

## HFSC CONVENES HEARING TO EXAMINE THE SEC'S FINAL CLIMATE-RELATED DISCLOSURES RULE

### EXECUTIVE SUMMARY

On April 10, the House Financial Services Committee (HFSC) held a [hearing](#) entitled, "Beyond Scope: How the Securities and Exchange Commission's (SEC) Climate Rule Threatens American Markets," where lawmakers and witnesses discussed the agency's recently finalized [climate-related disclosures rule](#). Republicans criticized the rule as exceeding the SEC's statutory mandate, arguing it would: (1) impose undue compliance costs on companies; (2) deter companies from going public and thereby limiting investor choice; (3) confuse investors with non-material information; (4) divert funding from research and development (R&D) expenditures; (5) and harm domestic oil and natural gas production, among other arguments. Many GOP members called for the rule to be withdrawn altogether.

Democrats defended the rule as mandating and standardizing important information for investors, citing the impact of climate change and associated extreme weather events on businesses and households as demonstrating the materiality of climate-related financial risks. Democrats also argued that many U.S. companies will not experience increased compliance costs since other jurisdictions and states have implemented their own climate reporting standards. Some Democrats, including **Ranking Member Maxine Waters (D-CA)**, criticized the SEC for weakening aspects of the rule from the initial proposal, particularly with the removal of the Scope Three reporting requirement. Other notable topics were discussed to a lesser extent during the hearing, including workforce-related disclosures, vulnerability to China, and housing costs.

### OPENING STATEMENTS

**Chair Patrick McHenry (R-NC)** criticized the climate disclosures rule, arguing that it falls outside of the SEC's statutory mandate. He was concerned that the rule would harm the U.S. economy by imposing additional compliance costs on publicly traded companies, thereby impeding companies from becoming publicly listed. Chair McHenry contended that the final rule would give investors fewer investment choices, confuse investors with what he viewed as "non-economic" information, and harm workers as companies confront higher compliance costs. The Chair concluded his remarks by calling on the SEC to withdraw the final rule.

**Ranking Member Maxine Waters (D-CA)** countered that the final rule is important to investors because climate change affects the financial health of public and private companies. As an example, Ranking Member Waters cited insurance companies' decisions to withdraw or increase premiums in

California due to “climate change induced” wildfires. While she defended the final rule as being within the SEC’s statutory mandate, Ranking Member Waters criticized the agency for weakening aspects of the rule as it was initially proposed.

**Rep. Bill Huizenga (R-MI)** described the final rule as “unworkable” and asserted that it is not within the SEC’s jurisdiction.

**Rep. Brad Sherman (D-CA)** argued that the final rule is important because climate-related information is material to investors’ decisions.

#### **WITNESS TESTIMONY**

**Mr. Elad Roisman** ([testimony](#)), of Cravath, Swaine & Moore LLP and former SEC Commissioner, was concerned about the final rule’s compliance costs, which he believed would be borne by investors. Mr. Roisman also argued that the final rule may not result in comparable and consistent disclosures because of the different assumptions, estimates, and definitions that will underly company disclosures.

**Mr. Robert Stebbins** ([testimony](#)), of Willkie Farr & Gallagher LLP and former SEC General Counsel, cited pending and active litigation against the SEC rule, bringing him to reason that there is a “strong basis” for the courts to conclude that the climate rule violates the major questions doctrine as set forth in *West Virginia v. Environmental Protection Agency (EPA)* and the Administrative Procedures Act (APA).

**Mr. Joshua T. White** ([testimony](#)), of Vanderbilt University, echoed concerns that the final rule will “substantially” raise the direct costs of being a public company. With regards to the SEC’s economic analysis of the rule, Mr. White argued that: (1) the rule mandates “costly and granular” disclosures that are non-material; (2) the SEC’s fails to make a convincing argument for the final rule since the existing system already mandates the disclosure of material climate information; and (3) the final rule will raise disclosure costs above the SEC’s estimated 20 percent.

