August 3, 2026

VIA ELECTRONIC SUBMISSION

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

Re: Proposed Rescission of Climate-Related Disclosure Rules, Release Nos. 33-11421, 34-105572; File No. S7-2026-19

Dear Secretary Countryman:

The undersigned Attorneys General ("the States") submit these comments in opposition to the Securities and Exchange Commission's ("SEC" or "Commission") proposal entitled, Rescission of Climate-Related Disclosure Rules, File Number S7-2026-19, 91 Fed. Reg. 33296 (June 3, 2026) ("Proposed Rescission").[1]

In March 2024, the Commission adopted a standardized framework for public companies to disclose specific climate-related risks and related information material to investors ("Final Rules," or "Final Climate-Related Disclosure Rules") and issued a corresponding adopting release that demonstrated careful attention to the interests and concerns of registrants and investors. *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, File Number S7-10-22, 89 Fed. Reg. 21688 (Mar. 28, 2024) ("Adopting Release"). The Adopting Release provides the legal basis for these rules, responds to thousands of public comments, evaluates the economic evidence, and documents the Commission's factual findings regarding investor demand, materiality, the adequacy of existing disclosure requirements, costs, and benefits. *See id.*

The Proposed Rescission fails to provide a reasoned basis for abandoning the Commission's prior well-reasoned and amply supported findings or for rescinding the Final Climate-Related Disclosure Rules. First, the Commission relies on a novel and cramped reading of the Securities Acts that is contrary to statutory text, context, and past precedent to disclaim its authority to maintain these requirements. Second, rather than meaningfully engaging with the extensive factual record supporting the Final Rules, the Proposed Rescission mischaracterizes key evidence, disregards the Commission's prior record-based findings without adequate explanation, and offers unsupported policy assertions to reach a prejudged outcome.

The Proposed Rescission is of particular concern to the States, which have significant interests in standardized and consistent climate-related disclosures that promote transparency in capital markets affecting their investments, residents, economies, and financial institutions. Because the Final Rules are squarely within the Commission's statutory authority and provide significant—and well-established—benefits to investors and capital markets, the Commission should withdraw the Proposed Rescission and retain the Final Climate-Related Disclosure Rules.

[1] The Commission requests comments on several topics. *See* Proposed Rescission at 33314. The comments herein provide the States' responses to Questions (1), (2), (3), (5), and (6).

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I. THE STATES' SIGNIFICANT INTERESTS IN CLIMATE-RELATED DISCLOSURE RULES

The Proposed Rescission will make it more difficult for investors to evaluate material information relating to registered companies. The Final Rules address inadequacies and inconsistencies in voluntary climate reporting by establishing a mandatory and standardized disclosure regime for climate-related risks. Rescinding these rules will raise costs, make investment decisions riskier, and fuel incomplete, inconsistent, and, thereby, misleading disclosures, harming both the States and their residents.

The States are themselves major institutional investors. Both state treasuries and public-pension funds are invested heavily in registered companies. Among the undersigned States, for example, Massachusetts' public pension fund has over $30 billion, New York State's public pension fund has over $70 billion, and California's largest two public pension programs, the California State Teachers Retirement System ("CalSTRS") and the California Public Employees' Retirement System ("CalPERS"), have over $410 billion invested in publicly registered securities.[2] In 2021 and 2022, many of these pension funds expressed their support for mandatory climate-related disclosures.[3] If the Climate-Related Disclosure Rules are rescinded, many of our States will need to expend significant time and resources to independently obtain and analyze the information that registrants would otherwise have standardized and provided in accordance with the Final Rules.

In addition, as the earliest regulators of securities, the States have a continual, longstanding, and significant interest in protecting investors. State investor protection laws, such as New York's Martin Act, predate the enactment of the Securities Act of 1933 and the Exchange Act of 1934. Consistent with our longstanding interest in investor protection, the States have sought to protect our resident-investors by commenting on a variety of previous SEC Rules, on issues from asset-backed securities to the frequency of reporting.[4]

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[2] *See* MASS. PENSION RSRVS. INV. MGMT. BOARD, ANNUAL COMPREHENSIVE FINANCIAL REPORT, FISCAL YEARS ENDED JUNE 30, 2025 AND 2024 (Dec. 4, 2025), https://www.mapension.com/wp-content/uploads/2025/12/PRIT-Annual-Comprehensive-Financial-Report-06302025.pdf; N.Y. STATE AND LOC. RET. SYS., 2025 ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR FISCAL YEAR ENDED MARCH 31, 2025 (Sep. 30, 2025), https://www.osc.ny.gov/files/retirement/resources/pdf/annual-comprehensive-financial-report-2025.pdf; CAL. PUB. EMPS.' RET. SYS., PUBLIC EMPLOYEES' RETIREMENT FUND (PERF) MONTHLY UPDATE AS OF MAY 31, 2026 (last visited July 17, 2026), https://www.calpers.ca.gov/documents/perf-monthly-update/download; Cal. State Tchrs.' Ret. Sys., *Investment Portfolio* (June 30, 2026), https://www.calstrs.com/investment-portfolio.

[3] *See, e.g.*, Comment Letter on Climate Change Disclosures from Cal. Pub. Empls.' Ret. Sys. (June 12, 2021), https://www.calpers.ca.gov/documents/comment-sec-countryman-jun-12-2021/download; New York City Comptroller (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8916910-245044.pdf; and New York State Comptroller (June 8, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8895795-241275.pdf.

[4] *See, e.g.*, Comment Letter on Proposed Rule on Semiannual Reporting (SEC File No. S7-2026-15) from N.Y. Att'y Gen., et al. (July 6, 2026); Comment Letter on Proposed Rule on Regulation Best Interest (SEC File No. S7-07-18) from N.Y. Att'y Gen., et al. (Aug. 7, 2018); Comment

As of the most recent Federal Reserve Survey of Consumer Finances, approximately 58% of U.S. households had stock holdings with a per-household average value of $489,490.[5] Residents rely on investment plans to save for future expenses. Indeed, there are approximately 17.7 million 529 plan accounts nationwide, holding $576.7 billion, showing that state residents are utilizing investment plans to prepare for educational expenses.[6] Further, more than half of U.S. workers participate in employer-sponsored investment-backed retirement savings, such as public and private pensions and 401(k) plans.[7]

The Final Rules benefit these investors—our residents—by increasing transparency about short- and long-term climate-related risks. Climate-related risks such as the physical impacts of wildfires and floods, supply chain disruptions, increased operational costs, and exposure to evolving regulations significantly affect companies' financial performance and long-term value. *See infra* Section IV(A)(2)(c). Indeed, in Morgan Stanley Capital International's ("MSCI") Climate Risk Outlook Study, more than half of the senior industry professionals surveyed "agree broadly that climate-related physical risks are creating economic fallout," while only 7% of respondents believe that the prices of financial assets fully capture climate risks.[8] A June 2026 survey of over 100 asset owners and managers showed that "[p]hysical climate risk has jumped up the agenda for investors over the past two years as the cost of extreme weather events has mounted."[9]

Standardized and reliable information regarding climate-related risks allows investors to make more informed investment and voting decisions and to spread risk prudently across their portfolios. When securities are more accurately priced, investor portfolios are more likely to flourish. The States benefit when our residents, and the investment advisors on whom they rely, receive sufficient information to optimize investment returns, which increases our tax revenues and reduces state expenditures to protect residents with insufficient retirement income.[10]

Letter on Proposed Rule on Asset-Backed Securities (SEC File No. S7-08-10) from Mass. Att'y Gen. (Aug. 2, 2010).

[5] U.S. Fed. Rsrv., *Survey of Consumer Finances (SCF)* (Nov. 2, 2023), https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Stock_Holdings;demographic:all;population:all;units:mean.

[6] Inv. Co. Inst., *Release: 529 Plan Program Statistics, December 2025* (Mar. 4, 2026), https://www.iciglobal.org/research/stats/529s/529s_25_q4.

[7] U.S. Bureau of Labor Stat., *Employee Benefits in the United States, March 2025* (Sep. 2025), https://www.bls.gov/ebs/publications/employee-benefits-in-the-united-states-march-2025.htm.

[8] MSCI Sustainability Inst., *What the Market Thinks: A Climate Risk Survey* at 4 (Oct. 2024), https://www.msci-institute.com/wp-content/uploads/2024/11/MSI-Survey-Report-061124_2.pdf?uncache=1782231583.

[9] *RI Climate Risk and Resilience Survey: Results & Analysis*, RESPONSIBLE INV. (June 2, 2026), https://www.responsible-investor.com/ri-climate-risk-and-resilience-survey-results-and-analysis/.

[10] Rocky Mengle, *13 States that Don't Tax IRA and 401(k) Distributions*, AM. ASS'N OF RETIRED PEOPLE (Mar. 18, 2026), https://www.aarp.org/money/taxes/states-that-do-not-tax-your-retirement-distributions/ (thirty-seven states tax retirement income in some form). When retirement income is insufficient, states often protect their residents with social expenditure programs. *See* N.Y. STATE ASSEMB. COMM. ON AGING, 2024 ANNUAL REPORT at 2 (Dec. 15, 2024), https://assembly.state.ny.us/Reports/?sec=story&story=113134 (over $24 million for

Preventing misleading disclosures is likewise a core state interest. Selective disclosures that lack standardization, as well as misrepresentations and omissions by registered companies related to their climate-related risks, can mislead investors and undermine efficient securities markets. Requiring registered companies to disclose their climate-related risks in a standardized manner deters the spread of misleading information and reduces the likelihood that such information will ultimately undermine investment returns.

Access to standardized and reliable information related to climate-related risk also counters greenwashing.[11] As the SEC has noted, greenwashing undermines investor confidence in registered companies' purported actions to address the effects of climate change.[12] Greenwashing concerns are relevant not only to investors with sustainability goals, but also to those investors seeking to maximize their investment returns; indeed, the proliferation of misleading information related to climate-related risk can undermine the securities market for all investors.

In summary, rescission of the Final Rules will undermine our significant state interests in protecting our own and our residents' investments and financial security, as well as in preventing the spread of misleading information.

II. BACKGROUND OF THE SEC'S CLIMATE-RELATED DISCLOSURE RULES

The SEC has long recognized that environmental and climate-related disclosures can be important and financially material to investors. In recent years, the Commission has sought to understand whether the climate-related disclosures that registrants provide under the existing disclosure regime are sufficient to meet investor needs. A significant public showing that additional detail and standardization of climate-related disclosures would be useful to investors of all stripes led to the passage of the Final Climate-Related Disclosure Rules in 2024. Those rules were soon challenged in litigation that was not resolved before the new presidential administration came into office and determined that the Commission would no longer defend them. After the Eighth Circuit (where the consolidated challenges to the Final Rules were

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services for elderly residents); GOV'T OF D.C., FY 2026 APPROVED BUDGET AND FINANCIAL PLAN, VOLUME 4: AGENCY BUDGET CHAPTERS - PART III, DEP'T OF AGING & CMTY. LIVING at E-11 (Oct. 3, 2025), https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/by_dacl_chapter_2026o.pdf (over $62 million for services for elderly residents).

[11] "Greenwashing" consists of exaggerating the beneficial effects of, or obscuring the harmful effects of, corporate actions related to climate change- or the environment, with the goal of appealing to investors. *See* Miriam A. Cherry, *The Law and Economics of Corporate Social Responsibility and Greenwashing*, 14 U. C. DAVIS BUS. L. J. 281, 284–87 (2014) (defining "greenwashing").

[12] The SEC's enforcement action against Volkswagen to fix and deter greenwashing behavior by the company resulted in a final judgment ordering the company to pay $34.35 million in disgorgement and $14.4 million in prejudgment interest. SEC, *Securities and Exchange Commission v. Volkswagen Aktiengesellschaft, et al., No. 19-cv-1391 (N.D. Cal.)* (Sep. 18, 2025), https://www.sec.gov/enforcement-litigation/distributions-harmed-investors/volkswagen.

pending) entered an abeyance pending Commission action, the agency proposed to rescind the Final Rules.

This Section details the Commission's historical guidance regarding environmental and climate-related matters, the development and adoption of the Final Climate-Related Disclosure Rules, and the subsequent litigation that preceded the Proposed Rescission.

A. Past SEC Guidance Related to Environmental and Climate Matters.

The SEC has a long history of requiring disclosures of environmental and climate-related risks. In 1971, in the wake of the passage of the Clean Air Act, the Commission issued interpretive guidance clarifying that registrants' disclosure obligations under the Securities and Exchange Act extend to disclosures about compliance with and legal risks under environmental laws and regulations. *Disclosures Pertaining to Matters Involving the Environment and Civil Rights*, 36 Fed. Reg. 13989 (July 29, 1971). Soon thereafter, the Commission amended its registration and reporting requirements to ensure that registrants disclosed material information about "compliance with Federal, State, and local laws and regulations relating to the protection of the environment." *Disclosure with Respect to Compliance with Environmental Requirements and Other Matters*, 38 Fed. Reg. 12100 (May 9, 1973). The Commission further clarified in 1975 its recognition that the securities laws authorize the agency to require disclosures about environmental matters not "for the sole purpose of promoting social goals," but when "it believes that the information would be necessary or appropriate for the protection of investors or the furtherance of fair, orderly and informed securities markets." *Environmental and Social Disclosure*, 40 Fed. Reg. 51656, 51660 (Nov. 6, 1975).

In 2010, the Commission recognized that climate change was increasingly affecting public companies both through "regulatory, legislative and other developments" as well as through impacts to supply chains and elsewhere from the "significant physical effects of climate change." *Commission Guidance Regarding Disclosure Related to Climate Change*, 75 Fed. Reg. 6290, 6291 (Feb. 8, 2010). Accordingly, the agency issued guidance explaining how its existing disclosure requirements extended to climate-related issues and describing its ongoing assessment of "whether further guidance or rulemaking relating to climate change disclosure is necessary or appropriate in the public interest or for the protection of investors." *Id.* at 6297.

B. The SEC's Climate-Related Disclosure Rules.

In March 2021, the Commission requested public input about "whether climate change disclosures adequately inform investors about known material risks, uncertainties, impacts, and opportunities, and whether greater consistency could be achieved."[13] Many publicly registered companies and investors, including many of the undersigned Attorneys General, wrote in support of climate-related disclosures.[14] We recognized that the "physical threats [of climate change] have already and will continue to destroy property, to require significant insurance readjustments, and to disrupt supply chains used by businesses within each state," and that "those

[13] *See* Public Statement, Allison Herren Lee, Acting Chair, SEC, Public Input Welcomed on Climate Change Disclosures (Mar. 15, 2021).

[14] Comment Letter on Climate Change Disclosures from Cal. Att'y Gen., et al. (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8915221-244800.pdf.

climate risks could damage and destabilize the United States economy—and with it, the value of investor holdings—if companies, regulators, and investors cannot effectively manage them."[15]

We explained that the existing disclosure regime was not producing the "[t]ransparency about whether and how companies are addressing and responding to climate change" necessary to ensure that we and our residents could make informed investment decisions.[16] We noted that although SEC-regulated firms were required to disclose material information about climate-related risks, many were failing to do so, suggesting that "many companies either have not studied the issue and therefore may not know what, if any, climate-related disclosures they need to make, or have not disclosed what they know."[17] We, along with many other investors, therefore advocated for the Commission to require uniform and specific climate-related disclosures to provide investors with the types of comparable and decision-useful data needed to effectively manage risk and allocate capital.[18]

In response to the resounding support from investors and registrants alike for standardized disclosures,[19] the Commission "determined that disclosure of information about climate-related risks and metrics would be in the public interest and would protect investors," and therefore proposed rules to improve the "consistency, comparability, and reliability" of such disclosures. *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334, 21335 (Apr. 11, 2022) ("Proposed Climate-Related Disclosure Rules").

For almost two years, the Commission received, considered, and evaluated a record number of comments on the Proposed Climate-Related Disclosure Rules. And in the Final Climate-Related Disclosure Rules and corresponding Adopting Release that the Commission issued in March of 2024, the agency demonstrated careful attention to the interests and concerns of registrants and investors.

In the Adopting Release, the Commission recognized that climate-related risks can "significantly affect" a registrant's "financial performance and position," and that investors increasingly seek to understand how a registrant's management is overseeing and managing those risks. Adopting Release at 21669. The Commission found that many companies were already disclosing such information to investors outside of SEC filings, but that this information was "inconsistent and often difficult for investors to find and/or compare across companies." *Id.* Therefore, the Commission found the Final Rules would "ensure that investors have access to more complete and reliable information that will enable them to make informed investment and voting decisions," while also minimizing the "burdens on registrants." *Id.* at 21670–71.

The Final Rules require that registrants provide consistent and comparable disclosures about (1) climate-related risks that have materially affected them or are likely to materially affect them, and how they are managing those risks; (2) the tools and strategies that they use to measure and/or mitigate climate-related risks; (3) their board of directors' oversight of climate-related risks and their processes for identifying such risks; (4) any climate-related targets or goals that have materially affected or are likely to materially affect them; (5) the financial statement

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[15] *Id.* at 3–4.
[16] *Id.* at 2.
[17] *Id.* at 10–12.
[18] *See id.* at 4, 17.
[19] *See, e.g.*, Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Cal. Att'y Gen., et al. (June 17, 2022).

effects of severe weather events and other natural conditions; and, for certain registrants on a phased-in basis, (6) the registrant's greenhouse gas emissions. *Id.* at 21670.

The SEC made multiple modifications from the Proposed Climate-Related Disclosure Rules in response to comments. *Id.* at 21675. For example, the SEC qualified certain disclosure requirements, such as those including impacts of climate-related risks, to require them only when material. *Id.* The Commission also removed the requirement for all registrants to disclose Scope 1 and Scope 2 emissions, and eliminated altogether the requirement to disclose Scope 3 emissions. *Id.* And it made certain disclosure requirements less prescriptive and extended phase in periods and a safe harbor from private liability. *Id.*

C. Litigation Over the SEC's Final Climate-Related Disclosure Rules.

Soon after the Commission issued the Final Rules, multiple entities, including a group of states, petitioned for review in different courts across the country, and the cases were consolidated and assigned to the Eighth Circuit Court of Appeals on March 21, 2024. Consol. Order at 2, *Iowa v. SEC*, No. 24-1522 (Mar. 21, 2024), ECF No. 5376308. On April 4, 2024, the SEC entered an administrative stay of the effectiveness of the Final Rules pending "the completion of judicial review of the consolidated Eighth Circuit petitions." Letter from SEC, *Iowa v. SEC* (Apr. 4, 2024), ECF No. 5380534.

Many of the undersigned States moved to intervene as respondents to defend the Final Rules, explaining their interest in "information about climate-related risks that is critical to making informed investment decisions." Mot. for Leave to Intervene as Respondents at 2, *Iowa v. SEC* (Apr. 3, 2024), ECF No. 5380130. The court granted Intervenor-Respondent States' motion on April 29. Order, *Iowa v. SEC* (Apr. 29, 2024), ECF No. 5387919.

By the fall of 2024, the consolidated cases were fully briefed, including a robust 116-page merits brief filed by the SEC defending the Final Rules' legality. Consol. Br. for Respondent SEC, *Iowa v. SEC* (Aug. 5, 2024), ECF No. 5421108. While the scheduling of oral argument in this case was pending, the new presidential administration came into office, and the composition of the Commission changed.[20]

On March 27, 2025, the Commission wrote a letter to notify the Court that "a majority of the [now-]current Commissioners voted against the rules at issue in this litigation." SEC Status Report at 1, *Iowa v. SEC* (Mar. 27, 2025), ECF No. 5500618. The letter further indicated that "the Commission has determined that it wishes to withdraw its defense of the Rules," and then, cryptically, suggested that "[t]he Court would not need to reach the petitioners' challenges based on the First Amendment or non-delegation doctrine if it sets the Rules aside on other grounds." *Id.*

In response, Intervenor-Respondent States moved the Eighth Circuit for an abeyance of the consolidated challenges. Intervenor States' Mot. to Hold Cases in Abeyance, *Iowa v. SEC* (Apr. 4, 2025), ECF No. 5503726. In so doing, Intervenor-Respondent States argued that it was not a good use of the court's—or the parties'—resources to adjudicate the challenges "when the agency that promulgated the regulations has indicated that it is likely to amend or rescind them if upheld." *Id.* at 5. Intervenor-Respondent States also pointed out that the lawful vehicle for the Commission to reconsider the Final Climate-Related Disclosure Rules was to open a new notice-

[20] *See, e.g.*, Press Release, SEC, Mark T. Uyeda Named Acting Chairman of the SEC (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-29.

and-comment rulemaking proceeding, engage with the record supporting the rules, and invite public comment on proposed changes, instead of attempting to obtain a court order to circumvent the process required by the Administrative Procedure Act ("APA"). *Id.* (citing 5 U.S.C. §§ 551(5), 553(b)-(c)).

The court granted the requested abeyance, directing the SEC to file a status report advising whether it "intends to review or reconsider the rules at issue in this case," and, "[i]f the Commission has determined to take no action, … whether the Commission will adhere to the rules if the petitions for review are denied and, if not, why the Commission will not review or reconsider the rules at this time." Order at 6, *Iowa v. SEC* (Apr. 24, 2025), ECF No. 5509839.

The SEC's status report, filed in July, again asked the court to take up the case. Status Report of the SEC in Response to the Court's April 24, 2025 Order at 2, *Iowa v. SEC* (July 23, 2025), ECF No. 5540471. And again, the court ordered that the case remain in abeyance "until such time as the Securities and Exchange Commission reconsiders the challenged Final Rules by notice-and-comment rulemaking or renews its defense of the Final Rules." Order at 6, *Iowa v. SEC* (Sep. 12, 2025), ECF No. 5557595.

In accordance with this order, the SEC in May informed the court of this rulemaking to reconsider the Final Rules. SEC Status Report, *Iowa v. SEC* (May 7, 2026), ECF No. 5637380. This time, the state petitioners tried to get the court to decide the case, Mot. to Lift Abeyance, *Iowa v. SEC* (May 8, 2026), ECF No. 5638324, but again to no avail, Order, *Iowa v. SEC* (May 21, 2026), ECF No. 5642807. The litigation thus remains in abeyance while the Commission conducts the instant notice-and-comment rulemaking.

III. LEGAL STANDARD

The APA governs review of the Commission's final actions. 5 U.S.C. §§ 551–559, 701–706. Under the APA, a reviewing court must "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or that exceeds the agency's statutory authority. *Id.* § 706(2)(A), (C).

To evaluate the Commission's primary basis for the Proposed Rescission, a court would look to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which held that no deference is due an agency's interpretation of the meaning of statutory terms. 603 U.S. 369, 412–13 (2024). It is for "the courts," not agencies, to say "what the law is." *Id.* at 385 (cleaned up). And in doing so, "[c]ourts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences." *Id.* at 403.

The Supreme Court's "change-in-position doctrine" sets forth the applicable framework for reviewing agency action in the context of policy change, such as the rescission of a rule. *Food and Drug Admin. v. Wages & White Lion Investments, L.L.C.*, 604 U.S. 542, 566 (2025). While an agency may reconsider prior policy judgments, the agency must "provide a reasoned explanation for the change." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citing *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981–82 (2005)).

An adequately reasoned explanation for changing policy positions requires the agency, at a minimum, to "display awareness that it is changing position," demonstrate that the new policy is permissible under the governing statute(s), and provide "good reasons for the new policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Where, as here, a "new policy rests upon factual findings that contradict those which underlay its prior policy," the agency must

further "provide a more detailed justification than what would suffice for a new policy created on a blank slate." *Id. (*citing *Smiley v. Citibank (South Dakota), N. A.*, 517 U.S. 735, 742 (1996)). The Commission may not simply point to a change in policy when reversing course; it must justify and "explain its decision to 'disregard facts that underlay the prior policy.'" *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802, 811 (5th Cir. 2024) (quoting *Fox*, 56 U.S. at 516) (cleaned up).

An agency must provide "a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy," as "[i]t would be arbitrary or capricious to ignore such matters." *Fox*, 56 U.S. at 515–16. Although an agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one," the agency must at least demonstrate that "there are good reasons for it, and that the agency believes it to be better." *Id.* at 515. "An 'unexplained inconsistency' in agency policy is 'a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.'" *Encino Motorcars*, 579 U.S. at 222 (quoting *Brand X*, 545 U.S. at 981) (cleaned up).

Further, as with any agency action reviewed under the APA, the Commission must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Manufacturers Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). Agency action is arbitrary and capricious if the agency has relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation that runs counter to the evidence before the agency, failed to consider reasonable alternatives, or otherwise failed to provide a reasoned explanation for its decision. *Id.* at 43, 48.

The Commission must provide the public "with enough clarity that its path may reasonably be discerned." *Jimenez-Cedillo v. Sessions*, 885 F.3d 292, 297 (4th Cir. 2018) (internal quotation omitted) (citing *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc*., 419 U.S. 281, 286 (1974)). It is arbitrary and capricious for an agency to simply leave the public "guessing as to the agencies' rationale." *Thakur v. Trump*, 148 F.4th 1096, 1106–07 (9th Cir. 2025), *rev'd on other grounds by Thakur v. Trump*, No. 25-4249, 2025 WL 3760650 (9th Cir. Dec. 23, 2025).

The Commission's authority is also bounded by the federal securities laws. Congress has charged the SEC with protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. In addition, Congress has directed the Commission, when engaged in rulemaking, to consider whether its actions promote efficiency, competition, and capital formation. *See, e.g.*, 15 U.S.C. §§ 77b(b), 78c(f), 80a-2(c), 80b-2(c). Any decision to rescind the climate-disclosure regulations therefore must reasonably explain why the Commission believes that eliminating those disclosure requirements better advances these statutory objectives than retaining them. *See Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (vacating SEC rules where the Commission had failed adequately to assess economic effects under these factors).

