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The SEC's Climate-Related Disclosures Rule Puts Special Interests Ahead of Its Mission and Everyday Investors

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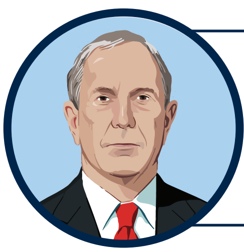
KEY FINDINGS

THE SECURITIES AND EXCHANGE COMMISSION (SEC) ESTIMATES THAT ITS **CLIMATE-RELATED DISCLOSURES RULE WILL COME AT A COST OF MORE THAN $10 BILLION TO PUBLIC COMPANIES**, BUT THE ACTUAL COST WILL LIKELY BE MUCH HIGHER.

THE RULE IS **PUSHED BY CLIMATE ACTIVISTS** AND OTHERS THAT COULD BENEFIT FINANCIALLY, **NOT EVERYDAY INVESTORS**.



THE PROPOSAL FOLLOWS A MODEL **CREATED BY A GROUP LED BY MICHAEL BLOOMBERG**.

THE SEC'S ACTION IS UNNECESSARY AS **COMPANIES ALREADY MUST REPORT MATERIAL THREATS**, INCLUDING THOSE CONNECTED TO THE CLIMATE.

CONGRESS SHOULD PASS THE REINS ACT TO ENSURE PROPER OVERSIGHT OF AGENCIES.

THE BOTTOM LINE:

THE SEC'S CLIMATE-RELATED DISCLOSURES RULE IS UNNECESSARY, COSTLY, AND OUTSIDE THE SEC'S NORMAL PURVIEW. CONGRESS SHOULD PASS THE REINS ACT TO PREVENT FUTURE AGENCY OVERREACH.

Overview

Days after taking office, President Biden announced the need to take a "government-wide approach to the climate crisis."[1] The following spring, the SEC attempted to carry out the president's green agenda by proposing a new rule that would require public companies to make climate-related disclosures.[2-3] The proposed rule lays outside the SEC's traditional purview and would cost companies and investors billions.

The proposed rule, titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors," professes to be for the benefit of investors. But in reality, the rule has been pushed by activists and is even modeled after recommendations made by a group led by former New York City Mayor and 2020 Democratic presidential candidate Michael Bloomberg.[4]

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The SEC is overstepping its authority in an attempt to force reductions in greenhouse gases. It is another effort by Democrats to put an end to fossil fuels, regardless of the consequences. The rule is not even necessary, as public companies already must disclose material risks, including those that are climate-related.[5]

Congress should prevent this type of political meddling from bureaucrats and protect the public from resulting harm. To do this, it should reassert its authority and oversight over federal agencies by requiring that major rules like this receive congressional approval before being implemented.

What is the SEC's climate-related disclosures rule?

The rule requires public companies to make several disclosures in their registration statements and annual reports. Among these requirements, three stand out. First, companies must disclose how any climate-related risks are likely to have a material impact on their business.[6] They must also disclose the impact that future weather changes or movement away from greenhouse gases may have on their financials.[7] Finally, they must report greenhouse gases that are produced by the company's activities, often including upstream and downstream sources as well.[8]

THE RULE REQUIRES PUBLIC COMPANIES TO MAKE SEVERAL DISCLOSURES IN THEIR REGISTRATION STATEMENTS AND ANNUAL REPORTS.

These disclosures are extremely in-depth and would take time and expertise to complete, which is costly for businesses. The SEC estimates its rule change would result in direct costs of more than $10 billion.[9] This would more than double the current cost of the regulation.[10] The SEC also estimates that the rule would require more than 43 million internal hours to complete the requirements, again more than doubling the current requirements.[11]

Recent history shows us that when the SEC implements rules and regulations, the actual costs are often much higher than estimated. For example, when the SEC implemented the Sarbanes-Oxley Act of 2002, the annual costs were estimated at $91,000 per company—but a later SEC report showed the true figure as $2.3 million a year in direct compliance costs.[12] The SEC's new rule may not result in costs 25 times greater than expected, but it is complicated and in-depth enough to suggest the agency may be underestimating the true cost.

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The costs of the proposed rule would be far greater than any potential benefits to investors and other everyday Americans. The loss felt by these individuals would go to profit climate consultants, auditors, and greenhouse gas emissions attestation providers. The SEC estimates that $6.38 billion will be spent on outside firms providing these services to comply with the rule each year.[14] Profit potential like this shows why the proposal is so popular with groups that would benefit financially from the rule.