**Mr. Chris Wright** ([testimony](#)), CEO of Liberty Energy, repeated arguments that the final rule falls outside of the SEC’s jurisdiction and would increase compliance costs for U.S. businesses. He predicted that the SEC rule would decrease domestic oil and gas production despite increasing demand. Mr. Wright was skeptical about the economic impacts of climate change.

**Ms. Jill E. Fisch** ([testimony](#)), of the University of Pennsylvania Law School, countered criticisms of the SEC’s rule, referencing previous rulemakings to argue that the climate disclosures rule is within the agency’s jurisdiction and that the Commission has not historically been limited to requiring disclosures that are individually financially material. Ms. Fisch remarked that the rule will increase consistency and reliability for investors, contending that voluntary climate disclosures are insufficient.

## DISCUSSION AND QUESTIONS

### Materiality & Investor Benefits

- When prompted by Chair McHenry, Mr. Roisman commented that the SEC’s rule provides for a level of “prescriptive” disclosure beyond what is material to investors.
- When prompted by **Rep. David Scott (D-GA)**, Ms. Fisch argued that there has been “overwhelming” investor demand for improved climate-related disclosures.
- Several Democrats on the committee — **Reps. Stephen Lynch (D-MA), Joyce Beatty (D-OH), Juan Vargas (D-CA), Sean Casten (D-IL), Sylvia Garcia (D-TX), and Rashida Tlaib (D-MI)** — maintained that climate-related risks are material to investors.
- Ms. Fisch agreed when Rep. Lynch argued that the increased disclosures will benefit the U.S. economy by protecting the integrity of the markets.
- In a line of questioning with **Bill Posey (R-FL)**, Mr. Roisman did not believe that retail investors would benefit from the climate-related disclosures. Mr. Wright predicted that the rule would result in decreased domestic oil and gas production.
- **Rep. Al Green (D-TX)** asked how the rule could help retail investors. Ms. Fisch indicated that the professionals who run retirement plans for retail investors — who often themselves have a range of investment preferences — have been urging the SEC to standardize climate disclosures because they view it as material to their investments and therefore important to fulfilling their fiduciary duties.
- **Rep. Andy Barr (R-KY)** asked Mr. Roisman to elaborate on his assertion that the final rule will not result in comparable and consistent disclosures. Mr. Roisman explained each company will need to make assumptions about their business.
- **Rep. Barry Loudermilk (R-GA)** was skeptical about investor demand for the climate disclosures, and he claimed that the SEC instead issued the rule due to pressure from “activist groups.” Mr. Roisman pushed back on Rep. Loudermilk’s assertion, responding that some investors do in fact want climate disclosures. However, Mr. Roisman continued to emphasize his concerns that aspects of the rule are non-material and not relevant to a company’s financial condition.
- Several Financial Services Committee Republicans — including **Reps. John Rose (R-TN), William Timmons (R-SC), Bryan Steil (R-WI), Scott Fitzgerald (R-WI), Monica De La Cruz (R-TX), and Andy Ogles (R-TN)** — were all similarly skeptical about the materiality of the climate disclosures and the benefits to retail investors.
- Mr. Stebbins agreed when Rep. Timmons insinuated that the disclosure rule could “mislead” investors to believe that climate-related risks are more significant than other risks, including those pertaining to interest rates or inflation where disclosures are not mandated.

### Compliance Costs & Jurisdiction

- **Rep. Brad Sherman (D-CA)** applauded the SEC’s rule for imposing additional costs for disclosure compliance on publicly traded companies, going as far as to urge the Committee to consider legislation that would impose similar requirements on larger private companies. He countered concerns that the rule would not majorly increase compliance costs for many U.S. companies by

noting that other jurisdictions — such as the European Union (EU) — and states already require such disclosures.

