January 9, 2024

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Gensler:

We write regarding the Securities and Exchange Commission's (SEC) proposed rule on climate-related disclosures for publicly-traded companies to disclose their greenhouse gas (GHG) emissions and other climate change-related information. On April 5, 2022, we led all Republican members of the Senate Environment and Public Works and Banking Committees in a letter, firmly expressing our opposition to the draft rule and requested the SEC to abandon its adoption.

This proposal serves as another illustration of the Biden Administration's strategy to rely on unelected bureaucrats to impose its radical and impractical climate agenda aimed at American energy companies. Congress did not change the SEC's regulatory authority and, in fact, the Environmental Protection Agency is the federal agency charged with air emissions reporting and regulation. This begs the question of where the SEC's presumptive and duplicative jurisdiction comes from. Moreover, required reporting of estimated Scope 3 emissions results in substantial over counting of emissions upstream and downstream in supply chains. These emissions are beyond a company's control and the reporting will only be estimates likely provided by third-parties. Commissioner Uyeda was right when he said, "Using the Commission's disclosure rules to address these social problems is not only ineffective and inefficient, it is also outside of the Commission's statutory authority and expertise."

In addition to the SEC's lack of authority, current securities regulations already mandate companies divulge significant risks in their annual and periodic reports. Numerous companies already voluntarily share extensive details about their sustainability practices to comply with the Supreme Court's materiality principles. The concept of materiality instills confidence in investors and issuers, assuring them the information disclosed by companies is not only relevant but also beneficial for fostering efficiency in capital markets. As we have previously outlined, the proposed rule would fail the materiality test and counteract capital formation. The significant costs alone may keep companies from going public or cause public companies to go private, depriving investment opportunities in pubic markets.

The proposed rule further pushes the anti-American energy rhetoric from the Biden Administration, and adoption of the rule will hinder domestic energy producers' access to capital and fuel even higher energy prices. Proposing and finalizing burdensome new regulations is the opposite of what the SEC should be doing to encourage more capital investment in American energy companies to halt inflation and strengthen our position amid realized geopolitical risks.

Since our initial letter nearly two years ago, the SEC has left the business community in regulatory limbo. Recent public reporting of your comments has stated: "it appears the SEC is delaying the final rule while they try to find a legal workaround to include Scope 3." Rather than performing legal gymnastics and subjecting the American economy to further uncertainty, we reiterate our request for the SEC to not adopt a final rule.

Sincerely,

Kevin Cramer
United States Senator

Shelley Moore Capito
United States Senator