Thus, the Commission cannot justify the Proposed Rescission merely by invoking a change in policy priorities or a thinly-supported, novel interpretation of its authority designed to justify that change. Rather, it must demonstrate—through reasoned analysis grounded in the administrative record—that the factual findings underlying the Final Rules no longer support them, that rescission better advances the objectives Congress assigned to the Commission, and that the agency has adequately considered the evidence and significant comments.

IV. THE PROPOSED RESCISSION OF THE CLIMATE-RELATED DISCLOSURE RULES IS UNLAWFUL

The first and primary justification the Commission proffers for its proposed wholesale rescission is that the Final Rules exceed the scope of the agency's authority. *See* 91 Fed. Reg. at 33300. That rationale fails because the SEC has ample authority to require climate-related disclosures. Second, the agency proposes a series of policy rationales for the rescission, all of which are based on conclusions directly contradicted by the well-supported findings in the Final Rules' Adopting Release. *Id.* Because each of these rationales fails, finalizing the Proposed Rescission would be arbitrary and capricious and contrary to law.

A. The Climate-Related Disclosure Rules Are Within the SEC's Broad Disclosure Authority, and Arguments to the Contrary Are Based on Mischaracterizations of Fact.

In the Proposed Rescission, the Commission misapprehends the scope of the agency's authority. When Congress enacted the Securities Act of 1933, 15 U.S.C. §§ 77a *et seq.* ("Securities Act"), and the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.* ("Exchange Act"), (collectively, "the Acts"), it gave the SEC broad authority to require disclosures. As is discussed below, this is apparent from the text of the Acts and has been routinely reiterated by courts and understood by the agency. The constricted articulation of the SEC's disclosure authority that the agency puts forward in the Proposed Rescission is both vague and unsupported, and runs counter to the longstanding disclosure regime on which the integrity of the U.S. capital markets is based. Moreover, the Final Rules are within SEC's ambit even under a narrow construction of the SEC's authority because, contrary to the Proposed Rescission's assertions, they are (1) needed by reasonable investors, (2) grounded in financial materiality, (3) related to the financial characteristics of companies, and (4) limited to disclosure, not mandating corporate behavior.

1. The SEC has Broad Authority to Require Disclosures to Fit New Conditions, including Climate-Related Risk.

The SEC's governing statutes, the Securities and the Exchange Acts, explicitly grant the agency broad authority to promulgate rules to update disclosure requirements to protect investors and the public interest as market conditions evolve. This broad rulemaking authority is bounded by the purposes of the Securities and Exchange Acts and the requirement to consider whether new requirements promote efficiency, competition, and capital formation. Contrary to assertions in the Proposed Rescission, neither the Securities Act nor the Exchange Act limits the Commission to the disclosure topics set forth in Schedule A, explicitly enumerated in the Exchange Act, or "channeled" by those items. That narrow reading of the Commission's rulemaking authority is not consistent with statutory text or structure, congressional intent,

judicial interpretation, or the long history of the Commission's exercise of its rulemaking authority.

a) The Securities Act of 1933 Authorizes the SEC to Require Enumerated Disclosures and New Disclosures That Promote Statutory Aims.

Congress, through the Securities Act, expressly delegated considerable discretionary authority to the SEC to require various types of disclosures. The statute, in various locations and contexts, authorizes the SEC to require disclosures in "such detail and such form as the Commission shall prescribe," *see, e.g.*, 15 U.S.C. §§ 77aa(25)–(26), disclosure of "such other information" and "such other documents" the SEC deems "necessary or appropriate in the public interest or for the protection of investors," *id.* § 77g(a)(1), and to promulgate "such rules and regulations as may be necessary to carry out" the Securities Act, *id.* § 77s(a). These familiar phrases are often employed by Congress to delegate discretionary authority when implementing the law. *See Loper Bright*, 603 U.S. at 394–95. As discussed below, these and other statutory provisions clearly empower the SEC to require a variety of disclosures, including climate-related disclosures.

First, the Securities Act directs the SEC to ensure disclosure of the enumerated items contained in 15 U.S.C. § 77aa ("Schedule A"). 15 U.S.C. § 77g(a)(1). Even this specific set of disclosures provides latitude to the SEC. For instance, Schedule A requires the disclosure of a "balance sheet" and a "profit and loss statement" in "such detail and such form as the Commission shall prescribe." *Id.* §§ 77aa(25)–(26). Moreover, some Schedule A categories are broad and demonstrate Congress' understanding that the disclosure of holistic information about a registrant will benefit investors. *See, e.g.*, *id.* § 77aa(8) ("the general character of the business actually transacted…").

Second, in addition to the enumerated list in Schedule A, the Securities Act directs the SEC to require disclosure of "such *other* information" and "such *other* documents" as it deems "necessary or appropriate in the public interest or for the protection of investors." *Id.* § 77g(a)(1) (emphasis added). This broad grant of authority plainly contemplates that the agency can require disclosures beyond those items enumerated in Schedule A. Congress instead provided the SEC with the authority to promulgate *additional* disclosure requirements where the Commission determined such rules were necessary or appropriate to advance the public interest and investor protection. Indeed, similar grants of broad authority for the SEC to act as "necessary or appropriate in the public interest or for the protection of investors" are found throughout the Securities Act. *See id*. § 77j(c) (empowering the SEC to require a prospectus to contain many of the enumerated items contained in Schedule A, in addition to "such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors"); *see also id.* § 77z-3 (empowering the SEC to exempt persons, securities, or transactions from the requirements of the Securities Act if doing so "is necessary or appropriate in the public interest, and is consistent with the protection of investors.")

Third, Congress expressly empowered the SEC to define various terms under the statute and to regulate the details of disclosures. *Id.* § 77s(a) (SEC may "make…such rules and regulations as may be necessary to carry out" the Securities Act, including by "defining accounting, technical, and trade terms" as well as prescribing "the items or details to be shown in

the balance sheet and earning statement."). This definitional authority underscores Congress's broad grant of discretionary disclosure authority to the SEC.

While Congress has established broad boundaries for the SEC's authority to craft disclosure regulations, that discretion must be exercised through "'reasoned descisionmaking' within those boundaries." *Loper Bright*, 603 U.S. at 395 (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015). In addition to ensuring that disclosures the SEC requires are "necessary or appropriate in the public interest" and "protect[] investors," the agency must also consider "whether the action will promote efficiency, competition, and capital formation." 15 U.S.C. § 77b(b).

b) The Exchange Act of 1934 Further Authorizes the SEC to Exercise Its Discretion to Require Disclosures.

The Exchange Act also delegates authority to the Commission to promulgate rules and regulations through which it may require broad disclosure of corporate information. This statute empowers the SEC to require the disclosure of "such information, in such detail" as it finds "necessary or appropriate in the public interest or for the protection of investors, in respect of" various enumerated categories. 15 U.S.C. § 78I(b)(1); *see also id.* § 78l(g)(1)(B) (stating that a "registration statement" shall contain "such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section"). Even within these enumerated categories, Congress authorized the SEC to require additional disclosures. For example, Congress authorized the SEC to require "further financial statements which the Commission may deem necessary or appropriate for the protection of investors." *Id.* § 78I(b)(1)(L). Similar grants of broad authority for the SEC to act as "necessary or appropriate in the public interest or for the protection of investors" are found throughout the Exchange Act. *See id.* § 78mm(a)(1) (empowering the SEC to exempt persons, securities, or transactions from the requirements of the Exchange Act if doing so "is necessary or appropriate in the public interest, and is consistent with the protection of investors.").

In addition to these basic Exchange Act registration statement requirements, the statute contains a directive that the SEC create a disclosure mechanism for "such information and documents…as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement" as well as such "annual" and "quarterly" reports "as the Commission may prescribe." *Id.* § 78m(a). Because the content of these annual and quarterly reports is not specified, the statute leaves to the SEC, exercising its expert discretion, to determine what types of information will benefit investors. With respect to these reports, the SEC may also "prescribe … the items or details to be shown in the balance sheet and the earnings statement." *Id.* § 78m(b)(1). Certain issuers must also file "as necessary or appropriate in the public interest or for the protection of investors" the information contained in section 78m(a). *Id.* § 78o(d)(1).

As with the Securities Act, *see supra* Section IV(A)(1)(a), the Exchange Act requires the SEC to consider "whether the [disclosure] will promote efficiency, competition, and capital formation." 15 U.S.C. § 78c(f); *see also id.* § 78w(a)(2) (SEC must avoid unnecessary burdens on competition). Within these constraints, as is true with the Securities Act, the Exchange Act sets forth a broad responsibility for the SEC to ensure that investors receive the information they require to make sound investment and voting decisions.

c) Congress Has Consistently Acted to Provide Full and Fair Disclosures to Investors.

The history of the Acts' enactment and subsequent congressional authorizations to the SEC confirm Congress' intent to grant the SEC broad disclosure rulemaking authority.

In the aftermath of the 1929 stock market crash, Congress sought to curb the "[a]lluring promises of easy wealth" being made to investors without important information about the issuers. H.R. Rep. No. 73-85, at 2 (1933). In response, it enacted the Securities Act of 1933 to ensure that issuing companies broadly disclosed "items indispensable to any accurate judgment upon the value of the security." *Id.* at 3.

Congress deemed the responsibility of selling securities one that "demands the assumption of responsibilities of a character fully equivalent to those of trusteeship, compelling full and fair disclosure…." *Id.* Indeed, when the Securities Act was first enacted, Congress noted that the disclosure principles were "met with wide approval from the public, investment bankers, dealers, and industry alike." *Id.* Congress endorsed the broad principles announced by President Roosevelt that the Securities Act contain "[a]n insistence that there should be full disclosure of every essentially important element attending the issue of a new security." *Id.*

Similarly, a year later, when enacting the Securities Exchange Act of 1934, Congress reiterated that it was "practically essential" for the SEC to have broad rulemaking powers to respond to "the technical character of the problems to be dealt with." H.R. Rep. No. 73-1383, at 6–7 (1934). Congress gave the SEC "considerable latitude," so that the securities laws did not become an "unworkable 'strait-jacket.'" S. Rep. No. 73-792, at 5 (1934).

Congress's actions in the near century since the passage of those Acts reinforce a broad reading of the SEC's disclosure authority. Congress has consistently expanded—not trimmed—the SEC's disclosure authority, even as the agency has exercised its authority to expand disclosure requirements beyond the items enumerated in the Acts.

For example, in 2002, Congress responded to a wave of accounting scandals that included Enron and MCI Worldcom by enacting the Sarbanes-Oxley Act ("SOX"), 15 U.S.C. §§ 7201 *et seq*., which, among other things, required enhanced disclosures of an issuer's financial condition and operations. SOX required the SEC to promulgate regulations requiring transparent disclosure of issuers' business and operations, *id.* § 7261, and requiring officers and directors to certify that "the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer," *id.* § 7241(a)(3).

Similarly, following the 2008-2009 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") to promote corporate transparency and further enhance disclosures to investors. 12 U.S.C. §§ 5301 *et seq*. Dodd-Frank strengthened regulatory oversight over the financial and banking industries and enhanced the SEC's rulemaking authority in those markets, including disclosure authority on matters concerning executive compensation, *see* Pub. Law No. 111-203 § 953, and corporate leadership structure, *see id.* § 972. These recent statutes affirm Congress's ongoing recognition of the need for full disclosure to investors.

d) Judicial Interpretations Confirm the SEC's Broad Disclosure Authority Under the Securities and Exchange Acts.

Courts have consistently confirmed the SEC's broad disclosure rulemaking authority. In interpreting and applying the Securities Act, the U.S. Supreme Court has upheld for decades the core principle that "[t]he design of the statute is to protect investors by promoting full disclosure of information thought necessary to informed investment decisions." *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953). The Court has discerned the "protection of investors as a group…and the need for a healthy economy constantly purged by full disclosure" as the "broad policies" the Acts and their disclosure mandates advance. *Pinter v. Dahl*, 486 U.S. 622, 638 n.14 (1988); *see also SEC v. Cap. Gains Rsch. Bureau, Inc*., 375 U.S. 180, 186 (1963) (noting that "a fundamental purpose, common to [the federal securities laws], was to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry").

Courts have long recognized that the Securities and Exchange Acts give the SEC "broad discretionary powers" to "[require] disclosure of information beyond that specifically required by statute." *NRDC v. SEC*, 606 F.2d 1031, 1045 (D.C. Cir. 1979). Congress intentionally gave the SEC wide disclosure authority to allow it the flexibility to protect investors in evolving market conditions. *See id.* ("Rather than casting disclosure rules in stone, Congress opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable."), 1057 (SEC's tasks include "mak[ing] decisions against the background of rapidly changing conditions"); *Touche Ross & Co. v. SEC*, 609 F.2d 570, 580 (2d Cir. 1979) ("Congress realized that it could not enact express statutory provisions to deal with every possible evil that might develop.").

As noted *supra* Sections IV(A)(1)(a)-(b), Congress directed the SEC to require the disclosure of information "necessary or appropriate in the public interest or for the protection of investors." *See, e.g.*, 15 U.S.C. § 77g(a)(1). Courts interpreting the "public interest" directive have recognized that "the words take meaning from the purposes of the regulatory legislation" and that "to give content and meaning to" the directive one must "look to the purposes for which the [statutes] were adopted." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669–70 (1976). Courts also have analyzed what it means to "protect investors and the public interest" by reviewing the statute's "purposes." *Bus. Roundtable v. SEC*, 905 F.2d 406, 413 (D.C. Cir. 1990).[21]

[21] Instances in which courts have articulated other purposes found in the federal securities law are inapposite. *See* Proposed Rescission at 33302 n.75. For example, in *Alliance for Fair Board Recruitment v. SEC*, 125 F.4th 159, 178 (5th Cir. 2024), the Court determined that, under a discrete Exchange Act provision, the SEC needed to consider specifically enumerated statutory goals in determining whether a proposed Exchange Rule was "designed to protect investors and the public interest." But that need to consider some goals that are statutorily enumerated in a specific context does not undercut the overarching principle that, absent this type of countervailing consideration, broad disclosure is the goal of the Securities and Exchange Acts. It also underscores the point that the SEC, when it considers all the appropriate factors, has wide-ranging authority to look at possible disclosure requirements.

In the context of the securities laws, the "protection of investors" relates to the "complete and truthful exposure of all matters in relation to the registrant's financial condition." *Bank of Am. v. Douglas*, 105 F.2d 100, 103 (D.C. Cir. 1939). The SEC's guidepost in advancing the purpose of the Securities and Exchange Acts is clear: "[d]isclosure, and not paternalistic withholding of accurate information." *Basic, Inc. v. Levinson*, 485 U.S. 224, 234 (1988).

Federal courts have— in binding decisions spanning decades—affirmed the Commission's broad authority, including authority to promulgate rules concerning matters of environmental significance. *See NRDC*, 606 F.2d at 1051–52.

e) The SEC Has Long Interpreted Its Disclosure Authority Broadly.

Consistent with these clear Congressional directives and judicial decisions, the SEC has also historically understood its discretionary authority and disclosure responsibilities to be broad. The agency has determined that its directive to determine what additional information is "necessary or appropriate in the public interest or for the protection of investors" empowers it to require the disclosure of information that is important to making informed investment decisions.[22] *See, e.g*., *Concept Release on Management's Discussion and Analysis of Financial Condition and Operations*, 52 Fed. Reg. 13715, 13717 (Apr. 24, 1987) (noting that narrative required by Management Discussion and Analysis rule aids "an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance."); *Adoption of Integrated Disclosure System*, 47 Fed. Reg. 11380, 11382 (Mar. 16, 1982) (noting that a goal of integrating disclosure systems is to "[ensure] that security holders, investors and the marketplace have been provided with meaningful, nonduplicative information upon which to base investment decisions."); *SEC Release Notice*, Release No. 66 (Dec. 21, 1934) (adopting disclosure of information "which might effect the value of its securities in the open market"). At no point before now has the Commission interpreted its disclosure rulemaking authority as being limited to items in Schedule A or "channeled by" those specific items.

In fact, for nearly a century, the Commission has exercised its authority to require disclosures beyond the enumerated items in the Securities and Exchange Acts to provide investors with information necessary to their investment and voting decisions. Almost immediately after the passage of the Securities Act, the Commission's predecessor agency adopted requirements for disclosures beyond the items in Schedule A, such as the requirement to "disclose all pending litigation that may materially affect the value of the security to be offered, describing the origin, nature and name of parties to the litigation, as part of Form A-1 in 1933."

[22] The same is true for the disclosure of information that is helpful for investors seeking to utilize the right to vote offered by their securities. *See Proxy Disclosure Enhancements*, 74 Fed. Reg. 68334, 68334 (Dec. 23, 2009) (amending disclosure rules to "enhance [investors'] ability to make informed voting and investment decisions."). The disclosure of sufficient information to aid investors in their voting decisions is an important consideration under federal securities law. *See TSC Indus., Inc. v. Northway, Inc*., 426 U.S. 438, 449 (1976) (noting that under the antifraud provisions in the Exchange Act "an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.").

Modernization of Regulation S-K Items 101, 103, and 105, 85 Fed. Reg. 63726, 63740 (Oct. 8, 2020) (discussing the history of Item 103 going back to 1933).

In the ensuing decades, the Commission has updated the disclosure regime dozens of times to require disclosures that extend beyond the specific items identified in the Acts. Item 105 of Regulation S-K, for instance, requires registrants to provide "a discussion of the material factors that make an investment in the registrant or offering speculative or risky." 17 C.F.R § 229.105(a). Such "risk-factor disclosures" have a long history. Since the 1960s, the SEC has instructed registrants to disclose "principal factors which make the offering one of high risk or speculative." *See Guides for Preparation and Filing of Registration Statements*, 33 Fed. Reg. 18617, 18619 (Dec. 17, 1968). The SEC codified the "Risk Factor" disclosure requirements in 1982, *see Adoption of Integrated Disclosure System*, 47 Fed. Reg. 11380 (Mar. 16, 1982), and moved them in 2019, *see FAST Act Modernization and Simplification of Regulation S-K*, 84 Fed. Reg. 13796 (Apr. 8, 2019).[23] In 1989, the Commission adopted "Management Discussion & Analysis" disclosure requirements, which elicit extensive information about material risks facing registrants, how they manage those risks, and management's "short and long-term analysis of the business of the company." *Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*, 54 Fed. Reg. 22427, 22428 (May 24, 1989).

At times, the Commission has adopted rules that have been prescriptive in their form and content. In 1997, the Commission adopted new market risk disclosures in response to a sharp increase in the use of derivatives and other market risk instruments, and significant market losses related to those instruments. *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information About Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments, and Derivative Commodity Instruments*, 62 Fed. Reg. 6044, 6045 (Feb. 10, 1997). The market risk disclosures include detailed requirements both for disclosure content and presentation. Notably, in the adopting release, the Commission explained that investors needed more specific disclosures because the disclosures available at the time were "abbreviated," "piecemeal," and not applied uniformly. *Id.* at 6048.

Other longstanding disclosure requirements that reflect the breadth of SEC's authority include 17 C.F.R §§ 229.101(a) (General development of business), 229.101(g) (Enforceability of civil liabilities against foreign persons), 229.103 (Legal Proceedings), 229.407 (Corporate governance), 229.702 (Indemnification of directors and officers), and 229.801 (Securities Act Industry Guides).

More recent disclosure requirements elicit similar types of information about risk management, strategy, and governance to enable investors to price registrants' exposure to and management of an emerging risk—namely, material cybersecurity risks, 17 C.F.R. § 229.106. The Commission exercised its authority under Sections 7 and 19(a) of the Securities Act, and Sections 12, 13, and 23(a) of the Exchange Act, among others, to adopt rules and rule amendments to "enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incidents by public companies." *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, 88 Fed. Reg. 51896, 51896 (Aug. 4, 2023). In its rulemaking, Commission explained that those risks had steadily increased due to

[23] *See also* 85 Fed. Reg. at 63742–45 (changing the disclosure standard in Item 105 from "most significant" risk factors to "material" risk factors).

the "ever-increasing share of economic activity [that] is dependent on electronic systems" and the "substantial rise in the prevalence of cybersecurity incidents." *Id.* at 51897. The Commission's cybersecurity rulemaking demonstrates the SEC's understanding that when emerging risks can significantly impact companies' operations and financial condition, investors benefit from standardized disclosures to allow them to evaluate those risks and make informed investment decisions.

The disclosures required by the Final Rules are similar in kind to the aforementioned disclosures—longstanding and newer—that require registrants to disclose material risks. And the specificity of the disclosures they require has precedent in other existing SEC disclosure requirements, such as those on legal proceedings, market risks, and executive compensation. In sum, numerous examples throughout the SEC's 90-year history of responding to evolving market developments and investors needs demonstrate that the Final Rules are no departure from the SEC's practice of requiring disclosures to discharge its obligation to protect investors, and promote efficiency, competition, and capital formation.

f) The Narrow Standard of Disclosure Authority That the Proposed Rescission Articulates Is Unsupported, Vague, and Inconsistent with the Existing Disclosure Regime.

The Proposed Rescission articulates a new interpretation of the SEC's statutory authority, stating: "[t]he Commission's rulemaking with respect to disclosures must be 'channel[ed]' by and comparable to the kinds of disclosures recited in the statutes, which refer to a registrant's business or financial characteristics." Proposed Rescission at 33302. This new interpretation is not only contrary to the statutory language, judicial interpretation, and the SEC's long practice of exercising its authority, but is a vague and unworkable standard.

Nothing in the text or the legislative history suggests that the agency must limit itself to the items identified in or "channeled by and comparable to" those in Schedule A, as the Commission now asserts. *See id.* at 33304. Congress's authorizations to "make, amend, and rescind [] rules and regulations," 15 U.S.C. § 77s(a), and act "as necessary or appropriate in the public interest or for the protection of investors," *id.* § 77g(a)(1) — "breathe discretion at every pore," *Strickland v. Morton*, 519 F.2d 467, 469 (9th Cir. June 18, 1975). If these grants of rulemaking and decision-making authority mean anything, it is that the SEC must be able to require additional disclosures beyond those already enumerated in the statute so long as its decision-making is well reasoned. Indeed, the broad-ranging concept of "full and fair disclosure" is so vital to the Securities Act that the phrase is contained in the statute's preamble. Pub. L. No. 73-22, 48 Stat. 74, 74.

Federal Communication Commission v. Consumers' Research, 606 U.S. 656, 690 (2025), does not support the SEC's novel interpretation. For one, that case interpreted the authority of a different agency (the FCC) in a different statutory context (the Communications Act). *See id.* And, in fact, the reasoning of *Federal Communication Commission* reinforces the Commission's exercise of authority in the Final Rules. There, the Court upheld the FCC's discretion to articulate "additional principles" to guide its telecommunications programs. *Id.* at 689–90. The statute's grant of this discretionary authority to the FCC is lawful, the Court reasoned, because it is bounded by the agency's obligation to determine that such added principles "are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with [the statute.]." *Id.* at 689–90. Therefore, the Court's approval of the FCC's

authority to build on the statutorily enumerated principles by "channel[ing]" the agency's discretion "within those statutory parameters," *id.* at 690, is consistent with the Commission's exercise of rulemaking authority in the Final Rules.

It is also unclear what the SEC means by the phrase "the kinds of disclosures recited in the statutes, which refer to a registrant's business or financial characteristics." Proposed Rescission at 33302. While at first glance, the phrase "business or financial characteristics" appears to broadly refer to a registrant's business and financial-related information, this term is defined elsewhere in the Proposed Rescission as "the disclosure items that Congress enumerated in [15 U.S.C. §77aa and 15 U.S.C. § 78l(b)(1)]." *Id.* at 33300 n.47. Rather than clarifying the scope of the phrase, this definition is circular, simply pointing back to the statutory disclosure framework without articulating a limiting principle or explaining how the Commission determines whether a particular disclosure falls within that category.

Adding further uncertainty, the reference to "kinds of disclosures" could broadly mean disclosures relating to similar subject matter or could be interpreted to mean disclosures eliciting information in the same format or structure. It is not clear, for instance, whether Item 303 of Regulation S-K, 17 C.F.R § 229.303, which requires a discussion and analysis of the registrant's financial condition from management's perspective, is one of the "kinds of disclosures recited in the statutes," Proposed Rescission at 33302. While Item 303 supplements the financial information explicitly elicited by Schedule A and 15 USC § 78l(b)(1), none of the enumerated disclosures explicitly require this type of narrative analysis.

Similarly, it is unclear what the SEC means in the Proposed Rescission when it asserts that a disclosure should be "comparable to" another kind of disclosure. To the extent the SEC is relying on 15 U.S.C § 78l(c), this language refers only to specific circumstances under the Exchange Act (*i.e.*, when the SEC has decided the disclosures in 15 U.S.C § 78l(b)(1) are not applicable to particular class of securities or issuers), not the authority the SEC has to require additional disclosures under the Securities Act, and should not be imputed to the SEC's broad disclosure authority in 15 U.S.C. § 77g.

The ambiguity of the Proposed Rescission's language leaves the reader rudderless. It may be that the proposed language is simply attempting to tie SEC disclosure authority to materiality—*i.e.*, the SEC is authorized to require disclosures of information so long as the information affects a registrant's financial performance or condition. If so, the Final Rules meet this standard. *See infra* Section IV(A)(2)(b).

The Proposed Rescission may instead—and indeed appears to—be designed to radically cabin SEC authority and limit SEC disclosures to information that is explicitly and closely tied to items enumerated in Schedule A and 15 U.S.C. § 78l(b)(1). But, as described above, such an interpretation of SEC authority is inconsistent with the statutes, case law, and the SEC's longstanding disclosure regime that, as described above, includes numerous well-established disclosures that extend beyond the specific items identified in the federal securities laws. *See supra* Section IV(A)(1)(a)-(e).

