

Center for American Progress



The SEC Has Broad Authority To Require Climate and Other ESG Disclosures

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Introduction and summary

On March 15, 2021, the U.S. Securities and Exchange Commission (SEC) released a request for comments on whether and how it should require companies to disclose information related to climate risks and other environmental, social, and governance (ESG) matters.¹ In May 2021, SEC Chair Gary Gensler confirmed that agency staff are developing enhanced climate-related and “human capital management” disclosures.² The SEC’s actions follow more than a decade of growing investor demand for enhanced information from companies and financial institutions on these risks.³

As a result of these developments, some companies, business representatives, and their political allies have raised questions regarding both the SEC’s authority to require such disclosures and the overall wisdom of imposing mandatory disclosures for ESG issues.⁴ Some have gone so far as to disregard securities laws and regulations to argue that the SEC could or should only require disclosure of information that is financially material to investors.⁵ If adopted, this radical rewriting of the SEC’s authority and materiality standard could reduce the level of information companies are required to disclose rather than address market participants’ need and desire for enhanced disclosures.

The SEC has the ability and responsibility to require disclosures, including ESG-related disclosures, that would further its mission to protect investors; promote more fair, orderly, and efficient markets; promote capital formation; and protect the public interest.

These responsibilities require the SEC to ensure that market participants have reliable, consistent, and comparable climate- and ESG-related information that is important to their business decision-making. The agency’s authority to require disclosures is not limited in any way by materiality, although the SEC and the courts may rely on this concept in specific, limited contexts. Moreover, what is material to investors today is broader than it has ever been.

The SEC's authority to require disclosures is linked to its mission

Congress passed the federal securities laws more than 80 years ago as a means to “close the channels of...commerce to security issues unless and until a full disclosure of the character of such securities has been made.”⁶ This was seen as an essential guardrail against the “wanton misdirection of the capital resources of the Nation” that played a critical role in causing the Great Depression.⁷ Congress also established the SEC to implement and enforce the new laws, which included requiring public companies to disclose information not just at the point of registration but on an ongoing basis.⁸

The purpose of the disclosures—and the agency created to mandate and enforce them—is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.⁹ Congress deemed these disclosures essential because they found that the lack of reliable disclosures was a key contributor to the frenzied speculation that led to the stock market crash of 1929 and the economic devastation that ensued.¹⁰

It was not just investors who suffered from the misdirection of capital resources, but also millions of American families and businesses.¹¹ Upon introducing the Securities Act of 1933 on the House floor, Rep. Sam Rayburn (D-TX) stated:

*These hired officials of our great corporations... called upon the people to bow down to them as the real rulers of the country. Safe from the pitiless publicity of government supervision, unrestrained by Federal statute, free from any formal control, these few men, proud, arrogant, and blind, drove the country to financial ruin.*¹²

As law professor Cynthia Williams explains, “Although only a small proportion of the U.S. population owned stocks in 1930, the entire population was affected by the economic turmoil produced by the stock market collapse.”¹³ Specifically, the federal securities laws “were designed to reassert social control over capital that Congress thought had been used for the private benefit of relatively few people, to the detriment of millions, and had been misallocated to fuel speculation on Wall Street.”¹⁴

Through both the Securities Act of 1933 and the Securities Exchange Act of 1934, the SEC uses issuer disclosure as the primary tool to carry out its three-part mission. As both the statutory language and legislative histories show, its regulatory authority to require disclosures is broad and expressly aimed not just toward fair pricing of securities but also rooting out corporate behavior resulting in “manipulation and control” of those prices.¹⁵ Notably, in key places, the two foundational statutes call for the commission to require information as necessary and appropriate in the public interest or to protect investors.¹⁶ Importantly, nowhere in the statutes or legislative history is the SEC’s authority to require disclosures limited to materiality.

