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The Ceres Report

EXECUTIVE SUMMARY

Over the last two years consumers have become all too familiar with large asset managers, such as BlackRock, using the massive sums of money they control on behalf of others, to enact through corporate boardrooms what is effectively environmental and social policy in the United States. This phenomenon has gone by several names, ESG, stakeholder capitalism, conscientious capitalism, but the strategy is the same -- use the large pools of capital entrusted to the firms, often by state and local pension funds, to push measures that would not pass at the ballot box.

***“What consumers may not be familiar with is Ceres, a globe spanning pressure group that has worked to cajole and coordinate members of the finance industry into pushing harmful, anti-consumer “net zero” targets at every major public company in the country.*”**

What consumers may not be familiar with is Ceres, a globe spanning pressure group that has worked to cajole and coordinate members of the finance industry into pushing harmful, anti-consumer “net zero” targets at every major public company in the country. This seemingly nebulous organization is set to be the center of a broad Congressional investigation

regarding how Ceres helped create, and then leveraged, the investing environment where most Americans’ savings, retirements, and investments are managed by a small group of large asset managers and public pension fund managers. Together, these asset managers have swiftly used their power to shift public companies from their traditional focus of generating returns for their shareholders to a new focus, namely radical, far-left policy goals.

This report details a more than a decade long coordinated effort led by Ceres to assert regulatory influence and organize shareholder activism, all with the goal of mandating climate disclosure that benefits and feeds the ESG investing industrial complex. Whether Ceres focused its attention on direct lobbying or mobilizing shareholder activism at a given time was largely dependent on whether Ceres had a friendly (read: Democratic majority) audience at the Securities and Exchange Commission (SEC). When that was not the case, the group turned to major asset managers and proxy advisory firms to create the illusion of mass demand for climate risk disclosure in the public markets. From 2010 to the present day, all of Ceres’s activities have been geared toward one core goal – to bolster the case for a mandatory, highly regulated ESG investing industry that enriches wealthy asset managers at the expense of consumer choice.

Ceres plays an essential role in mobilizing investment managers to compel the

companies they own to use their resources and shareholder voting power to disclose climate related information such as greenhouse gas emissions and climate transition plans. Ceres has also been essential in advocating for rules at the SEC to mandate this information. The intended goal is to force companies to focus their resources and capital towards serving Ceres' preferred, superfluous "net zero" targets, rather than serving consumers with high quality goods at reasonable prices. This is particularly dangerous for the national economy with respect to energy companies. Because energy is an input to all economic activity, this forced decapitalization could raise prices for all goods and services. Ultimately, such a result would be a major loss to consumers who would lose significant purchasing power and suffer lower returns on their investments.

Ceres's actions have attracted the attention of the House Judiciary Committee, which is now investigating the organization for alleged violations of anti-trust law. A recent letter from Committee Chair Jim Jordan claims that the organization behaves like a "cartel," directing members' policies and investment strategies towards preferred climate-friendly policies, sometimes through the brute force of shareholder activism.

For the first time, thousands of public records obtained by public interest group Government Oversight and Accountability reveal the extent of Ceres's anti-competitive behavior. Since at least 2010, Ceres has led a select cohort of asset managers and activist investors representing trillions of dollars in a decade-long effort to prime the SEC to ultimately mandate climate risk disclosure (CRD). To build its case, Ceres uses its investor networks to create the appearance of mass investor demand for such disclosure, and force disclosure into the market via shareholder activism.

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A byproduct - or, more likely, a goal - of Ceres's efforts is to drive capital away from the American oil and natural gas industry. The New Yorker reports that Michael Liebreich, the founder of Bloomberg New Energy Finance, transparently described this approach as "divestment through value destruction" at Ceres's 2016 Investor Summit on Climate Risk. While this strategy advances the climate agenda of a handful of wealthy asset managers and deep-pocketed funders, it undermines domestic energy security and national security while driving up the cost of energy for consumers who rely on traditional fuel sources to power their vehicles and heat their homes.

BACKGROUND

Who is Ceres?

Ceres is a so called “sustainability” nonprofit organization that works with investors and companies to lead sustainability campaigns. Ceres was created in response to the Exxon Valdez oil spill in 1989 by a group of investors and environmentalists who intended to shift Exxon and the oil industry as a whole towards renewable energy development – a strong indicator of where the group would later focus the bulk of its attention. Led by Joan Bavaria, their mission as an organization was to re-evaluate the role and responsibility of companies as stewards of the environment and agents of economic and social change.

In its first two decades in existence, Ceres focused on rallying companies around commitments to turn their focus towards “green growth” and promote environmental policies in their own interest. The organization also began to rank companies that committed to these ideals, providing an arbitrary framework for investors and the general public to project their ideological opinions on.¹

Since its founding, Ceres has grown into a sprawling organization more akin to a trade association or a supranational institution than an NGO. Today, Ceres primarily operates through its various networks, including:

Investor Network on Climate Risk (“Ceres Investor Network” and “INCR”)

- Launched at the first Institutional Investor Summit on climate-related risks at the UN in 2003, INCR is an overarching network of businesses, environmental groups, investors, financial institutions, and asset managers. Within INCR, there are collaborations that work to coordinate emissions reductions among different groups. For instance, the Net Zero Asset

Managers Initiative is comprised of asset managers pledging emission reductions, while Climate Action 100+ includes a wider range of investors.²

- According to the Climate Initiatives Project, INCR has several working groups: INCR Policy Working Group, 21st Century Investor working group, **Carbon Asset Risk Working Group**, SEC/ Disclosure Working Group, Investor Initiative for Sustainable Exchanges Working Group, Integrated Reporting Working Group, Investment Consultants Working Group, Investor Water Working Group, and **Shareholder Initiative on Climate and Sustainability** (SICS).³
- INCR represents the North American investors in the Global Investor Coalition on Climate Change. GIC coordinates investors to engage on climate issues with key international organizations such as: the United Nations, the G20, the World Bank and IFC.⁴

Ceres Company Network

- The Ceres Company Network is a collaboration of major corporations that have committed to reducing carbon emissions, among other environmental measures. By developing a large group of corporations committed to the same goal, the network creates a forum for companies to collectively pursue social issues.⁵
- The Ceres Company Network consists of 52 different companies, including Target, Walt Disney, State Street, Nike, Bloomberg, Ben & Jerry’s, Bank of America, Hershey’s, and others that have been criticized for pursuing “woke” goals over profit.⁶

¹ <https://www.greenbiz.com/article/ceres-releases-first-ever-ranking-100-global-companies-climate-change-strategy>

² <https://www.ceres.org/networks/ceres-investor-network>

³ [https://climateinitiativesplatform.org/index.php/Investor_Network_on_Climate_Risk_\(INCR\)](https://climateinitiativesplatform.org/index.php/Investor_Network_on_Climate_Risk_(INCR))

⁴ [https://climateinitiativesplatform.org/index.php/Global_Investor_Coalition_on_Climate_Change_\(GIC\)#:-:text=The%20GIC%20collaborates%20and%20coordinates,and%20a%20number%20of%20NGOs.](https://climateinitiativesplatform.org/index.php/Global_Investor_Coalition_on_Climate_Change_(GIC)#:-:text=The%20GIC%20collaborates%20and%20coordinates,and%20a%20number%20of%20NGOs.)

⁵ <https://www.ceres.org/networks/ceres-company-network>

⁶ <https://www.foxnews.com/opinion/these-51-big-businesses-target-conservatives-heres-what-you-can-do-stop-them>

Ceres Policy Network

- The Business for Innovative Climate and Energy Policy (BICEP) is comprised of over 75+ companies that advocate for climate-related policies at the state and federal level. BICEP has four working groups, including: the Energy and Optimization Workgroup, the Climate-Smart Agriculture and Healthy Soil Working Group, the Corporate Electric Vehicle Alliance, and the Environmental and Climate Justice Policy Working Group.⁷
- BICEP gives its members “tools and knowledge” to engage with federal and state policymakers on energy and climate policies. Since its inception in 2009, the group has advocated for carbon prices, remaining in the Paris Agreement, former President Obama’s Climate Action Plan, numerous tax credits for different forms of renewable energy, mandatory corporate climate disclosure, to name a few. Notably, the group’s policy advocacy has exponentially increased in recent years.⁸

Climate Action 100+

- Launched in December 2017 at the One Planet Summit, Climate Action 100+ is an investor initiative to ensure the world’s largest corporate greenhouse gas emitters take action on climate change. Each year, Climate Action 100+ identifies approximately 100 “systemically important emitters,” accounting for two-thirds of annual global industrial emissions, alongside dozens more that the group has deemed significant players in the energy transition. The initiative is designed to implement the investor commitment first set out in the Global Investor Statement on Climate Change in the months leading up to the adoption of the Paris Agreement in 2015.⁹

- Ceres is a founding member of Climate Action 100+ and holds a permanent seat on the group’s steering committee. As the investor representative for North America, Ceres encourages members of its INCR group to join Climate Action 100+ and is responsible for the group’s shareholder activism and engagement efforts with North American companies.
- Climate Action 100+ has faced increased scrutiny from 21 attorneys general for allegations of collusion and anticompetitive behavior geared towards decapitalizing specific industries.¹⁰ The House Judiciary Committee has subpoenaed Ceres due to its inability to produce documents that were requested by the committee beginning in December 2022, including information related to Climate Action 100+ activity.¹¹

Net Zero Asset Managers Initiative (NZAM)

- The Net Zero Asset Managers Initiative (NZAM) consists of a group of global asset managers that support the goal of net-zero greenhouse gas emissions by 2050. Ceres is a founding partner of the organization, which includes 128 signatures with \$43 trillion in assets under management (AUM). BlackRock and State Street are also a part of the initiative.¹²
- Scrutiny of NZAM has consistently been tied to that of Climate Action 100+, with the same 21 attorneys general alleging that the group is hampering economic growth.

