Columbia Law School | COLUMBIA CLIMATE SCHOOL
SABIN CENTER FOR CLIMATE CHANGE LAW

July 29, 2026

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

Re: Opposition to the Rescission Proposal of *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release Nos. 33-11421, 34-105572; File No. S7-2026-19

Dear Secretary:

Columbia Law School's Sabin Center for Climate Change Law ("Sabin Center") respectfully submits this comment in opposition to the Commission's proposal[1] ("Rescission Proposal") to rescind *The Enhancement and Standardization of Climate-Related Disclosures for Investors*[2] ("Final Rule"). For the reasons set out below, the Commission should withdraw the Rescission Proposal.

Introduction

The Sabin Center develops legal techniques to fight climate change and advance climate justice, trains students and lawyers in their use, and provides the public with resources on key topics in climate law and regulation. We have engaged with this rulemaking throughout its lifecycle, including in connection with the 2022 proposal and the 2024 adoption of the Final Rule. Two of the Sabin Center's recent white papers inform this comment letter. The first, *Shedding Light on Climate Risk in 2025: Upcoming Debates About the SEC's Climate Disclosure Rule*,[3] examines how the Final Rule would operate in practice, including a survey of recent corporate climate

[1] Rescission of Climate-Related Disclosure Rules, Securities Act Release No. 33-11421, 91 Fed. Reg. 33296 (proposed June 3, 2026) ("Rescission Proposal").

[2] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 33-11275, Exchange Act Release No. 34-99678, 89 Fed. Reg. 21668 (Mar. 28, 2024) ("Final Rule"). The Final Rule's multiple provisions were stayed before their May 28, 2024 effective date and have not taken effect; the Commission ended its defense of the Final Rule in March 2025, and the consolidated petitions for review were held in abeyance. See *Iowa v. SEC*, No. 24-1522 (8th Cir. Sept. 12, 2025).

[3] Cynthia Hanawalt, Andrew Bernstein, Lisa Sachs & Madeleine Field, *Shedding Light on Climate Risk in 2025: Upcoming Debates About the SEC's Climate Disclosure Rule* (Sabin Center for Climate Change Law, Nov. 2024), available at https://scholarship.law.columbia.edu/sabin_climate_change/236/("Shedding Light").

disclosure that goes beyond the keyword analysis upon which the Commission relied in 2024 (and continues to rely on in the Rescission Proposal). The second, *The Behavioral Effects of Corporate GHG Emissions Disclosures*,[4] reviews the empirical literature on if and how markets benefit from standardized emissions disclosure. Both are cited herein.

This comment proceeds in five sections. Each line of analysis finds ample grounds for retaining the Final Rule. Section I considers the standard for rescinding a final rule, and concludes the Rescission Proposal fails to meet that standard. Section II details the Commission's authority to promulgate the Final Rule, both under traditional understandings of its statutory authority and even under the narrower test the Rescission Proposal now advances. Section III explains why climate information is material under the objective, reasonable investor-centered standard the Supreme Court has long applied, as confirmed by the record of investor demand. Section IV cautions that, absent proper implementation of the Final Rule's disclosure system, investors will be forced to rely on inconsistent, unverified, and unaccountable sources for material climate information. Finally, Section V shows that the Rescission Proposal's economic analysis omits a central benefit of standardized disclosure and overstates costs associated with the Final Rule.

I. The Rescission Proposal Fails to Explain the Commission's Reversals on Central Issues or to Account for Reliance Interests the Final Rule Engendered

An agency may change course, but not without reasonable explanation. The Supreme Court has held that, when the Commission rescinds a rule, this action is reviewed under the same arbitrary-and-capricious standard that governs the rule's adoption under the Administrative Procedure Act ("APA").[5] That standard "requires that agency action be reasonable and reasonably explained."[6] Importantly, when the new position rests on factual premises that contradict those underlying the prior rule, or disturbs serious reliance interests, the agency must give a "more detailed justification than what would suffice for a new policy created on a blank slate."[7] An "unexplained inconsistency" between an agency's prior and current positions is itself a reason for courts to hold that the change is arbitrary and capricious.[8] The Rescission Proposal fails to meet these standards of sufficient consistency.

Recent caselaw on another SEC rescission attempt underscores this point. In *National Association of Manufacturers v. SEC* ("*Nat'l Ass'n of Mfrs*"), the United States Court of Appeals for the Fifth Circuit, in an opinion by Judge Edith Jones, vacated the Commission's rescission of notice-and-

[4] Cynthia Hanawalt & Andy Fitch, *The Behavioral Effects of Corporate GHG Emissions Disclosures* (Sabin Center for Climate Change Law, Sept. 2025), available at https://scholarship.law.columbia.edu/sabin_climate_change/256/ ("Behavioral Effects").

[5] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made") (citation and internal quotation marks omitted).

[6] *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021); accord [6] *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802, 810 (5th Cir. 2024).

[7] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (noting that additional explanation is required when the new policy rests on factual findings that contradict those underlying the prior policy, or when the prior policy engendered serious reliance interests).

[8] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (citation omitted).

awareness conditions for its 2020 proxy-advisor rule as arbitrary and capricious.[9] The court identified two independent failures. First, the agency "failed adequately to explain its decision to disregard its prior factual finding" regarding risks that notice-and-awareness conditions posed to regulatory timeliness and independence. Second, the agency "failed to provide a reasonable explanation why these risks were so significant … as to justify … rescission."[10] The court rejected the Commission's attempt to recast its contradictory reassessment of risk as a mere "policy judgment," holding that the reassessment "was not a policy judgment but rather a new factual finding that contradicted an earlier one." As the court put it, the agency was essentially saying, improperly, "That was then – this is now."[11]

The parallel to the 2026 Rescission Proposal is nearly exact. The Final Rule rested on an extensive factual record, which documented: the inadequacy and incomparability of existing voluntary disclosure (as well as disclosure under the Commission's 2010 Guidance), the strong investor demand for standardized climate information, and the financial materiality of climate-related risks. The Rescission Proposal does not develop a new factual record displacing those findings; it simply short-changes the same record and proffers a different factual determination. Changing the Commission's risk assessment based on the same factual record is precisely the approach that the Fifth Circuit held unlawful.