Since its creation, the SEC has mandated specific disclosures where it deemed them necessary, such as the requirement that public companies disclose when they repurchase their own shares.¹⁷ However, it has recently begun to rely on principles to guide issuer disclosures, specifically with respect to climate-related disclosures and disclosures related to a company’s workforce or human capital management. Rather than prescribing standardized line-item disclosures, a principles-based approach sets out general guidelines and requires each company to determine what to disclose based on its unique circumstances.¹⁸ For example, in its 2010 guidance on climate-related disclosures, the commission described in detail how climate risk could affect companies and encouraged them to make climate-related disclosures that are material. However, it declined to establish any common line-items that all firms must disclose, such as the company’s greenhouse gas emissions or assets located in geographic areas at high risk of flooding or wildfires.¹⁹ Similarly, in a 2020 rule-making, the commission called on companies to provide a description of their human capital resources and any human capital measures or objectives that the company focuses on in managing its business, rather than setting forth specific line items such as the number of full-time, part-time, and contract employees; pay, benefits, and workplace safety measures; union density; and resources devoted to training and recruitment.²⁰

While a principles-based approach is certainly valuable in providing management with a better idea of the types of disclosures the commission deems important to investors, it is inadequate in many areas, often resulting in disclosure of only the items important to management—rather than what investors think is important—or no disclosure at all.²¹ It goes without saying that management’s interests are likely to be very different from those of investors seeking to make informed decisions about whether to buy, hold, or sell securities or how to vote their proxies.

In a system that relies mainly on a principles-based approach or on the broad concept of materiality, even where disclosures occur, they are unlikely to be consistent over time or comparable across firms.²² Regrettably, the SEC has yet to impose specific line-item disclosures for climate and many other ESG factors. It did rely on a principles-based approach for climate disclosures in 2010 guidance, but this has not resulted in reliable, consistent, or comparable disclosures about the climate risks that companies face and how they are handling those risks.

Theoretically, investors can seek to compel company management to make specific disclosures by putting an issue up for a shareholder vote and, ideally, receiving enough support from other shareholders to urge the company to comply. This practice, generally overseen by the SEC, is known as the “proxy process.”²³ The SEC first created the proxy process in the 1940s to empower shareholders to vote their shares and put forth proposals for shareholder consideration, even if they could not attend companies’ in-person annual meetings.²⁴ Although shareholders are increasingly using this process,²⁵ it is woefully insufficient to bring the broad, marketwide change in disclosures that investors, lenders, suppliers, workers, customers, and governments need.²⁶ The SEC can and should fix the problems with the proxy process that undermine its usefulness. Yet even if all the shortcomings in the system were eliminated, a company-by-company approach would not be sufficient to establish standardized disclosures that would enable investors to compare companies. Nor would such a company-by-company process result in capital market changes commensurate with the urgency of the current crisis. Effecting broad change in disclosures through the proxy process also imposes unnecessary costs on both investors and companies and places different burdens on different companies in the same industry, creating a less level playing field.

Finally, while many have rightly focused on the importance of information to investors, protection of investors is not the sole purpose for disclosures. Disclosures also further the SEC’s mission to ensure fair, orderly, and efficient capital markets and facilitate capital formation. Investors are not the only private parties who rely on public disclosures. SEC-mandated disclosures are used by many different economic actors, including the SEC itself and other financial regulators concerned with systemic risks to the financial system. In addition, the information provided in public disclosures is often used by lenders, including both banks and bond purchasers. Similarly, suppliers may seek to limit exposure to companies that may pose risks, and workers engaged in wages and benefits negotiations often access companies’ SEC-mandated disclosures. Increasingly, customers are also reviewing disclosures regarding a huge swath of issues, ranging

from climate-related risk to political spending, and using it when exercising their discretionary purchasing powers. The information that disclosures provide to market participants helps make capital markets more fair, orderly, and efficient, and participants' business decisions may have significant impacts on capital formation for companies, their investors, the markets, and the economy overall.

