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‘Dramatic Overreach’ of Authority: SEC Proposes to Rescind Climate Disclosure Rules

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> “We must re-examine the costs, burdens, and benefits of disclosure mandates to make becoming and remaining a public company more attractive again. SEC disclosure obligations should comply with the Commission’s statutory authority, be guided by materiality as the North Star, avoid the practical effect of dictating corporate behavior, and be imposed only when the expected benefits justify the likely costs and burdens.”
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> *—SEC Chair Paul Atkins*

On May 29, 2026, the SEC proposed to formally rescind its climate-related disclosure rules in their entirety. The rules—adopted under former SEC Chair Gary Gensler in March 2024 by a 3-2 party-line vote but never implemented—would require substantially all public companies (including emerging growth companies, smaller reporting companies and foreign private issuers) to provide certain climate-related information in their annual reports and registration statements (including those for IPOs). More specifically, the rules would require standardized disclosures about greenhouse gas emissions, the impact, management and oversight of climate-related risks, transition plans, scenario analysis, internal carbon prices and the financial statement effects of severe weather events, among other matters.

First proposed in March 2022, the rules were finalized after receiving more than 22,000 comment letters from a broad and ideologically diverse spectrum of stakeholders—the most in the agency’s history—evidencing an unprecedented level

of public interest. Notwithstanding that level of public engagement, the rules immediately faced multiple legal challenges from the U.S. Chamber of Commerce, energy companies, other business interests and state attorneys general, asserting lack of statutory authority, violations of the Administrative Procedure Act and the major questions doctrine, and unconstitutionally compelled speech under the First Amendment. In April 2024, the SEC voluntarily stayed the rules pending completion of the consolidated litigation in the Eighth U.S. Circuit Court of Appeals. In March 2025, following the change in presidential administration and SEC leadership, the SEC voted to withdraw its defense of the rules. In September 2025, the Eighth Circuit held the litigation in abeyance.

Although the rules have never gone into effect, they have not been formally repealed or vacated. To resolve that ambiguity, the SEC is now moving to permanently eliminate the rules through notice-and-comment rulemaking, **asserting that they "were a dramatic overreach of the Commission's statutory authority and, independently, unsound as a matter of policy."** More specifically, the SEC contends that the rules exceed the scope of the agency's statutory authority and that, even if it had the authority to adopt the rules, several compelling independent policy reasons support their full rescission, including that:

- The rules are unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure that best serves the interests of registrants and investors.
- The rules stray well beyond the policy concerns of the federal securities laws.
- The rules impose substantial costs on public companies and their shareholders that are not justified by the informational benefits they may provide to some investors.
- The rules are at odds with the SEC's policy objectives of facilitating capital formation and promoting public company status.

The proposing release articulates the SEC's preliminary views on these issues, and invites public comment on a range of questions, including whether the SEC should fully rescind the rules, as proposed, or consider alternatives short of complete rescission, such as amending the rules, narrowing their application or replacing them with less prescriptive and less costly climate-related disclosure requirements. The comment period will remain open for **60 days** following publication of the rescission proposal in the *Federal Register*, which is expected to occur shortly. A final rescission, if adopted, would likely face legal challenges of its own.

Beyond the Commission's Statutory Authority

The SEC argues that the rules relied on an "impermissibly broad" reading of its statutory authority, principally because the disclosures they compel (i) fall outside the categories of information Congress directed the SEC to require (information "central to an understanding of the company's business or financial characteristics" or "fundamental to valuing the risks and returns of an investment in the registrant's securities") and (ii) improperly intrude on state corporate law without a clear statutory directive. The SEC contends that the proper remedy is full rescission, which it estimates would generate annualized savings of approximately **$4.9 billion per year** over the next ten years for all affected registrants. Rescission would also eliminate other adverse consequences the rules may have produced, including competitive and litigation risks associated with expanded disclosures and the risk of investor confusion from the sheer volume of required information.

The SEC's specific statutory authority arguments are as follows:

- **Congress authorized financial disclosures, not climate disclosures**. The SEC's governing statutes authorize disclosure rules focused on a company's business or financial characteristics—the type of targeted, limited disclosures the SEC has historically required on environmental matters. The climate rules, by contrast, "mandate highly specific and granular information on the sole topic of climate-related matters, such as operational and governance practices and internal metrics (including GHG emissions) that many registrants may not track or use for business purposes." Nothing in the Securities Act of 1933 or Securities Exchange Act of 1934 "expressly empowers the agency to burden public companies and their shareholders with such detailed (and costly) disclosures about one particular topic."

- **Materiality qualifiers do not cure legal defects**. The inclusion of materiality qualifiers throughout the rules cannot rescue them from their legal infirmities. As the SEC explains: "[W]hile the requirement to disclose Scope 1 and Scope 2 GHG emissions is qualified by materiality, it nonetheless requires covered registrants to devote significant time and resources to measure their emissions and determine whether they are material… Only after it has invested potentially significant resources to perform this exercise can a registrant make a determination about whether such metrics are material and therefore must be disclosed." Rather than limiting costs, the materiality qualifier "effectively compels covered registrants to track and evaluate a metric they may not otherwise use for business purposes." The SEC suggests that the numerous materiality determinations required by the rules "merely mask how the rules reached well

beyond what a reasonable investor would consider important in buying or selling securities."

- **Existing disclosure obligations render the rules unnecessary**. The SEC's 2010 interpretive guidance on climate change disclosure identifies specific obligations under Regulation S-K and Regulation S-X applicable to climate-related matters when they are material to a particular company, including items related to description of business, legal proceedings, risk factors, MD&A and any financial statement implications. "The fact that existing disclosure obligations already serve to provide investors with material information about climate-related matters reinforces the conclusion that the [rules] are not 'necessary' to protect investors." Indeed, they may harm investors "by eliciting information about climate-related matters that goes well beyond what a reasonable investor needs to make an informed investment decision."

