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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

June 13, 2021

The Honorable Gary Gensler, Chair
The Honorable Allison Herren Lee, Commissioner
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Public Input on Climate Change Disclosures

Dear Chair Gensler and Commissioner Lee:

We are writing in response to Commissioner Lee's request dated March 15, 2021 on whether current Securities and Exchange Commission (SEC) disclosures adequately inform investors about climate change risks. We do not believe that any further securities regulations to specifically address global warming are necessary or appropriate, and will only serve to further discourage firms from becoming publicly traded, thus denying significant investment opportunities to retail investors.

Federal securities regulations already require companies to make extensive disclosures. For example, companies must describe their business, properties, legal proceedings, and risk factors. Companies are also required to provide management's discussion and analysis of the firm's financial condition, results of operations, liquidity, and capital resources. Each of these disclosure areas are legally required to include any material climate change information so that the disclosures are not misleading under the circumstances.

To the extent global warming will have a material impact in any of these areas, companies must already disclose this information. Financial statements must reflect climate change costs where appropriate, for example, if a company incurs additional expenses to pay a carbon tax, purchase carbon offsets, or comply with greenhouse gas (GHG) emission regulations.

The push for more disclosure related to global warming has little to do with providing material information for investment purposes. Rather, activists with no fiduciary duty to the company or its shareholders are trying to impose their progressive political views on publicly traded companies, and the country at large, having failed to enact change via the elected government. These activists want to use climate change disclosure regimes to run costly pressure campaigns against firms to the detriment of shareholders.

Some responses to your request from asset managers and institutional investors have argued that climate change disclosures are material, irrespective of financial significance. However, many of these entities are not the ultimate asset owners. The ultimate owners are often retail investors who invest in a mutual fund, an exchange-traded fund, or are the beneficiary of a pension plan and who may have a significantly different perspective on climate change. Some asset managers and institutional investors who support a climate change reporting regime have their own

conflicts of interest. For instance, climate change disclosures might facilitate efforts by asset managers to create higher margin environmental, social, and governance (ESG) products. In addition, asset managers may desire climate change disclosures in order to satisfy compliance obligations imposed by foreign regulators and obtain recognition and reputational benefits.

Should the SEC proceed with a rulemaking, we are particularly concerned by suggestions that the SEC should designate a third-party climate disclosure standard setter as this would be an unlawful delegation of regulatory authority. Outsourcing this responsibility to a third-party appears to be an attempt to avoid compliance with the Administrative Procedure Act. Moreover, it would contradict the commitment made to the Senate by Chair Gary Gensler during his confirmation process that new regulations be subject to a robust cost-benefit analysis by the SEC.

Any use of a third-party climate disclosure standard setter must first be authorized by Congress. For example, in the case of accounting standards, Congress specifically authorized the recognition of accounting principles established by a standard setting body, which complies with important safeguards regarding the public interest, funding, and operating procedures.¹ Further, the SEC should certainly not attempt to use creative means to extend its jurisdictional reach into mandating disclosure for private entities.²

The efforts to mandate financially immaterial climate change disclosures are misguided and will potentially have little to no effect on reducing GHG emissions. Even if global warming activists succeed in mandating these disclosures, publicly-traded companies will likely sell GHG-related assets to non-public entities at a discount.³ This will harm millions of retail investors, while creating a potential windfall for the wealthiest investors who can acquire these discounted assets. On paper, publicly-traded companies will appear more environmentally responsible, but in reality there will be no reduction in overall GHG emissions and calls into question whether there is any benefit from such immaterial disclosure. In the meantime, potentially billions of dollars that could have been spent towards actually reducing GHG emissions will have been spent instead on securities disclosure compliance.

In conclusion, federal securities regulations are not the appropriate vehicle to advance climate change policy goals. The SEC is an independent financial regulator, whose political insulation reflects its narrow focus on the financial markets. It does not have a mission of remaking society or our economy as a whole.

Determining how to address global warming is a difficult process that involves weighing costs and benefits, making tradeoffs, and negotiating to reach political consensus.

¹ 15 U.S.C. § 77s(b).

² Question 14 of the request for input asks “what climate-related information is available with respect to private companies, and how should the Commission’s rules address private companies’ disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?”

³ See, e.g., Hiroko Tabuchi, “*Here Are America’s Top Methane Emitters. Some Will Surprise You.*” N.Y. Times (June 2, 2021) (describing how five of the top 10 emitters of methane in the oil and gas production industry are privately-held).

If our laws are inadequate to deal with climate change, then it is job of members of Congress—who are accountable to the voters through elections—to address them and not the SEC.

Sincerely,



Pat Toomey
U.S. Senator



Richard Shelby
U.S. Senator



Mike Crapo
U.S. Senator



Tim Scott
U.S. Senator



M. Michael Rounds
U.S. Senator



Thom Tillis
U.S. Senator



John Kennedy
U.S. Senator



Bill Hagerty
U.S. Senator



Cynthia Lummis
U.S. Senator



Jerry Moran
U.S. Senator



Kevin Cramer
U.S. Senator



Steve Daines
U.S. Senator

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner