Financial Materiality and the Politics of Scope 3 Emissions in U.S. Securities Regulation

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ABSTRACT

This article examines the political contestation surrounding Scope 3 emissions disclosure in United States financial regulation to explain the institutional limits of disclosure-led climate governance. Climate disclosure is formally justified on the basis of financial materiality, positioning it as a neutral extension of investor protection within securities regulation. However, the regulation of Scope 3 emissions (indirect emissions across corporate value chains) has exposed fundamental tensions within the Securities and Exchange Commission's (SEC) regulatory framework, particularly when such emissions occur outside a firm's direct operational control. Drawing on analysis of the SEC's climate disclosure rulemaking and stakeholder submissions, the article demonstrates that financial materiality operates not simply as a technical disclosure standard but as a regulatory boundary defining the scope of financial authority over climate risk. Climate-related risks become financially material only under specific conditions, as illustrated by Peabody Energy's bankruptcy filing amid the transition away from coal and Pacific Gas and Electric's wildfire-related bankruptcy linked to escalating physical climate hazards. Climate litigation targeting downstream emissions of oil and gas corporates further illustrates how value chain emissions may generate financial risk through legal liability. Yet the financial materiality of value-chain emissions remains unevenly shaped by regulatory geography and political economy. Emissions embedded in jurisdictions with weaker climate regulation or strong state support for carbon-intensive industries often generate limited firm-level financial risk despite contributing substantially to systemic climate vulnerability. The exclusion of mandatory Scope 3 disclosure from the SEC's final rule therefore reveals the structural limits of disclosure-led climate governance, demonstrating how the boundaries of corporate climate accountability are determined not only by climate risk but by the institutional mandates and political constraints that shape financial regulation.

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I. Introduction

Climate disclosure has emerged as a central instrument of contemporary climate governance, reflecting a broader shift toward regulatory approaches that seek to align

financial markets with climate risk management. Rather than mandating emissions reductions directly, disclosure regimes aim to improve transparency regarding firms' exposure to climate-related risks, enabling investors to incorporate such risks into capital allocation decisions. This approach reflects a broader model of governance through transparency in which information disclosure is expected to alter market behaviour by enabling investors and other stakeholders to discipline corporate practices.[1] Within this framework, climate disclosure is justified as a mechanism for improving investor decision-making and market efficiency rather than as a form of environmental regulation.[2]

In financial regulatory contexts, climate disclosure is therefore framed as an extension of existing disclosure obligations grounded in the concept of materiality. Under U.S. securities law, firms are required to disclose information that is reasonably likely to influence investor decision-making.[3] The materiality standard has been described as the "cornerstone" of the securities disclosure system.[4] Information is material if there is a substantial likelihood that a reasonable investor would consider it important or significant when deciding whether to buy or sell a security or how to vote as a shareholder.[5] Climate risks therefore enter disclosure regimes only when they can be translated into firm-level financial risks that fall within the jurisdiction of securities regulation.

Climate disclosure proponents argue that climate-related risks, including physical climate impacts and transition risks associated with decarbonisation, can affect corporate financial performance and therefore fall within the scope of traditional disclosure requirements. As investor interest in environmental, social and governance (ESG) information has grown, regulators and institutional investors have increasingly advocated for more standardised sustainability disclosures to address the limitations of voluntary reporting regimes and improve the comparability of climate-related information.[6]

Recent regulatory developments, however, suggest that climate disclosure is not merely a technocratic exercise but a politically contested process. This tension is particularly evident in the SEC climate disclosure rulemaking. In 2022, the SEC proposed a comprehensive disclosure framework requiring firms to report Scope 1 and Scope 2 greenhouse gas emissions and, under certain conditions, Scope 3 emissions occurring across corporate value chains. Scope 3 emissions frequently constitute the majority of corporate emissions and are therefore central to understanding firms' overall climate impact and financial exposure, particularly for financial institutions whose lending and investment activities generate substantial financed emissions.[7] Yet Scope 3 disclosure rapidly became the most controversial component of the proposal. Industry groups such as the American Petroleum Institute argued that mandatory Scope 3 reporting would impose significant compliance costs, rely on uncertain data, and exceed the SEC's statutory authority.[8] The rule became the subject of extensive political

[1] Fung, Archon, Mary Graham and David Weil. *Full Disclosure: The Perils and Promise of Transparency*. Cambridge University Press, 2007.
[2] Richardson, Benjamin J. "The SEC and Climate Risk." *UCLA Journal of Environmental Law and Policy*, 2022, pp.1-60.
[3] Fisch, Jill E. "Making Sustainability Disclosure Sustainable." *Georgetown Law Journal*, vol. 107, 2019, pp. 923–966.
[4] *TSC Industries, Inc. v. Northway,* 426 U.S. 438, (1976) (explanation for information to be material, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available").
[5] Ibid.
[6] Ponte, Stefano. "Green Capital Accumulation: Business and Sustainability Management in a World of Global Value Chains." *New Political Economy*, vol. 25, no. 1, 2020, pp. 72–84.
[7] Strauss, Kalysta A. "Scope 3 Emissions Disclosures for Banks, With or Without the SEC," *North Carolina Banking Institute*, vol. 29, no. 1, 2025, pp.275-306.
[8] U.S. Securities and Exchange Commission. "*Public Comments on the Climate-Related Disclosure Rule*." Accessed on 3 Mar. 2026.

debate[9] and legal challenges.[10] When the SEC adopted its final rule in March 2024[11], it excluded mandatory Scope 3 disclosure, significantly narrowing the original proposal. The exclusion of Scope 3 disclosure highlights broader limitations in disclosure-led approaches to climate governance. Consequently, emissions that contribute significantly to global climate change may remain outside the scope of mandatory disclosure if they do not generate immediate firm-level financial risks within existing regulatory frameworks.

This article contributes to scholarship on climate governance and the political economy of financial regulation by examining how financial materiality operates as a politically contested regulatory construct rather than a purely technical disclosure standard. Existing research has examined the economic effects of ESG disclosure, practices and the development of sustainability reporting frameworks. However, less attention has been paid to the institutional and political processes through which the boundaries of financial materiality regarding greenhouse gas (GHG) emissions are defined. By analysing the political contestation surrounding Scope 3 emissions in the SEC's climate disclosure rulemaking, this article shows how statutory authority[12], legal constraints, and political conflict shape the scope of climate governance within financial markets. The removal of Scope 3 disclosure from the SEC's final climate rule illustrates the difficulty of governing systemic climate risks through financial disclosure frameworks designed primarily to address firm-level financial risk.

The article proceeds as follows. Section II develops the theoretical framework, situating climate disclosure within broader debates on transparency governance and financial materiality. Section III outlines the methodological approach. Section IV analyses the political contestation surrounding Scope 3 disclosure in the SEC rulemaking process. Section V discusses the implications of these findings for disclosure-led climate governance. Section VI concludes by reflecting on the structural limits of financial disclosure as a mechanism for addressing climate change.

II. Theoretical Framework: Financial Materiality and the Institutional Logic of Climate Disclosure

To understand why Scope 3 disclosure proved politically contested, it is necessary to examine how financial materiality structures the institutional logic of climate disclosure. In the U.S., climate disclosure regimes operate within the institutional framework of financial regulation, where transparency serves as the primary mechanism for governing corporate behaviour. Securities regulation has historically relied on disclosure to enable investors to assess firm-specific risks, rather than prescribing substantive operational outcomes.[13] This model assumes that markets can incorporate disclosed risks into asset prices, thereby influencing corporate conduct indirectly through capital allocation. The SEC's climate disclosure rule extends this logic by requiring firms to disclose climate-related risks that may affect their financial performance.