- **Intrusion on state corporate governance**. Despite purporting to require only disclosure, the rules effectively regulate issuers' internal affairs: "While framed in terms of risks to and impacts on the registrant, the disclosure mandates in the [rules] effectively provide an aspirational framework for how public companies should manage climate-related matters." This intrudes on the domain traditionally reserved to state corporate law without any statutory directive authorizing such an encroachment.

- **Major questions doctrine**. The major questions doctrine—which requires clear congressional authorization when an agency embarks on a new and expansive regulation of a policy area of "vast economic and political significance"—further demonstrates that the SEC lacked authority to issue the rules. The SEC notes that "[w]hether and how public companies should respond to the perceived causes and effects of climate change is unquestionably of 'vast economic and political significance.'" Yet, "Congress has declined to enact climate-related disclosure regulation" and has not instructed the Commission to do so. As the SEC concludes: "Congress has not given the Commission power to write regulations requiring such detailed and extensive disclosure of climate-related information, let alone to essentially regulate issuers' internal affairs through onerous disclosure requirements…. In light of the controversy, costs, and intrusions into the operations of public companies that would be generated by mandatory climate-related disclosure rules, this is a choice for Congress, not the Commission, to make."

Independent Policy Grounds for Rescission

The SEC explains that, on reconsideration, several of the main justifications for adopting the rules were given inappropriate weight, and the agency now reaches a different policy judgment regarding their need and appropriateness.

Unnecessary and Inconsistent with a Materiality-Based Approach

The SEC argues that the rules are unnecessary because: (i) existing, generally principles-based disclosure requirements and antifraud provisions already elicit information about the material effects of climate-related matters in a manner better tailored to reflect registrants' particular circumstances; (ii) the rules prioritize one potential factor over others that may materially affect a registrant's operations and financial condition; and (iii) recent developments—such as the European Union's efforts to narrow the coverage and scope of its recently adopted sustainability and due diligence directives and to extend their implementation deadlines—have highlighted the flaws in mandating highly prescriptive disclosure for an evolving area such as climate, and underscore why a flexible, materiality-based approach is preferable.

Beyond the Federal Securities Laws' Policy Concerns

The SEC argues that the rules, rather than responding to a genuine gap in investor protection within the securities disclosure regime, "concern the divisive and unsettled political and social issue of climate regulation." The SEC's role is not "to regulate how public companies manage the effects of climate-related matters or to hijack the public company reporting regime to further social policies unrelated to the aims of the [f]ederal securities laws"—and in pursuing those broader objectives, the rules inappropriately intruded on corporate decision-making.

Costs That Outweigh Any Informational Benefits

The SEC argues that "any marginal or theoretical informational benefits to be derived from the [rules] do not and cannot justify the substantial burdens they impose on public companies and their shareholders." More fundamentally, the SEC concludes that it is not appropriate "to burden all shareholders of almost all public companies with the high costs of the [rules] in order to subsidize the informational demands of certain investors who choose to focus their investment strategies on climate-related matters or who have interests other than the pursuit of a financial return that are driving their informational demands."

At Odds with Capital Formation and Public Company Objectives

The SEC argues that the rules are in direct contravention of its current policy objectives of promoting public company status and facilitating capital formation, in part because they increase the overall costs associated with accessing and participating in capital markets. Beyond direct compliance costs, the SEC adds, “some companies may avoid going public if they fear they will have to provide disclosure about an array of socially and politically contentious issues.”

Request for Comment

The proposing release poses seven numbered questions, including:

- Whether the SEC should rescind the rules in their entirety, as proposed, or whether there are aspects of the rules that remain within the SEC’s authority and should be retained.
- Whether the SEC should consider alternatives to outright rescission, such as amending the rules to apply to a smaller subset of registrants or in more limited circumstances, or replacing them with less prescriptive and less costly climate-related disclosures.
- Whether existing disclosure requirements serve to elicit adequate disclosure about climate-related matters, when material to a specific registrant.
- Whether the SEC’s 2010 interpretive guidance on climate change disclosure should be revised to provide updated guidance about how existing disclosure obligations may elicit information about material climate-related matters.
- Whether recent developments in climate reporting practices have affected the rationale for the rules.
- The extent to which the rules would impact firm decisions about whether to become or remain a public company were they to go into effect.

The proposing release also requests comment on all aspects of the SEC’s related economic analysis, including the potential costs and benefits of the proposed rescission.

Commissioner Statements

In a statement supporting the proposal, Commissioner Mark Uyeda criticized the rules as “the culmination of efforts by various special interests to hijack and weaponize the federal securities laws for their own climate-related goals.” “Regrettably,” he added, “the Commission ventured outside of its expertise and set

about using its disclosure regime as a means for driving political and social change. This approach was problematic and risked eroding the Commission's effectiveness and credibility as a financial regulator."

In a statement also supporting the rescission, Commissioner Peirce observed that "[u]nless Congress explicitly has directed otherwise, we do not have the authority to craft boundless disclosure rules to respond to stakeholder demands, investors' idiosyncratic interests, or our own curiosity…. Adhering to a merit-neutral, materiality-centric disclosure framework is not only consistent with the SEC's statutory authority, but also good for the health of our capital markets."

Related Materials

- Fact Sheet
- Proposing Release
- Press Release
- Chair Atkins Statement
- Commissioner Peirce Statement
- Commissioner Uyeda Statement
- SEC 2010 Guidance Regarding Disclosure Related to Climate Change

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