

Comments on S7-10-22  
The Enhancement and Standardization of Climate-Related Disclosures for  
Investors

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I am writing to express my concerns about the U.S. Securities and Exchange Commission's (SEC) notice of proposed rulemaking on the Enhancement and Standardization of Climate-Related Disclosures for Investors (ESG rule).

When it became law, the Securities Exchange Act of 1934 included as one rationale for its passage the "important national interest in maintaining fair and orderly securities trading, assuring the fairness of securities transactions and markets and protecting investors." While many rightly focus on the protection of investors when referencing SEC regulation, it must also be noted that all U.S. citizens in their roles as consumers, producers, and investors have an interest in the efficiency and productivity of markets that are subject to fair and orderly securities regulation. This proposed rule would impose unnecessary requirements on publicly traded companies that stand in opposition to decades of theory and practice related to securities regulation, and would thus threaten the interests of all Americans.

The proposed rule requires the disclosure of a number of factors related to climate change, including company-related carbon emissions under 3 categories: emissions from direct operations of a company, emissions from electricity and power purchased by the company, and emissions from indirect sources such as those from suppliers and customers. The SEC estimates that the direct costs of these disclosures and other compliance measures for the public companies subject to this rule will be \$6.37 billion. This dwarfs current SEC compliance costs of \$3.85 billion, increasing the total cost of compliance with SEC regulations to \$10.2 billion ([21459-21461](#)).

Of course, compliance costs associated with any regulation imposed on a business are not simply contained within that business but have ramifications throughout the economy. The same is true with the compliance costs of the proposed rule. Matthew Winden, Ph.D., the department chair and associate professor of economics at University of Wisconsin - Whitewater, used the Regional Economics Models, Inc. ("REMI") model of the U.S. economy to estimate the costs of the proposed rule on the U.S. economy. In developing the cost estimate, Dr. Winden phased in the compliance costs in his model with 25% of the total accounted for in 2022, 50% of the total in 2023, and 75% of the total in 2024. He did this because the proposed rule would not take full effect until 2025.

Dr. Winden reports the costs of rule's effect on the entire U.S. economy:

The direct compliance cost of \$6.37 billion per year leads to significant economic losses when comparing disclosure rule implementation to the baseline scenario of no new disclosure requirement. These include initial job losses of 47,000 in 2022 under partial implementation, peaking at 203,000 in 2025 with full implementation and declining to 145,000 in 2035. This is an average of 156,000 U.S. jobs foregone annually from higher costs due to the disclosure rule. In addition, lower productivity growth, and reduced investment, equivalent to 0.02% of GDP in 2022 under partial implementation, peaking at 0.1% of GDP in 2025-2027 under full implementation and leveling off at 0.08% of GDP through 2035 also occurs. Economy-wide GDP losses are \$5.6 billion in 2022, peak at \$25.6 billion in 2026 and eventually level off to around \$22.5 billion dollars in 2035. These impacts are generalized across the economy but have particularly strong effects in capital-intensive economic sectors, such as natural resource extraction and processing, manufacturing, construction, and transportation and logistics.

Not only will these costs reduce investment, employment, and economic growth, they are completely unnecessary. The SEC's proposed ESG rule would require information about a company's "climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition." Yet any material company information related to climate change has long been available to American investors, consumers, and others interested in this issue.

The causes and consequences of climate change have been publicly debated in the U.S. for more than 30 years. Some Americans are concerned about the release of CO<sub>2</sub> into the atmosphere, and others are not. And the marketplace has responded to the debate in various ways. As Dr. Winden writes:

Companies which believe they have a competitive advantage in their ESG performance and would like to attract capital on that basis, already voluntarily report and disclose ESG metrics, as well as future plans of action to combat climate change. Around 20% of current public companies are doing this. These companies are therefore sending a "climate-positive" signal to financial markets and investors who, for financial or social motives, can then support these companies. By direct contrast, companies that do not have this information provided are sending either a "climate-neutral" or "climate-negative" signal. Again, investors are able to respond accordingly.

What this means is that these disclosures provide little information to the market that is not already available. Any benefits to investors of the disclosures required under the proposed rule are likely to be negligible, or nonexistent.

While the SEC's role is to protect investors and ensure fair and orderly securities trading, it is likely that regulators and other proponents of the rule also hope for some environmental benefits through a reduction of CO<sub>2</sub> emissions as a result of the adoption of this rule. While the extent of the financial and environmental risks of CO<sub>2</sub> emissions are still being debated ([McKittrick and Christy](#)), it is nonetheless true that reductions in CO<sub>2</sub> emissions in the U.S. have been taking

place primarily through various market mechanisms rather than through regulations, including those like the SEC is proposing.

As previously noted, a number of publicly traded U.S. companies have voluntarily reported and disclosed ESG metrics. Many of these companies have also taken specific measures to reduce their “carbon footprint,” i.e., the CO<sub>2</sub> emissions directly and indirectly related to their businesses. Additionally, technological developments have led to reduction in CO<sub>2</sub> emissions, often dramatically so in the case of energy production, which is where the vast majority of CO<sub>2</sub> emissions occur .