This reflects the principle that disclosure requirements should focus on information relevant to investor assessment of firm value. In articulating this materiality standard, the U.S. Supreme Court cautioned against

[9] U.S. House Committee on Financial Services. "*Beyond Scope: How the SEC's Climate Rule Threatens American Markets*." (Hearing before the Committee on Financial Services, 10 Apr. 2024).

[10] Bell, David A., Ran Ben-Tzur and Alan C. Smith. "SEC Files Brief in Support of Climate Disclosure Rules." (*Harvard Law School Forum on Corporate Governance*, 1 Sep. 2024).

[11] U.S. Securities and Exchange Commission. "*The Enhancement and Standardization of Climate-Related Disclosures for Investors: Final Rule*." Release Nos. 33-11275; 34-99678. U.S. Securities and Exchange Commission, 29 Feb. 2024.

[12] U.S. Securities and Exchange Commission. "Statutes and Regulations." (*U.S. Securities and Exchange Commission*, Accessed on 5 Mar. 2026).

[13] Kratz, David A., McIntosh, Laura A., and Lipton, Wachtell, "Corporate Governance Update: "Materiality" in America and Abroad." (*Harvard Law School Forum on Corporate Governance*, 1 May 2021).

adopting an overly expansive definition of materiality, warning that excessive disclosure could overwhelm investors with trivial information and undermine effective decision-making.[14] However, subsequent scholarship and case law have emphasised that materiality in securities law remains inherently indeterminate, requiring context-specific judgements about what constitutes decision-useful information.[15]

The scope of mandatory disclosure is determined by the principle of financial materiality. Under U.S. securities law, information is material if a reasonable investor would consider it important in making investment decisions. This standard does not require disclosure of all socially significant risks, but only those deemed relevant to firm valuation. As a result, financial materiality functions as a filtering mechanism, determining which climate-related risks fall within the jurisdiction of financial regulators. Climate disclosure is therefore constrained not by the physical reality of climate change, but by the institutional boundaries of financial regulation. While often presented as a neutral technical standard, materiality is shaped by legal mandates, institutional authority, and political constraints. Climate-related risks do not automatically translate into financial risks; their materiality[16] depends on regulatory enforcement, liability frameworks, and market expectations that vary across jurisdictions[17]. As a result, climate risks enter disclosure regimes only when they can be translated into legally defensible forms of firm-level financial risk.

The concept of materiality itself is inherently indeterminate.[18] In practice, determinations of materiality are made largely by corporate management and boards rather than regulators, reflecting interpretive judgements about what information a reasonable investor would consider important.[19] This institutional ambiguity creates space for contestation over which risks qualify as financially material and therefore fall within the scope of securities regulation. These institutional constraints create a structural misalignment between the systemic nature of climate risk and the firm-level focus of securities regulation. Climate change generates risks that are diffuse, cumulative, and global, while financial disclosure frameworks assess risks primarily in terms of their impact on individual firms. This distinction is particularly important in the context of global supply chains. Emissions embedded in upstream production or downstream consumption may contribute significantly to climate change without necessarily exposing firms to immediate financial risk. In the absence of regulatory mechanisms that translate environmental harm into financial liability, such emissions may remain outside the scope of mandatory disclosure.

Scope 3 emissions illustrate this institutional limitation. Unlike direct operational emissions, Scope 3 emissions occur across complex value chains that extend beyond the firm's legal and operational boundaries. Their financial relevance is therefore mediated by regulatory expectations, legal liability, and investor perception rather than determined solely by their contribution to climate change and broader systemic risk. This creates uncertainty regarding whether such emissions fall within the disclosure mandate of financial regulators. Expanding disclosure requirements to include Scope 3 emissions would therefore represent not merely a technical adjustment but a shift in the scope of financial regulatory authority.

[14] *Basic Inc. v. Levinson*, 485 U.S. 224, 231, 7 Mar. 1988.
[15] Oesterle, Dale A. "The Overused and Under-defined Notion of 'Material' in Securities Law." *Ohio State Public Law Working Paper No. 145,* 2011, pp.167-207.
[16] Clark, Cynthia E. "How Do Standard Setters Define Materiality and Why Does It Matter?" *Business Ethics, the Environment & Responsibility*, vol. 30, no. 3, 2021, pp. 378–391.
[17] Ameli, Nadia, et al. "Climate Finance and Disclosure for Institutional Investors: Why Transparency Is Not Enough." *Climate Change*, Vol. 160, 2020, pp. 565-589.
[18] Jebe, Ruth. "The Convergence of Financial and ESG Materiality: Taking Sustainability Mainstream". *Boise State University,* 2019, p. 7.
[19] Eccles, Robert G., and Krzus, Michael P. *The Integrated Reporting Movement*. Wiley, 2018, pp. 134-136.

The boundaries of financial materiality are not fixed but are shaped through regulatory interpretation and political contestation. Financial regulators must justify disclosure requirements within their statutory mandate, which prioritises investor protection and market integrity. Disclosure requirements that extend beyond clearly identifiable financial risks may face legal and political challenges. As a result, climate disclosure frameworks reflect institutional compromises that balance the recognition of climate risk against constraints imposed by regulatory authority and political feasibility.

This institutional logic helps explain the contested status of Scope 3 disclosure. While Scope 3 emissions are central to understanding corporate contributions to climate change, their financial materiality is less direct and more contingent than that of operational emissions. Requiring disclosure of such emissions would expand the scope of financial regulation into areas traditionally governed by environmental policy. The exclusion of mandatory Scope 3 disclosure from the SEC's final rule reflects the limits imposed by the institutional structure of financial regulation itself. Climate disclosure regimes can incorporate climate risk only to the extent that it can be justified within the legal and conceptual framework of financial materiality. Climate change reflects a classic case of negative externalities in which the social costs of emissions are not fully borne by emitting firms. Firms can benefit from financial disclosure regimes which operate within regulatory frameworks designed to address firm-level financial risk and therefore may not capture environmental harms that remain ostensibly external to the firm's balance sheet.

III. Methodology

This article adopts a qualitative case study approach to analyse the political contestation surrounding Scope 3 emissions disclosure within the SEC's climate disclosure rulemaking. Case study analysis is appropriate because it enables close examination of how regulatory authority, institutional mandates, and political constraints shape the implementation of climate disclosure within a specific institutional setting. The SEC climate disclosure rule constitutes a critical case for examining the limits of disclosure-led climate governance because it represents one of the most significant attempts by a major financial regulator to incorporate climate-related risks into mandatory corporate disclosure frameworks.

The analysis focuses on the SEC's climate disclosure rulemaking process between the publication of the proposed rule in March 2022 and the final rule in March 2024. This period captures the evolution of regulatory proposals, public consultation, and the eventual exclusion of mandatory Scope 3 disclosure from the final rule. Examining this regulatory process provides insight into how the boundaries of financial materiality are interpreted and contested in practice. The article demonstrates how regulators, market participants, and political actors advanced competing claims regarding the relevance, feasibility, and legality of value chain emissions disclosure.

The empirical analysis draws on three primary sources: regulatory documents, public consultation responses, and political and regulatory statements by policymakers and public officials. First, the study examines official SEC rulemaking documents, including the proposed rule, final rule, and accompanying explanatory materials. These documents provide insight into the SEC's regulatory rationale and its interpretation of financial materiality in the context of climate disclosure.

