May 11th, 2021

The SEC's Invitation to Input on Climate Change Disclosure

The following is presented by InfluenceMap CIC in response to an invitation for comment on climate change disclosures by SEC Acting Chair Allison Herren Lee to be submitted by June 14th, 2021.

1. Introduction

InfluenceMap CIC[1] is a global think tank providing open-source data on corporate performance on climate change to investors and other stakeholders. InfluenceMap has worked extensively with investors since 2015 on understanding corporate behavior on public policy matters related to climate change, including lobbying and other forms of policy engagement. Notably, InfluenceMap is one of four members of the Climate Action 100+ Technical Advisory Group. Climate Action 100+, comprised of 545 global investors responsible for more than $52 trillion in assets under management, is a collaborative engagement program designed to ensure the world's largest corporate greenhouse gas emitters take necessary action on climate change. InfluenceMap has *tracked 17 shareholder* resolutions in 2020[2] on climate policy engagement globally, with InfluenceMap content informing the majority of these.

The comments in this submission relate primarily to issues pertaining to disclosure on 'policy engagement' by companies. The term policy engagement here refers to a range of activities defined by a 2014 UN protocol *Guide for Responsible Corporate Engagement in Climate Policy* which include lobbying, political contributions, the use of legal strategies, PR/advertising, research funding etc., both directly by corporations and indirectly by third party organizations. InfluenceMap's comments are based on our platform for assessing corporate climate policy engagement (with full *methodology* and *results* available online), which has been developed and refined over the last six years through close coordination with the global investment community. In short, InfluenceMap's data and investor interactions show a combination of poor disclosure by the corporate sector on climate policy engagement combined with robust demand from investors for detailed, accurate and comprehensive information from companies around this topic.

This submission aims to provide the SEC with an evidentiary base to understand why an understanding of corporate climate policy engagement is material to investors and why current disclosures and voluntary frameworks are lacking. It concludes by suggesting some relatively simple requirements which could significantly

[1] InfluenceMap CIC is a nonprofit Community Interest Company (CIC) No. 9480976, *based in London UK* with an affiliated 501c3 organization InfluenceMap Inc registered in Delaware.

[2] based on data from ProxyInsight, 2020

increase meaningful disclosure by companies. As summarized below, and explained in more detail in section 4, it is recommended that companies be required to disclose the following.

1. Provide a full and detailed account of company advocacy positions on all the existing and potential future policy, regulatory and other government interventions globally that may materially impact the business, including quantification of these impacts.
2. Describe in detail corporate engagement activities conducted directly by the company and its subsidiaries (with engagement defined by the UN Guide for Responsible Corporate Engagement in Climate Policy[3]) on positions noted in (1).
3. Describe in detail the engagement activities in (1), similarly defined as in (2), as conducted by external groups the company funds and/or is a member of (industry, advocacy groups, chambers of commerce etc.) and any misalignments between the company's own advocacy and those of its external groups.

2. Why Corporate Climate Policy Engagement is Material

2.1 Question 2: What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision?

Understanding corporate engagement with climate policy represents increasingly material information for investors. As early as 2011, researchers from Harvard Business School[4] argued that understanding physical emissions from a company represents an incomplete picture and that corporate policy impact could far outweigh that of its emissions.

Corporate performance on climate change has been on the investor agenda for over two decades, with efforts led by investor and civil society groups emerging alongside new frameworks — CDP, the *UN PRI*, SASB, CBSD, as well as the FSB-initiated Task Force on Climate-Related Financial Disclosures (TCFD). However, to date, the content of disclosure demanded of companies focuses on physical emissions associated with an individual company along with its future reduction plans (scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals).

Several recent developments bulleted below, highlight investor need for information related to corporate engagement with climate policy, especially as policy responses materialize:

[3] *Guide for Responsible Corporate Engagement in Climate Policy*, UN Caring for Climate, 213; Page 15 Direct and Indirect activities noted including lobbying, campaign contributions, other influencing activities, PR, advertising, industry group links, revolving doors etc.

