

July 11, 2023

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services
2129 Rayburn HOB Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
4340 O'Neill HOB
Washington, DC 20515

House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Re: Upcoming ESG Hearings and Markup

Dear Chairman McHenry, Ranking Member Waters, and other members of the House Committee on Financial Services:

We, the undersigned organizations, write to you today to express our opposition to the policy agenda apparent from a recent ESG Working Group memorandum¹ and a series of bills introduced in the House.² That policy agenda seeks to: 1) insulate the management of public companies from investor input and accountability; and 2) undermine regulations that would equip investors with more information to make better decisions about their investments.

We oppose insulating the management of public companies from investor input and accountability.

Workers saving for retirement are long-term investors who hold equity in a broad swath of public companies for decades. As Illinois State Treasurer Michael Frerichs repeatedly noted in a recent

¹ ESG Working Group, House Committee on Financial Services, “MEMORANDUM: Preliminary Report on ESG Climate Related Financial Services Concerns,” Jun. 23, 2023, *available at* https://financialservices.house.gov/uploadedfiles/hfsc_esg_working_group_memo_final.pdf.

² H.R. 448, Putting Investors First Act of 2023, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/448>; H.R. 8521, INDEX Act, *available at* <https://www.congress.gov/bill/117th-congress/house-bill/8521>; H.R. 7151, Ensuring Sound Guidance Act, *available at* <https://www.congress.gov/bill/117th-congress/house-bill/7151/text?s=1&r=90>; H.R. 9408, Mandatory Materiality Requirement Act of 2022, *available at* <https://www.congress.gov/bill/117th-congress/house-bill/9408>; H.R. 1018, Protect Farmers from the SEC Act, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/1018>; H.R. 3057, Scope 3 Act, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/3057/text>.

House Oversight Committee hearing, these investors are interested in how a company performs over the next quarter century, not the next quarter.³ Because their retirement security depends on the ability of the many public companies they are invested in to engage in long-term, sustainable value creation, workers are incentivized to use the tools at their disposal to push companies toward this goal and away from short-term, risky value extraction that jeopardizes the long-term value of their investments. These tools include engaging with companies, filing shareholder proposals, and voting their shares in line with their interests. With these tools, shareholders can push companies to address issues affecting their long-term investments, including those related to workplace safety, human capital, racial equity, environmental sustainability, and workers' freedom of association.

Unfortunately, the policy agenda outlined by the majority in the ESG Working Group memorandum and in the bills they have introduced demonstrates a desire to shut off investors' access to these tools and insulate management from investor input and accountability by targeting various actors in the corporate governance ecosystem:

- Perceiving **proxy advisory firms** to be too unfriendly to management, the majority wants to interfere with these firms' ability to give sound voting advice to their clients by making it more costly and risky to advise voting against management's wishes.⁴
- The majority wants to make it more difficult for shareholders to file **shareholder proposals** and to have those proposals considered by the rest of the shareholders.⁵
- The majority wants to both make it easier for **asset managers** to eschew their responsibility to vote proxies in the best interest of their clients and make it harder for them to vote against management's wishes.⁶
- The majority wants to muddy the legal waters that determine how investment advisors and those managing workers' retirement savings under ERISA can make investment decisions⁷ — including proxy voting and engagement decisions — by introducing an

³ House Committee on Oversight and Accountability, "ESG Part I: An Examination of Environmental, Social, and Governance Practices with Attorneys General," May 10, 2023, *available at* <https://oversight.house.gov/hearing/esg-part-i-an-examination-of-environmental-social-and-governance-practices-with-attorneys-general/>.

⁴ H.R. 448, Putting Investors First Act of 2023, sections 3 & 8, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/448>; ESG Working Group, House Committee on Financial Services, "MEMORANDUM: Preliminary Report on ESG Climate Related Financial Services Concerns," 2-7, Jun. 23, 2023, *available at* https://financialservices.house.gov/uploadedfiles/hfsc_esg_working_group_memo_final.pdf.

⁵ H.R. 448, Putting Investors First Act of 2023, section 6, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/448>.