Second, the analysis considers a purposive sample of public comment letters submitted to the SEC by investors, civil society organisations, corporations and industry associations. Public consultation is a central component of U.S. rulemaking and provides a structured forum through which stakeholders

seek to influence regulatory outcomes.[20] These submissions were selected because they represent influential actors in financial markets and climate governance debates. Analysing submissions across these actor categories allows the study to compare how different institutional interests interpret financial materiality and the scope of financial regulatory authority. The comment letters therefore provide insight not only into technical concerns regarding disclosure feasibility but also into the political and institutional contestation shaping the boundaries of climate disclosure regulation.

Third, the analysis considers political and institutional interventions surrounding the rulemaking process, including congressional hearings and regulatory commentary. Examining these interventions helps situate the SEC's decision within its broader political and institutional context. The analytical framework focuses on how financial materiality is constructed and operationalised within regulatory decision-making. By analysing the exclusion of mandatory Scope 3 disclosure, this study identifies the structural limits of financial disclosure as a mechanism of climate governance.

While the analysis focuses on a single regulatory case, the selection of the SEC climate disclosure rule is justified by its status as a critical case within global financial regulation. As one of the world's most influential securities regulators, the SEC plays a central role in shaping disclosure practices and regulatory expectations across international financial markets. Examining the treatment of Scope 3 emissions within this rulemaking process therefore provides a strategically important case through which to analyse how financial materiality is interpreted and contested within a leading regulatory framework.

IV. Analysis: The SEC Climate Disclosure Rule and Stakeholder Contestation

The SEC's climate disclosure rulemaking provides a clear illustration of how the boundaries of financial materiality are shaped through institutional constraints and political contestation. When the SEC published its proposed rule in March 2022, it represented a significant expansion of climate-related disclosure within U.S. securities regulation. The proposal required registrants to disclose Scope 1 and Scope 2 greenhouse gas emissions and, under certain conditions, Scope 3 emissions where these were deemed material or included in corporate emissions reduction targets.[21] The inclusion of Scope 3 emissions reflected growing recognition among regulators and investors that value chain emissions frequently constitute the majority of corporate GHG exposure and may generate financially relevant risks through regulatory change, supply chain disruption, and transition dynamics associated with decarbonisation.[22]

Scope 3 disclosure rapidly emerged as the most contested element of the proposal. Industry associations, corporate actors, and political officials argued that mandatory Scope 3 disclosure exceeded the SEC's statutory mandate and would impose significant compliance burdens on firms.[23] Critics argued that firms lack reliable access to data from upstream suppliers and downstream users, raising concerns about measurement accuracy and potential legal liability associated with disclosure obligations.[24] These concerns were

[20] Georgiev, George S. "The SEC's Climate Disclosure Rule: Critiquing the Critics." *50 Rutgers L.* vol. 101, no.1, 2022, pp.101-130.
[21] U.S. Securities and Exchange Commission. *The Enhancement and Standardization of Climate-Related Disclosures for Investors: Proposed Rule.* Release Nos. 33-11042; 34-94478. U.S. Securities and Exchange Commission, 2022. Accessed on 10 Mar. 2026.
[22] World Resources Institute and World Business Council for Sustainable Development. *Corporate Value Chain (Scope 3) Accounting and Reporting Standard.* Greenhouse Gas Protocol, 2011. Accessed on 3 Mar. 2026.
[23] Georgiev, George S. "The SEC's Climate Disclosure Rule: Critiquing the Critics." *50 Rutgers L.* vol. 101, no.1, 2022, pp.101-130.
[24] Washington, Andrew. "Big Problems with the SEC Climate Disclosure Mandate." (*Competitive Enterprise Institute*, 31 Jan. 2024).

framed not only as technical challenges but also as questions of regulatory legitimacy, with opponents arguing that mandatory Scope 3 disclosure would effectively transform securities regulation into a form of environmental policy.

Public consultation submissions reveal competing interpretations of financial materiality and the appropriate scope of financial regulation, as summarised in Table 1 below. Institutional investors and asset managers generally supported the inclusion of Scope 3 disclosure. BlackRock argued that value chain emissions are essential for assessing climate transition risk and long-term financial exposure.[25] Similarly, Vanguard stated that comparable and concise disclosures are necessary for investors to evaluate how companies manage climate-related risks and their implications for long-term financial performance.[26] Investors emphasise that climate transition risks often arise through supply chain dependencies and product-use emissions, which may expose firms to regulatory, reputational, and market pressures even when emissions occur outside their direct operational boundaries.[27]

Similar arguments were advanced by transnational financial governance networks. The United Nations Environment Programme Finance Initiative (UNEP FI), representing financial institutions engaged in responsible banking and sustainable finance initiatives, supported enhanced climate disclosure frameworks to improve risk assessment and capital allocation across financial markets. Drawing on the Task Force on Climate-related Financial Disclosures (TCFD) framework, UNEP FI emphasised the importance of firms reporting greenhouse gas emissions across operational and value-chain boundaries, including Scope 3 emissions where these are financially material to investors. This position reflects an effort by financial actors to integrate climate risk into existing disclosure frameworks while maintaining the central role of financial materiality as the governing principle determining which climate-related information should be disclosed.[28] However, the position of UNEP FI also reflects its institutional mandate as an organisation explicitly oriented toward advancing sustainability-oriented frameworks[29], which shapes its interpretation of financial materiality and its support for more expansive climate disclosure.

Civil society organisations, including Carbon Tracker, Ceres and Climate Action 100+ which operate as non-profit, sustainability-focused, or investor-led initiatives further emphasised that value chain emissions are essential for understanding climate-related financial risk.[30] From this perspective, the omission of Scope 3 emissions could obscure material risks associated with regulatory change, technological transition, and evolving market expectations regarding decarbonisation. Carbon Tracker, an independent financial think tank specialising in climate-related financial risk analysis, argued that climate-related risks are already relevant to core financial reporting assumptions, including asset valuation, cash-flow projections, and impairment testing. However, its review of over 100 publicly listed carbon-intensive firms found that "over 70% of companies and 80% of auditors did not indicate they had considered material climate matters in such reporting"[31], limiting investors' ability to assess the financial implications of transition scenarios. Carbon Tracker therefore argued

[25] BlackRock. *Comment Letter on the SEC Climate Disclosure Rule*. (*BlackRock*, 17 Jun. 2022).
[26] Vanguard. *Comment Letter on the SEC Climate Disclosure Rule*. (*Vanguard*, 11 Jun. 2021).
[27] Read, Russell. "Testimony of Russell Read, Chief Investment Officer, California Public Employees' Retirement System. Hearing on "Climate Disclosure: Measuring Financial Risks and Opportunities"". In: *Climate Change Disclosure and Financial Risk: Merits & Concerns*. Edited by Lawrence, Carolyn S. and Lloyd T. Wheeler. Nova Science Pub Inc., 2013.
[28] United Nations Environment Programme (UNEP) Finance Initiative. *Comment Letter on the SEC Climate Disclosure Rule*. (*UNEP*, 21 May 2021).
[29] Ibid.
[30] Ceres. *Comment Letter on the SEC Climate Disclosure Rule*. (*Ceres*, 15 Dec. 2021).
[31] Carbon Tracker Initiative. *Flying Blind: The Glaring Absence of Climate Risks in Financial Reporting*. (*Carbon Tracker Initiative,* 16 Sep. 2021).