[4] What Environmental Ratings Miss, Auden Schendler and Mike Toffel, October 2011

- In 2019, InfluenceMap's *Trade Groups and their Carbon Footprints* (utilizing analysis from the NYU School of Law)[5] showed the huge economic and social impact of industry-led climate regulatory rollbacks in the US from 2016-2019.
- In 2019, Kyle C. Meng and Ashwin Rode[6] calculated that lobbying on the U.S. Waxman-Markey Bill in 2009 has so far resulted in $60 billion in climate costs to society.
- The automotive sector, particularly in the wake of the "Dieselgate" scandals, provides telling case studies as to how a deeper understanding of corporate policy engagement could have served to protect investors from material loss. While the Volkswagen Group presented itself as a climate and sustainability leader, its actual policy engagement represented dramatically different behavior. A lack of understanding as to how the company (along with others in the sector) was managing regulatory risk shocked shareholders and resulted in an SEC lawsuit (*March 2019*). It is noted that Volkswagen chose to defraud NOx related rules to comply with increasingly stringent and climate-motivated CAFE efficiency standards in the US.
- In its ongoing *Inevitable Policy Response* project, the Principles for Responsible Investment (PRI) coalition of investors notes that "*financial markets today have not adequately priced-in the likely near-term policy response to climate change*."

2.2 Question 2: What information related to climate risks can be quantified and measured? How are markets currently using quantified information? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision?

Accurate information on corporate climate policy engagement is in demand by investors for a variety of reasons and use-cases. InfluenceMap's public facing analysis and scoring of companies on climate policy engagement and its robust uptake by the global investment community suggests corporate policy engagement can be quantified and effectively used by investors.

The bullets below provide examples of situations where information on corporate policy engagement is already in use by investors:

- **Company risk assessment and portfolio management**: The Volkswagen case illustrates the value of understanding accurate policy engagement behavior as a proxy for true management thinking on how the company is approaching risks/opportunities of climate change. This is especially true in sectors primarily or heavily driven by regulations such as the GICS top level sectors Utilities, Energy, and Materials. For example, the San Francisco Employees' Retirement System (SFERS) *utilizes InfluenceMap's metrics* to

[5] Climate & Health Showdown in the Courts, State Attorneys General Prepare to Fight, NYU Law School, March 2019

[6] The social cost of lobbying over climate policy, Meng, K. & Rode, A, Nature Climate Change volume 9, pages 472–476, 2019

assess and manage its oil & gas holdings, and Legal & General Investment Management incorporates the metrics in its *Climate Impact Pledge scoring*.

- **Managing systemic risk**: Many large, diversified investors (such as pension funds) regard negative policy engagement as a systemic portfolio risk, given that it can lead to delays to policies deemed necessary by governments to reduce the impacts of climate change. This view has been articulated, *for example*, by a group of investors including Sweden's AP7, BNP Paribas Asset Management and the Church of England's Pension Board. AP7 notes "*The importance of climate lobbying has become firmly established as a new norm on the sustainability agenda, but there is still much to do before negative climate lobbying is brought to an end.*" The fund has blacklisted ExxonMobil, among others, based on climate policy engagement criteria.
- **The engagement process**: Engagement with companies over climate policy engagement is a strategic element within the framework of the *Climate Action 100+* (CA100+) investor process, which comprises 545 investors with a total of $52 trillion in signatory assets under management. Several investor-representative groups (e.g. *PRI*, *IIGCC*, *and CERES*) have formalized sets of expectations regarding how companies should manage their climate policy engagement processes. These expectations require companies to align their policy engagement with Paris targets and ensure good governance, including full disclosure of the entire policy engagement process. In its *2021 Stewardship Expectations* release, the world's largest asset manager BlackRock highlighted lobbying and trade association alignment as a priority: "*we will now seek confirmation from companies, through engagement or disclosure, that their corporate political activities are consistent with their public statements on material and strategic policy issues. Moreover, we expect companies to monitor the positions taken by trade associations of which they are active members on such issues for consistency on major policy positions and to provide an explanation where inconsistencies exist.*"
- **The shareholder resolution process**: The issue of policy engagement by companies is central to an increasing number of shareholder resolutions. A coalition of investors organized by AFSCME and Boston Trust Walden has conducted a program of shareholder resolutions for some years (*see a 2019 release*) demanding better lobbying disclosure from US corporations, many of the recent ones focused on climate related lobbying.

