



State of West Virginia
Office of the Attorney General

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April 15, 2022

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

Submitted Electronically via SEC Internet Comment Form

Re: Request for Extension of Time to Provide Comments on Proposed Pule Amendments titled “The Enhancement and Standardization of Climate-Related Disclosures for Investors” by the States of West Virginia, Alaska, Arizona, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming (SEC File Number S7-10-22)

Dear Secretary Countryman:

The States of West Virginia, Alaska, Arizona, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming respectfully request an additional 60 days to submit comments on the Securities and Exchange Commission’s proposed rule, “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” *See* 87 Fed. Reg. 21334 (Apr. 11, 2022). The States ask that the Commission extend the comment deadline to July 19, 2022.

To call the SEC’s proposal merely lengthy would be a gross understatement. The agency has produced more than 500 pages of material with more than 1,000 footnotes. Within those pages, the Commission has proposed a total reordering of its present disclosure regime. And not surprisingly, it has requested public comment on a set of extraordinarily broad subjects spanning more than 200 questions—not even including the Commission’s additional requests for comment on its economic analysis, proposed information collection requirements, and initial regulatory flexibility analysis.

To provide useful and comprehensive comments, the States will need to undertake and synthesize an enormous amount of analysis.

The required legal analysis alone is vast. The States must analyze existing disclosure laws and regulations, most particularly those that define the relevant materiality standard. The States will need to evaluate existing disclosure requirements to confirm whether the proposed new requirements are duplicative, contradictory, or otherwise problematic—as the States expect them to be. The States will need to determine whether the proposed requirements are consistent with the Commission’s obligation to “modernize and simplify” disclosure requirements. *See* Jumpstart Our Business Startups Act, Pub. L. No. 112-106, Sec. 108, 126 Stat. 306, 313-14 (2012); Fixing America’s Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312 (2015). The States will need to measure the proposed requirements against the First Amendment’s protections against certain forms of compelled speech. The States will need to compare the proposed rules to those imposed in foreign markets to ensure that the SEC is not creating a competitive disadvantage for American-traded companies. And the States will need to evaluate existing environmental laws and regulations to determine how the proposed disclosure requirements might undermine, conflict, or otherwise impair those provisions now that the Commission is stepping into this new area. These tasks are but a part of the legal inquiry that the States must do. The States and other commenters cannot responsibly preform this work in 60 days.

And the legal analysis is only one part of what the States must do. These disclosures will have serious real-world effects on the thousands of public companies in the United States. The States need time to consult with relevant stakeholders, gather data, and consider the positive or negative effects on affected companies within their borders (or the States themselves). If, as expected, the proposed disclosure requirements create more costs than benefits, the States deserve an adequate opportunity to try to quantify those costs. The States and others should have the real chance to explain how these proposed disclosures could harm investors, companies, and the market as a whole.

Back in March 2021, before the Commission had proposed any rules, the Commission gave the public *90 days* to provide input on just 15 questions relevant to potential climate disclosures. (That narrower request elicited more than 6,000 comments.) Even as to run-of-the-mill proposed rules—and the rules here are hardly that—the ‘usual’ amount of time allotted for a comment period” is “90 days,” not 60 days.* *California by & through Becerra v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1176 (N.D. Cal. 2019) It would seem reasonable, then, for the Commission to provide some additional time now that the requests for comments and the matter to be commented on have vastly broadened. Neither the Commission nor any other party would be prejudiced; the Commission has never suggested that climate-related disclosures are an emergency necessity, and its multi-year effort to implement these rules belies any suggestion that it would be. Especially given that comment periods average more than two years, Nina A. Mendelson,

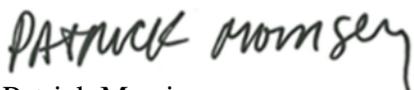
* In truth, the comment period here is shorter than the ordinary understanding of a “60-day comment period.” That’s because agencies generally “start” comment periods on the day the notice of proposed rulemaking is published in the Federal Register. The APA, of course “generally requires an agency to provide a comment period *after* [the] ‘proposed rule making’ is ‘published in the Federal Register.’” *In re Bees*, 562 F.3d 284, 289 n.3 (4th Cir. 2009) (emphasis added; citing 5 U.S.C. § 553(b) & (c)). But the Commission said the comment period would run for 60 days following the Commission’s informal publication of the proposed rule or *30 days* after publication in the Federal Register, whichever is longer. So the comment period, at least as it is ordinarily understood, is really just 39 days.

Regulatory Beneficiaries and Informal Agency Policymaking, 92 CORNELL L. REV. 397, 452 n.63 (2007), allowing a few additional days here seems to create no great burden for anyone.

At bottom, the Commission proposes to change its mission fundamentally. The Commission was previously concerned with ensuring that companies fairly and accurately report material risks. But in this proposal, the Commission appears to be trying to *drive the behavior* of registered companies in a manner more palatable to the administration. The Commission should not be trying to rush such a substantial change through in a few short weeks.

For all these reasons, then, the States request that the SEC extend the comment deadline to July 19, 2022.

Sincerely,



Patrick Morrisey
West Virginia Attorney General



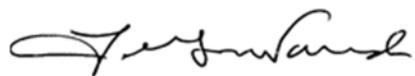
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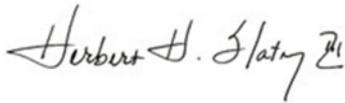
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