that stronger disclosure requirements were necessary to ensure that climate risks are properly reflected in financial reporting and valuation assumptions.[32]

Some corporate actors acknowledged the relevance of value-chain emissions but emphasised the complexity of measurement and the need for sector-specific materiality thresholds. TotalEnergies noted that Scope 3 emissions can represent "more than 80% of the lifecycle emissions of some energy products", but argued that only material categories should be required within regulatory disclosure frameworks.[33] Chevron similarly argued that a principles-based disclosure regime grounded in financial materiality would provide issuers with the flexibility necessary to account for differences across industries and business models, cautioning that firms may lack reliable access to data across global supply chains.[34]

While several corporate actors acknowledged the importance of value-chain emissions, non-financial industry associations adopted a more adversarial stance toward the proposal. More critical than individual corporates, non-financial industry submissions frequently emphasised the uncertainty and indirect nature of Scope 3 emissions. Industry associations such as the U.S. Chamber of Commerce argued that mandatory disclosure would impose disproportionate compliance costs and introduce significant legal risks due to the difficulty of verifying emissions data across complex value chains.[35] The American Petroleum Institute (API) argued that requiring companies to report scope 3 emissions would "lead to inefficiencies and unnecessary costs among multiple parties without yielding useful information." [36] The API's regulatory position was thus strongly opposed to mandatory Scope 3 disclosure despite the initial public framing of support for 'timely and accurate reporting of GHG emissions from all emitting sectors in the economy to provide a transparent fact base to address climate change'.[37] These submissions frequently framed Scope 3 emissions as insufficiently material to justify mandatory disclosure within the existing framework of securities regulation, arguing that the SEC's statutory mandate is limited to protecting investors through financially material information rather than regulating environmental externalities.

Financial industry submissions emphasised implementation challenges and the need to maintain a materiality-based disclosure framework. The Securities Industry and Financial Markets Association (SIFMA) argued that disclosure requirements should apply only where climate risks are financially material and should rely on a limited set of core emissions metrics supplemented by principles-based guidance.[38]

These divergent stakeholder perspectives are summarised in Table 1, which highlights how actor positions on Scope 3 disclosure reflect differing interpretations of financial materiality and underlying regulatory interests.

As illustrated in Table 1, these differences reflect the distribution of climate risk and regulatory costs across institutional actors. Institutional investors, whose exposure spans diversified portfolios, emphasised systemic transition risks and therefore favoured comprehensive disclosure of value chain emissions, while corporate actors focused on firm-level compliance burdens and operational constraints. Industry associations

[32] Carbon Tracker Initiative. *Comment Letter on the SEC Climate Disclosure Rule*. (*Carbon Tracker Initiative,* 27 Sep. 2021).
[33] TotalEnergies. *Comment Letter on the SEC Climate Disclosure Rule*. (*TotalEnergies*, 13 Jun. 2021).
[34] Chevron. *Comment Letter on the SEC Climate Disclosure Rule*. (*Chevron*, 11 Jun. 2021).
[35] U.S. Chamber of Commerce. *Comment Letter on the SEC Climate-Related Disclosure Rule*. (*U.S. Chamber of Commerce*, 16 Jun. 2022).
[36] American Petroleum Institute. *Comments on the SEC Climate Disclosure Rule*. (*American Petroleum Institute,*17 Jun. 2022).
[37] Ibid.
[38] SIFMA. *Comment Letter on the SEC Climate Disclosure Rule*. (*SIFMA*, 10 Jun. 2021).

adopted a more explicitly political framing, questioning whether mandatory Scope 3 disclosure exceeded the SEC's statutory authority. Taken together, these positions demonstrate that interpretations of financial materiality are shaped not solely by technical assessments of climate risk, but by the distribution of financial exposure, regulatory burden, and institutional incentives across actors, as well as the broader political and legal constraints within which financial regulators operate.

The divergent responses of political actors further illustrate that financial materiality is interpreted through partisan and ideological lenses that shape how regulatory relevance and feasibility are assessed. Some Democrats argued that Scope 3 disclosures are financially relevant,[39] whilst some Republicans reiterated concerns regarding the complexity, data reliability, legal liability and challenge to the overall relevance of these disclosures[40]. The distribution of stakeholder positions further demonstrates the political nature, scope and application of financial materiality.

The SEC's final decision to exclude mandatory Scope 3 disclosure reflects the outcome of this contestation. While investors emphasised the financial relevance of value chain emissions, regulatory decisions ultimately reflected institutional constraints regarding regulatory authority, legal defensibility, and implementation feasibility. This outcome illustrates how the scope of disclosure is shaped through negotiation between regulators, market participants, and political actors, rather than determined solely by the magnitude of climate risk. The distribution of consultation responses demonstrates that support for Scope 3 disclosure was strongest among actors exposed to portfolio-level climate risk, while opposition was concentrated among firms subject to direct regulatory compliance. This asymmetry reflects the uneven distribution of regulatory costs and financial risk across institutional actors.

These legal and political debates also intersect with broader questions regarding the scope of administrative authority under U.S. constitutional law. Critics of the proposed rule argued that mandatory Scope 3 disclosure raised issues associated with the "major questions doctrine", a principle articulated by the U.S. Supreme Court requiring clear congressional authorisation for regulatory actions with significant economic or political implications[41]. Under this interpretation, requiring firms to disclose emissions generated across global value chains could be construed as an attempt to use securities regulation to pursue broader environmental policy objectives beyond the SEC's statutory mandate. Legal scholars and policy commentators therefore suggested that expansive climate disclosure requirements, particularly those relating to Scope 3 emissions, could face judicial scrutiny if interpreted as exceeding the SEC's regulatory authority.[42] The prominence of these arguments during the rulemaking process highlights how the boundaries of financial materiality are intertwined with constitutional and administrative legal constraints on regulatory power.

The SEC's final rule, published in March 2024, reflects the outcome of these institutional and political pressures. The final rule retained mandatory disclosure of Scope 1 and Scope 2 emissions for certain registrants but removed mandatory Scope 3 disclosure entirely.[43] The SEC justified this decision by citing concerns regarding reporting complexity, data reliability, and the potential compliance

[39] Warren, Elizabeth and Casten, Mark. *Comment Letter on the SEC Climate Disclosure Rule*. 11 Jun. 2021.
[40] Woellert, Lorraine. "House Republicans warn SEC on climate disclosure". (*POLITICOPRO*, 6 Mar. 2021).
[41] Diller, Matthew et al. "A Major Question for the SEC: Analyzing Constitutional Limits on the SEC's Climate Disclosure Rule." *Fordham Journal of Corporate & Financial Law,* vol. 29, no. 2, 2024, pp.427-501.
[42] Haan, Sarah. "The First Amendment and the SEC's Proposed Climate Risk Disclosure Rule." (*SSRN,* 23 Jun. 2022).
[43] U.S. Securities and Exchange Commission. *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. Release Nos. 33-11275; 34-99678. U.S. Securities and Exchange Commission, 2024. Accessed on 9 Mar. 2026.

burden on firms.[44] This outcome demonstrates how the scope of disclosure is shaped not solely by the magnitude of climate risk but by institutional feasibility and regulatory authority, and the distribution of political and economic constraints within the rulemaking process.