Moreover, if a rescission proposal is finalized and litigation ensues to challenge it, an agency cannot subsequently defend the rescission with novel justifications. As the Fifth Circuit further pointed out, a reviewing court "may consider only the reasoning articulated by the agency itself" in its formal rescindment docket, and "cannot consider *post hoc* rationalizations."[12]

While a separate Court of Appeals declined to set aside the Commission's 2020 proxy-advisor rescission on the record before it, such divergence does not aid the Commission here.[13] The Sixth Circuit declined to set aside the proxy-advisor rescission only because it found that the rescission did not contradict the agency's prior factual findings. But the Rescission Proposal clearly does contradict specific factual determinations the Commission made in adopting the Final Rule in 2024 (including, as discussed herein: the inadequacy and lack of comparability of voluntary climate disclosure; the documented investor demand; the financial materiality of climate risks, plans and targets; and the severability determination[14] now recharacterized as an indivisible whole). Thus, even under the Sixth Circuit's holding, a "reasonable and reasonably explained" APA framework for policy reversal is now required, which the Commission has failed to provide. The governing principle that an agency reversing course must confront, not merely evade, the findings that supported its prior rule is not in dispute. And the contradictions between the Final Rule and the Rescission Proposal are more pronounced even than the record in *Nat'l Ass'n of Mfrs*.

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[9] *Nat'l Ass'n of Mfrs. v. SEC*, 105 F.4th 802, 811–15 (5th Cir. 2024). Like the Final Rule here, the proxy-advisor rule had been suspended by the Commission and had not become effective.

[10] Id. at 811.

[11] Id. at 812.

[12] Id. at 814 (quoting *Data Mktg. P'ship, LP v. U.S. Dep't of Lab.*, 45 F.4th 846, 856 (5th Cir. 2022), in turn quoting *State Farm*, 463 U.S. at 50.

[13] *Chamber of Commerce of the U.S. v. SEC*, 115 F.4th 740 (6th Cir. 2024).

[14] Final Rule at 591 ("The Commission considers the provisions of the final rules to be severable to the fullest extent permitted by law").

Most notably, the Commission grounded its Final Rule in a substantial record of investor demand. The Commission cannot now set aside that record through a conclusory reframing, without explaining why the evidence it previously credited no longer supports the conclusions it then drew. "Nodding to concerns raised by commenters only to dismiss them in a conclusory manner is not a hallmark of reasoned decision-making."[15] This logic applies all the more forcefully when the Commission itself has previously relied on those very commentator concerns to inform and justify its regulatory action.

Further, under the Supreme Court's *State Farm* decision[16] and subsequent jurisprudence, the Commission is also obligated to grapple with the reliance the Final Rule has engendered. Since 2024, investors and other stakeholders have reshaped their operations around the expectation of standardized, comparable data. Registrants have devoted organizational resources to building the disclosure controls, data systems, and assurance relationships that can meet investor expectations and comply with the Final Rule. An agency that reverses a recent rule must account for disrupting such reliance.[17] The Rescission Proposal does not. Indeed, the Commission's choice to rescind a recently adopted rule, based on inconsistent and unexamined assumptions (rather than on changed facts), undermines the predictability and stability that capital markets rely on. This blow to proper market functioning is another consideration the Commission was obligated to weigh, and did not.

A final instance of arbitrary-and-capricious reversal appears in the Rescission Proposal's treatment of severability. In adopting the Final Rule, the Commission expressly determined that the rule's provisions were severable and intended "to operate independently."[18] The Rescission Proposal neither honors that determination, nor identifies any change in fact that would justify abandoning it. Instead, merely "upon reconsideration," the Commission now announces the opposite conclusion: that "the individual items of disclosure in the Final Rules are pieces of a larger whole and cannot operate sensibly without the others." On that minimal rhetorical basis, the Commission would sweep aside the Final Rule's multiple components "in their entirety."[19]

Again, an agency that reverses its prior determinations must confront the factual assertions it is abandoning and supply a reasonable explanation for any changed perspective on those facts. It may not summarily pronounce a new conclusion "upon reconsideration."[20] The Rescission Proposal does provide a series of supposed justifications: that the Final Rule occasionally cross-references its own provisions, that the Final Rule requires "significant overlap" between the narrative and financial-statement disclosures, and that the offsets-and-RECs metric is tied to the

[15] *Nat'l Ass'n of Mfrs.*, 105 F.4th at 813.

[16] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

[17] See *Fox*, 556 U.S. at 515–16.

[18] Adopting Release, 89 Fed. Reg. 21668, pt. III ("Other Matters") (severability provision); see Final Rule, at 33308 & n.164 (acknowledging that "the Commission stated in the Adopting Release that it intended for the Final Rules to operate independently").

[19] Final Rule, § III.B.3, 91 Fed. Reg. at 33308.

[20] See *State Farm*, 463 U.S. at 42; *Fox*, 556 U.S. at 515–16; *Encino Motorcars*, 579 U.S. at 222; cf. *Nat'l Ass'n of Mfrs.*, 105 F.4th at 812 (rejecting an agency's "upon reconsideration" reversal of a prior factual finding as the equivalent of saying "That was then—this is now").

targets disclosure. But the Commission considered the same interrelationships in 2024 and reached the opposite conclusion. The Rescission Proposal does not engage with that contrary judgment.

