



OSGOODE HALL
LAW SCHOOL



June 11, 2021

The Honorable Gary Gensler
Chair, U.S. Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-0609

Dear Chair Gensler:

It is an honor for me to suggest an Article I wrote, Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 Harvard L. Rev. 1197-1311 (1999), for the Commission's review. Unfortunately, the Article is too large for me to attach and submit directly.

This Article addresses a number of questions that have been raised in response to the March 15, 2021, request for public comments on the regulatory issues before the U.S. Securities and Exchange Commission (the "Commission") as it considers requiring registrants to disclose clearer, more comparable, and more consistently presented data and analysis of some of the significant climate change risks and opportunities facing America's public companies, its economy, and its financial system.

In writing this Article, I was fortunate to have the assistance of excellent research librarians, and the resources of the extensive collection of historical materials found in the University of Illinois and the University of Illinois College of Law libraries. I was also fortunate to have the time to read the entire legislative history of the Securities Act of 1933, some significant portions of the legislative history of the Securities Exchange Act of 1934 (collectively "the legislative histories"), and to read contemporary news reports, influential weekly publications, and a number of the books written by leading intellectuals whose ideas shaped the securities laws.

In undertaking that research, I sought to answer two questions: Does the Commission have the statutory authority to promulgate disclosure requirements concerning what we now call environmental, social, and governance ("ESG") data, in order to promote corporate social transparency, comparable to its well-understood authority to enact disclosure requirements to promote corporate financial transparency? And if it has the authority to promote corporate social transparency, should it do so as a matter of well-informed, thoughtful policy? I answered both questions in the affirmative in this Article.

I went into the project with no clear expectation concerning the answers to those questions. Then, as now, many writers narrowly construed the Commission's authority, suggesting it is to be exercised almost exclusively for the purposes of protecting investors in their buying and selling of securities. The more I read, however, the more I became convinced that Congress had broader goals in passing the securities laws than protecting investors in their securities transactions, although that was one quite important goal. Congress also sought

to empower shareholders in their exercise of voting rights. That Congressional purpose required shareholders to be given information about how companies were being managed, not just financial information, as is evident in the legislative history of proxy regulation, as discussed at pages 1235-1246 of the Article.

Moreover, Congress perceived the health of the entire American economy as fundamentally affected by the regulation of its capital markets, presumably why throughout the statutes, Congress granted the Commission the disjunctive authority to regulate “as necessary or appropriate in the public interest, or for the protection of investors.” Congresses’ broader purposes included improving the “morals” and sense of “corporate responsibility” of company directors, officers, and financial market participants. Shaping the conduct of those who ran and financed America’s companies was one of Congresses’ clear purposes, as is evident throughout the legislative histories, discussed at pages 1227-1246 of the Article.

Disclosure was the primary mechanism Congress adopted in these first federal securities statutes to advance its purposes, even as some in the Roosevelt brain trust argued for more substantive regulation of corporate behavior. But reading the legislative histories and contemporaneous materials, I was, and am, left with no doubt that Congress had empowered the Commission to enact disclosure requirements to shape the conduct of the people managing and financing America’s companies.

Today, the issues facing America’s companies and the American economy are obviously different than those of 1933 and 1934. Directors and officers of operating companies and financial institutions today face complex, disruptive social, economic, technological, and environmental risks, including the risks of climate change, and the substantial transition imperatives brought about by climate change. How climate change risks and opportunities are being evaluated and managed are aspects of officers’ and directors’ exercise of their fiduciary obligations. Today, as in 1933 and 1934, the power of disclosure, and the power of informed shareholders’ oversight and voting, can be harnessed to promote the health and well-being of the American economy in light of these transition imperatives. The Commission is well within its statutory authority to require that disclosure.

I welcome the opportunity to discuss these comments, and the Article, with the Commission or the Commission Staff. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Cynthia A. Williams". The signature is fluid and cursive, with the first name "Cynthia" being more prominent and the last name "Williams" following in a similar style.

Cynthia A. Williams
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Cc: Hon. Hester Peirce, Commissioner,
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