply multiplied by the number of affected firms. 91 Fed. Reg. at 33,339. But this calculation overlooks the qualifiers in the Final Rule, which would exempt many firms from some of the disclosure requirements. The Proposal's economic analysis acknowledges that not all firms would face these costs and also that firms that do not have material GHG emissions to report, or have no climate-related target or do not conduct scenario analysis, will incur much lower costs complying with disclosure obligations than those facing extensive climate risks and that have comprehensive climate strategies. Yet the Proposal does not account for these lower costs in its cost estimate.
- Second, the economic analysis does not appear to have adjusted its estimate of compliance costs to consider registrants who are already reporting voluntarily (as many companies already are) or are subject to disclosure requirements adopted by other jurisdictions. Those companies are making or have already made investments in climate data collection and reporting that will drastically reduce the cost of complying with the SEC obligations.
- Third, the new economic analysis now assumes that a substantially larger number of registrants are subject to the Rules than the Commission assumed just two years ago. The Paperwork Reduction Act analysis in the Disclosure Rules included estimates of what fraction of each subset of registrants the Rules would affect, totaling 3,509 affected

registrants. 89 Fed. Reg. at 21,903-04 tbl.5. The Proposal, on the other hand assumes that the Rules affect *all* registrants in each category, totaling 6,766 affected registrants. 91 Fed. Reg. at 33,333, 33,335-39 tbls.9-11. The Proposal provides no reasonable basis for so massively changing, just two years later, its assumption about the number of registrants the Rules affect, and there is none. This unsupported figure seems to account for around half of the Proposal's claimed aggregate avoided costs.

- Fourth, the Proposal assumes that initial and ongoing costs for reporting a registrant's use of scenario analysis and targets will be an order of magnitude higher than the SEC estimated in the Disclosure Rules. In Tables 9-11 of the Proposal, the SEC assumes an initial cost of $126,859 to report a registrant's use of scenario analysis, with ongoing costs of $63,430. 91 Fed. Reg. at 33,335-39 tbls.9-11. The figures just two years ago were $12,000 and $6,000, respectively. 89 Fed. Reg. at 21,897 tbl.3. The cost estimates for reporting on targets are likewise over ten times higher in the Proposal than in the Disclosure Rules. *Compare* 91 Fed. Reg. at 33,335-39 tbls.9-11 *with* 89 Fed. Reg. at 21,897 tbl.3. The Proposal does not explain or justify these changes, again demonstrating that the Proposal is not supported by a reasonable economic analysis.

ii. The Proposal Irrationally Downplays the Costs of Rescission to Investors.

On the other side of the ledger, the Proposal underestimates the costs of rescission for investors.

First, the Proposal incorrectly assumes that the Disclosure Rules will not result in the disclosure of any material information that is not otherwise available to investors. The Proposal claims that "to the extent [climate-related] risk is material, information about that risk should be elicited by existing disclosure requirements." 91 Fed. Reg. at 33,312. But the existing regime fails to consistently elicit material climate risk information, as prior regulations do not prompt issuers to report on the topics in the Disclosure Rules, including board and management oversight of climate risk, GHG emissions, transition plans, and physical and transition risks. As the Adopting Release explained, climate-related risk is closely linked to firm fundamentals and reflected in asset prices, but Regulation S-K and Regulation S-X do not currently elicit these disclosures with specificity. 89 Fed. Reg. at 21,848-50.

Second, the Proposal dismisses the lost benefits to investors from rescinding the Rules. But the Adopting Release cited public comments indicating that some investors spend millions of dollars annually to obtain from third party sources relevant information about individual companies' climate-related risks. *Id.* The Proposal does not engage with this record evidence. Instead, it maintains that the Rule's informational benefits can and should be ignored, because "those benefits are substantially compromised by the inconsistent, variable, and often speculative assumptions necessary to make many of those disclosures," and because investors may be better served by "existing principles-based requirements that allow for more particularized insight into a registrant's management, operations, and financial condition." 91 Fed. Reg. at 33,313. Both assertions are wrong. The Rules' disclosure requirements were based on familiar, widely-adopted voluntary disclosure rubrics, and the Proposal does not engage with the substantial literature, cited and discussed in the Adopting Release and in comments, about the price discovery benefits of information about climate-related risks. Instead, the Proposal hand-waves about "assumptions." Nor does the Proposal come forth with *any* disclosure requirement—"principles-based" or not—that would fill the gaps in the current voluntary climate disclosure system. Instead, the Proposal would leave investors high and dry.

Third, the Proposal does not consider the benefits to *registrants* from the Disclosure Rules. As commenters pointed out in the earlier proceeding, consistent and comparable climate-related disclosures can lower the cost of capital for companies by allowing asset prices to more efficiently and accurately reflect climate risk. "Even a very modest reduction in estimation risk can decrease cost of capital by more than enough to pay for the already modest compliance costs" from the Rules, according to one set of commenters.[75]

The Proposal's failure to consider the substantial benefits of the Disclosure Rules— and, in turn, the costs of rescinding the Rules—overlooks "an important aspect of the problem," *State Farm*, 463 U.S. at 43, and is arbitrary and capricious.

