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COMMITTEE ON FINANCIAL SERVICES

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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January 16<sup>th</sup>, 2024

The Honorable Gary Gensler  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549

Dear Chairman Gensler:

I write to you to express concerns with recent reports of a potential conflict of interest between the Securities and Exchange Commission (SEC) and the carbon accounting platform, Persefoni, in the development of the cost estimate of the SEC's proposed climate disclosure rule.

Since September 2021, SEC officials have met with representatives from Persefoni on approximately six separate occasions to discuss various aspects of the climate disclosure rule, most notably the economic analysis.<sup>1</sup> Emails obtained through the Freedom of Information Act show that a "concept of the study" was mentioned during an undocumented October 2021 meeting between SEC Policy Counsel, Mika Morse, Persefoni, and the lobbying firm, Boundary Stone Partners.<sup>2</sup> Around the same time, on October 2, 2021, then Senior Counsel for Climate and ESG to the Director of the Division of Corporation Finance, Kristina Wyatt contacted Senior Vice President of Strategic Market Engagement at Persefoni, Mike Wallace, and informed him that she mentioned Persefoni to other government agencies to discuss climate cost disclosure initiatives. Following Ms. Wyatt's referrals, Mr. Wallace met with representatives from the Environmental Protection Agency, Department of Defense, Office of Management and Budget, the General Services Administration, and the White House Council on Environmental Quality to discuss Persefoni's climate management and carbon accounting services.<sup>3</sup>

Communication between Persefoni and the SEC continued over the course of several weeks and in February 2022, Persefoni began their cost study analysis for the impending SEC climate disclosure rule. The following month, the SEC proposed the anticipated climate disclosure rule, with limited citations and an inadequate economic analysis. Of the six sources cited in the rule, three of the organizations, Persefoni, South Pole Governance, and S&P Global, offer services to aid with compliance of the regulation and stand to directly benefit financially from the rule's adoption.<sup>4</sup>

In addition to monetary gain, Persefoni's relationship with the SEC has resulted in new employment opportunities for former SEC officials. Emails show that on January 17, 2022, following four months of collaboration on a cost estimate for the climate disclosure rule, Ms. Wyatt and Mr. Wallace, discussed

<sup>1</sup> GOVERNMENT ACCOUNTABILITY & OVERSIGHT, <https://govoversight.org/wp-content/uploads/2023/07/23-00700-FOIA-Releasable-records.pdf> (last visited Jan. 4, 2023).

<sup>2</sup> *Id.* at 254.

<sup>3</sup> *Id.* at 58.

<sup>4</sup> Ganon Evans, *SEC consults fraudulent company on cost expectations for ESG-related climate rules*, THE WASHINGTON TIMES (Apr. 19, 2023).

potential job openings at Persefoni for Ms. Wyatt.<sup>5</sup> Two days later, in an email to Mr. Wallace, Ms. Wyatt confirmed her intention to join Persefoni.<sup>6</sup> On January 24, Ms. Wyatt submitted her departure ethics forms with the SEC, in which she listed her post separation destination as “unknown,” despite appearing to confirm a new position at Persefoni five days prior.<sup>7</sup>

Not only does your agency lack the statutory authority on its face to promulgate, publish and enforce the proposed climate disclosure rule, but there are serious questions as to whether the SEC violated both the letter and spirit of the Administrative Procedures Act in the rule’s development. As laid out in the holding of *Business Roundtable vs. SEC*, the SEC may not “inconsistently and opportunistically frame[] the costs and benefits of the rule.”<sup>8</sup> Rather than continuing its jurisdictional expansion efforts at the expense of American taxpayers and markets, I urge you to withdraw this proposed rule and return the agency’s focus to its core mission. To follow up or if you have any questions, please reach out to my office directly at (202) 225-2536. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'BD', followed by a long horizontal line extending to the right.

Byron Donalds  
Member of Congress

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<sup>5</sup> GOVERNMENT ACCOUNTABILITY & OVERSIGHT, <https://govoversight.org/wp-content/uploads/2023/07/23-00700-FOIA-Releasable-records.pdf>, 462 (last visited Jan. 4, 2023).

<sup>6</sup> *Id.* at 463.

<sup>7</sup> GOVERNMENT ACCOUNTABILITY & OVERSIGHT, <https://govoversight.org/wp-content/uploads/2023/08/Wyatt-1.24.22-departure-form-destination-unknown.jpg> (last visited Jan. 4, 2023).

<sup>8</sup> *Business Roundtable v. SEC*, 647 F.3d, 1148 (D.C. Cir. 2011).