Examples of market participants

SEC disclosures inform a broad range of participants in capital markets. Informed investors and other participants make capital markets more fair, orderly, and efficient, and their decisions affect capital formation. These market participants may include:

- Retail investors in stocks and bonds
- Institutional investors in stocks and bonds
- Advisers and fiduciaries of retirement and savings plans
- Brokers, dealers, and stock exchanges
- Lenders and other counterparties
- Suppliers
- Federal, state, and local governments
- Customers
- Communities near company facilities
- Employees and their representatives
- "Gatekeepers," such as credit rating agencies and index providers
- Academic researchers and securities analysts
- Company competitors and potential competitors
- Executives and potential executives
- Board members and potential board members

The need for information about companies is much greater today

In the decades since the federal securities laws were passed, the world has changed dramatically. But some changes have come at significant cost to the planet and pose significant risks to capital markets.

The disclosures required by the SEC are widely used today by a broad swath of market participants—including investors, lenders, suppliers, customers, workers, and even governments—to make important business and policy decisions. Because of changes to the U.S. retirement system over the past three decades,²⁷ capital markets are also the primary place where millions of middle-class Americans save for retirement and other long-term goals. The ability of all of these market participants to access reliable, consistent, and comparable information about securities and the companies that sell them is essential to making capitalism fair, orderly, and efficient.

To have a “full disclosure” of the character of securities has the same meaning today as it did in 1933, but the execution of that disclosure must adapt to the needs of the 21st century. Market participants and the public need more and better information than ever before. For example, investors and the public understand that “intangible” assets, such as how a company manages its workforce, may be significant drivers of success or failure of a firm. Many young investors entering the market increasingly want their investments to have positive impacts on the climate, diversity and inclusion, fair treatment of workers, and corporate accountability.²⁸ Moreover, the climate crisis, the COVID-19 pandemic, and cybersecurity threats now unquestionably pose clear and present risks, not just to American or U.S.-based multinational businesses but also to the U.S. financial system and economy. Unfortunately, the SEC has not revised its rules to keep pace with most of these realities.

Investors, lenders, customers, workers, suppliers and governments around the world are increasingly demanding that companies disclose information on ESG factors, which can include how companies assess and handle climate risks, how

they treat their workers, what they are doing to build diversity in their ranks, and more. This information may have direct impacts on the performance, innovation, reputation, and resilience of a firm.

Collectively, these factors may also shed light on systemic risks. For example, they may provide assurance that capital formation will respond to the urgent need for investment in renewable energy to reach the global goal of net-zero greenhouse gas emissions by the year 2050—which can only happen if issuers provide the marketplace with robust information about emissions.

Some companies are pushing back and seeking to limit disclosures, claiming that providing more detailed information to investors is too burdensome and costly—despite the fact that they often collect this information internally already.²⁹ However, a growing number of U.S. companies are clearly aware that investors, lenders, customers, workers, suppliers and governments want to know more about climate and other ESG factors and prioritize this information in their decision-making. Many companies have committed to disclosing information relating to these issues.³⁰ And many asset managers—who have fiduciary duties to their own customers—have committed to encouraging companies in their portfolios to make such disclosures, as evidenced by the 803 U.S. signatories to the U.N. Principles for Responsible Investment’s six principles for responsible investing.³¹

The need for more information is also evident in the number of private sector efforts to develop frameworks for disclosure of climate-related and other ESG matters and the fairly widespread acceptance by large companies of these frameworks. However, the lack of standardization of metrics, underlying data, assumptions, and methodologies, combined with the voluntary nature of the frameworks, still has not resulted in reliable, consistent, and comparable disclosures.³²

The SEC's disclosure authority is not limited to materiality

Nowhere in the Securities Act of 1933, the Securities Exchange Act of 1934, their legislative histories, or case law is the SEC's authority to mandate disclosures limited to just information that is deemed material to investors. Indeed, to impose such a limit now would effectively repeal a significant and increasingly important part of U.S. federal securities laws that not only protects investors directly, but also provides for more fair, orderly, and efficient markets, promotes capital formation, and in so doing, protects the public interest.

