ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510–2105
P: 202–224–4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617–565–3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413–788–2690

www.warren.senate.gov

April 28, 2020

The Honorable Walter Joseph "Jay" Clayton III
Chairman
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Clayton:

I write in regard to the Securities and Exchange Commission's (SEC or the Commission) proposed rule "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information"[1] to amend Regulation S-K, which establishes disclosure and reporting requirements for publicly traded companies. The Federal Register notes that the proposed amendments are intended to "modernize, simplify, and enhance certain financial disclosure requirements in Regulation S-K… for the benefit of investors,"[2] and reports describe the proposal as a move "to give executives more flexibility in what they share with investors."[3] I am concerned that, while you have acknowledged that "[t]he issue of environmental and climate-related securities law disclosures has received increasing attention from various regulators, investors and other market participants and non-market participants during my tenure as Chairman,"[4] the SEC's proposed rule does not include needed climate disclosure provisions. As health professionals and public health officials work to combat the ongoing coronavirus disease 2019 (COVID-19) pandemic, and as governments throughout the world work to address the associated economic collapse, we cannot also afford to lose sight of climate-related threats to our health and economic well-being.

The climate crisis will have a significant impact on our economy,[5] and without meaningful requirements for companies to disclose their exposure to climate change risk, I am

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[1] Securities and Exchange Commission, Federal Register Notice, "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information," February 28, 2020, https://www.federalregister.gov/documents/2020/02/28/2020-02313/managements-discussion-and-analysis-selected-financial-data-and-supplementary-financial-information.
[2] *Id.*
[3] Wall Street Journal, "SEC Proposes Amending Corporate Disclosure Rules," Mark Maurer, January 31, 2020, https://www.wsj.com/articles/sec-proposes-amending-corporate-disclosure-rules-11580510076.
[4] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[5] New York Times, "Climate Change's Giant Impact on the Economy: 4 Key Issues," Neil Irwin, January 17, 2019, https://www.nytimes.com/2019/01/17/upshot/how-to-think-about-the-costs-of-climate-change.html; Brookings Institution, "Ten facts about the economics of climate change and climate policy," Ryan Nunn, Jimmy O'Donnell,

concerned that the proposed rule would not give investors and the public the information needed to make well-informed investment decisions.

In a statement regarding the proposed amendments to Regulation S-K, you stated, in a discussion of climate-related disclosures, that you are "pleased with the Commission's approach to this [climate] issue to date" and argued that disclosures should remain based on materiality.[6] SEC Commissioner Allison Herren Lee, however, addressed your concerns regarding materiality in stating that "Investors have been clear that this information is material to their decision-making process, and a growing body of research confirms that," that "the broad, principles-based 'materiality' standard has not produced sufficient disclosure to ensure that investors are getting the information they need—that is, disclosures that are consistent, reliable, and comparable," and that the SEC's "routine disclosure review process could be used to improve disclosure under the materiality standard."[7] Furthermore, Commissioner Lee acknowledged, "investors are overwhelmingly telling us, through comment letters and petitions for rulemaking, that they need consistent, reliable, and comparable disclosures of the risks and opportunities related to sustainability measures, particularly climate risk."[8]

Additionally, a 2018 Government Accountability Office report found that "[i]mpacts from a changing climate can pose serious risks to the global economy and affect many economic sectors" and that "SEC reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings."[9] While the SEC has issued guidance for considering effects of climate change,[10] the agency has not mandated disclosures for how climate risk materially affects returns. Indeed, several stakeholders, regulators, and companies have acknowledged the various economic and financial risks and have urged the SEC and other regulators to better incorporate the various climate-related risks in mandatory disclosures,[11] yet the SEC has thus far declined to take this opportunity to require climate disclosures in this proposed rulemaking.

Currently, investors lack access to basic information about the potential risk of the climate crisis on American companies, which is why former Vice President Al Gore has argued that "By overlooking a known material-risk factor, investors are exposing their portfolios to an

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Jay Shambaugh, Lawrence Goulder, Charles Kolstad, and Xianling Long, October 23, 2019, https://www.brookings.edu/research/ten-facts-about-the-economics-of-climate-change-and-climate-policy/.

[6] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.

[7] Securities and Exchange Commission, "'Modernizing' Regulation S-K: Ignoring the Elephant in the Room," Allison Herren Lee, January 30, 2020, https://www.sec.gov/news/public-statement/lee-mda-2020-01-30.

[8] *Id.*

[9] Government Accountability Office, "CLIMATE-RELATED RISKS: SEC Has Taken Steps to Clarify Disclosure Requirements" February 2018, https://www.gao.gov/assets/700/690197.pdf.

[10] Securities and Exchange Commission, "Commission Guidance Regarding Disclosure Related to Climate Change," February 8, 2010, https://www.sec.gov/rules/interp/2010/33-9106.pdf.