⁶ HR 448, Putting Investors First Act of 2023, section 4, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/448>; H.R.8521, INDEX Act, *available at* <https://www.congress.gov/bill/117th-congress/house-bill/8521>.

⁷ U.S. Congressman Barr, "Barr and Allen Introduce ESG Act to Protect Investors and Preserve Access to Capital for Energy Producers," Jun. 21, 2023, *available at* <https://barr.house.gov/press-releases?ID=9DB5373C-A4BF-4964-8283-6B186252CDF7>; H.R.7151, Ensuring Sound Guidance Act, *available at* <https://www.congress.gov/bill/117th-congress/house-bill/7151/text?s=1&r=90>.

unworkable distinction between so-called pecuniary and non-pecuniary factors.⁸

We oppose undermining regulations that would equip investors with more information to make better decisions about their investments.

Investor protection is a central part of the mission of the Securities and Exchange Commission (SEC). At a time when it is undeniable that climate risk is a significant financial risk,⁹ the SEC proposed an important rule that will bring much-needed transparency to investors about how public companies are contending with climate risk and capturing emissions reduction opportunities created by new laws like the Inflation Reduction Act. Investors nearly universally support the rule's main provisions,¹⁰ and securities law experts agree that the proposal is clearly within agency authority.¹¹ Additionally, the SEC is expected to propose a rule on human capital management disclosures to provide investors with visibility into how public companies manage their workforce, a central component of long-term value creation. These two rules aim to give investors access to consistent, comparable, and decision-useful data that would help them and asset managers get a fuller picture of risks and opportunities to make investment decisions and for the valuation of securities.

Unfortunately, the ESG Working Group memorandum expresses strong opposition to these two rules,¹² and members of the majority have introduced three bills that would take direct aim at the SEC's investor protection mission:

- The **Mandatory Materiality Requirement Act** would stymie the SEC's ability to fulfill its investor protection mission by making it harder for the agency to issue effective rules requiring disclosures that are important to investors.¹³
- The **Protect Farmers from the SEC Act** would block the SEC's ability to require information from public companies that is critical for investors to protect themselves

⁸ David J. Berger, David H. Webber, & Beth Young, "The Liability Trap: Why the ALEC Anti-ESG Bills Create a Legal Quagmire for Fiduciaries Connected with Public Pensions," Feb. 15, 2023, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4360119.

⁹ *See generally* Financial Stability Oversight Council, "Report on Climate-Related Financial Risk," 2021, *available at* <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

¹⁰ Steven M. Rothstein, "Analysis shows that investors strongly support the SEC's proposed climate disclosure rule," Ceres, Oct. 11, 2022, *available at* <https://www.ceres.org/news-center/blog/analysis-shows-investors-strongly-support-secs-proposed-climate-disclosure-rule>.

¹¹ Jill E. Fisch, George S. Georgiev, Donna M. Nagy, & Cynthia A. Williams, "Climate Change, West Virginia v. EPA, and the SEC's Distinctive Statutory Mandate," Summer 2022, *available at* <https://www.sec.gov/comments/s7-10-22/s71022-20154853-323117.pdf>.

¹² ESG Working Group, House Committee on Financial Services, "MEMORANDUM: Preliminary Report on ESG Climate Related Financial Services Concerns," 13-14, Jun. 23, 2023, *available at* https://financialservices.house.gov/uploadedfiles/hfsc_esg_working_group_memo_final.pdf.

¹³ H.R.9408, Mandatory Materiality Requirement Act of 2022, *available at* <https://www.congress.gov/bill/117th-congress/house-bill/9408>.

from climate-related risks.¹⁴ The SEC climate disclosure rule, as proposed, includes extensive protections to avoid burdens on small private businesses — including small farmers. The Institute for Agriculture and Trade Policy puts it bluntly: “Agribusinesses are wrongly fighting the wrong battle by enlisting farmers and ranchers to falsely claim that the SEC climate disclosure rule applies to them.”¹⁵ Organizations that represent the interests of small farmers wrote the SEC in March 2023 in support of finalizing the rule inclusive of Scope 1, 2, and 3 emissions.¹⁶

- The **Scope 3 Act** would block the SEC from requiring Scope 3 emissions from any issuer.¹⁷ Scopes 3 emissions disclosure has nearly unanimous support from investors¹⁸ who told the SEC during the comment period that they need this information to assess transition risk of companies.