As explained below, materiality in securities law is a concept that is based on context and is constantly evolving. The most important application is in cases alleging fraud by a company.

Issuers and others who seek to limit SEC disclosures have sought to use the materiality concept as a way to potentially constrain the SEC's authority. Some have conflated the concept of materiality with the SEC's disclosure authority and also attempted to narrow the definition of what is material—for example, by describing materiality as limited to only near-term quantitative impacts and by perpetuating other myths.³³

By sowing confusion between the SEC's authority and materiality, and by narrowly defining the scope of such material information, these advocates may effectively inhibit the SEC's efforts to empower investors and other market participants with the information they need to make informed business decisions.

Some opponents of broad disclosures have added to the confusion by claiming that climate and other ESG disclosures are not needed because issuers are already required to disclose all material matters.³⁴ But this is not true either. In securities law, an issuer cannot be sued for failure to disclose unless there is a duty to disclose, which arises only when the SEC explicitly requires disclosure or when not disclosing renders other issuer statements misleading.³⁵ Private third-party standard-setters have also played a role in the confusion. Some have said they are

limiting the disclosures in their proposed frameworks to what is material, as they define it.³⁶ This approach is misguided because materiality is not defined by issuers or third parties, but rather by what investors want.³⁷

In some instances, the SEC may even choose to use materiality principles, but this does not mean it must do so or that materiality limits the agency's authority to require disclosures in order to fulfill its mission. Moreover, even where the concept of materiality applies, it is nowhere near as limited as disclosure opponents claim.

Materiality is both contextual and evolving

While the concept of materiality is not relevant for determining SEC authority to require a disclosure, it is important in other, more specific contexts. It is perhaps most important to the effective implementation of the anti-fraud provisions of the federal securities laws.

Since the federal securities laws were adopted, courts have found companies liable for fraud in instances where they failed to disclose information that was specifically required to be disclosed or where a disclosure, whether mandated or not, was inaccurate or incomplete—that is, where more information was needed to render other statements by the company accurate or not misleading.³⁸

In the fraud context, a trivial omission or disclosure error is generally inadequate to support a lawsuit for fraud. Accordingly, in these instances, the courts essentially have acknowledged that a lawsuit is not actionable unless there is a duty to disclose. This duty can arise from either an explicit SEC disclosure requirement or if further disclosure is needed to make other statements of the company not misleading.³⁹ The Supreme Court has explained that the construct of materiality is intended to consider “the proper balance between the need to insure adequate disclosure and the need to avoid the adverse consequences of setting too low a threshold for civil liability.”⁴⁰ In essence, materiality is a threshold for issuer liability; as SEC Commissioner Allison Lee has stated, materiality limits anti-fraud liability but does not limit the commission's disclosure rulemaking.⁴¹

The context matters, and questions of materiality are generally a mix of law and fact. In 1976, the Supreme Court examined materiality in the proxy voting process governed by SEC Rule 14a-9 and ruled that “[t]he general standard of materiality that we think best comports with the policies of Rule 14a-9 is as follows: an omitted fact is material if there is a substantial likelihood that a reasonable shareholder

would consider it important in deciding how to vote.”⁴² The court continued, “In defining materiality under Rule 14a-9, we are, of course, giving content to a rule promulgated by the SEC pursuant to broad statutory authority to promote ‘the public interest’ and ‘the protection of investors.’”⁴³

The court then offered a phrase that has since become the de facto definition of materiality for many corporate lawyers: Information in question is material if there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”⁴⁴ That standard is often cited as the general materiality standard today and underscores the fact that materiality is inherently fact-specific and the purpose of the concept is to limit issuers’ liability exposure in specific contexts. Nothing about the court’s ruling, however, purports to limit the SEC’s authority to require disclosures.