In any event, this limiting language in the Proposed Rescission invites frivolous challenges to the SEC's existing disclosure regulations, which would result in costly litigation and burden the courts with individual attacks on specific disclosures. Such a piecemeal approach would also disadvantage registrants, who would continue to submit filings as the entire SEC disclosure regime shifts beneath them.

In sum, the disclosure authority articulated in the Proposed Rescission is vague, unsupported, and irreconcilable with the SEC's governing statute's and the existing SEC disclosure regime, and it should not apply to the SEC's Final Climate-Related Disclosure Rules.

* * * * * *

As described, it is plain from the clear text of the Securities and Exchange Acts, Congress's actions reaffirming the SEC's authority, and decades of legal and administrative precedent that the SEC has broad authority to require disclosures of new categories and forms of information that reasonable investors need to inform their investment and voting decision-making.

The Final Rules fit squarely within the bounds of the SEC's broad disclosure rulemaking authority because they elicit information necessary to reasonable investors' investment and voting decision-making. That conclusion is reinforced by every relevant source of legal authority. The text and history of the federal securities laws reflect Congress's broad delegation of authority to the Commission to require disclosures in the public interest and for the protection of investors. *See supra* Section IV(A)(1)(a)-(c). Courts have recognized the breadth of that authority and upheld disclosure requirements designed to provide investors with decision-useful information. *See supra* Section IV(A)(1)(d). Likewise, the Commission's own longstanding regulatory practice has required disclosure of a wide range of financially relevant information concerning registrants' operations, governance, strategy, and risks. *See supra* Section IV(A)(1)(e). The Final Rules are a natural extension of this statutory, judicial, and administrative framework, not a departure from it. And, in keeping with its statutory obligation, in the Final Rules the Commission also carefully considered whether their disclosure requirements would promote efficiency, competition, and capital formation, finding that the Final Rules would promote these factors. *See supra* Section IV(B)(1)(d).

2. The Proposed Rescission Relies on Mischaracterizations to Disclaim the SEC's Authority.

Even if the Commission's disclosure authority were narrower than previously recognized, the Final Rules still fall within its ambit because they are "comparable to the kinds of disclosures recited in the statutes" as they relate to registrants' "business or financial characteristics." Proposed Rescission at 33302. Each provision of the Final Rules requires disclosures that directly relate to the financial performance and position of the registrant. Claims otherwise are based on mischaracterizations.

In the Proposed Rescission, the Commission states, without foundation, that climate-related disclosures benefit only a subset of investors, *id.* at 33310, do not elicit material information or concern the financial characteristics of issuers*, id.*, and mandate certain corporate behavior, *id.* at 33305. None of these are true. To the contrary, climate-related disclosures are needed by reasonable investors, the Final Rules are grounded in financial materiality as physical, transition, and other climate risks affect corporate bottom lines, and the rules are limited to disclosure, and thus do not interfere with state corporate law.

a) Reasonable Investors Demonstrated a Need for Climate-Related Disclosure Rules to Inform Investment and Voting Decisions.

The Final Rules fall squarely within the Commission's authority to provide investors with information needed to value securities and inform their investment and voting decisions. The Final Rules were born out of an expressed investor need for consistent and standardized information about climate risks. Contrary to the claims made in the Proposed Rescission, investors' need for consistent disclosure of climate risk is not limited to "certain investors who choose to focus their investment strategies on climate-related matters." Proposed Rescission at 33312. Rather, a wide range of reasonable investors have long demanded climate risk information that they can use to make informed investment decisions because of the salience of that information to their analyses of companies' financial performance and position.

As the Commission recognized in the Adopting Release, investors have consistently explained that climate-related risks materially affect companies' financial condition, operating performance, and long-term value, and that existing voluntary disclosures are incomplete, inconsistent, and not sufficiently comparable across issuers. *See* Adopting Release at 21669. The record before the Commission when it adopted the Final Rules included comment letters from a broad range of investors, including large, diversified asset managers, public pension funds, and other institutional investors. A study of 320 of those institutional investors representing over $50 trillion in assets under management found overwhelming support for standardized disclosure on climate-related risk because such information is material to financial analysis, capital allocation, valuation, and risk management.[24]

Some of the nation's largest investment managers, responsible for trillions of dollars in assets under management, explained that standardized climate-related disclosures are essential to financial analysis. For example, BlackRock, Inc., managing approximately $14 trillion in assets,[25] stated that "because we firmly believe that climate risk is investment risk,"[26] it strongly supported a framework providing investors with more comprehensive, comparable and consistent climate-related disclosures. The Vanguard Group, Inc. similarly explained that climate risks are "material and fundamental risks for investors" and that improved disclosures would allow securities prices to more accurately reflect those risks for the benefit of all investors.[27] Bank of America likewise emphasized that investors would benefit from "consistent, standardized disclosures" and that a "uniform approach" to climate-related metrics is critical to informed capital allocation decisions.[28]

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[24] *See* Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Ceres (Dec. 2, 2022).
[25] BlackRock, Inc., Quarterly Report (Form 10-Q) (May 6, 2026).
[26] Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from BlackRock, Inc. ("BlackRock") (June 17, 2022).
[27] Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Vanguard Grp., Inc. ("Vanguard") (June 17, 2022).
[28] Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Bank of Am. (June 17, 2022).

The Investment Company Institute ("ICI"), representing the U.S. regulated fund industry with approximately $29.7 trillion in assets serving more than 100 million investors, likewise supported key components of the Final Rules because standardized disclosures would provide information that is "consistent, comparable, and reliable" and improve capital allocation.[29] Notably, ICI observed that only approximately 1.5% of mutual fund and exchange traded fund ("ETF") assets are invested according to environmental, social, and governance ("ESG") criteria, with less than 0.15% invested in environmentally focused funds.[30] Its support on behalf of its members, which represent the vast majority of the mutual fund and ETF industry, highlights that demand for standardized climate-related disclosures is not driven by investors pursuing climate-focused investment strategies, but by mainstream investors seeking financially material information.

Investors have consistently explained that they use climate-related information because it can directly impact the financial performance of the companies they invest in.[31] The Pacific Investment Management Company ("PIMCO") described climate risks as "often" posing material financial risks and emphasized the need for complete, reliable, consistent disclosures. Wellington Management explained that comparable climate risk information is critical to price risk and to assess issuer value, while AllianceBernstein described climate-related risks as "fundamental financial factors" affecting company cash flows.[32] *See* Adopting Release at 21852 n.2782. Several investors specifically mentioned that their consideration of climate-related risks was a necessary part of their fiduciary duty.[33]

Public pension funds, which are bound by a fiduciary duty to seek long-term returns for their beneficiaries, also view climate-related information as critical to pricing securities and understanding risks to companies' earnings and financial position. For example, the Washington State Investment Board's Chief Executive Officer stated that greenhouse gas emissions disclosure is "critical to our understanding of the quality of a company's earnings in the face of climate change and the energy transition." *See* Adopting Release at 21679–80 n. 137 (quoting Comment Letter from Allyson Tucker, CEO, Wash. State Inv. Bd. (June 17, 2022)). East Bay Municipal Utility District Employee Retirement System in Oakland, California supported inclusion of climate-related information in financial statements on the ground that climate-related impacts or risks can materially affect a company's financial position and operations. *See*

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[29] Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Inv. Co. Inst. (June 17, 2022) ("ICI").
[30] *Id.*
[31] *See, e.g.*, Comment Letters on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from AllianceBernstein (June 17, 2022); Alphabet, Autodesk, Dropbox, eBay, Hewlett Packard Enterprise, HP Inc., Intel, Meta, PayPal, and Workday ("Alphabet et al.") (June 17, 2022); Amazon.com, Inc. ("Amazon") (June 17, 2022); CalPERS (June 15, 2022); CalSTRS (June 17, 2022); Eni SpA (June 16, 2022); Maple-Brown Abbott (May 31, 2022); Amalgamated Fin. Corp. (June 17, 2022); PIMCO (June 17, 2022); and Wellington Mgmt. Co. (June 17, 2022).
[32] Comment Letter (File No. S7-10-22) from AllianceBernstein.
[33] *See, e.g.*, Comment Letters on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from BlackRock; Harvard Mgmt. Co., Inc. (June 6, 2022); Tchrs. Ins. and Annuity Ass'n of Am. ("TIAA") (June 17, 2022); N.Y. State Ins. Fund ("NY SIF") (June 17, 2022); and PIMCO.

id. (citing Comment Letter from East Bay Mun. Util. Dist. Emp. Ret. Sys. (June 6, 2022)). CalSTRS stated that "[c]limate-related information is fundamental to understanding the nature of a company's operating prospects and financial performance."[34] CalPERS also informed the Commission that it views "[c]limate change [as] a substantial risk that is material to investors," given that it "seek[s] long-term, sustainable, risk-adjusted returns through efficient capital allocation and stewardship in line with [its] fiduciary duty."[35] The Connecticut Retirement Plans and Trust Funds commented that "[c]limate risks have tangible and identifiable financial impacts, and it is essential to have disclosure of these risks for efficient and data-driven investment decision-making."[36] These public pension funds each manage hundreds of billions of dollars in assets and are far from specialty ESG investors, as the Commission now suggests, Proposed Rescission at 33310 ("[T]he Commission should not seek to cater to the specific informational needs of every subset of investors about each emergent topic."); *id.* at 33312 (characterizing the Final Rules as "subsidiz[ing] the informational demands of certain investors who choose to focus their investment strategies on climate-related matters or who have interests other than the pursuit of a financial return..."). By their very nature, these public pension funds are the definition of "reasonable investors."

Investors have continued to reaffirm the need for standardized climate-related disclosures since the Commission adopted the Final Rules. In 2024, 534 financial institutions managing $29 trillion in assets under management ("AUM") publicly affirmed their support for "mandatory climate risk disclosure in financial reporting," in light of their "commit[ment] to ensuring portfolio value and generating returns over the long term for their beneficiaries and clients in line with their fiduciary duty."[37] Likewise, a 2024 MSCI survey found that 57% of institutional investors agree that climate-related physical risks are creating economic fallout now, and an additional 36% expect future impacts.[38] Yet only 7% of respondents thought that asset prices accurately reflect climate risk.[39] A 2025 Morgan Stanley survey of over 900 institutional investors found that more than three-quarters of institutional investors expect physical climate risks to have a major impact on asset prices in the next five years.[40]

This persistent demand is reflected not only in investors' stated preferences, but also in the substantial resources they devote to obtaining and analyzing climate-related information that standardized disclosures would provide more efficiently. Institutional investors go to considerable effort and expense to collect and compare climate-related information in the

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[34] *See* Comment Letter (SEC File No. S7-10-22) from CalSTRS.
[35] *See* Comment Letter (SEC File No. S7-10-22) from CalPERS.
[36] *See* Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Conn. Ret. Plans and Trust Funds (June 17, 2022).
[37] *2024 Global Investor Statement to Governments on the Climate Crisis*, UNITED NATIONS ENV'T PROGRAMME FIN. INITIATIVE (Sep. 17, 2024), https://www.unepfi.org/wordpress/wp-content/uploads/2024/09/FINAL-2024-Global-Investor-Statement_17-Sep-2024.pdf.
[38] MSCI Sustainability Inst., *supra* note 8, at 4.
[39] *Id.*
[40] Morgan Stanley Institute for Sustainable Investing, *Sustainable Signals: Institutional Investors 2025* (Nov. 2025), https://www.morganstanley.com/content/dam/msdotcom/en/assets/pdfs/MS_ISI_Signals_Institutional_Investors_2025_Report.pdf.

absence of a standardized climate disclosure requirement. A survey of institutional investors submitted by Enterprise Risk Management ("ERM") found that they spend an average of $257,000 annually collecting climate data related to their assets and an average of $357,000 on internal climate-related investment analysis. *See* Adopting Release at 21842 (citing ERM survey attached to comment letter from ERM (June 16, 2022)).[41] CalSTRS reported spending approximately $2.2 million per year to access climate research, analyze available data, and estimate climate risks across its portfolio, with a further $550,000 in annual human resources costs for two full-time investment staff and external advisors. *See id.* at 21850 n.2754 (citing Comment Letter (SEC File No. S7-10-22) from CalSTRS ((June 17, 2022))). Other institutional investors described comparable burdens in qualitative terms, noting that in the absence of mandatory disclosure requirements they rely on third-party data providers whose estimates are often inaccurate, and that the resulting process of filling data gaps through outreach, written requests, and shareholder resolutions is "inefficient and resource intensive." *Id.* at 21842 n.2669.

The need for standardized climate-related disclosures is not limited to institutional investors. As the Commission observed in the Adopting Release, retail investors also expressed their need for climate-related disclosures and strongly supported the Final Rules. *Id.* at 21673, 21677, 21680. More recent evidence confirms that surveys indicate that approximately 73% of global retail investors view climate change as an investment risk, and empirical research shows that retail investors actively use climate-related information as an indicator of financial risk and expected returns.[42]

The Final Rules meet these investors' needs; they provide "information to assess how climate-related risks affect a registrant's business and financial condition and thus the price of the registrant's securities." *See infra* Section IV(A)(2)(c). Disclosure of climate-related risk information is thus in keeping with Congress's authorization to the SEC to require disclosure of information that is "necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 77g(a)(1); Adopting Release at 21683.

b) The Final Rules Elicit Material Information.

The Proposed Rescission incorrectly posits that the Final Rules exceed the Commission's authority because they fail to meet a purported materiality threshold. *See* Proposed Rescission at 33298.

At the outset, neither the Securities Act nor the Exchange Act impose a universal materiality prerequisite for disclosure. Other longstanding disclosure requirements elicit information important to investors that may or may not be material. For example, disclosures about related party transactions, 17 CFR § 229.404, environmental proceedings, *id.* § 229.103(c)(3), share repurchases, *see* Form 10Q, Item 2(e), and executive compensation disclosures, *see* 17 CFR § 229.402, are required based on a bright-line threshold, regardless of case-by-case materiality.

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[41] *See also* Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from ERM (June 16, 2022).

[42] *See* GLOBESCAN, *Shareholder Convictions on Inequality, Climate Risk, and Responsible Returns Hold Firm* (Apr. 29, 2026), https://globescan.com/2026/04/29/insight-of-the-week-retail-investors-agreement/; Qianqian Li et al., *Retail Investors and ESG News*, 78 J. ACCT. & ECON. (2024), https://doi.org/10.1016/j.jacceco.2024.101719.

In any event, the Final Rules are firmly grounded in financial materiality. *See* Adopting Release at 21669 ("the Commission is adopting rules to require registrants to provide certain information about climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, the registrant's business strategy, results of operations, or financial condition. . . ."). The Commission broadly incorporated materiality qualifiers to reduce burdens on companies while still providing investors with useful information. *Id.* at 21675. As a result, all but two provisions in the Final Rules are explicitly linked to materiality. The remaining two—(1) a description of the board's governance over climate-related risks; and (2) certain financial statement disclosures related to severe weather events and natural disasters, subject to defined thresholds—lack an express materiality qualifier but were tailored to provide investors with material information. *See id.* at 21674–75. For example, the Adopting Release made a reasoned decision that the "fact of such oversight being exercised by the board is likely material to investors given other demands on the board's time and attention." *Id.* at 21713. Likewise, the use of thresholds used in the financial statement disclosures reflects the Commission's carefully reasoned decision to address investors' concerns about underreporting and to provide greater clarity and consistency. *Id.* at 21797.

The Commission also grounded the disclosure requirements in the impact on the company's financial performance or position, evidencing their relevance to fundamental analyses of the company and pricing of its securities. *See id.* at 21674–75 (summarizing the disclosures, which are tied to "impacts on the registrant's business, results of operations, of financial condition"); 21676–77. Indeed, the Commission found that institutional investors' support for the Proposed Climate-Related Disclosure Rules stemmed from their fiduciary obligations to maximize financial returns on behalf of their clients.[43] *Id.* at 21847; *see supra* Section(IV)(A)(2)(a).

In the Proposed Rescission, the Commission also asserts that the fact that "existing disclosure obligations already serve to provide investors with material information about climate-related matters reinforces the conclusion that the Final Rules are not 'necessary' to protect investors," relying on the 2010 Guidance which lists the specific disclosure requirements that could elicit climate-related information. *See* Proposed Rescission at 33305, 33309–10. But that assertion ignores the extensive record of investors detailing the inadequacies of current disclosure requirements and the SEC staff's own experience with climate-related disclosures since 2010. *See* Adopting Release at 21677, 21679. The purpose of the Final Rules was to require more specific disclosures to address the problem of "boilerplate" and inconsistent disclosures elicited under existing requirements. *Id*. at 21677. The Proposed Rescission dismisses the careful analysis the Commission conducted of the comments and the inadequacies of the existing disclosure regime.

Instead of grappling with the record and the Commission's previous findings, the Proposed Rescission seems to claim that requiring more specific disclosures about a financially material risk about which companies may already have to disclose information exceeds the SEC's authority. *See* Proposed Rescission at 33305. There is no statutory, legal, or factual basis for this claim.

[43] *See* Comment Letters (SEC File No. S7-10-22) from BlackRock and CalPERS.

c) Climate-Related Risks Affect Companies' Financial Condition and Performance and, Therefore, Are Relevant to Investor Decision-Making.

The Proposed Rescission characterizes the Final Rules as falling "outside the policy concerns of the Federal securities laws." *See* Proposed Rescission at 33309. That characterization ignores the well-documented financial costs and risks associated with climate change, which have material impacts on companies' financial condition, operations, and long-term value in two primary ways. First, physical climate risks, including extreme weather events, supply chain disruptions, and rising insurance costs, can impose direct and measurable financial costs on companies. Second, transition risks arising from regulatory, technological, and market changes can significantly impact companies' business strategies, operations and financial performance. These risks are precisely the type of financially relevant information that the Acts are designed to provide investors.

The Commission recognized that "[c]limate-related natural disasters can damage issuers' assets, disrupt their operations, and increase their costs." *See* Adopting Release at 21672 (citing Greg Ritchie, *90% of World's Biggest Firms Will Have at Least One Asset Exposed to Climate Risk*, BLOOMBERG: FRESH DATA SHOW (Sep. 15, 2022) (stating that over 90% of the world's largest companies will have at least one asset financially exposed to climate risks such as wildfires or floods by the 2050s, and more than a third of those companies will see at least one asset lose 20% or more of its value as a result of climate related events)). The financial impacts of physical climate risks are already observable across industries. The following examples illustrate how these risks affect companies' assets, operations, costs, and long-term planning.

Wildfires and floods have cost businesses billions of dollars worldwide. As the Commission recognized, "wildfires can be both an acute and chronic risk to a company." Adopting Release at 21689. In 2025, it is estimated that insured losses from wildfires totaled $54 billion, the highest total on record.[44] And it has been estimated that flooding costs the United States between $179.8 and $496.0 billion each year.[45] Both wildfires and floods cause structural damage to businesses and their equipment, increase insurance premiums, damage or destroy inventory, reduce revenue from interrupted operations, and lower output and sales. Companies that proactively prepare for such risks must price in the costs of updating infrastructure, relocation, or increases in insurance premiums to their overall long term capital planning. One study estimates that 11.4% of business relocations can be attributed to wildfires.[46] Still other companies may be constrained from relocation, having to bear the physical costs of any future damage.[47] In 2024, MIT Technology Review Insights issued a report with the results of a survey

[44] Rebecca Dzombak, *2025 Wildfires Were the Costliest Ever, Researchers Say,* N.Y. TIMES (May 31, 2026), https://www.nytimes.com/2026/05/31/climate/2025-wildfire-damage.html.
[45] U.S. JOINT ECON. COMM., FLOODING COSTS THE U.S. BETWEEN $179.8 AND $496.0 BILLION EACH YEAR (June 2024), https://www.jec.senate.gov/public/_cache/files/0b144b39-b127-4033-bfdf-c1bdffd31ed2/jec-report-on-economic-cost-of-flooding-update.pdf.
[46] Richard Acquah-Sarpong, Yong Chen, & Paul Lewin, *Firm Relocation Responses to Wildfire Events* 2 (W. Rural Dev. Ctr., Working Paper), http://dx.doi.org/10.2139/ssrn.6711861.
[47] *Id.* at 1.

of 300 executives from businesses across the United States.[48] When asked which climate events would most likely affect their businesses, 67% of executives cited severe storms, 55% flooding and 51% extreme heat.[49] Additionally, the survey found "(62%) say their organizations have created a plan to prepare for climate change effects . . . and [j]ust over half (52%) have conducted a climate risk assessment."[50]

Credit-risk analyses indicate that the scale of financial impacts of climate events on companies within the next 25 years will be significant. In a report published in September 2025, Moody's projects that physical climate risk could cut companies' average operating margins by 2.0 percentage points and raise average probability of default by 74% for a sample of 639 publicly traded U.S. companies by 2050.[51] For pension funds that need to generate sufficient returns in 40 years to pay for the retirement of employees just starting their careers, these future risks are well within their time horizon as investors.

In any event, these are not just long-term risks; they are showing up for companies now. A recent MSCI survey found that more than 80% of companies surveyed said that extreme weather events (dangerous heat, severe storms, flooding) have disrupted operations or added to operational costs in the past five years.[52]

Climate change affects every link in a company's supply chain. Companies must first grapple with a decrease in the availability of raw materials and increases in agricultural pricing. One study analyzing the effects of global warming on inflation found that "persistent upward pressures on annual food inflation of 1-3 percentage points per year could result from temperatures projected for 2035."[53] Next, companies face disruptions to transportation of goods due to climate change. For example, the Panama Canal, one of the world's busiest shipping routes, faced significant challenges in 2023-2024 due to drought, resulting in shipping delays and increased company costs. One study found that drought for the lake supplying the Panama Canal may become commonplace due to climate change.[54]

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[48] MIT Tech. Rev. Insights & Mich. Econ. Dev. Corp., *Addressing Climate Change Impacts* (2024), https://wp.technologyreview.com/wp-content/uploads/2024/09/MITTR-x-MEDC_final_19sept2024.pdf?utm_source=report_page&utm_medium=landing&utm_campaign=insights_report&utm_term=09.19.24&utm_content=sponsored.

[49] *Id.* at 6.

[50] *Id.* at 12.

[51] Viola Lutz et al., *Catastrophic Events in an Uncertain Future: A Pending $41 Trillion Bill for Businesses and Governments to Resolve,* MOODY'S (Sep. 23, 2025), https://www.moodys.com/web/en/us/insights/physical-transition-risk/catastrophic-events-in-an-uncertain-future-a-pending-41-trillion-bill-for-businesses-and-governments-to-resolve.html.

[52] Linda-Eling Lee, Katie Towey, & Umar Ashfaq, *What the Market Thinks: Findings from Our Corporate Resilience Survey*, MSCI INSTITUTE (Oct. 29, 2025), https://www.msci-institute.com/themes/climate/what-the-market-thinks-findings-from-our-corporate-resilience-survey/.

[53] Maximilian Kotz et al., *Global warming and heat extremes to enhance inflationary pressures*, 5 COMMC'N EARTH ENV'T 1, 8 (2024), https://www.nature.com/articles/s43247-023-01173-x#Abs1.

[54] Samuel E. Muñoz, Lindsay Lawrence, & Shuochen Wang , *Drying of the Panama Canal in a Warming Climate*, 52 GEOPHYSICAL RSCH. LETTERS 1 (Sep. 17, 2025), https://doi.org/10.1029/2025GL117038.

Rising insurance costs have also resulted from climate change and have had significant impacts on companies' financial decisions. Extreme weather events are a significant driver of increases in insurance costs on commercial businesses. According to Deloitte, "[c]ommercial buildings located in states with the 10 highest expected annual loss ("EAL") totals according to Federal Emergency Management Agency ("FEMA"), based on their exposure to natural hazards, have seen a 31% increase in insurance costs year over year and 108% increases over levels from five years ago … compare[d] to 25% and 96% increases, respectively, for states outside of the top 10."[55] Companies also face the prospect of having to purchase additional insurance policies to cover certain locations. Surveyed as part of the MIT Technology Review Insights report, one business owner explained that, "[w]e had to get special insurance for a plant we're building near a river"… "because there's a high probability of water level rise during our 20-year lease."[56] The costs associated with increased insurance affect capital allocation and long-term strategic planning.[57] Climate-related risk exposure also influences corporate financial performance through operational disruptions, higher insurance costs, strategic shifts, and increased stock price volatility as financial markets price climate risk.[58]

The impacts of wildfires, floods, drought, and the resulting rise in insurance costs are just some examples of the types of climate-related risks that are material to investors and that affect capital formation, business expansion, profitability, and competition, and that therefore merit reliable disclosures for investors.

In addition to these physical risks, transition risks associated with changes in regulations, technology, and consumer preferences can also materially impact the "operation and performance [and] financial condition" of a company. Proposed Rescission at 33300. The Commission has defined transition risks as "the actual or potential negative impacts on a registrant's consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks." Adopting Release at 21687.

This analysis is not new. In its 2010 Guidance, the Commission reminded registrants of disclosure requirements as they related to climate change matters. The Commission noted that international and domestic policies, for example related to "cap and trade" systems, "could have a material impact on registrants." 75 Fed. Reg. at 6291. And this has occurred more and more since the adoption of the 2010 Guidance.

In 2015 the Paris Agreement treaty was adopted with a goal of "limit[ing] the temperature increase to 1.5°C above pre-industrial levels."[59] The 194 countries signed on to the agreement have committed to work toward this goal in part by reducing and mitigating emissions

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[55] Renea Burns, Tim Coy, & Niall Williams, *Climate Change Impacts Elevate US Commercial Real Estate Insurance Costs*, DELOITTE INSIGHTS (May 29, 2024), https://www.deloitte.com/us/en/insights/industry/financial-services/impact-of-climate-change-on-commercial-real-estate-insurance-costs.html.

[56] *Addressing Climate Change Impacts*, *supra* note 48, at 10.