3. Existing Disclosure Frameworks and Practices

3.1 Question 1: How can the Commission best regulate, monitor, review, and guide climate change disclosures to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them?

Question 3: What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them?

Existing disclosure frameworks to address investor need for accurate information on corporate climate policy engagement are inadequate, despite multi-year efforts by investors pressuring companies to disclose. This gap points to a potential opportunity for the SEC to provide rules/guidance on the topic to facilitate corporate disclosures in line with its mandate of protecting investors.

Existing regulatory disclosure systems: The key US regulatory framework is the Lobbying Disclosure Act (LDA) of 1995 and its subsequent updates. Data generated by the LDA falls short in two important respects:

- First, the definition of the term 'lobbying' is relatively narrow and does not include a broader range of activities covered by the UN *Guide for Responsible Corporate Engagement in Climate Policy*, which includes lobbying, political contributions, the use of legal strategies, PR/advertising, research funding, etc., both directly by corporations and indirectly by third party organizations. Such information is crucial for investors to gain a complete picture of corporate influence including misalignments the company may have with external groups such as trade associations.
- Second, the US Lobby Act focuses on monetary contributions and does not require disclosure of the nature of the policy engagement at hand. Investors crucially need to know details of how the company views pending strands of climate policy and regulations which could materially impact the business. With regards to the monetary contributions, it is noted that the Citizens United 2010 Supreme Court ruling further relaxed disclosure rules for political contributions. Policy engagement disclosure frameworks outside of the US remain generally ineffective. The EU's Transparency Register is a voluntary lobbyist register operated jointly by the European Parliament and the EU Commission since June 2011 - its non-binding nature and lack of policy position details render its resulting information of little use to investors.

Existing non-binding disclosure systems: Key ESG and climate related disclosure frameworks are insufficient. Most contain little to no mention of climate policy engagement:

- The Task Force on Climate-Related Financial Disclosures (TCFD), Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), and Climate Disclosure Standards Board (CDSB) make scant mention of policy engagement.
- The CDP system for companies to disclose climate related information contains *two questions* (12.3 a & 12.3c) on policy engagement and industry associations. The results of these do not feed into the CDP

scoring used by investors and there is no external verification of the company responses. InfluenceMap's independent verification of these responses to CDP by the corporate sector shows generally incomplete and often misleading responses.

- As noted above, the Climate Action 100+ investor engagement process has high-level expectations of companies to disclose around climate policy engagement, including industry association misalignment issues. Yet there is currently no detailed format for such disclosures, and after more than three years of the CA100+ process, only 14% of the 167 companies have made such disclosures. Furthermore, InfluenceMap's *independent assessment* finds the quality of existing disclosures poor and misaligned with the investor expectations as stated.

Lastly, **existing SEC requirements** mandate disclosure of material risks including regulatory risks with SEC guidance referring to disclosure of the impact of policy/regulations on the company. There is no guidance at present to disclose details of policy positions or engagement.

Escalating engagement and resolutions by investors on the topic of corporate climate policy engagement point to the inadequacies of existing frameworks and efforts by companies to disclose such information in a meaningful manner.

4. Ideas for Disclosure Systems

4.1 Comments here relate to Question 4 through 13.

The three disclosure questions below, when comprehensively answered, would help investors to understand whether their expectations on climate policy engagement (as stated by investor-representative groups e.g. *PRI*, *IIGCC*, *and CERES*) are being met.