The rule is pushed by climate activists, not everyday investors

The SEC claims the rule was proposed to provide useful information for and to protect investors.[15] But if investors are clamoring for this information, they have not been very vocal. There have not been large-scale, or even small-scale, protests or an effort to pull money until companies report climate-related risks. In fact, the opposite is occurring.

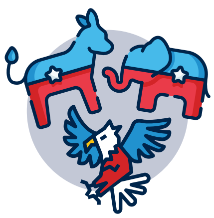
ESG funds, which consider a company's environmental, social, and governance positions, had an awful last year. The 10 largest funds posted double-digit losses and eight of them did worse than the S&P 500.[16] Investors have responded as one would expect, with one such fund reporting a 71 percent drop in inflows through September.[17] Global outflows from ESG funds topped $100 billion through the first three quarters.[18] States have even begun pulling their funds from management firms with ESG accounts, citing poor returns for shareholders.[19]

If most investors are more interested in return on investment, who is pushing for climate-related disclosures?

A mere week after taking office, President Biden issued an executive order detailing steps to tackle climate change.[20] He announced a policy to "deploy the full capacity of [federal] agencies" to take "bold, progressive action" to address the climate crisis.[21]

Taking their marching orders, the SEC proposed this bold rule change with the help of a well-known progressive. The rule itself states that the disclosure framework is modeled after recommendations from the Task Force on Climate-Related Financial Disclosures (TCFD).[22] Michael Bloomberg is the chairman of this group.[23]

The rule states that many commentators supported creating the climate-related disclosures rule and basing them on the TCFD's framework.[24] What the SEC fails to highlight is that those calling for these reforms may be more politically motivated than looking out for investors. The footnotes reveal that groups calling for the disclosures include the retirement systems for California state employees and teachers and San Francisco city and county workers, Google's parent company Alphabet, and BlackRock, which is losing investors because of its ESG position.[25]



WHAT THE SEC FAILS TO HIGHLIGHT IS THAT THOSE CALLING FOR THESE REFORMS MAY BE MORE POLITICALLY MOTIVATED THAN LOOKING OUT FOR INVESTORS.

This rule is not being put forth, nor supported, by everyday investors who may have a 401k or IRA for retirement. These people know that the billions of dollars in extra expenses will only cut into profits which could reduce both dividend payments and company stock prices. Instead, this rule follows a policy set forth by President Biden, tracks a framework created by a group headed by Michael Bloomberg, and is pushed for by progressive politicians and companies and the auditors and consulting firms that stand to profit off investors' losses.

The rule is neither necessary nor in the SEC's wheelhouse

The SEC was created during the Great Depression to help restore the public's trust in the stock market.[26] The agency was created to help stop serious abuses in the market, misrepresentations, and manipulation of stock prices.[27] It has a three-part mission, "protecting investors, facilitating capital formation, and fostering fair, orderly, and efficient markets."[28]

The SEC has proposed this rule under two acts of Congress, both foundational to the agency, the Securities Act of 1933 and the Securities Exchange Act of 1934.[29] In both acts, Congress shared categories of information that they anticipated companies would disclose. These categories are financial in nature to best help investors understand a company's true value. For instance, the Securities Exchange Act of 1934 lists 11 categories of information tied to the company's finances.[30] It concludes with, "any further financial statements which the Commission may deem necessary or appropriate for the protection of investors."[31]

There is an important reason for this. Financial disclosures are generally objective, as a company does not have to guess at how much money it made or lost last year. The proposed rule would invite the type of guesses, assumptions, and speculations that the SEC was created to remove from securities.

Commissioner Hester Peirce argues that requiring these climate-related disclosures will, "entail stacking speculation on assumptions. It will require reliance on third parties and an array of experts who will employ their own assumptions, speculations, and models."[32] The TCFD itself says the climate scenarios would use, "hypothetical constructs" "not designed to deliver precise outcomes or forecasts."[33]

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This invites companies to fudge numbers, since they are assumptions anyways, to make them appear more attractive to investors. This is exactly what the SEC was created to prevent, but they will now be seemingly encouraging them to do so. If these numbers are essentially made up, how can they be useful to investors? At best the additional disclosures may confuse them, at worse companies may use the opportunity to create phony numbers to lure in investors.