The exclusion of Scope 3 disclosure highlights the structural limitations of disclosure-led approaches to climate governance. While Scope 3 emissions are widely recognised as central to understanding corporate climate exposure as shown by the institutional investor comment letters, Scope 3 disclosure proved difficult to justify within the institutional framework of financial regulation. Financial materiality functions as a regulatory threshold that determines which climate risks are incorporated into disclosure requirements. Risks that are indirect, uncertain, or difficult to quantify may remain outside the scope of mandatory disclosure even when they contribute substantially to systemic climate risk. This outcome reflects the institutional logic of securities regulation. Disclosure regimes are designed primarily to inform investors about firm-specific financial risks rather than to regulate corporate environmental externalities directly. The SEC's decision to exclude Scope 3 disclosure therefore reflects not only technical challenges but also the institutional boundaries of financial regulatory authority.
The regulatory landscape surrounding climate disclosure in the United States has become increasingly uncertain since the adoption of the SEC's final climate disclosure rule in March 2024. In March 2025, the Commission announced that it would cease defending the rule in certain ongoing legal challenges, further undermining the prospects for the implementation of mandatory climate disclosure requirements.[45] In the absence of a fully operational rule, the SEC's earlier interpretive guidance on climate-related disclosure issued in 2010 remains the primary regulatory framework through which climate risks are incorporated into securities reporting.[46] The persistence of this earlier guidance highlights the lack of development of climate disclosure within U.S. financial regulation.

These regulatory developments must be understood within the broader political context surrounding climate policy in the United States. The SEC's 2022 climate disclosure proposal emerged under the Biden administration, which prioritised the integration of climate-related financial risks into federal regulatory frameworks. This included the 2021 Executive Order on Climate-Related Financial Risk and the United States' renewed participation in the Paris Agreement.[47] Subsequent political developments, however, have introduced significant uncertainty regarding the future trajectory of climate-related financial regulation. The election of Trump who has expressed scepticism towards climate regulation and the nomination of Paul Atkins as Chair of the SEC in December 2024 signalled a shift toward a more deregulatory approach to ESG-related financial regulation.[48] As a former SEC Commissioner, Atkins has advanced a market-oriented interpretation of securities law that emphasises the primacy of financial materiality and resists the expansion of disclosure requirements beyond the Commission's statutory mandate. Atkins argued in response to the SEC's climate proposal that it risked exceeding the agency's

[44] Ibid.
[45] U.S. Securities and Exchange Commission. "SEC Announces Withdrawal of Defense of Climate Disclosure Rule." Press Release. U.S. Securities and Exchange Commission, 2025. Accessed on 11 Mar. 2026.
[46] U.S. Securities and Exchange Commission. *Commission Guidance Regarding Disclosure Related to Climate Change*. Release No. 33-9106. U.S. Securities and Exchange Commission, 2010. Accessed on 11 Mar. 2026.
[47] Biden, Joseph R. *Executive Order on Climate-Related Financial Risk*. Executive Order 14030, 20 May 2021; United States Department of State. "The United States Officially Rejoins the Paris Agreement." United States Department of State, 19 Feb 2021.
[48] Ho, Soyoung. "Trump's SEC Takes First Step to Rescind Climate Disclosure Rule." (*Thomson Reuters*, 12 Feb. 2025); Ho, Soyoung. "SEC Chair Criticizes Accounting Firms for Pushing Rules Driven by Self-Interest." (*Thomson Reuters*, 9 Dec. 2025).

regulatory authority and undermining its core investor protection function.[49] This orientation is reflected more broadly in the SEC's subsequent retreat from defending its climate disclosure rule, indicating a wider institutional shift toward limiting ESG-related regulatory intervention.[50] These developments illustrate how climate disclosure policy in the United States remains contingent on shifts in political authority,[51] reinforcing the argument that financial materiality operates as a politically mediated construct.

V. Discussion: Financial Materiality and the Limits of Disclosure-Led Climate Governance

The empirical analysis of the SEC rulemaking highlights broader theoretical implications for understanding the role of financial materiality within disclosure-led climate governance. The exclusion of Scope 3 disclosure did not reflect a determination that such emissions lack relevance to climate risk, but rather that their connection to firm-level financial outcomes could not be established with sufficient certainty to justify mandatory disclosure within the SEC's institutional mandate. This distinction is significant. It suggests that the scope of disclosure is determined less by the scale of climate risk itself than by the ability of regulators to translate that risk into legally defensible financial terms.[52]

While the analysis focuses on the United States, these dynamics are not unique to the SEC. Financial materiality is embedded within the institutional mandates of financial regulators more broadly, meaning that similar constraints are likely to arise in other jurisdictions where disclosure frameworks are grounded in investor protection. In the European Union, however, the Corporate Sustainability Reporting Directive (CSRD) adopts a double materiality approach,[53] requiring firms to disclose information that is material both in terms of financial risk to the firm (financial materiality) and the firm's impacts on the environment and society (impact materiality).[54] This represents a significant departure from the SEC's investor-centric model by explicitly incorporating outward environmental effects into disclosure requirements. Under the European Sustainability Reporting Standards (ESRS), particularly ESRS E1 (Climate Change), firms are required to disclose Scope 3 emissions where they are material under the double materiality assessment, subject to transitional provisions, data availability constraints, and proportionality considerations.[55] This broader conceptualisation reduces reliance on the narrow translation of climate risk into firm-level financial outcomes and permits the disclosure of value chain emissions even where financial impacts are uncertain, indirect, or not yet fully internalised within market pricing mechanisms. This reflects a conceptual shift from an investor-centric model of disclosure toward a broader accountability framework that integrates environmental externalities into reporting obligations.

However, the European approach does not eliminate the institutional and political constraints identified in the SEC case. The prescriptive and granular reporting requirements under CSRD have been subject to proposed legislative refinements under the

[49] Atkins, Paul, S. et al. *Comment Letter on the SEC Climate Disclosure Rule*. 17 Jun. 2022.
[50] Christian D. H. Schultz and Adrien K. Anderson. "SEC Halts Defense of the Climate-Related Disclosures Rule." (*Arnold & Porter*, 13 Feb. 2025).
[51] U.S. House Committee on Financial Services. "McHenry Slams SEC's Final Climate Disclosure Rule". Press Release, 06 Mar. 2024.
[52] Clark, C.E. "How Do Standard Setters Define Materiality and Why Does It Matter?" *Business Ethics, the Environment & Responsibility*, vol. 30, no. 3, 2021.
[53] European Commission (EC), *Corporate Sustainability Reporting Directive (CSRD)*, Directive (EU) 2022/2464. European Commission, 16 Dec. 2022.
[54] European Commission. *Commission Delegated Regulation (EU) 2023/5303, Annex I: ESRS 1 General Requirements*; European Financial Reporting Advisory Group (EFRAG), *European Sustainability Reporting Standard (ESRS) 1: General Requirements*, 15 Nov. 2025.
[55] European Commission, *Commission Delegated Regulation (EU) 2023/5303, Annex I: ESRS E1 Climate Change.* European Commission, 2023; European Financial Reporting Advisory Group (EFRAG). *ESRS E1: Climate Change*. EFRAG, 15 Nov. 2025.