Nor does the Commission explain why provisions that clearly can stand alone, such as quantitative disclosure of Scope 1 and Scope 2 emissions, or qualitative disclosure of board and management oversight of climate-related risk, "cannot operate sensibly" without each other. Indeed, the Rescission Proposal itself treats the Final Rule's components as discrete, critiquing them item by item, and even conceding that the board-oversight requirement "overlaps with existing disclosure requirements" (absent the Final Rule's full regulatory package). The effect of the Commission's dubious conclusion that the Final Rule's discrete components "cannot operate sensibly without the others" would be to relieve the Commission from its baseline obligation to consider obvious, less-drastic alternatives, such as retaining components of the Final Rule that can stand on their own, or rescinding only individual items the Commission has found to be particularly costly.[21] But an agency acts arbitrarily when it fails to consider such available alternatives.[22]

The Commission also did not consider whether, apart from severability, modest modifications to the Final Rule might sufficiently address the concerns expressed in the Rescission Proposal. The Commission's view that the Final Rule is overly prescriptive and contains overlapping requirements,[23] for example, should have led it to consider whether reducing the level of detail or eliminating duplicative disclosure items would be a better remedy than the wholesale rescission of the Final Rule.

II. The Commission Has the Authority to Require Climate Financial Risk Disclosure

The Rescission Proposal contends that the Commission's disclosure authority does not reach climate-related information that the Final Rule requires. This contention is mistaken under long-settled understandings of the Commission's authority, and remains mistaken even under the narrower test the Rescission Proposal now advances.

Section 7 of the 1933 Securities Act ("Securities Act") authorizes the Commission to require disclosure of information "necessary or appropriate in the public interest or for the protection of investors."[24] Congress enumerated certain disclosure items in Schedule A of the Securities Act[25] but did not make that list exhaustive. To the contrary, Congress delegated to the Commission

[21] For example, the Commission did not consider whether rescinding only Art. 14 of Regulation S-X (which requires audited disclosure of expenditures on severe weather events at a 1% materiality threshold) would alter its cost-benefit analysis, even though it estimated that Art. 14 alone accounts for more than 40% of the costs to companies of complying with the Final Rule. Rescission Proposal at 93, 94 (table 8). The Rescission Proposal argues that certain parts of Art. 14 would not make sense in the absence of certain Regulation S-K disclosures, but the Commission did not consider whether the Regulation S-K disclosures would be useful without Art. 14. Rescission Proposal at 45.

[22] *State Farm*, 463 U.S. at 46–51; see *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2349 (2020) (courts adhere to the text of a severability determination absent "extraordinary circumstances"); *Nat'l Ass'n of Mfrs.*, *Nat'l Ass'n of Mfrs.*, 105 F.4th at 815-816 (giving effect to the Commission's own severability determination).

[23] Rescission Proposal at 9, 34, 47, 50, 53, 55, 56, 60, 61, 62.The Commission has solicited comments as to whether a less prescriptive approach might be used, but multiple statements in the Rescission Proposal undermine the sincerity of that analysis, and the Commission has not provided any indication as to what approach might, in its view, strike a more appropriate balance.

[24] 15 U.S.C. §§ 77g, 78l(b), 78m, 78o.

[25] 15 U.S.C. §§ 77aa, 78l(b).

ongoing judgment of what additional information is required for sound investment decision-making. The Commission has exercised this judgment continuously for more than ninety years.

Rather than embrace this authority, the Rescission Proposal instead focuses on Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and the corollary requirements of Section 13 of the Exchange Act.[26] But it does so erroneously. While Section 12(b) does not include the same "necessary or appropriate" authority as Section 7 of the Securities Act, it nonetheless provides the Commission with broad authority to establish disclosure requirements relating to "the organization, financial structures, and nature of the business"[27] of a registrant.[28] The Commission is thus able to exercise essentially the same judgment under the Exchange Act as under the Securities Act. This parallelism underpins the integrated disclosure system of Regulation S-K.

The Rescission Proposal now suggests that the Commission may only mandate disclosure of matters bearing the "business and financial characteristics" of the items Congress recited in 1933 and 1934. This test is contrary to longstanding practice and caselaw interpreting the SEC's statutory authority. Tellingly, the Commission cites no authority for its newly embraced limitations. Still, the Final Rule satisfies even this narrower test. The climate-related matters that the Final Rule addresses plainly possess "business and financial characteristics": they bear directly on registrants' capital expenditures, sources of revenue, operating costs, margins, and access to financing.

Three examples the Rescission Proposal identifies as problematic actually illustrate the point. The Rescission Proposal's description of an internal carbon price as a "secondary or remote" business item[29] ignores that internal carbon pricing can materially affect the reported performance of a registrant's business segments, and management's allocation of capital among them.[30] The Rescission Proposal similarly claims that disclosure of climate risks affecting suppliers and purchasers is only "secondarily or remotely" about business or financial considerations[31], despite the dramatic impact on a registrant's business that could result from supplier and purchaser disruptions arising from climate-related natural disasters or regulatory changes. The Recission Proposal likewise argues against disclosure of emissions-related targets,[32] ignoring that such targets can have an outsized effect on decisions about product mix, target markets, and the operating and capital expenditures that a registrant commits to over a planning horizon.[33] Regardless of whether one agrees with the Commission's restrictive new test of its own authority, these and other examples demonstrate that climate-related information called for by the Final Rule is financial in the most conventional sense.

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[26] 15 U.S.C. §§ 78l(b), 78m.

[27] 15 U.S.C. §§ 78l(b)(1).

[28] The Commission further takes the position that its authority under Section 7(b)(1) of the Securities Act should be "informed" by experience under Section 12 of the Exchange Act, without any apparent consideration that the reverse should be the case (i.e.. that Section 12(b)(1)'s broad business-related disclosure requirement should be informed by Section 7(b)(1) of the Securities Act). Rescission Proposal at 23.

