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Before the

U.S. House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations

Hearing on

"Oversight of the SEC's Proposed Climate Disclosure Rule: A Future of Legal Hurdles"

January 18, 2024

Good morning Chairman Huizenga, Ranking Member Green and members of the Subcommittee on Oversight and Investigations. My name is Charles Crain, and I am Vice President of Domestic Policy at the National Association of Manufacturers. On behalf of the NAM and the millions of people who make things in America, I appreciate the opportunity to testify before today's Subcommittee hearing, titled "Oversight of the SEC's Proposed Climate Disclosure Rule: A Future of Legal Hurdles."

The NAM is the largest manufacturing association in the United States, representing nearly 14,000 manufacturers of all sizes and in every industrial sector. Manufacturers are dedicated to creating products and processes to improve the quality of life for all Americans; every day, innovators throughout our industry pioneer groundbreaking new technologies and drive entrepreneurship in America.

Manufacturers are developing the next-generation breakthroughs our economy and our world need to combat climate change. It is manufacturers who will make the products and technologies needed to face this generational challenge: clean energy, carbon capture, batteries, microgrids, advanced vehicles and more.

When the manufacturing industry succeeds, America succeeds. Manufacturers employ nearly 13 million Americans from all walks of life, paying $98,846 on average in wages and benefits. Manufacturing's annualized contribution to the U.S. economy was $2.85 trillion as of the third quarter of 2023; by itself, manufacturing in the U.S. would be the eighth-largest economy in the world. And manufacturers are continuing to invest in growth while performing more than half of all private-sector research and development. This growth bolsters U.S. competitiveness on the world stage at a time when China continues to work toward its ambition of becoming the world leader in advanced manufacturing.

Despite this global leadership, the industry faces significant headwinds in the form of the cost, complexity and uncertainty associated with overreaching and burdensome federal regulations. To put it bluntly, manufacturers are facing a regulatory onslaught. This onslaught has a direct impact on

manufacturers' ability to invest, hire and grow in the United States—threatening America's leadership on the world stage.

The NAM recently released a landmark study analyzing the cost of unbalanced regulations through 2022.[1] Even without data on the continuing onslaught through 2023 and into 2024, the results are shocking:

- The total cost of federal regulations is an estimated $3.079 trillion, an amount equal to 12% of U.S. GDP. The average U.S. company pays $13,000 per employee per year to comply with federal regulations.
- For manufacturers, the cost of federal regulations is roughly $350 billion, a 26% increase from 2012. The regulatory burden on manufacturers is larger than the economies of 29 U.S. states.
- The average manufacturer in the United States pays $29,100 per employee per year to comply with federal regulations—more than double the regulatory burden faced by other industries.
- The burden on small manufacturers is even more severe, as they incur regulatory costs of $50,100 per employee per year. A small manufacturing firm with 20 employees bears more than $1 million in compliance costs per year.

The SEC's proposed climate disclosure rule[2] is a significant part of this regulatory onslaught. If finalized, the rule would dramatically increase manufacturers' compliance costs, divert resources from job creation and growth, expose companies to increased liability, reveal proprietary and confidential information and ensnare wide swaths of the manufacturing supply chain. These effects would be felt throughout the industry, including by small and privately held businesses. As the NAM said in its comments to the SEC, the proposed rule "institutes a wide-ranging mandate for public companies to generate and report pages upon pages of information, much of which is not material to their operations or financial performance," yet the SEC has "fail[ed] to appropriately take into account the feasibility of compliance with the proposed requirements, as well as the time and cost burden associated with the rule's far-reaching mandates."[3]

Manufacturers appreciate that the Subcommittee is holding today's hearing to provide much-needed oversight of the SEC's proposal. To be clear, manufacturers believe strongly in the importance of combatting climate change and are developing technological innovations to counter this threat. The industry is taking strides to reduce its emissions and enhance environmental stewardship, and publicly traded manufacturers are providing appropriate, material disclosures to shareholders about these critical efforts. But the SEC's proposed rule goes far beyond standardizing an approach to material climate-related disclosure: it is a complex regime that imposes a wide-ranging, inflexible mandate on companies, requiring them to disclose immaterial information at extreme cost and limited investor benefit. To defend manufacturers' ability to invest, hire and grow in the United States, the SEC must withdraw this overreaching and damaging rule.