F. The Proposal Fails to Adequately Consider Reasonable Alternatives to a Full Repeal.

Even if the Commission's alleged concerns provided a lawful basis for rescinding the Disclosure Rules (which, as explained above, they do not), the SEC has nonetheless failed to satisfy its obligation to consider alternatives short of a full repeal and to explain its reasons for adopting or rejecting those alternatives. *See* 91 Fed. Reg. at 33,308 ("Even if the Commission had authority to adopt some of the Final Rules, the Final Rules should nevertheless be rescinded *in their entirety*.") (emphasis added). If at least some provisions of the Rules are lawful, the Commission must "consider the alternatives that are within the ambit of the existing policy," *Regents*, 591 U.S. at 30 (cleaned up), including options for partial rather than full repeal, and fully explain its reasons for adopting or rejecting those alternatives. The SEC has failed to do so here.

Agencies are required to consider "significant and viable and obvious alternatives" to their proposed action. *Dist. Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 59 (D.C. Cir. 2015); *see Spirit Airlines, Inc. v. DOT*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) ("[T]he failure of an agency to consider obvious alternatives has led uniformly to reversal." (internal quotations omitted)); *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 188 (D.C. Cir. 2022) (finding FERC's lack of consideration of an alternative "amounts to failure of reasoned decisionmaking"). Courts have repeatedly affirmed the need to consider alternatives, particularly where an agency is reversing a prior action.[76] Moreover, an agency cannot broadly invoke the

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[75] *See* Shivaram Rajgopal Comment Letter (June 12, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20130924-299962.pdf.

[76] *See, e.g., State Farm*, 463 U.S. at 51 (finding that NHTSA had arbitrarily failed to explain its rejection of option requiring airbags despite its prior finding "that airbags are an effective and cost-beneficial life-saving technology"); *Pub. Citizen v. Steed*, 733 F.2d 93, 100 (D.C. Cir. 1984) (setting aside suspension of rule because NHTSA "failed to explain why alternatives, which the rulemaking record indicates were available to the agency, could not correct" problem agency relied on as basis for suspending rule); *Delaware Dept. of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1 (D.C. Cir. 2015) ("alternative way of achieving EPA's objective ... should have been addressed and adequate reasons given for its abandonment"); *Shieldalloy Metallurgical Corp. v. NRC*, 624 F.3d 489 (D.C. Cir. 2010) ("[A]gencies must evaluate parties' proposals of 'significant and viable' alternatives.") (citing *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1511 n.54 (D.C. Cir. 1984)).

alleged defects of one aspect of a regulation to justify its repeal of the entire regulation, especially where the agency has viable alternatives.

The Proposal fails to satisfy these legal obligations. First, the Commission fails to explain its change in position on the severability of the Rules' provisions. The 2024 Adopting Release's discussion of severability presents in the record multiple alternatives to full repeal that the Proposal has here failed to consider. The Adopting Release first affirmed that the Commission viewed the Disclosure Rules' provisions as "severable to the fullest extent permitted by law." 89 Fed. Reg. at 21,829. It further stated that "[f]or instance, but without limitation," four portions of the Rules each "serve[] distinct but related purposes and [are] capable of operating independently," and could survive intact even if the others were repealed: "(1) climate-related risk disclosures [Items 1501-03], (2) targets and goals disclosures [Item 1504], (3) GHG emissions disclosures and assurance [Items 1505-06], and (4) Article 14 financial statement disclosures." *Id.*[77] Although agencies may change their views, they must provide a "reasoned explanation ... for disregarding facts and circumstances that underlay ... [a] prior policy." *Fox Television,* 556 U.S. at 516. The Proposal now asserts that "individual items of disclosure" "cannot operate sensibly without the others," 91 Fed. Reg. at 33,308, with no explanation as to why investors could not make sense of narrative disclosures regarding climate-related risk, targets and goals, or GHG emissions and assurance without the others, or why any of these categories are so interconnected that removal of any would render the others inoperable.

Second, beyond the Adopting Release's express position and explanation on severability, other aspects of it support independent operation of various parts of the Disclosure Rules. For instance, the phasing in over time and applicability only to certain registrants of Items 1502(d)(2), 1502(e)(2), 1504(c)(2), 1505, 1506, and 1508 evince that the Disclosure Rules were designed to be operable without each of these later or less broadly required items. *See* 89 Fed. Reg. at 21,828. Also, the Adopting Release provides separate benefit-cost analyses on the disclosure categories of governance, targets and goals, GHG emissions, assurance of GHG emissions, and risk management, expenditures, contextual information for the financial statement, and financial estimates and assumptions, as well as the location of certain of the disclosures in the financial statement and the structured data requirement. *Id.* at 21,852-71. And it includes separate quantitative direct cost estimates for disclosures on climate-related risks (Items 1501-03), scenario analysis (Item 1502(f)), GHG emissions (Item 1505), assurance of GHG emissions (Item 1506), and the Article 14 financial statement disclosures, indicating that each could be performed independently. *Id.* at 21,875.