[57] *See* Woraphon Wattanatorn & Pornsit Jiraporn, *Climate Change Exposure and Corporate Cash Reserves: International Evidence*, 25 INT'L REV. OF FIN. 1 (Dec. 24, 2024), https://doi.org/10.1111/irfi.70050.

[58] *See id.* at 3.

[59] U.N. Framework Convention on Climate Change, *Paris Agreement*, https://unfccc.int/process-and-meetings/the-paris-agreement (last visited July 31, 2026).

levels and "[m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."[60]

To achieve greenhouse gas emission reduction goals, countries are implementing industrial policies to transition to a lower-carbon economy, including carbon prices on heavy emitting industries,[61] phase-outs of internal combustion automobiles,[62] and incentives for retrofitting buildings[63] and low-carbon production of cement, steel, and other commodities.[64]

According to the International Energy Agency (IEA) "oil and gas becomes a less profitable and a riskier business as net zero transitions accelerate" because "prices and output are generally lower and the risk of stranded assets"—i.e., oil and gas fields that companies own but decide not to develop because they will not be sufficiently profitable—"is higher."[65]

The automotive industry is also highly exposed to transition risks. For example, by 2030, any manufacturer selling new cars in the United Kingdom will have to sell 80 percent zero-emissions vehicles to comply with the Zero Emissions Vehicle mandate.[66] Automobile manufacturers will also be impacted by taxes on imported steel and aluminum under the EU's Carbon Border Adjustment Mechanism ("CBAM").[67] The CBAM "requires EU importers to purchase 'CBAM certificates' reflecting the carbon embedded" in their goods,[68] in essence

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[60] *See* Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79, https://unfccc.int/sites/default/files/resource/english_paris_agreement.pdf.

[61] WORLD BANK GRP., *2025 State and Trends of Carbon Pricing* (2025), https://openknowledge.worldbank.org/entities/publication/e5f6e755-e6a6-4d2c-927a-23b5cc8a9b03.

[62] *See* Sandra Wappelhorst and Hongyang Cui, *Growing Momentum: Global Overview of Government Targets for Phasing Out Sales of New Internal Combustion Engine Vehicles*, INT'L COUNCIL ON CLEAN TRANSP. (Nov. 11, 2025), https://theicct.org/growing-momentum-global-overview-of-government-targets-for-phasing-out-sales-of-new-internal-combustion-engine-vehicles/.

[63] *See, e.g.*, Directive 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the Energy Performance of Buildings, 2024 O.J. (L 1275).

[64] *See* IEA, *Policy Toolbox for Industrial Decarbonisation* (Mar. 4, 2025), https://iea.blob.core.windows.net/assets/cfd54d6e-fdf2-4582-83de-31d651c4cb14/PolicyToolboxforIndustrialDecarbonisation.pdf (cataloging national industrial decarbonization measures, including China's Henan steel targets (2023), the European Union's Industrial Carbon Management Strategy (2024) and Clean Industrial Deal (2025), France's Industry Decarbonisation Roadmap for Cement (2021), and Germany's action plan for a strong steel industry (2020)).

[65] IEA, *The Oil and Gas Industry in Net Zero Transitions, Executive Summary* (Nov. 23, 2023), https://www.iea.org/reports/the-oil-and-gas-industry-in-net-zero-transitions/executive-summary.

[66] *See* The Vehicle Emissions Trading Schemes Order 2023, SI 2023/1394 (UK).

[67] See SAP BrandVoice, *How Automakers Should Prepare for CBAM*, FORBES (Nov. 19, 2025), https://www.forbes.com/sites/sap/2025/11/19/how-automakers-should-prepare-for-cbam/ (estimating that "a newly manufactured vehicle could soon be subject to €300 in CBAM certificate costs").

[68] Antoine Dechezlepretre and Antton Haramboure, *EU Carbon Border Adjustment Mechanism: What Is It, How Does It Work and What Are the Effects?*, ORG. FOR ECON. COOP. AND DEV.

putting a tax or fee on imported goods for the greenhouse gases emitted during their production.[69]

At the same time, as the Commission recognized in the Adopting Release, "widespread market-based transition to lower carbon products, practices, and services—triggered, for example, by recent or future changes in consumer preferences or the availability of financing, technology, and other market forces—can lead to material changes in a company's business model or strategy and may have a material impact on the registrants financial condition or operations." Adopting Release at 21672.

For example, transnational companies must comply with carbon pricing and emissions trading systems and pay carbon taxes.[70] Consumer preferences for low-emissions and sustainably-produced products[71], as well as state regulations, also drive companies' transition risks. The Commission acknowledged in the adoption of the Final Rules "[t]he most common reason asserted for supporting the mandatory disclosure of [greenhouse gas] emissions is that such disclosure would provide investors with specific metrics to assess a registrant's exposure to transition risks." *See* Adopting Release at 21728.

Together, physical and transition risks demonstrate that climate-related information is not a disclosure of political or social concerns; it is information about business risks that can directly affect financial performance and investor decision-making. Greenhouse gas emissions disclosures and information about exposure to physical climate risks are thus significant to a company's financial strategy and risk analysis, and important to investor decision-making.

d) The Final Rules Require Disclosures, Not Changes to Corporate Governance.

The Commission's argument that the Final Rules "intrude on State authority over core matters of corporate governance," Proposed Rescission at 33305, is both unsupported and factually incorrect. The Final Rules do not mandate changes in corporate behavior, but rather require disclosure that is well within the SEC's statutory authority. *See* Adopting Release at 21683–87.

First, the Commission does not, because it cannot, explain how the implementation of the Final Rules would constitute a "conduct-altering regime," Proposed Rescission at 33306, that would interfere with state authority over corporate governance. The Final Rules do not "create a highly detailed and prescriptive regime," *id.* at 33305, for corporate conduct; to the contrary, they are exclusively focused on eliciting disclosures of actual or reasonably likely material risks,

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(Mar. 21, 2025), https://www.oecd.org/en/blogs/2025/03/eu-carbon-border-adjustment-mechanism-what-is-it-how-does-it-work-and-what-are-the-effects.html.

[69] Sam Boocker and David Wessel, *What is a Carbon Border Adjustment Mechanism?*, BROOKINGS INST. (Oct. 3, 2025), https://www.brookings.edu/articles/what-is-a-carbon-border-adjustment-mechanism/.

[70] See World Bank, Carbon Pricing Dashboard, https://carbonpricingdashboard.worldbank.org/ (last visited July 31, 2026).

[71] *See, e.g.,* Nicole Voigt et al., Green Awakening: Are Consumers Open to Paying More for Decarbonized Products?, Boston Consulting Group (Dec. 2023), https://web-assets.bcg.com/fa/44/8abcfccf430ca039a3a1417ac690/green-awakening-are-consumers-open-to-paying-more-for-decarbonized-products.pdf.

and governance, risk management practices, and strategies already in use by registrants. Nowhere do the Final Rules prescribe or even touch upon traditional state authority over how a corporation should be formed, the powers it should have, the composition of its board and management, the classes of stock and its issuance, board and shareholder meetings, mergers, and the like. *Contrast* 8 Del. Laws c.1, *General Corporation Law*.

Rather, the Final Rules are focused solely on disclosure to investors of such climate-related issues as board and management oversight of climate-related risks. *See, e.g.*, Adopting Release at 21710–16. Even as proposed, the Final Rules "neither required nor encouraged any particular board composition or board practices." *Id.* at 21,710. The Final Rules as promulgated likewise do not require issuers to "dedicate significant board, executive, and employee resources to manage [climate risks]," as the Commission argues in the Proposed Rescission. Proposed Rescission at 33305. Nor do the Final Rules require issuers to take any climate-related actions, such as adopting transition plans, conducting scenario analyses or using internal carbon prices. The Final Rules simply require certain disclosures if the issuer chooses to take those climate-related actions and they have material impacts on the issuer's business. Adopting Release at 21674.

The Proposed Rescission also argues that the Final Rules are prescriptive because they would "effectively require many registrants to conduct new analyses or gather new data for the sole purpose of determining *whether* they have a disclosure obligation." Proposed Rescission at 33305 (emphasis in original). There is nothing prohibiting the SEC from requiring registrants to conduct such an analysis; in fact, that sort of analysis is required by any of the multitude of SEC regulations that require the issuer to meet an initial materiality test. As just one of many examples, under Regulation S-X, which lays out the form and content of financial reports, Section 210.04-01 dictates that the "information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information as is necessary to make the required statements… not misleading."[72] 17 C.F.R. § 210.4-01(a).

Similarly, under Regulation S-K, which lays out reporting requirements for various SEC filings, Item 101 mandates that issuers disclose "information material to an understanding of the general development of the business," including "any material changes to a previously disclosed business strategy." *Id.* § 229.101(a)(1). Item 303 requires an issuer's management to include a "discussion and analysis" for the purpose of "provid[ing] material information relevant to an assessment of the financial condition and results of operations of the registrant." *Id.* § 229.303(a). And Item 1201 outlines mandatory disclosures for companies "[i]f oil and gas producing activities are material to the registrant's or its subsidiaries' business operations or financial position," thus requiring an initial materiality test. *Id.* § 229.1201(a). Adding a materiality test in the climate disclosure context would be neither different nor new.

Second, the Final Rules are consistent with other long-established SEC regulations that require disclosure of corporate structure and operations without requiring any changes to them. Like existing disclosure requirements, the Final Rules do not direct companies to alter their governance, risk management, or business practices; they simply require disclosure of information that investors have determined is relevant to investment and voting decisions. For example, Regulation S-K requires that companies disclose specific information and categories of

[72] Section 210.4-02 of Regulation S-X further clarifies that "[i]f the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth." 17 C.F.R. § 210.4-02.

information without mandating any change to company management, structure, or operation as part of its requirements. Subpart 100 of Regulation S-K, for instance, requires companies to describe their business, their physical properties and locations, material pending legal proceedings, material risk factors, and cybersecurity incidents, threats, and oversight. 17 C.F.R. § 229.101 *et seq*. Subpart 300 requires companies to provide discussion and analysis by management of the company's financial condition, market risks and internal controls over financial reporting. *Id.* § 229.301 *et seq*. Subpart 400 requires disclosure of a company's directors and officers, executive compensation, and related-party transactions. *Id.* § 229.401 *et seq.*

None of these disclosure requirements mandate any change as to who a company's leadership or management is or may be, any physical property the company holds or where it operates, or how it manages and addresses different risks or resolves legal disputes. The Final Rules operate precisely the same way, mandating only the provision of information, not the implementation of any change to a company's business or organizational structure. The Final Rules therefore do not intrude on matters of state corporate governance.

3. The Major Questions Doctrine Does Not Apply, and, Even if It Did, There Is Ample Congressional Authorization.

Unlike regulations that have been found to raise "major questions" scrutiny, the Final Rules are a classic exercise of one of the Commission's central obligations and its long-recognized authority under the Securities Act and the Exchange Act, and do not require the agency to step outside its traditional role or expertise. Therefore, contrary to the Commission's assertion, *see* Proposed Rescission at 33307–08, the major questions doctrine has no bearing here.

The major questions doctrine provides that an "[e]xtraordinary grant[] of regulatory authority" must be supported by "'clear congressional authorization.'" *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (quoting *Utility Air Reg. Grp*, 573 U.S. 302, 324 (2014)). The doctrine is reserved for those "extraordinary cases" where the anomalousness, scope, and significance of the authority asserted by the agency "provide a 'reason to hesitate before concluding that Congress' meant to confer" such authority. *Id.* at 721 (quoting *FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120, 159 (2000)); *see also United States v. White*, 97 F.4th 532 (7th Cir. Apr. 2, 2024) (recognizing that this doctrine is triggered only by "truly extraordinary cases").

First, the Final Rules continue in a long tradition of disclosure requirements and are squarely within the Commission's "wheelhouse." *Biden v. Nebraska*, 600 U.S. 477, 518 (2023) (Barrett, J., concurring). The Commission's expertise in finance, accounting, investment risk assessment, and disclosures is well suited to its role of developing and overseeing disclosure requirements. This is nothing like the Center for Disease Control's stepping into the real estate rental market, *id*., or a workplace safety regulator regulating—for the first time— "the hazards of daily life," *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin*., 595 U.S. 109, 118 (2022). The Commission has long required disclosures related to investment risks and opportunities arising from subject matters outside the narrow universe of finance. *See supra* Section IV(A)(1)(e). Indeed, as the Commission recognizes, *see* Proposed Rescission at 33332–33, the Commission has long required disclosure of material climate risks and environmental liabilities. As such, the Final Rules are well within the Commission's "comparative expertise." *Contra id.* at 33307.

Second, the Final Rules do not exert regulatory authority over a new segment of the economy, as their obligations apply only to those companies already subject to the Commission's disclosure requirements. The Final Rules require that additional information be included in reports that publicly registered companies are already required to submit (with a few minor exceptions). *See* Adopting Release at 21831. In fact, in response to concerns about the costs of compliance for smaller reporting companies, the Commission narrowed the universe of registrants subject to certain of the Final Rule's requirements, such as exempting smaller reporting companies from the Final Rules' greenhouse gas disclosure requirements. *See* Adopting Release at 21675. It is thus nothing like *Utility Air Regulatory Group v. EPA*, where the agency's proposed interpretation would have swept into EPA's regulatory ambit millions of small sources that were outside its scope under prior interpretations. 573 U.S. at 328.

Finally, contrary to the Commission's characterization, the Final Rules take no position on how companies "can or should respond to climate change," Proposed Rescission at 33308. *See* Adopting Release at 21687 (affirming that "the Commission is agnostic as to whether and how issuers manage climate-related risks so long as they appropriately inform investors of material risks"). Instead, the Final Rules address the format and basic components of disclosures about the impacts of climate-related risks and climate-related market changes on public companies. *See* Adopting Release at 21679 (Final Rules were promulgated "to improve the consistency, comparability, and reliability of climate-related disclosures for investors"); *see also supra* Section IV(A)(2)(d). As such, they do not represent a question of "deep…political significance." 600 U.S. at 506 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. at 324). Nor do the Final Rules have the "economic significance" that could trigger major questions scrutiny. *See id.* Indeed, the Proposed Rescission overstates by many factors the costs of the Final Rules to make its claim. *See infra* Section IV(B)(6)(a).

Even if the major questions doctrine did apply here, which it does not, the Final Rules are lawful because the Securities Act and the Exchange Act supply the requisite "clear congressional authorization," *West Virginia*, 597 U.S. at 723. *See* Adopting Release at 21683–87; *supra* Section IV(A)(1).

B. The Proposed Rescission Is Arbitrary and Capricious.

The Commission also claims several policy reasons for rescinding the Final Rules, Proposed Rescission at 33308, which do not meet the APA for agency policy reversals. *See Fox*, 556 U.S. at 515; *Encino Motorcars*, 579 U.S. at 221; *State Farm*, 463 U.S. at 43. The Commission fails to explain its decision to disregard the facts that underlay the well-supported Final Rules or to justify this inconsistency. *Nat'l Ass'n of Mfrs.*, 105 F.4th at 810–12. The Commission also fails to justify the Proposed Rescission on its own terms, as its conclusions run counter to the evidence and do not provide a rational connection between the facts in the Final Rules' record and the Commission's policy choices in this proposal. *See State Farm*, 463 U.S. at 43.

The Commission fails to fulfill its APA obligations in other important respects. The Commission fails adequately to consider reasonable alternatives to full rescission, even when those potential alternatives were well-developed in the prior record. *Id.* at 46–51. The Commission also fails to provide a rational connection between its policy position and the evidence available to it, instead resting on conclusions that run counter to the evidence on SEC disclosure precedent with respect to category-specific disclosures and recent international

developments on mandatory climate disclosures. *Id.* at 43. Additionally, the Commission has demonstrated an unalterably closed mind on rescinding the Final Rules. *Ass'n of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1170 (D.C. Cir. 1979). Because the outcome has been prejudged long before the opening of the rulemaking, the Proposed Rescission does not reflect reasoned decision-making. *See State Farm*, 463 U.S. at 43.

Continuing this pattern, the Proposed Rescission's economic analysis reverses the record-grounded findings underlying the Adopting Release's economic analysis without the explanation *Fox* requires. *See Fox*, 556 U.S. at 516. including by overinflating the benefits of rescission and systematically understating the costs to investors. The economic analysis also fails to satisfy the Commission's statutory obligation to determine the economic implications of its action, *Bus. Roundtable*, 647 F.3d at 1148–49; *Chamber of Com.*, 412 F.3d at 143, including by relying on a faulty baseline, *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010), and failing to attempt to quantify the costs rescission despite quantitative and qualitative evidence in the Final Rules' record, *Chamber of Com. v. SEC*, 85 F.4th 760, 778–79 (5th Cir. 2023).

Lastly, the Proposed Rescission is arbitrary and capricious because it fails to consider "an important aspect of the problem." *State Farm,* 463 U.S. at 43. The Proposed Rescission relies heavily on its claim that the existing disclosure regime elicits material climate-related information and that investors can express their interest to companies for more voluntary disclosures, while ignoring the ways in which its concurrent rule proposals and agency actions undermine those potential channels for climate-related disclosures.

1. The Proposed Rescission Lacks a Reasoned Basis and Contradicts the Factual Findings Underlying the Prior Policy Without Explanation.

When, as here, "the new policy rests on factual findings that contradict those which underlay its prior policy," the agency must give a more detailed explanation than would suffice for a policy adopted on a blank slate. *See Fox*, 556 U.S. at 515. The Proposed Rescission provides no such explanation. Instead, the Commission rejects the factual findings in the Final Rules without support and without engaging with the extensive record supporting the Final Rules. The Proposed Rescission claims it is merely arriving at a "different policy judgment." *See* Proposed Rescission at 33308. But an agency cannot claim its decision is just a "policy judgment," when it is in fact relying on a "new factual finding that contradicted an earlier one." *Nat'l Ass'n of Mfrs.*, 105 F.4th at 811–12. An "agency's failure to explain its decision to 'disregard[] facts . . . that underlay . . . the prior policy' is arbitrary and capricious." *Id.* at 811 (citing *Fox*, 556 U.S. at 516) (alteration in original).

The Final Rules were the product of one of the Commission's most comprehensive administrative records in history; robust, specific, and detailed, including extensive empirical literature, investor surveys, and economic analyses. The record included an unprecedented volume of comments (over 24,000), which were overwhelmingly in support of mandatory climate-related disclosures. The Final Rules reflect careful consideration of comments, demonstrated by changes from the proposal in response to comments and detailed explanations of how the comments informed the final rule. The Proposed Rescission, however, fails to consider that public input.

Indeed, the Proposed Rescission mischaracterizes, diminishes, or simply ignores overwhelming evidence that investors want and need climate-related financial risk data to be

available, reliable, and comparable across companies. This failure to provide a detailed justification for a policy contradicting the facts underlying the prior policy, *Fox*, 556 U.S. at 515–16, and failure to explain its apparent "inconsistency," *Encino Motorcars*, 579 U.S. at 221, is arbitrary and capricious. The below chart summarizes some of the key unexplained factual reversals in the Proposed Rescission, which are further detailed in subsections B.1.a–g below.

Facts at Issue	**Final Rules' Findings**	**Final Rules' Record Support**	**Proposed Rescission's Treatment**
(a) Reasonable investors need climate information because it is financially material.	Fiduciary, returns-focused investors need climate data for fundamental analysis and valuation because climate risk affects assets, cash flows, and future revenues. *See* Adopting Release at 21679–80, 21847.	Investor comment letters explained this use case directly. *See* Adopting Release at 21677.	Asserts the Final Rules do not serve reasonable investors, with no mention of the underlying record, and recasts these investors as a "subset," without support. *See* Proposed Rescission at 33305, 33310.
(b) Investors and registrants support standardized mandatory disclosure, and there was broad support for the Proposed Climate-Related Disclosure Rules.	Both investor and registrant comment letters supported standardization, even where registrants sought changes to specific requirements, and many specifically supported the Proposed Climate-Related Disclosure Rules. *See* Adopting Release 21671–21673, 21677–21678.	Comment file; third-party analyses of the comment file have corroborated the degree of support.	Does not engage with this part of the record. Asserts, without support, that standardized disclosure offers limited benefit and that the Final Rules benefited only climate-focused investors. *See* Proposed Rescission at 33312–13.
(c) Current climate-related disclosures are inadequate.	Existing climate disclosures are inconsistent, incomplete, and often boilerplate, and current practices misprice climate risk. *See* Adopting Release at 21677–21679.	Investor and registrant comments, Commission staff experience, and academic studies on mispricing. *See* Adopting Release at 21677–79, 21841–43, 21889.	Asserts current disclosures are adequate. *See* Proposed Rescission at 33309. Repeats the Adopting Release's keyword search of SEC filings but does not assess disclosure quality or substance and does not address the comments or mispricing studies. *See* Proposed

			Rescission at 33317–21.
(d) The Final Rules promote efficiency, competition, and capital formation.	Disclosure inefficiencies impede investor decision-making, contribute to mispricing, and harm capital formation; standardized disclosure addresses this. *See* Adopting Release at 21888–91.	Comment letters plus empirical and academic literature cited in the Adopting Release. *See* Adopting Release at 21888–91.	Reverses this finding without citing support or addressing the underlying comments and evidence. *See* Proposed Rescission at 33314.
(e) Investors can manage the volume of disclosures.	Investors largely supported the volume of required disclosures (some sought more); the Commission addressed registrant burden concerns by grounding requirements in materiality and adding flexibility, and cited evidence that structured data eases analysis of larger disclosure volumes. *See* Adopting Release at 21675, 21682, 21698–99, 21825.	Comment file plus structured-data studies. *See* Adopting Release at 21698–99, 21825, and 21869–70.	Revives pre-adoption volume objections without new evidence, and ignores both the comment record and the structured-data findings. *See* Proposed Rescission at 33309.
(f) The Final Rules improve consistency, comparability, and reliability versus the status quo.	Comments described concrete improvements over existing voluntary disclosure practice, supported by the Commission's own analysis of climate-related disclosures. *See* Adopting Release at 21831–32, 21842, 21847, and 21849.	Comment file, and analysis of current required and voluntary disclosures. *See* Adopting Release at 21831–46.	Asserts, without support, that the Final Rules would not have produced consistent and comparable information. *See* Proposed Rescission at 33309. Recreates the keyword analysis and voluntary-disclosure baseline without addressing the comment file. *See* Proposed Rescission at 33317–27.

(g) The Final Rules' provisions each have value for investors and are independently supported by the record and economic analysis.	Each provision was supported by the Commission's analysis of comments and its specific benefits and costs; the Commission concluded that the provisions could operate independently. *See* Adopting Release at II.C.1.b, II.C.2.b, II.D.1.b, II.D.2.b, II.D.3.b, II.D.4.b, II.E.1.b, II.E.2.b, II.F.2, II.G.2, II.H.2, II.I.1.b, II.I.2.b, II.I.3.b, II.I.4.b, II.I.5.b, II.J.2, II.K.2.b, II.K.3.b, II.K.4.b, II.K.5.b, II.K.6, and II.K.7 (discussing the comments specific to each provision of the Final Rules); and 21829 (discussing severability).	Comment file plus Commission's economic analysis, which included a careful review of empirical studies; the Adopting Release's structure provides a separate discussion of the proposed provision, comments, and the final provision, and the economic analysis and Paperwork Reduction Analysis likewise assess each provision separately and by filer type. *See* Adopting Release at 21848–88; 21894–908.	Asserts, without support, that the Final Rules' provisions cannot be considered individually because they are interconnected; declines to engage with the record or studies previously considered. *See* Proposed Rescission at 33308–9.

a) The Proposed Rescission Reverses Without Explanation the Prior Commission's Finding That Reasonable Investors Treat Climate Information as Financially Material.

The Proposed Rescission is arbitrary and capricious because it reverses without support the Commission's prior finding that reasonable investors across the market—not merely a small subset of investors pursuing climate-focused strategies—need consistent, standardized climate-related disclosures to evaluate a company's financial performance and make informed investment and voting decisions. *See supra* Section IV(A)(2)(a); Adopting Release at 21677 (summarizing comments). In contrast, the Proposed Rescission now asserts that the Final Rules would have provided "more particularized information than what the reasonable investor needs for an investment decision." *See* Proposed Rescission at 33312. The Commission lacks any support for its new position that directly contradicts the record in the Final Rules, and it asserts it without any support—let alone the "more detailed justification" an agency is required to provide when its "new policy rests upon factual findings that contradict those which underlay its prior policy." *Fox*, 556 U.S. at 515.

For example, the record in the Final Rules contradicts the assertions of the Proposed Rescission that the Final Rules do not "facilitate an understanding of a registrant's business, financial condition, and prospect." Proposed Rescission at 33308–09. Investors overwhelmingly supported the Proposed Climate-Related Disclosure Rules precisely because they would elicit

disclosure relevant to a registrant's business, financial condition, and prospects.[73] Commenters explained that climate-related information assists investors in assessing long-term enterprise value, cash flows, operational resilience and capital allocation. In many cases, they consider climate-related information as part of the execution of their fiduciary duty. *See supra* Section IV(A)(2)(a).

As discussed in Section IV(A)(2)(c), the Adopting Release documented the many ways in which physical and transition climate risks can affect companies' operations, financial condition, and long-term value. *See* Adopting Release at 21671–73, 21848–49. The Commission further relied on studies linking these risks to firm fundamentals, including reduction in revenues and operating income, higher loan losses, lower long-run profitability, higher operating costs and distress costs, and loan losses. *Id.* at 21848–49. The Proposed Rescission, in contrast, takes the opposite view without any support or reasoned explanation. Mere conclusory assertions contradicting the carefully reasoned findings in the Adopting Release are not sufficient to meet the Commission's APA obligations. *See Nat'l Ass'n of Mfrs*, 105 F.4th at 812.

b) The Proposed Rescission Reverses Without Explanation the Prior Commission's Finding That Investors Support Climate-Related Disclosure Rules.

