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July 7, 2016

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White,

I write to follow up on your testimony on the "Disclosure Effectiveness Initiative" before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on June 14th and to renew my objections to any efforts by the Securities and Exchange Commission ("SEC" or "Commission") to limit disclosure requirements in ways that would harm investors.

Based on public statements by you and other senior SEC officials, the Initiative appears focused on changing SEC rules to permit publicly traded corporations to disclose less information to their investors and the public. I am deeply concerned that the SEC has spent significant agency time and resources on this Initiative without a clear congressional directive, while simultaneously failing to finalize congressionally mandated rules under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. I am also concerned that the SEC has attempted to portray this work as a pro-investor effort designed to solve "information overload" – a problem that the Commission has never been able to document and that analysts have described as a "myth." [1]

As you move forward – either with this Initiative or with the narrower disclosure review mandated in the Fixing America's Surface Transportation ("FAST") Act that Congress passed in December of last year – I urge you to re-focus the agency's efforts on the interests of investors, not the large corporations that are seeking to limit disclosures. Anything else would be an abdication of the SEC's mission "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[2]

The remainder of this letter describes my concerns in additional detail.

I. The Disclosure Effectiveness Initiative Went Well Beyond Any Congressional Mandate.

[1] Gretchen Morgenson, "FASB Proposes to Curb What Companies Must Disclose," *New York Times* (Jan. 2, 2016) (online at http://www.nytimes.com/2016/01/03/business/fasb-proposes-to-curb-what-companies-must-disclose.html?_r=0).
[2] Securities and Exchange Commission, "What We Do" (online at https://www.sec.gov/about/whatwedo.shtml).

At the recent Banking Committee hearing, you testified that the SEC launched the Disclosure Effectiveness Initiative "in response to a congressional mandate to do a report that reviewed our entire [Regulation] S-K concept."[3] Yet the mandate you referenced is far narrower than the Initiative you launched in 2014.

In April 2012, Congress passed the Jumpstart Our Business Startups Act ("JOBS Act").[4] The law included a provision mandating that the SEC conduct a review of the "registration requirements" in Regulation S-K – which outlines various reporting and filing requirements for public companies – and "determine how such requirements can be updated to modernize and simplify the registration process and reduce costs and other burdens associated with these requirements for" a subset of issuers: "emerging growth companies."[5] The law defined "emerging growth companies" as issuers with "total annual gross revenues of less than $1 [billion]."[6] The law also ordered the Commission to submit a report based on its review of certain provisions in Regulation S-K that included "specific recommendations…on how to streamline the registration process in order to make it more efficient and less burdensome for the Commission and for prospective issuers who are emerging growth companies."[7]

The JOBS Act was narrowly targeted at reviewing and modernizing one subset of disclosure requirements – the registration requirements in Regulation S-K – as they applied to one subset of companies – emerging growth companies. That is the narrow mandate the SEC initially followed in 2012 under then-Chair Mary Schapiro. The SEC's Division of Corporation Finance quickly implemented new registration procedures for emerging growth companies and issued a series of "frequently asked questions" to help those small companies register and deregister with the Commission.[8]

But under your leadership, which began in April 2013, the SEC took the narrow congressional mandate in the JOBS Act and transformed it into a comprehensive review of disclosure requirements.

In October 2013, you spoke before the National Association of Corporate Directors – a group representing board members of public companies – and previewed your desire to go far beyond the congressional mandate in the JOBS Act. Both in your speech and "internally at the SEC," you explained, you were "raising the question…as to whether investors need and are optimally served by the detailed and lengthy disclosures about all of the topics that companies

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[3] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Oversight of the U.S. Securities and Exchange Commission* (June 14, 2016) (online at http://www.banking.senate.gov/public/index.cfm/2016/6/oversight-of-the-u-s-securities-and-exchange-commission).
[4] Pub. L. No. 112-106, 126 Stat. 306 (2012).
[5] Id. §108 (emphasis added).
[6] Id. §101.
[7] Id. §108 (emphasis added).
[8] Securities and Exchange Commission, "Division of Corporation Finance Director Meredith Cross to Leave SEC" (Dec. 4, 2012) (online at https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171486548).

