Congress of the United States
House of Representatives
Washington, DC 20515

October 6, 2021

The Honorable Gary Gensler
Chairman
Securities and Exchange Commission
100 F St NE
Washington, DC 20549

Dear Chairman Gensler:

As you have stated on several occasions,[1] the Securities and Exchange Commission (SEC or Commission) has made climate risk disclosures a top priority under your chairmanship. We write to you today to express our deep concerns about the SEC compelling mandatory climate disclosures for privately held businesses, as suggested by several commenters responding to the SEC's recent Request for Comment on Climate Disclosure[2] (the "Request"). The SEC does not have the statutory mandate and therefore lacks the authority and jurisdiction to compel privately-held businesses, not otherwise subject to the SEC's registration and periodic reporting requirements, to publicly disclose, directly or indirectly, data of any sort.

Question 14 of the aforementioned Request for Comment posed the following series of questions:

> **What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?**

First, we respectfully request an explanation why the SEC asked this question, as private companies do not access the public securities markets and therefore are not subject to the jurisdiction of the Commission. The inclusion of this question has generated a high level of unease among the business community, particularly those that own or operate smaller, privately-held businesses, as they fear that they may be subject to a regulatory regime that is not conducive to their business model or ownership interests. Startups, venture backed enterprises, and small businesses are the engine of our economy and forcing them to disclose non-material climate information will only make it harder for Main Street to recover from the economic fallout associated with the COVID-19 pandemic and government mandated shutdowns. Nevertheless, in response to Question 14, several commenters urged the SEC to impose a uniform climate reporting obligation on all public and private companies, with a subset of those commenters also requesting that the SEC significantly scale back the scope of its private placement exemptions to force compliance. The concern of smaller businesses is well-founded.

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[1] E.g., Prepared remarks at London City Week (June 23, 2021), available at https://www.sec.gov/news/speech/gensler-speech-london-city-week-062321.

[2] Request for Comment on Climate Disclosure (Mar. 15, 2021), available at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

Notwithstanding the small minority of commenters that are in favor of a climate reporting obligation for privately-held businesses, we are unaware of any commenters who provided citations to statutory authority for such an unprecedented move. We believe the reason for this omission is simple: the SEC lacks any such authority. We reiterate that the SEC has no authority to impose public disclosure obligations—regarding climate or otherwise—on private businesses that have not accessed the public capital markets.

Embedded in Question 14 is also the proposition that the Commission could do indirectly what it may not do directly by bootstrapping a climate disclosure obligation on private placement issuers or registered investment advisers and investment companies. While the statutory authority for this approach is dubious, we likewise believe the SEC should devote its limited resources to other pursuits that are more likely to benefit Main Street investors. We see no good public policy reason to increase the cost of capital to small businesses and saddle them with additional compliance costs while providing no discernable benefit to investors or the capital markets more broadly.

Rather than wade into social and environmental policy, the SEC should be focused on what benefits investors—the fair and orderly allocation of capital, and the efficient operation of our capital markets. The SEC has no mandate to safeguard other so-called stakeholders who are not participants in the capital markets; and the SEC certainly has no mandate to be a roving, at-large regulator of climate or environmental policies. These are responsibilities reserved to other federal agencies who possess both the authority and the expertise to consider these important issues holistically within the bounds of a clear statutory framework.

As Members of the Financial Services Committee, we previously cautioned[3, 4] that the SEC's willingness to insert itself into social and public policy debates outside its expertise risks the agency's credibility and independence, factors that have made it such an effective regulator of our capital markets for over 85 years. The SEC must not politicize rulemaking and risk diminishing its credibility in the eyes of the public. We urge you and your fellow Commissioners to ensure that any further action taken by the SEC regarding climate risk disclosures, as well as any public company disclosure, is clearly tied to the Commission's core competencies and statutory mission. In no event is the Commission authorized to compel private companies not otherwise subject to the SEC's registration and periodic reporting regime to public disclosure of any kind.

Thank you for your attention to this critical matter.

Sincerely,

Andy Barr
Member of Congress

French Hill
Member of Congress

Bill Huizenga
Member of Congress

[3] Letter from House Financial Services Committee Members to Chair Gensler (June 3, 2021), available at https://hill.house.gov/uploadedfiles/20210604secltr.pdf.

[4] Statement from Representatives Hill, Barr, and Huizenga on mandatory climate risk disclosure directive (July 28, 2021), available at https://hill.house.gov/news/documentsingle.aspx?DocumentID=8618.