[11] Congressional Research Service, "Climate-Related Risk Disclosure Under U.S. Securities Laws," Eva Su and Nicole Vanatko, September 10, 2019, https://fas.org/sgp/crs/misc/IF11307.pdf.

externality that should be integrated into the capital allocation process."[12] These risks are likely to have significant impacts on investments and the broader economy, with studies estimating that "the current value of direct private investor losses globally due to the physical risks of climate change is between $4.2 trillion and $13.8 trillion, depending on the warming scenario" and that climate change may lead to "permanent damage that would far eclipse the scale of the 2007-2008 financial crisis."[13] A 2018 report by 13 federal agencies also found that without significant climate action, as much as ten percent of the American economy, or more than double the losses of the Great Recession, may be wiped out by the end of the century.[14] Additionally, a separate Moody's report argued that climate change may lead to tens of trillions of dollars in global damages by the end of the century and that the climate crisis will "universally hurt worker health and productivity."[15] While you have stated that the proposed regulation, "if adopted, would substantively benefit investors and our capital markets more generally,"[16] it cannot do so if it lacks meaningful mandatory requirements to provide investors with information about public companies' exposure to material climate-related risks.

For these reasons, I have introduced *The Climate Risk Disclosure Act of 2019* as a standard climate disclosure regime in order to require public companies to disclose their climate-related risks so investors can accurately assess climate-related environmental and financial threats.[17] My legislation requires rigorous disclosures of critical information about climate-related risks by all public companies, including companies' direct and indirect greenhouse gas emissions; assets related to fossil fuel that companies own or manage; how companies' financial valuations would be affected under various climate scenarios; and companies' risk management strategies related to the physical and transition climate change risks.[18] The House Financial Services Committee passed the House version of this legislation last year.[19] As I work with my

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[12] Wall Street Journal, "The Coming Carbon Asset Bubble," opinion, Al Gore and David Blood, October 29, 2013, https://www.wsj.com/articles/the-coming-carbon-asset-bubblethe-coming-carbon-asset-bubble-1383076555.

[13] Center for American Progress, "Climate Change Threatens the Stability of the Financial System," Gregg Gelzinis and Graham Steele, November 21, 2019, https://www.americanprogress.org/issues/economy/reports/2019/11/21/477190/climate-change-threatens-stability-financial-system/.

[14] New York Times, "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy," Coral Davenport and Kendra Pierre-Louis, November 23, 2018, https://www.nytimes.com/2018/11/23/climate/us-climate-report.html; U.S. Global Change Research Program, "Fourth National Climate Assessment," November 23, 2018, https://nca2018.globalchange.gov/.

[15] Moody's Analytics, "The Economic Implications of Climate Change," Chris Lafakis, Laura Ratz, Emily Fazio, and Maria Cosma, June 2019, https://www.moodysanalytics.com/-/media/article/2019/economic-implications-of-climate-change.pdf.

[16] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.

[17] Climate Risk Disclosure Act of 2019, S. 2075, https://www.congress.gov/bill/116th-congress/senate-bill/2075.

[18] Office of U.S. Senator Elizabeth Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill to Require Every Public Company to Disclose Climate-Related Risks," July 10, 2020, https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks.

[19] Office of U.S. Representative Sean Casten, "Casten, Warren 'Climate Risk Disclosure' Act Passes House Financial Services Committee," July 17, 2019, https://casten.house.gov/media/press-releases/casten-warren-climate-risk-disclosure-act-passes-house-financial-services; Climate Risk Disclosure Act of 2019, H.R. 3623, https://www.congress.gov/bill/116th-congress/house-bill/3623.

colleagues to enact *The Climate Risk Disclosure Act of 2019*, I urge the SEC to review the requirements under this legislation as you consider potential changes to the existing disclosure regime.

In your statement about the proposed amendments to Regulation S-K, you stated that the SEC's efforts thus far "have improved issuer disclosures of material information, allowing investors to make better capital allocation decisions" and that in terms of considering climate-related risks, "[t]he Commission's and the SEC staff's focus on and work in this area will continue."[20] This proposed rule, despite the SEC's intention to "modernize and enhance"[21] financial disclosures, however, does not take the opportunity to incorporate climate risk that has the potential to "destroy billions of dollars in property and to displace millions of people" and lead to "economic losses and social disruption."[22]

As the SEC considers potential changes to financial disclosures, it is imperative that the Commission include mandatory climate disclosures. Because the Trump administration has continued to aggressively weaken environmental safeguards in ways that will further exacerbate the climate crisis,[23] it is more important than ever that the SEC ensure that investors and the public have the tools and information they need to assess climate-related risks and make well-informed investment decisions.

Thank you for your consideration of this important matter.

Sincerely,

Elizabeth Warren
United States Senator

[20] Securities and Exchange Commission, "Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure," Jay Clayton, January 30, 2020, https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.
[21] Securities and Exchange Commission, Federal Register Notice, "Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information," February 28, 2020, https://www.federalregister.gov/documents/2020/02/28/2020-02313/managements-discussion-and-analysis-selected-financial-data-and-supplementary-financial-information.
[22] Freddie Mac, "Life's a Beach," April 2016, http://www.freddiemac.com/research/insight/20160426_lifes_a_beach.page.
[23] New York Times, "95 Environmental Rules Being Rolled Back Under Trump," Nadja Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, December 21, 2019, https://www.nytimes.com/interactive/2019/climate/trump-environment-rollbacks.html.