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**Via Electronic Submission**

June 8, 2022

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

**Re: File No. S7-10-22; Proposed Enhancement and Standardization of  
Climate-Related Disclosures for Investors.**

Dear Secretary Countryman,

Amberwave Partners, LLC (“Amberwave” or “AWP”) submits this letter in response to the Commission’s Release No. 34-94478 (the “Release”) which included a number of proposed changes to long-standing disclosure regulation (collectively, the “Climate Proposals”), including the additions of 17 CFR 210.14-01 and 14-02 (Article 14 of Regulation S-K) and 17 CFR 229.1500 through 1506 (subpart 1500 of Regulation S-K) under the Securities Act and the Exchange Act, and amendment of 17 CFR 239.11 (Form S-1), 17 CFR 239.18 (Form S-11), 17 CFR 239.25 (Form S-4), and 17 CFR 239.34 (Form F-4) under the Securities Act, and 17 CFR 249.210 (Form 10), 17 CFR 249.220f (Form 20-F), 17 CFR 249.306 (Form 6-K), 17 CFR 249.308a (Form 10-Q), and 17 CFR 249.310 (Form 10-K) under the Exchange Act.

**1. Background and summary.**

Amberwave is an impact investing firm founded in 2021, which focuses on the universal values of U.S. jobs, security & growth (“JSG”). Amberwave’s focus on the tangible, measurable metrics of JSG stands in contrast to much of the impact investing market, which has grown tremendously in recent years, largely driven by the popularity of the environmental, social, and governance movement (“ESG”).

By some measures, professionally managed assets with ESG mandates have grown to approximately \$46 trillion globally as of 2021, or approximately 40% of all assets under management.<sup>1</sup> Like many of our peer firms engaged in impact investing, we draw on a wide range of information in implementing our investing strategies, including issuer disclosure. The availability of reliable, consistent issuer disclosure on key impact priorities, including environmental impact, is foundational to the growing impact investing movement. Indeed, investor demand for such disclosures has significantly altered corporate disclosure practices, with more than 90% of S&P 500 constituents publishing sustainability reports in 2020.<sup>2</sup>

Despite the growing universality of voluntary corporate disclosure on environmental and other societal impacts, the Commission's recent Climate Proposals represent the most far-reaching disclosure and corporate mandate in decades.<sup>3</sup> The Climate Proposals, which the Commission proposed on a party-line vote, would require highly detailed and extensive climate-related disclosures for registrants, including climate-related financial statement metrics.<sup>4</sup>

Amberwave believes that the Climate Proposals lack basis in both law and policy. This letter will focus on the harmful policy implications of the Climate Proposals, but Amberwave also notes that there is much doubt as to whether the Climate Proposals have an adequate legal basis.<sup>5</sup> We leave it to other commentators to further explore these important legal issues.

This letter will address some of the key policy harms that will be caused by the Climate Proposals. Amberwave is uniquely positioned as an innovative recent entrant into the impact investing market to evaluate and opine on the deleterious effects of the Climate Proposals on investors and U.S. capital markets, which may result in significant long-term damage to U.S. jobs, security, and growth.

Our analysis following this Section 1 is organized as follows:

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<sup>1</sup> Foster, Lauren, "[Sustainable Investing Failed Its First Big Test, A Reckoning Is Coming](#)", *Barron's*, April 17, 2022.

<sup>2</sup> Governance and Accountability Institute, "[92% of S&P 500 Companies and 70% of Russell 1000 Companies Published Sustainability Reports in 2020, G&A Institute Research Shows](#)", *Globe Newswire*, November 16, 2021.

<sup>3</sup> Davis Polk & Wardwell LLP, "[SEC Proposes Climate Disclosure Regime](#)", *Davis Polk Insights*, March 22, 2022.

<sup>4</sup> U.S. Securities and Exchange Commission, "[SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors](#)", *U.S. Securities and Exchange Commission Press Releases*, March 21, 2022.