The two provisions within the rule most illustrative of the SEC's regulatory overreach are the requirements related to Scope 3 emissions-reporting and climate-related financial statement disclosures. In brief:

[1] Crain, Nicole V. and W. Mark Crain. *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business* (October 2023). *Available at* https://nam.org/competing-to-win/cost-of-regulations/.

[2] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334 (11 April 2022). Release Nos. 33-11042, 33-94478; *available at* https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.

[3] NAM Comments on File No. S7-10-22 (6 June 2022). *Available at* https://documents.nam.org/tax/nam_comments_sec_climate_rule.pdf.

- The Scope 3 mandate would require manufacturers to track and report the greenhouse gas emissions of the suppliers and customers throughout their value chains. Companies often have little information about and less control over these emissions—meaning that accurately understanding and disclosing them could require complicated and invasive inquiries to the thousands of small and privately held businesses throughout their supply chain.
- The proposed financial statement metrics would require manufacturers to identify individual expenses throughout their operations that could be attributed to weather, climate events, climate-related risks and transition activities; aggregate those expenses and analyze their impact on each line item in the company's consolidated financial statements; and disclose the aggregated effects if they exceed 1% of the value of any individual line item. This mandate is unprecedented and would impose substantial burdens on public companies of all sizes.

These novel and complex requirements share certain key features that illustrate the flaws endemic to the SEC's proposed rule. First, they would have a disproportionate impact on small and privately held manufacturers. Second, the SEC's cost-benefit analysis of both provisions is severely lacking, dramatically understating the true costs of compliance. Last, finalizing both proposed requirements would undermine the bedrock principle of materiality at the heart of the Exchange Act reporting regime—distracting investors with pages of information irrelevant to their understanding of a business and calling into question the SEC's authority to issue such a wide-ranging rule.

Today's hearing comes at a critical time, as manufacturers understand that the SEC is planning to finalize the climate rule soon. The NAM appreciates the Subcommittee's efforts to provide oversight of the SEC and its proposed climate mandates, and manufacturers look forward to working with you to rein in the agency's regulatory overreach.

I. The SEC's proposed climate rule would have a significant and damaging impact on small manufacturers.

Small manufacturers are the heart of the manufacturing industry in America, forming the backbone of their communities, creating jobs and driving economic growth. Nearly 75% of manufacturers have fewer than 20 employees, and more than 93% have fewer than 50 employees. The proposed climate rule will have a direct, negative impact on these small businesses.

Under the rule, publicly traded small manufacturers will be subject to most of the same requirements as much larger firms. Small businesses would be required to, for example, calculate and report their Scope 1 and Scope 2 greenhouse gas emissions, provide granular disclosures with respect to dozens of potential climate-related risk factors, expose sensitive information about their transition planning and scenario analyses and—perhaps most critically—provide novel and detailed financial statement disclosures.

The financial statement requirements in the proposed rule are emblematic of the undue burden on small businesses. The proposed amendments to Regulation S-X (which governs companies' financial statements) are among the most complicated and consequential in the entire rule. In brief, they would require businesses to tag individual expenses as climate- or weather-related and then to aggregate those costs on a line-item-by-line-item basis; if the aggregated impacts total 1% of the value of any individual financial statement line item, the rule would require disclosure within a company's consolidated financial statements. In addition to this disclosure burden, the resulting data would be subject to audit and internal controls requirements. This novel reporting regime will require significant time and resources to understand, let alone comply with. Yet the proposed rule offers no exemptions from these requirements for smaller companies, nor does it allow for delayed, scaled or tailored implementation in any way. The Regulation S-X amendments would take full effect for all businesses on the day the rule itself takes effect. These financial statement requirements would

subject companies of all sizes, including small businesses, to an enormous and damaging compliance burden from day one.

This approach is replicated throughout the proposed rule. Smaller public companies are only exempt from the Scope 3 mandate (though would still be impacted by it, as discussed below) and from the external audit requirement with respect to Scope 1 and Scope 2 emissions. Otherwise, they will be required to come into full compliance with the climate rule on the same terms and at the same time as their larger peers.

The compliance costs associated with the rule will present a substantial burden for smaller public companies. The SEC's cost estimate exceeds $400,000 per year for smaller reporting companies—an astronomical sum for a small business, even putting aside the significant flaws in the SEC's cost calculations that likely understate the true cost of the rule. Companies will be forced to hire additional accounting, legal and compliance staff to meet this burden. Or, perhaps more likely, they will have to allocate funds for external ESG consultants—at the expense of manufacturing investment in the United States. Though many smaller manufacturers are taking steps to understand and mitigate their climate impact, they must be allowed to do so at their own pace and within the resource constraints under which they operate—not forced into an inflexible, one-size-fits-all government mandate.

