July 30, 2026

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

Re: *Rescission of Climate Disclosure Rules,* File No. S7-2026-19

Dear Madam Secretary:

Ceres respectfully submits this letter in opposition to the SEC's proposed rule, *Rescission of Climate-Related Disclosure Rules* (the "Rescission Proposal"). That rule would rescind the SEC Rules, *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (the "Final Rules"; we also refer to the "Proposing Release" the "Proposed Rules," and the "Adopting Release" related to the Final Rules).

I. INTRODUCTION

A. Ceres Description:

Ceres is a sustainability non-profit advocacy organization with over 35 years of experience working to accelerate the transition to a cleaner, more just, and resilient economy. Our Investor Network, Company Network, and Policy Network include many large U.S. institutional investors (with combined assets under management of over $45 trillion) and many large companies. Drawing on our decades of expertise, we support investors and companies in integrating responsible investment and business strategies and managing financial sustainability issues critical to protecting long-term portfolio value.[1]

From our founding in 1989,[2] corporate sustainability disclosure has been important to our work. We create tools and standards that companies can use to meet investor and public expectations for improved climate risk management and sustainability disclosure. In 1997, we launched the Global Reporting Initiative (GRI) – the most

[1] The views expressed herein are those of Ceres and are not necessarily those of members of our Investor, Company, or Policy Networks.
[2] Ceres, *The Ceres Principles* (2012).

widely used standard worldwide for sustainability reporting, used by 40% of all large listed companies, which represents 62% of global market capitalization.[3] The Ceres Investor Network, which includes 160 institutional investors, engages companies on improving their disclosures and management of climate, nature, and water risks (among other financial risks).

Ceres is a founding partner of several global initiatives where climate-related financial disclosures are core elements. These include, among others, the Climate Disclosure Standards Board (CDSB), an international consortium of business and nonprofit organizations that worked to align global corporate reporting to equate natural capital with financial capital by offering companies a framework for reporting environmental information with the same rigor as financial information. We also co-founded Climate Action 100+, an investor engagement initiative with more than 600 investors, focused on ensuring many of the world's largest companies take appropriate action on climate change to mitigate financial risk and maximize the long-term value of assets. Investors engage companies on improving climate governance, reducing greenhouse gas emissions, and strengthening climate-related financial disclosures.

Ceres is also a founding partner of the Investor Agenda, a global nonprofit collaboration focused on supporting and promoting investor climate action – and a founding partner of the Net Zero Asset Managers Initiative, which provides asset managers with a platform for voluntary commitments and public disclosures of individual net zero targets and implementation strategies.

In 2019, we established the Ceres Accelerator for Sustainable Capital Markets to expand our climate risk-related work to focus on the practices and policies that govern capital markets. The Ceres Accelerator, with expertise in securities and other financial regulatory areas, engages with federal and state financial regulators, including the SEC, as well as financial institutions, investors, and corporate boards, seeking greater recognition of climate change as a significant, systemic financial risk.

[3] Global Reporting Initiative, *GRI is top choice for sustainability reporting worldwide* (June 23, 2026).

B. Ceres' Interest:

Through its work, Ceres has developed a deep understanding of the significant gaps, weaknesses, and inconsistencies in the current corporate disclosure regime and the burden faced by investors in making investment decisions based on fragmented and incomparable data. Corporate disclosures often do not adequately capture important and systemic financial climate risks and opportunities that issuers face, concealing major vulnerabilities in the global financial system and preventing effective risk management and efficient capital allocation.

Our work on SEC climate-risk disclosure rules goes back more than two decades. In 2003, Ceres organized the Ceres Investor Network, and network members immediately sought SEC attention to climate risk disclosure.[4] Ceres also published reports in which public pension funds and others urged that steps be taken by the SEC to improve climate risk disclosures, such as *Climate Change Risks and the SEC: Summary Report* (2004). In 2005, investors released *A New Call for Action: Managing Climate Risk and Capturing the Opportunities* (2005), which called for improving climate risk disclosure in SEC filings.[5] A 2014 Ceres report found that "[m]ost S&P 500 climate disclosures in 10-Ks are very brief, provide little discussion of material issues, and do not quantify impacts or risks."[6] Further, "[a] large number of companies fail to say anything about climate change in their annual filings with the SEC."[7]

[4] Ceres & United Nations Fund for International Partnerships, *Institutional Investor Summit on Climate Risk Final Report* (November 21, 2003) at 18-19. The Investor Call for Action on Climate Risk, signed by 10 state treasurers, state and city comptrollers, and labor pension funds, called upon the SEC "to enforce corporate disclosure requirements under regulation S-K on material risks such as climate change and to strengthen current disclosure requirements – as requested by investors and others in [a] recent petition to the SEC (File # 4-463)." *Id*. at 19.
[5] United Nations Foundation, United Nations Fund for International Partnerships, State Treasurer of Connecticut & Ceres, *2005 Institutional Investor Summit on Climate Risk Final Report* (May 10, 2005), app. A, at 20–22.
[6] Ceres, *Cool Response: The SEC & Corporate Climate Change Reporting* key findings (January 30, 2014).
[7] *Id*.

In 2021, the SEC asked for public input on climate-related financial disclosures, posing dozens of questions on a wide range of issues.[8] Ceres was among the many commenters.[9] The SEC received more than 550 unique comment letters, with 75% supporting climate disclosure rules.[10] This was followed in 2022 with the issuance of Proposed Rules.[11] Ceres was actively involved in responding to the Proposed Rules, submitting on its own or with others multiple comment letters which included detailed cost/benefit data and information about business and investors support for the Proposed Rule, and releasing other publications.[12] On March 6, 2024, the SEC adopted Final Rules that the current SEC seeks to rescind.[13]

C. Ceres' Position:

[8] Allison Herren Lee, Acting Chair, SEC, *Public Input Welcomed on Climate Change Disclosures* (Mar. 15, 2021).
[9] Ceres, *Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33-11042, 34-94478; File No. S7-10-22 (June 17, 2022).
[10] Gary Gensler, Chair, SEC, *Prepared Remarks Before the Principles for Responsible Investment "Climate and Global Financial Markets" Webinar* (July 28, 2021).
[11] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11042; 34-94478; File No. S7-10-22, 87 Fed. Reg. 21,334 (Apr. 11, 2022).
[12] *See* Ceres' multiple comments letters on the proposed rule:

- April 6, 2023: Joint letter of Ceres and Persefoni containing additional details related to costs to issuers and investors, as well as counterarguments to misleading arguments related to the cost-benefit analysis
- March 28, 2023: Ceres letter providing summary of Ceres and Center for Audit Quality roundtable on alternatives to proposed Regulation S-X financial statement requirements
- February 1, 2023: Ceres letter providing evidence regarding increased disclosures of emissions data & TCFD-aligned information
- December 12, 2022: Joint letter of five organizations, with recommendations on key provisions plus possible amendments
- December 2, 2022: Ceres letter providing data on support for rulemaking, investor use cases, issuers' support for Scope 1 and 2 disclosure, and link to letter by 86 Chief Financial Officers to the International Sustainability Standards Board
- November 10, 2022: Ceres letter with articles on businesses leading on Scope 3 emissions disclosure/management and risks to investors
- June 17, 2022: Ceres' main comment letter on proposed rule

[13] SEC, *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors* (March 6, 2024).