<sup>5</sup> In particular, there are significant questions as to whether the Commission's statutory authority to require disclosure that is "necessary or appropriate in the public interest or the protection of investors," extends to the Climate Proposals, given that nothing in federal securities law expressly authorizes climate-related disclosures, let alone the Commission's wide-ranging Climate Proposals. See U.S. Securities and Exchange Commission, "[Business and Financial Disclosure by Regulation S-K](#)", *U.S. Securities and Exchange Commission*, April 13, 2016. The Climate Proposals also appear to create First Amendment issues, specifically whether the Climate Proposals are unconstitutional compelled speech under the *National Association of Manufacturers v. SEC* precedent. See *National Assoc. of Mfrs. v. Securities & Exchange Comm'n*, 800 F.3d 518 (2015). There are also serious questions as to whether the Climate Proposals satisfy the Commission's materiality requirement or were properly promulgated under the Administrative Procedure Act. See Brightbill, Jonathan, "[Evaluating Challenges To SEC's ESG Disclosure Proposal](#)", *Winston's Environmental Law Update*, August 25, 2021.

- 2) The Climate Proposals would diminish competition in the still-nascent market for impact investing products by inappropriately favoring environmentally-focused investors.
- 3) The Climate Proposals would impose mandatory disclosure on environmental matters that have a significantly less meaningful impact on issuers and society than other potential disclosures on corporate impact, including those related to JSG.
- 4) The Climate Proposals would exacerbate the dangerous trend of the capital markets undermining U.S jobs, security, and growth by encouraging the continued prioritization of environmental goals over other important national priorities.
- 5) The Climate Proposals would diminish innovation within the market for ESG and environmentally sustainable investing products.

The arguments and analysis included in this letter demonstrate the harm the Climate Proposals will have on the economy and the security of the United States. We urge the Commission to reject the Climate Proposals in light of the costs it will impose on investors, the markets, and the United States.

## **2. The Climate Proposals would diminish competition in the still-nascent market for impact investing products.**

Much of the Commission's recent actions regarding ESG generally, and environmental impact in particular, focus on the perceived inconsistencies in disclosure practices and labeling across the market.<sup>6</sup> Numerous market participants have also pointed out that ESG strategies and ratings vary widely depending on the firm offering the ESG product or service, leading to inconsistent results across the ESG ecosystem.<sup>7</sup>

While the Commission and market commentators regard these inconsistencies as a problem, the variation across the market is better seen as a feature rather than a bug. The impact investing space is still a nascent market and therefore will tend to defy neat categorizations. The rapid growth in the market is reflective of the increased pace of innovation, as new solutions have attracted more attention and asset flows.

While these trends are positives for the industry, the combination of the rapid pace of innovation and large numbers of new market entrants will tend to create natural inconsistencies across the marketplace. The proper way to address this asymmetry in expectations is through increased investor education and competition in the marketplace for impact investing products, so that investors have the ability to choose their own

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<sup>6</sup> Gensler, Gary, "[The SEC & Climate Risk Disclosure](#)", *U.S. Securities and Exchange Commission YouTube Channel*, July 28, 2021.

<sup>7</sup> Shifflett, Shane, "[How ESG Stocks Perform Depends on Who Ranks Them](#)", *The Wall Street Journal*, June 11, 2021; and Edmands, Alex, "[The inconsistency of ESG ratings: Implications for investors](#)", *The Wall Street Journal*, February 17, 2020.

impact investing strategy and are able to best determine which providers reflect their desired impacts.

Unfortunately, the Climate Proposals cut in exactly the opposite direction, and will likely diminish competition in the market for impact investing products. The far-reaching environmental disclosure obligations the Commission intends to impose will create a number of significant challenges to innovation in the space.