The SEC's proposed Scope 3 mandate also will impose tremendous compliance difficulties on small businesses. Under the Scope 3 reporting requirement, larger public companies must track and report the greenhouse gas emissions attributable to their suppliers and customers. The manufacturing industry's diverse and integrated supply chain will make this requirement particularly onerous, as a single large public company subject to the Scope 3 requirement could have *thousands* of suppliers throughout the industry—an industry where 93% of businesses have fewer than 50 employees. Larger companies' obligations to monitor their Scope 3 emissions will fall directly on these small businesses, many of which are privately held entities outside the SEC's jurisdiction.

Most manufacturers are private companies, but that will not protect them from the SEC's regulatory overreach. As suppliers for large public companies, these small private businesses could find themselves in the untenable position of choosing between incurring significant costs to report their emissions and potentially losing a valuable customer. The same will be true for smaller public companies that in theory are exempt from the Scope 3 requirement but which will face a similar dilemma.

Since the climate rule was proposed, SEC officials have maintained that it does not apply to private businesses. While this is true in a narrow sense (as private companies will not file the required climate reports themselves), these businesses inevitably will be swept into larger companies' Scope 3 compliance obligations. The text of the rule makes this clear, noting, for example, that larger public companies are likely to begin "working with suppliers to increase access to emissions data"[4] and "gather[ing] data from relevant upstream and downstream entities."[5]

These new obligations will add to the $50,100 per employee in regulatory costs that smaller manufacturers face on an annual basis. The NAM's quarterly Manufacturers' Outlook Survey has consistently shown the real-world impacts of this regulatory burden—which will only deepen if the SEC climate rule is finalized. For example, more than 63% of manufacturers have reported spending more than 2,000 hours per year complying with federal regulations.[6] More than 69% of small

[4] Proposed Rule, *supra* note 2, at 21390.

[5] *Id.* at 21439.

[6] *Manufacturers' Outlook Survey: Second Quarter 2023*. National Association of Manufacturers (7 June 2023). *Available at* https://nam.org/2023-second-quarter-manufacturers-outlook-survey/.

manufacturers would plan to hire more workers or increase compensation if the regulatory burden decreased; similarly, more than 70% of all manufacturers would plan to purchase more capital equipment, 42.5% would expand their facilities and 38.4% would invest in research.[7] Looking forward, nearly 94% of respondents reported that increasing the regulatory burden they face—such as via the proposed SEC climate rule—would make it more difficult to expand their workforce, invest in new equipment or expand their operations.[8] At a time when the United States is facing increased competition globally, America simply cannot afford to stymie the growth of the manufacturing industry.

II. The SEC's cost-benefit analysis does not accurately reflect the significant burden that manufacturers will face in complying with the proposed climate rule.

As noted, manufacturers face $29,100 per employee per year in regulatory costs—a figure that rises to $50,100 for smaller manufacturers. According to the SEC's own analysis, the proposed rule would add to this burden, costing large companies at least $530,000 per year and small companies $420,000 per year.

These new costs represent a damaging diversion of capital away from manufacturing growth and job creation. However, the SEC's assessment dramatically understates the true cost of the rule. Most of the proposing release's cost analysis is based on anecdotal reports on the cost of completing third-party climate questionnaires like those proffered by the Task Force on Climate-Related Financial Disclosures and CDP (formerly the Carbon Disclosure Project). Even though some of the SEC's requirements are based on these existing regimes, the costs of providing voluntary information pursuant to a flexible framework published by a climate-focused nongovernmental organization is hardly comparable to the burden of mandatory disclosures filed with the SEC under strict liability standards. Yet the SEC predicts that, because many companies already have experience with frameworks like those published by TCFD, the "incremental costs of a mandatory climate disclosure rule are therefore expected to be minimal."[9]

The proposed Scope 3 reporting requirement is an illustrative example of this discrepancy. It is true that many manufacturers have taken steps to understand and report their Scope 3 emissions, often utilizing the Scope 3 framework published by the Greenhouse Gas Protocol. However, the GHG Protocol explicitly states that it is "not designed to support comparisons between companies based on their Scope 3 emissions"[10]—yet the SEC insists that basing its emissions-reporting requirements on the GHG Protocol "could help provide investors with consistent, *comparable*, and reliable information about a registrant's GHG emissions."[11]