The Proposed Rescission rejects without explanation the finding in the Adopting Release, based on the comment record in the Final Rules, that many investors supported mandatory climate disclosures and the Proposed Climate-Related Disclosure Rules specifically. *See supra* Section IV(A)(2)(a). Third-party analyses of the comment file corroborate the significant level of support for the Proposed Climate-Related Disclosure Rules from investors and companies.[74] These investors represented a wide range: asset managers of all sizes, public pension funds, investment advisers, institutional investors, and retail investors.[75] Their comments emphasized

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[73] *See, e.g.*, Comment Letters (File No. S7-10-22) from AllianceBernstein; Amalgamated Financial Corp.; BlackRock; Bloomberg; Boston Common Asset Management (June 17, 2022); Breckinridge (June 17, 2022); CalPERS (June 15, 2022); CalSTRS (June 17, 2022); Calvert Research and Management ("Calvert") (June 17, 2022); Ceres (June 17, 2022); Consumer Federation of America ("CFA") (June 17, 2022); East Bay Mun. Util. Dist. Emp. Ret. Sys.; Eni SpA; Harvard Mgmt. Co.; Impax Asset Management (May 12, 2022); Maple-Brown Abbott; Parnassus Investments (June 14, 2022); Rockefeller Asset Management (June 1, 2022); PIMCO; Principles for Responsible Investment (June 17, 2022) ("PRI"); SKY Harbor Capital Management ("SKY Harbor") (June 17, 2022); Wash. State Inv. Bd.; Wellington Mgmt. Co.; and Vanguard.

[74] *See* Cynthia A. Williams, Robert G. Eccles, Nathan Chael, Christy O'Neil & Alex Cooper, Review of Comments on SEC Climate Rulemaking, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 23, 2022), https://corpgov.law.harvard.edu/2022/11/23/review-of-comments-on-sec-climate-rulemaking/.

[75] In the Adopting Release, the Commission made a finding that both institutional and retail investors expressed a need for more reliable climate disclosures, and that most individual retail investors and firms advising such investors who submitted comments supported the Proposed Climate-Related Disclosure Rules. *See* Adopting Release at 21673 & n.40; Adopting Release at 21677 & n.105.

that the Final Rules would elicit information directly relevant to their assessment of individual companies' financial performance and the risks and returns of their investments.

When the SEC solicited the public's views on mandatory climate disclosures in 2021, many investors[76] and registrants[77] voiced support for an SEC rule because it would bring more consistency and comparability to the existing fragmented disclosure landscape. For example, Vanguard commented as follows:

> Based on our extensive experience engaging with public companies on climate-related matters, we believe an SEC mandate to disclose baseline climate information in a clear, concise and comparable manner would efficiently standardize disclosure practices . . . Currently investors and companies alike navigate climate risk disclosures using a variety of reporting frameworks. This ad hoc and cumbersome process does not provide consistent comparable data for investors to effectively assess this risk, nor evaluate the board's assessment of its materiality and, in the aggregate, creates unnecessary burden for companies.[78]

After the SEC issued the Proposed Climate-Related Disclosure Rules, investors also stated that the proposed rules would be a significant improvement from disclosures elicited under current requirements and voluntary disclosure frameworks.[79] As stated by one commenter, an

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[76] *See*, *e.g.*, Comment Letter on Climate Change Disclosures from Council of Institutional Investors (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-9036137-246175.pdf; Investment Adviser Association (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8906799-244130.pdf; Investment Company Institute (June 4, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8883549-240438.pdf; SIFMA Asset Mgmt. Grp. (June 10, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8902620-243456.pdf.

[77] *See, e.g.*, Comment Letters on Climate Change Disclosures from Business Roundtable (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8906771-244124.pdf; Etsy (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8916210-245006.pdf; Microsoft (June 14, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8914472-244721.pdf; (June 8, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8895803-241279.pdf; Walmart (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8911753-244396.pdf.

[78] Comment Letter on Climate Change Disclosures from Vanguard (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8906800-244148.pdf; *see also* Comment Letter on Climate Change Disclosures from BlackRock (June 11, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8906794-244146.pdf.

[79] *See, e.g.*, Comment Letter (SEC File No. S7-10-22) from BlackRock ("Compared to the existing voluntary framework, the Commission's detailed analytical and disclosure roadmap . . . is more likely to increase the comparability and consistency of issuers' climate-related disclosures."); Decatur Capital Management (May 29, 2022) ("The Commission's Proposed Rule marks a change in the quality and comparability of climate disclosures that is essential to an efficient market response to climate change and ESG-related risks."); TIAA ("[T]he Proposal represents a significant and long-overdue step toward ensuring that investors have access to the type of reliable, comparable climate-related data they need to make fully informed investments

investment advisor with billions in assets under management, while current reporting "remains inconsistent and may lack comparability . . . [and] at times the reliability of the data can be called into question," the Proposed Climate-Related Disclosure Rules "would promulgate decision-useful, comparable climate information that is vastly improved compared to the disclosures that are currently available," and the "new information would greatly enhance our ability to assess a material and pervasive credit risk."[80]

Investors' support for the Proposed Climate-Related Disclosure Rules was specific and detailed. They provided comments to the Commission on a provision-by-provision basis explaining why the information mandatory climate-related disclosure rules would elicit is financially material and would inform their decision-making. For example, commenters described how they would use climate-related disclosures on governance, risk management, strategies, targets and goals, greenhouse gas emissions, and financial statement disclosures—in each case, they noted how the disclosures would inform their assessment of the company's future financial position and performance, ultimately informing company valuations and securities prices.[81]

Investors supported mandatory climate disclosures and the Proposed Climate-Related Disclosure Rules to avoid expending time and resources gathering and standardizing inconsistent climate information available under the status quo. The Proposed Rescission reverses the findings of the Commission in the Adopting Release that investors face these costs without fully addressing the relevant evidence in the record. The Proposed Rescission, in a sentence, acknowledges that "investors have faced and may continue to face costs associated with obtaining or verifying information related to a registrant's climate-related risks or management thereof." Proposed Rescission at 33312. But its only response is that the Commission no longer "agree[s] that it is appropriate to . . . subsidize the informational demands of certain investors who choose to focus their investment strategies on climate-related matters or who have interests other than the pursuit of a financial return that are driving their informational demands." *Id.* Yet, in their comments, investors consistently explained why climate-related disclosures are

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decisions that incorporate relevant climate factors, where appropriate."); and Franklin Templeton (June 17, 2022) ("Currently, both investors and companies face costs and uncertainties where information provided is not consistent, assured and integrated into the financials. We see analysis and evidence that incomplete information adversely impacts companies' cost of capital, and increasingly is relevant to top line revenues. . . . [T]herefore we are supportive of this information being part of filed reports, rather than furnished, with reasonable assurance, as with other material risks disclosed in company financial statements.").

[80] *See* Comment Letter on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22), from Breckinridge Capital Advisors (June 17, 2022).

[81] *See, e.g.*, Comment Letters (SEC File No. S7-10-22) from SKY Harbor; ICI; New York City Comptroller ("NYC Comptroller") (June 17, 2022); Council of Inst. Inv. ("CII") (June 17, 2022); Wellington Mgmt.; AllianceBernstein; Decatur Capital Management; Washington State Inv. Bd.; BlackRock; Inv. Advisors Ass'n ("IAA") (June 17, 2022); and Maple-Brown Abbott; *see also* U.S. Securities and Exchange Commission Investor Advisory Committee Recommendation Related to Climate-Related Disclosure Rule Proposals (Sep. 21, 2022), https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220921-climate-related-disclosurerecommendation.pdf ("IAC Recommendation").

financially material, how they use these disclosures to value companies and assess risk, the costs imposed by inconsistent voluntary disclosures, and the need for each component of the Final Rules. The Commission carefully considered that evidence in adopting the Final Rules. The Proposed Rescission does not contend with this evidence, and therefore violates the change in position doctrine and is arbitrary and capricious under the APA. *See, e.g., Fox*, 556 U.S. at 515–16; *Encino Motorcars*, 579 U.S. at 221; *Wages & White Lion Investments*, 604 U.S. at 566.

The Proposed Rescission also ignores the fact that investors were not the only ones who supported the Final Rules or saw value in more standardized climate-related disclosures. Many registrants also agreed that mandatory climate disclosures would be appropriate and helpful, even if they opposed specific aspects of the rules or asked the Commission to make revisions.[82] They agreed that more consistent and comparable disclosures of material climate-related information, including greenhouse gas emissions, would be useful to "reasonable, mainstream investors . . . so that they can understand how companies identify, govern, and manage climate-related risks and make decisions about securities."[83] Even registrants who opposed the Proposed Climate-Related Disclosure Rules noted that they supported the Commission's intention in standardizing climate-related disclosures for investors,[84] and urged the Commission to ground

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[82] *See* Comment Letters (SEC File No. S7-10-22), from Alphabet et al.; Amazon; SalesForce (June 15, 2022); Bank of Am. ("Various stakeholders, including asset owners and asset managers, will benefit from consistent, standardized disclosures addressing climate-related risks and opportunities to help them make decisions on where best to deploy capital in alignment with investor goals."); Bank Policy Institute ("BPI") (June 16, 2022); Dominion Energy, Inc. ("Dominion Energy") (June 17, 2022) ("We believe climate-related disclosures are important to our investors and support the Commission's efforts to design rules and guidance to provide investors with the disclosures that they need in order to make informed decisions."); Long-Term Stock Exchange ("LTSE") (June 17, 2022) (stating that climate "represents an investment risk, and investors deserve to understand what public companies are doing to address this issue… [w]e believe the proposal represents a significant step toward standardizing, clarifying and verifying disclosures so as to enable investors to make more informed investment decisions…"); United Airlines Holdings, Inc. ("United Airlines") (June 17, 2022); Walmart (June 17, 2022) ("The Company supports the adoption of rules that can facilitate the disclosure of consistent, comparable, and reliable material climate-related information."); and Chevron (June 17, 2022) ("We see opportunities for the SEC to provide similar flexibility for mandatory reporting" and "[w]e support well-designed disclosure of Scope 1, 2, and 3 GHG emissions to provide comparable and relevant data.").

[83] Comment Letter (SEC File No. S7-10-22), from Walmart; *see also* Comment Letters (SEC File No. S7-10-22), from Amazon; American Apparel and Footwear Ass'n (June 17, 2022); Bank of Am.; Chevron; Microsoft (June 17, 2022); United Airlines; and United Parcel Service, Inc. ("UPS") (Jun. 14, 2022).

[84] *See, e.g.*, Comment Letters on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22), from U.S. Chamber of Commerce ("Chamber of Commerce") (June 17, 2022) ("The Chamber is committed to working constructively with the SEC to develop and ensure and effective, standardized and consistent mandatory disclosure regime under the federal securities laws so that the marketplace has the benefit of material climate-related information that informs investor decision making as investors seek out financial returns," and "[t]he Chamber believes companies should disclose climate risks

the disclosures in materiality,[85] which the Commission did in the Final Rules. *See* Adopting Release at 21675.

By ignoring these comments, as well as the studies the Commission previously considered, the Proposed Rescission fails to engage with a record that was largely supportive of mandatory climate disclosures for the very reasons that the Proposed Rescission now summarily rejects: more consistent and comparable disclosures of material climate-related information are beneficial for both investors and public companies. As the Commission disregards these facts without reason, the Proposed Rescission is arbitrary and capricious—the Commission has failed to meet the threshold "show[ing] that there are good reasons for the new policy," *Fox*, 556 U.S. at 515, let alone "provide [the] more detailed justification" required when basing a new policy on "factual findings that contradict those which underlay its prior policy," *id.* at 515; *see also Nat'l Ass'n of Mfrs*, 105 F.4th at 810–12 (applying *Fox* in the context of an SEC rule rescission, finding the rescission was not a mere "policy judgment but rather a new factual finding that contradicted an earlier one," thereby requiring a "more detailed explanation" for the change in position).

c) The Proposed Rescission Reverses Without Support the Prior Commission's Finding That Existing Disclosures Are Inadequate.

One of the primary policy reasons the Commission provides for proposing to rescind the Final Rules is that it now views them as "unnecessary" because "existing disclosure requirements already elicit information about the material effects of climate-related matters." Proposed Rescission at 33309. This is a complete reversal from the Commission's finding in the Final Rules that the existing disclosure requirements were inconsistent, incomplete, and often boilerplate, which was based on (1) the extensive comment file considered in the adopting release, *see* Adopting Release at 21677–80, (2) the Commission's own assessment, based on staff experience with climate-related disclosures, *see id.* at 21679 n.135, and (3) an assessment of third-party surveys, studies, and data, *id.* at 21841–44.[86] Dismissing the Commission's previous

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when material and the SEC can provide companies with valuable structure and direction as to how to do so.") and National Association of Manufacturers ("NAM") (June 6, 2022) ("NAM supports the SEC's stated goal of eliciting investment decision-useful information that is necessary or appropriate to protect investors." (cleaned up)).

[85] *See* Comment Letters (SEC File No. S7-10-22), from the Chamber of Commerce ("[A]ny final rules adopted should be grounded in the established understanding of materiality . . . "); NAM ("[W]e support specific and targeted changed to narrow the scope of the proposed rule, reduce burdens on public companies, [and] reinforce the importance of financially material disclosures . . ."); American Bar Association, Business Law Section ("ABA") (June 24, 2022); American Petroleum Institute ("API") (June 17, 2022); and Society for Corporate Governance ("Soc. Corp. Gov.") (June 17, 2022).

[86] Citing Center for Capital Markets, 2021 Survey Report: Climate Change & ESG Reporting from the Public Company Perspective, https://www.centerforcapitalmarkets.com/wpcontent/uploads/2021/08/CCMC_ESG_Report_v4.pdf); TCFD, Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-

finding and the underlying evidence without any support or reasoned explanation is arbitrary and capricious. *See, e.g.*, *Fox*, 556 U.S. at 515–16; *Encino Motorcars*, 579 U.S. at 221; *Wages & White Lion Investments*, 604 U.S. at 566.

The record before the Commission in the Final Climate-Related Disclosures rulemaking demonstrated that current disclosure requirements are not adequately meeting investors' needs.[87] According to both investors and registrants, current climate-related disclosures are inconsistent, difficult to compare, often boilerplate, and insufficient to gauge the climate-related effects on a company's business and financial condition. *See* Adopting Release at 21673. Many commenters specifically stated that the Commission's current reporting requirements do not yield sufficient information to value financial impacts of climate-related risks on companies.[88] In their view, under the current requirements, registrants selectively choose which climate-related disclosures to provide and fail to provide the level of detail investors need to assess the financial impact on registrants.[89] As discussed above, *see supra* Section IV(B)(1)(b), Commenters also supported the Proposed Climate-Related Disclosure Rules specifically because they represented a significant improvement over the status quo by increasing the consistency and comparability of registrant's climate-related disclosures.[90]

In the Final Rules, the Commission found that while climate-related disclosures have increased since the issuance of the 2010 climate guidance, there is "considerable variation in the content, detail, and location (*i.e.*, in the reports filed with the Commission, in sustainability reports posted on registrant websites, or elsewhere) of climate-related disclosures." *See* Adopting Release at 21679, n. 135. The staff also observed "significant inconsistency in the depth and specificity of disclosures by registrants across industries and within the same industry." *Id.* With

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11052018.pdf; IOSCO, Report on Sustainability-related Issuer Disclosures (June 2021), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD678.pdf, and GAO, Climate-Related Risks, (2018), https://www.gao.gov/assets/gao-18-188.pdf; Moody's Analytics, TCFD-Aligned Reporting by Major U.S. and European Corporations (Feb. 2022), https://www.moodysanalytics.com/articles/pa/2022/tcfd_aligned_reporting_by_major_us_and_european_corporations.

[87] *See, e.g.*, Comment Letters (SEC File No. S7-10-22), from AllianceBernstein; BlackRock; CalPERS; CalSTRS; Calvert; Decatur Capital Management; Domini Impact Investments (June 17, 2022); Harvard Mgmt. Co.; Impax Asset Mgmt.; Trillium Asset Mgmt. ("Trillium") (Oct. 20, 2022); and Wellington Mgmt. Co. *But see, e.g.*, Comment Letters (SEC File No. S7-10-22), from the Chamber of Commerce; NAM; and Soc. Corp. Gov.

[88] *See, e.g.*, Comment Letters (SEC File No. S7-10-22) from AllianceBernstein; Amer. for Fin. Reform Ed. Fund, Public Citizen, Sierra Club, Ocean Conservancy, and the Sunrise Project (June 16, 2022) ("Amer. for Fin. Reform, Sunrise Project et al."); As You Sow (June 21, 2022); BlackRock; Bloomberg; Boston Common Asset Management; CalPERS; CalSTRS; Calvert; Ceres; CFA; Franklin Templeton Inv.; Harvard Mgmt. Co.; IAA; Miller/Howard (June 16, 2022); Morningstar Inc. (June 16, 2022); New York State Comptroller (June 3, 2022); PRI; Soros Fund Management LLC (June 17, 2022); Union of Concerned Scientists ("UCS") (June 17, 2022); U.S. Sustainable Inv. Funds ("US SIF") (June 17, 2022); and Wellington Mgmt.

[89] *See, e.g.*, Comment Letters (SEC File No. S7-10-22) from BlackRock; Bloomberg; Calvert; Ceres; Franklin Templeton; Miller/Howard; PRI; and US SIF.

[90] *See, e.g.*, Comment Letters (SEC File No. S7-10-22) from BlackRock; Decatur Capital Management; and TIAA.

respect to disclosures in Form 10-K filings, the SEC found that those disclosures "frequently contain general, boilerplate discussions that provide limited information as to the registrants' assessment of their climate-related risks of their impact on the companies' business." *Id.*

The Proposed Rescission, in contrast, asserts that the existing disclosure requirements, including the 2010 Guidance, and anti-fraud provisions are sufficient and thus the Final Rules are "unnecessary." *See* Proposed Rescission at 33309. The Commission, however, does not address the many comments in the record about the inadequacy of the current requirements, nor does it provide an analysis of the substance of climate-related disclosures. The Proposed Rescission presents an updated keyword analysis in annual reports, but the Commission concedes that this analysis "is not meant to capture the substantive depth or quality of climate-related disclosures." *See* Proposed Rescission at 33317–18. Thus, the Commission does not provide any reason why it is reversing its previous assessment of the inadequacy of the current requirements or investors' need for more detailed disclosures, other than to claim, inaccurately, that existing requirements already elicit material climate-related information. *See* Proposed Rescission at 33309.

The Commission also detailed in the Adopting Release that the current disclosure landscape is inadequate because it is costly: investors expend considerable time and resources gathering and standardizing inconsistent climate information available under the status quo. *See* Adopting Release at 21670, 21842, and 21850. Here, too, the Proposed Rescission reverses the findings of the Commission in the Adopting Release that investors face these costs without fully addressing the relevant evidence in the record. The Proposed Rescission, in a sentence, acknowledges that "investors have faced and may continue to face costs associated with obtaining or verifying information related to a registrant's climate-related risks or management thereof." Proposed Rescission at 33312. But its only response is that the Commission no longer "agree[s] that it is appropriate to . . . subsidize the informational demands of certain investors who choose to focus their investment strategies on climate-related matters or who have interests other than the pursuit of a financial return that are driving their informational demands." *Id.* This response misleadingly suggests that investors who care about climate-related information are a small, unrepresentative minority of investors, rather than most major institutional investors with trillions of dollars in assets under management. Yet, as described above, this assertion contradicts the record of investors explaining why climate-related disclosures are financially material, how they use them to value companies and assess risk, the costs imposed by inconsistent voluntary disclosures, and the need for each component of the Final Rules. The Commission carefully considered that evidence in adopting the Final Rules. The Proposed Rescission dismisses that evidence and takes a completely contradictory view without the more detailed explanation required. *Nat'l Ass'n of Mfrs.*, 105 F.4th at 810–12; *see also Encino Motorcars*, 579 U.S. at 221.

d) The Proposed Rescission Reverses Without Support the Prior Commission's Finding That the Final Rules Promote Efficiency, Competition, and Capital Formation.

In the Final Rules, the Commission provided a reasoned, supported rationale for its conclusions on the effect of the Final Rules on competition, market efficiency, and capital formation. The Commission analyzed the record and performed an economic assessment, finding that the Final Rules would reduce information asymmetry and uncertainty about future cash flow

estimates, leading to a lower cost of capital, improved stock liquidity, and efficient capital allocation. Adopting Release at 21829–30, 21846–50. Yet, with no analysis of the Final Rules' finding and using flawed economics, *see infra* Section IV(B)(6), the Commission now reverses that position, claiming that the "Final Rules increase the overall costs associated with accessing and participating in capital markets." Proposed Rescission at 33314. The Commission's change of policy contradicts the Final Rules' record and the Adopting Release's economic analysis without a reasonable and detailed explanation, and is therefore arbitrary and capricious. *See Fox*, 556 U.S. at 515–16.

When adopting the Final Rules, the Commission found that standardized, comparable, and reliable climate disclosure would (1) enable investors to better evaluate registrants; (2) reduce information asymmetry and mispricing in the market; and thus (3) improve market efficiency, competition, and capital formation. *See* Adopting Release at 21888–91. The Commission grounded its conclusions in the extensive record before it. Drawing on the comment file, the Commission concluded that the final rules would improve efficiency by "reducing the costs associated with compiling and organizing information on climate-related risks and oversight" and improving the comparability of the disclosures because they would be filed in a machine-readable format. *Id.* at 21888. The Commission also concluded that standardized reporting practices would "level the playing field among firms, making it easier for investors to assess the climate-related risks of a registrant against those of its competitors," which would increase competition. *Id.* at 21890. With respect to capital formation, the Commission found that "[m]ore consistent, comparable, and reliable disclosures could lead to capital market benefits in the form of improved liquidity and lower costs of capital." *Id.* at 21890.

In addition to basing its findings on the record, the Commission also drew on empirical research and academic studies to substantiate the connection between improving access to more consistent and comparable information for investors and market efficiency. For example, the Commission found that academic research supported its finding that reducing information asymmetries improves capital formation because it leads to more efficient prices, increased public trust in markets, and greater investor participation and market liquidity. *Id.* at 21888 n.3134; 21890 nn.3152–55. The Commission also found that "expected improvements in market efficiency are broadly consistent with empirical research." *Id.* at 21889. That empirical research demonstrated pricing effects based on the availability of climate-related information, including instances when the availability of climate-related information correlated with detectable pricing differences between comparable companies as well as mispricing effects as a result of inconsistently available information. *Id.* The Commission also cited empirical evidence to support its conclusion that machine-readable disclosures have positive impacts for the cost of capital and stock liquidity for registrants. *Id.*

In fact, studies have found that enhanced disclosure actually helps facilitate capital formation and investment by improving firm market valuation, liquidity, and efficiency. Specifically, one study found that disclosure about different types of climate risk is generally positively associated with firm market value because climate change disclosure reduces a firm's cost of capital, leading to higher valuations.[91] Research also show that climate risk disclosure

[91] *See, e.g.*, Roberto Vestrelli, Andrea Fronzetti Colladon, & Anna Laura Pisello, *When Attention to Climate Change Matters: The Impact of Climate Risk Disclosure on Firm Market Value,* 185 Energy Pol'y 113938 (2024). https://doi.org/10.1016/j.enpol.2023.113938.

improves ownership breadth and liquidity,[92] undermining the Commission's current assertions that the Final Rules would impede capital formation.

In the Adopting Release, the Commission also addressed directly the concern that compliance costs might deter companies from entering or remaining in the public markets. *See* Adopting Release at 21891. The Adopting Release acknowledged that a number of commenters raised this point and acknowledged the mechanism, namely that sufficiently high costs could lead a marginal company to defer an offering or deregister. *Id.* The Commission fully grappled with this concern. *Id.* It weighed the offsetting disadvantages of avoiding public registration, including more limited capital-market access and higher financing costs, and it pointed to accommodations adopted to reduce the burden, including relief from greenhouse gas emissions disclosures for smaller reporting companies and emerging growth companies, longer phase-in periods, extending a legal safe harbor over specified forward-looking statements, and prospective-only application of certain disclosures. *Id.*; *see also* Adopting Release at 21675 (describing modifications to the proposed rules in response to comments). On that record, the Commission reached an express conclusion that, on balance, the benefits of public-company status remained strong enough that few companies would likely avoid the public markets because of the rules. *Id.* at 21891.

The Proposed Rescission reverses these findings without the more detailed explanation a change of position requires when the agency's "new policy rests upon factual findings that contradict those which underlay its prior policy." *Fox*, 556 U.S. at 515. On the benefit side, the Proposed Rescission recites the Adopting Release's efficiency and capital formation findings and then states only that the Commission "disagree[s] that these policy goals should be pursued at such significant costs," Proposed Rescission at 33313, and that the comparability benefits should be "discounted" because of "speculative assumptions," *id.* at 33309.

Acknowledging a prior finding and then expressing disagreement with it does not satisfy the obligation to confront the earlier evidence and explain why it no longer supports the finding. *See id.*; *Nat'l Ass'n of Mfrs.*, 105 F.4th at 810–13 (applying *Fox* to find an SEC Rule Rescission arbitrary for failure to "engage in any analysis of its prior finding . . . or explain *why* it had changed its mind"). The Proposed Rescission does not engage with the comment record or the studies the Commission considered in the Final Rules, identify any flaws in the Commission's information asymmetry analysis, or explain why the documented comparability benefits are illusory. It is, therefore, an arbitrary and capricious change in position. *See, e.g., Fox*, 556 U.S. at 515–16; *Encino Motorcars*, 579 U.S. at 221; *Wages & White Lion Investments*, 604 U.S. at 566.

Aside from failing to meet its additional obligations to explain such contradictions with its prior findings, the Commission's Proposed Rescission plainly fails to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines*, 371 U.S. at 168 (1962)).