First, the Commission's emphasis on issuers' environmental impact will reinforce the existing market understanding that financial regulators remain highly focused on the environment despite the fact that environmental impact and climate change are typically outside the purview of such authorities.<sup>8</sup> Investors generally anticipate future regulatory developments. As a result, investors may be left with the impression that the Commission is placing a regulatory stamp of approval on environmental focus, which will compound an existing problem in the market, where "people are very focused on [ESG], but it is generally about the E."<sup>9</sup>

The heightened focus on environmental impact is particularly concerning because the Commission has already taken a number of actions that could be perceived to be inappropriately favoring ESG from among various impact investing strategies. For example, the Commission's Twitter account posted a message of approval for ESG funds on Earth Day in 2021.<sup>10</sup> Additionally, the Commission provides that investors who engage with issuers on ESG matters may use Form 13(g) for beneficial ownership reporting, whereas investors who engage on other matters are required to file the more onerous Form 13(d). In contrast, the Commission has not taken any action to increase disclosures that are relevant for other impact investing strategies. This includes strategies like faith-based investing that have been well-established in the market for decades.

Second, the Commission's emphasis on environmental reporting will likely contribute to significant cognitive biases that will cause investors to focus on environmental issues at the expense of other important priorities. Information bias is the general tendency for investors to seek and evaluate information that is readily available, rather than focusing on information that may be necessary in the context of an informed investment decision but is more difficult to access.<sup>11</sup> The availability of highly detailed environmental impact disclosures will therefore tend to increase investor focus on environmental impact. Given the scarcity of time faced by all investors, the result will be less investor focus on other important impact priorities, all else being equal.

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<sup>8</sup> Demekas, Dimitri G; Grippa, Pierpaolo, "[Financial Regulation, Climate Change, and the Transition to a Low-Carbon Economy: A Survey of the Issues](#)", *International Monetary Fund*, December 17, 2021,

<sup>9</sup> Sutherland, Brooke, "[What Does ESG Really Mean? Take Your Pick](#)", *Bloomberg*, February 26, 2021.

<sup>10</sup> U.S. Securities and Exchange Commission, "[Environmental, social and governance \(ESG\) Funds can provide you with the opportunity to put your money to work with companies that work on making the world a better place. #Earthday2021](#)", *U.S. Securities and Exchange Commission Twitter*, April 22, 2021.

<sup>11</sup> Mirae Asset Management, "[Information Bias](#)", *Mirae Asset Mutual Fund Knowledge Center*.

Third, the Climate Proposals will reduce the human capital available to drive innovation in the impact investing space. Financial regulators' increasing focus on climate change has resulted in a remarkable hiring spree across financial services firms. For example, even before the Commission's most recent action, PwC announced its intention to hire approximately 100,000 new employees over the next five years to focus on ESG reporting.<sup>12</sup> The Climate Proposals' sweeping nature and the attendant significant increase in potential liability will further drive this existing trend, depriving other areas of the nascent market for impact investing products of talent.<sup>13</sup>

### **3. The Climate Proposals would impose mandatory disclosure on environmental matters that have a significantly less meaningful impact on issuers and society than other potential disclosures on corporate impact, including those related to JSG.**

Newcomers to the market for impact investing products may assume that "ESG" is synonymous with the entirety of a company's interactions with society other than those captured by traditional financial metrics that investors have long scrutinized. However, this is misguided characterization, because in practice, ESG focuses on a narrow set of issues, and tends to be dominated by consideration of environmental matters.<sup>14</sup>

Yet corporations have a dramatic impact on society that is not captured by ESG's narrow focus.<sup>15</sup> Issuer behavior dramatically affects the full range of considerations that go into the health of U.S. communities, including by creating economic opportunity, shaping community formation, and providing products and services that impact daily life.