We respectfully submit that when appropriate consideration is given to the 92-year history of SEC rulemaking, the agency's statutory investor protection mandate, and the requirements of the Administrative Procedure Act, the Rescission Proposal is found rife with flaws.[14]

The Final Rules were supported by a large number of mainstream investors who made a strong case for why climate risk information is needed to make informed investment and voting decisions. Where investors mentioned direct and indirect emissions, alignment with the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations, and disclosure location in their comment letters, at least 97% of the time they supported the inclusion of these items in the Final Rules.[15] A shift in the political winds, such as what has occurred in the past 18 months, is not by itself sufficient to justify a wholesale rejection of an important set of disclosure rules. Absent a showing of how the SEC in 2024 got its facts wrong – and the Rescission Proposal contains no serious attempt to make such a showing – rescission of the Final Rules would be arbitrary and capricious.[16]

We urge the SEC to consider carefully the points we make below. First, investor demand and need for comparable and decision-useful climate information was emphatically established during the 2022-2024 rulemaking, and it has grown since then. The Final Rules reflect what was said in the more than 24,000 comment letters it received.[17] Thus, the Commission is mistaken when it states that the Final

[14] That is not to say, however, that the Rescission Proposal is surprising or unexpected in view of the Commission decision to abandon its Eighth Circuit defense of the Rules and the on-the-record opposition of all three Commissioners. SEC, *Rescission of Climate-Related Disclosure Rules,* Release Nos. 33-11421; 34-105572; File No. S7-2026-19, 91 Fed. Reg. (June 3, 2026).
[15] Ceres, *Analysis shows that investors strongly support the SEC's proposed climate disclosure rule* (Oct. 11, 2022).
[16] We note that the Rescission Proposal was issued by a Commission with only three Commissioners from one party. There has been no apparent effort by the Administration to fill the remaining two seats, contrary to the intent of the Exchange Act that both political parties be represented, and the Rescission Proposal was approved without the traditional debate and dialogue that takes place at a Commission open meeting. We believe that the investing public and the Commission itself could have benefitted from hearing diverse inputs and a robust discussion of the wisdom of the Commission's action.
[17] SEC press release, *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors* (March 6, 2024).

Rules "are unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure."[18] The facts do not support this conclusion.

Second, the Rescission Proposal wrongly concludes that the SEC lacks statutory authority for the Final Rules. The administrative record of the Final Rules contains strong support for such authority. Moreover, the SEC's decision to undermine its own investor-protection authority is deeply troubling and will have unfortunate ramifications beyond climate disclosure. In view of the solidity of support for the SEC's rulemaking authority, the SEC should have continued to take the side of investors. The SEC as it existed in the past – with a storied tradition as "the investor's advocate", in William O. Douglas' words[19] – assuredly would not have advanced the interests of corporate representatives over those of investors who made strong arguments in favor of climate risk disclosure.

Third, the SEC's also gives short shrift to the discussion in the Adopting Release about the possibility of amending the Final Rules or severing portions of those rules if those portions were found (most likely by a reviewing court) statutorily or otherwise defective. The Rescission Proposal states that the Final Rules are too burdensome and costly (conclusions with which we do not agree) but fails almost completely to explore how to reduce those burdens or costs even though the Adopting Release gave a roadmap on how that might be done. And the Commission's cost-benefit analysis and other elements of the proposal are unsupported.

In sum, it appears that the current SEC's aversion to climate risk concerns has led it to stray from rulemaking norms and legal requirements. The Rescission Proposal should be withdrawn.

II. The Administrative Record of the Final Rules Shows Broad Investor Support for those Rules, and the Need for SEC-Mandated Climate Risk Disclosure Has Grown Since 2024.

[18] Rescission Proposal at 15.
[19] Transcript of SEC Chairman William O. Douglas's press conference (Sep. 22, 1937), Douglas Papers, box No. 630, Library of Congress. *See* http://hdl.loc.gov/loc.mss/eadmss.ms002011.

A. Investors strongly supported adoption of the Final Rules and gave specific examples of how they needed more and better climate risk information.

Support for the Proposed Rules came from across the spectrum of investors – large institutional, retail, growth, value, and others.

Large institutional investors stated support for the Proposed Rules while, at the same time, urging modifications, many or most of which were made when the Final Rules were adopted. Thousands of other investors, both retail and institutional, also supported the rulemaking. The Proposed Rules were supported by the Commission's own Investor Advisory Committee[20] (both of which also suggested various changes to the Proposed Rules). The Adopting Release cites extensively to investors' letters that stated their support for the rulemaking.[21]

Ceres performed a detailed analysis of the comment letter file and found that the investors had made the following major points in favor of disclosure:[22]

- *Asset managers are bound by fiduciary obligations to manage risks, which may include climate risk.* In many instances asset managers need to understand how climate risk is integrated into risk management frameworks and how risk analysis feeds into business decision making.

- *Company financial performance is positively and negatively affected by climate issues, over different time horizons.* Investment decisions are better informed knowing a company's exposure to and transition readiness for

[20] SEC Investor Advisory Committee, *Recommendation of the SEC Investor Advisory Committee Related to Climate-Related Disclosure Rule Proposals*, Approved by the Investor Advisory Committee at the September 21, 2022 Meeting.

[21] *See*, *e.g.,* Adopting Release at 42, footnote 115 (investors' letters supporting basing the SEC's climate disclosure rules on the TCFD Recommendations); at 101, footnote 358 (investors' letters supporting "the proposed requirement to describe any material climate-related risk that may manifest over the short, medium, and long term"); at 109, footnote 394 (investors' letters supporting the SEC's proposal to require disclosure of actual and potential impacts of strategy, business model, and outlook of material climate-related risks).

[22] Ceres, *Analysis shows that investors strongly support the SEC's proposed climate disclosure rule* (October 11, 2022).

impacts from physical and transition risks. Incomplete information can adversely impact companies' costs of capital and is increasingly relevant to top line revenues.

- *Climate disclosures contribute to informed capital allocation and business decisions by investors, resulting in improved value creation, risk mitigation, and effective portfolio design.* This information is used during due diligence and securities selection to help compare one company's risk to its peers and, consistent with fiduciary duties, to determine position adjustment.

- *Investors need to understand the magnitude of company-specific risk exposures to prioritize engagements and inform proxy voting.* The failure of companies to appropriately manage and comprehensively report climate risk may lead investors to withhold support from board members.

Many of the commenters gave specific examples of why they have needed or how they have used climate risk information. Ceres found that at least 129 investors described how they use climate-related data in investment decision-making and how standardized disclosure will improve the comparability, consistency, and reliability of this information.[23]

These explanations of how important climate risk is to investment and voting decisions make crystal clear why the Rescission Proposal is so off-course when it states that the Final Rules "stray well beyond the policy concerns of the Federal securities laws"[24]. In fact, risk disclosure is at the core of those laws' policy concerns.

B. Events Since the 2022-2024 Rulemaking Have Further Established the Need for the Rules

Investors submitted information on climate risk during the comment period on the Final Rules, which took place in mid-2022. They described climate impact as it

[23] *Id.*
[24] Rescission Proposal at 56.

existed then. Now, four years later, the financial impact of climate change has grown – a development ignored by the SEC in the Rescission Proposal.

The financial risks related to climate change are growing. $2.9 billion in losses related to extreme weather were recorded by 3,890 companies reporting to CDP in 2025, out of 11,261 total reporters.[25] A significant share of the losses came from heavy precipitation ($1.5 billion), operational shutdowns ($266 million), and increased direct costs ($309 million), "showing that extreme weather hits cash flows and business continuity before it hits balance sheets."[26]

Recent research reinforces investors' concerns: one study finds that 1°C warming reduces world GDP by over 20% in the long run,[27] while another study estimates that under a high emissions scenario the U.S. economy would lose one to four percent of GDP annually by the end of century.[28]

The World Meteorological Organization has confirmed that the years 2015 to 2025 were the hottest 11 years on record,[29] causing increasingly severe weather events. Swiss Re found that 2025 was the sixth year that insured natural catastrophe losses globally exceeded $100 billion.[30] They found that U.S. events were "the main driver of global insured natural catastrophes losses", at $89 billion, or 83% of estimated global insured losses.[31] The main drivers were the unprecedented Los

[25] CDP, *Disconnected Defenses: Extreme Weather Risk Across Corporates, Cities and Financial Systems* (May 2026) at 3, 5.
[26] *Id*. at 3.
[27] Adrien Bilal & Diego R. Känzig, *The Macroeconomic Impact of Climate Change: Global vs. Local Temperature*, National Bureau of Economic Research Working Paper No. 32450 (May 2024, rev. Jan. 2026) at 1, 15-16.
[28] Amir Jina, *Climate Change and the U.S. Economic Future: Policy Insight*, in U.S. Energy & Climate Roadmap 12 (2025) at 18.
[29] World Meteorological Organization, press release, *Earth's climate swings increasingly out of balance*, Mar. 23, 2026.
[30] Swiss Re Group, *2025 marks sixth year insured natural catastrophe losses exceed USD 100 billion, finds Swiss Re Institute* (Dec. 16, 2025).
[31] *Id*.