The Proposed Rescission also makes the affirmative claim that the rules "hinder[], rather than facilitate[], capital formation" and "negatively affect[] . . . capital markets' information efficiency." Proposed Rescission at 33314. That conclusion is the direct inverse of the Adopting Release's central finding, yet the Proposed Rescission offers no support for its claims, let alone

[92] *See, e.g.*, Jiang Luo et al., The Capital Market Implications of Climate Risk Disclosure (UCLA Anderson Sch. of Mgmt. Working Paper, May 24, 2025), https://anderson-review.ucla.edu/wp-content/uploads/2025/10/ClimateDisclosure-1.pdf.

the more detailed explanation required in such circumstances—failing both the threshold requirements of a rational basis under the APA, *see, e.g., State Farm*, 463 U.S. at 43, and the additional requirements for explaining reasoning where a change of position contradicts prior findings. *See, e.g.*, *Fox*, 556 U.S. at 515–16. While the Commission observes that the "number of public companies has diminished significantly since 2000," it offers no evidence to connect that reduction to disclosure obligations beyond the vague statement that "some observers point[] to the cost of public company disclosure as one deterrent." Proposed Rescission at 33314. "One deterrent" mentioned by "some observers" is not a reasoned justification for reversing its findings. Likewise, as discussed in Section IV(B)(6)(a), *infra*, the Commission's economic analysis of the cost impacts of the Final Rules overestimates the costs by over 60%, negating its contention that "the proposed rescission would significantly reduce regulatory compliance costs for registrants affected by the Final Rules." Proposed Rescission at 33315.

Thus, the Proposed Rescission reverses the Commission's previous factual findings that the Final Rules would promote efficiency, competition, and capital formation without a reasonable basis, and is arbitrary and capricious. *See, e.g.*, *State Farm*, 463 U.S. at 43; *Fox*, 556 U.S. at 515–16.

e) The Proposed Rescission Reverses Without Support the Prior Commission's Finding That the Final Rules Appropriately Balance Investor Need for Information With the Risk of Information Overload.

The Proposed Rescission characterizes the Final Rules as providing investors, "at great cost, with an avalanche of information that is unlikely to be material to the decision-making of a reasonable investor." Proposed Rescission at 33309. This claim reverses a specific finding the Adopting Release made on the basis of the comment record, without engaging with that finding or explaining its change in position. These failures constitute arbitrary and capricious decision-making. *See, e.g., Fox*, 556 U.S. at 515–16; *Encino Motorcars*, 579 U.S. at 221; *Wages & White Lion Investments*, 604 U.S. at 566.

The prior Commission considered the information-overload concern directly, carefully weighing comments that raised concerns about the volume of disclosures. *See, e.g.*, Adopting Release at 21678, 21694, 21698, 21804, 21825, 21851. First, the Commission included explicit materiality qualifiers throughout the rule in direct response to that concern. *See, e.g.*, *id.* at 21698, 21700, 21707, 21719, 21726, 21851. Second, in adopting Item 1508's Inline XBRL structured data requirement, the Commission found that machine-readable tagging would enable automated extraction and analysis, large-scale aggregation, comparison, filtering, and other analysis of required disclosures across registrants. *Id.* at 21869. Multiple commenters supported the tagging requirement specifically because it addresses investors' ability to efficiently process disclosure at scale. *See id.* at 21825, 21870 ("Many commenters agreed that the proposed structuring requirement would enable more efficient data processing and more informed investment decisions"). The Commission also cited empirical research and academic studies documenting the positive impacts of structuring disclosure data on financial analysis—not just for sophisticated investors, but also for retail investors, who generally "rely on analysts' interpretation of financial disclosures rather than directly analyzing those disclosures themselves." *Id.* at 21869–70, nn.2948–52.

The Proposed Rescission itself acknowledges the utility of structured disclosures in its economic analysis, stating that the Final Rules' structured data requirements "could also serve to mitigate these concerns by providing a means for certain investors to organize and process the required disclosures." Proposed Rescission at 33331. Having acknowledged the mitigation, the Proposed Rescission offers no explanation for why it was inadequate. It simply states that "the possibility remains" that disclosure volume could "unduly emphasize" climate risk or "reduce the practical utility of the disclosures for investors." *Id.* at 33331. Reasserting a concern the prior Commission found to be mitigated, without engaging the prior finding or the evidence supporting it does not constitute a reasoned decision, much less the requisite more detailed, explanation for a reversal which contradicts prior findings. *See, e.g.*, *State Farm*, 463 U.S. at 43; *Fox*, 556 U.S. at 515–16.

f) The Proposed Rescission Reverses Without Support the Prior Commission's Finding That the Final Rules Would Provide More Consistent and Comparable Disclosures.

The Proposed Rescission asserts that consistency and comparability benefits "should be discounted" because the Final Rules permit variable methodologies and assumptions across registrants, limiting their comparability in practice. Proposed Rescission at 33309. However, the relevant inquiry is whether the Final Rules improve the quality and comparability of climate-related information relative to the existing disclosure regime. As the Commission's argument in the Proposed Rescission applies the wrong baseline, it fails to provide a reasoned basis for rejecting the prior Commission's findings regarding the Final Rules' benefits. *See, e.g.*, *State Farm*, 463 U.S. at 43; *Fox*, 556 U.S. at 515–16.

The Final Rules were designed to produce materially more consistent and comparable climate-related information than the largely voluntary disclosure baseline they replace. They were not designed to achieve perfect uniformity. The Adopting Release documented the baseline of climate-related disclosures at length: disclosure under the 2010 Guidance produced boilerplate, incomplete, and non-comparable information that a broad range of investors found inadequate for investment and voting decisions. *See* Adopting Release at 21679, 21831–32, 21841–42, 21847–48. On the basis of the comment file, staff experience, and the studies it considered, the Commission made an express finding that the structured framework of the Final Rules would improve consistency and comparability relative to that baseline in meaningful ways, even accounting for residual variation arising from materiality judgments, methodology choices, and conditional disclosure triggers. *See id.* at 21849 ("Given the usefulness of climate disclosures to investors in accurately valuing a company and assessing its risks, the use of a standardized disclosure framework will mitigate agency problems arising from registrants being able to selectively disclose . . . information, which reduces transparency and impairs investors' ability to effectively assess the potential financial impacts of a registrant's climate-related risks."). The Commission concluded that the improvements over the baseline would "reduce information asymmetries between managers and investors as well as amongst investors . . . which will improve liquidity and reduce transaction costs for investors . . . and may lower firms' cost of capital." *Id.*

The Proposed Rescission does not engage this baseline comparison. It identifies sources of residual within-framework variation and concludes that comparability benefits are substantially compromised. *See* Proposed Rescission at 33309. But these limitations were present

in the record before the prior Commission, which weighed them and found on balance that the structured framework produced a net improvement over voluntary disclosure. Reversing that finding requires engaging the evidence underlying it, not identifying limitations the prior Commission already considered and resolved. The Commission, therefore, fails to "examine the relevant data," and any explanation it offers can neither be "satisfactory" nor "rational," as required by the APA. *State Farm*, 463 U.S. at 43.

g) The Proposed Rescission Reverses Without Explanation the Prior Commission's Finding that Each Disclosure Provision Is Justified and Stands on Its Own.

The Proposed Rescission bluntly reverses the entire suite of climate-related disclosure rules in the Final Rules without addressing the reasoning underpinning each provision. This is plainly inconsistent with the factual record and the Commission's prior policy and findings, as the Final Rules provide detailed justifications for each disclosure provision, including a provision-by-provision analysis of the costs and benefits. *See* Adopting Release, IV.C.2 (discussing economic costs and benefits of each specific provision). The Final Rules' provision-by-provision approach mirrored the comments in the comment file, which reflected specific feedback and recommendations for improving upon each provision. *See* Adopting Release at II.C.1.b, II.C.2.b, II.D.1.b, II.D.2.b, II.D.3.b, II.D.4.b, II.E.1.b, II.E.2.b, II.F.2, II.G.2, II.H.2, II.I.1.b, II.I.2.b, II.I.3.b, II.I.4.b, II.I.5.b, II.J.2, II.K.2.b, II.K.3.b, II.K.4.b, II.K.5.b, II.K.6, and II.K.7 (discussing the comments specific to each provision of the final rules). The rationale for each provision of the Final Rules stands on its own. Yet, the Commission's Proposed Rescission "disregard[s] the facts and circumstances that underlay [each provision of] . . . the prior policy," *Fox*, 566 U.S. at 516, failing to separately consider and provide a reasoned basis for rescinding, rather than maintaining or modifying, each provision.

The Commission developed the provisions of the Final Rules "to be severable to the fullest extent permitted by law." Adopting Release at 21829. The Commission then specified that the following provisions are capable of operating independently: (1) climate-related risk disclosures, (2) targets and goals disclosures, (3) greenhouse gas emissions disclosures and assurance, and (4) Article 14 financial statement disclosures. *Id.* The Proposed Rescission, in contrast, takes the opposite view, stating: "we now conclude that the individual items of disclosure in the Final Rules are pieces of a larger whole and cannot operate sensibly without the others." Proposed Rescission at 33308. The Proposed Rescission, however, does not provide a reasoned basis for this reversal on severability. This "'unexplained inconsistency' in agency policy is 'a reason for holding [its] interpretation to be an arbitrary and capricious change from agency practice,'" *Encino Motorcars*, 579 U.S. at 221. Likewise, a change in position that contradicts prior findings is arbitrary and capricious if it lacks a more detailed explanation. *See Fox*, 556 U.S. at 515.

The Proposed Rescission fails adequately to explain its conclusion that the Final Rules would not make sense to investors as individual provisions. *See* Proposed Rescission at 33308. It focuses on the fact that the Adopting Release described certain provisions taken together as providing investors with an even more complete understanding of a registrant's exposure to climate risks than information from one disclosure provision alone. *Id.* But the Adopting Release also explained why each individual provision elicits useful information on its own. To provide a reasoned explanation for why the Commission now takes the opposite view, it has the burden of

going provision-by-provision to examine whether and to what extent the provision meets the Commission's policy goals or could be modified to address the Commission's concerns, while still responding to the considerable record in support of the provision. As the Commission provides very little analysis of the interrelationship between the provisions, the public cannot "reasonably . . . discern" why the Commission now takes the position that none of the individual provisions can function independently. *Jimenez-Cedillo*, 885 F.3d at 299–300 (internal quotation omitted).

By not analyzing each provision separately, the Commission does not enable the public to have a meaningful opportunity to weigh in on whether and how the individual provisions further the Commission's stated policy goals. The Commission states in the Proposed Rescission that, in designing a disclosure regime, the Commission should consider the "common interests of reasonable investors . . . in information regarding the financial performance of a company, the pricing of securities, and the prospect for economic and financial return from the disclosing company." Proposed Rescission at 33311. Each disclosure provision within the Final Rules does, in fact, provide "investors more reliable and decision-useful disclosure of strategies and risks that a registrant has determined will likely materially impact its business, results of operations, or financial condition." Adopting Release at 21685. Yet, the Proposed Rescission does not provide a reasoned explanation for why each provision of the Final Rules now fails to align with the Commission's policy goals. Nor does the Commission propose meaningful alternatives for the public to consider, as discussed further below, *see infra* Section IV(B)(2). "At the very least [] alternative way[s] of achieving the objectives of the [Securities] Act should have been addressed and adequate reasons given for [the] abandonment" of each provision. *State Farm*, 463 U.S. at 48. Moreover, the Proposed Rescission is arbitrary as it leaves the public "guessing as to the agenc[y's] rationale." *Thakur*, 148 F.4th at 1106–07.

2. The Proposed Rescission Fails Adequately to Consider Reasonable Alternatives.

While the Proposed Rescission repeatedly endorses a "more principles-based" approach, it does not meaningfully consider alternatives to the Final Rules that could bridge the gap between investors' need for more detailed climate-related disclosures and the Commission's policy preference for more principles-based disclosures. For example, the Commission could have considered: (1) reducing the prescriptiveness of certain disclosures, (2) extending compliance timelines, (3) limiting compliance to large accelerated filers ("LAFs") only, and/or (4) retaining some provisions but not others. The record in the Final Rules is full of recommendations from commenters on modifications that relate directly to providing registrants more flexibility or reducing the burden of compliance.[93] But the Proposed Rescission fails to

[93] *See, e.g.*, Comment Letters on Proposed Rule *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (SEC File No. S7-10-22) from Amazon (providing specific recommendations to Regulation S-X provisions); Amer. Apparel & Footwear Ass'n (recommending moving from a 1% threshold to materiality in the Regulation S-X provisions, and requesting longer compliance timelines for GHG emissions disclosures); American Trucking Ass'n (June 17, 2022) (recommending the Commission expand safe harbors for emissions-related disclosures); Bank of Am. (supporting the Proposed Climate-Related Disclosure Rules, but recommending changes to address "timing challenges with respect to compliance," modify

consider meaningfully any of those alternatives that would potentially meet the Commission's policy goals and the needs of investors and registrants, as documented in the record. That failure to consider reasonable alternatives, particularly ones already developed in the record, is itself sufficient to render the Proposed Rescission arbitrary and capricious. *See State Farm*, 463 U.S. at 51; *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020).

The very brief consideration the Proposed Rescission gives to alternatives, found in Section IV.E, suffers from three serious flaws. First, the consideration is cursory, and it is especially so given a rulemaking record that already contains detailed modification proposals the Commission itself evaluated and in substantial part adopted. *State Farm* "teaches that when an agency rescinds a prior policy its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'" *Regents*, 591 U.S. at 30 (citing *State* Farm, 463 U.S. at 51). When the Commission adopted the Final Rules, it narrowed the 2022 proposal in response to comments from investors and registrants, including by streamlining the requirements, making them less prescriptive, adding materiality qualifiers, reducing the scope of the greenhouse gas emissions disclosure obligations, exempting certain registrants, and extending compliance timelines. *See* Adopting Release at 21675 (discussing the modifications made in the final rules in response to commenters' feedback). Modifications of those kinds are the alternatives to full rescission that Section IV.E declines to address. These proposed modifications were the product of notice and comment and already exist in the record; moreover, the Commission found them workable at the time. If the Commission's policy judgment has shifted, it should consult that record and weigh the documented alternatives on their merits. These are exactly the kinds of alternatives that *State Farm* requires an agency to consider, and the failure to address them renders the Proposed Rescission arbitrary and capricious. *See State Farm*, 463 U.S. at 46, 51; *Regents* at 591 U.S. at 29–30.

Second, the Proposed Rescission rejects any modifications of the Final Rules primarily because of the Commission's view that it lacks statutory authority. *See* Proposed Rescission § IV.E (cross-referencing §§ III.B, III.C). But the Proposed Rescission elsewhere advances "several independent policy judgments" as an independent basis for rescission. *Id.* at 33298. The Commission cannot rely on its statutory authority arguments to escape its obligation to consider alternatives. If the policy rationale independently supports rescission, the alternatives must be evaluated on the basis of the Commission's policy position, on the assumption that the Commission has the authority it elsewhere disclaims. On that assumption, retaining the components that investors and registrants supported lies within the Commission's authority, and the Commission must give a reasoned, policy-based explanation for rejecting them. Failure to do so in the Proposed Rescission is a failure to meet the legal standard for a rescission and reversal in agency policy. *See State Farm*, 463 U.S. at 43; *Regents*, 591 U.S. at 33; *Fox*, 556 U.S. at 515.

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the Regulation S-X provisions, and expand the safe harbor); BlackRock (recommending the Commission tie disclosures on climate-related strategy to materiality and take a more flexible approach on GHG emissions disclosures); BPI (recommending not finalizing the Regulation S-X provisions or at a minimum, significantly narrowing them, and making board and management governance provisions less prescriptive); ICI (recommending the Commission require registrants to file material climate-related information and furnish non-material information); Walmart (recommending the Commission modify the Proposed Climate-Related Disclosure Rules to "[r]equire principles-based climate disclosures that include a materiality qualifier" and "[r]equire registrants to furnish—rather than file—Scope 1 and 2 emissions metrics").

The Proposed Rescission asserts two additional reasons for declining to consider alternatives: "the interconnectedness of the Final Rules, and the inappropriateness and burden of the Commission issuing disclosure rules focused specifically on climate-related matters." As set forth above, the Commission's assessment of the interconnectedness of the Final Rules is flawed. Even if the Commission went provision-by-provision and determined that certain provisions were in fact interconnected, that finding would not discharge the Commission's legal obligation to consider reasonable alternatives including targeted modifications to enable certain provisions to function independently. *See supra* Section IV(B)(1)(g). Similarly, the Commission's policy objections to the appropriateness and burden of the disclosures could have been addressed with alternatives that, for example, made the disclosure provisions more principles-based, extended compliance dates, or exempted smaller reporting companies and emerging growth companies from more provisions. Each of these alternatives, supported by comment letters in the record,[94] could have provided the Commission with a way to address the policy concerns while still addressing investors' well-documented need for more standardized climate-related information for investment decision-making. The consideration of these alternatives is not optional; it is the Commission's legal obligation, which it fails to meet. *See State Farm*, 463 U.S. at 43; *Regents*, 591 U.S. at 28–30.

Third, the Proposed Rescission's consideration of alternatives does not actually weigh the costs and benefits of any alternatives. Section IV.E observes that retaining some aspects of the Final Rules would reduce cost savings for registrants and would also reduce the disclosure costs borne by investors who use the information. The Proposed Rescission mentions both effects but does not weigh or attempt to quantify those effects, even though there is evidence in the record that could have been used to do so. Because the Proposed Rescission rests on the Commission's judgment that the costs of the Final Rules exceed their benefits, it would have given the public more opportunity to understand the Commission's rationale to fully rescind the rules if it had weighed the comparative costs and benefits of alternative approaches that would have retained aspects of the Final Rules. Without that analysis, the public is in the dark about the Commission's rationale.

The omission is compounded by the flaws in the economic analysis as a whole, *see infra* Section IV(B)(6), in which the Commission quantifies the registrant cost savings that rescission would produce, *see* Proposed Rescission at 33327–29, while declining to value the investor benefits that rescission would eliminate, *id.* at 33331–33, despite data in the record on the cost to investors to gather and standardize climate-related information in the absence of the Final Rules, *see* Adopting Release at 21842 (citing 2022 ERM survey), 21850 (citing comments on costs to investors to gather and standardize information under the status quo).

An agency cannot discharge its cost-benefit obligation by quantifying one side of the ledger while disregarding the other, *see Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–50 (D.C. Cir. 2011), *State Farm*, 463 U.S. at 43, particularly where it has information it could have used to attempt to quantify the costs to investors. Applied to the alternatives, this approach sets aside options that would potentially preserve investor benefit at incremental cost because the rescission does not adequately value what investors stand to lose. A reasoned analysis would weigh the

[94] *See, e.g.*, Comment Letters (SEC File No. S7-10-22) from Amazon; American Apparel& Footwear Ass'n; Bank of Am.; BPI; BlackRock; U.S. Chamber of Commerce (June 16, 2022); Chevron (June 17, 2022); CII; ICI; IAA; Microsoft Corporation; PIMCO; PricewaterhouseCoopers LLP; and United Airlines.

marginal investor benefit that an intermediate alternative to full rescission would preserve against the marginal compliance cost it imposes, using comparable treatment of both sides of the cost-benefit ledger. The Proposed Rescission does not do that.

For these reasons, the Commission failed to adequately consider alternatives, and thus the Proposed Rescission is arbitrary and capricious.

3. The Proposed Rescission Runs Counter to the Evidence of the SEC's Practice of Requiring Category-Specific Disclosures.

The Proposed Rescission posits that "the Final Rules prioritize one potential factor over others that may materially affect a registrant's operations and financial condition," in a manner inconsistent with the Commission's standard practice. *See* Proposed Rescission at 33309. This argument runs counter to the evidence of the Commission's own precedent for specific disclosures and mischaracterizes what the Final Rules require. *See State Farm*, 463 U.S. at 43.

The Proposed Rescission's assertion that category-specific disclosure frameworks are inconsistent with standard practice runs counter to the evidence of the Commission's history of disclosure requirements. Since 1977, the Commission has required disclosure of the material effects of compliance with environmental regulations on capital expenditures, earnings, and competitive position under what is now Item 101. *See* Adopting Release at 21684. Since 1997, the Commission has required quantitative and qualitative disclosure of market risk under Item 229.305, covering interest rate risk, foreign currency risk, commodity price risk, and related categories, in a standardized framework applicable broadly to registrants. *Id.* at 21684. As discussed above, *see supra* Section IV(A)(1)(e), cybersecurity disclosures are a more recent example of a category-specific disclosure requirement. These are examples of category-specific frameworks requiring assessment of a defined risk category, the kind of framework the Proposed Rescission now characterizes as inconsistent with the Commission's approach. The Proposed Rescission itself acknowledges other category-specific disclosure requirements, such as those related to oil and gas, real estate, and specific types of transactions, *see* Proposed Rescission at 33304, n.99; 33310, n.192, but dismisses them briefly in a footnote without a reasoned explanation. In doing so, the Commission ignores and fails to grapple with other long-standing examples of disclosure requirements that focus on a specific category of risk.

In explaining why the Final Rules are different from other examples of category-specific disclosures, the Proposed Rescission asserts that other category-specific disclosures "do not require virtually every registrant to devote time and resources to determining whether it may have a disclosure obligation." Proposed Rescission at 33310 n.192. But in making this argument, the Proposed Rescission overstates the scope of what the Final Rules actually require from "virtually every registrant." *See id*.

The Final Rules are not different from other category-specific disclosures that require registrants to undertake some analysis to determine whether they have a disclosure obligation. Like those other examples, the Final Rules are tailored to elicit material information and mitigate compliance burdens. *See* Adopting Release at 21675–76. For example, the greenhouse gas emissions disclosure under Item 1505 applies only to accelerated filers and LAFs. *Id.* at 21732–33. Beyond that, all but the board governance disclosures in Subpart 1500 are conditioned on a registrant's determination that it faces material climate-related risks. *See id.* at 21675 (discussing, generally, modifications from the Proposed Climate-Related Disclosure Rules). A registrant concluding through good-faith assessment that climate risk is not material to its particular

circumstances is not required to provide disclosure under the strategy, risk management, scenario analysis, or targets provisions, which flow from a material risk finding. The Regulation S-X Article 14 financial statement disclosures carry their own quantitative threshold. The characterization of the Final Rules as requiring intensive climate-specific analysis across virtually the entire registrant population thus significantly overstates the scope of the materiality-grounded approach the Commission adopted.

As a result, the Proposed Rescission's assertion that the Final Rules are at odds with the SEC's disclosure regime by requiring category-specific disclosures runs counter to the evidence and cannot be a reasoned explanation for rescission. *State Farm*, 463 U.S. at 43.

4. The Proposed Rescission Runs Counter to the Evidence of Recent Developments in Global Mandatory Climate Disclosures.

The Proposed Rescission suggests that international developments on mandatory climate disclosures reinforce the Commission's view that the Final Rules were "misguided." Proposed Rescission at 33310. In support of that position, the Commission cites to recent developments in the European Union's ("EU") Corporate Sustainability Reporting Directive ("CSRD") and the International Sustainability Standard Board's ("ISSB") climate-related disclosures standard. *Id.* at 33311. The Proposed Rescission's assertions are a mischaracterization of the developments and run counter to the evidence. Contrary to the Proposed Rescission's characterization, *see* Proposed Rescission at 33311, the evidence shows that recent international developments reflect continued global momentum toward mandatory climate-related disclosure, not a retreat from it. An agency's reliance on a factual premise that "runs counter to the evidence before the agency" cannot survive arbitrary-and-capricious review. *State Farm*, 463 U.S. at 43.

The Commission's mischaracterization of international developments is consequential because of its reliance on these developments to support its view that the Final Rules were misguided. Proposed Rescission at 33310. In fact, the evidence shows that recent changes to CSRD and ISSB reflect efforts to improve implementation and reduce compliance burdens – not retreat from mandatory climate-related disclosures.

Contrary to the Proposed Rescission's description, the February 2026 CSRD revisions do not represent a "step back" in the EU from mandatory climate disclosure. Proposed Rescission at 33311. In the legislation that modified the CSRD and other disclosure requirements, "Omnibus I," the EU reaffirmed its commitment to the core mandatory regime and merely made adjustments to "reduce compliance burdens," particularly for large companies.[95] The changes under Omnibus I raised the threshold for both EU and non-EU companies required to make disclosures, and extended timelines for the second wave of companies required to comply by two

[95] Directive 2026/470, of the European Parliament and of the Council of 24 February 2026 Amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as Regards Certain Corporate Sustainability Reporting Requirements and Certain Corporate Sustainability Due Diligence Requirements, 2026 O.J. (L 2026/470) 1 (EU) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202600470 (stating that the amendments are made "in the context of the Commission's commitment to reducing reporting burdens and enhancing competitiveness," but "whilst maintaining the policy objectives specified in" the European Green Deal and the Sustainable Finance Action Plan.).

years, to reporting on FY2027 in 2028.[96] These are scope calibrations and phase-in adjustments, structurally similar to the tiered compliance dates in the Final Rules that exempted smaller reporting companies and emerging growth companies, phased in greenhouse gas attestation requirements, and applied scaled obligations by filer status. Proposed changes to the substance of the disclosures (the European Sustainability Reporting Standards) aim to simplify and streamline climate-related disclosures, without losing the core disclosure provisions and their utility for users of the information.[97]

Meanwhile, the first wave of companies required to comply under CSRD are actively disclosing climate-related information right now. These EU companies published their first CSRD reports in 2025, covering FY2024, and will continue publishing for FY2025 and FY2026.[98] The EU is in the process of finalizing the disclosure standards for non-EU countries.[99] While Omnibus I raised the threshold for compliance for such companies,[100] official EU estimates indicate that approximately 350-450 U.S. companies will still be covered by CSRD requirements.[101]

The Commission does not provide a reasoned explanation for how Omnibus I developments support its conclusion that the Final Rules were "misguided." Proposed Rescission

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[96] *See* Council of the European Union Press Release 116/26, Council signs off simplification of sustainability reporting and due diligence requirements to boost EU competitiveness (Feb. 24, 2026), https://www.consilium.europa.eu/en/press/press-releases/2026/02/24/council-signs-off-simplification-of-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/?__cf_chl_f_tk=rCQBl0YrcP97x5KmaE95pzgk0NzR8IPEQuWUoUQsqF8-1782937136-1.0.1.1-1uc3.a84hDbLWk.zmlS3g0mPf8tA1qu0QZXBrM4zRCs.