Indeed, many ESG investors eschew, or in some cases, actively undermine other important national priorities despite their focus on ESG. For example, some of the most enthusiastic proponents of ESG principles also recklessly invest in firms linked to the Chinese military, including companies that produce weapons designed to target Americans.<sup>16</sup> The U.S.-China Economic and Security Review Commission noted that such investments violated a "basic responsibility of American citizenship...not to do anything to endanger U.S. troops."<sup>17</sup> ESG investors' selective focus on a narrow set of priorities at the exclusion of other vital interests is the fundamental driver of the need for competing impact investment strategies like JSG. Indeed, one might wonder whether prominent ESG proponents' support for the Climate Proposals is designed to avoid enhanced

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<sup>12</sup> DiNapoli, Jessica, "[PwC planning to hire 100,000 over five years in major ESG push](#)", Reuters, June 15, 2021.

<sup>13</sup> Kirkland & Ellis LLP, "[SEC Proposes New Climate Disclosure Requirements](#)", *Kirkland Alert*, March 24, 2022.

<sup>14</sup> Katz, Dan, "[Markets Have ESG Tunnel Vision](#)", *Barron's*, May 27, 2022.

<sup>15</sup> Business Roundtable, "[Statement on Purpose of a Corporation](#)", *Business Roundtable Press Release*, August 19, 2019.

<sup>16</sup> Morgan, Ryan, "[US firm BlackRock investing in Chinese military, spy companies tied to human rights abuses](#)", *American Military News*, October 29, 2021.

<sup>17</sup> United States China Economic and Security Commission, "[2021 Report to Congress](#)", November 17, 2021.

disclosure in other areas where their investment practices undermine other critical U.S. national interests.<sup>18</sup>

Yet the logic underlying the Commission's environmental actions – that climate impact is material to financial performance *and* a matter of public policy concern – evidently does not extend to other important areas, at least in the view of the Commission. This view is just as misguided as the Commission's view that climate change presents a near and present threat to financial stability.<sup>19</sup>

The U.S. economy is currently dealing with the highest inflation since the 1970s. President Biden recently declared that addressing inflation is his number one domestic priority.<sup>20</sup> While some portion of inflation is attributed to rising commodity prices (in part driven by ESG's impact on the cost of financing for fossil fuel production), much of the current bout of inflation stems from the tightness of the U.S. labor market.<sup>21</sup> Indeed, few public policy priorities are as critical as the health of the U.S. labor market, given the fundamental importance of economic opportunity to the health of American communities.

Yet the SEC's recently modernized human capital disclosures only require limited disclosure on issuers' workforce.<sup>22</sup> The human capital disclosure framework does not require that issuers disclose their number of employees in the United States; only half of U.S. issuers disclose their number of U.S.-based employees.<sup>23</sup> Required disclosures regarding workforce turnover, compensation levels, and other information that would help investors assess both issuer risks and critical public policy priorities are also lacking.

Similarly, disruptions of highly globalized supply chains have caused significant damage to the U.S. economy over the last two years.<sup>24</sup> Yet issuers' supply chain exposure is governed primarily by the existing materiality regime. Many corporations provide voluntary disclosure on their supply chains; however, this information tends to focus on naming suppliers rather than quantifying financial risk, which would be significantly more useful for investors and policymakers.<sup>25</sup>

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<sup>18</sup> BlackRock, "[Request for Input on Climate Change Disclosure](#)", *U.S. Securities and Exchange Commission Public Comments*, June 11, 2021.

<sup>19</sup> For discussion of the Commission's and other agencies' views of climate change as a risk to financial stability, see: Financial Stability Oversight Council, "[Report on Climate-Related Financial Risk](#)", 2021. For discussion of the lack of a near term financial stability risk from climate change, see: Stewart, Kirk, "[HSBC's Stuart Kirk tells FT Investors Need Not Worry About Climate Risk](#)", *Financial Times YouTube Channel*, May 20, 2022.

<sup>20</sup> Biden, Joseph, "[My Plan for Fighting Inflation](#)", *The Wall Street Journal*, May 30, 2022.

<sup>21</sup> Kupiec, Paul, "[Socially responsible investing is turning into a covert war on fossil fuels](#)", *The Hill*, March 11, 2022.