The International Energy Agency (IEA) reported that in 2019 the [U.S. led the world](#) in energy-related reduction of CO<sub>2</sub> emissions:

The United States saw the largest decline in energy-related CO<sub>2</sub> emissions in 2019 on a country basis – a fall of 140 Mt, or 2.9%, to 4.8 Gt. US emissions are now down almost 1 Gt from their peak in the year 2000, the largest absolute decline by any country over that period. A 15% reduction in the use of coal for power generation underpinned the decline in overall US emissions in 2019. Coal-fired power plants faced even stronger competition from natural gas-fired generation, with benchmark gas prices an average of 45% lower than 2018 levels. As a result, gas increased its share in electricity generation to a record high of 37%.

This trend is not new. In 2012, the U.S. Energy Information Administration (EIA) reported that “Energy-related carbon dioxide (CO<sub>2</sub>) emissions in 2012 were the lowest in the United States since 1994, at 5.3 billion metric tons of CO<sub>2</sub> (see figure above). With the exception of 2010, emissions have declined every year since 2007.” Almost all of these reductions took place before there were any meaningful federal regulations on CO<sub>2</sub> emissions.

It is not within the scope of these comments to discuss whether the U.S. Environmental Protection Agency or other environmental regulatory agencies need to adopt additional measures to reduce CO<sub>2</sub> emissions, nor to debate whether the U.S. Congress should adopt something like a carbon tax to address CO<sub>2</sub> emissions. The focus of these comments is to make the point that the compliance costs imposed by the proposed rule will cause significant economic harm on American businesses, investors, and the public with little or no benefit to investors or the public. And to observe that the harm imposed by the proposed rule could extend well beyond the \$6.37 compliance costs as they ripple throughout the American economy.

In fact, substantial economic, environmental, and societal harm could result from a decrease of competitiveness in the U.S. economy if the proposed rule is adopted. Dr. Winden describes the likely competitive effects on the economy from the proposed rule:

As a result of the disclosure requirement and the recommendations provided in it by the SEC, firms may seek to avoid and mitigate carbon intensive activities, further raising

domestic costs beyond just those of compliance. Ostensibly this would be a good thing and help to combat climate change by lowering domestic greenhouse gas emissions; however, without a corresponding decline in the demand for carbon intensive products or activities, satisfaction of that demand will simply shift. Carbon intensive products will still be produced either privately or internationally and then imported to the US. Under private provision, domestic emissions reductions won't happen. If supplied by foreign firms, carbon emissions will simply be displaced internationally. This creates a competitive disadvantage for public domestic producers, because they face higher costs stemming from the disclosure requirement while private and international firms' cost structures are unchanged. Because there isn't a corresponding change in consumers' preferences for carbon intensive products or activities, as well as implementation of a corresponding border adjustment tax applied to foreign firms who import carbon intensive products, private or foreign companies will simply fill the gap and supply carbon intensive products at cheaper prices than public domestic producers. Worse, there will likely be little to no net-change in emissions (and therefore environmental improvement) globally as carbon intensive production shifts overseas.

Competitiveness in the market would also be reduced as companies seek to comply with the rule by possibly adopting some of the prescriptive actions the rule suggests companies should take to address climate change. By suggesting specific changes, the SEC seeks to replace the judgment of highly sophisticated capital markets by picking technological winners and losers. This type of government action often results in dated or inferior technology being "locked-in" to place in the market. The result of this is that market participants often cannot adapt to new challenges and new competitors with new technology, increasing the potential of future economic and environmental harm.

Dr. Winden also discussed how the changes to the competitive nature of the market could also hurt smaller retail investors who have limited access to private capital markets:

Compliance actions raise costs on firms and these cost increases incentivize firms to either stay private (if they are already private) or to go private (if they are currently public). The reason for this is that privately held firms are not subject to the same disclosure requirements as public firms and therefore the compliance costs can be avoided. Increasing firm disclosure costs by a projected 165% will cause a substantial impact on most firms. For many companies, avoiding these disclosure costs may lead them to seek capital in alternative, non-public markets.

Unfortunately, this incentive then contravenes part of the benefits which the rule aims to impart to investors by driving otherwise profitable and financially sound firms out of the public markets. Investors are hurt by this because this reduces investment options for retail investors and deprives them of potentially lucrative returns. Some of the largest market returns ultimately accrue from firms entering the public market to secure funding for additional growth. Retail investors provide the capital to these firms and then, when the firm grows successfully, are rewarded with a return on their investment. If these firms

forgo public funding and seek private funding instead (which most retail investors do not have access to), retail investors miss out on the substantial growth and return produced by these firms (lowering the overall returns available to retail investors).

Finally, this rule is not being proposed in a political vacuum. Several states, including Texas and Arizona, are pushing back against investment firms and other companies that are targeting investment in traditional energy sources. The proposed rule is likely to exacerbate the political battle over ESG investing and efforts to address CO2 emissions. This would further distract from the public and market responses to concerns over climate change that have taken place over the last 30 plus years. We encourage the commission to halt consideration of the proposed rule and let this debate take place in more appropriate venues, including Congress, the market, and the American public. Only by doing this can the SEC avoid the human, social, and economic harms that would come from the adoption of this rule.