FUNDING

Ceres receives funding from groups that have traditionally funded climate advocacy, divestment, and anti-energy initiatives, including the Grantham Foundation, the V. Kann Rasmussen Foundation, The Rockefeller Brothers Fund, and the Energy Foundation. These groups’

7 <https://www.ceres.org/networks/ceres-policy-network>

8 https://www.ceres.org/sites/default/files/BICEP_PolicyPositions_2009_Present_v1_Apr22.pdf

9 <https://www.ceres.org/climate/climate-action-100>

10 <https://www.foxnews.com/politics/21-states-threaten-banks-legal-action-woke-policies-stay-your-lane>

11 <https://judiciary.house.gov/media/in-the-news/exclusive-jim-jordan-subpoenas-woke-esg-cartel-company#:~:text=Jim%20Jordan%20sent%20a%20subpoena.to%20Ceres%20CEO%20Mindy%20Lubber>

12 <https://www.ceres.org/climate/net-zero-asset-managers-initiative>

support of Ceres plays into their broader goal of crippling the American energy industry, creating an aligned base for achieving their extreme goals unbeknownst to the unassuming public.

While Rockefeller-funded philanthropies began flowing dollars towards Ceres in 2004, the group has also received funding from major corporate partners. In 2018, Ceres received funding from a number of financial institutions, including Bank of America, Citigroup, Ford Motor Company, General Motors, Goldman Sachs, Google, and Morgan Stanley.¹³

CERES'S POLICY ADVOCACY

Ceres at the Start of Climate Risk Disclosure

In 2010, the SEC issued its first guidance to investors on how to disclose climate-related risks.¹⁴ While the guidance did not prescribe specific actions, it noted that companies have an obligation to disclose to investors material risks associated with climate change. The commissioners at the time were Mary L. Schapiro (I-Chair), Kathleen Casey (R), Troy Paredes (R), Elise Walter (D), and Luis Aguilar (D).

SEC Chair Mary Schapiro was a key target of Ceres's advocacy. After she was confirmed as Chair in 2009, Schapiro quickly presided over the SEC's approval of the 2010 climate guidance. After she left the SEC in 2012, Schapiro continued to champion climate disclosure in the private sector through leadership roles at the Taskforce for Climate-Related Financial Disclosure, the Sustainability Accounting Standards Board, and Bloomberg, LP.

During Schapiro's tenure as Chair, it looked like new limits on greenhouse gas emissions may be soon imposed by the Environmental Protection Agency (EPA) via the Clean Power Plan, and consequently, investors should be notified if a company would suffer a material loss from such a

policy shift. Sweeping climate policy never came to pass, yet climate disclosure remained on the agenda.

The landmark 2010 guidance made the case that Item 303 in the Commission's code requires registrants to "disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance," including climate-related factors such as physical impacts of flooding, direct and indirect impacts of legislation and regulation, and international accords.

The Commission did not recommend or mandate any new climate-related disclosure at the time; rather, it reminded "companies of their obligations under existing federal securities laws and regulations to consider climate change and its consequences."¹⁵ If the SEC launched enforcement actions related to the 2010 guidance, it would have sent a strong market signal to companies to move to disclose more climate information and ultimately ease the path for a more stringent SEC rulemaking.

Despite the significant role Ceres played in designing and advocating for the guidance, the organization was cited just **once** in the document. In a footnote referencing petitions pushing for climate-related disclosures, the 2010 guidance notes that while it was not a formal petition, Ceres (in partnership with the Environmental Defense Fund) conducted a study that recommended the commission issue guidance on GHG disclosures. However, that one footnote significantly understates Ceres's involvement in securing climate guidance.

In fact, Ceres's own website states that the group "mobilized investors to successfully petition the SEC to issue the first-ever guidance on mandatory corporate

¹³ <https://www.ceres.org/about-us>

¹⁴ <https://www.sec.gov/rules/interp/2010/33-9106.pdf>

¹⁵ <https://www.federalregister.gov/documents/2010/02/08/2010-2602/commission-guidance-regarding-disclosure-related-to-climate-change>

reporting of material climate risks.”¹⁶ The Environmental Defense Fund’s website also claims, “Ceres and the Environmental Defense Fund requested formal guidance in a petition filed with the Commission in 2007, and supported by supplemental petitions filed in 2008 and 2009.”¹⁷

Public records obtained through Freedom of Information Act requests shine more light on the extent of Ceres’s involvement in advancing the 2010 guidance. On September 21, 2012, Ceres’s Siobhan Collins emailed New York Attorney General Michael Myers “to join Ceres staff on Tuesday, October 23, 2012 at two INCR meetings with SEC Commissioners Aguilar and Walter at the US Securities and Exchange Commission in Washington, DC”¹⁸ Collins wrote that the meetings would focus on “SEC comment letters, plus climate risks related to oil and gas and water.” Collins also planned to lock in meetings with Chari Schapiro and staff in the SEC’s Division of Corporate Finance. In her email invitation, Collins further added color on the purpose of the meetings:

“The purpose of these meetings is to discuss the state of climate change-related disclosure in SEC filings. As a reminder, **INCR members were the key driver in encouraging the SEC to issue its groundbreaking guidance on climate change disclosure in 2010**, and it’s important for the SEC to hear from investors – in person – about the need for the Commission to better implement its guidance.”

Collins’ characterization that Ceres, its INCR group, and the New York Attorney General represent “investors” writ large is an important tactic that Ceres and their allies reproduce time and time again to push for SEC action on climate.

¹⁶ <https://www.ceres.org/about-us>

¹⁷ <https://www.edf.org/news/sec-issues-ground-breaking-guidance-requiring-corporate-disclosure-material-climate-change-risk>

¹⁸ <https://govoversight.org/wp-content/uploads/2022/05/NY-OAG-Ceres-et-al-records-re-SEC-Climate-Risk-Disclosure.pdf>

However, the SEC’s mission of protecting investors and promoting efficient capital formation was not conceived in the current era of asset manager concentration and was designed to ensure everyday Americans, the retail investors whose assets are now largely managed by large funds, are protected and have the information they need to make wise investments.

In a separate email several years later, in 2016, Ceres’s Rob Berridge also claimed credit for the group’s role in authorizing the 2010 guidance. In an email to the INCR subgroup SICS regarding a Congressional effort to limit the SEC’s ability to require climate disclosure, Berridge wrote:¹⁹

“Last week the House of Representatives passed an amendment to the Financial Services Spending bill (which then passed the House) that would bar the SEC from enforcing its 2010 climate risk disclosure guidance, **guidance that Ceres helped to write and get implemented**. [...] Many of us have been working hard in recent years to ensure that the SEC properly enforce that guidance – but this is an altogether different issue.”

As Berridge admits, during the 2010-2016 period, Ceres members did work hard to try and transform the 2010 guidance into a more prescriptive mandate. Over the course of several years, Ceres capitalized on a Democratic-majority Commission and developed inroads with tenured SEC staff members – up until the 2016 election, when a change in administration forced Ceres and its allies to lean heavily into shareholder activism.

2010-2014 SEC LOBBYING EFFORT

After Ceres’s INCR group succeeded in driving the SEC to issue its 2010 guidance, it continued to lobby the Commission on more prescriptive climate risk disclosure,

¹⁹ https://govoversight.org/wp-content/uploads/2023/06/VT-Treas-production-SICS-Google-Groups-request-TRE_11.18.16.pdf

and discussed these lobbying efforts explicitly in an closed Google group.²⁰

Ceres also continued to focus its attention on Commissioners Aguilar and Walter, who were clearly willing to play ball with Ceres on climate disclosure. According to a meeting readout distributed to INCR Google group members via email, on October 23, 2012, Ceres’s INCR group convened a meeting with the two target SEC Commissioners to discuss climate risk disclosure.²¹

Meeting attendees included representatives from Ceres, Rockefeller Financial Asset Management, CalPERS, Trillium Asset Management, BlackRock, the New York Attorney General’s office, and Maryland’s state pension system. Goals for the meeting with Commissioner Aguilar included to “demonstrate our continued interest in improving climate disclosure in SEC filings” and “**position Ceres and INCR members as an ongoing resource for the SEC on climate disclosure.**”

The same emails included an internal agenda for the meeting with SEC Commissioner Walter stating the meeting’s objectives were to “**position Ceres and INCR members as an ongoing resource for the SEC on climate disclosure**” and “**make the case for materiality** of key oil and gas climate disclosure issues.”²²

Additionally, a memo titled “Recommendations for SEC Actions to Improve Climate Risk Disclosure” created as follow-up collateral for the meetings with SEC Commissioners Aguilar and Walter included a recommendation to “**provide Ceres/Bloomberg training to Corporation Finance staff on researching climate risk data.**”²³ Whether or not that training took place would be a question

for former SEC Chair Mary Schapiro, who joined Bloomberg LP in 2018.

Following the meetings in October 2012, Ceres’s Jim Coburn wrote to the meeting attendees:²⁴

“We learned a lot about how to influence SEC staff to improve climate disclosure.

... I look forward to hearing your views on our best strategies to influence the commission.”

As evidenced by the agenda for the meeting with Commissioner Walter, making the case for the materiality of climate disclosure was a key concern for Ceres, and the question of when and if climate-related factors can be considered material under the SEC’s traditional legal framework continues to plague the Commission today. On June 25, 2013, Ceres’s Erica Scham emailed SEC Commissioner Aguilar a letter “regarding the increasing materiality of climate change.” Ceres wrote:²⁵

“We ask that the Commission devote greater attention to this issue, in accordance with the Guidance, as it reviews companies’ financial filings, such as by issuing comment letters to companies.”