<sup>22</sup> U.S. Securities and Exchange Commission, "[SEC Adopts Rule Amendments to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K](#)", *U.S. Securities and Exchange Commission Press Release*, August 26, 2020.

<sup>23</sup> Pandit, Ganesh, "[First Look at the Human Capital Disclosures on Form 10-K Analyzing the SEC Mandate and Comparing it to SASB and EU Standards](#)", *The CPA Journal*, October 2021.

<sup>24</sup> Whipple, Tom, "[The Era of Cheap and Plenty May be Ending](#)", *New York Times*, May 3, 2022.

<sup>25</sup> Batemen, Alexis; Bonanni, Leonardo, "[What Supply Chain Transparency Really Means](#)", *Harvard Business Review*, August 20, 2019.

An honest appraisal of the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and to facilitate capital formation would point the Commission towards consideration of enhanced disclosure on workforces and supply chains, in addition to other vital public policy matters. Yet instead, the Commission has mistakenly chosen to single out climate change as a public policy risk worthy of elevation over other priorities.

#### **4. The Climate Proposals would exacerbate the dangerous trend of the capital markets undermining U.S. jobs, security, and growth by encouraging the continued prioritization of environmental goals over other important national interests.**

The rapid growth of the ESG movement, which is expected to surpass \$50 trillion in assets by 2025, has reshaped incentives in the capital markets.<sup>26</sup> Furthermore, the rise of indexing and passive funds has resulted in large asset managers like BlackRock, Vanguard, and State Street adopting ESG principles across their stewardship efforts rather than focusing on company by company analysis that is required of active investors.<sup>27</sup>

As a result, the capital markets already have a tendency to favor the elevation of ESG priorities over other key national interests.<sup>28</sup> For example, ESG investors have long eschewed defense companies and other firms that produce armaments.<sup>29</sup> Yet renewed concerns regarding European security have recently led to the absurdity of ESG advocates now arguing over whether armaments should be classified as ESG after all.<sup>30</sup> The importance of national defense as a pillar of global security did not change in the interim; what changed was the perverse impact of ESG on the ability of weapons manufacturers to attract financing.

The Climate Proposals are likely to reinforce the capital markets' prioritization of environmental goals over other important national interests. As discussed in Section 2, enhanced climate disclosures will likely interact with existing information biases to further focus investor attention on companies' environmental impact rather than on their financial risks or their impact on various other critical national priorities like job creation and supply chain security. As a result, the Climate Proposals will likely exacerbate the significant rise in the cost of capital for new fossil fuel production that is already attributable to the ESG movement.<sup>31</sup> The result is likely to be diminished energy security and economic opportunity for communities that depend on fossil fuel production.

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<sup>26</sup> Martin Adams, Gina, "[ESG assets may hit \\$53 trillion by 2025, a third of global AUM](#)", *Bloomberg Intelligence*, February 23, 2021.

<sup>27</sup> Gibson Dunn & Crutcher LLP, "[BlackRock, Vanguard and State Street Update Corporate Governance and ESG Policies and Priorities for 2022](#)", January 25, 2022.

<sup>28</sup> Katz, Dan, "[Markets Have ESG Tunnel Vision](#)", *Barron's*, May 27, 2022.

<sup>29</sup> Pfeifer, Sylvia, "[Rise of ESG adds to pressure on European defense companies](#)", *Financial Times*, November 30, 2021.

<sup>30</sup> Marsh, Alastair, "[Top UBS Researcher for ESG Finds Holes in Weapons Debate](#)", *Bloomberg*, March 16, 2022.

<sup>31</sup> Quinson, Tim, "[Cost of Capital Spikes for Fossil-Fuel Producers](#)", *Bloomberg*, November 9, 2021.