- **Reps. French Hill (R-AR) and Zach Nunn (R-IA)** criticized the SEC for not publishing sufficient cost-benefit analyses for its rulemakings. Mr. Stebbins agreed, explaining that he expects that the SEC has underestimated its projected compliance costs for the rule due to the high rates charged by many law firms.
- Rep. Scott asked whether companies should start preparing ahead of the climate rule’s effective date. In response, Ms. Fisch spoke to the difficulties with creating an accurate cost-benefit analysis with ongoing developments in this area. These include technological improvements, more companies voluntarily disclosing climate-related information, and requirements from regulators in other jurisdictions, she said.
- Rep. Posey asked whether certain requirements — such as those pertaining to disclosure of climate goals, scenario analysis, and internal carbon pricing — will become mandates out of fear of noncompliance. Mr. Stebbins reasoned that, since material disclosures are already required, companies will need to conduct their own cost-benefit analysis to weigh whether they need to report information as outlined in the rule.
- **Reps. Pete Sessions (R-TX), Rep. Ann Wagner (R-MO), Roger Williams (R-TX), Andrew Garbarino (R-NY), Fitzgerald, Young Kim (R-CA), Nunn, and De La Cruz** raised concerns about compliance costs.
- When Rep. Sessions raised concerns about the rule’s impact on small businesses, Ms. Fisch emphasized that the final rule largely exempts smaller reporting companies and emerging growth companies from the reporting requirements in the rule.
- In response to a question from Rep. Barr about the reporting requirements surrounding “severe weather events and other natural conditions,” Mr. Roisman voiced concerns that the de minimis threshold for the reporting of these events will force companies implement different policies and procedures based on the geography of the operation.
- **Rep. Ralph Norman (R-SC)** criticized the SEC for not sufficiently defining “severe weather events” in the final rule.
- Rep. Williams argued that the increased compliance costs of the rules would decrease the global competitiveness of U.S. companies, particularly small companies. Mr. White agreed that the rule will likely have an “outsize” effect on small companies, which he believed could result in fewer public offerings and some companies moving to other jurisdictions.
- In response to a question from Rep. Rose, Mr. White referenced a study finding that — after statutory changes — companies used savings from compliance costs to invest in R&D.
- Rep. Tlaib asked Ms. Fisch to compare the SEC climate disclosure rule to the requirements in the EU. Ms. Fisch remarked that the EU standards are more demanding, requiring reporting on climate, environmental, and sustainability issues, as well as Scope Three emissions. She added that a “substantial” number of U.S. companies are already subject to the EU’s standards.
- When responding to a question from Rep. Kim, Mr. Roisman countered that — while the EU does in fact have its own climate reporting standards — U.S. companies do not face the same level of litigation risk in Europe.
- Rep. Fitzgerald asserted that the exemption for smaller reporting companies is “far too narrow,” claiming that the rule could impact many small- and medium-sized manufacturers. Additionally,

Rep. Fitzgerald voiced concerns that the rule's safe harbor is insufficient to protect against litigation risk.

- Reps. Huizenga and Fitzgerald were concerned that “special interest groups” could take advantage of the climate disclosures by suing public companies.
- With news that the SEC is staying the rule due to ongoing litigation, Rep. Huizenga asked whether the agency would delay implementation of the rule further. Both Mr. Stebbins and Mr. Roisman expected the SEC to extend the timeframe for compliance depending on the length of litigation.
- In addition to Chair McHenry, **Reps. Frank Lucas (R-OK)**, Posey, Fitzgerald, **Mike Flood (R-NE)**, and Ogles also argued that the climate disclosures rule is outside of the SEC's statutory mandate.
- When prompted by Rep. Posey, Mr. Stebbins reiterated that the final climate rule likely violates the major questions doctrine. He added that the rule is: (1) outside of the SEC's area of expertise; (2) does not have a specific congressional authorization; and (3) is of large economic significance.
- **Rep. Emanuel Cleaver (D-MO)** asserted that the climate rule is within the SEC's jurisdiction, and he asked whether the final rule requires that companies reduce emissions. Mr. Wright responded that it forces his company to work to collect the necessary information. Later on in the hearing, Ms. Fisch responded in the negative when Rep. Tlaib also asked whether the final rule requires companies to reduce emissions.