But as Erica Scham’s letter indicated, Ceres’s SEC lobbying was not limited to general advocacy around materiality and disclosure regimes. Throughout 2013 and 2014, Ceres was in frequent contact with the SEC regarding **specific companies’ financial filings**, primarily communicating through **Jim Coburn**. On multiple occasions, Ceres sent reports of corporations’ climate change-related disclosures to the commission – often under embargo – and suggested that the information could be helpful “as the Commission works to improve reporting in this and other areas.”²⁶

20 <https://eelegal.org/ee-legal-letters-issue-xiv-state-city-investment-officers-the-next-stop-for-climate-change-industry-divestment-through-value-destruction-campaign/>

21 <https://govoversight.org/wp-content/uploads/2022/05/NY-OAG-Ceres-et-al-records-re-SEC-Climate-Risk-Disclosure.pdf>

22 <https://govoversight.org/wp-content/uploads/2022/05/NY-OAG-Ceres-et-al-records-re-SEC-Climate-Risk-Disclosure.pdf>

23 <https://govoversight.org/wp-content/uploads/2023/01/CRD-ESG-Origins-Summary-Images.pdf>

24 <https://govoversight.org/wp-content/uploads/2022/05/NY-OAG-Ceres-et-al-records-re-SEC-Climate-Risk-Disclosure.pdf>

25 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00002878.pdf>

26 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00002878.pdf>

Ceres also contacted the SEC regarding companies' disclosures that Ceres deemed inadequate. More often than not, the target companies were traditional energy companies. On January 13, 2013, Ceres's Jim Coburn sent the Environmental Defense Fund's Vicki Patton a draft INCR sign-on letter to the SEC regarding increased climate disclosure at Tesoro Corporation.²⁷

Coburn wrote, "**This letter is part of a Ceres strategy of sending letters to the SEC highlighting inadequate climate disclosure** in 10-K filings, in order to encourage Corporation Finance attorneys to include climate disclosure more often in the comment letters they regularly send to companies. The first letter in this series concerned Chevron."

On another occasion, on May 31, 2013, Jim Coburn emailed SEC staff to specifically discuss ExxonMobil's climate change-related disclosures:²⁸

"I am writing with information on the lack of disclosure of potentially material issues in ExxonMobil Corporation's latest 10-K filing, in order to encourage your office to communicate with the company about improving their disclosure."

By 2014, Ceres was in frequent communication with SEC Commissioners and staff. On April 3, 2014, longtime SEC staff member Shelley Parratt mentioned the extent of her communication with Ceres to a colleague:²⁹

Parratt wrote, "Just so you know, **we are in frequent contact with Ceres - I meet with Jim Coburn several times a year.**"

ENGAGING STATE FINANCIAL OFFICIALS

A core element of Ceres's strategy was **mobilizing left-leaning state treasurers to support climate-related shareholder resolutions** and meet with the SEC on climate disclosure at the same time.

This strategy was particularly essential for Ceres to build the case for the materiality of climate-related disclosures to the SEC. On June 3, 2015, Jim Coburn described the approach to officials from the Vermont Treasurer's office:³⁰

"I ask because I think different messengers may be more effective with different staff members at the SEC. Investors, attorneys, accountants, investment staff at college/university endowments and **anyone who understands the SEC's sharp focus on the legal definition of materiality** would be helpful for meetings with staff in the Division of Corporation Finance. A broader spectrum of delegates may be more effective for meetings with friendly commissioners like Kara Stein."

Given that the SEC's definition of materiality is broad and **can rely on investor demand rather than hard data**, Ceres aimed to utilize sympathetic public pension fund managers to build a case that climate disclosures were material. Democratic states would prove to be essential allies in **manufacturing "investor demand" on multiple fronts.**

Around the same time, Ceres was mobilizing state treasurers and other state financial officers to support climate disclosure through a different channel - shareholder activism. Ceres primarily used its SICS group, a subgroup of the INCR group, for this effort.³¹ The SICS group was not limited to private sector actors; rather, emails show that representatives from

27 <https://govoversight.org/wp-content/uploads/2022/05/NY-OAG-Ceres-et-al-records-re-SEC-Climate-Risk-Disclosure.pdf>

28 <https://govoversight.org/wp-content/uploads/2023/06/Coburn-to-SEC-re-XOM-10k-Copy.pdf>

29 <https://govoversight.org/wp-content/uploads/2022/05/NY-OAG-Ceres-et-al-records-re-SEC-Climate-Risk-Disclosure.pdf>

30 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003206.pdf>

31 <https://eelegal.org/ee-legal-letters-issue-xiv-state-city-investment-officers-the-next-stop-for-climate-change-industry-divestment-through-value-destruction-campaign/>

the New York State and City Comptroller Office, various state treasurer offices including Vermont, Connecticut, Rhode Island, and Pennsylvania; state and city pension funds; and other **government officials were participants in the group.**³²

Google group emails between members of the SICS group display members boasting that “environmental, social, and governance considerations now affect \$8.72 trillion in professional management.”

Additionally, an email by Mark Kresowik, Director of the Sierra Club’s Bloomberg-funded “Beyond Coal Campaign” to the group states that the **ESG ecosystem built by groups such as the Rockefeller Fund, the NY OAG, Friends of the Earth, and the Interfaith Center on Corporate Responsibility** “prompted the banks to set up the infrastructure and insights today to understand both the climate risks related to an industry in decline.”³³

Again, Ceres’s SICS group focused the bulk of its shareholder pressure on traditional energy companies, and tapped in state financial officials to support the pressure campaign, describing select companies as “good food” for state pension funds’ activism. On August 28, 2015, Ceres’s Shanna Cleveland sent an email titled “September 4th and Engagement for 2016” to Tom Lueders-Dumont of the Vermont State Treasurer’s office.³⁴ Cleveland’s email noted that Ceres was following up on Vermont Treasurer Pearce’s “idea to reach out to a few additional **state treasurers to join in a meeting so that we can get the [SEC] Chair’s attention.**” The email outlined Ceres’s advocacy agenda on both the regulatory and shareholder activism fronts, and outlined the prominent role the Vermont Treasurer’s office would play going forward:

32 https://govoversight.org/wp-content/uploads/2023/06/VT-Treas-production-SICS-Google-Groups-request-TRE_11.18.16.pdf

33 <https://govoversight.org/wp-content/uploads/2023/01/CRD-ESG-Origins-Summary-Images.pdf>

34 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003089.pdf>

Cleveland wrote, “We are planning to focus more strategically on a few resolutions and few companies this year and would be able to provide support in terms of filing the resolutions and executing a coordinated communications plan around the resolutions and company engagements. **Companies that we were thinking might be a particularly good food for VT** would include ExxonMobil (here you could co-file with Tri-State Coalition and As You Sow who are planning to lead on Exec Comp) or you could be the lead filer on the CAR resolution; ConocoPhillips (you could co-file with UUA or lead file on Carbon Asset Risk); and/or Anadarko (you could co-file on either Exec Comp or CAR).

An internal email sent on September 5, 2015, from Vermont Treasury Investments Manager Katie Green to Treasurer Beth Pierce and State Treasury official Tim Lueders-Dumont showcased the extent of Vermont’s shareholder activism efforts, which were almost entirely focused on energy companies. The list of shareholder activities included “TRE meets with INCR members to create a work plan for the 2016 proxy season,” “TRE meets with ISS to discuss policy on Environmental resolutions and how we can get their support on re: Exxon,” and “call with Exxon to discuss questions regarding transparency.”³⁵

Following up on Treasurer Pearce’s suggestion to rally additional state financial officials, in September 2015, Ceres’s Shanna Cleveland tried to recruit state treasury officials from Vermont, Connecticut, Rhode Island, Maryland, and Massachusetts to join Ceres for a meeting on climate disclosure with SEC Commissioner Stein. But Vermont still seemed to be out front – of the public sector officials invited, only Vermont Treasurer Pearce and her staff were able to attend. Following the meetings, on

35 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003077.pdf>

September 21, 2015, Cleveland wrote to Vermont state treasury officials:³⁶

“We had terrific meetings with Commissioner Stein, Commissioner Aguilar, and Shelley Parratt from the Division of Corporate Finance. I’ve also received a response from [Rhode Island] Treasurer Magaziner indicating that he would like to be involved in further outreach to the SEC. I’d be happy to provide you with a debrief of the meeting via phone, and we are very interested in pursuing the idea of having a group of treasurers working as a coalition on this issue. Do you think you would be interested in helping to shape and lead that group?”

A year later, Vermont Treasurer Pearce was still the main public face representing state financial officials in climate disclosure conversations with the SEC. On September 16th, 2016, a familiar cohort – Vermont Treasurer Pearce, an equity analyst from Rockefeller and Co., Ceres’s Jim Coburn, and Ceres’s Shanna Cleveland – met with “friendly” SEC Commissioner Kara Stein to discuss “improving carbon asset risk disclosure in SEC filings” and “improving climate-change related disclosure in SEC filings.”³⁷

What did Vermont get in exchange for being Ceres’s main surrogate for climate disclosure advocacy? An invoice from Ceres for thousands of dollars. Emails show that **the taxpayers of Vermont were actually paying Ceres** to be a surrogate for Ceres’s agenda in front of regulators – an invoice sent from Ceres, and internal correspondence among officials in the State Treasurer’s Office, shows that the office paid Ceres \$2,000 in 2015 INCR membership dues.³⁸

PRIVATE ACTORS CAPITALIZE ON INCR NETWORK

Other members of the INCR network appeared to be using the relationships Ceres brokered with state financial officials for financial gain. In 2014, Ceres INCR member BlackRock and eNGO Natural Resources Defense Council (NRDC) partnered to launch a series of index funds that exclude companies that produce energy made from legacy fuel sources.³⁹ NRDC invested \$66 million of its own funds into the anti-energy index, further proving allegiance to the movement being propagated by their web of eNGO colleagues.