[29] See Final Rule, Item 1502(g) (17 C.F.R. § 229.1502(g)).

[30] Rescission Proposal at 95.

[31] Id. at 31.

[32] Id. at 32; see Final Rule, Item 1504 (17 C.F.R. § 229.1504).

[33] Rescission Proposal at 96.

Indeed, for many elements of its reporting mandate, the Final Rule simply requires disclosure comparable to existing requirements[34] in a new context. For example, Commission rules already require registrants to disclose how the obsolescence of a product line, the emergence of a competing technology, or the adoption of a restrictive regulation may affect their business and financial condition. The Final Rule applies those same concerns to climate-related developments, while confining reporting requirements to information material to a registrant's business, results, and financial condition.[35] Disclaiming the Commission's authority to require such reporting is thus impossible to justify, given that the Final Rule addresses subjects that have been (and continue to be) within the Commission's disclosure mandate since the federal securities laws were enacted.

The Commission should be reluctant to adopt a constrained theory of its own statutory authority that, applied evenhandedly, would unsettle disclosure requirements that issuers and investors have relied upon for decades. Yet, should the Commission now deploy its narrower test for authorized disclosure requirements, the consequences could not be confined to this proposed rescission. Such a test would call into question a substantial part of Regulation S-K, including: cybersecurity disclosure,[36] which requires risk-management and governance reporting closely analogous to the governance disclosure in the Final Rule; compensation discussion and analysis,[37] a highly prescriptive regime that compels disclosures of limited interest to many investors, including the pay-ratio metric, whose evident purpose is not financial; mine-safety disclosure,[38] which bears at best a relationship to the "business and financial characteristics" of enumerated items comparable to disclosure about climate risk; disclosure of delinquent Section 16(a) filings,[39] which is immaterial to most investors, and whose purpose is to influence insider conduct by identifying those who file late; disclosure of insider trading policies, [40] which is unrelated to the business or financial condition of a registrant; quantitative and qualitative disclosures about market risk,[41] which is covered by the general risk-factor disclosure requirement at least to the same extent as disclosure about climate risk; and the Management's Discussion and Analysis section itself,[42] which calls for forward-looking and other analytical disclosure well beyond the items recited in

[34] Id. at 24 ("[t]o be appropriate, the additional disclosures must elicit information comparable to that elicited by the disclosures specified by Congress").

[35] See Shedding Light, at 4–5, 11 (explaining that the Rule "applies the same concepts in a new context" and that the challenge to the Commission's authority "seems hard to sustain").

[36] 17 C.F.R. § 229.106 (Item 106).

[37] 17 C.F.R. § 229.402 (Item 402).

[38] 17 C.F.R. § 229.104 (Item 104).

[39] 17 C.F.R. § 229.405 (Item 405).

[40] 17 C.F.R. § 229.408 (Item 408).

[41] 17 C.F.R. § 229.305 (Item 305).

[42] 17 C.F.R. § 229.303 (Item 303).

Schedule A and Section 12(b).[43] None of these requirements exceeds the Commission's authority, and no serious arguments contend otherwise.[44] The same conclusion follows for the Final Rule.

The Supreme Court itself recently acknowledged, and did not question, the Commission's authority here. Justice Gorsuch's concurring opinion in *Trump v. Slaughter*, describing expeditious ways that agencies have employed powers Congress has given them, observed that "the SEC took on climate change" in 2024. Justice Gorsuch cited the Final Rule's adopting release, without suggesting that the rule fell outside the Commission's authority, and referred explicitly to the "broad grants of legislative authority" by Congress to the Commission.[45] This 2026 *Trump v. Slaughter* opinion suggests an understanding, shared even by jurists skeptical of administrative power, that the 2024 Rule was a valid exercise of authority Congress conferred on the SEC.

The Rescission Proposal further implies that it would be improper for the Commission to focus on any single, under-disclosed subject area like climate-risk disclosure. It is not. The Commission has a long history of directing attention to specific subjects that its general requirements arguably already reach, but that have become particularly relevant while remaining unevenly disclosed. Examples include hyperinflation,[46] the digital-technology transition for the year 2000,[47] executive compensation,[48] and cybersecurity.[49] Like these topics at their most salient, climate-related risk is today (absent the Final Rule's proper implementation) acutely under-represented in SEC disclosure, relative to traditional subjects of comparable financial significance.

More broadly, the Rescission Proposal's theory of limited authority itself has remained conspicuously limited to Commission criticisms of the Final Rule. The Commission is currently engaged, for example, in wide-ranging reconsiderations of Regulation S-K. Issuers and their counsel have urged the Commission to scale back a range of requirements, including cybersecurity disclosure obligations which, as mentioned above, closely parallel elements of the Final Rule. But as far as we are aware, no commenter, and no Commission member, has suggested that

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[43] See also John Coates, John C. Coffee, Jr., James D. Cox, Merritt B. Fox & Joel Seligman, Shadow SEC Statement No. 10: The SEC's Proposed Climate "Do-Over"—Prejudged, Internally Inconsistent, and Partisan, CLS Blue Sky Blog (Jul. 1, 2026). ("Shadow SEC Statement No. 10") (noting that "the SEC has had a longstanding practice of requiring disclosure of or related to environmental risks, the very subject of the March 2024 release. Since the Nixon Administration in the early 1970s, the SEC has repeatedly used this authority to require environmental disclosures. In 1971, it published a release highlighting that existing disclosure requirements covered material environmental and civil-rights matters, and stating that staff would press issuers that omitted such information").