Notably, for investors, the actual holding focuses on what types of information not specifically mandated by the SEC would be significant to their analysis and thus would need to be provided when they are faced with making voting decisions. Today, of course, investors have many voting decisions that require ever more detailed information.

Examples of situations where materiality may be used include determining whether information should be included or excluded in disclosure documents; whether a communication omits or misstates a fact of sufficient significance that legal consequences should result; and whether a person considering a securities transaction should be barred from doing so if they have knowledge that would give them an unfair advantage over others.⁴⁵

The SEC itself has chosen at times to limit line-item disclosures to what is material, while in other cases it has chosen not to.⁴⁶ While it has eschewed requiring detailed climate-related financial disclosures, in its 2010 climate-related disclosure guidance, the agency both attempted to define materiality in the context of climate-related disclosures and clarified that issuers need to disclose “material” climate-related information.⁴⁷ In all of these instances, materiality is not a limit on the SEC’s authority to require disclosures; rather, the agency has chosen to rely on materiality in a specific factual context. Indeed, if the SEC determines that relying on materiality has not worked—for instance, if issuers have failed to provide adequate climate disclosures—it is empowered to revisit the issue and prescribe more specific line-item disclosures.

Today, many reasonable investors care deeply about climate-related risks and request detailed information from companies. During the 2020 proxy season, investors filed at least 140 climate-related shareholder proposals at U.S. companies, with an average approval vote of more than 30 percent.⁴⁸ Six proposals won majority votes in favor, up from only one in 2019, while 40 percent of the 140 were withdrawn by the filer in return for company commitments to address the issue raised.⁴⁹ Human capital management issues were also of high interest to filers in the 2020 proxy season. Six proposals received majority support, with average support of 28 percent, up from 26 percent in 2019.⁵⁰ In addition to proxy proposals, many large institutional investors are directly engaging with companies now on their climate and ESG practices.⁵¹

Clearly, institutional investors believe climate and ESG-related disclosures are material to them in various contexts today. But it is important to recognize that what investors deem important today is different from what they held as important just a few years ago, much less decades ago. Following the consequences of recent horrific wildfires and hurricanes and the coronavirus pandemic, investors have become increasingly concerned with supply chain resiliency to climate and other disasters. Before those events, companies knew these risks existed but were slow to invest profits in managing them. However, disruptions in the supply of critical inputs have demonstrated to companies and their investors the value of building resiliency.⁵² It is clearly reasonable for investors and other market participants to care about these matters. Materiality, then, evolves as the context and facts evolve.

Materiality is not determined only by the level of financial impact on a company, nor does it have to be quantitative

Much of the debate on materiality focuses on the context of an investor making a decision about whether to buy or sell securities. But investors often use the information contained in disclosures to assess the quality and risks regarding a company's governance and make decisions regarding proxy voting. When exercising voting rights or investing in assets for the long term, such as in retirement planning, investors may be interested not only in immediate financial returns but also the overall risks and opportunities for a company going forward. This may include information about the activities of management and board members, the backgrounds of individuals who serve in management and on the board, their conflicts of interest, and more. But shareholders seeking to exercise their voting

rights or engage in long-term investing may also wish to know information that could give rise to other risks, such as potential labor difficulties, negative publicity, and customer risks.

Even when management is required to disclose risks that it determines to be “material” or “significant,” history demonstrates that their discretion over these areas often leads to missing, inadequate, or inconsistent disclosures, particularly when it comes to qualitative disclosures. For example, the petrochemical industry does not disclose the geographic concentration of its operations or the impact those operations have on the largely poor and historically disadvantaged communities that may live near the plants. Instead, they often paint a rosier picture and minimize the litigation related to their operations. The disclosures of companies engaged in many poor Black communities along the Mississippi River, in an area of Louisiana now known as “Cancer Alley,” represent one such egregious example.⁵³ After decades of exposure to environmental pollution, people in these communities have died from COVID-19 at a much higher rate than average, which has brought fresh scrutiny to corporate practices in the region.⁵⁴ Unfortunately, the disclosures of the companies involved have been woefully inadequate in providing market participants with sufficient information to make accurate assessments of this human toll. Put another way, the SEC’s current regulatory regime enables environmental racism and inadequate protection of the public interest.