Public records obtained by *E&E Legal* show that NRDC pitched public officials, including state comptrollers and public pension fund investment managers, on the BlackRock-NRDC fund. NRDC focused its efforts particularly on the New York State Comptroller’s office, which manages the state pension fund and other state government assets.⁴⁰ At the time, the state pension fund was led by Thomas DiNapoli, a long-term public official who headed the New York Comptroller’s office for over a decade. DiNapoli also happened to be appointed to the Ceres Board of Directors in 2011, a position he still holds.⁴¹

On May 26, 2015, NRDC’s Peter Lehner sent a lengthy email to John Stouffer, an official from the Office of the State Comptroller, offering to “raise divestment” with the office and simultaneously make a pitch for the BlackRock-NRDC fund. Lehner wrote, “... if a hundred organizations all invest in the same fund, it shows a unified commitment to ceasing support for the companies that are destroying our earth while enjoying governmental protection from the consequences of their actions.”

36 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003037.pdf>

37 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00002880.pdf>

38 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003295.pdf>

39 <https://www.nrdc.org/press-releases/nrdc-blackrock-and-ftse-jump-start-mainstream-climate-conscious-investing>

40 <https://www.ceres.org/about-us/board-directors/thomas-p-dinapoli>

41 https://www.osc.state.ny.us/files/press/pdf/climate-change-fact-sheet_0.pdf

Before he met with Lehner to discuss the pitch, Stouffer emailed an attorney for the Comptroller's office and laid bare how the index funds' supporters planned to capitalize on the divestment movement to move funds into ESG products:

"NRDC, as you probably know is an environmental advocacy group. They want to discuss divestment of fossil fuel stocks, but also an investment in a fossil free index developed by FTSE and BlackRock. We want to make sure this meeting comports with OSC, State and federal policy."

The Comptroller's attorneys were concerned about when nonprofit groups start "pitching a particular fund or manager or try to bring us to a specific investment opportunity to create some sort of critical mass, we could have an issue under our placement agent policy, not in the sense of a payment to the NRDC (which seems unlikely) but potentially the 'other benefit' they seek for their policy agenda...

particular companies cannot be the subject of a 'pitch' by advocates or other not for profits."⁴² The attorney followed up again on the same message, saying "Also since they are not registered investment advisors they should not be providing advice on specific investments. **If discussion of BlackRock was the main purpose of the meeting then we should probably cancel.**"

Additional public records show how intertwined Ceres was with the DiNapoli's office around the time NRDC and BlackRock were pushing the Comptroller's office to invest in the anti-energy fund. Leading up to the COP21, a Ceres employee reached out to the Comptroller's office and worked with staffers to help secure press for DiNapoli at the conference in Paris, where DiNapoli received a significant volume of media attention and high praise for his commitment to divest the state

⁴² <https://eelegal.org/ee-legal-letters-issue-xiv-state-city-investment-officers-the-next-stop-for-climate-change-industry-divestment-through-value-destruction-campaign/>

pension fund "from the riskiest oil and gas companies by 2025."^{43, 44}

SHIFT TO SHAREHOLDER ACTIVISM

Starting with efforts to mobilize progressive state treasurers in their role as shareholders, leading up to and during the Trump administration Ceres ramped up the use of the INCR SICS group to secure climate shareholder proposals on the agenda for upcoming proxy seasons. Given a less friendly and accessible SEC, **this strategy functioned to surrogate climate disclosure into the market via shareholder activism and create the illusion of vast investor demand** for climate-related information.

On September 2, 2015, an email from Ceres's Shanna Cleveland recapping the INCR Carbon Asset Risk Working Group call said that the group had shareholder resolution filers lined up for 10-15 Carbon Asset Risk (CAR) resolutions.⁴⁵ Cleveland revealed that Ceres's strategy also encompassed a public affairs push to bolster the case for climate risk disclosure:

"This year we will be **organizing a much more coordinated public narrative** to support the resolutions and use them to illustrate the key messages of the carbon asset risk initiative."

Ceres used the INCR, CAR, and SICS subgroups to identify target companies for shareholder activism, draft the shareholder resolutions themselves, and put out open calls to members to "claim" the "targets." On September 8, 2015, Ceres sent an email titled "Re: 2016 Utility Reso Coordinating Call at 1pm ET today" to representatives from the **Connecticut government, As You Sow, CalPERS, the NY Comptroller's office**, and others to discuss draft shareholder resolutions at utilities.⁴⁶ And on September 21, 2015, Shanna

⁴³ <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0009-00005513.png>

⁴⁴ <https://www.responsible-investor.com/new-york-state-pension-fund-to-decarbonise-by-2040/>

⁴⁵ <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003085.pdf>

⁴⁶ <https://govoversight.org/?s=F03964-E0008-00003035>

Cleveland, an employee at Ceres wrote: “Companies that we view as **particularly good targets for the CAR 2.0 resolution** that have not been claimed yet include: ExxonMobil, Chevron, ConocoPhillips, Anadarko, Marathon Oil, Devon.”⁴⁷

Ceres held at least two SICS strategy meetings on July 14, 2016, and October 20, 2016, where the subgroup discussed how to divide and conquer “targets.” The strategy meetings included participants from As You Sow, Ceres, CalSTRS, the Vermont Treasurer’s Office, the Connecticut Treasurer’s Office, Rockefeller Capital Management (Rockefeller & Co.), and the New York City Comptroller’s Office, among others. Goals for the fall strategy meeting included to “**coordinate and determine roles and tactics for the 2017 proxy season focusing on climate-related shareholder resolutions**” and to “share and discuss resources for the 2017 proxy season.”⁴⁸

At the same time Ceres was attempting to force “target” companies to disclose climate-related information through shareholder proposals, it was simultaneously encouraging the SEC to pay closer attention to filings by companies and industries pre-selected by the SICS group.

On June 21, 2016 Ceres’s Rob Berridge emailed the SICS group announcing that 41 members of Ceres INCR and “other international institutional investors” sent a letter to the SEC “urging the commission to prioritize improving climate risk disclosure in financial filings” by U.S. listed companies, specifically, the companies and sectors identified as SICS group “targets”.⁴⁹

“In the context of the increasing materiality of climate risk to multiple sectors, this letter asks the SEC to

closely scrutinize filings by oil and gas, electric power and insurance companies, and to issue comment letters when filings fail to discuss with meaningful specificity the material risks and impacts of climate change and related matters to their businesses.”

On occasion, the SICS group resorted to even more hardball strategies to move capital away from energy companies. On March 21, 2016, commenting on a *New York Times* article regarding bank financing of coal, Sierra Club’s Mark Kresowik wrote to SICS group members, “**one of the most important steps to get here involved replacing one of the ESG staff at JPMorgan Chase, although I’m not going to go into that particular strategy in writing...**”⁵⁰

LOBBYING THE PROXIES

It wasn’t enough to just get resolutions on companies’ proxy ballots. In order to support the proxy campaign, Ceres also focused its lobbying and advocacy efforts on the proxy advisory firms, Institutional Shareholder Services (ISS) and Glass Lewis. These two proxy firms control an overwhelming majority of the advisory space – roughly 97 percent – and serve to administer shareholder voting recommendations for products such as passive funds. The proxy firms are significant to Ceres’s activism due to investors’ extreme adherence to the firms’ – and particularly ISS’s – voting recommendations. Investors vote with ISS’s recommendation at astounding rate of 95 percent based off of data gathered from 175 asset managers managing over \$5 trillion in assets.⁵¹

Combining both traditional shareholder activism and efforts to lobby the proxy advisors, Ceres and SICS group participants honed in their efforts on a greenhouse gas goals shareholder resolution filed with ExxonMobil by the Vermont

47 <https://govoversight.org/?s=F03964-F0008-00003035>

48 https://govoversight.org/wp-content/uploads/2023/06/VT-Treas-production-SICS-Google-Groups-request-TRE_11.18.16.pdf

49 https://govoversight.org/wp-content/uploads/2023/06/VT-Treas-production-SICS-Google-Groups-request-TRE_11.18.16.pdf

50 <https://eelegal.org/ee-legal-letters-issue-xiv-state-city-investment-officers-the-next-stop-for-climate-change-industry-divestment-through-value-destruction-campaign/>

51 <https://www.sec.gov/comments/4-725/4725-5006855-182897.pdf>

Treasurer's office.⁵² On July 15, 2015, Mary Beth Gallagher of the Tri-State Coalition for Responsible Investment, an interfaith investment group, emailed representatives from Ceres, the Vermont Treasurer's office, Boston Trust Walden, and others asset managers.⁵³

"We spoke with ISS about the Exxon Mobil GHG goals resolution today. It was a productive conversation and they were open to hearing our position on it."

Gallagher also shared talking points for the group on the specific shareholder proposal at issue for use in discussions with ISS. She suggested that the group consider either **joint or individual letters to ISS encouraging the proxy firm to vote in favor of the ExxonMobil GHG goals resolution**, and suggested SICS group members use talking points in discussion with ISS that emphasized materiality.⁵⁴

"Make a nuanced recommendation: 'If you believe climate risk is relevant to shareholder value and/or a 2 degree scenario is likely, support this resolution, if not, vote against.'"