Not only could the proposed additional disclosure requirements confuse rather than inform investors, it also may run afoul of the major questions doctrine. This doctrine states that questions of vast economic or political significance should be answered by Congress unless clear authority is given to the agency. No clear authority from Congress was given to the SEC to address environmental matters as the agency itself acknowledged as recently as 2016.[34]

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The sheer cost of the rule and that it benefits the connected at the expense of investors may be enough to oppose it, but it turns out the rule is not even necessary. SEC rules already require companies to disclose any material risks, regardless of the source or cause.[35] This would include any material risks that are climate-related. A recent report showed that 71 percent of S&P 500 companies disclose greenhouse gas emissions, and more than half disclose climate risks.[36] What this rule would really do then is to require companies to disclose additional non-material risks while increasing the cost of compliance.

The rule is another attempt to end fossil fuel investment

Rather than protect investors, the true objective of this rule is to reduce the use and investment in fossil fuels in the country. After the Supreme Court struck down the Clean Power Plan as exceeding the Environmental Protect Agency's authority, the Green New Deal went nowhere in Congress, and the Democrats' budget reconciliation bill was trimmed, climate activists have turned to the SEC to help reduce greenhouse gas emissions.[37]

The way this would work is familiar by now. Both activists and the media will push the narrative that a company must change its ways and that all decent citizens should boycott it until they do. All too often this charade works, the target backs down and promises to do better in the future. This was on full display recently when Major League Baseball was pressured to move its All-Star Game from Atlanta over Georgia's new election law.[38]

RATHER THAN PROTECT INVESTORS, THE TRUE OBJECTIVE OF THIS RULE IS TO REDUCE THE USE AND INVESTMENT IN FOSSIL FUELS IN THE COUNTRY.

The SEC itself admits that part of the idea behind the rule is to reduce greenhouse gas emissions.[39] When discussing the impact of requiring companies to account for greenhouse gas emissions from upstream and downstream sources it states that companies can choose "to purchase from more greenhouse gas emission-efficient suppliers or by working with existing suppliers to reduce emissions."[40] In other words, do not source materials created with fossil fuels, instead turn to renewables.

This rule would not affect all public companies equally. Some may escape relatively easily from the more than $10 billion in annual costs, but some, especially those in the manufacturing and agriculture sectors, would be hit particularly hard. If a company is in the mining, transportation, or energy production business the rule could be devastating. For many, this is not seen as a harmful side effect of a helpful rule, it is the purpose of the rule.

But ending western investment in fossil fuels and fossil fuels-intense industries will not influence the future climate. If the demand is there, supply will just move to other countries, many of which see the United States as an enemy and are much less environmentally conscious.

> **But ending western investment in fossil fuels and fossil fuels-intense industries will not influence the future climate.**

Congress should pass the REINS Act

Congress has the power and authority to stop disruptive, illegal rules in their tracks by requiring approval for rules with costs of more than $100 million, before they can take effect.

Costs like those contemplated in this rule should not be imposed by unelected bureaucrats who are not accountable to the public. The Regulations from the Executive in Need of Scrutiny (REINS) Act would bring accountability to agencies and ensure elected officials speak to matters of financial importance.

CONGRESS HAS THE POWER AND AUTHORITY TO STOP DISRUPTIVE, ILLEGAL RULES IN THEIR TRACKS BY REQUIRING APPROVAL FOR RULES WITH COSTS OF MORE THAN $100 MILLION BEFORE THEY CAN TAKE EFFECT.

THE BOTTOM LINE: The SEC's climate-related disclosures rule is unnecessary, costly, and outside the SEC's normal purview. Congress should pass the REINS Act to prevent future agency overreach.

The SEC's climate-related disclosures rule works for special interests, not everyday investors. The estimated annual cost of more than $10 billion, which would likely run much higher, will ultimately be paid by investors through lower dividends and stock prices or consumers through higher prices.

The rule is either duplicative, because companies already must make disclosures of material risks, or unnecessary because any additional disclosures are not material. The rule exceeds the authority granted by Congress, as the agency seemingly admitted just a few years ago. The rule would help promote the type of manipulation and misrepresentations that the agency was created to discourage after the market crash of 1929. The true intention behind the rule is not to protect consumers but to reduce investment in and use of fossil fuels.

Congress should keep overactive agencies in check by requiring its approval before costly rules like this take effect. This would provide both helpful oversight of these agencies and hold bureaucrats accountable.

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