There are also significant practical differences between the GHG Protocol's approach and the SEC's. For example, the GHG Protocol enables companies to choose among 15 individual categories of emissions that may be relevant to their business, as opposed to the SEC's all-inclusive mandate. Further, the voluntary nature of the framework allows companies to provide information on the categories or sources of emissions about which they have the most reliable information, and to

[7] *Manufacturers' Outlook Survey: Third Quarter 2023*. National Association of Manufacturers (13 September 2023). *Available at* https://nam.org/2023-third-quarter-manufacturers-outlook-survey/.

[8] *Manufacturers' Outlook Survey: First Quarter 2023*. National Association of Manufacturers (27 March 2023). *Available at* https://nam.org/2023-first-quarter-manufacturers-outlook-survey/.

[9] Proposed Rule, *supra* note 2, at 21440.

[10] *Corporate Value Chain (Scope 3) Accounting and Reporting Standard*. Greenhouse Gas Protocol (October 2011). *Available at* https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.

[11] Proposed Rule, *supra* note 2, at 21377 (emphasis added).

utilize evolving and variable estimation methodologies. Moreover, the results of a company's Scope 3 inquiries under the GHG Protocol can be published and disseminated in whatever way a company deems appropriate for its business and its stakeholders. This is a stark contrast to the SEC's mandate that climate information be filed with the Commission, a requirement that brings with it significant legal liability. It is therefore simply not realistic to expect that companies' Scope 3 compliance costs under the SEC's proposed mandate will in any way mirror the current burden associated with Scope 3 reporting.

Perhaps the SEC is aware of this difficulty, as the proposing release admits that the agency is "unable to fully and accurately quantify these costs,"[12] and the proposal does not offer a standalone cost estimate for its emissions-reporting provisions. But the SEC's assurances that compliance with the entire rule will cost no more than $530,000 per year set an effective cap on its cost estimate for Scope 3. This cost estimate is both unrealistic on its face and unsupported by the analysis within the proposing release.

Further, the SEC's cost-benefit analysis of Scope 3 reporting completely ignores the impact on privately held businesses. As noted, small and privately held manufacturers across the country will be swept into the rule via larger companies' obligations to report Scope 3 emissions. Though it may be difficult to predict exactly what the costs to these companies will be given the vagueness of certain parts of the SEC's proposal and the evolving nature of Scope 3 emissions tracking, *their cost burden is unlikely to be $0*. The SEC has a statutory mandate to analyze the impact of its proposed rules on "efficiency, competition, and capital formation"[13]—yet it has not even attempted such analysis with respect to the privately held manufacturers that will be impacted by the rule.

The SEC's estimate of the costs associated with its proposed amendments to Regulation S-X (the requirement that companies aggregate climate- and weather-related expenses and report 1% impacts on each line item of their consolidated financial statements) is similarly egregious. Because this data would be included within companies' consolidated financial statements, it would be subject to the same degree of assurance as the financial statements themselves. In practice, this means that auditors would be required to understand, verify and attest to the convoluted processes required to identify individual expenses as climate- or weather-related and aggregate their impacts on the company's financial statements. As the NAM illustrated in its comments on the proposed rule[14]:

> *Compliance with the proposed requirements could ultimately necessitate a separate set of books just to track the myriad minor impacts that climate and weather events and activities might have on the individual line items within a company's financial statements.*
>
> *[…]*
>
> *Attempting to quantify the impact of weather events, seemingly less amorphous than other risk factors, illustrates the difficulty of complying with the proposed Regulation S-X changes. Is a tornado in Kansas attributable to climate change or just a risk of doing business in the Great Plains? If a company rebuilds a damaged facility following the tornado, is the entire rebuild attributable to climate change or should the financial impact analysis exclude any modifications to improve the facility beyond the harm caused by the storm? What if the modifications make the facility more energy efficient—would those costs be assigned to "climate-related events" (the tornado) or "climate-related transition activities" (improving the company's energy efficiency)?*

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[12] *Id.* at 21441.

[13] 15 U.S.C. 78c(f).

[14] NAM Comments on SEC Climate Rule, *supra* note 3, at 30.

