



# Policy Memo: So-Called “Sustainable” Investing Should Not Be Enforced by the Federal Government

Under the Biden Administration, public companies should expect many new requirements for environmental, social, and governance-related disclosures.

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The administration has made it a top priority to “hold polluters accountable” and will require companies to disclose climate risks and greenhouse gas emissions in their operations.<sup>i</sup> The Securities and Exchange Commission (SEC) will issue guidelines on climate report disclosures, similar to requirements that have been made in the United Kingdom and New Zealand.<sup>ii</sup>

According to the *Wall Street Journal*, the number of corporations reporting their sustainability efforts has been on the rise. “Last year, 90 percent of companies in the S&P 500 index issued sustainability reports, up from about 20 percent in 2011, according to the Governance & Accountability Institute Inc., an ESG

[Environmental, Social, and Governance] consulting firm.”<sup>iii</sup> It should be noted that corporations have been able to choose what they disclose in their annual

sustainability reports and are only required to disclose information that they deem material to investors' perception of business.<sup>iv</sup> As the Government Accountability Office notes, however, climate change disclosures have been on the rise:

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*In 2012 and 2014, SEC staff issued mandated reports to the Senate Committee on Appropriations that assessed the compliance of climate change disclosures included in a sample of 60 companies' 10-K filings in selected industries. The Committee had required these reviews following SEC's issuance of its interpretive release on climate change disclosures in 2010. SEC staff found that most sampled companies included climate-related information within their 10-K filings with varying levels of detail. Since 2014, Corporation Finance has conducted additional internal assessments on these topics that have resulted in findings consistent with previous reviews.<sup>v</sup>*

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Environmental, Social, and Governance (ESG) investing, also known as sustainable investing, has become increasingly popular in recent years. ESG investors seek not only financial returns, but a positive impact on the environment, society, and operation of the business.<sup>vi</sup> Recently, ESG investors have pushed corporations to disclose more information related to their climate impact. This has occurred without more requirements from the SEC regarding ESG disclosures, although it does recommend that companies disclose their climate risks.<sup>vii</sup>

If investors want more environmental disclosure from their corporations to better gauge the risks of their investments, they can ask for a vote to require the disclosure. But they, not the federal government, are best-positioned to convey those concerns to the companies in which they invest. Stephen Brown of RBJ Strategies explains the issue well, stating "The potential for an extremist ideologue Democrat in the White House weaponizing the SEC and overall corporate governance policies in the context of the environmental, social and governance suite of issues is quite a serious concern among publicly-held companies in the energy sector."<sup>viii</sup> The SEC should not attempt to influence corporate behavior beyond its purview.

**Key Point: Corporate disclosure of information relevant to investors is important and should be required, but a federal requirement to disclose climate risk information is overreaching and unnecessary.**

## Endnotes

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- i “Plan for Climate Change and Environmental Justice: Joe Biden” Joe Biden for President, October 2020 <https://joebiden.com/climate-plan/>
- ii “Are U.S. Corporates Ready for Climate Risk Disclosures?” Four Twenty Seven, November 2020 <https://427mt.com/2020/11/24/are-u-s-corporates-ready-for-climate-risk-disclosures/>
- iii “Companies Could Face Pressure to Disclose More ESG Data” Wall Street Journal, December 2020 <https://www.wsj.com/articles/companies-could-face-pressure-to-disclose-more-esg-data-11607263201>
- iv *Ibid.*
- v “Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them” United States Government Accountability Office, July 2020 <https://www.gao.gov/assets/710/707949.pdf>
- vi “What is ESG Investing?” Adec Innovations <https://www.esg.adec-innovations.com/about-us/faqs/what-is-esg-investing/>
- vii “Democrats want companies to disclose their climate risks – and fossil fuel industry is worried” Politico, June 2019 <https://www.politico.com/story/2019/06/17/democrats-energy-industry-climate-risk-1483586>
- viii *Ibid.*