[44] The Rescission Proposal seeks to explain the Commission's authority in other areas by referring to several disclosure items that are said to "channel" the requirements of Schedule A of the Securities Act or Section 12(b) of the Exchange Act. Rescission Proposal at 28.It is not relevant, however, whether some disclosure items can be characterized in this way, given the large number of other disclosure items that cannot be so characterized, and that can only be within the Commission's authority if the Final Rule is also authorized.

[45] *Trump v. Slaughter*, No. 25-332, slip op. at 51, 2026 WL 1855612 (U.S. June 29, 2026); Id. at 8 (Gorsuch, J., concurring) (citing 89 Fed. Reg. 21,668, 21,683 (2024)). The Sabin Center cites this concurrence solely for the narrow point stated in text.

[46] 17 C.F.R. § 229.303(b), Instruction 9.

[47] Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers, Securities Act Release No. 7558, Exchange Act Release No. 40277, Investment Advisers Act Release No. 1738, Investment Company Act Release No. 23366, International Series Release No. 1149, 63 Fed. Reg. 41,394 (Aug. 4, 1998).

[48] 17 C.F.R. § 229.402 (Item 402).

[49] 17 C.F.R. § 229.106 (Item 106).

cybersecurity requirements exceed the Commission's statutory authority, even where they argue the requirements should be scaled back as a matter of policy. Within this broader regulatory context, an incongruous interpretation of statutory authority, advanced to undermine one single rule, does not provide a reasonable explanation of agency action, but rather an arbitrary excuse.[50]

The Rescission Proposal even points to the Commission's 2010 Guidance, under which registrants already must provide certain climate-related disclosures, as a reason the Final Rule is unnecessary. This argument is incompatible with the Commission's statutory-authority argument. If the Commission lacks authority to require disclosure of material climate-related risk, the 2010 Guidance interpretation of existing disclosure requirements in the climate context would also be faulty.

Finally, the Rescission Proposal's description of the Final Rule as a "conduct-altering regime" is inapt. The Final Rule does not, as the Rescission Proposal suggests, mandate that registrants react to climate change, regulate their internal affairs or arrange their risk management practices in any particular manner. It simply requires them to describe whatever climate-risk practices they follow, if material, so that investors possess sufficient data to make the types of decisions they long have made.[51]The Rescission Proposal's use of this "conduct-altering" misconception to invoke the "major questions" doctrine[52] is accordingly inappropriate.

III. Climate Information Is Material Under the Governing Standard

The Rescission Proposal reframes legal determination of materiality in a manner inconsistent with controlling law. It treats materiality as a purely financial concept, and it discounts amply demonstrated reasonable investor demand as insufficient to establish materiality. These positions are mistaken.

A. Materiality Is an Objective Standard that Favors Disclosure

As the Supreme Court has long made clear, information is material if there is "a substantial likelihood that a reasonable investor would consider it important," measured against the "total mix" of information available.[53] The statutory scheme "broadly favors disclosure," and doubts are to be "resolved in favor of those the statute is designed to protect," namely, the investing public.[54] These settled presumptions undermine the Rescission Proposal's suggestion that climate disclosure may "harm" investors by burdening them with unwanted information. The law does not treat additional material information as a "harm." Rather, it treats actionable disclosure, for

[50] See "Remarks at the Society for Corporate Governance Conference," speech of Paul S. Atkins, Chair of the Commission (July 9, 2026) ("Chairman Atkins July 9 Remarks") (referring to the Commission's ambition to pare back disclosure requirements in various non-climate areas, but without suggesting that any such requirements might exceed the Commission's authority).
[51] Rescission Proposal at 41, 56.
[52] Rescission Proposal at 39-41.
[53] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); accord *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988); see *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011); *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175 (2015).
[54] *TSC*, 426 U.S. at 448; see *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); Shedding Light, at 17.

instance through sufficiently standardized and comparative climate-risk reporting, as precisely the type of protection the federal securities statutes were enacted to provide.

The Rescission Proposal mistakenly conflates two distinct types of materiality analysis. A materiality threshold does delimit liability boundaries under the scienter-based anti-fraud provisions, such as Rule 10b-5 and Rule 14a-9. However, no equivalent materiality requirement constrains Commission authority to mandate disclosure.[55] Nothing in Sections 7, 12, 13, or 15 limits the Commission to requiring solely "material" disclosures, and the Commission has long required disclosure that is not material to every registrant. Disclosure requirements related to mine-safety information, executive-compensation detail, share-repurchase data, related-party transactions, and delinquent Section 16(a) filings provide just a small sampling of relevant counterexamples. Indeed, Chairman Atkins recently called for a "materiality overlay" to qualify all existing disclosure requirements, but as a policy preference rather than a fixed statutory constraint on Commission authority, and even then acknowledging "the Commission may be unable to ensure that information called for by every line item will be material to investors of every public company."[56]

Additionally, the Rescission Proposal mistakenly describes the concept of materiality as being "inherently rooted in financial considerations,"[57] apparently to support the Commission's current view that it may only require disclosure of matters with "business or financial characteristics." The Supreme Court's definition of materiality is not so limited, nor so narrow in its conception of business characteristics. In the seminal case of *TSC Industries v. Northway*, the question was not financial at all: the case involved the omission of information relating to the degree of control of a company's main shareholder from a business combination proxy statement. In ruling that "an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote,"[58] the Supreme Court did not "root" its ruling in "financial considerations," nor could it have done so, given that the omission in question was not financial in nature.

B. Significant Investor Demand Is Probative of Materiality

The Rescission Proposal makes a significant error by assuming the disclosure called for by the Final Rule is valued solely by a small group of investors who "choose to focus their investment strategies on climate-related matters or who have interests other than the pursuit of a financial return."[59] This is mistaken as a matter of fact, and leads to questionable applications as a matter of law.

