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What the Volume and Diversity of Comment Letters to the SEC Say About its Climate Proposal

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July 3, 2022

The Securities and Exchange Commission presents its new climate proposal as a modest evolution in its longstanding rules requiring environmental disclosure. While supporters echo that pitch, most recognize the proposal as a large leap beyond the SEC's traditional focus on material financial matters.
Who has the better of it may be inferred from the breadth of comments the SEC's proposal received during the three-month comment period that ended June 17.

By sheer number, the proposal is record setting. The SEC has posted some **14,000** letters it received: These letters come from an astounding array of people and organizations, a far larger and diverse group than SEC rule proposals usually attract.

By comparison, only a handful of the thousands of SEC rule proposals have garnered anywhere near the level of comment letters as this one, and few with the diversity of views. For instance, the SEC's proposal rules on disclosing compensation ratios and political contributions both drew large volumes of form letters (30,000 and 1.2 million!), neither drew as many tailored letters as the climate rule (those drew ~1500 and ~3400 respectively). Notably too, while the climate rule comment period has been open 3 months, those were open far longer: 1 year and 6 years, respectively. Suffice it to say: the climate rule is attracting inordinate attention.

While the SEC simply posts comments as received, with no attempt to classify them, here is a rundown based on my own classification effort:

- **~1,000** substantial substantive letters written by a diverse range of authors who clearly spent dozens to hundreds of hours on each
- **~ 3,000** less detailed but many nuanced and equally impassioned from individual investors not otherwise identifying an affiliation
- **~10,000** following about 30 different form letters that others energized, both for and against (few nuanced).

A breakdown of most of the first category by type illuminates.

Public Companies: **~ 200** different companies of diverse sizes and industries, including not only energy, shipping, and insurance, but consumer goods, e-commerce, foods, music, technology (including a joint letter from 10 titans), telecom, transportation. *Examples: Autodesk, Dell, Exxon, Ecolab, FedEx, HP, Impossible Foods, McCormick, MercadoLibre, Microsoft, NACCO, Ralph Laruen, Salesforce, TELUS, Travelers, Uber, Unilever, Walmart, Warner Music, Wells Fargo, Uber, Uhaul, United Airlines.*

Institutional Investors: **~150** institutions, especially larger ones with a variety of types and strategies, from index funds and public pension funds to asset managers, including numerous impact (social, ESG) investors, and several from outside the U.S. *Examples: AllianceBernstein, BlackRock, Brown Advisory, Capital Group, Dimensional, Fidelity, First Eagle, Longfellow, Soros, State Street, T. Rowe Price, Vanguard, Wellington. Public Pension Funds: California, Colorado, Connecticut, Los Angeles, Minnesota, New York City, New York State, San Francisco, Seattle, Vermont, Washington State. Labor Pension Funds: AFL-CIO, TIAA, UAW.*

Public Intellectuals: **~90** letters from university professors, think tank scholars and other public intellectuals, many with multiple signatories, from fields including accounting, auditing, ecology, economics, energy, environment, finance, law, and physics. *Examples: Universities: BU, Columbia, Colorado, Concordia, Emory, George Mason, GW, Harvard, Houston, Indiana, Miami, NYU, Penn, Pitt, Vanderbilt, Stanford. Think Tanks: AEI, Cato, Center for American Progress, Center for International Environmental Law, Columbia Center for Sustainable Investment, First Amendment Scholars, Heritage, Manhattan Institute, Reason Foundation, Sabin Center for Climate Change Law.*

Industry Trade Associations. **~60** trade associations, representing every artery of industry: aerospace, apparel, aviation, bankers, biotechnology, cattle, coal, coatings, communications, construction, dairy, energy, farming, fertilizer, forestry, grain, gravel, health care, home builders, hospitality, insurance, lubricants, manufacturers, milk producers, minerals, motor equipment, news media, nuclear energy, ocean industries, petroleum, pipelines, plastics, professional services, railroads, real estate, reinsurance, restaurants, retail, semiconductor, shale, small business, solar energy, transport, transit, travel, trucking, vehicle leasing.

Environmental Activists. **~40** environmental activists, many with multiple signatories. *Examples: Amazon, Clean Air Task Force, ClientEarth, Carbon Direct, Carbon Neutral Coalition, CarbonPlan, Carbon Tracker Initiative, Earthjustice, Greenpeace, Green America, The Humane Society, Sierra Club, World Wildlife Fund*

Commercial Trade Groups: **~35** commercial trade groups: at least 20 state farm bureaus, 7 bankers associations; and 5 chambers of commerce.

Elected Officials: **~30** letters from elected officials, many containing multiple signatories. including vying groups of US Senators and Representatives, State Governors, Treasurers, Secretaries of State, and Legislators; local officials from towns or counties; and a few from other agencies (Small Business Administration, EPA).

International: **~30** letters from international or non-US organizations, most based in Canada, but also identifying as based in diverse cities, countries or continents, including Asia, Australia, Brazil, Britain (multiple), Central America, Europe, France (several), Germany, Japan, London (several).

Professional Service Firms: **~20** letters from professional service firms, mainly law and accounting firms. *Examples: All Big Four plus Baker Tilly, BDO, Grant Thornton and Mazars in accounting and in law: Boyden Gray; Davis Polk; Cleary; Dechert; Fenwick & West; Jones Day; Linklaters; Reed Smith; Sullivan & Cromwell.*

Investment Associations: ~ **20** investment associations (managed funds, investment companies, private equity, capital markets, financial education, individual investors, limited partners, shareholder rights, structured finance, swap dealers). *Examples: American Securities Association,*

Professional Associations: **~20** professional associations (accountancy, actuaries, bond lawyers, corporate directors, corporate governance/counsel, in-house financial reporting staffs, internal auditors, investor relations, scientists, small business owners).

Citizen Advocacy: **~20** citizen advocacy groups such as among taxpayers, women, and young people; advocates for racial justice, social justice and environmental justice; as well as powerful groups such as Consumer Reports, the League of Women Voters and Public Citizen.

Religious: **~20** from churches, religious orders or religiously affiliated investors. *Examples: Adrian Dominican Sisters, Episcopal Church, Interfaith Center on Corporate Responsibility, The Maryknoll Sisters, Presbyterian Church, Seventh Generation Interfaith Inc., Unitarian Universalist Association.*

Climate Industry: **~20** from firms offering products and services necessary to support climate risk measurement and management. *Examples: ASTM International, Carbon Direct, Climate Advisers, GHGSat, The Greenhouse Gas Management Institute, LRQA, Morningstar, Persefoni, SCS Global Services, Sweep.*

Notably Absent: I may have missed them, but it surprised me that I did not find letters from the mega investor proxy advisors Glass Lewis or Institutional Shareholder Services. Nor did I find letters from two investment industry powerhouses, Goldman Sachs or JP Morgan, though the SEC did disclose that SEC Chairman Gary Gensler met with representatives from both firms. Another surprise: while Chair Gensler discloses meeting with **~30** organizations, including many companies, environmental advocacy groups, trade associations, and climate industry companies, he only met with one investor (CalPERs).

An administrative rule proposal that attracts 14,000 letter is as rare as hen's teeth. One that attracts views from so many different quarters is unique. Why this one?

To me, it affirms that this is a major question of public policy, not a discrete topic of investor protection. An effort like this requires much more leadership than a handful of Commissioners and a Staff expert in securities regulation.