[…]

Just this one simple example highlights multiple choices a company must make in attempting to assign, quantify, track, control, and report financial statement impacts pursuant to the proposed rule. The actual degree of uncertainty would increase by several orders of magnitude in the real world given that companies, many of which are operating hundreds or thousands of facilities on an international basis, face far more, and far more complex, decisions every single day.

The SEC, in analyzing the potential difficulty of auditing these decisions on an invoice-by-invoice, line-item-by-line-item basis, has assigned a cost estimate of *just $15,000*. External auditors are *extremely* unlikely to charge only $15,000 for such an exercise. And the proposal does not even attempt to quantify the burden that will fall on companies working to come into compliance with such a novel requirement—a clear failure to "consider an important aspect of the problem"[15] and an abdication of the SEC's duty to evaluate the "economic implications of the rule it has proposed."[16]

Courts have long held that inadequate cost-benefit analyses can be fatal to agency rulemakings,[17] and it is clear that the SEC's analysis of the proposed climate rule is glaringly deficient. It remains to be seen whether the agency will amend the final rule to address these errors; certainly, a final rule that relies on the flawed cost-benefit analysis from the proposal could not withstand judicial scrutiny. But further hurdles remain: the flaws in the proposal's cost-benefit analysis are so fundamental that a complete reconsideration of the rule's costs and benefits is necessary, and any such reconsideration must include public comment on the updated analysis. This is especially true given that new climate mandates from California and the European Union have changed the economic baseline since the SEC's rule was proposed in March 2022. Unveiling a new cost-benefit analysis solely in conjunction with the final rule, thereby denying companies the opportunity to provide comment on the actual analysis underpinning the rule to which they will be subject, would be just as fatal to the rulemaking as are the current cost-benefit flaws.[18]

A robust cost-benefit analysis that identifies the SEC's justifications for a rule alongside the burdens it imposes on regulated entities is vital to understanding whether the Commission's actions are "necessary or appropriate in the public interest."[19] Unfortunately, the SEC has failed to provide convincing analysis with respect to the climate rule—and all available evidence suggests that the costs that accrue to manufacturers as a result of the rule will far exceed the agency's estimates.

III. The proposed climate rule undermines materiality and exceeds the boundaries of the SEC's statutory authority.

The SEC's tripartite mission is to protect investors, facilitate capital formation and support efficient markets. In the context of public company disclosures, this mission supports SEC reporting requirements that deliver financially material information to investors. The Supreme Court has been clear that information is material if there is a "substantial likelihood that the disclosure of the omitted

[15] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

[16] *Chamber of Com. of U.S. v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005).

[17] *See, e.g.*, *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 452 (5th Cir. 2021) ("An agency's decision to rely on a cost-benefit analysis as part of its rulemaking can 'render the rule unreasonable' if the analysis rests on a 'serious flaw.'" (citing *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012)).

[18] *See, e.g.*, *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1107 (D.C. Cir. 2014) ("An agency may promulgate a rule that differs from a proposed rule only if the final rule is a 'logical outgrowth' of the proposed rule").

[19] 15 U.S.C. 78c(f).

fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available" to them.[20] Despite this clear limitation on the SEC's authority, the proposed climate rule would mandate pages of immaterial disclosures that are not relevant to a company's operations or financial performance.

Though couched in terms of materiality, the substance of the proposed requirements undermines this bedrock of Exchange Act reporting. For example, the text of the proposed rule says that Scope 3 reporting is only required if those emissions are material. But the proposing release undermines this limitation, encouraging disclosure if Scope 3 emissions "make up a relatively significant portion of [the company's] overall GHG emissions," irrespective of their financial materiality—a threshold the SEC sets (but is careful not to explicitly mandate) at 40%.[21] The SEC goes further by suggesting that Scope 3 emissions generally are likely to be material (particularly in certain prescribed industries), pressuring companies to resolve doubts about materiality in favor of disclosure and encouraging companies to provide a written justification if they determine their Scope 3 emissions are not material. And materiality is not a factor at all when a company has identified a target or goal related to Scope 3 emissions—disclosure is always required in such cases.

The Regulation S-X amendments evince a similar disregard for materiality. The proposed rule sets a disclosure threshold of 1% of the value of a given line item in a company's consolidated financial statements—far too low to identify only the climate-related financial statement impacts that would be relevant to an investor's understanding of the business. Additionally, the 1% threshold is only a *reporting* trigger; companies will be required to identify, calculate and aggregate each and every sub-1% financial statement impact in order to determine whether the aggregate impacts exceed the 1% threshold, deepening the rule's reach into immaterial information.