In her response to Gallagher, Katie Green of the Vermont Treasurer's office thanked Gallagher for the talking points and said that the Vermont Treasurer's office would stick to the suggested messaging in their upcoming meeting with ISS. Green said to Gallagher, "you are much more up to date on the Exxon reporting and ISS policy than we are."⁵⁵

On July 24, 2015, an official from the Vermont State Treasurer's office emailed Cleveland to request a call with Ceres to "talk about dates for meetings with the SEC, **continued pressure on ISS**, and plans for the upcoming year all in one call."⁵⁶ The

following month, Shanna Cleveland from Ceres thanked members of the SICS group for "agreeing to join **this sub-group to work on engaging ISS** to improve their recommendations and policies with respect to climate resolutions."⁵⁷

Ultimately, ISS decided not to support the ExxonMobil GHG goals resolution. In an August 12, 2015, email from Vermont Treasury official Katie Green to Ceres's Shanna Cleveland, Green thanked Cleveland for writing the letter to ISS and that "**we feel it is very important they understand our disappointment** in their decision not support the Exxon resolution."⁵⁸

Ceres's INCR SICS group was unimpressed with ISS and ramped up pressure on the proxy advisory firm, encouraging ISS to evaluate climate-related factors in a manner favorable to the SICS group's shareholder proposals. Timothy Smith of Boston Trust Walden, a core activist investor and SICS group member, authored a letter to ISS asking several questions about ISS's climate research and advisory methodology.⁵⁹

Smith wrote, "As you know your recommendations re: ExxonMobil and Chevron raised concerns that have been discussed at several meetings and phone calls of investors... We need to understand better how ISS follows and analyzes climate research."

Smith made several inquiries to ISS, asking, "What are the major sources of climate research that is used by ISS analysts?", "Does ISS reach out and talk to key groups on climate whether environmental groups, Ceres, etc.?", "Would it be helpful for ISS clients to share research they believe is important in their own climate deliberations with ISS?". On July 31, 2015, Smith forwarded the ISS letter to select SICS group members, including Mercy Investments, the Vermont

52 <https://www.pollutiononline.com/doc/state-treasurer-and-vcip-urge-exxonmobil-greenhouse-gas-emission-reduction-goals-0001>

53 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003216-00001.pdf>

54 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003216-00001.pdf>

55 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003216-00001.pdf>

56 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003325.pdf>

57 <https://govoversight.org/?s=F03964-E0008-2>

58 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003133.pdf>

59 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003192.pdf>

Treasurer's office, and the Tri-State Coalition for Responsible Investment. In response, Ceres's Shanna Cleveland thanked Smith and looped in Pam Bartol from the Connecticut Treasurer's office, "as she indicated that Connecticut is interested in engaging with ISS as well."⁶⁰

On August 7, 2015, Smith followed up with the select SICS group and recapped a "half hour call with ISS Head of Global Content, Rich Reynics."⁶¹ Smith said, "It was a respectful airing of issues. Walden is a client." The ISS representative told Smith how the firm planned to handle clients' dissatisfaction with its decision not to back the Exxon GHG goals resolution:

"On Exxon vote he noted there would be individual meetings. **I highlighted the credibility gap that had emerged with many investors** and also urged them to be open in explaining how they do climate research. He also said there will be client Roundtables in the fall to hear feedback."

Timothy Smith's email ended with an interesting note about an upcoming change in personnel at ISS:⁶²

"**There is a change at the top level of ISS** so he will get us in touch with Georgina who came to ISS from Aviva and has deep history on E&S," likely referring to the "E" and "S" components of ESG.

Smith's letter, and its **implied recommendations that ISS turn to organizations like Ceres for research and benchmarking material to help guide support of climate-related shareholder proposals**, foreshadowed the proxy advisory firm's eventual **reliance on Ceres-affiliated groups to guide its voting recommendations**.

Undeterred, in early 2016, SICS group member and core Ceres INCR member CalPERS filed a new climate disclosure

proposal with ExxonMobil.⁶³ At the time, Reuters reported, "Exxon's board has said its existing climate disclosures are robust and more than adequate. It has also said it is being unfairly targeted by green groups."

The company was certainly being targeted. Public records show that in March 2016, CalPERS officials were in communication with representatives of the New York State Comptroller – remember, both groups held leadership roles on Ceres's board – regarding support for CalPERS's shareholder proposal at ExxonMobil. In an email to New York State Comptroller officials and CalPERS colleagues, CalPERS's Anne Simpson wrote:⁶⁴

"I wanted to let you know that we've just weighed in at the SEC to support your proposal at Exxon on climate risk reporting – see the attached letters.

"More encouraging – we have had briefings at both the major proxy firms – ISS and Glass Lewis – and we have had a positive reaction to the argument that Paris has delivered a new policy environment, anchored to two degrees or less, hence investors need an opportunity to support the call for risk reporting. **Glass Lewis are offering us a webinar to make the case to clients**, which is excellent news."

"**We're all set for the full court proxy solicitation** at the various companies too, including to support your resolution at Exxon, so am hopeful this will be a useful boost to the outcome."

The 2016 shareholder resolution was also soundly rejected by nearly three-quarters of ExxonMobil shareholders, even though it was supported by ISS and Glass Lewis.⁶⁵

60 <https://govoversight.org/?s=F03964-E0008-2>

61 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0008-00003147.pdf>

62 <https://www.fnondon.com/articles/former-aviva-investors-governance-head-georgina-marshall-named-iss-research-chief-20150721>

63 <https://www.reuters.com/article/us-exxon-mobil-shareholders/calpers-nyc-pensions-urge-exxon-investors-to-back-climate-measure-idUSKCN0Y-22IB>

64 <https://govoversight.org/wp-content/uploads/2023/06/F03964-E0009-00005698.png>

65 <https://www.osc.state.ny.us/press/releases/2017/05/investors-exxon-needs-step-climate-change>

CLIMATE ACTION 100+

Possibly due to the failure of the 2015 and 2016 ExxonMobil climate resolutions championed by SICS group participants, or maybe in response to the 2016 Presidential election, Ceres took its shareholder activism efforts to a new level in 2017 with the founding of Climate Action 100+, a global investor network committed to using collective investor pressure to force climate disclosure and climate commitments from corporate actors. Climate Action 100+ takes the shareholder pressure tactics and coordination efforts of its predecessor – the Ceres INCR SICS group – and applies them at a massive, global scale.

Today, Climate Action 100+ represents 700 investors with \$68 trillion in assets under management globally. As a co-founder of the effort, Ceres mobilizes its INCR to engage directly with North American “focus companies.”⁶⁶

BACKGROUND

In September 2017, Climate Action 100+ was “soft launched” at a Principles for Responsible Investment event in Berlin.⁶⁷ At launch, the organization was described as a new, “five-year initiative designed to implement the Paris climate accord through collaborative investor engagement with the world’s largest greenhouse gas emitters.” At the time of its formal launch in December 2017, Climate Action 100+ was made up of 225 investors with \$26.3 trillion in assets under management globally. The investors pledged to use shareholder activism and governance to “engage” with the 100 most polluting companies – a playbook that Ceres pioneered when it organized climate-related shareholder activism through its SICS group.

Climate Action 100+ is governed by a rotating steering committee of representatives from major investor

participants. At the time of the effort’s launch, these representatives hailed from Australian super fund HESTA, US pension fund CalPERS, the asset management arm of HSBC, and French pension fund Ircantec. Today, the steering committee includes representatives from Franklin Templeton, GAM Investments, Generali Insurance Asset Management, AustralianSuper, Sumitomo Mitsui Trust Asset Management, and CalPERS.⁶⁸

The steering committee also includes executives from the five regional investor networks who collectively founded and developed the initiative. These organizations are Ceres, the Asia Investor Group on Climate Change (AIPAC), the Investor Group on Climate Change (Australia and New Zealand), the Institutional Investors Group on Climate Change (Europe), and the United Nations-affiliated Principles for Responsible Investment.

In March 2021, Climate Action 100+ first launched its Net Zero Company Benchmark, an “evaluation tool” for investor engagement. The Benchmark is updated approximately every year, and scores focus companies based on two types of indicators: climate disclosure framework assessments and Paris Agreement alignment assessments. Depending on the findings of the annual assessment – and a review of “investor perspectives” – Climate Action 100+ chooses each year to add and subtract companies from its focus list.⁶⁹

CLIMATE ACTION 100+ ENTERS PHASE TWO

Approaching the conclusion of its first five-year mark, in June 2023, Climate Action 100+ announced that it was moving into “Phase Two.” The second phase of the effort plans to use shareholder action to force companies to implement climate transition plans, rather than simply disclosing GHG emissions and emissions

⁶⁶ <https://www.ceres.org/climate/climate-action-100>

⁶⁷ <https://www.responsible-investor.com/sice-launch/>

⁶⁸ <https://www.climateaction100.org/about/>

⁶⁹ <https://www.climateaction100.org/net-zero-company-benchmark/>

reduction plans. Francois Humbert, chair of CA100+'s Steering Committee, told Reuters that in phase two, "the overarching goal is to go from words to action," claiming there would be "more accountability, more transparency, **more seniority**" for investors.⁷⁰

The Phase Two announcement came after reports of disunity within Climate Action 100+ and activist groups' dissatisfaction regarding investor members' commitment to voting with the group. The new strategy presented a major shift for members; *Bloomberg Law* reported that investor signatories would need to confirm in the next twelve months whether they intend to participate in the revamped effort.⁷¹

The foundations that bankroll the effort are also debating whether to double down for another five-year effort – an article from *Responsible Investor* claimed that Climate Action 100+ has not fully secured funding for its next five-year push, and there are "concerns among funders that some investors are not pulling their weight" and may drop out of the initiative as it moves into an even more active posture.⁷²

CRITICISM

Climate Action 100+'s organized pressure campaign has drawn the scrutiny of attorneys general and other state officials. While state officials had made inquiries and expressed concerns regarding asset managers' participation in Climate Action 100+ since at least 2021, a coalition of twenty-one state attorneys general formalized their arguments in a letter to asset managers issued on March 20, 2023.⁷³ The nineteen-page letter describes how asset managers' participation in and engagement with Climate Action 100+ may

run afoul of state and federal antitrust law, securities law, and/or fiduciary obligations:

"As explained further below, asset managers have committed to use client assets to change portfolio company behavior so that it aligns with the Environmental, Social, and Governance (ESG) goal of achieving net zero by 2050. This specific, political commitment changes the terms of the products offered, as well as engagements with individual companies."