Angeles wildfire losses in Q1 2025 and severe convective storms,[32] both of which have been found to be related to climate change.[33]

Another recent assessment of the growing climate-related financial risk was made by the Federal Insurance Office. It found:

> "[H[omes are increasingly vulnerable to natural catastrophes. From 2018 through 2022—the five-year time period for the data analyzed in this Report—the annual number of major disaster declarations for climate-related events was almost double the annual average over the 50-year period from 1960 to 2010. In 2023, a significant number of natural catastrophes again impacted the United States, at an estimated cost of $114 billion, of which approximately $80 billion was insured. In the first three quarters of 2024, natural catastrophes caused the United States to suffer an estimated $145 billion in economic losses, of which nearly $80 billion was insured."[34]

The report examined financial impacts on insurance companies. Insurers' costs were higher in areas with the highest expected losses from climate-related perils. The paid loss ratio, which reflects how much insurers paid for claims relative to what they received in premiums, was 18 percent higher in the top 20 percent of ZIP Codes with the highest expected annual losses to buildings from climate-related perils. This is despite homeowners paying higher premiums for policies in these areas. The highest risk areas also had higher severity of claims, about $24,000 on average compared to an average of about $19,000 for the lowest risk ZIP Codes.

Business leaders continue to view extreme weather events and/or climate change-related risks as a top financial risk in 2026 and into the future. A major global risk report asked respondents to assess the current global risk landscape by selecting one risk they believe is most likely to present a material crisis on a global scale in 2026. Extreme weather events ranked third out of 33 risks, with only

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[32] *Id*.
[33] *See, e.g.,* Rebecca Lindsey, *The Weather and Climate Influences on the January 2025 Fires Around Los Angeles,* NOAA Climate.gov (Feb. 19, 2025).
[34] Federal Insurance Office, U.S. Department of the Treasury, *Analyses of U.S. Homeowners Insurance Markets, 2018-2022: Climate-Related Risks and Other Factors* (January 2025) at 1.

geoeconomic confrontation and state-based armed conflict above it.[35] When global risks were ranked by severity over the next 10 years, climate change-related risks were ranked in the top three: extreme weather events (1st), biodiversity loss and ecosystem collapse (2nd), and critical change to earth systems (3rd).[36]

Likewise, a recent survey of corporate executives by the World Business Council for Sustainable Development found that [a]lmost half (47%) of leaders reported facing higher costs in the past year related to climate change, such as extreme weather events, heat stress, flooding, drought or water scarcity, and 49% expect these costs to continue to increase over the next 12 months.[37]

In proposing to rescind the Final Rules, the SEC cannot disregard these developments.

C. Subsequent to the 2022-2024 Rulemaking Investors Have Continued to Call for Better Climate Risk Disclosure and Evidence of Deficiencies in Disclosure Continues to Mount

Since 2022, investors have continued to demonstrate strong support for standardized climate disclosure rules being issued by the U.S. and other governments worldwide. In November 2024, 651 financial institutions and their representatives managing almost $34 trillion in assets under management issued a statement to governments on the climate crisis. Regarding climate-related disclosures, the statement called on governments to:

- "[m]andate climate-related disclosures across the financial system,"
- "[r]equire the public disclosure of 1.5°C pathway-aligned, science-based, and independently verifiable climate transition plans for listed and large non-listed companies, asset managers, and regulated asset owners," and
- "[i]nstitute mandatory climate risk disclosure in financial reporting, subject to external assurance, in a manner consistent with the ISSB [International Sustainability Standards Board] standards, with reporting for all public and

[35] World Economic Forum, *The Global Risks Report 2026: 21st Edition* (January 2026) at 8.
[36] *Id*. at 14.
[37] World Business Council for Sustainable Development, *Business Breakthrough Barometer 2026, Briefing for Policymakers (n.d.)* at 1.

large private companies and financial institutions, including disclosure of Scope 1, 2, and Scope 3 greenhouse gas emissions data."[38]

Evidence of the deficiencies in disclosures has been confirmed by numerous recent studies. Carbon Tracker assessed 52 global companies, including 19 U.S. and Canadian companies, as part of the 2025 Climate Action 100+ Net Zero Company Benchmark. It found that only five percent of the U.S. and Canadian companies partially met the assessment criteria for climate accounting and audit disclosures, while 95% met no part of the criteria.[39]

The Conference Board found, "As of 2024, 93% of S&P 500 companies disclose scope 1 emissions and 92% disclose scope 2 emissions".[40] However, when looking solely at 10-K filings, the rate of emissions disclosure in the S&P 500 goes down over 67%. The Center for Audit Quality found that only 129 of S&P 500 companies, or 25.6%, disclose GHG emissions (Scope 1, 2 or 3 GHG Emissions, Status or Objectives) in 10-K filings.[41]

Existing voluntary climate disclosure standards and frameworks are also inadequate substitutes for the Final Rules because they do not result in consistent, comparable, decision-useful disclosures. For example, the ISSB studied climate-related disclosures by 3,814 publicly traded companies globally, examining these companies' financial filings, annual reports, integrated reports, sustainability reports and other relevant documents.[42] It found that while 82% of companies disclosed information in line with at least one of the 11 TCFD recommended disclosures, only 2-3% reported in line with all of the disclosures.[43] Most important, in seven of the 11 TCFD recommended disclosures, no more than 38%

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[38] Founding Partners of the Investor Agenda, *2024 Global Investor Statement to Governments on the Climate Crisis* (Sept. 17, 2024) at 1, 3.
[39] Climate Action 100+, *2025 Climate Action 100+ Net Zero Company Benchmark Summary Report* at 16.
[40] Matteo Tonello, The Conference Board, Inc., *Corporate Climate Disclosures and Practices: Risk, Emissions, and Targets* (May 3, 2025).
[41] Center for Audit Quality (CAQ), *Analysis of Climate-Related Information in S&P 500 Companies' 10-Ks*.
[42] IFRS Foundation, *Progress on Corporate Climate-related Disclosures—2024 Report* (November 2024) at 151.
[43] *Id*. at 4.

of companies disclosed information in line with the categories, showing a significant absence of consistent, comparable disclosures in many TCFD categories.[44]

III. The Proposed Rescission Ignores Key Facts, Making it Arbitrary and Capricious

The case law establishes that an agency may rescind a rule or policy and it "need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate."[45] But when the new policy "rests upon factual findings that contradict those which underlay its prior policy," then a "more detailed justification" is required.[46] An agency failure to explain its decision to "disregard[] facts . . . that underlay . . . the prior policy" is arbitrary and capricious.[47] If an agency decides to rescind a final rule based on a change in policy it must explain why the factual basis for that rule was mistaken. *National Association of Manufacturers and Natural Gas Services Group v. SEC,* No. 22-51069 (5th Cir. 2024), quoting *FCC v. Fox Television Stations, Inc*. 556 U.S. 502 (2009). As discussed below, it has not done so here.

At issue in the *National Association of Manufacturers* case was an SEC rule imposing certain requirements on proxy advisers. These included a requirement that the proxy adviser give registrants the opportunity to review and provide feedback on voting advice before the advice was disseminated to the proxy adviser's clients. The rule never actually took effect; before it could do so, a newly-constituted SEC rescinded the rule (a chronology similar to the one here). The SEC's decision to rescind was challenged in court, and there the SEC argued that the rescission was based solely on a change in *policy* rather than a revised evaluation of relevant *facts*. But the Fifth Circuit disagreed, stating that the issue involved an assessment of an important risk associated with the rule, namely whether the new notice and feedback requirement would create a risk of delay and loss of independence. The SEC was saying that it would create such a risk, while two years earlier it had said it would not. Without an explanation of its decision to

[44] *Id*. at 22.
[45] *FCC v. Fox Television Stations, Inc.,* 556 U. S. 502 (2009).
[46] *Id*.
[47] *Id*.