Ultimately, investors and other market participants—not management—are the parties that determine what is material. Congress has directly empowered the SEC to ensure that investors have the information they need to vote and place a check on corporate leadership, as well as to invest for the long term.⁵⁵

There is also no threshold of financial impact that information must meet to be considered material. The commission made this clear in a 1999 staff accounting bulletin (SAB), expressing the view that “misstatements are not immaterial simply because they fall beneath a numerical threshold.”⁵⁶ In fact, as SAB 99 emphasized, there are many information examples that may not have significant financial impact but are nonetheless material, such as violations of health and safety laws and litigation in which the company is involved.

Improperly limiting the SEC’s disclosures to information that fits within an artificially restrictive definition of “financial materiality”—such as information that would have an immediate impact on the bottom line or is otherwise related to a company’s size—would essentially create a massive loophole for the largest com-

panies in the world. Their sheer size would render nearly any issue too small to be “material.”⁵⁷ For example, there are now several companies with valuations higher than \$1 trillion; it would be ridiculous to say that investors in these companies would not care about any issue worth less than \$50 billion.

SAB 99 points out that the Financial Accounting Standards Board has “long emphasized that materiality cannot be reduced to a numerical formula,” that “materiality judgments can properly be made only by those who have all the facts,” and further, that quantitative impact is by itself “‘too blunt an instrument to be depended on’ in considering whether a fact is material.”⁵⁸

Similarly, SAB 99 confirms that material factors may also be qualitative in nature, saying that “[c]ourt decisions, Commission rules and enforcement actions, and accounting and auditing literature have all considered ‘qualitative’ factors in various contexts.”⁵⁹ The risks associated with Facebook’s sales of platform users’ data to third parties⁶⁰ are one example of “qualitative” materiality, related to the integrity of management, which SAB 99 highlighted as within the SEC’s authority and concern.

Companies already recognize that information that is material to investors, other market participants, and the public may not be financially significant to them. For instance, in the aftermath of the January 6 insurrection at the U.S. Capitol, several companies voluntarily disclosed that they were halting or permanently changing their political spending.⁶¹ Those companies clearly believed that this information was important to investors, their customers, and the public, even though the dollar levels involved in those political spending activities are facially inconsequential to the finances of many of those companies.

Finally, intangible assets or nonphysical assets that give value to a company—such as intellectual property and brand recognition—make up a much larger share of value today than they did a decade or two ago.⁶² Meanwhile, market and book values have been diverging, and investors need to understand the reasons for that gap. Intangible value is harder to measure quantitatively and could be based on such qualitative factors as whether a firm has a strong employment base, whether it is resilient to climate-related risks, or how it is perceived in social media and elsewhere in the public sphere.⁶³ These and many other types of information may be material, even if they do not fall within a quantitative measure of financial materiality.

Material information can be forward-looking and based on uncertain events

Item 303 of Regulation S-K requires narrative reporting of management’s views of current financial results and analysis of forward-looking information, specifically of “known trends, or any known demands, commitments, events, or uncertainties” that are reasonably likely to have a material impact on the company’s liquidity, capital resources, results of operations, or off-balance sheet arrangements.⁶⁴ Known as management discussion and analysis, or MD&A, this part of a corporation’s reporting is intended to provide the investor with a view of the company through the eyes of management.