[77] Other entities have similarly concluded that subsets of these disclosures are operable and useful on their own. Notably, some other climate risk disclosure frameworks—many of which are likewise designed for investors—include some but not all of the Disclosure Rules' requirements. For example, the long-used Task Force on Climate-Related Financial Disclosures (TCFD) framework recommends certain disclosures on governance, strategy, risk management, and metrics and targets (including GHG emissions), but does not include all of the Disclosure Rules' provisions. TCFD, Recommendations of the Task Force on Climate-related Financial Disclosures (2017). California passed separate bills in 2023 requiring TCFD-aligned disclosures (SB 261) and GHG emissions disclosures (SB 253). And shareholder proposals have sought climate-related disclosures on individual topics such as governance, risk management, scenario analysis, targets, GHG emissions, physical and transition risks, or financial reporting, demonstrating that investors deemed each of those pieces of information meaningful in isolation. *See* Shareholder Proposal Database, Ceres, https://engagements.ceres.org/ (last visited July 31, 2026) (archived at https://web.archive.org/web/20251016153352/https://engagements.ceres.org/).

Third, as support for its claim that financial statements and narrative disclosures cannot be uncoupled, the Proposal offers only two narrow examples, neither of which supports that assertion. While financial statement disclosures of "severe weather events" do "facilitate investors' assessment of particular types of risk," and may "overlap" with the climate-related physical risk disclosures required by Regulation S-K, 91 Fed. Reg. at 33,308, that rather supports the Commission's original conclusion in 2024 that these portions of the Rules can operate independently. It is entirely unclear why two requirements that are additive and indeed, potentially similar or duplicative in certain circumstances, could not survive the repeal of one or the other. Similarly, the Proposal claims that there is an unbreakable "connection" between the financial statements and the transition plan disclosures in Regulation S-K because Rule 14-02(d)(1) requires disclosures of costs, expenditures, and losses for carbon offsets and RECs where carbon offsets or RECs have been used as a material component of a registrant's plan to achieve its disclosed climate-related targets or goals. But it does not follow that those two requirements could not be separated. If the transition plan disclosure were repealed, the corresponding financial statement disclosure would go with it. Conversely, if the financial statement disclosure were repealed, the transition plan component could remain unaffected. Even if the disclosure regime would be more decision-useful for investors if both requirements were in place, as some commenters asserted, *see* 89 Fed. Reg. at 21,801, it does not follow that either disclosure requirement would be rendered meaningless without the other.

Finally, the Commission fails to substantively engage with yet more record evidence of alternatives to full repeal of the Disclosure Rules. The Adopting Release included a lengthy discussion of the alternatives the SEC considered when it promulgated the Disclosure Rules, none of which are referenced or discussed in the Proposed Rescission. The alternatives discussed included numerous options that potentially address concerns about burdens to registrants and other concerns articulated in the Proposal:

- The SEC considered and rejected adopting a more principles-based approach to Regulation S-K disclosures. *See* 89 Fed. Reg. at 21,891.
- The SEC considered but ultimately decided against "not adopting a requirement for the GHG emissions assurance provider to be independent with respect to the registrant and any of its affiliates and/or instead requiring disclosure about any potentially independence-impairing relationship." *See* 89 Fed. Reg. at 21,892.
- For financial statement disclosures, the SEC considered and rejected various alternatives, including using a more principles-based materiality approach rather than a quantitative threshold and limiting Regulation S-X disclosures to registrants in certain sectors. *See* 89 Fed. Reg. at 21,892.
- The SEC considered and rejected permitting some or all of the climate-related disclosures to be furnished rather than filed. *See* 89 Fed. Reg. at 21,893.
- The SEC considered and rejected exempting small reporting companies and emerging growth companies from all climate-related disclosures. *See* 89 Fed. Reg. at 21,893.
- The SEC considered and rejected substituting compliance with the Disclosure Rules with compliance with other jurisdictions' reporting regimes or other GHG reporting regimes. *See* 89 Fed. Reg. at 21,893.

In addition to the above-listed alternatives from the existing rulemaking record, before concluding that a full rescission is the best or only path, the SEC should consider all other reasonable options that could potentially or partially address the investor needs that prompted it to adopt the Disclosure Rules. Such options could include extending phase-in timelines for rule requirements, limiting all or some disclosure requirements to certain sectors or classes of registrants, and providing more flexible options for meeting compliance obligations.

Although the undersigned do not believe that any such scaling back is necessary or appropriate, principles of reasoned decisionmaking oblige the Commission, before jettisoning this massively beneficial disclosure regime in its entirety, to at least consider whether these less draconian alternatives are warranted. The Proposal's failures to do so, individually and collectively, render it arbitrary and capricious.

CONCLUSION

For all of the above reasons, the Commission must withdraw this illegal, unsupported, and deeply harmful Proposal.

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