The March 2023 letter identifies Climate Action 100+'s benchmarking system as a particular target of concern. Climate Action 100+ establishes its own benchmarks, based on climate-related criteria, that instruct investors on how to vote their shares. The proxy advisor duopoly of ISS and Glass Lewis has effectively adopted Climate Action 100+ benchmarks as its own guidelines for board votes. ISS benchmarking policy – which they insist is "proprietary"⁷⁴ – is particularly egregious, as the March 2023 AG letter points out:

"ISS's 2023 benchmark policy states it will recommend 'generally vot[ing] against' directors at companies 'on the current Climate Action 100+ Focus List' that have not adopted 'medium term [greenhouse gas (GHG)] reduction targets or Net-Zero-by-2050 GHG reduction targets.' They also state that SS will use the Climate Action 100+ Focus Group list as a proxy for "significant [greenhouse gas] emitters."

Recall that ISS was the primary target of Ceres members' lobbying efforts back in 2015, when the SICS group members unsuccessfully pressured ISS to support the Vermont Treasurer's greenhouse gas resolution filed with ExxonMobil. Given ISS's commitment to Climate Action 100+ benchmarks, and the "horizontal agreements between asset managers" that

⁷⁰ <https://www.reuters.com/sustainability/big-investor-group-urges-action-not-words-meet-climate-goals-2023-06-08/>

⁷¹ <https://news.bloomberglaw.com/environment-and-energy/investors-with-68-trillion-push-companies-on-climate-plans-2>

⁷² <https://www.responsible-investor.com/ca100-funders-remain-positive-ahead-of-phase-2-launch/>

⁷³ <https://attorneygeneral.utah.gov/wp-content/uploads/2023/03/2023-03-30-Asset-Manager-Letter-Press-FINAL.pdf>

⁷⁴ <https://corpgov.law.harvard.edu/2023/06/23/commentary-our-proxy-advice-is-apolitical/#more-157769>

structure Climate Action 100+, the state attorneys general argue that asset managers using the benchmarks in proxy votes should know that their efforts could very likely lead to changes in control of target companies. This system is both collusive and undermines the nominal “independence” of the proxy advisory firms.

In recent months, state officials also began to investigate more specific anti-trust implications of participating in Climate Action 100+. In May 2023, seventeen Republican Attorneys General argued that Climate Action 100+ should be considered a holding company given the percentage of U.S. utility securities held by the groups’ members.⁷⁵ Taking things a step further, in April 2023, Louisiana Attorney General Jeff Landry opened an investigation into Climate Action 100+ and two of its U.S.-based global steering committee members, Franklin Templeton and CalPERS.⁷⁶ Fox News reported that Landry’s investigation will focus on “whether Climate Action 100+, Franklin Templeton and CalPERS violated Louisiana consumer protection laws through unfair or deceptive practices.”

Attorney General Landry told the Washington Times, “Franklin Templeton is deeply embedded in Climate Action 100+; and we are troubled that, by focusing on the radical ESG agenda, it may be violating its fiduciary duties to shareholders in our state.”⁷⁷

At the same time, Republicans in Congress began an investigation into Climate Action 100+, and its founding investor network, Ceres. On December 6, 2022, Republican Members of the House Judiciary Committee sent a letter to Mindy Lubber, the CEO and President of Ceres, and Simiso Nzima, the Managing Investment Director at CalPERS. The letter argues that Climate Action 100+ and its leadership, which

includes Ceres and CalPERS, may be violating antitrust laws.⁷⁸ The letter also requested documents and other materials related to participation in Climate Action 100+, including how the group plans to target “focus companies”:

“We are writing to you because of **your roles coordinating how some companies pursue environmental, social, and governance (ESG) policies in ways that may violate antitrust laws.** Each of you is on the Steering Committee for Climate Action 100+, which seems to work like a cartel to ‘ensure the world’s largest corporate greenhouse gas emitters take necessary action on climate change.’

“In addition, Ms. Lubber leads Ceres, a non-profit co-founder of Climate Action 100+. Ceres runs a regional corporate network for Climate Action 100+, advancing ESG policies by encouraging and helping drive “collective action.”

According to a December 31, 2022, letter published by Reps. Jim Jordan and Dan Bishop of the House Judiciary Committee, Ms. Lubber did not provide any of the requested information, but conceded that Ceres and Climate Action 100+ engage in collusive behavior:⁷⁹

“Your December 20th letter seems to concede that Ceres and Climate Action 100+ engage in collusive behavior to ‘address complex, systemic challenges...’ Your defense, however, is to allege that this collusive behavior is not anti-competitive, and you offer several broad assertions about the positive economic effects of ESG policies without offering any evidence to support your claims. Indeed, you did not produce any of the material we requested or certify that you are preserving all responsive documents. In doing so, you provide us with no ability to verify the accuracy of

75 <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/BlackRock-fights-gop-push-to-designate-climate-initiatives-as-holding-companies-75942037>

76 <https://www.foxnews.com/politics/republican-led-state-opens-sweeping-investigation-woke-investing-group>

77 <https://www.washingtontimes.com/news/2023/apr/25/louisiana-launches-esg-probe-major-climate-fund-pu/>

78 <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-05-05-db-idi-to-lubber-ceres-re-follow-up.pdf>

79 <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-05-05-db-idi-to-lubber-ceres-re-follow-up.pdf>

your assertions or to gauge whether ESG policies—and Ceres’s and Climate Action 100+’s coordination of those policies—are pro- or anti-competitive.”

On May 5, 2023, Reps. Jordan and Bishop followed up again with Ceres, saying that the organization’s response so far has been inadequate.⁸⁰

“Although Ceres has been producing some material on a rolling basis, its response to date has been inadequate. More than five months after our initial requests, Ceres has produced just 161 documents. In addition, Ceres’s production includes a number of duplicative documents, many documents that are publicly available, and several documents with excessive redactions. Further, despite our explicit requests for communications, Ceres has not produced any e-mail communications responsive to our request.”

In the May letter, the committee leaders re-advised that if Ceres did not cooperate, the committee would be “forced to resort to compulsory process.” On June 14, 2023, Rep. Jim Jordan, the Chair of the House Judiciary Committee, made good on that promise and sent a subpoena to attorneys for Ceres.⁸¹ According to reporting from the *Daily Caller*, the subpoena calls for Ceres President Mindy Lubber to appear before the House Judiciary Committee the morning of July 7, 2023.⁸²

“Ceres’s response without compulsory process has been inadequate. To date, and despite your repeated assurances of Ceres’s cooperation, Ceres has produced just 299 documents. Accordingly, please find enclosed a subpoena.”

Ceres’s response to the subpoena is evidence that it is not taking the House

80 <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-05-05-db-idi-to-lubber-ceres-re-follow-up.pdf>

81 <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-06-14-idi-to-miller-ceres-re-subpoena.pdf>

82 <https://dailycaller.com/2023/06/14/exclusive-jim-jordan-subpoena-woke-esg-company-ceres/>

Judiciary Committee’s inquiry or anti-trust allegations seriously, even while a similar climate action group, Net Zero Asset Managers, steadily drops members due to concerns about antitrust enforcement.

Ceres General Counsel Mike Boudett gave a flippant statement to Reuters regarding the subpoena, claiming that “membership in the coalition did not pose antitrust issues since investors chose whether to join and use the group to engage with stock issuers. ‘Nobody’s colluding with anybody. **It’s like you and your friend deciding you want to get a burger so you go to a burger place,**’ he said.”⁸³

Ceres’s dismissal of the antitrust issue is ill-advised. Its asset manager members are still governed by their fiduciary duty to their investors, and if they make choices – for instance, going to get a burger with their asset manager buddies – that compromise clients’ fiduciary duty, they risk legal penalties. Moreover, the fact that asset managers may choose to become members of Climate Action 100+ and choose to vote along with the group’s recommendations does not mean that the effects of this collusion aren’t anticompetitive and potentially harmful to consumers. But as Rep. Jordan pointed out, the economic effects cannot be fully analyzed until Ceres complies with Congressional inquiry and provides a clearer view of how Ceres and Climate Action 100+ operate.

