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Via Commission's Internet
Comment Form

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
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Re: File No. S7-2026-19: Rescission of Climate-Related Disclosure Rules

Washington Legal Foundation is pleased to submit this comment in support of the Securities and Exchange Commission's proposed rule, *Rescission of Climate-Related Disclosure Rules*, 91 Fed. Reg. 33,296 (June 3, 2026).

Founded in 1977, WLF is a nonprofit, public-interest law firm and policy center dedicated to advancing free enterprise, individual rights, limited government, and the rule of law. To that end, WLF supports regulatory reforms that promote effective markets—an objective best served when the Commission confines its rules to preserving the integrity and efficiency of the securities markets, not when it issues rules on social or environmental policy.

WLF commends the Commission's proposal to rescind the climate-related disclosure rules adopted in 2024 and codified, among other places, at 17 C.F.R. § 229.1500-229.1507 and 17 CFR § 210.14-01 to 210.14-02. Those rules—which never took effect and were stayed pending litigation—would require securities registrants to make burdensome disclosures on greenhouse gas emissions, climate-related risk management, and financial impacts of severe weather. The Commission correctly recognizes that the rules exceed its statutory authority. They also raise serious First Amendment concerns. The Commission should finalize its rescission of the rules.

I. THE COMMISSION'S PROPOSAL CORRECTLY RECOGNIZES THE LIMITS OF ITS STATUTORY AUTHORITY.

An administrative agency has "only those powers given to it by Congress" and must exercise those powers consistent with an enabling statute's "best reading." *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (explaining that "agencies have only those powers given to them by Congress" and that "enabling legislation is not an open book"); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (instructing courts to "use every tool at their disposal to determine the best reading of the statute"). The Securities Act of 1933 and the Exchange Act of 1934 do not give the Commission a freestanding mandate to require expansive climate-related disclosures, and the Commission's recent proposal correctly recognizes these limits.

The 2024 rules rely heavily on the Exchange Act's Sections 13 and 23, which together authorize the Commission to issue disclosure rules as may be "necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. §§ 78m, 78w. But such general language does not license the Commission to construct a sweeping new disclosure regime untethered to Congress's statutory design. "[P]ublic interest" is not "a broad license to promote the general public welfare." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669 (1976). Under settled interpretative principles, Section 13's and 23's references to "public interest" and "protection of investors" must be read in the overall context of the securities laws' disclosure scheme. *See Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 608 (2019) ("[W]ords of a statute must be read in their context and with a view to their place in the overall statutory scheme.").

That statutory scheme, unlike, say, the National Environmental Policy Act or the Clean Air and Clean Water Acts, has nothing to do with the climate or the environment. The securities laws are focused on company-specific financial and operational information so investors can evaluate a firm's economic condition. Indeed, the relevant statutes require disclosures concerning matters such as financial statements, business operations, management, and securities. *See, e.g.,* 15 U.S.C. §§ 77g(a)(1), 77aa, 78l(b)(1), 78m(a)(1)–(2). They do not authorize climate-related metrics or any other policy-driven disclosures. Yet in 2024, the Commission attempted to do precisely that, notwithstanding the principle that an agency "may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000).

Congress understands these limits on the Commission's power to prescribe disclosure rules. The House Report accompanying the Exchange Act emphasized that the statute does not confer "unconfined authority to elicit any information whatsoever." H.R. Rep. No. 73-1383 at 23 (1934). And the Commission has more recently recognized this point. In 2016, it acknowledged that, absent "a specific congressional mandate," it "is not authorized to consider the promotion of goals unrelated to the objectives of the federal securities laws when promulgating disclosure requirements." SEC, *Business and Financial Disclosure Required by Regulation S-K*, Release Nos. 33-10064, 34-77559 (Apr. 13, 2016), at 209.

The Commission's traditional disclosure framework, which is grounded in registrant-specific "materiality," highlights how far the 2024 rules depart from the agency's statutory authority. *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988). "Materiality" requires information that a reasonable investor would consider important in making an investment decision about a certain company. *Id.* (explaining that "materiality" requires "a substantial likelihood that the disclosure of the omitted fact would have been viewed by [ ] reasonable investors as having altered the 'total mix' of information made available"). Current rules already require registrants to disclose material risks to their businesses regardless of source. This standard ensures that disclosures remain tied to firm-specific economic relevance—not generalized policy concerns. Nowhere does the law grant the Commission authority to mandate entire categories of non-financial disclosures irrespective of their materiality to particular registrants.

The Supreme Court's "major questions" jurisprudence reinforces this point. When an agency takes an action of vast "economic and political significance," it must point to clear congressional authorization. *West Virginia*, 597 U.S. at 721; *Biden v. Nebraska*, 600 U.S. 477, 502 (2023). Yet Congress's securities laws contain no clear statement authorizing the Commission to mandate sweeping disclosures on greenhouse gas emissions and climate risk. That absence of authorization is dispositive.