currently provide."[9] You claimed that the JOBS Act was an "opportunity" to jumpstart the Commission's review of this broad question.[10]

Two months later, in December 2013, the Division of Corporation Finance issued its *Report on Review of Disclosure Requirements in Regulation S-K* – the report required by the JOBS Act on disclosure requirements for emerging growth companies. This report, however, did not limit itself to the narrow mandate in the JOBS Act. Instead, it included a "full review of Regulation S-K," designed to reveal "simplifications, modernizations, revisions or eliminations that would be suitable for all issuers," not just emerging growth companies.[11] The *Report* concluded with a call for an expanded review of the Commission's disclosure requirements, including non-registration requirements in Regulation S-K,[12] "financial reporting and disclosure requirements" under Regulation S-X, industry guides, and disclosure requirements "contained in rules and forms" like Form 10-Q and Form 8-K.[13]

Following the *Report's* release, you asked the Division of Corporation Finance to "lead the effort to develop specific recommendations for updating…disclosure requirements."[14] Using the *Report* as a "springboard for further action," the Division announced the "Disclosure Effectiveness Initiative" in April 2014. The Commission describes the Disclosure Effectiveness Initiative as "a comprehensive evaluation of the type of information [SEC] rules require registrants to disclose, how this information is presented, where and how this information is disclosed and how [the SEC] can leverage technology as part of these efforts."[15]

Table 1 provides a chronology of SEC's disclosure-related actions.

II. The Disclosure Effectiveness Initiative Was Designed to Reduce Disclosures to Ease the Burden on Issuers – Not to Address Actual Investor Concerns.

To justify the time and resources spent on the voluntary Disclosure Effectiveness Initiative, the SEC has claimed that the Initiative is aimed at helping investors. At the recent Banking Committee hearing, for example, you told me that "the purpose of this review is to make disclosure more meaningful to investors."[16] However, based on public statements from

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[9] Mary Jo White, Chair, Securities and Exchange Commission, "The Path Forward on Disclosure" (Oct. 15, 2013), speech to the National Association of Corporate Directors' Leadership Conference (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539878806).

[10] Id.

[11] Securities and Exchange Commission, *Report on Review of Disclosure Requirements in Regulation S-K, As Requested by Section 108 of the Jumpstart Our Business Startups Act* (Dec. 2013) (online at https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf), p. 3.

[12] Id. at 99-101.

[13] Id. at 103-104.

[14] Keith F. Higgins, Director, Division of Corporation Finance, SEC, "Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section" (Apr. 11, 2014) (online at https://www.sec.gov/News/Speech/Detail/Speech/1370541479332).

[15] Securities and Exchange Commission, *Business and Financial Disclosure Required by Regulation S-K (Concept Release)* (April 2016) (online at https://www.sec.gov/rules/concept/2016/33-10064.pdf), p. 9.

[16] U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Oversight of the U.S. Securities and Exchange Commission* (June 14, 2016) (online at http://www.banking.senate.gov/public/index.cfm/2016/6/oversight-of-the-u-s-securities-and-exchange-commission).

you and other top SEC officials, it appears that a key component of the Initiative is to pare down disclosures in the name of addressing an investor problem – "information overload" – that simply does not exist.

Some aspects of the Disclosure Effectiveness Initiative have the potential to benefit investors. As I said at the June 14th Banking Committee hearing, I support efforts to enhance disclosure for investors by cutting out pure redundancies, improving disclosure presentation, and adding disclosure requirements that investors request. I was pleased, for example, to see that a recent Concept Release on Regulation S-K's business and financial disclosures requested stakeholder feedback on a variety of issues related to disclosure presentation and delivery.[17]

I am concerned, however, that the SEC seems focused on reducing disclosures in the name of "protecting" investors from a non-existent problem: "information overload." Though the Commission, under your leadership, has portrayed information overload as a major issue for investors, it has consistently failed to demonstrate that investors actually feel overwhelmed by the amount of information they receive from public companies.