[97] *See EFRAG Provides Its Technical Advice on Draft Simplified ESRS to the European Commission*, EUR. FIN. REPORTING ADVISORY GROUP (Dec. 3, 2025), https://www.efrag.org/en/news-and-calendar/news/efrag-provides-its-technical-advice-on-draft-simplified-esrs-to-the-european-commission (For example, "the materiality assessment [] has been simplified, to avoid unnecessary administrative efforts, refocus on usefulness of the information, and help companies to disclose what really matters for users.").

[98] *See Corporate Sustainability Reporting, Finance*, EUR. COMM'N (July 3, 2026), https://finance.ec.europa.eu/financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en; *State of Play 2025: Implementation of the European Sustainability Reporting Standards*, EUR. FIN. REPORTING ADVISORY GROUP (July 2025), https://www.efrag.org/sites/default/files/media/document/2025-07/EFRAG_State%20of%20Play%202025%20Report_0.pdf.

[99] *See* Non-EU Groups Standard Setting — Research Phase, EUR. FIN. REPORTING ADVISORY GROUP, (June 2026).

[100] Directive 2026/470, of the European Parliament and of the Council of 24 February 2026 Amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as Regards Certain Corporate Sustainability Reporting Requirements and Certain Corporate Sustainability Due Diligence Requirements, 2026 O.J. (L 2026/470) 15-25 (EU), amending art. 40a in Directive 2013/34/EU.

[101] *See* Mark Segal, *Omnibus Cuts Non-EU Companies in the Scope of CSRD from 10,000 to 1,200: EFRAG*, ESG TODAY (June 2026), https://www.esgtoday.com/omnibus-cuts-non-eu-companies-in-the-scope-of-csrd-from-10000-to-1200-efrag/.

at 33310. Steps to simplify implementation say nothing about whether climate-related disclosures remain important and useful to investors.

The Proposed Rescission similarly mischaracterizes the ISSB's recent actions. As the Commission recognizes, the ISSB's stated purpose is to "reduce complexity, the risk of duplicative reporting and the cost of applying specific GHG disclosure requirements . . . while not significantly reducing the usefulness of information for users of general purpose financial reports." *See* Proposed Rescission at 33317.[102] Contrary to the Proposed Rescission's characterization, the ISSB did not change its view or abandon its goal of providing decision-useful information on financially material climate-related information to investors. It refined implementation mechanics, along the lines of the accommodations the Commission included in the Final Rules.

The December 2025 IFRS S2 amendments are proportionality accommodations, not a repudiation of the framework. The ISSB's announcement states the amendments "will bring real relief to companies applying ISSB Standards without significantly affecting the decision-usefulness of information for investors."[103] The amendments are effective for periods beginning on or after January 1, 2027.[104] The ISSB designed the amendments to "provide reliefs and clarifications to support companies in applying the Standard, while keeping investor information needs in focus and minimising disruption to jurisdictions that are in the process of adopting or otherwise using ISSB Standards."[105] This accommodation guidance was particularly intended to help small and medium enterprises;[106] it is not a retreat from the importance of financially material climate-related information for investors.

Additionally, the IFRS Foundation's current tracking data contradicts the Commission's characterization of the ISSB amendments. As of the end of March 2026, more than 40 jurisdictions have decided to use or are taking active steps to introduce ISSB standards into their legal or regulatory frameworks.[107] Requirements have already come into effect in approximately 19 of these jurisdictions, with effective dates in 2025 or 2026, meaning companies in countries including Australia, Hong Kong, Malaysia, Mexico, Pakistan, Qatar, and Singapore are producing ISSB-aligned climate disclosures now.[108] The IFRS Foundation's institutional record portrays a framework gaining mandatory legal force across dozens of jurisdictions representing a substantial share of global GDP and market capitalization.

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[102] Citing *Amendments to Greenhouse Gas Emissions Disclosures*, INT'L SUSTAINABILITY STANDARDS BOARD (Dec. 2025), https://www.ifrs.org/content/dam/ifrs/publications/amendments/english/2025/issb-2025-1-amendments-ifrs-s2.pdf.

[103] *ISSB Issues Targeted Amendments to IFRS S2 to Support Implementation*, IFRS (Dec. 11, 2025), https://www.ifrs.org/news-and-events/news/2025/12/issb-issues-targeted-amendments-ifrs-s2/.

[104] *Id.*

[105] *Id.*

[106] *Proportionality mechanisms help companies with different levels of capabilities and preparedness to apply the ISSB Standards*, IFRS SUSTAINABILITY (Jan. 2025), https://www.ifrs.org/content/dam/ifrs/news/2025/sustainability/proportionality-factsheet.pdf.

[107] *Update on the ISSB's Activities*, IFRS SUSTAINABILITY (2026), https://www.ifrs.org/content/dam/ifrs/meetings/2026/april/ac/ac5-issb-update.pdf.

[108] *Id.*

The conclusion to draw from these developments is not that mandatory climate-related disclosures are not useful and important to investors, but that the rest of global capital markets are moving forward with mandatory climate-related disclosures *because* they are useful and important. In implementation, they are taking steps to help companies comply and addressing concerns about timing, scope, and compliance costs, which are all areas that the Final Rules already considered and made accommodations to address.

Indeed, the global momentum toward mandatory climate disclosure cuts directly against the Proposed Rescission's competitiveness rationale. Proposed Rescission at 33341. As dozens of jurisdictions are moving toward mandatory disclosure requirements of similar or greater scope, rescinding the Final Rules would leave U.S. issuers reporting less than their international counterparts, which could harm their competitiveness in global capital markets. At the same time, the existence of foreign disclosure regimes does not diminish the need for standardized SEC disclosure requirements. Many SEC registrants are not subject to comparable foreign reporting obligations, and those that are must comply with regimes that differ in scope, applicability, timing, and content. Without a uniform federal disclosure framework, investors in U.S. markets would continue to face fragmented, inconsistent, and difficult-to compare climate-related information, the very problem the Final Rules were designed to address.

The scale of international adoption is also evidence against the Proposed Rescission's characterization that only a "subset" of investors need or want the climate-related disclosures the Final Rules would have elicited. *See* Proposed Rescission at 33310. Reasonable investors in dozens of jurisdictions, representing a substantial share of global capital markets, are being given access to standardized climate disclosure because regulators there have concluded the information is financially material. That conclusion, replicated across jurisdictions independently, is difficult to reconcile with the claim that demand for the same category of information in the United States comes from a narrow, non-representative segment of investors. The Proposed Rescission's assertions run counter to the official statements the EU and ISSB have made about their modifications and the data on the global momentum around mandatory climate disclosures. As a result, the Proposed Rescission runs counter to the evidence because it relies on a mischaracterization of international developments and thus is arbitrary and capricious. *See State Farm*, 463 U.S. at 43.

5. The Proposed Rescission Is Prejudged and Lacks Reasoned Decision-making.

The Commission's actions and statements with respect to the Final Rules demonstrate that it has an "unalterably closed mind on matters critical to the disposition" of this rulemaking. *Ass'n of Nat'l Advertisers*, 627 F.2d at 1170. "[T]he purpose of [a rulemaking] would be frustrated if [the decisionmaker] had reached an irrevocable decision on whether a rule should be issued prior to . . . final action," *id.,* as the facts and evidence marshalled before it have not entered into its decision-making. As such, finalization of the Proposed Rescission, when that outcome was prejudged long before the opening of the rulemaking, violates the APA, 5 U.S.C. § 553(c), and does not reflect reasoned decision-making, *see State Farm*, 463 U.S. at 43.

The evidence shows that the Commission is "unable to consider meaningfully" the evidence that will be presented in this rulemaking. *See Ass'n of Nat'l Advertisers, Inc.*, 627 F.2d at 1170.

First, two of the three current members of the Commission have long demonstrated an overt hostility to a mandatory climate-related disclosure regime. Hester Peirce and Mark Uyeda have publicly accused the Commission of using the disclosure regime to "hijack" the Acts and conduct climate policy under another name.[109] Such inflammatory statements alone may "indicate a prejudged political conclusion." *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249, 1260–61 (D. Wyo. 2004).

Moreover, this Commission's efforts to convince the Eighth Circuit to vacate the Final Rules fundamentally demonstrate its inability to retain an open mind in this proceeding. There, in a highly unusual course of action, the Commission doggedly pursued a decision on the merits of legal challenges to the Final Rules, despite its vote to no longer defend those Rules and its avowed opposition to them. SEC Status Report at 1, *Iowa v. SEC* (Mar. 27, 2025), ECF No. 5500618. The Commission refused to seek remand or an abeyance of the litigation to allow for notice-and-comment rulemaking, as is standard when the political orientation of an agency changes while an action is pending in litigation. Instead, the Commission sought to move the case toward oral argument without the agency there to defend it, not taking "no" for an answer. *See id.* at 2 ("yield[ing]" the Commission's "oral argument time back to the Court or to other parties"); Order at 6, *Iowa v. SEC* (Apr. 24, 2025), ECF No. 5509839 (ordering the Commission to "advis[e] whether [it] intends to review or reconsider the rules at issue"); Status Report of the SEC at 2, *Iowa v. SEC* (July 23, 2025), ECF No. 5540471 (indicating that "[t]he Commission does not intend to review or reconsider the Rules at this time" and "request[ing] that the Court proceed with the litigation."). The Commission went so far as to attempt to steer the court toward specific grounds on which to rule for the challengers. *See* SEC Status Report at 1, *Iowa v. SEC* (Mar. 27, 2025), ECF No. 5500618 (emphasizing that the Court not "reach the petitioners' challenges based on the First Amendment or non-delegation doctrine," but "set[] the Rules aside on other grounds").

The Commission's purported reasons for seeking a decision, to inform the "scope and need" for future rulemaking and to "promote an efficient resolution," Status Report of the SEC at 2, *Iowa v. SEC* (July 23, 2025), ECF No. 5540471, should be "read in their context," *City & Cty. of S.F. v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018). In the context of the Commission's overt hostility to the rules at issue, and the deviation from standard agency practice, it is clear that the only "efficiency" the Commission sought to pursue was the potential to evade notice and comment rulemaking—a sham administrative process when its mind was made up.

Considering that the Commission's mind was made up on this rulemaking long before it even proposed the rescission, it is no surprise that its purported rationales fail to hold up. As described *supra* Section IV(B)(1), the Commission has failed to seriously grapple with the record undergirding the Final Rules. In short, it is clear that the agency has not conducted an authentic interrogation of the evidence supporting the Final Rules because it is not interested in inviting "interested parties [to] contribute to the debate." *Hous. Study Grp. v. Kemp*, 736 F. Supp. 321,

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[109] Commissioner Hester M. Pierce, *We are Not the Securities and Environment Commission - At Least Not Yet*, SEC (Mar. 21, 2022), https://www.sec.gov/newsroom/speeches-statements/peirce-climate-disclosure-20220321; Commissioner Mark T. Uyeda, *A Climate Regulation under the Commission's Seal: Dissenting Statement on The Enhancement and Standardization of Climate-Related Disclosures for Investors,* SEC (Mar. 6, 2024), https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-mandatory-climate-risk-disclosures-030624.

333 (D.D.C. 1990). Instead, the Commission has shown that it will maintain the Proposed Rescission "even in the face of critical comments," *Nehemiah Corp. of Am. v. Jackson*, 546 F. Supp. 2d 830, 847 (E.D. Cal. 2008), and thus is not the product of reasoned decision-making. *See State Farm*, 463 U.S. at 43. For this reason, too, the Proposed Rescission must be withdrawn.

6. The Proposed Rescission's Economic Analysis Overstates Benefits, Understates Costs, and Applies the Wrong Baseline, Counter to the Evidence.

The flaws in the Proposed Rescission's economic analysis also render the proposal arbitrary and capricious. As in other parts of the Proposed Rescission, the Commission reverses factual findings underlying the Final Rules about the costs of compliance and the benefits to investors without a detailed explanation. *See Fox*, 556 U.S. at 515. As a result, the Proposed Rescission significantly overinflates the benefits of the Proposed Rescission and minimizes costs to investors. The Proposed Rescission also fails to satisfy its statutory obligation to determine the economic implications of its action by failing to establish a proper baseline and disregarding available evidence in forming its conclusions about costs and benefits. *See* 15 U.S.C. § 78c(f); 15 U.S.C. § 80a-2(c); *Bus. Roundtable,* 647 F.3d at 1148–50; *Chamber of Com.*, 412 F.3d at 143.

As a result of these flaws, the Proposed Rescission's economic analysis fails to provide a reasoned basis for its conclusions about its expected costs and benefits. Specifically, the Proposed Rescission purports to rely on already conservative (high) cost estimates developed in the Adopting Release while systematically misapplying those estimates in ways that greatly inflate the purported benefits of the Proposed Rescission and ignoring or minimizing evidence of the costs to investors.[110] Moreover, although the Proposed Rescission extensively discusses existing climate-related disclosure regimes other than the Final Rules as a "baseline" for considering the benefits and costs of the Final Rules and Proposed Rescission, it makes no effort to consider the extent to which filers' current disclosures under such existing regimes would reduce the incremental cost of complying with the Final Rules. Finalizing the Proposed Rescission on the basis of this flawed economic analysis would be arbitrary and capricious. *See Bus. Roundtable*, 647 F.3d at 1148–49.

a) The Proposed Rescission Departs from the Final Rules' Economic Analysis Methodology Without Explanation and Improperly Inflates the Benefits of Rescission.

The Proposed Rescission calculates the total benefit of rescission of the Final Rules using a methodology that departs substantially from the one underlying the Adopting Release in several material respects. These departures render the economic analysis arbitrary and capricious because they reverse the evidence-based methodology of the Adopting Release without explanation, *Fox*, 556 U.S. at 515, and run counter to the evidence before the agency, *State Farm*, 463 U.S. at 43. The Proposed Rescission obfuscates these departures by claiming that it adopts, with inflation adjustments, the compliance cost estimates contained in the Adopting Release. Proposed Rescission at 33327. But it does not. Instead, it quietly chooses at each

[110] The Adopting Release took a "conservative approach (*i.e.*, erring on the side of overstating costs . . .) to estimate approximate compliance costs for the final rules." 89 Fed. Reg. at 21874.

juncture to depart from the methodology employed in the Adopting Release in critical respects, each of which overstates compliance costs—and, in turn, the benefits of rescission.

i. The Proposed Rescission Improperly Attributes the Costs of Voluntary Business Activities to Disclosure Requirements.

One particularly consequential and unexplained departure from the Adopting Release's methodology is the Proposed Rescission's treatment of disclosure costs related to scenario analysis and climate-related targets and goals. The Final Rules do not require registrants to conduct scenario analyses or adopt climate-related targets or goals. Rather, they require disclosure only if a registrant has voluntarily chosen to undertake those activities *and* they are material to the registrant's business. *See* Adopting Release at 21674. Recognizing this distinction, the Adopting Release therefore made a carefully considered factual finding that the estimated costs of compliance with the Final Rules should only include the incremental cost of preparing the required disclosures—not the cost of developing scenario analyses or climate-related targets. *See* Adopting Release at 21883.

The Adopting Release then found that the cost of disclosure relating to performing scenario analysis and adopting climate-related targets or goals would represent approximately 10% of the total cost of these activities, if undertaken. *Id.* The Proposed Rescission nevertheless attributes the full cost of conducting scenario analysis and developing targets and goals to the Final Rules. *See* Proposed Rescission at 33329, Table 8 (citing "savings" from rescinding the disclosure requirements for scenario analysis as $126,859 in the first year and $63,430 annually and, for targets and goals, $103,483 in the first year and $56,916 annually). For example, the Adopting Release estimated the initial cost of scenario analysis at $120,394 and a median annual cost of $60,197, and therefore the cost of initial disclosure at $12,000 and $6,000 annually. Adopting Release at 21883. The Proposed Rescission uses the costs of disclosure contained in the Adopting Release, increased by 5.37% to account for inflation. Proposed Rescission at 33329, Table 8. Accordingly, the savings from not incurring the cost of initial disclosure of scenario analysis listed should be $12,000 times 1.0537, or approximately $12,644. Instead, the Proposed Rescission estimates these savings at $126,859, a figure ten times too high. *Id.* The Proposed Rescission makes the same error with respect to targets and goals. *See id.*

This error effectively charges the Final Rules with the costs of business decisions that registrants voluntarily undertake independent of any SEC requirement. The result is a multibillion dollar overstatement of the costs attributable to the Final Rules. The Proposed Rescission offers no explanation for its departure from the methodology in the Adopting Release or for reversing the Commission's findings on the estimated costs of making those disclosures. The failure to explain the contradiction of the facts underlying the prior policy, *Fox*, 556 U.S. at 515, and a conclusion counter to the evidence, *State Farm*, 463 U.S. at 43, render the analysis arbitrary and capricious.

ii. The Proposed Rescission Improperly Applies Cost Savings as if the Disclosures Were Universally Required.

The Proposed Rescission ignores the Adopting Release's factual finding that not every registrant will make every disclosure and thus the costs of compliance with the Final Rules should not be applied uniformly across all registrants. The Proposed Rescission abandons that approach without explanation and calculates the benefits of rescission by assuming all registrants would shoulder the compliance costs for every provision.[111] Proposed Rescission at 33334. Not only is this a reversal without a detailed explanation, *Fox*, 556 U.S. at 515, but it is faulty on its own terms because it runs counter to the evidence, *State Farm*, 463 U.S. at 43. There is ample evidence available to the Commission that would allow it to better estimate the benefits for different filer classes. The Proposed Rescission's failure to engage with that evidence renders the economic analysis arbitrary and capricious. *See id.*

Most of the Final Rules' disclosure requirements apply only when climate-related matters are material to the registrant's business, financial condition, or results of operations. *See* Adopting Release at 21674. Others apply only if the registrant has voluntarily enacted certain business practices, such as by adopting transition plans, scenario analyses, internal carbon prices, or climate-related targets and goals, and only then when those voluntary actions are themselves material to the registrant. *Id.* Based on comments and available data on the prevalence of voluntary disclosures of elements of the Final Rules, the Commission determined that there would be a wide range of compliance costs for registrants, depending on their specific situation. *See id.* at 21874–86.

Recognizing this variation, in its Paperwork Reduction Act calculations, the Adopting Release carefully estimated the percentage of registrants expected to make each category of disclosure. *See id.* at 21903–04, PRA Table 5. Those estimates vary substantially by filer status and disclosure category. For example, 65% of LAFs are expected to provide governance, strategy, and risk-management disclosures, but only about 30% of smaller registrants are expected to make such disclosures; and only about 10% of all registrants are anticipated to disclose scenario analysis. *Id.* Similar estimates appear throughout the Commission's cost analysis. The Commission estimated that, except for LAFs, fewer than half of filers would be required to make any particular disclosure. *See id.*[112] In fact, the Adopting Release estimated that, of approximately 8,292 anticipated annual Form 10-K filers, the average number required to make any given disclosure would be only about 1,131. *See id*.

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[111] The Proposed Rescission correctly does not assign costs for greenhouse gas emissions disclosures to emerging growth companies or smaller reporting companies, but assumes that all registrants make all other disclosures. *See* Proposed Rescission, Table 11 (Estimated Annual Monetized Cost Savings for SRCs, EGCs, and NAFs); Table 12 (applying the estimated savings from rescinding each disclosure provision to all registrants, which assumes all registrants make all disclosures).

[112] For example, the Commission estimated for its PRA analysis that 65 percent of LAFs would disclose governance, strategy and risk management and Scope 1 and 2 emissions; otherwise for every other category of filer for every category of disclosure the affected percentage is fifty percent or less. Adopting Release at 21903–04, PRA Table 5.

In the Proposed Rescission, the Commission discards these carefully developed, factually grounded estimates and instead assumes all registrants will make all disclosures. *See* Proposed Rescission at 33307–08; 33335–39. That assumption is contrary to the structure of the Final Rules, the Commission's findings in the Adopting Release, and the economic reality that many disclosure obligations would be triggered only under specified circumstances. In fact, the Proposed Rescission itself acknowledges the available data on disclosure prevalence. *See id.* at 33325–26. Despite this data, the Proposed Rescission nevertheless calculates costs as though every registrant must prepare every disclosure potentially applicable to companies of similar filing status.

By assuming that all filers will make all disclosures in the Final Rules, contrary to the record underlying those rules, the Commission reverses its prior factual findings without explanation, *Fox*, 556 U.S. at 515, and draws conclusions that run counter to the evidence and thus is arbitrary and capricious, *State Farm*, 463 U.S. at 43.

The combined effect of the Proposed Rescission's principal methodological errors is enormous. Correcting only these two assumptions—conflating activity with disclosure and assuming universal application of the disclosure requirements—reduces the estimated compliance costs of the Final Rules, and therefore the purported benefits of the Proposed Rescission, by over $20 billion.[113]

iii. The Proposed Rescission Treats Upper-Bound Cost Estimates as Point Estimates Without Support.

The Adopting Release's cost estimates reflected a range of possible outcomes, with the upper bound representing a conservative, worst-case assumption. The Proposed Rescission ignores this range and instead uses just the upper-bound figure as the expected cost, without acknowledging this change from the Adopting Release's approach or explaining why it has chosen the upper-bound as the expected cost. The result of this choice is, once again, to inflate the benefits of rescission.

In particular, the Adopting Release expressly characterizes the estimated first-year Regulation S-X implementation cost of $500,000 and the recurring annual cost of $375,000 as

[113] We estimate that correcting for these two errors alone would reduce the estimated cost of compliance with the Final Rules, and therefore the estimated benefit of their rescission, by over 60% under either discount rate. To get the correct total filer costs, we first exclude voluntary activities not attributable to the Final Rules. Removing the cost savings of voluntary activities reduces the estimated costs by about $5 billion under a 7% interest rate or about $6 billion under a 7% interest rate. To correct for the Proposed Rescission's improper assumption that all disclosure requirements apply to all filers, we multiply the estimated percentages of affected filers, Adopting Release at 21903–04, PRA Table 5, by the estimated annual cost savings, Proposed Rescission at 33335–38, Tables 9, 10 and 11. On top of correcting for voluntary activities, correcting for the error of overestimating the number of filers leads to a reduction in the estimated costs of the Final Rule, or benefits of the Proposed Rescission, of over $20 billion of the claimed $33.4 billion in savings under a 7% discount rate, or at least $25 billion of the claimed $42.25 billion in savings under a 3% discount rate. *See* Proposed Rescission at 33340, Table 13 (listing the claimed present value of the estimated benefits and costs based on 3% and 7% discount rates).

upper-bound estimates. Adopting Release at 21875. Likewise, the Adopting Release identifies the estimated annual incremental audit cost of $23,000 as an upper bound. *Id.* The Adopting Release arrived at these ranges based on a careful analysis of comment letters and available evidence. *Id.* at 21871–74.

The Proposed Rescission, by contrast, applies those upper-bound estimates to all registrants. By using the upper-bound figure without any explanation or justification, the Proposed Rescission contradicts the prior Commission's factual findings and arrives at an estimate not supported by the evidence. The result of this error is further inflation of the Proposed Rescission's estimated benefits by hundreds of millions of dollars.[114] By failing to provide an explanation for this departure from the facts in the Adopting Release, the Proposed Rescission's economic analysis is arbitrary and capricious. *See Fox*, 556 U.S. at 515.

b) The Proposed Rescission Systematically Underestimates the Costs of Rescission to Investors Without Reason.

While taking pains to quantify— and overstate—the benefits of rescinding the Final Rules, the Proposed Rescission systematically understates the costs to investors of losing access to standardized climate-related disclosures. This kind of inconsistent and opportunistic framing of the costs and benefits of a rule to reach its desired conclusion results in an arbitrary and capricious rule. *See Bus. Roundtable,* 647 F.3d at 1148–49.

The Proposed Rescission first understates the number of investors that would suffer costs and burdens from the rescission. The Proposed Rescission seeks to characterize the number of investors that would be impacted by the rescission as small—a mere "subset" of investors with a narrow focus on climate. Proposed Rescission at 33310, 33312. As discussed above, *supra* Section IV(A)(2)(a), the universe of reasonable investors that expressed a need for more consistent, comparable, and reliable climate-related disclosures and voiced support for the Proposed Climate-Related Climate Disclosure Rules was broad and significant, representing trillions of dollars of assets under management and millions of Americans with invested savings.[115] *See also* Adopting Release at 21846. The Proposed Rescission's assessment of the number of investors is untethered to the available evidence and has no rational basis. *See State Farm*, 463 U.S. at 43; *Bus. Roundtable*, 647 F.3d at 1151.

The Proposed Rescission then minimizes the costs that investors would face. The Proposed Rescission dismisses without a detailed explanation the benefits of more comparable and consistent climate-related disclosures the Final Rules would have provided and thus the costs of rescinding the Final Rules. As discussed above, *supra* Section IV(B)(1)(b), the Adopting Release detailed the reasons commenters gave for supporting the Final Rules precisely because of the improvement against the status quo of climate-related disclosures. Commenters specifically mentioned that the Proposed Climate-Related Disclosure Rules would significantly improve the consistency, comparability, and reliability of climate-related disclosures. While data shows that public companies voluntarily disclose some categories of climate-related information,

[114] Simply reducing the cost estimates for financial disclosures and audit fees by 10% to better approximate average cost estimates results in a reduction in the estimated costs of the Final Rule, or benefits of the Proposed Rescission, of over $600 million under a 7% discount rate or over $700 million under a 3% discount rate.