WHERE THIS LEAVES US TODAY

Influence on Climate Rule & Cost Estimate

The Biden Administration ushered in a new, friendly audience at the SEC and Ceres has been highly active in shaping the agenda at Chair Gensler’s SEC. Unsurprisingly, private and public calendars logs show that Ceres was deeply engaged in shaping the SEC’s controversial 2022 rule proposal, *The Enhancement and Standardization of Climate-Related Disclosures for Investors* – better known

83 <https://www.reuters.com/article/usa-congress-esg-idAFL1N38635W>

as the *Climate Disclosure Rules or Climate Rules*.^{84, 85}

After a decade of lobbying, the SEC’s climate disclosure rule was formally proposed on March 21, 2022, and its first documented meetings in the S7-10-22 rulemaking file began on September 14, 2021. From the outset, Ceres and other affiliated entities like climate management & accounting platform (CMAP) startup Persefoni immediately found themselves inside the influential realm of advising the SEC on the cost of compliance estimate.⁸⁶

Though Ceres and Persefoni presumably operate independent of each other, a key partnership between the two at the onset of the rulemaking period has positioned each, as well as the SEC, in an opportunistic position to reap benefits tied to ideological, business, and political gain. Significantly, collaboration between Ceres and Persefoni appears to have led to a cost of compliance study reflecting a similar estimate to the SEC’s proposal.⁸⁷

In the same vein of bolstering cost of compliance estimate credibility, Ceres and Persefoni continued to remain engaged on validating this issue for the SEC as recent as April 6, 2023, when they submitted a supplemental letter to the comment file almost ten months after the public comment period closed. The letter, co-signed by Ceres’s Steven Rothstein, functioned as a supporting argument to Ceres’s own cost estimate study and rebuttal of cost-benefit arguments submitted by the U.S. Chamber of Commerce and a former SEC Chief Economist, the American Petroleum Institute, and Business Roundtable — all

of which have significant corporate issuer members to sample from.⁸⁸

Funny enough, parallels in folklore apply to the practices of modern climate disclosures. As Greco-Roman mythology goes, Ceres is Persephone’s mother by Zeus, and therefore Persephone cannot exist without Ceres. As it relates to the climate rule, if Ceres does not assist and endorse Persefoni’s wholly substantiating cost of compliance research for the SEC’s own estimate, how will the climate rule fare and affect advocates’ financial and ideological goals? For sake of balancing the scenario’s power dynamics, let’s think of the SEC as Zeus.

It is suspicious for a conflicted organization to align so closely with the SEC’s cost estimate considering the lack of publicly available information and defined methodology to guide either the SEC’s own estimate or the Persefoni/Ceres survey. Logically, early and often collaboration and private coordination could very well help us understand the answer of this coincidence. The questionable movements between Ceres, Persefoni, and the SEC allude to a web of influence patterns that should be subject to further investigation, and could accordingly serve as a fixture of litigation.⁸⁹

Taking a step back into a more bird’s eye level of Ceres’s SEC coordination on the 2022 proposed climate rule and related ESG issues, let’s take a look at some simple facts:⁹⁰

- On **March 23, 2021**, Commissioner Allison Herren Lee gave a speech at the Ceres conference titled “Regulating Climate Change as a Systemic Financial Risk.”
- On **June 15, 2021**, Gary Gensler held a meeting with four members of Ceres, along with representatives from CALPERS, CalSTRS, the comptroller of

84 <https://www.sec.gov/comments/s7-10-22/s71022.htm>

85 <https://govoversight.org/more-details-on-the-securities-exchange-commissions-activist-role-in-the-whole-of-government-push-on-esg-climate-risk-disclosure/>

86 <https://www.sec.gov/comments/s7-10-22/s71022-persefoni.pdf>

87 <https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/costs-and-benefits-of-climate-related-disclosure-activities-by-corporate-issuers-and-institutional-investors-17-may-22.pdf>

88 <https://www.sec.gov/comments/s7-10-22/s71022-20163766-333922.pdf>

89 <https://oversight.house.gov/wp-content/uploads/2023/06/6.5.23-Letter-to-SEC-on-EU-ESG-Engagement-FINAL.pdf>

90 <https://www.sec.gov/foia/docs/sec-chair-calendar>

the State of New York, and other environmental groups.

- On **June 21, 2021**, Chair Gensler attended a meeting titled “Introductory meeting with Ceres.”
- On **October 12, 2021**, Chair Gensler attended a meeting titled “climate advocates,” which included attendees from Ceres, CalPERS, CalSTRS, the Center for American Progress, and others.
- On **February 11, 2022**, Gary Gensler held a meeting with five members from Ceres, along with representatives from CalPERS, CalSTRS, the Comptroller of New York City, and other environmental groups.
- On **March 22, 2022**, Gary Gensler held a meeting with Mindy Lubber and Steven Rothstein from Ceres.
- On **April 12, 2022**, Gary Gensler participated in a “Speaking engagement the Ceres Investor Briefing”, which was scheduled to last 1.5 hours.
- On **October 13, 2022**, Gary Gensler held a meeting with seven members of Ceres, along with representatives from CalPERS, CalSTRS, the California Controller, the NYC Controller, the New York City Comptroller’s office, and other environmental advocacy groups.
- On **October 28, 2022**, Gary Gensler held a meeting with five representatives from Ceres, along with other environmental groups.
- On **November 3, 2022**, Gary Gensler held a meeting with Ceres and numerous environmental advocacy groups.
- On **December 22, 2022**, Gary Gensler held a meeting with two representatives from Ceres, along with other environmental advocacy groups.
- From **September 14, 2021, to June 17, 2022**, the SEC met with representatives of Persefoni, Ceres, and ERM 8 times – 4 individual meetings with Ceres, 3 individual meetings with Persefoni, and

1 joint meeting with all. The public docket shows that cost of compliance – one of the more controversial elements of the climate rule – was discussed during those meetings well before the Ceres- and Persefoni-commissioned study was conducted.

Cost of compliance criticism aside, at face value, the SEC appropriately held meetings with relevant stakeholders to address thoughts on the proposal adjacent to the public comment feedback process. But while the SEC’s mission is to serve and protect investors, the Commission clearly values and ranks certain categories of its constituency higher than others. Organizations in the SEC’s favoured category include institutional investors and pooled climate-driven financial networks like Ceres, which was individually present at 29 out of 288 publicly documented meetings with the SEC since the proposal’s rulemaking period began.⁹¹

Basic math asserts that this covers roughly 10 percent of the SEC’s face-to-face feedback for a rule that will steer capital, impact businesses’ plans and raise prices for consumers. The SEC’s poor assessment of macroeconomic impacts such as higher energy prices and other goods has recently piqued the interest of Congress, prompting questions of whether the Commission even cared to consider these widespread effects.⁹² Instead of gathering thorough information on these matters primarily from corporate issuers and downstream consumer sources, the SEC’s reliance on Ceres and its affiliated entities who stand to become dominant “Salesforce”- and “Turbo Tax”-like players in the field of carbon accounting as a result of this reporting regime is a clear misappropriation of resources spent on stakeholder input.^{93, 94}

91 <https://www.banking.senate.gov/hearings/09/08/2022/over-sight-of-the-us-securities-and-exchange-commission>

92 https://www.banking.senate.gov/imo/media/doc/mchenry_scott_huizenga_letter_to_sec_chair_gensler_on_climate_disclosure_rule.pdf

93 [SEC climate rule: Winners and losers \(cnbc.com\)](https://www.cnbcs.com/news/SEC-climate-rule-Winners-and-losers)

94 <https://www.politico.com/newsletters/the-long-game/2022/04/08/software-startups-see-green-in-sec-00024048>

Ultimately, rulemaking practices like these support the ESG industrial complex and contribute to the SEC’s inflated “investor demand” narrative aimed at justifying core elements of the climate disclosure rule, including materiality.

However, true investor demand can be accurately quantified from tabulating the public comment file.

CERES IMPACT ON THE SEC’S CLIMATE DISCLOSURE INITIATIVES

- 13+** Years of SEC Climate Disclosures Influence
- 10%** of SEC’s Public Meetings on the 2022 Climate Rule
- 7** Comment Letters Submitted into the Climate Rule File⁹⁵
- 1** Anti-trust Related Subpoena from the 118th U.S. Congress⁹⁶

SEC CLIMATE RULE COMMENT FILE ANALYSIS

Since the SEC closed the climate disclosure rule’s 88-day public comment period on June 17, 2022, the Commission has touted the high-level of investor demand and support for the proposal due to the 14,000 total comments (including approximately 10,000 form letter submissions) and 4,008 uniquely published written input letters from interested individuals and organizations.⁹⁷

⁹⁵ <https://www.sec.gov/comments/s7-10-22/s71022.htm>

⁹⁶ <https://judiciary.house.gov/media/in-the-news/exclusive-ijm-jordan-subpoenas-woke-esg-cartel-company>

⁹⁷ <https://www.banking.senate.gov/hearings/09/08/2022/oversight-of-the-us-securities-and-exchange-commission>

However, this broad-stroke generalization of investor demand and support fails to communicate the true sentiment of relevant stakeholders, as neither comment letters nor meeting subjects are categorized and logged to publicly reveal an accessible cumulative count.

In fact, based on our assessment, 53 percent of published retail investor comments opposed the proposal as written, a contingency that represents the very fabric of U.S. citizens who are afforded equal access to economic opportunity. Similarly, issuers and companies who would be lawfully compelled to comply with this unprecedented disclosure regime opposed the proposal citing numerous operational deficiencies and general costliness at an alarming rate of 62 percent. Trade associations followed suit on these trends, coming in at 85 percent against the climate disclosure rule’s proposal.⁹⁸

For the first time in-full, our report includes a comprehensive, interpretive breakdown of **all 4,008 unique commenter classifications and viewpoints** on the SEC’s proposed climate disclosure rules so that actual investor sentiment can be provided, revealed and referenced. The framework for assessing commenter’s viewpoints and aggregating them into a “scorecard” was point-blank – **are they supportive of the rule proposal as written, or not?**

Contrary to the SEC and advocates’ public posturing, the basic statistics show demand is not as high and supportive as claimed. To support the following overview of the comment file’s activity and feedback, a glossary, methodology, and corresponding final tallies for groupings of commenters can be reviewed in Appendix A.