"disregard its prior factual finding", the rescission decision was "arbitrary and capricious."[48]

The same situation is present here. The 2024 Adopting Release explained in great detail how the risks associated with climate change were material to many companies and, where material, disclosure of those risks was inadequate. Now, the Proposed Rescission concludes that the Final Rules are "unnecessary" because other SEC rules, described in the 2010 guidance, already require disclosure of material facts: "the Commission's existing disclosure requirements and anti-fraud provisions already elicit information about the effects of climate- related matters".[49] How could the rules be found to be "unnecessary" now when those same disclosure and anti-fraud provisions existed in 2024 and the disclosures about important risks associated with climate change were found to be inadequate (a *factual* determination)?

Likewise, to survive legal scrutiny, the Rescission Proposal must show how the SEC got its facts wrong when it concluded in 2024 that the 2010 guidance had not been effective. The Adopting Release considered in some detail the importance of the 2010 Release and concluded: "Our experience with the 2010 Guidance and current practices regarding disclosure of this information led us to conclude that, although many companies disclose some climate-related information, there was a need to both standardize and enhance the information available to investors about such matters and thus to propose an updated approach."[50]

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[48] We should note that in a challenge to the same SEC rescission decision the Court of Appeals for the Sixth Circuit, in a two-to-one decision, reached a different result than the Fifth Circuit and held that the rescission was not arbitrary and capricious. *Chamber of Com. of the U.S. v. SEC*, 115 F.4th 740 (6th Cir. 2024). But that court applied the same legal test as did the Fifth Circuit; it simply assessed the factual record differently.

[49] Rescission Proposal at 47.

[50] *See* Adopting Release at 39 ("many commenters stated that the Commission's current reporting requirements do not yield adequate or sufficient information regarding climate-related risks."); see also SEC, *Commission Guidance Regarding Disclosure Related to Climate Change*, Release Nos. 33-9106; 34-61469; FR-82, 75 Fed. Reg. 6290 (Feb. 8, 2010).

Despite that finding, the SEC now proposes reverting back to a principles-based disclosure regime for climate risk.[51] As a general matter, using principles rather than specific rules is a proper basis for a disclosure regime in certain circumstances. Many SEC rules are principles-based. But even if principles-based requirements were appropriate for climate risk information – and the record as discussed above shows that it has not worked – the SEC is not writing on a clean slate. Substitution of principles for proscriptive rules *cannot* be made now, for the specific reason identified by the Fifth Circuit: the *factual* record established that principles-based disclosure requirements were *not* working, that climate risks were *substantial*, and investors were *not* getting the decision-useful climate risk information they needed. The 2010 guidance appears to have led to "cherry-picking" where companies omitted problematic disclosures on the basis of their purported "immateriality," and it allowed companies to pick and choose among various existing voluntary climate disclosure standards, making it difficult to compare one company to another.[52]

In order to rescind the Final Rules, the SEC must now make an adequate explanation of why it is disregarding its prior factual findings, and it has not done so (nor is any valid explanation supported by the record).

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[51] There is, of course, considerable irony and inconsistency in the SEC's looking to the 2010 guidance as the appropriate solution to investor demand for more climate-related information while, at the same time, asserting that climate-risk information is a matter outside of its statutory mandate.

[52] *See* Adopting Release at 22 ("the current state of climate-related disclosure has resulted in inconsistent, difficult to compare, and frequently boilerplate disclosures, and has therefore proven inadequate to meet the growing needs of investors for more detailed, consistent, reliable, and comparable information . . ."; at 23 ("Retail and institutional investors and investor-led initiatives have increasingly expressed the need for more reliable information about the effects of climate-related risks, as well as information about how registrants have considered and addressed climate-related risks and opportunities when conducting operations and developing business strategy and financial plans.") (footnotes omitted); and at 660-661 ("As numerous commenters stated, climate-related risks and their impacts on businesses are often not reported in a way that is useful to investors. Commenters noted that with the limitations to the currently available climate-related disclosures, extensive costs in the form of data gathering, research and analysis are needed to process them and to fill data gaps where possible in forming investment decisions.") (footnotes omitted).

IV. Rescission would also be arbitrary and capricious because the SEC's materiality analysis does not comply with the Administrative Procedure Act's requirement for "reasoned decision making."

The Supreme Court has established that an agency's explanation for rescission of a final rule must be "the product of reasoned decision making."[53] The Commission in the Rescission Proposal concludes that "the Final Rules cannot be justified as eliciting disclosure of *material* information." (Emphasis in original). The SEC's Rescission Proposal, however, does not display "reasoned decision-making" on the question of materiality.

We discuss below several elements of a materiality analysis and describe how the Rescission Proposal misapplies all of them. But as a preliminary matter, it is important to note the degree to which the SEC in the Adopting Release focused on the question of materiality. It did so in response to positions taken by many comment letter submissions.[54] As has been noted, "One area where the final rule looks dramatically different from the proposed rule is the inclusion of a materiality threshold for Scope 1 and 2 GHG emissions disclosure and for various climate risk and transition disclosure requirements throughout."[55] In fact, one commentator found that the words "material" or "materiality" appear in the 2024 Adopting Release more than 1000 times.[56] Hence, it seems far-fetched to conclude that the SEC, which has decades of experience with materiality questions and which used that experience with rigor, got things wrong in 2024.

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[53] *Motor Vehicles Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co*., 463 U.S. 29, 52 (1983).
[54] The Proposed Rules did not include a materiality threshold for some of the disclosures, including the emissions disclosures; based on adverse comments from many industry groups, the materiality requirement was inserted. This was done even though the federal securities laws do not generally include a materiality requirement. For example, a letter signed by 30 leading securities law scholars stated that "nothing in the federal securities statutes or in judicial precedent, including Supreme Court precedent, imposes a materiality constraint on Commission rulemaking, or requires the Commission to incorporate materiality qualifiers in the language of specific disclosure rules." 30 law professors, *Letter to SEC Re: Enhancement and Standardization of Climate-Related Disclosures for Investors (S7-10-22)* (June 6, 2022) at 13.
[55] Chloe Field & Cynthia Hanawalt, *The SEC's Final Climate Disclosure Rule: Key Requirements, and the Materiality Threshold*, Columbia University Law School Climate Law Blog (March 11, 2024).
[56] Cydney Posner, *Final SEC Climate Disclosure Rules [Updated Part I]*, Cooley PubCo (March 11, 2024).

1. **The SEC misstates the *need* for the Rules as established by the administrative record.**

The thrust of the SEC's position is contained in this section heading: "The Final Rules Are Unnecessary and Inconsistent with a Registrant-Specific Materiality-Based Approach to Disclosure that Best Serves the Interests of Registrants and Investors" (tellingly, this heading places the SEC's concern about the interests of *registrants* before that of *investors*).

Every element of this heading is wrong. The SEC found a strong factual basis for rulemaking by carefully reviewing the comment letters, where the deficiencies in existing disclosures were thoroughly explained, as described above. Hence, the Rules were not "unnecessary." And, as just discussed, the SEC applied a "materiality-based approach to disclosure."

As for "registrant-specific", the SEC has recently begun using that phrase in its rulemaking to distinguish principles-based rules from proscriptive rules[57], but it is a red herring. *All* materiality determinations are "registrant specific", in that the registrant makes the determination of what information is material and what is not based on its particular circumstances. And because the disclosures here were so clearly needed by investors, they were in their "best interests" of investors. In fact, they were viewed by many *registrants* to be in their best interest as well, as shown in the Adopting Release, which cites to registrants' letters that supported the rulemaking.[58]

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[57] SEC, *Modernization of Regulation S-K Items 101, 103, and 105*, Release Nos. 33-10825; 34-89670; File No. S7-11-19, 85 Fed. Reg. 63,726 (Oct. 8, 2020) (codified at 17 C.F.R. pts. 229, 239, 240).