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Questions surrounding climate policy have traditionally been addressed through legislation and environmental regulation, not through the Commission's disclosure authority. The 2024 Commission ventured beyond company-specific financial reporting and improperly into policy-driven rulemaking. The Commission's present proposal appropriately corrects this error. By rescinding the 2024 rules, the Commission affirms that its authority is bound by statute, that disclosure obligations must remain grounded in firm-specific materiality, and that decisions to expand into new policy realms must be left to Congress.

II. RESCISSION PROPERLY AVOIDS COMPELLING CONTROVERSIAL OR SPECULATIVE SPEECH IN VIOLATION OF THE FIRST AMENDMENT.

The Commission's proposal to rescind the 2024 rules also avoids serious First Amendment concerns arising from compelled speech.

The First Amendment protects not only the right to speak, but also "the right to refrain from speaking." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). This immunity extends to compelled-disclosure regimes like the 2024 rules. *Riley v. Nat'l Fed. of the Blind*, 487 U.S. 781, 795 (1988). And although under *Zauderer v. Office of Disciplinary Couns.*, 471 U.S. 626 (1985) the government may, in limited circumstances, require commercial disclosures, that authority is confined to disclosures involving "purely factual and uncontroversial information" aimed at preventing deception in the sale of a service. *NIFLA v. Becerra*, 585 U.S. 755, 769 (2018) (affirming that *Zauderer's* compelled-speech standard as limited to disclosures of "purely factual and uncontroversial information about the terms under which . . . services will be available") (ellipses in original). Where compelled commercial speech goes beyond those narrow bounds, it is subject to heightened constitutional scrutiny. *Id.* at 766 (explaining that exacting scrutiny applies to compelled speech where *Zauderer* does not apply); *cf. Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021) (Roberts, C.J., controlling) ("[C]ompelled disclosure requirements are reviewed under exacting scrutiny").

The 2024 rules require registrants to make subjective judgments on a controversial topic and fall well outside *Zauderer's* limited framework. For example, the rules mandate disclosures on "climate-related risks" that have "materially impacted or are reasonably likely to have a material impact" on a registrant. 17 C.F.R. § 229.1502-1504. But determinations of how weather events have affected a business, or how such events may affect a business in the future, are inherently speculative and rely on assumed answers to contested policy questions. They are not "purely factual." *NIFLA*, 585 U.S. at 768.

Nor is the compelled speech under the 2024 rules "uncontroversial." The issue of climate change remains a subject of substantial policy debate. *See* Veronique de Rugy, *Debate New Climate Report, Don't Silence It*, CATO INST. (Aug. 19, 2025), https://perma.cc/NS4L-8RTM (describing the "polarized" debate "over climate change"). Requiring companies to characterize and quantify their exposure to climate-related risks inevitably forces them to adopt debatable assumptions and express judgments they may not otherwise make. "Mandating speech" on such a controversial topic offends the First Amendment's basic protection against speaking a particular message. *Riley*, 487 U.S. at 795

The 2024 rules thus cannot be justified under *Zauderer*. Nor can they survive heightened scrutiny, because the Commission cannot show that the compelled disclosures directly advance a substantial government interest and are appropriately tailored to that interest. *NIFLA*, 585 U.S. at 766.

The 2024 Commission asserted that investors need information about the potential effects of climate-related risks on a company and that the challenged rules were necessary to satisfy that asserted need. But as Commissioner Peirce has already explained, the disclosures inevitably "entail stacking speculation on assumptions." Commissioner Hester M. Peirce, *We are Not the Securities and Environmental Commission—At Least Not Yet* (Mar. 21, 2022).

Establishing a causal link between climate phenomena and a company's present or future financial condition is inherently speculative and unreliable. The government can't justify compelled disclosure based on "speculation or conjecture."

Nat'l Ass'n of Mfrs. v. SEC, 800 F.3d 518, 526 (D.C. Cir. 2015) (explaining that an agency can't justify disclosures by speculating that they will be effective). And the Commission can't show that the disclosures would give investors reliable information on which to make a meaningful investment decision.

At best, any asserted benefits of the disclosure rules are highly uncertain, while the burdens—both in compliance costs and compelled expression—are substantial. This places their viability under the First Amendment in serious doubt. Rescinding the rules appropriately avoids these constitutional defects. It restores a disclosure regime focused on objective, company-specific financial information and ensures that registrants are not compelled to engage in speculative or policy-laden speech.

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WLF supports the Commission's proposal to rescind the 2024 climate-related disclosure rules in their entirety.

Respectfully submitted,

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