Congress of the United States
Washington, DC 20510

June 5, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Gensler:

We are writing to request information regarding the Securities and Exchange Commission's ("SEC's") activities taken in connection or coordination with the European Union ("E.U.") on environmental, social, and governance ("ESG") and climate-related measures that significantly impact U.S businesses, including E.U. climate-related disclosure mandates that closely resemble the SEC's proposed climate disclosure rule.

The E.U. is moving forward with climate directives that will have significant impacts on American companies. These E.U. mandates, including the Sustainable Finance Disclosure Regulation ("SFDR"), the Corporate Sustainability Reporting Directive ("CSRD"), and the Corporate Sustainability Due Diligence Directive ("CS3D"), seek to ingrain ESG and climate-related factors throughout the financial sector.[1] As U.S. policymakers, we are concerned that, under the Biden Administration, the SEC and other federal agencies have been coordinating with, or ceding regulatory responsibility to, foreign regulators on these and other climate measures that will force burdensome and non-material reporting obligations on American companies.

In particular, CSRD closely resembles the SEC's controversial proposed climate disclosure rule, requiring companies to calculate and disclose untested Scope 1, Scope 2, and Scope 3 greenhouse gas emissions. The E.U.'s directive takes the SEC's proposed climate rule one step further by including the disclosure of metrics related to pollution, water resources, biodiversity, human rights, and governance impacts like gender equality and working conditions.[2] Furthermore, CS3D, in its current proposed form, would punish American companies, holding them liable for putative damages in the instance that they fail to prevent, end, or mitigate alleged impacts that their business—and those in their value chains—may have with respect to a long list of ESG concerns.

The SEC will almost certainly face significant legal challenges in the U.S. regarding whether it possesses the requisite authority to promulgate and enforce its onerous and far-reaching climate disclosure rule, particularly in light of the Supreme Court's recent ruling in *West Virginia v EPA*.[3] As such, it appears that the Biden Administration is seeking to circumvent American

[1] *See* European Commission, *Renewed sustainable finance strategy and implementation of the action plan on financing sustainable growth* (Mar. 8, 2018), https://finance.ec.europa.eu/publications/renewed-sustainable-finance-strategy-and-implementation-action-plan-financing-sustainable-growth_en.
[2] *See* Directive (E.U.) 2022/2464 of the European Parliament and of the Council (Dec. 14, 2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464.
[3] *West Virginia v. EPA* 597 U.S. __ (2022).

courts, and our democratic process, by collaborating with the E.U. to ensure that the desired outcomes of the E.U.'s ESG agenda reach the U.S. through extraterritorial means.

We are deeply concerned that U.S. agencies under the Biden Administration are either passively allowing a foreign body to regulate American companies or are willfully circumventing the U.S. regulatory process by actively coordinating with foreign governments to dictate climate and economic policy to U.S. companies. Any such efforts to advance the E.U.'s ESG agenda over the interests of the U.S. and American companies would be an alarming development and a significant deviation from historical practices. Furthermore, shifting to an E.U.-style climate regulatory regime in the U.S. would materially and unnecessarily harm our nation's oil and gas sector, agriculture sector, and our preeminent capital markets.

With these concerns in mind, we request that you provide answers to the following questions no later than June 19, 2023:

1. The U.S. and E.U. issued a joint statement in October 2021 indicating that the E.U. and SEC were engaged in "bilateral technical-level exchanges on sustainability-related disclosures" while the SEC was developing rule proposals addressing disclosures around climate risk.[4] What specific technical-level information on sustainability-related disclosures has been exchanged between the SEC and the E.U., and why did the SEC choose to participate in these exchanges on sustainability-related disclosures with the E.U.?

2. What goals does the SEC hope to achieve in its efforts to cooperate or coordinate with the E.U. on climate disclosure regulations, such as the CSRD, CS3D, and the SEC's proposed climate disclosure rule, that would adversely impact thousands of U.S. companies?

3. Please provide a comprehensive list of all meetings in which SEC officials or employees met with representatives from the European Commission, the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority, the European Central Bank, the Single Resolution Board, and/or the International Sustainability Standards Board to discuss SFDR, CSRD, CS3D, and/or the SEC's proposed climate disclosure rule. For each such meeting, please provide the meeting date, the names and titles of all participants, and any meeting agenda or minutes that may have been prepared.

4. What concerns, if any, has the SEC expressed to its international counterparts or foreign government bodies regarding these E.U. proposals?

5. Has the SEC or any other agency conducted any cost-benefit analyses related to SFDR, CSRD, and/or CS3D?

[4] U.S. Department of the Treasury, Joint Statement on the E.U. - U.S. Joint Financial Regulatory Forum (Oct. 4, 2021), https://home.treasury.gov/news/press-releases/jy0386.