In an October 2013 speech on disclosure, you framed disclosure reform as beneficial to investors because it could protect them from "information overload." You stated: "When disclosure gets to be 'too much' or strays from its core purpose, it could lead to what some have called 'information overload' – a phenomenon in which ever-increasing amounts of disclosure make it difficult for an investor to wade through the volume of information she receives to ferret out the information that is most relevant."[18] Yet you cited no evidence of overload other than speculation about the idea from a 40-year old Supreme Court case, in which one Justice worried that companies *might* overwhelm shareholders with "an avalanche of trivial information" if required to provide too much disclosure.[19]

The subsequent December 2013 *Report* on Regulation S-K reflected your focus on information overload. It argued that the Commission should conduct an additional review of the internal and external factors that "may have contributed to the length and complexity of company filings and the costs of compliance" as a "possible next step" – a step that the Commission took through the Disclosure Effectiveness Initiative.[20] But the *Report* includes no evidence that the "length and complexity of company filings" bothers investors. In fact, the six-page section of the *Report* describing its scope does not mention the needs of investors once.[21] By contrast, that section expresses concern over the "ongoing compliance burden associated with public company status."[22]

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[17] Securities and Exchange Commission, *Business and Financial Disclosure Required by Regulation S-K (Concept Release)* (April 2016) (online at https://www.sec.gov/rules/concept/2016/33-10064.pdf).

[18] Mary Jo White, Chair, Securities and Exchange Commission, "The Path Forward on Disclosure" (Oct. 15, 2013), speech to the National Association of Corporate Directors' Leadership Conference (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539878806).

[19] Id.

[20] Securities and Exchange Commission, *Report on Review of Disclosure Requirements in Regulation S-K, As Requested by Section 108 of the Jumpstart Our Business Startups Act* (Dec. 2013) (online at https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf), p. 3.

[21] Id. at. 2-7.

[22] Id. at 3-4.

When Keith Higgins, Director of the Division of Corporation Finance, officially announced the Initiative in an April 2014 speech before a meeting of corporate lawyers, he said there was "growing concern about disclosure overload."[23] Again, Director Higgins failed to provide any proof that information overload is a problem for investors; instead, he acknowledged that, for many investors, "there is not a 'part of the disclosure pie that goes uneaten.'"[24]

Despite the SEC's repeated invocations of investor overload, there appears to be no evidence of concerns about information overload in the investor community around the time the Commission chose to launch the Initiative. Quite the opposite. After you first promised to combat "information overload," investment professionals decried your efforts as "a rallying cry for corporations to step into the shadows, pick up their pitchforks, and wage an assault on investor intelligence."[25] One investment adviser noted, "I think investors are better informed and are not suffering from too much information. I'd worry about cutting any of it out." "The SEC will best serve investors by focusing on making data more accessible, not limiting the amount," said another. "I don't understand why in the year 201[3] we are having this conversation about limiting corporate disclosure."[26]

Surveying investors and investment professionals, the CFA Institute – which represents investment professionals – reported in 2013 that 80 percent of their respondents "do not have an issue with the length of current [financial] disclosures or think that, although current disclosures may be lengthy, they contain unnecessary information."[27] Seventy-six percent of investors, meanwhile, felt that there was "no obvious inclusion of immaterial information" in existing disclosures.[28] Other analysts have described information overload as a "paper bogeyman" and a "myth."[29]

Investors rejected the trumped-up concerns about information overload in their official comments on the Initiative as well. The CFA Institute warned against the "misconception" that investors are "generally overwhelmed by the volume and complexity of information" in SEC filings: "The claims of disclosure overload are usually preparer-expressed, not investor-

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[23] Keith F. Higgins, Director, Division of Corporation Finance, SEC, "Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section" (Apr. 11, 2014) (online at https://www.sec.gov/News/Speech/Detail/Speech/1370541479332).

