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Investors Need the SEC's Climate Risk Disclosure Rule

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Background: In March this year, the Securities and Exchange Commission ("SEC") issued a rule that investors have long demanded to help them decide which companies to invest in and how to vote their shareholder proxies. The rule will meet that demand by requiring companies to disclose the climate-related risks they face and how, if at all, they are addressing those risks. This information is key, since climate risks are affecting the financial prospects and operations of virtually every company in every industry around the globe. Predictably, a number of business organizations, along with some states, challenged the rule in court, launching a series of now-familiar legal arguments. On August 15, 2024, Better Markets, joined by the Consumer Federation of America, submitted an amicus or "friend of the court" brief in the case defending the rule, available here. We made these arguments:

First: The SEC has crystal-clear statutory authority to require company disclosures that protect investors and serve the public interest. The rule will protect investors by providing them with more complete, reliable, accessible, and comparable information about the climate-related risks that companies face and how those businesses are managing such risks. The rule will also serve the broader public interest by promoting market efficiency, competition, and capital formation. Contrary to the challengers' claims, the disclosures are clearly important or "material" to investors. They are also *financially* material to investors, because climate-related risks pose ever-increasing threats to the financial condition of companies.

Second: The rule is not so ambitious that it requires especially clear Congressional authorization. In other words, the "major questions doctrine" has no application here. The rule does not invoke a little known or unexpected authority, since the SEC has been requiring company disclosures for almost a century. Moreover, the SEC has been addressing the need for environmental and climate-related disclosures for over 50 years. Nor is the SEC taking on the role of an "environmental guardian." The SEC is in no way attempting to regulate climate change or even the way companies adapt to climate change. As the SEC explains, it is entirely "agnostic about whether or how registrants consider or manage climate-related risks." The fact is that the SEC's authority to require disclosure does not hinge on the specific type of risk that companies face, whether they be from climate change or other sources. Finally, the rule has nowhere near the economic or political significance found in genuine major questions cases. In any event, the rule satisfies the essential requirement of the doctrine, since the SEC can point to clear congressional authorization for the SEC to require disclosure of information from companies, including climate-related risks.

Third: The SEC fully complied with its duty to conduct an economic analysis in support of the rule. The challengers attempt to impose on the SEC a duty to conduct a quantitative cost-benefit analysis where none exists by arguing that such an analysis is necessary to satisfy the "substantial evidence" test. That would rewrite the securities laws, since Congress imposed only a limited duty on the SEC to consider whether a rule will promote efficiency, competition, and capital formation, not to quantify costs and benefits. In this instance, the SEC conducted a thorough economic analysis of the rule: It considered the impact of the rule on the three statutory factors, and it furthermore evaluated the expected benefits and costs of the rule, even quantifying them where possible. The court should reject all of the challengers' arguments.

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Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform, to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

By being a counterweight to Wall Street's biggest financial firms through the policymaking and rulemaking process, Better Markets is supporting pragmatic rules and a strong banking and financial system that enables stability, growth, and broad-based prosperity. Better Markets also fights to refocus finance on the real economy, empower the buyside and protect investors and consumers.

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