[58] *See*, *e.g.,* Adopting Release at 42, footnote 16 (registrants' letters stating that because the TCFD framework is widely accepted by issuers and investors, it would be a useful model for the SEC's Rules); at 110-111, footnote 403 (registrants' letters supporting the requirement "to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect its consolidated financial statements"); at 141-142, footnote 539 (registrants' letters supporting the requirement to describe analytical tools, such as scenario analysis used to assess "the impact of climate-related risks on its business and consolidated financial statements"; at 173, footnote 676 (registrants' letters generally supporting "the proposed requirement to disclose management oversight of climate-related risks").

2. The SEC mischaracterizes the *nature* of the investors who sought the 2024 Rules.

The Rescission Proposal states that "the Commission should not seek to cater to the specific informational needs of every subset of investors about each emergent topic" but, rather, "should look to whether the *reasonable* investor would consider the information important in buying or selling securities" (emphasis in original). In other words, according to the SEC the advocates of disclosure are characterized as a "subset" of the investing public.

This approach to the supporters of better risk disclosure permeates the Rescission Proposal. For instance, in its opening paragraphs the SEC states that "it is not the Commission's role to require disclosure of particular information because it is useful for any one investment strategy or desired by some political interests for the purpose of influencing business practices."[59] But climate risk disclosure, far from being a merely sectoral interest, received enormous and broad-based support. The public pension funds, mutual funds, and retail investors who commented in support of the rule were not focused on "one investment strategy" in seeking climate risk information. They sought the information because it bears on their overall investment risk. The commenters were mainstream investors who were concerned about the impacts on their investment portfolios of forest fires, floods, and other phenomena caused by temperatures that are expected to rise significantly. This should be obvious from the statements of support described above and cited in the Adopting Release.[60] [61]

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[59] Rescission Proposal at 7.

[60] *See*, *e.g.,* Adopting Release at 38, footnote 99, referencing investor letters that stated climate-related risks can have material impacts on companies' financial position or performance; at 47, footnote 137, discussing investor letters that discuss seeking information from registrants about the impacts, and potential impacts, of climate-related risks on their financial performance or position; at 77, footnote 244, referencing investor letters that supported the proposal to require registrants disclose "any climate-related risks that are reasonably likely to have a material impact on its business or consolidated financial statements."

[61] We expect some of these investors may file comment letters in opposition to the Rescission Proposal, but most previous filers likely will not. This is particularly true of large, highly visible investment firms. Given the prevalence of unprecedented measures now being taken by various federal and state government bodies against entities that are perceived to be overly concerned

3. The SEC incorrectly fails to consider the *interests* of investors who use climate risk information for voting purposes.

It is not only *investment* decision-making that motivated the commenters who supported the rules. They sought, and continue to seek, climate-risk information to assist in making their *voting* decisions, where such information can be material.

The SEC in 2024 thought that climate risk information was important in this context. Indeed, the word "voting" appears in the Adopting Release *71 times.* But this aspect of what constitutes materiality is *never once* mentioned in the Rescission Proposal. Thus, the Rescission Proposal states that in issuing a mandatory disclosure rule "the Commission should seek to adopt rules that elicit information pursuant to the standard of materiality established by the Supreme Court: information that a reasonable investor would consider important in buying or selling securities."[62] But that is *not* the Supreme Court's complete definition because it omits voting. Indeed, the seminal case on materiality made this clear. In *TSC v. Northway Industries*,[63] the disclosure at issue related to voting, not investing; the Court declared that "[a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important *in deciding how to vote*."[64] (emphasis added)

This is a serious misstep by the Commission. Investors want and need climate risk information in deciding how to vote their shares. For example, one study, published in December 2024, concluded that "directors of firms that have larger carbon emissions or that do not voluntarily disclose their carbon emission receive

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about climate risk or insufficiently friendly to fossil fuels, this is hardly surprising. *See generally* K&L Gates, *2023 ESG State Legislation Wrap Up* (July 25, 2023). As a sign that the SEC itself might disparage entities that express support for mandatory climate risk disclosure, the SEC Chair, speaking to a recent gathering of accountants, expressed his "shock" that several major accounting firms had in 2022 submitted comment letters in support of the SEC's rulemaking (while making numerous suggestions for changes). *See* Vincent Huck, Corporate Disclosures, US SEC chair Atkins "shocked" by audit firms' climate stance, (Dec. 8, 2025).

[62] Rescission Proposal at 7.

[63] *TSC Industries, Inc. v. Northway, Inc*., 426 U.S. 438, 449 (1976).

[64] *Id.* It was not until the Supreme Court decided *Basic Inc., v. Levinson*, 485 U.S. 224 (1988) that the materiality definition was firmly extended outside of the voting context.

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significantly higher dissent votes."[65] And, climate change remains a frequent topic of shareholder resolutions. In 2026, 39 proposals addressed climate change, including twelve on emissions and emissions targets and fourteen on strategy and risk assessment issues. Common topics included disclosure of climate transition plans, emissions targets, and climate financing, including how companies will protect retirement plan beneficiaries from climate risk and disclosing risks associated with high-carbon investments.[66]

This omission of any discussion of voting interests in the context of climate change is particularly incongruous because the SEC typically *does* acknowledge the significance of voting as part of the materiality analysis. Indeed, just this past January, Chair Atkins gave a speech in which he defined materiality as including voting decisions and said that "[t]he Commission's disclosure regime should enable a reasonable investor to separate the wheat from the chaff when reviewing periodic reports *and proxy statements*." (emphasis added) [67] For unexplained reasons, when it comes to climate change disclosure, voting seems to bite the dust.

4. The SEC misstates the *reasons* for the Rules' support.

Perhaps the most puzzling statements in the Rescission Proposal are these two -- "An additional policy reason for rescinding the Final Rules is that they do not respond to a gap in investor protection in the securities disclosure regime; rather, they concern the divisive and unsettled political and social issue of climate regulation."; and the Rules' advocates were seeking "to hijack the public company reporting regime to further social policies unrelated to the aims of the Federal securities laws." To the contrary, the 2024 Rules emphatically addressed a "gap" in investor protection while never mentioning any "social" or "political" issues relating to climate. And there has been no "hijacking" by social activists. Rather, the SEC in 2024 was acting as it has for decades, as an "expert agenc[y] blessed with immensely capable professionals."[68]

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[65] Reena Aggarwal, Sandeep Dahiya, Umit Yilmaz, *Why do Investors Vote Against Corporate Directors?*, European Corporate Governance Institute Working Paper Series in Finance at 4.
[66] As You Sow and Proxy Impact, *Proxy Preview 2026* at 5, 11-13.
[67] Paul S. Atkins, Chairman, SEC, *Statement on Reforming Regulation S-K* (Jan. 13, 2026).
[68] Eugene Scalia, Wall St. J., *Why Dodd-Frank Rules Keep Losing in Court* (Oct. 3, 2012).

Moreover, even if there are advocates of the Rules who are concerned about "social policies" relating to climate change (and it is no doubt true that many groups backing the Rules have strong environmental protection concerns), the SEC is wrong to so readily conclude that such an interest falls outside the scope of the federal securities laws. So-called "socially responsible investing" is simply a well-established strategy which seeks to consider financial return *in addition to* ethical, social or environmental goals, based largely on the idea that by acting ethically and responsibly corporations can enhance investor return.[69] And where, as here, the investor demand for this type of information is so overwhelming and the factual basis for the financial impact is so striking, there really are no reasonable grounds for concluding that the information is not material because it has a social or environmental component.

5. The SEC mischaracterizes the *number* of investors seeking the Final Rules

The SEC seems intent on minimizing the number of investors who argued for the Rules. As discussed above, support for the Final Rules was (and remains) profound and pervasive.[70] Yet, in its opening paragraphs, the Rescission Proposal says that during the rulemaking comment period "some" commenters supported the climate risk rule while "many" did not. This description of the record is backwards –-in fact *most,* commenters supported the rules while "some" did not.[71] As discussed previously, institutional investors overwhelmingly supported the rulemaking.

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[69] The relationship between responsible corporate behavior and investor return has been the subject of hundreds of studies. It is straightforward. As lawyer Martin Lipton wrote recently: "A business that has healthy and well-trained employees, environmentally sound business practices, a symbiotic relationship with communities and other business practices that are consistent with societal values, will be more sustainable and valuable over the longer term." Further, failure to recognize this fact "seems at best naïve – and at worst, a grave mistake." Martin Lipton, Wachtell, Lipton, Rosen & Katz, *The Enduring Nexus Between Value and Values*, Harvard Law School Forum on Corporate Governance (March 13, 2025).