[24] Keith F. Higgins, Director, Division of Corporation Finance, SEC, "Disclosure Effectiveness: Remarks Before the American Bar Association Business Law Section" (Apr. 11, 2014) (online at https://www.sec.gov/News/Speech/Detail/Speech/1370541479332).

[25] Eleanor Bloxham, "Do investors have too much information?" *Fortune Magazine* (October 29, 2013) (online at http://fortune.com/2013/10/29/do-investors-have-too-much-information/).

[26] Id.

[27] CFA Institute, *Financial Reporting Disclosures: Investor Perspectives on Transparency, Trust, and Volume (Condensed Report)* (2013) (online at https://www.cfainstitute.org/ethics/Documents/investor-perspectives-on-disclosures.pdf), p. 8.

[28] Id. at 12.

[29] Gretchen Morgenson, "FASB Proposes to Curb What Companies Must Disclose," *New York Times* (Jan. 2, 2016) (online at http://www.nytimes.com/2016/01/03/business/fasb-proposes-to-curb-what-companies-must-disclose.html?_r=0).

expressed, concerns."[30] Another commenter noted, "the effectiveness of various disclosures does *not* depend on every investor reading every piece of information disclosed." Instead, "minutiae that may be noticed by only a few analysts may nonetheless enter the public discourse by means of that analyst and their reports or publications."[31]

The SEC's own Investor Advisory Committee ("IAC"), in its recently released draft comments on the Disclosure Effectiveness Initiative, stated that "the reality from an overall market perspective is that the bulk of market participants do not feel that they are inundated with useless information."[32] Instead, the IAC is "of the view that the current degree, quality, and frequency of disclosure for U.S. issuers overall is appropriate."[33] That view – which reflects the perspectives of investors from hedge funds to pension funds to retail investors – should demonstrate to the Commission that information overload is not a reasonable basis for eliminating disclosures.

In fact, many commenters requested *more* information disclosure. Multiple commenters asked the Commission to require disclosure of political spending and cited the "nearly one million comment letters" that investors have sent the SEC supporting increased political spending disclosure.[34] Others called cybersecurity disclosures a "clear and discrete area where investors need more information."[35] Additional comments included calls for "enhanced reporting of corporate environmental, social and governance…information" and information on companies' tax strategies, among other topics.[36]

Ultimately, it appears that information overload is merely an unsubstantiated talking point for large corporations seeking to limit disclosure requirements. The only groups clinging to the concept of information overload – other than the SEC – are groups representing the big

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[30] Letter from CFA Institute to Keith Higgins, Director Division of Corporate Finance, Securities and Exchange Commission, Re: The SEC's Disclosure Effectiveness Initiative (Nov. 12, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-24.pdf).

[31] Letter from Heather Slavkin Corzo, Director, Office of Investment, at the AFL-CIO, to Keith F. Higgins, Director, Division of Corporate Finance, Securities and Exchange Commission (Nov. 20, 2015) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-65.pdf), p. 2.

[32] Draft letter from SEC Investor Advisory Committee to Division of Corporate Finance, U.S. Securities and Exchange Commission (released June 7, 2016) (online at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-060716-draft-letter-to-commission-proposed-reg-sk.pdf).

[33] Id.

[34] See, for example, the comment from Mark Meeks on March 18, 2016 (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-71.htm); Letter from U.S. SIF to Mary Jo White, Chair, Securities and Exchange Commission, and Keith Higgins, Director, Corporate Finance Division, RE: Disclosure Effectiveness Review (Sept. 18, 2014) (online at http://www.ussif.org/files/Public_Policy/Comment_Letters/Disclosure_Effectivess_Review_Letter.pdf).