Today, many companies use scientific analysis of future uncertainties to drive internal strategy. For example, when valuing an oil and gas company’s reserves or when making decisions about where a firm should invest, management is concerned about future prices, not historical ones, and estimating those future prices may require assessment of many factors that could occur in the future. Understanding management’s considerations and priorities, and the basis for their decisions, is critical information for investors and other market participants. It is material.

Finally, as the SEC and the U.S. Supreme Court have pointed out, important information is often exclusively in the control of company management. Therefore, doubts about whether to disclose must be resolved in favor of those who are being protected—in other words, the many parties who read disclosures, not the issuers.⁶⁵

The scope of SEC disclosure authority and what is material are converging

The SEC’s disclosure authority, though not always exercised, has historically been broad. The agency has enhanced its disclosure requirements over time to better protect investors and the public by promoting market transparency, but it can and should require additional and more specific line-item disclosures, particularly on climate emissions. On matters where it is not yet prepared to do so, the SEC must continue to rely on principles and the concept of materiality while recognizing that what is material—the information that investors want to know about a company—has evolved significantly over recent decades.

As stated above, market participants need more information about companies today because the risks to companies are numerous and growing, from climate-related risks, to cybersecurity threats, to the impacts of the coronavirus pandemic. These factors often affect companies’ relationships with their lenders, suppliers, customers, workers, and even government bodies.

Unquestionably, companies base billion-dollar decisions on climate-related and human capital-related information. In May 2019, to great public fanfare, the United States Steel Corporation announced that it would invest up to \$1.5 billion in new and upgraded facilities in suburban Pittsburgh, which the company explicitly touted as “great for our stockholders.”⁶⁶ However, in early 2021, the company announced that it had decided to scuttle the Pennsylvania investments. At the time, the company stated that one of the key reasons for the withdrawal was local concern over environmental impacts and permitting delays, while others have speculated that the decision was based in part on the fact that the Pittsburgh facility involved organized labor.⁶⁷

Unfortunately, leaving the disclosures of these ESG factors open only to the discretion of management, rather than providing specific line-item requirements, often leaves investors exposed to conflicts of interest and subjective judgment. Companies and their executives may highlight investments, but if they choose not to disclose associated ESG factors, investors will have an incomplete and inadequate understanding of the risks of those decisions, as was the case with U.S. Steel.

Not surprisingly, investors and other market participants should and do care about a wide range of ESG factors today. They understand more than ever the interactive relationship between the decisions of corporate management and the impacts of those decisions on other market participants, as well as on the larger issues and crises that Americans face. Transparency helps ensure that, in the marketplace, each party can make decisions based on the best available information. Congress recognized the benefits of transparency—for investors and issuers and the economy as a whole—when it enacted the securities laws many decades ago. Transparency is an approach that has been time-tested and is even more important today. Consistent with that approach, the SEC must now expand disclosures to cover the key issues that will drive economic success and failure in the coming decades—and it has both the authority and an obligation to do so in order to fulfill its mission.

Conclusion

Since Congress created the SEC in 1934, the agency has been tasked with essentially ensuring that investors and the public have enough information about securities and those who sell them in order to ensure that the U.S. economy functions. Without full and fair disclosure, investors, lenders, suppliers, workers, customers, and even government entities will not be adequately informed as they make decisions about how and where to invest their resources in the marketplace.

Making capital markets fair, orderly, and efficient demands more and better information about climate and other ESG factors. Ensuring that capital is well-allocated and investors are protected requires reliable information about the risks associated with these factors. The SEC's authority to ensure transparency in the markets is not constrained by what may be material to a particular type of investor or limited to the near term. On the contrary, the SEC's obligation is to protect the public interest by promoting greater transparency in the capital markets around matters of concern to investors and other market participants. Fair, orderly, and efficient capital markets depend on it.

The individuals and groups that invest their resources into capital markets have made their voices clear: They want more transparency around companies' climate and other ESG practices and risks. And the SEC has the authority and obligation to build a disclosure regime that will provide that.

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Endnotes

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