Omnibus I proposal.[56] The proposal seeks to streamline reporting requirements and reduce compliance burdens in response to growing political and corporate concerns regarding European competitiveness, particularly in light of broader policy debates, including the Draghi Report, which emphasises the need to balance regulatory ambition with economic performance and industrial competitiveness.[57]

While the EU framework expands the boundaries of disclosure under double materiality, disclosure requirements remain shaped by member state interests, concerns regarding corporate competitiveness, and the practical challenges of implementing complex reporting standards across diverse sectors. This demonstrates that even where impact materiality broadens the conceptual scope of disclosure, its practical application remains contingent on political negotiation and regulatory feasibility. However, unlike the SEC, which resolved uncertainty by excluding Scope 3 disclosure, the EU has retained Scope 3 within its regulatory framework while managing uncertainty through proportionality, phased implementation, and interpretive flexibility.[58] By contrast, in the United States, the SEC's statutory mandate and political environment have reinforced a narrower interpretation of materiality centred on investor protection and legal defensibility, contributing to the exclusion of Scope 3 emissions from the final rule. Taken together, these differences illustrate that the scope of climate disclosure regimes is not determined solely by the scale of climate risk but by the interaction between legal mandates, institutional design, and political contestation across jurisdictions.

Importantly, the structure of the SEC's 2022 proposed rule further constrained the inclusion of Scope 3 emissions. Rather than adopting a targeted approach focused on the most financially material categories of value chain emissions, the proposal effectively required comprehensive ('all-or-nothing') Scope 3 reporting when deemed material. This design intensified concerns regarding data reliability, verification, and legal liability, particularly given the indirect nature of value chain emissions and the limited control firms exercise over upstream and downstream activities. The 2022 proposal sought to mitigate these concerns through the introduction of a safe harbour provision for Scope 3 disclosures, limiting liability for certain forward-looking or third-party emissions estimates[59], but this safeguard did not fully resolve concerns regarding evidentiary standards and litigation risk. A more granular approach, such as requiring disclosure of the most emissions-intensive or financially exposed segments of the value chain may have reduced these constraints but would have introduced additional subjectivity into materiality determinations. As a result, the regulatory challenge was not simply whether Scope 3 emissions could be material, but whether they could be operationalised within a disclosure framework that meets the evidentiary and liability thresholds of securities law. This helps explain why Scope 3 disclosure proved especially vulnerable to contestation and ultimately exclusion in the final rule in 2024, despite the recognised importance of Scope 3 emissions in capturing the full extent of climate-related financial risk.

The SEC rulemaking process must also be situated within the broader political economy of financial regulation in the United States. Climate disclosure has been shaped by ongoing political contestation regarding the appropriate scope of regulatory authority and the legitimacy of incorporating ESG

[56] European Commission. *Proposal for a Directive amending Directives (EU) 2022/2464, (EU) 2024/1760 and (EU) 2024/1762 as regards certain corporate sustainability reporting and due diligence requirements (Omnibus I)*, COM/2025/80 final. European Commission, 26 Feb. 2025.

[57] Draghi, Mario. *The Future of European Competitiveness*. European Commission, 03 Sep. 2024.

[58] European Financial Reporting Advisory Group (EFRAG), *ESRS E1: Climate Change*, 15 Nov. 2025.

[59] U.S. Securities and Exchange Commission. *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. Release No. 33-11042; 34-94478, 2022, pp.208-215.

considerations within securities law. Corporate lobbying and political engagement have played a significant role in this process, with firms seeking to influence disclosure requirements in ways that limit regulatory burden, transparency requirements[60] and constrain the expansion of financial oversight into environmental domains. These dynamics reinforce the argument that financial materiality is a politically contested construct shaped by institutional power and competing economic interests.

This dynamic reflects a structural feature of financial regulation. Securities law is designed to ensure that investors receive information relevant to firm valuation, not to ensure that firms account for the full external costs of their activities.[61] Climate change, however, is driven by cumulative emissions whose consequences unfold across temporal and geographic scales that exceed the firm-level focus of financial disclosure. Scope 3 emissions exemplify this misalignment. While they represent real contributions to climate change, their financial consequences are mediated through uncertain future regulatory and market developments. In the absence of clear mechanisms linking such emissions to present financial risk, regulators face institutional barriers to mandating disclosure.[62]

A further implication is that the financial materiality of Scope 3 emissions is mediated not only by market dynamics but by state intervention. Where governments provide direct subsidies, regulatory protection, or industrial policy support to carbon-intensive sectors, firms within corporate value chains may remain financially viable despite contributing substantially and being subject to climate risk. [63] In such cases, emissions embedded in supply chains do not translate into financially material risks for downstream firms because state support insulates upstream producers from market discipline. This dynamic weakens the transmission mechanism through which climate risk becomes financially material within disclosure regimes. Even where value chain emissions are environmentally significant, their financial consequences institutionalised through securities regulation may remain limited in the presence of state support. The financial consequences of climate risk depend on institutional frameworks that determine whether environmental harm generates enforceable economic liability. Financial materiality should therefore be understood not as an intrinsic property of emissions but as an institutional outcome shaped by the interaction between markets, regulation, and state power.[64]

The case of Pacific Gas and Electric (PG&E) illustrates how climate risk becomes financially material when institutional frameworks translate environmental exposure into enforceable economic liability. PG&E filed for bankruptcy protection in January 2019 after catastrophic wildfires in California generated potential liabilities exceeding $30 billion.[65] These fires were linked to electrical transmission infrastructure owned by the utility. The company's financial exposure was significantly shaped by California's legal framework of *inverse condemnation*, which holds utilities strictly liable for wildfire damages caused by their equipment even in the absence of negligence[66]. This regulatory

[60] Taddeo, Simone, Massimiliano Cerciello, Rabia Fatima and Roberto Carè. "When Money Talks, ESG Falls Silent: Evidence from US Lobbying and Disclosure." *Journal of Cleaner Production*, vol. 534, no.1, 2025.
[61] Fisch, Jill E. "Making Sustainability Disclosure Sustainable." *Georgetown Law Journal*, vol. 107, 2019, pp. 923-966.
[62] Karpoff, Jonathan et al. "What ESG-Related Disclosures Should the SEC Mandate?" *Financial Analysts Journal*, vol. 78, no. 2, 2022 pp. 9-18.
[63] Coady, David, et al. "Global Fossil Fuel Subsidies Remain Large." *IMF Working Paper*, 1 May 2019.
[64] Bolton, Patrick, et al. "The Green Swan, Central banking and financial stability in the age of climate change." *Bank for International Settlements*, 31 Jan. 2020; Jebe, Ruth. "The Convergence of Financial and ESG Materiality." *American Business Law Journal*, vol. 56, no. 3, 2019.
[65] MacWilliams, John J., Sarah La Monaca, and James Kobus. *PG&E: Market and Policy Perspectives on the First Climate Change Bankruptcy*. Center on Global Energy Policy, Columbia University SIPA, 15 Aug. 2019.
[66] Ibid.

structure transformed climate-amplified physical hazards into immediate financial liabilities, ultimately leading to the firm's bankruptcy. The PG&E case has therefore been widely characterised as one of the first major examples of a "climate change bankruptcy", illustrating how environmental risks become financially material when legal and regulatory institutions convert environmental damage into enforceable financial obligations. This contrasts with value chain emissions, where comparable liability mechanisms rarely exist, limiting the extent to which such emissions translate into firm-level financial risk.