[35] Letter from Representatives Jim Langevin and Jim Himes, U.S. House of Representatives, to Mary Jo White, Chair, Securities and Exchange Commission, June 17, 2015 (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-43.pdf).

[36] See, for example, the Letter from Laura Berry, Executive Director of the Interfaith Center on Corporate Responsibility, to Mary Jo White, Chair, Securities and Exchange Commission, and Keith Higgins, Director, Division of Corporate Responsibility (Sept. 24, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-19.pdf) and Letter from Heather Slavkin Corzo, Director, Office of Investment, at the AFL-CIO, to Keith F. Higgins, Director, Division of Corporate Finance, Securities and Exchange Commission, Nov. 20, 2015 (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-65.pdf).

companies that must do the disclosing. The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness, for example, described information overload as a "pressing concern" that "strikes a blow to the effectiveness of the disclosure regime that the SEC administers."[37] Under current disclosure rules, the Chamber asserts, "investors become inundated with information that is not useful" and "simply ignore long, dense documents altogether as they find much of the information unhelpful."[38] The Chamber provides no actual evidence to support these assertions.

By framing the SEC's disclosure reform efforts as an attempt to address "information overload," the Commission has moved quickly on a path that could result in major reductions in the amount of information companies are required to disclose to investors – a move that clearly benefits corporate issuers, but not the investors the SEC is supposed to protect.

III. The Commission Failed to Finalize *Mandatory* Disclosure Rules Under the 2010 Dodd-Frank Act – and Pursue Other Investor Priorities – While Working on this Voluntary Initiative.

Even as the Commission, under your leadership, has devoted staff time and SEC funds to the voluntary Disclosure Effectiveness Initiative, it has failed to finalize mandated Dodd-Frank rules and pursue other investor priorities that would improve investor protection and strengthen financial markets.

As of last month, the SEC has yet to finalize *twenty* mandatory rules under the Dodd-Frank Act.[39] Many of those unfinished rules would offer investors additional information, including a rule to enhance the reporting requirements for security-based swap dealers[40]; a rule to require registrants to disclose "pay versus performance" information[41]; and a rule to increase the transparency of information available "with respect to loan or borrowing of securities."[42]

The completion of these and other Dodd-Frank rulemaking requirements should occur prior to any review of the SEC's disclosure requirements. In the words of one commenter, a fully-implemented Dodd-Frank will "[expand] the type of disclosure available to investors" and "directly affect" any disclosure review. Thus, "discretionary review of the full disclosure regime

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[37] Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, *Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation* (2014), as part of a comment letter from Tom Quaadman, Vice President, Center for Capital Market Competitiveness, to Kevin O'Neill, Deputy Security of the Securities and Exchange Commission, and Lynn Powalski, Deputy Secretary of the Securities and Exchange Commission, RE: U.S. Chamber Report on Disclosure Effectiveness (July 29, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-11.pdf), p. 3.

[38] Id. at 3-4.

[39] See "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act" (online at https://www.sec.gov/spotlight/dodd-frank.shtml#).

[40] See SEC Release No. 34-71958; File No. S7-05-14 (online at https://www.sec.gov/rules/proposed/2014/34-71958.pdf).

[41] Id.

[42] See "Other—Remaining: Section 984(b)" at "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act" (online at https://www.sec.gov/spotlight/dodd-frank.shtml#).

should not precede congressionally mandated rulemaking."[43] Twenty-eight members of the Corporate Reform Coalition, meanwhile, expressed their "hope that this endeavor can be undertaken without in any way detracting from the ongoing rulemaking duties of the agency," citing, "in particular," the "strong new corporate governance rules as required under Dodd-Frank."[44]