[70] *See*, *e.g.,* The Mintz law firm, *What Public Comments on the SEC's Proposed Climate-Related Rules Reveal—and the Impact They May Have on the Proposed Rules* (July 20, 2022), noting the large number of comment letters the SEC received, and stating that few, if any, SEC rule proposals "have received such voluminous, significant, and diverse comments."

[71] *Id.,* which found that 12,345 comment letters to the SEC expressed support for the Rule, out of 15,776 total letters.

There is no hard and fast rule on how much investor support for disclosure can establish the materiality of certain information. But the SEC should take into consideration the views of some leading SEC scholars when it so readily discounts the significance of the Rules' support.

Consider the views of Professor John C. Coffee, the Adolf A. Berle Professor of Law and director of the Center on Corporate Governance at Columbia Law School and one of the nation's top securities law scholars. He wrote that, given the level of investor support demonstrated during the Proposed Rules' comment period, there is a "presumption" in favor of materiality: "Because a substantial majority of the stock in public corporations is now held by institutional investors (most of which are vocal in their desire for more climate-related disclosures), it would be myopic for a court to ignore their strong preferences. If the majority of the market wants the information, it presumptively should be material".[72]

6. The SEC misstates the *benefits* that would result from the Final Rules.

The Rescission Proposal quotes a statement in the Final Rules Release that described the "need to improve the consistency, comparability, and reliability of climate-related disclosures for investors." All of those achievements were described at great length in the Adopting Release. But the Rescission Proposal says they should be "discounted" because they are "substantially compromised by the inconsistent, variable, and often speculative assumptions necessary to make many of those disclosures."

Two facts are cited for this "discounting."[73] One is that the Final Rules allowed registrants to select the method used for calculating GHG emissions (a GHG

[72] John Coffee, *Unpacking the SEC's Climate-Related Disclosures: A Quick Tour of the Issues* (March 29, 2022).

[73] *See*, *e.g.,* Adopting Release at 522 ("The financial statement disclosures we are adopting may involve estimation uncertainties that are driven by the application of judgments and assumptions") and 250, 253 ("[T]he final rule will require a registrant to describe the methodology, significant inputs, and significant assumptions used to calculate the registrant's disclosed GHG emissions . . . [and] will require a registrant to disclose whether it calculated its GHG emissions metrics using an approach pursuant to the GHG Protocol's Corporate Accounting and Reporting Standard, an EPA regulation, an applicable ISO standard, or another standard.")

Protocol standard, an EPA regulation, an ISO standard, or something else). The SEC did this in the Final Rules to ease the burden on registrants while still giving investors important information – something one might expect the current SEC to applaud. Indeed, a court reviewing an SEC decision to rescind the Final Rules would view with favor the numerous significant changes made from the Proposed Rules, showing how responsive the SEC was to the comments and criticisms made by business and other interests.[74]

The second item cited for the "discounting" is even further off base. The only example given of so-called "speculative assumptions" is the following statement in the Adopting Release: "The financial statement disclosures we are adopting may involve estimation uncertainties that are driven by the application of judgments and assumptions". But the SEC, which has the statutory responsibility for establishing financial accounting standards, of course knows that financial reports are replete with "estimation uncertainties" and "judgments and assumptions". As the PCAOB has written, "Accounting estimates are pervasive to financial statements, often substantially affecting a company's financial position and results operations."[75] Some examples are valuations of financial and non-financial assets, impairments of long-lived assets, allowances for credit losses, and contingent liabilities. Are these accounting standards now at risk of also being deemed too "speculative" to warrant their mandate?

V. Both Within and Outside the US, New Disclosure Standards and Requirements Are Being Adopted, Leaving the SEC Behind the Rest of the World and Also Undermining the Rescission Proposal's Positions on Compliance Costs and Capital Formation

Regulators and governments have increasingly required disclosure of material climate-related financial risks, showing how mandatory climate risk disclosure in financial filings is becoming a norm for publicly traded companies everywhere.

[74] For example, the Final Rules eliminated the Scope 3 emissions reporting requirement entirely. It also changed the proposed required Scope 1 and 2 disclosures to add a materiality element. The SEC also narrowed its financial statement requirements by dropping the financial metrics disclosure.

[75] PCAOB, *Audit Focus: Auditing Accounting Estimates* (May 2025).

As noted above, California has moved forward with its own set of requirements for climate disclosure, covering GHG emissions and climate-related financial disclosures. Other states are considering doing likewise. Bills have been introduced in New York, New Jersey, Illinois and Colorado.

Elsewhere, adoption of the ISSB S2, which requires climate-related financial disclosures, has been rapid. The ISSB S2 standard has been developed in response to demand from investors for better data and global standards, and in response to issuers' demands for global standards, certainty, and fewer competing disclosure frameworks. In only three years since promulgation, the ISSB S2 standard has been adopted or is in the process of being adopted by jurisdictions representing over 40% of global market capitalization.[76] As of April 22, 2026, 28 jurisdictions have adopted the standards on a voluntary or mandatory basis, and 12 more are planning to adopt them in the future.[77] ISSB uptake demonstrates the existence of a growing "global baseline" of climate risk disclosure rules.

Also, the EU's Corporate Sustainability Reporting Directive (CSRD) covers around 1,200 non-EU companies, including approximately 350 to 450 U.S. companies,[78] and includes important climate-related disclosures. The June 15, 2026 draft of the European Sustainability Reporting Standards for Non-EU Groups[79] contains disclosure requirements that are very similar to the Final Rules, including transition plan for climate change mitigation, targets related to climate change, gross Scope 1, 2, and 3 GHG emissions, and GHG removals and GHG mitigation projects financed through carbon credits.[80]

Thus, rescission would leave the United States out of step with major jurisdictions that have adopted or are implementing climate-related disclosure standards. Laws

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[76] Elizabeth Seeger, ISSB Board Member, *Update on the ISSB's Activities*, Presentation at the Global Preparers Forum meeting (March 20, 2026) at 6.
[77] Jennifer Laidlaw, *May 2026 – Where does the world stand on ISSB adoption?*, S&P Global Sustainable 1 (May 7, 2026).
[78] ASUENE, *CSRD for Non-EU Companies: Scope, Standards, and Deadlines After the Omnibus*, (June 18, 2026).
[79] Jon McGowan, *European Union Releases Draft Sustainability Reporting Standards for U.S. Businesses*, Forbes (June 16, 2026).
[80] EFRAG Secretariat, European Sustainability Reporting Standards for Non-EU Groups (N-ESRS), *Unapproved Exposure Draft (V1)* (June 16-18, 2026) at 65-80.

such as those in California are not substitutes for a single, nationwide rule for public companies administered by the SEC.

But perhaps even more important, these other disclosure mandates undermine the cost-benefit and capital formation arguments made by the SEC in the Rescission Proposal. Compliance with other regulatory requirements (US states and non-US) means that compliance with the Final Rules would be less costly and less burdensome. And because US companies will not often be making the disclosures that are being by non-US companies, they will be less attractive investments for the many investors who are concerned about climate financial risk.

VI. The SEC had the statutory authority to promulgate the Rules

The Rescission Proposal contends that the Commission lacks statutory authority to issue the Rules. The Commission's self-imposed statutory hamstringing lacks merit. The scholarly consensus overwhelmingly supports the SEC's authority, and the Commission's brief, filed in the Eighth Circuit when the SEC was still defending the rule, likewise makes persuasive arguments on that issue.[81]

The Commission should consider the analyses of the scholars who submitted comment letters in 2022. Harvard University Law Professor and Deputy Dean John Coates (a former SEC General Counsel and Acting Director of Corporation Finance) submitted a comprehensive analysis of this issue. He wrote: "Many legal issues are open to reasonable debate. However, many legal questions have clear answers."[82] This is such a case, wrote Prof. Coates: the SEC's rule "does not regulate climate activity itself (e.g., greenhouse gas emissions) and would have modest effects on the economy as a whole. It is authorized by clear statutes, is consistent with settled understandings, and addresses disclosure topics covered by rules adopted long ago by the Commission and ratified by Congress."[83]

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[81] SEC, *Consolidated Brief for Respondent Securities and Exchange Commission*, State of Iowa v. SEC, Nos. 24-1522 et al. (8th Cir. Aug. 5, 2024).
[82] John C. Coates, *Proposal on Climate-Related Disclosures Falls Within the SEC's Authority*, Harvard Law School Forum on Corporate Governance (June 22, 2022).
[83] *Id*.