## **5. The Climate Proposals would diminish innovation within the market for ESG and environmentally sustainable investing products.**

Amberwave Partners focuses on U.S. jobs, security, & growth rather than on ESG, but we believe that the environment is an important public policy consideration, and investors should be free to focus on environmental impact and other ESG matters if they choose. Therefore, we believe that the ESG movement should face the same level of scrutiny as other impact investing strategies.

Environmental impact is a highly complex, multifactorial inquiry that requires significant human judgment and defies efforts to reduce issuers' impact to a single metric. The complexity of such judgments, and the resulting inconsistencies in conclusions between competing approaches have driven some of the high-profile debates in the ESG movement, such as the ongoing controversy over whether Tesla should be considered a strong ESG performer.<sup>32</sup> As a result, competing approaches are generally helpful to establish which environmental impact disclosures and methodologies are most useful to investors. Indeed, the capital markets already recognize the importance of environmental disclosures to investors, with more than 90% of S&P 500 constituents issuing sustainability reports in 2020.<sup>33</sup> Market pressures have shaped the issuance of such reports, and can be expected to continue to shape the type of disclosure that investors find most useful.

The Climate Proposals would impose a one-size-fits-all solution on environmental disclosure, short circuiting the ongoing development of increasingly useful environmental disclosure in the marketplace. The science of climate change constantly evolves, but disclosure rules will likely be slow to adapt.<sup>34</sup> Indeed, scientific understanding of and policy solutions to climate change are informed by increasing and evolving corporate disclosure. By imposing the Commission's preferred measures and standardizing market practices, we expect the Climate Proposals to harm innovation in environmental disclosures, and as a result, harm investors and undermine environmental policy aims over the long-term.

The tendency for disclosure and labeling regulation to create unintended adverse consequences for consumers, investors, and other market participants is well-observed in other markets. In the food labeling context, labeling requirements that assign simple solutions to complex judgments regarding nutrition have been found to lead to reduced

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<sup>32</sup> Kolodny, Lora, "[Why Tesla was kicked out of the S&P 500's ESG index](#)", *CNBC*, May 18, 2022.

<sup>33</sup> Governance and Accountability Institute, "[92% of S&P 500 Companies and 70% of Russell 1000 Companies Published Sustainability Reports in 2020, G&A Institute Research Shows](#)", *Globe Newswire*, November 16, 2021.

<sup>34</sup> Rosen, Julia, "[The Science of Climate Change Explained: Facts, Evidence and Proof](#)", *New York Times*, April 19, 2021.

innovation, adverse health effects, and market capture by existing incumbents.<sup>35</sup> The Climate Proposals will likely create similar issues in U.S. capital markets. For example, the Climate Proposals focus on emissions disclosure, but over time, policy solutions to climate change may move towards carbon capture rather than emissions reduction.<sup>36</sup> Yet issuer compliance with the Climate Proposals will likely remove market pressure for other forms of potentially more useful environmental disclosures, including those related to carbon capture. While we share the Commission's goal of bringing transparency and accountability to environmental disclosures, we believe the market is a better arbiter of underlying consumer preferences than the Commission's prescriptive solutions contained in the Climate Proposals.

## 6. Conclusion.

We respectfully urge the Commission to abandon the Climate Proposals. We would welcome the opportunity to discuss our comments with the Commission. Thank you for your consideration.

Sincerely,



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Cc:

The Hon. Gary Gensler, SEC Chair  
The Hon. Hester M. Pierce, SEC Commissioner  
The Hon. Allison Herren Lee, SEC Commissioner  
The Hon. Caroline A. Crenshaw, SEC Commissioner

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<sup>35</sup> Kolodinsky, Jane, "[Persistence of Health Labeling Information Asymmetry in the United States: Historical Perspectives and Twenty-First Century Realities](#)", *Journal of Macromarketing*, April 26, 2012.

<sup>36</sup> Foster, Joanna, "[To fight climate change, we need to do more than stop climate pollution. We need to reverse it.](#)", *Environmental and Defense Fund*, March 18, 2022.