The SEC has also ignored investor calls for enhanced access to information. For years, investors have requested additional reporting requirements around corporate political spending. In 2011, a committee of ten bipartisan law professors submitted a rulemaking petition to the SEC, asking the Commission to "develop rules to require public companies to disclose…the use of corporate resources for political activities."[45] The petition has received more than *one million* comments, with the vast majority supporting enhanced disclosure – a "record level of support for an SEC rulemaking provision."[46]

But the Commission has yet to implement a corporate campaign spending disclosure rule. These disclosure rules were on the SEC agenda when you took over the agency, but by December 2013, you had removed a potential rulemaking on this topic. Former SEC Commissioners have described your failure to require these disclosures as an "inexplicable" action that "flies in the face of the primary mission of the commission."[47]

Investors also seek improved disclosure of environmental, social, and governance issues, or "sustainability" disclosures. The SEC's Investor Advisory Committee has said "that environmental, social and governance issues should be subject to the same materiality standards as other sources of risk and return under the Commission's rules."[48] These issues can "impact voting decisions," affect a company's reputation, and "impact [a company's] purchasing decisions."[49]

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[43] Letter from Heather Slavkin Corzo, Director, Office of Investment, at the AFL-CIO, to Keith F. Higgins, Director, Division of Corporate Finance, Securities and Exchange Commission, November 20, 2015 (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-65.pdf), p. 2-3.

[44] Letter from the Corporate Reform Coalition to Mary Jo White, Chair, Securities and Exchange Commission, and Keith Higgins, Director, Corporate Finance Division, Securities and Exchange Commission (July 2, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-6.pdf), p. 1.

[45] Letter from the Committee on Disclosure of Corporate Political Spending to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, RE: Petition for Rulemaking (Aug. 3, 2011) (online at https://www.sec.gov/rules/petitions/2011/petn4-637.pdf).

[46] Securities and Exchange Commission, "Comments on Rulemaking Petition: Petition to require public companies to disclose to shareholders the use of corporate resources for political activities" (online at https://www.sec.gov/comments/4-637/4-637.shtml); Letter from U.S. SIF to Mary Jo White, Chair, Securities and Exchange Commission, and Keith Higgins, Director, Corporate Finance Division, RE: Disclosure Effectiveness Review (Sept. 18, 2014) (online at http://www.ussif.org/files/Public_Policy/Comment_Letters/Disclosure_Effectivess_Review_Letter.pdf).

[47] Letter from Senator Elizabeth Warren to Mary Jo White, Chair, Securities and Exchange Commission (June 2, 2015) (online at http://www.warren.senate.gov/files/documents/2015-6-2_Warren_letter_to_SEC.pdf), p. 2-4.

[48] Draft letter from SEC Investor Advisory Committee to Division of Corporate Finance, U.S. Securities and Exchange Commission (released June 7, 2016) (online at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-060716-draft-letter-to-commission-proposed-reg-sk.pdf).

[49] Id.

Disclosure Effectiveness Initiative commenters also raised concerns about the SEC's lax enforcement of disclosure requirements of risks from climate change. In 2010, the SEC released its "Commission Guidance Regarding Disclosure Related to Climate Change", which "seeks to provide greater transparency to investors on the material risks posed by climate change."[50] The SEC aggressively enforced these requirements after they were initially released, sending 49 comment letters to companies that failed to adequately disclose climate-related risks in 2010 and 2011.[51]

But during the subsequent two years, the SEC only sent three comment letters related to its Climate Change Guidance – despite the fact that companies consistently fail to meet the Commission's standards. As the First Affirmative Financial Network has noted, 41 percent of Standard & Poor's 500 companies "fail to say anything about climate change in their annual filings with the SEC." Those that do disclose often provide "very brief" disclosures that offer "little discussion of material issues, and do not quantify impacts or risks."[52]

Former SEC Chair Mary Schapiro has publically stated that "investors care about this information" and are "highly dissatisfied with the information they are getting today… [and] can't really use it effectively for their allocation decisions."[53] But observers note that the Commission, under your leadership, has "been underreacting in the extreme" and does not have "much interest in this issue."[54]