A parallel but distinct dynamic can be observed in the case of Peabody Energy, the largest private-sector coal company in the United States, which filed for bankruptcy protection in 2016[67] amid declining coal demand and tightening environmental regulation. The company attributed its financial distress to structural shifts in energy markets, including the expansion of renewable energy, environmental policy measures, and increasing regulatory pressure on coal-fired power generation. These developments reduced demand for thermal coal and contributed to falling coal prices, undermining the firm's financial viability. Although the bankruptcy was not attributable to a single climate policy, it illustrates how climate transition dynamics including regulatory change, technological substitution, and shifting investor expectations can translate climate-related risks into firm-level financial consequences[68]. Importantly, these dynamics also highlight a key challenge for Scope 3 disclosure: assessing the financial materiality of value chain emissions often requires forward-looking judgements about how climate policy, market demand, and technological change may evolve over time. Unlike direct emissions, which can be measured with relative precision, Scope 3 emissions are inherently tied to uncertain transition pathways, requiring firms to anticipate how future regulatory and market conditions will affect the financial significance of emissions across their value chains. This introduces a degree of prediction that sits uneasily within a disclosure regime grounded in verifiable, decision-useful financial information.

Peabody Energy emerged from bankruptcy in 2017 following financial restructuring. However, its share price subsequently declined significantly, falling by almost 90% since being relisted[69]. Following the inauguration of Donald Trump on 20 January 2025 and renewed political advocacy for the US coal industry[70], Peabody's share price rose sharply, increasing by approximately 80% between the inauguration and March 2026[71]. These developments illustrate how the financial materiality of climate transition risks is mediated not only by market and technological dynamics but also by shifts in political authority and regulatory priorities. As in the PG&E case, environmental pressures become financially consequential primarily when institutional conditions translate them into enforceable economic outcomes.

Taken together, the PG&E and Peabody cases demonstrate that climate risk becomes financially material not automatically through environmental change itself, but through institutional structures that convert environmental pressures into enforceable economic consequences. By contrast, value-chain emissions associated with fossil fuel production and consumption remain largely externalised. Although emerging climate litigation in European jurisdictions has sought

[67] United States Bankruptcy Court. *In re Peabody Energy Corporation*, Chapter 11 Bankruptcy Filing, Case No. 16-42529, 8 Dec. 2017.

[68] Caldecott, Ben, Jeremy McDaniels, and Mark Tilbury. *Stranded Assets and Thermal Coal: An Analysis of Environment-Related Risk Exposure*. Smith School of Enterprise and the Environment, University of Oxford, 31 Jan. 2016.

[69] Murray, James.. "Peabody Energy's coal mine write-down 'speaks volumes about the state of the industry'." (*NS Energy*, 7 Aug. 2020).

[70] Juricic, Louis. "Peabody Energy Stock Jumps After Trump's Coal Revival Promises." (*Investing.com*, 11 Feb. 2026).

[71] Yahoo Finance. "Peabody Energy Corporation (BTU) Historical Data." (*Yahoo Finance*. Accessed on 7 Mar. 2026).

to hold oil and gas companies accountable for downstream emissions, such cases have not yet produced liabilities comparable to PG&E. The Paris Agreement was mobilised by NGOs in litigation challenging corporate responsibility, notably in *Milieudefensie v Shell*, where the Hague District Court held that Shell owed an independent duty of care to align its business model with Paris-consistent emissions pathways.[72] While the Dutch Supreme Court[73] subsequently overturned the emission reduction order, the Court did not deny the relevance of international climate norms in informing corporate duties of care[74], instead emphasising that such obligations are context-dependent and not amenable to judicial quantification.

Climate litigation pathways appear less likely in the United States given judicial scepticism toward climate liability claims and continued political support for domestic fossil fuel production. In the absence of regulatory instruments capable of internalising the external costs of value-chain emissions, such as carbon pricing, Pigouvian taxation (i.e. taxes designed to internalise the social cost of negative externalities by incorporating these costs into market prices) or enforceable liability regimes, Scope 3 emissions may remain environmentally significant without becoming financially material within disclosure frameworks.

Alternative governance mechanisms have nonetheless begun to generate pressure for greater transparency regarding Scope 3 emissions through shareholder activism and corporate governance processes. For example, despite board opposition,[75] shareholders at Chevron's 2021 annual general meeting (AGM) approved (61.3% majority)[76] a resolution requesting that the company adopt emissions-reduction targets covering emissions generated from the use of its energy products (Scope 3) consistent with the goals of the Paris Agreement. The proposal reflected growing investor concern regarding transition risks associated with fossil-fuel demand. The persistence of this investor pressure is illustrated by developments at Chevron's 2023 AGM where shareholders overwhelmingly rejected (98.7%)[77] a proposal to rescind the 2021 resolution.[78] Similar dynamics have also emerged in other corporate governance contexts. In 2021, the activist hedge fund Engine No. 1 successfully led a shareholder campaign (with the support of BlackRock, Vanguard and State Street Global Advisers)[79] at ExxonMobil that resulted in the election of three new independent directors to the company's board despite opposition from management.[80] The campaign centred on concerns that ExxonMobil's strategy inadequately addressed the financial risks associated with the global energy transition and declining long-term demand for fossil fuels[81]. These developments illustrate how corporate governance mechanisms can partially internalise climate risks even in the absence of mandatory disclosure regulation. Moreover, the investor activism demonstrated how climate risks may become financially material through investor expectations and corporate governance pressure, demonstrating that the boundaries of financial

[72] Hösli, Andreas. "Milieudefensie et al. v. Shell: A Tipping Point in Climate Change Litigation against Corporations?" *Climate Law*, vol. 11, no. 2, 2021, pp. 195–209.
[73] *Milieudefensie et al v Royal Dutch Shell plc* ECLI:NL:GHDHA:2024:2100, *Court of Appeal of The Hague*, 12 Nov. 2024.
[74] McKeating, Fraser., Thompson, Nicola. "Dutch Court of Appeal Overturns Emission Reduction Order Against Shell but Holds Companies Must Limit CO_2 Emissions." *Lewis Silkin LLP,* 18 February 2025.
[75] Chevron Corporation, *Notice of 2021 Annual Meeting of Stockholders and Proxy Statement*, 8 Apr. 2021, pp.80-81.
[76] Chevron Corporation, *Form 8-K (Voting Results)*, 26 May 2021.
[77] Chevron Corporation, *Form 8-K (Voting Results)*, 31 May 2023.
[78] Chevron Corporation, *Notice of 2021 Annual Meeting of Stockholders and Proxy Statement*, 26 May 2021, pp.81-82.
[79] Kaufmann, Robert K., Kulatilaka, Nalin., and Mittelman, Melissa. "Evaluating Hedge Fund Activism: Engine No. 1 and ExxonMobil" *Journal of Climate Finance,* vol. 5, 2023, pp.1-9.
[80] ExxonMobil Corporation, *Definitive Proxy Statement (Form DEF 14A),* filed with the U.S. Securities and Exchange Commission, 6 Apr. 2021.
[81] Engine No. 1 LLC, *Additional Definitive Proxy Soliciting Materials (Form DFAN14A)*, filed with the U.S. Securities and Exchange Commission, 19 May 2021.

materiality are shaped not only by regulatory mandates but also by evolving market norms. However, individual climate considerations remain contingent on investor activism rather than enforceable regulatory requirements, reinforcing the argument that the financial materiality of Scope 3 emissions ultimately depends on institutional mechanisms capable of translating climate externalities into firm-level financial consequences.