#### Scope Three & Other Changes

- With the removal of Scope Three and the addition of new requirements, Rep. Hill asked whether Mr. Stebbins would have recommended a re-proposal of the rule. Mr. Stebbins answered yes, stating that these alterations “substantially” changed the rule.
- Rep. Scott applauded the SEC's decision abandon the proposed Scope Three reporting requirements, which he believed could have resulted in increased costs for production agriculture.
- Rep. Lucas contended that, while the final rule scales back the proposed Scope Three reporting requirements, many public companies will still be required to collect emissions data from their supply chains. Mr. Roisman agreed that there are some interpretive issues in the rule. For example, Mr. Roisman explained that if a public company has a zero-emissions goal, it will likely need to collect emissions data across its supply chain and make qualitative assessments in order to comply with the final rule. Mr. Stebbins echoed this point.
- Ranking Member Maxine Waters lamented that the final rule “fell short” of the initial proposal, commenting that: (1) the rule exempts large banks and insurance companies from disclosing emissions; (2) that the lack of a Scope Three requirement means companies do not have to disclose emissions they believe to be non-material; and (3) the rule lessens requirements that companies disclose the potential impacts of transition risks. Ms. Fisch agreed that these are areas for improvement, emphasizing her concerns that the announcement of targets and transition plans are “ripe for greenwashing.”
- Ranking Member Waters noted that the final rule limits the attestation requirements for Scope One and Two emissions. Ms. Fisch explained that attestation increases the quality of disclosures but is also costly, therefore the SEC implemented a “graduated” level of disclosure based on company size.

- Rep. Wagner argued that the SEC could have done more to clarify that companies are not required to disclose Scope Three emissions in the final rule.
- Rep. Wagner contended that, despite the removal of the Scope Three component, the rule will still impact private companies. Mr. Wright explained that private companies with major, controlling investments from public companies will also have to collect data on and report their emissions.
- Rep. Beatty asked about the potential benefits of the SEC harmonizing its climate disclosures rule with other jurisdictions, such as the EU. Ms. Fisch answered that this would lower compliance costs and decrease regulatory uncertainty for companies.
- When asked by **Rep. Dan Meuser (R-PA)** about alternatives to the rule, Mr. Roisman maintained that the materiality standard is sufficient for climate-related disclosures, though he added that the agency could have also updated its nonbinding, [interpretive 2010 guidance](#) on the matter.
- **Rep. Ayanna Pressley (D-MA)** expressed dissatisfaction with the final rule, particularly surrounding its exclusion of Scope Three emissions. Ms. Fisch agreed with Rep. Pressley regarding the importance of Scope Three for investors.

#### Energy Industry Impacts

- Chair McHenry asked about the potential impact of the SEC rule on energy availability and cost. Mr. Wright responded that the SEC lacks the environmental expertise to implement and enforce the rule. Additionally, he was concerned that the penalties under violations of securities laws — combined with the typically uncertain nature of greenhouse gas emission estimates — could have harmful consequences for publicly traded companies.
- When questioned by Rep. Barr, Mr. Wright maintained that the rule would harm his company's finances and could decrease oil and gas production in the U.S.
- Rep. Rose was highly critical of the Scope Two disclosure requirements, voicing concerns about utilities and energy producers being required to provide data to publicly traded companies about electricity usage and greenhouse gas emissions.
- In response to a question from Rep. Garbarino, Mr. Wright stressed his concerns that the compliance costs associated with the rule would draw funding from his company's R&D efforts.
- In a dialogue with Rep. Flood, Mr. Wright expressed his belief that the rule will result in increased complexity, costs, and risk for the energy industry.

#### Other Disclosures & Issues

- Rep. Sherman asked whether companies should be required to report information about their workforce, such as turnover rates, employee training expenses, as well as diversity, equity, and inclusion (DEI) efforts. Ms. Fisch answered in the affirmative, noting evolving issues as it pertains to human capital management.
- Rep. Sherman also expressed interest in requiring disclosures relating to research and development (R&D) and exposure to China.
- Rep. Kim touted the Review the Expansion of Government (REG) Act ([H.R.7030](#)) to enhance congressional oversight of SEC rules.
- **Rep. Steven Horsford (D-NV)** was critical of the subject of today's hearing, instead emphasizing his concerns about increasing housing prices.