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[55] See Rescission Proposal at 27 (acknowledging that "'materiality' is not referenced in the statutory provisions that were relied upon to promulgate the Final Rules").

[56] Chairman Atkins July 9 Remarks. Given the favorable position expressed with respect to a "materiality overlay," it is difficult to understand why the Rescission Proposal explicitly derides the value of equivalent materiality qualifiers in the Final Rule, counterintuitively asserting that they increase costs to registrants, rather than decreasing them. Rescission Proposal at 60-61.

[57] Rescission Proposal at 27.

[58] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. at 449.

[59] Rescission Proposal at 59.

No judicial or scholarly support exists for the Commission's constricted definition of a reasonable investor. Existing authorities support the view that there are many types of "reasonable investors," and that the concept is context-specific.[60] Put into practice, the Commission's narrow perspective in the Rescission Proposal could drastically diminish disclosure obligations below levels that our enduring securities statutes have long required.

And investor demand for climate-related financial-risk information is not, as the Rescission Proposal conjectures, the preoccupation of a narrow set of climate-focused investment funds. The record compiled when the Final Rule was proposed in 2022 reflects support from the largest U.S. asset managers, including BlackRock (with approximately $9 trillion in assets under management), Vanguard (approximately $7 trillion), State Street Global Advisors (approximately $3.9 trillion), and PIMCO (approximately $2 trillion).[61] The breadth of investor demand extended far further, as reflected in coalitions supporting the 2022 proposal, which collectively represented assets in the tens of trillions of dollars, and which included institutions such as Fidelity, T. Rowe Price, Franklin Templeton, the CFA Institute, Morningstar, Bloomberg, Moody's, and S&P Global, alongside investor networks and trade associations such as Ceres, the SIFMA Asset Management Group, the Investment Company Institute, the Investment Adviser Association, and the Council of Institutional Investors. Many of the largest public pension funds likewise indicated support, for example the California State Teachers' Retirement System ("CalSTRS"), describing climate-related risks as "a real financial risk to the value of our plan assets."[62]

Some of the most relevant comment letters from financial institutions explained in practical terms how investors use climate-risk information. For example, Wellington Management emphasized that "accurate and comparable information about climate risk is critical" to informed investment choices. Similarly, AllianceBernstein characterized climate-related risks as "fundamental financial factors" affecting issuer cash flows and the valuations investors assign to them. Rockefeller Asset Management described such risks as "increasingly relevant to company valuations." And the Washington State Investment Board noted that the proposed disclosures "would greatly assist the WSIB's proxy voting and engagement decision making and analysis." These are not statements about social policy preferences; these are statements about how reasonable investors price securities and determine how to vote.

Importantly, comparability was prioritized in comment letters. The Investment Company Institute urged that disclosures be "consistent and comparable across companies." The Value Reporting Foundation, established through the merger of the Sustainability Accounting Standards Board (SASB) and the International Integrated Reporting Council (IIRC), observed that voluntary reporting provides data "that is non-comparable, inconsistent and difficult for investors to use, while creating significant inefficiencies for entities."

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[60] See *United States v. Litvak*, 889 F.3d 56 (2d Cir. 2018); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, 554 F.3d 342, 347 (3d Cir. 2009); Shedding Light, at 19.

[61] See Shadow SEC Statement No. 10 (noting that such disclosures were "requested by a wide variety of institutions holding more than 75% of the market capitalization of all U.S. companies").

[62] The investor comment letters cited in this section are available on the SEC's rulemaking docket, File No. S7-10-22 (2022).

Comparability is a key feature of well-functioning markets, and it has long been a pillar of the Commission's disclosure regime.[63] A retreat from this principle would forfeit the comparability that allows investors to allocate capital efficiently, and that underpins confidence in U.S. markets—precisely as other major jurisdictions have moved toward standardized regimes.[64] The competitive position of U.S. capital markets will not be served by becoming the outlier on a critical concern for investors worldwide.

The empirical academic record also confirms that investors make effective use of this information. Studies of mandatory, standardized approaches, including the United Kingdom's 2013 requirement, demonstrate that standardized disclosure sharpens how the market evaluates registrants.[65] This evidence further shows that the information the Final Rule requires is routinely acted upon (i.e., that it is material). And contrary to the assertion in the Rescission Proposal, recent efforts to simplify climate disclosure regimes in the European Union do not undermine the judgment of European authorities that such disclosure is highly material. (Rather, the main impact of the simplification is to make the regime inapplicable to small, non-publicly listed companies that otherwise would have been subject to its disclosure requirements).[66]

Two further points are relevant to the materiality inquiry. First, many financial institutions are already required to assess various climate-related risks in their portfolios, either under prudential regulation or through their own risk-management and capital-adequacy obligations.[67] Second, registrants' voluntary conduct further indicates their recognition of climate risk's materiality. As our *Shedding Light* survey illustrates, a large majority of registrants already provide substantive

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[63] See Division of Corporation Finance, U.S. Securities and Exchange Commission, Report on Review of Disclosure Requirements in Regulation S-K (Dec. 2013), at 98, available at http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf ("the staff believes that any recommended revisions [of Regulation S-K] should emphasize a principles-based approach as an overarching component of the disclosure framework, in order to address the tendency toward implementation of increasing layers of static requirements, while preserving the benefits of a rules-based system affording *consistency, completeness and comparability of information across registrants*") (emphasis added); Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP, Securities Act Release No. 8879, Exchange Act Release No. 57026, International Series Release No. 1306, File No. S7-13-07, 73 Fed. Reg. 985 (Jan. 4, 2008), at 6 ("[t]he use of a single set of high-quality globally accepted accounting standards by issuers will help investors understand investment opportunities outside the United States more clearly and *with greater comparability* than if those issuers disclosed their financial results under a multiplicity of national accounting standards, and it will enable issuers to access capital markets worldwide at a lower cost.") (emphasis added).