Many of the nation's most distinguished securities law scholars concurred in that view. A June 16, 2022 comment letter was submitted by a bipartisan group of leading academics, former Commission officials, and market participants "who have studied and overseen development of SEC rules for decades." These included 15 former senior SEC officials, including four SEC Chairs, five SEC Commissioners, five SEC General Counsels, four Directors of the SEC's Division of Corporation Finance; 17 senior scholars of corporate, securities and administrative law, as well as accounting and finance, from top law and business schools across the nation; and several leading practitioners who advise public companies.[84] Their letter strongly supports the SEC's authority.[85]

Their letter stated: "[W]e write to express our unanimous view the SEC has clear statutory authority to mandate additional climate-related disclosures for publicly traded companies. Some have argued that, because the Nation's approach to climate change is politically contested, and since these matters affect major policy questions over which Congress has not granted the SEC new, explicit powers, the Commission lacks authority to require disclosure in this area. For the reasons given below, the Commission should disregard these claims, focusing instead on the challenging policy choices that any finalization of the proposal would require."[86]

Also, as has often been mentioned, the SEC has previously adopted disclosures that do not fit within the narrow confines of statutory authority now being espoused. For example, as Professor George Georgiev stated in congressional testimony: "In 2020 (and while under Republican control), the SEC adopted a disclosure rule regarding human capital management (HCM) after finding that new economic conditions and investor demand warrant such an action. It is worth

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[84] Working Group on Securities Disclosure Authority, *Letter to SEC re:* File No: S7-10-22 (June 16, 2022).
[85] *Id.* at 1.
[86] *Id*. (footnotes omitted). It might be noted in this regard that Harvey Pitt, former SEC Chair and one of the most prominent SEC practitioners of the 20th century, signed the bipartisan letter while, at the same time, he submitted a separate letter opposing adoption of the Rules on policy grounds. See Richard C. Breeden, et al., *Letter to SEC Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors* (File No. S7-10-22) (June 17, 2022). His posture is worth considering: despite disagreement with a particular SEC rulemaking objective, knowledgeable and experienced SEC experts are not inclined to undercut the SEC's authority. They take a longer view.

noting that both the House and the Senate had been contemplating HCM disclosure mandates since early 2019, but no one argued that the SEC was required to await congressional authorization before proceeding with or finalizing its own rulemaking."[87]

More recently these and other scholars have explained the mistakes in the SEC's discussion of authority in the Rescission Proposal, in particular a submission to the comment letter file by the distinguished scholars who are members of the "Shadow SEC."[88] Among the points made by these and others is that the Rescission Proposal hinges on a new "channeling" theory – the claim that Schedule A and Exchange Act Section 12(b) establish the outer boundary of the SEC's disclosure authority. This is a novel and dangerous new theory, at odds with the authority the SEC has exercised for nine decades. If adopted by the SEC it would seriously undermine the agency's ability to deal with new disclosure issues.[89]

Finally, a primary reason that investors have sought mandated disclosures is that the existing voluntary framework leads to inconsistency and non-comparability. In response, the Rescission Proposal suggests this problem is irrelevant because the securities laws "do not mention consistency or comparability as a basis for a disclosure rule."[90] But a basic, fundamental reason for mandatory disclosure under the federal securities laws is to enable investors to determine how one company compares to another company in financially related matters so they can make informed investment decisions. As former SEC Chair Jay Clayton said: "Disclosure and the concepts of materiality, *comparability*, flexibility, efficiency and responsibility have been, and continue to be, the bedrock principles that make

[87] Written Testimony of Professor George S. Georgiev, *"The Legality of the SEC's Proposal and Process for Climate-Related Disclosure,"* Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs., 118th Cong. (Jan. 18, 2024).
[88] John Coates, John C. Coffee, Jr., James D. Cox, Merritt B. Fox & Joel Seligman, *Shadow SEC Statement No. 10: The SEC's Proposed Climate "Do-Over"—Prejudged, Internally Inconsistent, and Partisan*, *Colum. L. Sch. Blue Sky Blog* (July 1, 2026).
[89] *See also* Erik Gerding, Melissa Hodgman & Ginger Hervey, *What the SEC's Proposed Rescission of its Climate-Related Disclosure Rules Signals for Future Disclosure Rulemaking Beyond Climate*, Harv. L. Sch. Forum on Corp. Governance (July 14, 2026), (noting potential impact on cybersecurity, human capital, and other areas of SEC rulemaking).
[90] Rescission Proposal at 26.

our public capital markets the most fair and efficient markets in the world."[91] If consistency and comparability were *not* a statutory objective then Congress in 1933 and 1934 could presumably have concluded that there was no need for *any* disclosure mandates: all disclosures could be made voluntarily.[92]

VII. Other Elements of the Rescission Proposal are Unsupportable

A. The Commission's Mischaracterization of the Nature and Purpose of the Rules Leads to Other Incorrect Assertions.

The Rescission Proposal takes a position that has been central to this matter– namely, that by requiring climate risk disclosure the SEC is really acting as an environmental regulator rather than securities regulator. Opponents have made this claim from Day 1, saying that any climate risk disclosure rules are actually designed to change corporate conduct rather than to provide more risk-related information to investors.[93]

The SEC in 2024 rejected this line of attack, but the Rescission Proposal accepts it, stating that "while the Final Rules purport to require only disclosure, the effect of their requirements is to impermissibly regulate issuers' internal affairs."[94] By concluding that the Final Rules are not really just disclosure rules, the Rescission Proposal states that, "Common sense would say that the Securities and Exchange

[91] Jay Clayton, Chairman, SEC, *Management's Discussion and Analysis of the SEC: Remarks at the "SEC Speaks" Conference* (Apr. 8, 2019).

[92] *See, e.g.,* Reinier Kraakman, Paul Davies, Henry Hansmann, Gerald Hertig, Klaus Hopt, Hideki Kanda & Edward Rock, *The Anatomy of Corporate Law: A Comparative And Functional Approach 246* (3d ed. 2017) (2017) ("The case for mandatory disclosure [is premised on the concern] that firms will not disclose sufficient, or sufficiently comparable, information without it.").

[93] *See, e.g.,* Andrew Vollmer, *Letter to SEC* (April 12, 2022) at 12, stating "the objective of climate-change disclosures is predominately the policy goal of combating the causes of climate change and reducing fossil fuel emissions. The disclosures would create incentives and disincentives to guide the behavior of corporations toward the policy goals of those advocating strong action against the causes of climate change." (footnotes omitted).

[94] Rescission Proposal at 34.

Commission is not the right agency to deal with the question of how public company can or should respond to climate change and related matters."[95]

Critics are of course correct that the SEC cannot impose environmental regulations, but that is not what is happening here. First, most fundamentally, the Adopting Release repeatedly and emphatically made clear that the Final Rules are *disclosure* rules, not behavior-changing rules: "The Commission has been and remains agnostic about whether or how registrants consider or manage climate-related risk."[96] Instead of taking this at face value, the Commission in the Rescission Proposal implies that the disclosure-only purpose expressed by the previous Commission in 2024 was false or disingenuous – "the Final Rules *purport* to require only disclosure" (emphasis added).

It is troubling that the current SEC would doubt the sincerity of its own predecessors. Indeed, the Commission is arguably taking a harsher approach to the prior rulemaking than even a reviewing court would take. Courts employ a doctrine known as the "presumption of regularity." As a *Yale Journal on Regulation* article states, "Under the presumption, courts assume that government officials properly discharged their official duties unless there is evidence showing otherwise. Courts have invoked it to give the government the benefit of the doubt in challenges to agency actions. If there are both good and bad possible justifications for the agency's action, the court will assume that the good ones motivated the action."[97] If a reviewing *court* would employ a doctrine of regularity, surely the *Commission* would be expected to do likewise when assessing the decision making of *its own previous Commission*.