You have said that the Commission cannot "ignore a Congressional mandate" or "put [a mandate] in a drawer or tuck it away. That would be impermissible nullification of the law and independence run amok."[55] You have also stated that a key function of the SEC is "to tell investors about the things that matter to them."[56] Your diversion of SEC resources to a Disclosure Effectiveness Initiative that appears designed to solve a non-existent problem of

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[50] Letter from Senator Jack Reed, *et al*, to Mary Jo White, Chair, Securities and Exchange Commission, Oct. 29, 2015 (online at https://cartwright.house.gov/sites/cartwright.house.gov/files/SEC%20Climate%20Letter%20October%202015.pdf?version=meter+at+0&module=meter-Links&pgtype=article&contentId=&mediaId=&referrer=&priority=true&action=click&contentCollection=meter-links-click), p. 1.

[51] David Gelles, "S.E.C. Is Criticized for Lax Enforcement of Climate Risk Disclosure," *New York Times* (Jan. 23, 2016) (online at http://www.nytimes.com/2016/01/24/business/energy-environment/sec-is-criticized-for-lax-enforcement-of-climate-risk-disclosure.html).

[52] Letter from Holly A. Testa, Director, Shareholder Advocacy, First Affirmative Financial Network, to Mary Jo White, Chair, Securities and Exchange Commission (June 26, 2014) (online at https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-5.pdf).

[53] Wall Street Journal, *Investors Want More From Sustainability Reporting, Says Former SEC Head* (Nov. 12, 2015) (http://blogs.wsj.com/cfo/2015/11/12/investors-want-more-from-sustainability-reporting-says-former-sec-head/).

[54] David Gelles, "S.E.C. Is Criticized for Lax Enforcement of Climate Risk Disclosure," *New York Times* (January 23, 2016) (online at http://www.nytimes.com/2016/01/24/business/energy-environment/sec-is-criticized-for-lax-enforcement-of-climate-risk-disclosure.html).

[55] Mary Jo White, Chair, Securities and Exchange Commission, "The Importance of Independence" (Oct. 3, 2013), 14th Annual A.A. Sommer Jr. Corporate Securities and Financial Law Lecture at Fordham Law School (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539864016).

[56] Mary Jo White, Chair, Securities and Exchange Commission, "The Path Forward on Disclosure" (Oct. 15, 2013), speech to the National Association of Corporate Directors' Leadership Conference (online at https://www.sec.gov/News/Speech/Detail/Speech/1370539878806).

information overload, while failing to complete Dodd-Frank rulemakings and address other investor priorities, fails to live up to your own standards.

IV. As the SEC Continues its Review of Disclosure Effectiveness, the Commission Should Focus its Attention on Reforms that Benefit Investors.

As you know, in December 2015, Congress included language in the Fixing America's Surface Transportation (FAST) Act that called for an SEC review of certain disclosure requirements. The FAST Act called on the SEC to "eliminate provisions of regulation S-K…for all issuers that are duplicative, overlapping, outdated or unnecessary," while "still providing all material information to investors." It requires the SEC to conduct a study and produce a report on the "modernization and simplification of Regulation S-K" and mandates related rulemaking to implement "specific and detailed recommendations" to simplify Regulation S-K and make disclosure requirements easier to read and navigate.[57]

I am concerned that your previous statements and the Commission's actions to date may result in implementation of the FAST Act's requirements in a way that deprives investors of material information. As I said at the recent Banking Committee hearing at which you testified, consistent with FAST Act requirements, I fully support eliminating purely redundant disclosures and improving the manner in which information is presented to investors. But I urge you to work with the investor community to identify ways to pursue this goal in a way that addresses the legitimate needs and concerns of investors – not by relying on rationales like "information overload" that have no factual basis.