6. Which SEC officials or employees have been responsible for coordinating or working with foreign governments on SFDR, CSRD, CS3D, or any other E.U. climate-related corporate disclosure regulation or directive since January 20, 2021? Please provide a comprehensive list of all such employees (both former and current), to include each employee's name, title, and duties with respect to any such coordination or work.

In addition, to allow Congress to evaluate the SEC's activities taken in connection with U.S. and European ESG and climate-related measures that significantly impact U.S businesses,[5] we request that you provide the following records in unredacted form no later than June 19, 2023:

1. All nonpublic meeting minutes, meeting notes, and memoranda related to SFDR, CSRD, CS3D, or any other E.U. climate-related corporate disclosure regulation or directive since January 20, 2021;

2. All nonpublic slide decks and other presentation materials exchanged between the U.S. government and any E.U. country or foreign entity related to SFDR, CSRD, CS3D, or any other climate-related corporate disclosure regulation or directive proposed or considered by the E.U. or the SEC since January 20, 2021;

3. All nonpublic records[6] referring or relating to the climate consultancy, climate accounting, or sustainability-related organizations Persefoni, Ceres, ERM, or South Pole since January 20, 2021;

4. All nonpublic analyses of the costs and/or economic impact for U.S. businesses expected to result from SFRD, CSRD, CS3D, and/or the SEC's proposed climate disclosure rule, including, but not limited to, the impact that these measures are expected to have on energy prices;

5. All nonpublic communications sent between any official or employee of the SEC and any official or employee of the U.S. Treasury Department related to SFDR, CSRD, CS3D, or the SEC's proposed climate disclosure rule since January 20, 2021;

6. All nonpublic communications sent between any official or employee of the SEC and any official or employee of the Executive Office of the President related to SFDR, CSRD, CS3D, or the SEC's proposed climate disclosure rule since January 20, 2021;

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[5] The Senate Committee on Banking, Housing, and Urban Affairs has jurisdiction over, among other things, the SEC; financial exchanges and markets; securities, annuities, and other financial investments; accounting standards; and international economic policy as it affects U.S. monetary affairs, financial institutions, economic growth, and credit. The House Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.
[6] The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

7. All nonpublic communications sent between any official or employee of the SEC and any official or employee of the Office of the Special Presidential Envoy for Climate related to SFDR, CSRD, CS3D, or the SEC's proposed climate disclosure rule since January 20, 2021;

8. All nonpublic calendar entries of any SEC officials or employees who coordinated or worked with a foreign government on SFDR, CSRD, CS3D, or any other E.U. climate-related corporate disclosure regulation or directive since January 20, 2021, that relate to any such E.U. climate-related corporate disclosure regulation or directive;

9. All non-public calendar entries of any relevant SEC person[7] referring or relating to CSRD, CS3D, or the SEC's proposed climate disclosure rule that were created or generated since January 20, 2021; and

10. All nonpublic records sent, received, or created by any relevant SEC person since January 20, 2021, that contain any of the following key words or key word combinations:
    a. "climate" AND "disclose" OR "disclosure"; or
    b. "sustainability" AND "disclose" OR "disclosure".

Thank you for your attention to this matter.

Sincerely,

Tim Scott
Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs

James Comer
Chairman
House Committee on Oversight and Accountability

[7] The term "relevant SEC person" refers to: Gary Gensler (Chair); Heather Slavkin Corzo (Policy Director); Kevin Burris (Counselor to the Chair and Director of Legislative and Intergovernmental Affairs); Scott Schneider (Counselor to the Chair and Director of Public Affairs); Mika Morse (Climate Counsel); Keo Chea (Director of Public Engagement); Allison Herren Lee (former Commissioner/Acting Chair); Katherine Kelly (former Senior Policy Advisor/Counsel); Satyam Khanna (former Senior Policy Advisor for Climate and ESG); Parisa Haghshenas (Counsel); Renee Jones (former Director); Erik Gerding (Director/Deputy Director); Luna Bloom (Chief, Legal and Regulatory Policy (Rulemaking); Kristina Wyatt (former Senior Counsel to the Director for Climate and ESG); Katherine Bagley (Senior Special Counsel to the Director); Paul Munter (Chief Accountant); Shaz Niazi (Deputy Chief Counsel); Omid Harraf (former Deputy Chief Counsel); Jessica Wachter (Director and Chief Economist); Oliver Richard (Deputy Director and Deputy Chief Economist); Lauren Moore (Chief Counsel); Jill Henderson (Senior Special Counsel to the Director); Charles Woodworth (Deputy Chief Counsel); Giulio Girardi (Senior Financial Economist); John Coates (former General Counsel/Director of Division of Corporate Finance); Dan Berkovitz (former General Counsel); Megan Barbero (General Counsel); Bryant Morris (Associate General Counsel Legal Policy (Corporate Finance, Accounting, Disclosure Policy), and David Leviss, (Associate General Counsel for Oversight and Investigations).