[64] See Shedding Light, at 14–15.

[65] See Behavioral Effects, at 9-10, 19, 26.

[66] Press Release, Eur. Comm'n, Commission Simplifies Rules on Sustainability and EU Investments, Delivering over €6 Billion in Administrative Relief, IP/25/614 (Feb. 26, 2025).

[67] See Shadow SEC Statement No. 10 (noting that "more than 80% of large, listed operating companies already engage in climate disclosures—a fact that provides a strong basis for modest, low-cost, high-benefit improvements in the comparability, timeliness, and reliability of climate risk disclosures that would be decision-useful for the majority of investors, and in so doing reduce the cost of capital for companies"). U.S. banks and bank-holding companies also are required to take climate risk into account in their risk management processes. While specific regulatory guidance on these issues was rescinded in 2025, the expressed reason was that the guidance was unnecessary, as these risks (like all risks) had to be accounted for in risk management even before the specific guidance was issued. Rescission of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, Office of the Comptroller of the Currency, Treasury, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation, 90 Fed. Reg. 51, 756 (Nov. 18, 2025).

climate disclosure to investors, on investor-relations pages and in strategy presentations targeted to investors.[68] A rational registrant would not pursue these extensive efforts if it considered its labor immaterial to investors. Standardized issuer disclosure is now necessary, however, so that investment markets can efficiently sift through and synthesize these teeming and largely unregulated risk assessments.

IV. The Final Rule Remains Necessary to Protect Investors

Rescission would not stop reasonable investors from seeking, receiving, or acting upon climate information. Instead, it would degrade the quality of this information, and thus of investor decision-making. Investors would resort to relying on flawed data sets circulating outside of any standardized, verifiable, and accountable disclosure process. They would be subject to potentially misleading marketing practices, such as the tendency for companies to announce climate-related plans and targets in investor communications, without subsequently reporting on progress (or lack thereof) in achieving them. Federal securities legislation exists to prevent such harms, and addressing them is "necessary or appropriate in the public interest [and] for the protection of investors."

Today's material climate information is disclosed largely outside SEC reports, and differs significantly from what would appear in formal filings under proper implementation of the Final Rule. Our *Shedding Light* survey (which goes beyond keyword analyses on which the Commission relied in 2024) shows that the substantive climate information investors use at present comes overwhelmingly from sustainability reports, or similarly bespoke and unregulated promotional materials.[69] Unsurprisingly, such information provided outside any formal Commission framework is almost uniformly self-congratulatory in tone, and rarely contains any risk disclosure. At the same time, climate-related risk disclosure that does appear in SEC reports (in response to the Commission's 2010 Guidance, rather than the stayed Final Rule) is typically too rudimentary and/or formulaic to provide investors with meaningfully comparative data.[70]

Climate information disclosed outside the Commission's regulatory framework lacks typical safeguards that investors rely upon. Information published in corporate sustainability reports is not prepared subject to a registrant's disclosure controls and procedures. It is not audited or within the scope of internal control over financial reporting. It is not subject to the diligence that underwriters conduct in connection with securities offerings (even when the same information is used to market those offerings in roadshow presentations).[71] Moreover, registrants frequently employ climate metrics that deviate from recognized standards (such as the GHG Protocol or the ISSB standard), without explaining these deviations. In other financial contexts, the Commission does not permit such discrepancies: Regulation G and Item 10(e) of Regulation S-K, for example, require non-GAAP financial measures to be reconciled to, and explained against, the comparable GAAP measure.[72] Absent the Final Rule, no analogous rigor will apply to U.S. registrants' climate

[68] See Shedding Light, at 10, 20.

[69] Id. at 10-11.

[70] Id.

[71] Id. at 13, 26-29.

[72] 17 C.F.R. § 244.100 ("Regulation G"); Regulation S-K, Item 10(e).

metrics, resulting in precisely the types of non-comparable, potentially misleading self-representations that our securities laws seek to check.

The SEC's Department of Corporation Finance, while well suited to administer disclosure rules, would be poorly equipped to address any further deficiencies brought about by the Rescission Proposal. Climate information would circulate largely outside SEC filings, and therefore not fall within the Commission's filing-review-and-comment process.[73] This would render the Commission unable to refine registrants' climate-disclosure practices over time, through its publishing of summary reports and more formal interpretive guidance, or issuing of individual comment letters to companies on the contents of their reports and registration statements.

Rescindment of the Final Rule would, however, invite selective disclosure—with all the attendant risks and harms that typically accompany this opaque practice. Most notably, registrants could characterize a non-compulsory disclosure as occurring outside the scope of material nonpublic information governed by Regulation FD, and therefore might share it selectively with favored investors.[74] This outcome would exacerbate foundational concerns of unequal access to material information, and of enhanced potential for privileged parties to trade on privately held information, which Regulation FD and insider-trading prohibitions exist to address. The Final Rule has brought this information within the disclosure system and mitigated those risks. But the Rescission Proposal would reopen a Pandora's box of temptations, benefitting market insiders at the direct expense of ordinary shareholders.

The Final Rule also mitigates risks for registrants who do seek to provide useful climate-related disclosures. Forward-looking statements at the core of climate-risk disclosure, on topics such as mitigation and adaptation plans, emissions targets, and transition strategies, point to where PSLRA safe harbor protections prove most valuable.[75] But outside the Commission's Final Rule framework, those protections would be much less certain (and inapplicable in the IPO context), discouraging registrants from providing the candid, forward-looking disclosures that investors value. Conversely, companies driven by climate-related business strategies would be reluctant to access public capital markets in the absence of adequate liability protections.