“Right now, hundreds of companies and investors representing tens of trillions of dollars of assets under management are in this conversation already. Investors

⁹⁸ <https://www.sec.gov/comments/s7-10-22/s71022.htm>

today want to know about climate risk because it matters to the future path of performance – financial or supply chain [or others]. So [climate disclosures] really do go back into when you buy or sell stock or vote proxy, because climate risk matters to those investors.” – SEC Chair Gary Gensler, from *U.S. Senate Committee on Banking, Housing, and Urban Affairs Oversight of the U.S. Securities and Exchange Commission (September 15, 2022)*⁹⁹

Per Chair Gensler’s comments, one would assume companies and investors at-large are clamoring for climate-related disclosures. What we find is the common independent investor and American consumer Prefers to not implement such stringent disclosures, likewise with companies across almost every industry that would be forced to abide by them. This is further exemplified by the sheer amount of trade associations that oppose climate-related disclosures, as they stood strong for their membership bases to protect the companies from public shaming and backlash for their proposal opposition from [shareholder] activists pushing the reporting regime.¹⁰⁰

As for much of the support garnered from advocates and academics, these statements of support can be reasonably chalked up to the varying degrees of funding and ideological interests set by their governing bodies, which in some cases, can historically be traced to the influential connections of discreet actors pushing a selfish narrative for personal gain and recognition – i.e., Ceres.

In order to support Chair Gensler’s comments, one would deduce that the SEC must weigh institutional investors and their issue-oriented advocacy groups as more valuable than others in the feedback

process, given their overwhelming 73 percent support for the proposal. If the SEC does give these opinions more weight, the SEC shuts out the majority of those participating in the comment file and directly refutes those who would realize the most extreme economic and societal impacts of the proposed climate disclosure rule.¹⁰¹

Some could argue that institutional investment vehicles represent the financial holdings of working American’s 401(k)s, retirement funds and more. However, in a scenario where individuals can’t exercise proxy voting mechanisms, pension funds operate under political appointments, and actors like Ceres have a back door into top regulatory bodies, it’s obvious that these major funds do not reflect the actual concerns of Americans.

Anti-trust violation or not, Ceres’s decade-long campaign to manufacture the SEC’s “investor demand” claim regarding climate-related disclosure directly contradicts the pretext of CEO Mindy Lubber’s statement.

“No one is telling investors how to vote and how to build their portfolio.”

Ceres’s network of advocates has pressured and coalesced investors into supporting a radical climate finance regime, and now regulators are pushing capital markets participants to build their portfolios in a climate-aligned fashion via mandatory disclosure.¹⁰² Whether it is better understood as an NGO, an association, a “network,” or a pooled investment vehicle, Ceres is quietly but forcefully pulling the strings of climate finance frameworks, therefore almost certainly dancing around the elements of an anticompetitive enterprise.

99 https://www.banking.senate.gov/hearings/09/08/2022/oversight-of-the-us-securities-and-exchange-commission?utm_source=Sail-thru&utm_medium=email&utm_campaign=9/12/22%20Punchbowl%20News%20AM&utm_term=Punchbowl%20AM%20and%20Active%20Subscribers%20from%20Memberful%20Combined

100 <https://www.sec.gov/comments/s7-10-22/s71022.htm>

101 <https://www.sec.gov/comments/s7-10-22/s71022.htm>

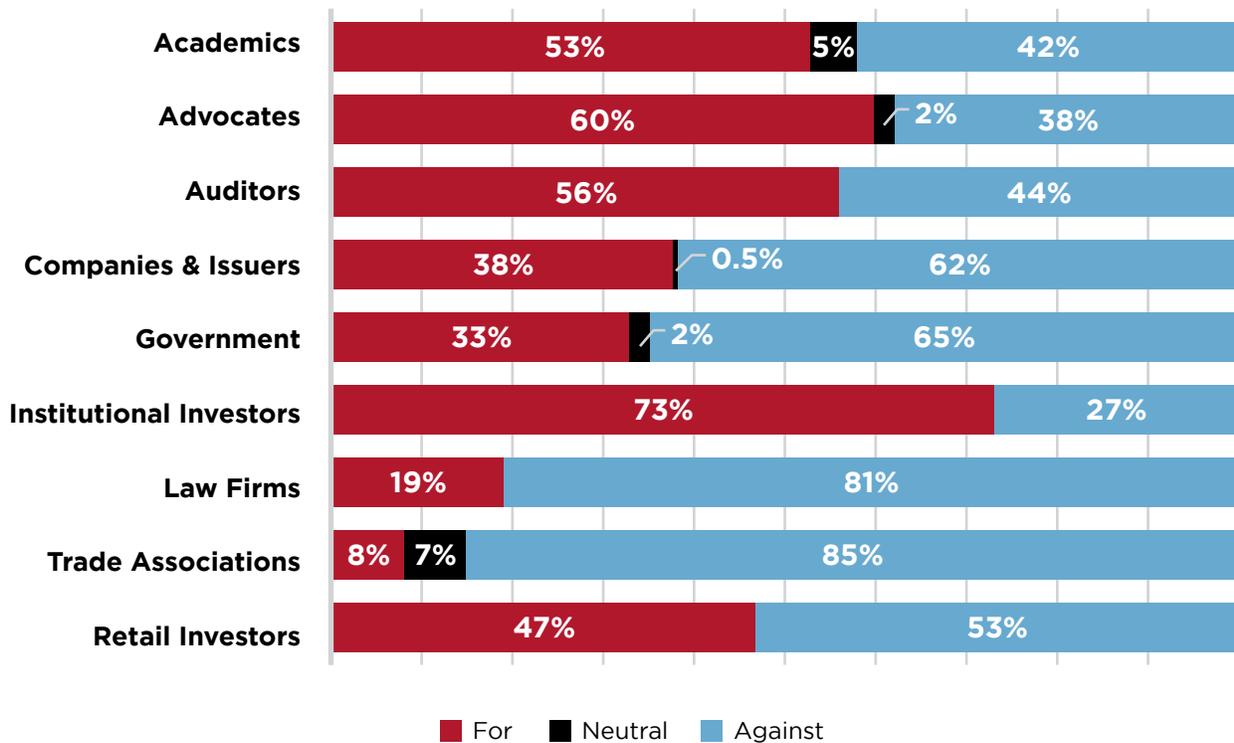
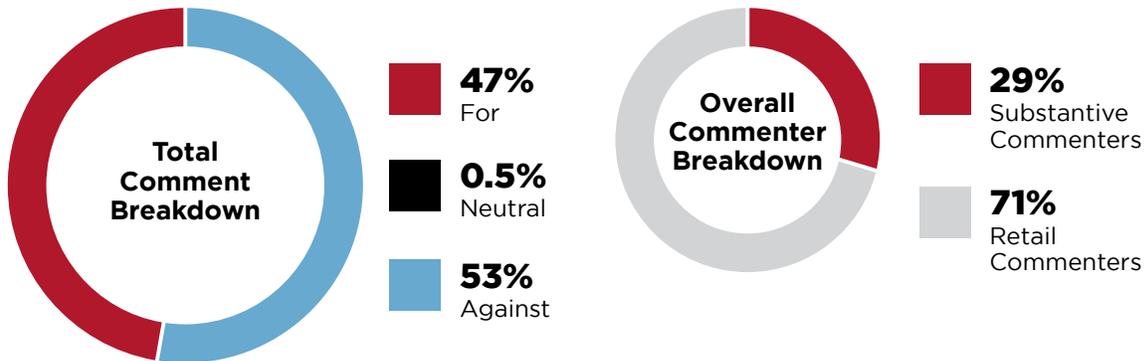
102 <https://www.sec.gov/comments/s7-10-22/s71022-20132502-302965.pdf>

APPENDIX A - THE CLIMATE RULE SCORECARD

THE CLIMATE RULE SCORECARD | A LOOK AT THE NUMBERS

Proposal Feedback Breakdown

The following quantitative analysis assesses positioning on the proposal as it was originally written.



GLOSSARY

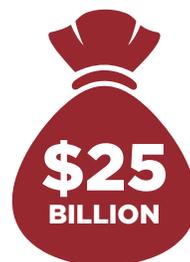
Academics	Post-graduate individuals with written affiliation to collegiate/ university institutions.
Advocates	Groups and individuals with written affiliation to non-government organizations, nonprofits, coalitions, institutes and more.
Auditors	Organizations and CPAs with working interest in accounting and/ or third-party attestation.
Companies & Issuers	Private and public companies who do not classify in any other applicable category.
Government	Elected representatives at the municipal, state and federal level.
Institutional Investors	Financial sector vehicles such as pension funds, retirement systems, asset managers, banks and more.
Law Firms	Outside counsel legal firms.
Trade Associations	Organization of a collection of companies in the same industry.
Retail Investors	Individuals with no written affiliation or claim of affiliation to an organization.

“Right now, **hundreds of companies and investors** representing tens of trillions of dollars of assets under management are in this conversation already. Investors today want to know about climate risk because it matters to the future path of performance – financial or supply chain [or others]. So [**climate disclosures**] really do go back into when you buy or sell stock or vote proxy, because climate risk matters to those investors.”

SEC CHAIR GARY GENSLER

from U.S. Senate Committee on Banking, Housing, and Urban Affairs Oversight of the U.S. Securities and Exchange Commission (September 15, 2022)¹⁰³

103 https://www.banking.senate.gov/hearings/09/08/2022/oversight-of-the-us-securities-and-exchange-commission?utm_source=Mail-thru&utm_medium=email&utm_campaign=9/12/22%20%20Punchbowl%20News%20AM&utm_term=Punchbowl%20AM%20and%20Active%20Subscribers%20from%20Memberful%20Combined



**IN U.S. GDP
EACH YEAR**



**FEWER
JOBS**

A report from Dr. Matthew Winden of the University of Wisconsin-Whitewater indicates the proposed rule being implemented as is could cost **\$25 billion in U.S. GDP each year** and result in **200,000 fewer jobs** created by the late 2020s.^{104, 105}

104 <https://www.sec.gov/comments/s7-10-22/s71022-20132304-302836.pdf>

105 <https://thehill.com/opinion/finance/4059135-are-climate-disclosures-worth-the-cost/>