The SEC rulemaking process illustrates how these institutional barriers operate in practice. Scope 3 disclosure would have required firms to account for emissions embedded in global supply chains, extending disclosure beyond direct operational control. This expansion would have shifted disclosure toward capturing systemic climate exposure rather than narrowly defined operational risk. However, doing so would also have expanded the functional scope of financial regulation, exposing the SEC to legal and political challenges regarding its statutory authority. The eventual exclusion of Scope 3 disclosure therefore reflects the limits of financial regulatory jurisdiction rather than a technical assessment of climate relevance.[82]

This distinction has broader implications for disclosure-led climate governance. Disclosure regimes depend on the existence of institutional mechanisms that translate environmental risk into financial risk. Where such mechanisms are weak or absent, disclosure frameworks struggle to capture the full extent of climate exposure. Climate risks become visible within disclosure frameworks only when they intersect with institutional structures capable of recognising them as (financially) relevant.[83] Even in the absence of mandatory regulatory requirements, financial institutions may nevertheless face growing pressure from investors, regulators, and market expectations to account for financed emissions across their portfolios.[84]

The SEC case also demonstrates that disclosure-led governance is inherently reactive. Financial materiality is shaped by existing regulatory expectations rather than anticipating future climate risk, as illustrated by the reversal in regulatory momentum following the return of the Trump administration and the SEC's retreat from defending its climate disclosure rule. Disclosure requirements expand primarily in response to established regulatory and legal developments, such as carbon pricing or liability regimes. Where such mechanisms remain uncertain or politically contested, disclosure frameworks tend to remain limited in scope. This reactive structure constrains the ability of financial disclosure to address climate risk proactively. This limitation is closely linked to the role of prediction within materiality assessments. Securities law is generally oriented toward information that can be substantiated with reasonable certainty, meaning that risks contingent on uncertain future policy developments are less likely to be considered material until they begin to crystallise. In the context of climate change, this creates a structural lag between the emergence of systemic risk and its recognition within financial disclosure frameworks.[85] By contrast, in non-environmental contexts such as financial regulation or taxation, materiality is often more readily established because regulatory changes are typically more immediate, clearly defined, and institutionally credible. For example, changes in corporate tax rates or financial reporting standards can be directly incorporated into firm valuations with a high degree of certainty.[86] Climate-related risks, however, depend on the future trajectory of policy, technological change, political

[82] Diller, Matthew et al. "A Major Question for the SEC: Analyzing Constitutional Limits on the SEC's Climate Disclosure Rule." *Fordham Journal of Corporate & Financial Law,* vol. 29, no. 2, 2024, pp.427-501.

[83] Fung, Archon, Mary Graham, and David Weil. *Full Disclosure: The Perils and Promise of Transparency*. Cambridge University Press, 2007.

[84] Strauss, Kalysta A. "Scope 3 Emissions Disclosures for Banks, With or Without the SEC," *North Carolina Banking Institute*, vol. 29, no. 1, 2025, pp.275-306.

[85] Dietz, Simon, et al. "Climate Value at Risk of Global Financial Assets." *Nature Climate Change*, vol. 6, no. 7, 2016, pp. 676–679.

[86] U.S. Securities and Exchange Commission. *Staff Accounting Bulletin No. 99: Materiality*, 13 Aug. 1999.

commitment, and Earth system feedbacks, making these risks inherently more difficult to translate into near-term financial impacts.[87] As a result, financial materiality tends to privilege risks that are already institutionalised within existing regulatory frameworks, reinforcing its reactive character and limiting its capacity to capture forward-looking or systemic climate risks. This suggests that disclosure-led climate governance is not merely limited in scope, but structurally incapable of capturing systemic climate risk without additional regulatory intervention.

These dynamics suggest that disclosure-led governance cannot be understood solely as a mechanism for improving market transparency. It must also be understood as a form of regulatory ordering that defines the relationship between financial regulation and climate governance. Financial materiality serves as the institutional interface through which climate risk enters financial regulation, but it also limits the extent to which disclosure can address systemic climate risk.[88] This does not render disclosure ineffective, but it clarifies its function. Disclosure can facilitate the incorporation of climate risk into financial decision-making where institutional conditions allow such risks to be recognised as financially relevant. However, disclosure alone cannot overcome the structural separation between financial regulation and environmental governance.

VI. Conclusion

This article examined the political contestation surrounding Scope 3 emissions disclosure in the SEC's climate disclosure rulemaking, analysing the limits of disclosure-led climate governance. It argued that financial materiality operates not as a neutral technical standard but as an institutional construct that defines the boundaries of financial regulatory authority. The exclusion of mandatory Scope 3 disclosure did not reflect the irrelevance of value chain emissions to climate risk, but rather the constraints imposed by the legal, institutional, and political framework within which financial regulators operate. Climate risks become subject to disclosure not based on environmental significance but on the ability to be translated into firm-level financial risk within the existing structure of securities regulation.

Climate disclosure contestation must also be understood within the broader shifts in U.S. regulatory politics associated with the return of the Trump administration which emphasised limiting the scope of regulatory authority. This political environment increased the legal and institutional constraints facing financial regulators, reinforcing the need to justify disclosure requirements strictly in terms of traditional investor protection.

These findings have broader implications for understanding the role of financial regulation in climate governance. Disclosure frameworks are frequently presented as mechanisms capable of aligning financial markets with climate objectives by improving transparency and enabling more efficient pricing of climate-related risks. However, this article suggests that disclosure is structurally constrained by the institutional logic of financial regulation. Where climate risks are not supported by regulatory mechanisms that translate environmental harm into financial liability, disclosure alone is insufficient to ensure comprehensive corporate accountability. These findings have implications beyond the United States. As financial regulators worldwide consider expanding climate disclosure frameworks, the SEC rule demonstrates that the scope of such regimes will ultimately depend on institutional mandates and political constraints rather than the scale of climate risk alone. Understanding these institutional constraints is essential for assessing the future role of financial regulation in addressing climate change. This

[87] Bolton, Patrick, and Kacperczyk, Marcin. "Do Investors Care about Carbon Risk?" *Journal of Financial Economics*, vol. 142, no. 2, 2021, pp. 517–549.

[88] Ameli, Nadia, et al. "Climate Finance and Disclosure for Institutional Investors: Why Transparency Is Not Enough." *Climate Change*, Vol. 160, 2020, pp.565-589.

suggests that disclosure-led climate governance is not merely limited in scope, but structurally incapable of capturing systemic climate risk in the absence of additional regulatory intervention. The SEC experience suggests that disclosure-led climate governance cannot overcome the institutional boundaries of financial regulation without broader policy instruments capable of internalising the economic costs of carbon.

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Actor Type	Example Organisations	Position on Scope 3 Disclosure	Main Argument	Underlying Regulatory Interest
Institutional investors	BlackRock, Vanguard, Schroders	Support	Necessary to assess transition risk and portfolio exposure	Portfolio-level risk management and long-term asset valuation
Civil society organisations	Ceres, Climate Action 100+, Carbon Tracker Initiative, Friends of the Earth	Support	Essential for understanding full corporate climate impact	Corporate accountability and systemic climate governance Climate risks not adequately reflected in financial reporting assumptions
Oil & Gas Corporates	Chevron, ExxonMobil	Oppose	Firms lack control over value chain emissions	Limiting firm-level compliance costs and legal liability
Industry associations	American Petroleum Institute, U.S. Chamber of Commerce	Oppose	Exceeds SEC statutory authority and imposes high compliance costs	Prevent expansion of regulatory authority over sector activities
Financial industry groups	SIFMA	Mixed / cautious	Concern over data reliability and comparability	Preserving flexibility within disclosure frameworks

***Table 1**: Stakeholder Positions on Scope 3 Disclosure in SEC Climate Disclosure Consultation*