Note finally that the SEC's 2010 Guidance, which the Rescission Proposal deems sufficient for prompting meaningful climate disclosure, has primarily yielded boilerplate risk-factor reporting. Registrants file generic statements that climate change may affect their business, but routinely fail to disclose detailed information that could inform comparative investor decision-making. Nor has the 2010 Guidance sufficed to address presumptively misleading practices in today's market, such as the self-serving promotion of climate targets, unaccompanied by any need to document actual progress or obstacles to progress, or to disclosure changes to (or abandonment of) disclosed targets. In sum, the 2010 Guidance may confirm the Commission's authority to act on climate-related risk. But only with the Final Rule did the Commission take tangible steps toward fulfilling its regulatory mandate on those risks.

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[73] See Shedding Light, at 36-38.

[74] 17 C.F.R. § 243.100 ("Regulation FD").

[75] Securities Act § 27A, 15 U.S.C. § 77z-2; Exchange Act § 21E, 15 U.S.C. § 78u-5.

V. Cost-Benefit Economic Analysis Favors the Final Rule

The Rescission Proposal overlooks principal benefits of the Final Rule, such as more accurate pricing of climate-related risk, and enhanced market functionality.[76] Reliable information about a registrant's climate risks can be prohibitively costly for investors to obtain on their own. Estimating these risks often requires not only proprietary knowledge of a registrant's operations, but also a sophisticated command of emissions accounting.[77] When such information is unavailable, non-comparable, or otherwise unusable, the market cannot readily distinguish better-positioned from worse-positioned registrants.[78] This poses a classic problem of information asymmetry, leading to less accurate pricing of securities. Standardized disclosure, by contrast, mitigates this asymmetry and leads to "more efficient marketplaces."[79] Indeed, standardization is often what makes disclosures decision-useful, by lowering investors' information costs and facilitating comparison across registrants.

Empirical research has correlated actionable climate disclosure with a lower cost of capital,[80] as investors' fear of mispriced climate risk diminishes, and they no longer demand a premium for climate-related uncertainty.[81] The Rescission Proposal's failure to consider these benefit reflects a serious deficiency in its economic analysis.

With respect to the costs of the Final Rule, we note briefly that they should not be measured against a blank slate. Many U.S. registrants will already be required to produce climate data under California law and under the European Union's Corporate Sustainability Reporting Directive, and the literature documents substantial cross-border spillover effects.[82] Further, the incremental cost of compliance with the Final Rule is likely modest for the many registrants that already compile this information internally or disclose it publicly. As the Rescission Proposal notes, a majority of large accelerated filers already disclose emissions data (and the percentage will certainly be higher if the Commission's proposed change to the large accelerated filer definition is adopted[83]), while the same is true for more than 90% of the companies in the S&P 500, 87% of which also disclose

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[76] See Shadow SEC Statement No. 10 (noting more broadly that the SEC's Final Rule rulemaking process cited and relied on "dozens of peer-reviewed studies to establish a basis for believing that climate disclosures provide investors and companies alike with material benefits," whereas the Rescission Proposal "neither cites, critiques, nor analyzes any of the studies supporting the SEC's prior identification of these benefits").

[77] Behavioral Effects, at 3.

[78] See also Shadow SEC Statement No. 10 (noting that disclosure also benefits companies reporting in good faith, "by making it easier to spot and discipline 'greenwashing' and other forms of investor-harming fraud and so reduce the cost of capital for non-fraudulent firms").

[79] Behavioral Effects, at 3.

[80] Id. at 6, 15, 20 (discussing, inter alia, Bolton & Kacperczyk and Jouvenot & Krueger).

[81] See also Shadow SEC Statement No. 10 (noting that robust climate-risk disclosure "would also benefit companies by making it easier to spot and discipline "greenwashing" and other forms of investor-harming fraud and so reduce the cost of capital for non-fraudulent firms").

[82] See Cal. S.B. 253 (Climate Corporate Data Accountability Act) & S.B. 261 (2023); Directive (EU) 2022/2464 (Corporate Sustainability Reporting Directive); Behavioral Effects, at 26.

[83] Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Securities Act, Release No. 11419, Exchange Act Release No. 105515, 91 Fed. Reg. 30,086 (proposed May 21, 2026).

climate targets.[84] And the costs the Rescission Proposal emphasizes, for assurance and verification, are costs directly associated with a basic sense of reliability. These additional steps are what make disclosed information trustworthy enough for investors to benefit from, by promoting more complete, accurate, and easily comparable data.[85]

Finally, the Commission's current proposal to reweigh the Final Rule's costs and benefits, before any assessment of the rule's actual implementation and operation exist, is premature, and highly unusual for the Commission. A reversal of this magnitude (undoing a rule adopted after review of thousands of comments, due merely to a change of policy preference) threatens the long-term institutional credibility on which the Commission's broader disclosure authority depends. Copious reporting regulations should not flip with each election cycle. Analysis of the Final Rule's merits should also consider the value, to issuers and investors alike, of regulatory stability.

Conclusion

The Commission should not rescind the Final Rule. The Rescission Proposal is arbitrary and capricious. The Commission plainly possesses the authority to require this disclosure. The governing materiality standard and an extensive record of investor demand support the Final Rule. Reversing the Final Rule would harm investors. The Rescission Proposal's economic analysis omits central benefits of standardized disclosure, while overstating the Final Rule's costs. Empirical research further confirms that investors will be well served by climate-related disclosure that is standardized, verified, subject to the Commission's review, and prepared in accordance with the requirements of the federal securities laws.

Thank you for the opportunity to provide comments. Please do not hesitate to contact the Sabin Center with any questions.

Respectfully submitted,

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[84] Rescission Proposal at 84-87.
[85] See Behavioral Effects, at 11 (discussing Berg et al.); Shedding Light, at 27.