[115] *See, e.g.*, Comment Letter (SEC File No. S7-10-22) from ICI.

the Adopting Release carefully considered the available evidence and made a factual finding that these ad hoc voluntary disclosures did not meet investors' need for financially material climate-related information on which to base investment and voting decisions. *See* Adopting Release at 21847.

The Proposed Rescission also fails to consider additional potential costs from rescinding the rules. Standardized climate-related disclosure also reduce the risk of misleading or inconsistent climate-related statements.[116] Issuers could benefit from a standardized disclosure framework that establishes clear expectations, promotes more rigorous and disciplined reporting, and reduces the likelihood that companies inadvertently omit material climate-related information or make inconsistent statements across different voluntary reporting channels. Rather than increasing litigation risk, standardized disclosure requirements could provide issuers with greater certainty regarding what information is expected, reducing the likelihood of allegations of fraud arising from incomplete, inconsistent, or piecemeal disclosures.

In adopting the Final Rules, the Commission concluded that standardized climate-related disclosures would provide investors with more consistent, comparable, and reliable information while improving the quality of issuer disclosure practices. *See* Adopting Release at 21683. If the Commission now proposes to rescind those requirements, it should address not only the compliance costs of the rule, but also the costs of increased regulatory uncertainty. Those costs include greater issuer exposure to antifraud claims arising from unclear disclosure expectations, increased investor reliance on inconsistent voluntary disclosures, diminished investor confidence resulting from heightened concerns about greenwashing and selective disclosure, and greater investor costs to obtain material climate-related information. These were all benefits of the Final Rules substantiated in the Adopting Release. *See* Adopting Release at 21849–50; *see also supra* Section IV(B)(1). The Proposed Rescission fails to account for the loss of these investor protection and market integrity benefits identified in the Final Rules' extensive record.

The Proposed Rescission's treatment of the costs to investors is also internally inconsistent. The Proposed Rescission discounts the costs to investors of rescinding the Final Rules on the basis that companies make climate-related disclosures, as required by existing requirements or under voluntary frameworks. *See* Proposed Release at 33331. Yet, the Proposed Rescission does not then take into account the existing disclosure controls and procedures established at those companies that would reduce the expected benefits of rescission for those companies. *See* Proposed Rescission at 33328-29 (noting that existing climate-related disclosure practices could affect a registrant's actual cost savings, but not attempting to quantify the impact of climate disclosure requirements currently in force that apply to U.S. registrants). Internal inconsistency alone renders the economic analysis arbitrary and capricious. *See Bus. Roundtable*, 647 F.3d at 1153.

Lastly, the Proposed Rescission also does not attempt to quantify costs to investors, even though there is quantitative evidence in the Final Rules' record that Commission could have used. The Adopting Release details in qualitative and quantitative terms the costs that investors currently bear to gather and standardize climate-related information. *See* Adopting Release at 21842 (citing a survey conducted by ERM of costs incurred by investors to gather and standardize climate-related information); 21850 (citing comments from investors of search costs

[116] As discussed above and in the Adopting Release, investors commented that some current disclosures are or border on being greenwashing, *see* Adopting Release at 21677, and that standardized disclosures would benefit investors by discouraging greenwashing, *see id.* at 21721.

incurred under the status quo). Yet, the Proposed Rescission does not attempt to use this evidence to construct an estimated cost to investors or explain its reasons for not doing so. *See* Proposed Rescission at 33333 (noting that "affected parties might need to devote more resources and time to collect and reconcile climate-related information from multiple sources" without mentioning the actual costs documented in the Final Rules' record or attempting to quantify the search costs). Ignoring quantitative data while claiming costs cannot be quantified is a separate ground for finding the economic analysis arbitrary and capricious. *See Chamber of Com.*, 85 F.4th at 778–79.

By ignoring available data, reversing the prior Commission's factual findings, *Fox,* 556 U.S. at 515, applying internally inconsistent logic, *Chamber of Com.*, 85 F.4th at 778–79 and failing to attempt to quantify costs, *Chamber of Com.*, 412 F.3d at 143, the Proposed Rescission's economic analysis has many serious flaws. The Commission does not adequately explain these choices or conclusions. Instead, its treatment of costs to investors is inconsistent and opportunistic. *See Bus. Roundtable*, 647 F.3d at 1148–49. On the basis of each separate flaw, the economic analysis is arbitrary and capricious.

c) The Proposed Rescission Fails to Set an Accurate Baseline for Registrants Already Making or Required to Make Climate-Related Disclosures.

An agency's economic analysis must measure a rule's costs and benefits against an accurate baseline, one that reflects the existing regulatory and market landscape. *Am. Equity Inv. Life Ins. Co.*, 613 F.3d at 178–79. While the Proposed Rescission acknowledges currently in-force climate disclosure requirements and trends in voluntary disclosures, it fails to establish an accurate baseline for registrants already making climate-related disclosures or subject to climate-related requirements. As a result, the Proposed Rescission significantly overstates the benefits of rescission for companies that have already developed internal systems to make climate-related disclosures.

The Adopting Release recognized that many registrants already collect, analyze, and publicly report climate-related information because of foreign and domestic regulatory requirements and/or voluntary reporting practices. But the Commission conservatively assessed the costs of the Final Rules as if all registrants were starting from scratch. While in this respect the proposal follows the Adopting Release, the Adopting Release took that approach in order to err on the side of assuming greater costs resulting from the rules. *See* Adopting Release at 21874–75. In this case, an analogous conservative approach would be to include and account for the reduced incremental costs of the Final Rule, and therefore the reduced cost savings of rescinding the Final Rule. In addition, climate-related reporting has increased since the time of the Adopting Release, *see, e.g.*, Proposed Rescission at 33325–26 (updating analyses of voluntary disclosures of GHG emissions and targets/goals), which is another reason why the Proposed Rescission ought to take into account existing disclosure practices in the current cost-benefit analysis.

Moreover, the Proposal arbitrarily acknowledges the effect of disclosure requirements in other jurisdictions—but only to minimize the cost to investors of rescinding the Final Rules, Proposed Rescission at 33331, and not to offset the anticipated benefits of the rescission for registrants. It only briefly acknowledges that existing disclosure practices could reduce the incremental costs of the Final Rules, and for the purpose of estimating the costs of the Final

Rules, the Proposed Rescission assumes all registrants would have had to build entirely new compliance systems to make disclosures under the Final Rules.[117]

The existing disclosure landscape is not a substitute for the standardized climate-related disclosures the Final Rules require. As discussed above, *supra* Section IV(B)(4), the mix of different jurisdictional requirements and voluntary disclosures result in information that varies widely and the fragmented disclosure landscape the Adopting Release observed imposes real costs on investors. But, the disclosure landscape also indicates that a substantial and growing share of registrants have already built the internal infrastructure, disclosure controls, and technical expertise necessary to disclose climate-related information. Registrants that have already established these systems to comply with jurisdictional requirements and/or voluntary frameworks face materially lower incremental costs in complying with the Final Rules, even if the resulting disclosures are not equivalent in substance to the Final Rules. The Proposed Rescission compounds its errors in estimating the benefits of rescission by assuming, in the face of contradicting evidence, that the rescission would relieve all registrants of the full cost of building climate disclosure capacity from the ground up, rather than the smaller incremental cost of adapting existing capacity to the Final Rules' requirements.

Because the Proposed Rescission's benefit calculation rests on a baseline that fails to reflect the existing infrastructure and expertise a substantial share of registrants have already developed, it fails to satisfy the Commission's statutory obligation to determine, as best it can, the economic implications of its action. *See* 15 U.S.C. § 78c(f); 15 U.S.C. § 80a-2(c); *Am. Equity*, 613 F.3d at 178–79; *Bus. Roundtable*, 647 F.3d at 1148–50. As a result of its faulty baseline, the Proposed Rescission's economic analysis also lacks the rational connection between the facts found and the choice made that arbitrary and capricious review requires. *See State Farm*, 463 U.S. at 43.

i. Many U.S. Registrants Have Developed Internal Capacity in Response to Existing Climate-Related Disclosure Requirements in Other Jurisdictions.

As discussed above, *supra* Section IV(B)(4), the global momentum toward climate-related disclosure continues and will affect most multinational registrants. The Proposed Rescission asserts that international developments "undermine the assumption that the emergence of other reporting regimes would help to mitigate the significant costs of the Final Rules." Proposed Rescission at 33311. But issuers with cross-border operations or foreign listings will in fact face climate-related disclosure obligations under the European Union's CSRD, and ISSB-aligned regimes, regardless of what the Commission does.

[117] The Proposed Rescission acknowledges in a footnote, but makes no effort to quantify, the effect of current disclosure regimes on the incremental cost of the Final Rules. *See* Proposed Rescission at 33328 n.296 ("If a registrant's current disclosures are similar to those required under the Final Rules, then the registrant could already have incurred some costs for preparing these disclosure and thus its incremental costs to comply with the Final Rules could be lower.").

For example, approximately 350 to 450 large U.S.-based companies are subject, or will become subject, to the CSRD and related sustainability disclosure requirements.[118] Those companies must develop governance structures, internal reporting systems, emissions inventories, and disclosure controls that would also be used to comply with the Final Rules. Although, as the Proposed Rescission states, the EU reporting system has been modified, non-EU parent companies of businesses with EU subsidiaries or branches and over €450 million in annual EU turnover will become subject to CSRD reporting for fiscal year 2028.[119] Proposed Rescission at 33311.

As the Adopting Release explains, numerous SEC registrants are also listed in the United Kingdom ("UK") and must comply with UK climate-related disclosure requirements. Adopting Release at 21834–35. The UK disclosure regime is currently transitioning to the ISSB framework which has evolved from the Task Force on Climate-related Financial Disclosures ("TCFD") framework upon which the Final Rules were based.[120]

Also, as stated in the Adopting Release, many other countries in which registrants operate have announced or implemented plans to adopt climate disclosure rules based on or aligned with the ISSB framework. *Id.* at 21681 As stated above, *supra* Section IV(B)(4), more than 40 jurisdictions use or plan to use that framework. *Id*.

In addition, a large number of companies are subject to climate-related disclosure requirements under state laws regulating the insurance industry. Twenty-eight states and territories require insurers with over $100 million in direct written premiums to disclose their climate-related risk assessment through a TCFD-aligned regime, and for reporting year 2024, more than 1800 companies provided climate risk disclosures.[121] Multiple states also require greenhouse gas emissions reporting.[122] The Commission has the ability to quantify the number of registrants subject to requirements in other jurisdictions and use the compliance cost estimates in the Adopting Release to estimate the reduction in benefit from the rescission taking into account the lower incremental burden of the Final Rules for companies with internal infrastructure to make climate-related disclosures. Yet, the Proposed Rescission does not use the available data to conduct this analysis. Instead, it chooses to apply an inaccurate baseline for those registrants

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[118] Eur. Fin. Rep. Advis. Grp., ESRS for Non-EU Groups N-ESRS, Slide 3 (June 3, 2026), https://www.efrag.org/sites/default/files/media/document/2026-06/01-01_n-esrs_public_session_presentation_3_june_2026_-_esrs_for_non-eu_groups.pdf.

[119] *See* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, Amending Directive 2006/43/EC of the European Parliament and of the Council and Repealing Council Directives 78/660/EEC and 83/349/EEC, art. 40a, 2013 O.J. (L 182) 19, as amended by Directive (EU) 2026/470, 2026 O.J. (L 470) (consolidated text CELEX No. 02013L0034-20260318), https://eur-lex.europa.eu/eli/dir/2013/34/2026-03-18/eng.

[120] *See* Fin. Conduct Auth., CP26/5, Aligning Listed Issuers' Sustainability Disclosures with International Standards (Jan. 2026).

[121] Ca. Dep't of Ins., *Climate Risk Disclosure Survey Database* (last visited July 30, 2026), https://interactive.web.insurance.ca.gov/apex_extprd/f?p=201:1.

[122] The Adopting Release cited seven state laws requiring disclosure of greenhouse gas emissions or emissions of air contaminants, not including California's recent climate disclosure legislation. *See* 89 Fed. Reg. at 21833, 21833 nn.2603–06.

already subject to climate-related disclosure requirements in other jurisdictions in order to inflate the benefits. An economic analysis that rests on a baseline that does not reflect existing requirements fails to satisfy the Commission's statutory obligation to determine the economic implications of its actions. *See Am. Equity,* 613 F.3d at 178–79; *Bus. Roundtable*, 647 F.3d at 1148–50. Accordingly, the Commission's assertion that the emergence of other disclosure regimes undermines the benefits of the Final Rules is unsupported by the record. Rather, these developments demonstrate that climate-related disclosure requirements are becoming an established feature of the regulatory landscape and that a standardized federal framework can reduce, not increase, fragmentation and compliance burdens.

ii. Many U.S. Registrants Have Developed Internal Capacity to Make Voluntary Climate-Related Disclosures.

Beyond registrants subject to mandatory state and international disclosure requirements, a substantial and growing share of registrants voluntarily disclose climate-related information through third-party frameworks and in response to investor demand. As explained in the Adopting Release, these voluntary practices do not substitute for the standardized, comparable disclosures the Final Rules require, and their variability in scope, rigor, and methodology is itself part of the fragmented landscape the Adopting Release found inadequate. *See* Adopting Release at 21673; 21830. But voluntary disclosure, like mandatory disclosure, requires registrants to build the internal infrastructure, controls, and expertise necessary to collect and report climate-related information, and that infrastructure lowers the incremental cost of complying with the Final Rules regardless of whether the resulting disclosures are legally required.

The Proposed Rescission acknowledges the extent to which registrants already make some climate-related disclosures either voluntarily or based on the Commission's 2010 Guidance, confirming and updating the findings in the Adopting Release that approximately 39% of public companies already mention climate-related risks, and climate-related disclosure rates among the Russell 3000 increased from approximately 35% in 2009 to 60% by 2020. *See* Adopting Release at 21840–41. High levels of reporting continue, according to the Proposed Rescission, which cites reports that most public companies across the Russell 3000 and S&P 500 disclose their exposure to climate risk, and that 84% of S&P 500 companies report climate change as a risk factor. *See* Proposed Rescission at 33319, 33322.

The Adopting Release also found that approximately 20% of reporting companies already disclosed Scope 1 and Scope 2 greenhouse gas emissions, with disclosure rates approaching 50% among LAFs. Adopting Release at 21842. The Proposed Rescission cites a report that, as of 2024, over 50% of the Russell 3000 companies and 90% of the S&P 500 disclose Scope 1 and 2 emissions, and that confirms emissions disclosure rates have risen. Proposed Rescission at 33325.

The trend toward greater reporting is further confirmed, according to the Proposed Rescission, by surveys of climate-related keywords in Commission filings, which increased between 2016 and 2025. *Id.* at 33318. Existing climate-related reporting is particularly prevalent among industries such as utilities, transportation, manufacturing and oil and gas, where climate risks are most financially significant. Adopting Release at 21837–39.

Many of the voluntary disclosures employ reporting frameworks substantially similar to those incorporated into the Final Rules, including the TCFD and the Sustainability Accounting

Standards Board. *Id.* at 21844. Many companies also already obtain third-party assurance regarding portions of their climate-related disclosures. *Id.* at 21846.

As the foregoing demonstrates, existing disclosure practices indicate that companies have built the internal infrastructure necessary to make some climate-related disclosures. The Proposed Rescission should have recognized the lower incremental costs of complying with the Final Rules when it calculated the estimated benefits of rescission, but it failed to do so and thus greatly overstated the benefits. Even a modest reduction in incremental costs due to existing reporting infrastructure amounts to hundreds of millions of dollars.[123] An economic analysis that overlooks this existing capacity does not reflect a reasoned assessment of a rescission's likely costs and benefits. *Am. Equity*, 613 F.3d at 178–79; *Bus. Roundtable*, 647 F.3d at 1148–50.

7. The Proposed Rescission Fails to Consider the Impact of Recent Proposals to Limit Disclosures and Agency Actions to Chill Investor Engagement with Companies.

The Proposed Rescission also fails to consider an important aspect of the problem: a series of concurrent Commission proposals and actions that are aimed at narrowing the channels of information and engagement for investors. Those actions include the proposals to move to semiannual reporting and to reduce disclosures across filer groups, the Commission's 2025 guidance on Schedule 13D/G, the elimination of the no-action process, and public statements questioning the use of proxy voting advice. By failing to consider how these concurrent developments affect multiple of the Commission's rationales for the Proposed Rescission, the Proposed Rescission has failed to consider an important aspect of the problem and is therefore arbitrary and capricious. *See State Farm*, 463 U.S. at 43.

On May 19, 2026, the Commission issued a proposal to raise the threshold for LAFs from $700 million to $2 billion, which would reduce the number of public companies subject to the most robust disclosure requirements. *See Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies*, 91 Fed. Reg. 30086 (May 21, 2026) ("Proposed Filer Simplification"). The Proposed Filer Simplification also reduces LAF disclosure obligations and combines the other current filing categories into a single Non-Accelerated Filer category, subject to even less disclosure. *See id.* The SEC estimates that the number of LAFs would drop from 35.4% to 19.2% of public companies, leaving the other 80% in a catch-all category that would be permitted to omit various disclosure items.[124] At the same time, the Commission has signaled an interest in further reducing the amount of

[123] For example, the reasonable assumptions that at least 350 LAFs already have substantial reporting infrastructure and therefore that their incremental costs of compliance with respect to financial statements are approximately 50% less than estimated reduces the Proposed Rescission's estimated cost by over $300 million.

[124] SEC, *FACT SHEET: Enhancing the Public Company Reporting Framework* (last visited July 30, 2026), https://www.sec.gov/files/33-11419-fact-sheet.pdf (estimating, based on SEC figures, that approximately 968 companies would lose LAF status).

information deemed material for the purposes of Regulation S-K, and to open shelf registration to more companies, which would reduce pre-offering disclosures.[125]

Several other recent Commission actions, taken outside the notice-and-comment process, have concurrently made it harder for investors to press companies on climate-related matters or to vote in an informed way on climate-related proposals. New staff guidance issued in February 2025 discourages large institutional investors from engaging directly with company management on environmental and governance topics, by exposing them to more burdensome reporting obligations if that engagement is viewed as an attempt to influence the company.[126] In November 2025, the Commission's staff stopped reviewing companies' decisions to exclude shareholder proposals from their proxy materials, giving companies substantially more latitude to keep climate-related proposals off the ballot without any independent check.[127] And in December 2025, a Commissioner publicly suggested that investors who rely on independent proxy advisory services to inform their voting decisions, rather than voting entirely on their own, may run afoul of separate reporting requirements,[128] a position that discourages the use of these services even though many investors depend on them to cast informed votes on complex matters like climate risk.

These concurrent developments undermine the Proposed Rescission's key assumption that existing disclosures are sufficient to provide investors with material climate-related information in the absence of the Final Rules. *See, e.g.*, Proposed Rescission at 33309; *id.* at 33332. In overhauling the filer categories, the Commission is proposing to exempt 80 percent of the public market from disclosing Risk Factors, *see* Proposed Filer Simplification at 30105—one of the main items the Proposed Rescission points to as eliciting material climate-related information under the 2010 Guidance. Proposed Rescission at 33309. The proposed filer simplification would also lift the current requirement for independent auditor attestation of controls over financial reporting, Proposed Filer Simplification at 30097, affecting the reliability of disclosures on material climate-related financial impacts.

The Proposed Filer Simplification also undermines the Proposed Rescission's key argument that rescinding the Final Rules would generate billions in annual savings. Under the

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[125] Press Release, SEC, Statement on Reforming Regulation S-K (Jan. 13, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326.

[126] SEC Div. of Corp. Fin., Compliance and Disclosure Interpretations: Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting, Questions 103.11, 103.12 (July 9, 2026), https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/exchange-act-sections-13d-13g-regulation-13d-g-beneficial-ownership-reporting (broadening the range of shareholder engagement activities that may cause an investor to lose eligibility to report beneficial ownership on the short-form Schedule 13G, first issued Feb. 11, 2025).

[127] Press Release, SEC, Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season (Nov. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.

[128] Mark T. Uyeda, Comm'r, SEC, Remarks at the 2025 Institute for Corporate Counsel (Dec. 3, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-institute-corporate-counsel-120325.

Proposed Filer Simplification, far fewer registrants would be subject to the highest tier of climate-related disclosure requirements. The reduced number of LAFs means that the estimated number of companies subject to the earliest phase-in timelines, material GHG emissions disclosures, and the assurance requirements would also be reduced. As the Proposal itself acknowledges, the filer status changes "would affect which companies are subject to which requirements of the Final Rules," and therefore "the cost savings from the proposed rescission would be smaller than estimated here." Proposed Rescission at 33316, 33327 n.289. Assuming based on the SEC's own figures that approximately 968 companies would shift out of the LAF category, that change alone reduces the benefits of rescission by over $1 billion.[129]

Likewise, the Commission's recent actions making it more difficult for investors to communicate with companies about their need for climate-related information undermine the Proposed Rescission's assumption that "registrants may choose to voluntarily disclose climate-related information to address investor interest." Proposed Rescission at 33332. By chilling investors' engagement with companies, the Commission limits the potential for voluntary disclosures to meet investors' needs. For example, following the SEC staff's recent updated guidance on investor engagement with companies on climate and other ESG issues, large institutional investors significantly reduced meetings with companies.[130] And the consequence of ending the staff no-action review for shareholder proposals has been an increase in investor lawsuits challenging company decisions to exclude shareholder proposals, demonstrating how much more difficult it has become for investors to signal their need for climate-related information with companies in the absence of the Final Rules.[131]

These examples demonstrate why the SEC's concurrent proposals and actions are an important aspect of the problem and why the SEC's failure to consider them here renders its proposal arbitrary and capricious. *State Farm*, 463 U.S. at 43.

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[129] This estimate conservatively assumes that 968 companies would no longer be subject to LAF disclosure requirements, and instead be subject to non-exempt Accelerated Filer requirements under the Final Rule. If those companies were instead subject to the disclosure requirements applicable to Smaller Reporting Companies, Emerging Grown Companies and Non-Accelerated Filers, the estimate would be greater.

[130] Ross Kerber, *Vanguard, Blackrock Retract Company Talks After New Guidance Bites*, REUTERS (Sept. 19, 2025), https://www.bnnbloomberg.ca/business/company-news/2025/09/19/blackrock-vanguard-scale-back-company-talks-as-new-guidance-bites/ (republished by BNN Bloomberg/CTV).

[131] *See* Cooley LLP, *2026 Shareholder Proposal Season Early Review and Look Ahead to 2027* (June 5, 2026), https://www.cooley.com/news/insight/2026/2026-06-04-2026-shareholder-proposal-season-early-review-and-look-ahead-to-2027 (reporting that six lawsuits challenging proposal exclusions were filed during the 2026 proxy season, compared to none in the preceding no-action-review era); *see also As You Sow v. Chubb Ltd.*, No. 26-cv-734, 2026 WL 879666 (D.D.C. Mar. 31, 2026) (regarding inclusion of a shareholder proposal about climate-related disclosure).

8. In Sum, the Proposed Rescission Is Unsupported by the Record and Is Arbitrary and Capricious.

The record underlying the Final Climate-Related Disclosure Rules was extensive. The Commission received over 4,500 unique comment letters from academics, investors, industry groups, and standard-setters, and over 18,000 form letters from interested parties. *See* Adopting Release at 21670. Reasonable investors, including large institutional investors, public pension funds, and retail investors and their fund managers and advisers identified the categories of climate-related information investors need to make informed decisions and explained why they largely supported the standardized disclosure rules as an improvement on the consistency and comparability of the existing, inconsistent disclosure landscape, which they described as inadequate to assess the financial characteristics of registrants. The Commission considered that record, including comments opposing or urging revisions, and made numerous modifications in response to concerns about compliance burden. It also conducted an economic analysis in which it weighed the relevant factors and concluded that the Final Rules would promote efficiency, competition, and capital formation, grounding those conclusions not only in the comments but in empirical evidence and academic literature.

The Proposed Rescission reverses these findings without a reasoned explanation, and in several respects reaches conclusions that run counter to the evidence before the Commission. It relies on unsupported assertions, fails to meaningfully engage with the extensive Administrative Record, overlooks reasonable alternatives to complete the rescission, rests on a flawed and asymmetrical cost-benefit analysis that overstates the benefits of rescission while minimizing or disregarding its costs to investors, and fails to consider important aspects of the problem by failing to account for the impact of concurrent SEC actions. Each of these deficiencies, standing alone, is sufficient to render the Proposed Rescission arbitrary and capricious. *See State Farm*, 463 U.S. at 43; *Fox*, 556 U.S. at 515–16; *Encino Motorcars,* 579 U.S. at 221–22.

V. CONCLUSION

We appreciate the opportunity to comment on this important proposal. For all of the reasons discussed above, we oppose the Proposed Rescission and encourage the SEC to retain the critical disclosure requirements enumerated in the Final Climate-Related Disclosure Rules. If the Commission does anything less than rescind the entire proposal, it must first confront the extensive administrative record supporting the Final Rules, provide a reasoned explanation for abandoning its prior factual findings, and conduct a lawful and accurate assessment of the Proposed Rescission's costs and benefits. The Commission may change course, but it may not do so by disregarding the evidence before it, mischaracterizing its own prior findings, or relying on methodological assumptions that substantially inflate the purported benefits of rescission. If, after considering the comments submitted in this proceeding, the Commission contemplates significant changes to the Proposed Rescission, it must re-propose those changes for public notice and comment to provide interested parties a meaningful opportunity to respond.

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