Behind this policy agenda that threatens investor protection and corporate accountability is the fossil fuel industry, bankrolling efforts to protect their own short-term interests regardless of what it means for workers’ retirement security, our financial system, and beyond.¹⁹

Unfortunately, this effort often involves the use of anti-woke rhetoric. Although woke simply means to be aware of racial and social injustices, some are using anti-woke rhetoric to fuel racial resentment in pursuit of policies that serve short-term corporate interests at the expense of working people, their retirement security, and corporate accountability.

We urge you to forcefully take a stand against these policies and this approach. For further discussion, contact Natalia Renta at natalia@ourfinancialsecurity.org.

Sincerely,

National & international organizations

Americans for Financial Reform

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

American Federation of Teachers (AFT)

¹⁴ H.R. 1018 - Protect Farmers from the SEC Act, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/1018>.

¹⁵ Steve Suppan, “Agribusiness opposition to the proposed SEC climate-related financial disclosure rule,” Institute for Agriculture & Trade Policy, Aug. 12, 2022, *available at* <https://www.iatp.org/agribusiness-opposition-proposed-sec-rule>.

¹⁶ Group letter to the Securities & Exchange Commission on climate-risk disclosure proposed rule, *available at* <https://www.sec.gov/comments/s7-10-22/s71022-20159767-327935.pdf>.

¹⁷ H.R. 3057, Scope 3 Act, *available at* <https://www.congress.gov/bill/118th-congress/house-bill/3057/text>.

¹⁸ Steven M. Rothstein, “Analysis shows that investors strongly support the SEC’s proposed climate disclosure rule,” Ceres, Oct. 11, 2022, *available at* <https://www.ceres.org/news-center/blog/analysis-shows-investors-strongly-support-secs-proposed-climate-disclosure-rule>.

¹⁹ Jessica Church, “The Big Money Behind the Fight to Ban Responsible Investing,” Inequality.org, Jul. 3, 2023, *available at* <https://inequality.org/research/big-money-behind-fight-to-ban-responsible-investing/>.

As You Sow
Businesses for a Livable Climate
CatholicNetwork US
Center for LGBTQ Economic Advancement & Research (CLEAR)
Change Finance, PBC
Climate Finance Action
Climate Hawks Vote
Communications Workers of America (CWA)
Environmental Defense Fund
Green America
Honor the Earth
Interfaith Center on Corporate Responsibility
Maryknoll Sisters
Public Citizen
RapidShift Network
Rhia Ventures
Rise Economy
Save EPA
Service Employees International Union (SEIU)
Seventh Generation Interfaith Coalition for Responsible Investment
Sierra Club
Small Business Alliance
SOC Investment Group
Stance Capital, LLC
System Change Not Climate Change
The Horizon Project
Take on Wall Street
Trillium Asset Management
Tulipshare
Union of Concerned Scientists
Unitarian Universalist Association
US Partnership for Education for Sustainable Development
Women's Earth and Climate Action Network (WECAN)
Zevin Asset Management

State & local organizations

Accelerate Neighborhood Climate Action
Call to Action Colorado
CO Businesses for a Livable Climate

Community for Sustainable Energy
Greater New Orleans Housing Alliance
I-70 Citizens Advisory Group
Indivisible Ambassadors
Larimer Alliance for Health, Safety and Environment
Littleton Business Alliance
Mayfair Park Neighborhood Association Board
Mental Health & Inclusion Ministries
The Mind's Eye
Montbello Neighborhood Improvement Association
Southwest Organization for Sustainability
Spirit of the Sun, Inc.
The Green House Connection Center
Unite North Metro Denver
Wall of Women
Western Slope Businesses for a Livable Climate
Womxn from the Mountain
Working for Racial Equity