V. Conclusion and Questions

For the last three years, the SEC has spent precious agency resources on a voluntary effort to reduce disclosure that appears to be aimed at addressing a problem – investor "information overload" – that does not exist. In the meantime, the Commission has failed to complete mandatory rules that will strengthen investor protection and financial markets, and declined to address actual investor priorities. The agency has defied the will of Congress and its mission to protect investors and instead has pursued an agenda aligned with the narrow interests of the U.S. Chamber of Commerce and big business.

I am therefore asking that you reverse course on this ill-conceived effort and work with the investor community to address their actual concerns with current disclosure requirements.

I also ask that you provide the following information no later than August 1, 2016 so that the public can better understand how you will protect investors while implementing the Disclosure Effectiveness Initiative and FAST Act mandates:

1. How much staff time and SEC funds did you spend on the Disclosure Effectiveness Initiative between April 2013 and the passage of the FAST Act in December 2015?

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[57] Pub. L. 114-94 (23 U.S.C. 167) (2015) (online at http://transportation.house.gov/uploadedfiles/crpt-114hrpt-hr22.pdf).

2. What evidence did the Commission have in 2013 of "information overload" among investors? Please provide any written comments that the SEC has received from investors in or before 2013 that express concerns over excessive disclosures. In addition, provide copies of the supporting documents (reports, studies, emails, interviews, etc.) that the Commission used to assess "information overload" from an investor perspective.

3. What evidence does the Commission currently have showing the existence of "information overload"?

4. As it moves forward with the Disclosure Effectiveness Initiative, how does the SEC plan to determine what information is "material" or "unnecessary" to investors?

Please feel free to contact Bharat Ramamurti or Susannah Savage of my staff at (202) 224-4543 if you have any questions or concerns.

Sincerely,

Elizabeth Warren
United States Senator

Table 1. Disclosure Effectiveness Initiative Timeline		
Date	**Action**	**Details**
July 2010	Congress passes the Dodd-Frank Wall Street Reform and Consumer Protection ("Dodd-Frank") Act	The law required the SEC to establish new offices, issue reports, and finalize new rules--including rules to enhance disclosure.
April 2012	Congress passes the Jumpstart Our Business Startups ("JOBS") Act	Among other provisions, the law mandated that the SEC conduct a review of the registration requirements in Regulation S-K to "determine how such requirements can be updated to modernize and simplify the registration process...for...emerging growth companies" and produce a report with "specific recommendations" on how to make the reporting process less burdensome for emerging growth companies.
April - December 2012	SEC begins implementing the JOBS Act	Under then-Chair Mary Schapiro, the SEC's Division of Corporation Finance implemented new registration procedures for emerging growth companies and issued a set of "frequently asked questions" to help small companies register and deregister with the Commission.
April 2013	Mary Jo White sworn in as Chair of the SEC	
October 2013	Chair White gives two speeches on the SEC's disclosure powers	The first, "The Importance of Independence," chastised Congress for requiring the SEC to increase disclosure and criticized Dodd-Frank; the second, "The Path Forward on Disclosure," warned of "information overload" and set the stage for the SEC's recent disclosure reform efforts.
December 2013	SEC's Division of Corporation Finance issues its *Report on Review of Disclosure Requirements in Regulation S-K*	The report went well beyond the narrow mandate of the JOBS Act, instead including a "full review of Regulation S-K" for "all issuers," not just emerging growth companies. The Report called for an expanded review of the Commission's disclosure requirements, including Regulation S-X.
April 2014	SEC announces Disclosure Effectiveness Initiative	Keith Higgins, Director of the Division of Corporation Finance, announced the Initiative and promised to "reduce the burdens on companies...wherever we can."
December 2015	Congress passes the Fixing America's Surface Transportation ("FAST") Act	The FAST Act calls for an additional SEC review of Regulation S-K.
April 2016	SEC releases its Concept Release on *Business and Financial Disclosure Required by Regulation S-K*	