Second, the criticism that the Final Rules are more than mere disclosure rules seems not to recognize an obvious aspect of disclosure generally – namely, *any* corporate disclosure requirement might lead to a change in conduct. If, for instance, a company discloses disappointing earnings, then investors might demand a change in business strategy, but that response is not because the SEC has mandated a strategy change. Relevant here is Justice Brandeis' famous aphorism

[95] Rescission Proposal at 43.
[96] Adopting Release at 18.
[97] Andrew Hessick, *Carissa Hessick on the Presumption of Regularity*, Yale J. on Reg.: Notice & Comment (Jan. 14, 2019).

that "sunlight is the best disinfectant," that is, that transparency can lead to change in behavior. The Final Rules do not require public companies to reduce their greenhouse gas emissions, set net-zero targets, or take any other particular action. Those steps might be taken, but only because companies decide it is in their best interests, not because the SEC told them to do so.

Thus, the Commission is incorrect when it suggests that the Rules may violate the Major Questions Doctrine and "improperly intrude on State corporate law." These criticisms only have legs if the Final Rules are something *other than* disclosure rules. Since they are not, they should be readily rejected.

B. Recent developments outside the US, in the EU and the ISSB, do not support the Rescission Proposal.

The Rescission Proposal argues that developments in the EU and at the ISSB support the rescission, stating, "Recent efforts to scale back, set aside, or otherwise revise various climate reporting regimes at the international level further underscore why the Commission was misguided in adopting costly and prescriptive requirements built around shifting investor preferences and reporting trends."[98] Again, the Commission misstates the facts.

The EU has reduced the number of companies covered by the CSRD, as well as the number of indicators that are mandatory. However, the CSRD still covers around 1,200 non-EU companies, including approximately 350 to 450 U.S. companies,[99] and includes important climate-related disclosures. The latest draft of the European Sustainability Reporting Standards for Non-EU Groups, issued June 15th, [100] contains disclosure requirements that are very similar to the SEC Rules, including transition plans for climate change mitigation, targets related to climate change,

[98] Rescission Proposal at 53.
[99] ASUENE, *CSRD for Non-EU Companies: Scope, Standards, and Deadlines After the Omnibus* (last updated June 18, 2026).
[100] Jon McGowan, *European Union Releases Draft Sustainability Reporting Standards for U.S. Businesses*, Forbes (June 16, 2026)

gross scope 1, 2, 3 GHG emissions, and GHG removals and GHG mitigation projects financed through carbon credits.[101]

As for the ISSB, the Rescission Proposal states it has acted to "reduce complexity, the risk of duplicative reporting and the cost of applying specific greenhouse gas emissions disclosure requirements."[102] The SEC claims this development supports its skepticism about what it calls "highly proscriptive disclosure requirements based on shifting investor preferences".[103]

In fact, the ISSB's recent amendments mainly concern the measurement and disclosure of financed emissions,[104] which is small component of the overall standards in the ISSB S2 climate disclosure standard. The amendments provide appropriate "reliefs and clarifications to support companies in applying the Standard, while keeping investor information needs in focus and minimizing disruption to jurisdictions that are in the process of adopting or otherwise using ISSB Standards."[105] If a lesson might be taken from these non-US developments, it is that climate disclosure regulations can be modified to make them more manageable, but complete rescission would be a mistake.

VIII. The SEC improperly fails to consider seriously the possibility of severing portions of the Rules

Much of the Rescission Proposal expresses concerns about the "breadth of disclosures required by the Final Rules" and the "burden" imposed on public companies.[106] The strong support for the Final Rule shows that those concerns are misplaced, but if they did have any merit, then rather than rescinding the Final Rules in their entirety the Commission should have followed up on the suggestion in the Final Rules that sections might be severed. It has been said that "deference

[101] EFRAG Secretariat, *European Sustainability Reporting Standards for Non-EU Groups (N-ESRS), Unapproved Exposure Draft (V1)* (June 16-18, 2026) at 65-80.
[102] Rescission Proposal at 55.
[103] *Id*.
[104] ISSB, *ISSB Issues Targeted Amendments to IFRS S2 to Support Implementation* (Dec. 11, 2025).
[105] *Id*.
[106] Rescission Proposal at 30.

to severability clauses in rules would have significant benefits for complex and ambitious regulatory schemes".[107]

Here, the Adopting Release, going further than is typical in rulemakings, sets forth a precise roadmap for how severance might work. It stated: "The Commission considers the provisions of the final rules to be severable to the fullest extent permitted by law." Then it pointed to areas of possible severance: "(1) climate-related risk disclosures, (2) targets and goals disclosures, (3) GHG emission disclosures and insurance, and (4) Article 14 financial statement disclosures."[108]

The Rescission Proposal bypasses this whole issue, addressing it in a single paragraph. It handpicks a few statements in the Adopting Release and concludes that "the individual items of disclosure in the Final Rules are pieces of a larger whole and cannot operate sensibly without the others."[109] That ignores the discussion in the Adopting Release where the Commission described how portions of the Final Rules could be severed from one another.

The Rescission Proposal's quick dismissal of severance is particularly problematic because, unlike most situations where severability is being raised, it is the Commission itself, not a reviewing court, that is considering the issue. The possibility of severance should be taken *more seriously* in this context, where the SEC is grappling with the merits of *its own rules*. Instead, consideration given to this question in the Rescission Proposal is cursory.

IX. The Cost-Benefit Analysis is Erroneous

Other commenters are better placed to address the shortcomings of the cost-benefit analysis, and in particular how the SEC overstates the costs. It also understates the benefits.

As for the cost savings from rescinding the Final Rules, the Rescission Proposal makes significant errors. Among those errors is a failure to reduce the incremental

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[107] Charles W. Tyler & E. Donald Elliott, *Administrative Severability Clauses*, 124 Yale L.J. 2286 (2015).
[108] Adopting Release at 591.
[109] Rescission Proposal at 44.

compliance costs by the fact that many or most registrants will soon be required to make disclosures pursuant to requirements in California or outside the US.

As for the benefits, the Adopting Release included an extensive discussion of benefits, beginning with the primary benefit, that is, allowing investors "to better assess material risks in climate-related reporting and facilitate comparisons across firms and over time."[110] Standardized disclosure benefits investors by providing higher quality information. This builds on the status quo where academic research shows that voluntary climate risk disclosures become priced into a firm's value, demonstrating the information is relevant to investors.[111] The Adopting Release also discussed other benefits: mitigation of negative impacts on investors from selective climate risk disclosure, reduction of search costs for investors because of scheduled, more timely disclosure in a reliable source (that is, Commission filings), and reduction of costs investors currently face to either collect and organize climate risk information or pay for it from third party providers.[112] None of these benefits are appropriately acknowledged in the Rescission Proposal.

The law is well-established that an SEC rule is arbitrary and capricious when the agency fails to "apprise itself—and hence the public and the Congress – of the economic consequences of a proposed regulation."[113] Here, the economic analysis vastly overstates the cost of compliance and understates the benefits.

IX. Conclusion

The Final Rules were the product of decades of requests for information by investors and years of effort by the Commission and its hard-working staff. The rules are essential for investor protection, which is why the SEC has authority to adopt them. Climate-related financial risk is not going away, it is only getting more substantial. Accordingly, we urge the Commission to withdraw the Rescission Proposal.

Thank you for your consideration of our comments.

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[110] Adopting Release at 645.
[111] *Id*. at 648.
[112] *Id*. at 648-651.
[113] *Business Roundtable v. SEC,* 647 F.3d 1144 (D.C. Cir. 2011).

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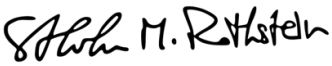
Sincerely,



Steven Rothstein
Chief Program Officer
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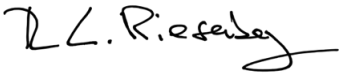

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