

February 9, 2022

Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler,

I am writing regarding a report yesterday that there are significant ongoing delays in the Securities and Exchange Commission's (SEC) release of its proposed climate change disclosure rule, which would "require public companies to disclose details such as the amount of energy they buy and how they manage risks posed by rising temperatures."¹ According to the report, the rule's "timeline has likely slipped to March or even later" due to "internal debate over how tough the rule should be."²

These delays are unwarranted and unacceptable, and violate the commitment, which you made seven months ago, "to develop a mandatory climate risk disclosure rule proposal for the Commission's consideration by the end of" 2021.³ And they are made worse by the fact that they precede the publication of even the draft rule, which will only begin "SEC's drawn-out rule-making process."⁴ Commissioners' first vote on the proposed rule "simply ensures that a proposal is submitted for public feedback. They then must reconvene months later to formally approve it, and companies are usually granted a lengthy phase-in period before they have to comply."⁵ Every day of continued delay means that the SEC is failing to meet its mission of "protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."⁶

¹ Bloomberg News, "SEC Bogs Down on Climate Rule, Handing White House Fresh Setback," Robert Schmidt and Benjamin Bain, February 8, 2022, <https://www.bloomberg.com/news/articles/2022-02-08/sec-bogs-down-on-climate-rule-saddling-biden-team-with-new-woe>.

² *Id.*

³ SEC, Chairman Gary Gensler, "Prepared Remarks Before the Principles for Responsible Investment "Climate and Global Financial Markets," July 28, 2021, <https://www.sec.gov/news/speech/gensler-pri-2021-07-28>.

⁴ Bloomberg News, "SEC Bogs Down on Climate Rule, Handing White House Fresh Setback," Robert Schmidt and Benjamin Bain, February 8, 2022, <https://www.bloomberg.com/news/articles/2022-02-08/sec-bogs-down-on-climate-rule-saddling-biden-team-with-new-woe>.

⁵ *Id.*

⁶ SEC, "What We Do," <https://www.sec.gov/about/what-we-do#:~:text=For%20more%20than%2085%20years,markets%2C%20and%20facilitating%20capital%20formation.>

I have long advocated for the SEC to require public companies to disclose information about their exposure to climate-related risks so that investors and the public have the information they need to accurately assess and address these environmental and financial threats.⁷ My *Climate Risk Disclosure Act*, which I first introduced in 2018 and recently reintroduced in April 2021, provides the Commission with a framework to update the SEC’s 2010 guidance regarding climate change disclosure and implement stronger requirements.⁸ President Biden’s Executive Order on Climate-Related Financial Risks agreed with the urgent need for such disclosures and directed financial regulators to “assess climate-related financial risk to the stability of the federal government and the stability of the U.S. financial system.”⁹

However, the agency is now overdue in meeting these commitments. The lack of a rule means that shareholders and investors are left in the dark about the significant long- and short-term climate risks facing public companies, including supply chain disruptions, infrastructure risks, costs from storms, sea-level rise and weather-related crop or equipment failure, and economic or national security instability.

I am also concerned about the reasons for this latest delay, which reportedly center around “how much information the agency can force companies to divulge without losing an almost certain legal challenge brought by Washington’s business lobby or a Republican-led state,” and “whether auditors should sign off on the disclosures, ensuring they would be vetted by the same independent watchdogs who review corporations’ financial statements.”¹⁰ The SEC has a responsibility to put in the place the strongest rule to ensure that investors are adequately informed about the threats the climate crisis poses to their investments and the broader economy. Having the Commissioners litigate against themselves and issue a watered-down proposal is at odds with that responsibility, and I urge you to act quickly and to release the strongest requirements possible to begin the formal rulemaking process.

⁷ The Hill, “Warren wants companies to disclose more about climate change impacts,” Timothy Cama, September 14, 2018, <https://thehill.com/policy/energy-environment/406700-warren-wants-companies-to-disclose-more-about-climate-change>; Office of Senator Elizabeth Warren, “Warren Urges SEC to Require Climate Risk Disclosures to Address Financial and Economic Threats Posed by Climate Change,” press release, August 13, 2020, <https://www.warren.senate.gov/newsroom/press-releases/warren-urges-sec-to-require-climate-risk-disclosures-to-address-financial-and-economic-threats-posed-by-climate-change>.

⁸ Office of Senator Elizabeth Warren, “Warren, Colleagues Unveil Bill to Require Every Public Company to Disclose Climate-Related Risks,” press release, September 17, 2018, <https://www.warren.senate.gov/newsroom/press-releases/warren-colleagues-unveil-bill-to-require-every-public-company-to-disclose-climate-related-risks>; Office of Senator Elizabeth Warren, “Warren, Casten, Colleagues Reintroduce Bill Requiring Public Companies to Disclose Climate-Related Risks,” press release, April 15, 2021, <https://www.warren.senate.gov/newsroom/press-releases/warren-casten-colleagues-reintroduce-bill-requiring-public-companies-to-disclose-climate-related-risks>.

⁹ The White House, “FACT SHEET: President Biden Directs Agencies to Analyze and Mitigate the Risk Climate Change Poses to Homeowners and Consumers, Businesses and Workers, and the Financial System and Federal Government Itself,” press release, May 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/20/fact-sheet-president-biden-directs-agencies-to-analyze-and-mitigate-the-risk-climate-change-poses-to-homeowners-and-consumers-businesses-and-workers-and-the-financial-system-and-federal-government/>.

¹⁰ Bloomberg News, “SEC Bogs Down on Climate Rule, Handing White House Fresh Setback,” Robert Schmidt and Benjamin Bain, February 8, 2022, <https://www.bloomberg.com/news/articles/2022-02-08/sec-bogs-down-on-climate-rule-saddling-biden-team-with-new-woe>.

The SEC has clear authority to issue this rule. As Commissioner Allison Herren Lee has noted, Section 7 of the Securities Exchange Act of 1933¹¹ “gives the SEC full rulemaking authority to require disclosures in the public interest and for the protection of investors.”¹²

These ongoing delays are not acceptable. I therefore ask that, no later than February 23, 2022, you provide me with (1) a clear timeline for publication of the climate disclosure rule and the rulemaking process that will be kicked off with its release; (2) a summary of any concerns regarding the agency’s statutory authority to impose a climate disclosure rule; and (3) a staff-level briefing on the development of the rule and the rulemaking and implementation process.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

¹¹ 15 U.S.C. § 77g(a)(1)

¹² Commissioner Allison Herren Lee, “Speech: Living in a Material World: Myths and Misconceptions about ‘Materiality,’” May 24, 2021, <https://www.sec.gov/news/speech/lee-living-material-world-052421>.