Similar approaches permeate the rule: for example, climate-related risks only must be disclosed if material, but, once they are disclosed, a laundry list of specific data must be provided (up to and including ZIP-code-level analysis in some cases) about the identified risk factor, irrespective of that information's materiality. And several requirements of the rule eschew materiality entirely, including Scope 1 and Scope 2 emissions reporting and the requirements to disclose confidential information like a company's internal carbon pricing, scenario analyses and transition plans.

Absent this link to materiality and investor protection, companies are left with a disclosure mandate justified by policy concerns outside the SEC's purview. As Commissioner Hester Peirce has said, the SEC is "using the [climate] disclosure framework to achieve objectives that are not [the Commission's] to pursue" and "pursuing those objectives by means of disclosure mandates that may not comport with First Amendment limitations on compelled speech."[22] Indeed, the separate climate annex that would contain the newly required information would be the only risk factor-specific addendum to companies' annual filings—elevating climate-related risks and disclosures above all other risk factors that public companies face.

Such an approach calls into question the appropriateness and legality of the SEC putting its thumb on the scale with respect to major questions about substantive climate policy.[23] To the extent that the

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[20] *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976); *see also Basic, Inc. vs. Levinson*, 485 U.S. 224 (1988).

[21] Proposed Rule, *supra* note 2, at 21379.

[22] *We are Not the Securities and Environment Commission - At Least Not Yet*. Commissioner Hester M. Peirce (21 March 2022). *Available at* https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321.

[23] *See, e.g., West Virginia v. EPA*, 142 S. Ct. 2587, 2608, 2609 (2022) (major questions doctrine requires vacating rule where the "history and the breath of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority" and the agency fails to "point to a clear congressional authorization for the power it claims"); *see also Global Tel*Link v. FCC*, 866 F.3d 397, 412 (D.C. Cir. 2017) (vacating an FCC regulation as "beyond the statutory

proposed rule's provisions are not narrowly tailored to the SEC's mission but rather seek to institute standards or guide corporate behavior for the purpose of achieving specific environment-, energy- or climate-related policy outcomes absent a congressional mandate, the proposed rule represents a significant encroachment by the SEC into areas traditionally—and more appropriately—governed by Congress and the EPA.

As recently as 2016, the SEC itself made clear that "disclosure relating to environmental and other matters of social concern should not be required of all registrants unless appropriate to further a specific congressional mandate or unless, under the particular facts and circumstances, such matters are material."[24] Here, the SEC lacks a congressional mandate, and the link to materiality in the rule is tenuous at best. Instead, the agency is taking on issues of "vast economic and political significance"[25] that are orthogonal to its mission to protect investors, facilitate capital formation and maintain efficient markets. The NAM appreciates that the Subcommittee is working to provide oversight of this regulatory overreach.

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On behalf of the NAM and the millions of people who make things in America, I appreciate the opportunity to testify before the Subcommittee today.

As NAM President and CEO Jay Timmons told Chairman McHenry and Ranking Member Waters last summer, congressional action is needed to "address the onslaught of ESG disclosure mandates" and ensure that the SEC requires public companies "to report only that information which is material to their shareholders."[26] The NAM supports the Subcommittee's efforts to rein in the SEC's overreaching and impractical climate disclosure rule. The NAM looks forward to working with the Subcommittee to ensure that manufacturers can continue to create jobs, lead the economy and improve the quality of life for all Americans.

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authority of the Commission" where the agency acted to further a "desirable social policy" while ignoring statutory limits).

[24] *Business and Financial Disclosure Required by Regulation S-K*, 81 Fed. Reg. 23916 (22 April 2016). Release Nos. 33-10064, 34-77599; *available at* https://www.govinfo.gov/content/pkg/FR-2016-04-22/pdf/2016-09056.pdf.

[25] *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014); *see also West Virginia v. EPA*, 142 S. Ct. at 2610.

[26] Letter from Jay Timmons, President and CEO, National Association of Manufacturers to Patrick McHenry, Chairman, and Maxine Waters, Ranking Member, House Committee on Financial Services (10 July 2023). *Available at* https://documents.nam.org/tax/NAM_Timmons_HFSC_Letter_w_Policy_Agenda.pdf.