1. Provide a full and detailed account of company advocacy positions on all the existing and potential future policy, regulatory and other government interventions globally that may materially impact the business, including quantification of these impacts.
2. Describe in detail corporate engagement activities conducted directly by the company and its subsidiaries (with engagement defined by the Guide for Responsible Corporate Engagement in Climate Policy[7]) on, the positions noted in (1).

[7] *Guide for Responsible Corporate Engagement in Climate Policy*, UN Caring for Climate, 213; Page 15 Direct and Indirect activities noted including lobbying, campaign contributions, other influencing activities, PR, advertising, industry group links, revolving doors etc.

3. Describe in detail the engagement activities on (1), similarly defined as in (2), as conducted by external groups the company funds and/or is a member of (industry, advocacy groups, chambers of commerce etc.) and any misalignments between company's own advocacy and those of external groups.

- With regards to question (1), while existing SEC rules and guidance require companies to disclose material risks, including regulatory risks, a specific requirement around climate regulatory risk disclosure will likely prompt a deeper dive in this key risk area by companies.
- Question (2), if fully answered and provided the list in (1) is complete, should go a long way towards helping investors understand corporate behavior on climate regulatory risk.
- In Question (3), InfluenceMap believes broadening the scope of policy engagement beyond lobbying/political contributions by reference to an existing UN protocol could be highly useful in triggering companies to disclose information, leading to a complete understanding of corporate behavior. A full answer to question (3) would be invaluable in assisting investor stewardship processes underway on climate change including shareholder resolution voting decisions.

4.2 Question 7: What is the best approach for requiring climate-related disclosures? For example, should any such disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or should a new regulation devoted entirely to climate risks, opportunities, and impacts be promulgated? Should any such disclosures be filed with or furnished to the Commission?

While InfluenceMap does not have legal expertise in disclosure regulations, the following offers some ideas based on our research in the area, including assessment of existing SEC disclosures by companies on climate regulatory risk.

As with all SEC rules and guidance, there is a limit to how prescriptive and specific such rules/guidance can be given the climate issue will impact the corporate sector in a complex and sector-specific manner. However, the benefit of an SEC ruling on climate disclosures (especially within the S-K) including climate policy engagement practices is that the results would be subject to SEC law: "*Laws and regulations prohibit companies from making materially false or misleading statements. Likewise, companies are prohibited from omitting material information that is needed to make the disclosure not misleading. In addition, a company's CFO and CEO must certify to the accuracy of the 10-K and 10-Q*."

- **Incorporation in SEC Regulation S-K guidance on climate change risk:** The three questions noted above could potentially be incorporated in existing guidance on environmental and climate change disclosures in the S-K framework (risk factors, compliance costs, impact of legislation etc.) with additional specificity as in the three questions above. This would be a highly useful and natural extension of such guidance in the climate risk space.

- **Incorporation in SEC Regulation S-K guidance in general:** *Comments here relate to Question 15*. It is noted that corporate regulatory risk is not, within the ESG framework or beyond, limited to climate change; investors have a strong interest in understanding details on how corporations are engaging on policy areas material to their businesses in general. Sectors where opaque policy engagement could be hiding material investor risks include drugs pricing and healthcare, financial regulatory reform, digital/internet regulations etc. Making the three questions noted above generic and applying as part of the S-K process in general could radically improve investor understanding of corporate behavior in highly regulated sectors. It is noted that this information could be requested by the SEC in an Annex to the main filing as many companies so-annex their sustainability statements. An advantage of including policy engagement disclosure in an existing S-K process is that it would be subject to 10-K rules and may reduce corporate reporting requirements.
- **Incorporation in a new SEC Regulation related to climate:** Inclusion of the disclosure requirements 1-3 above in a new SEC rule on climate disclosure would potentially be a natural extension of existing SEC guidance efforts on climate risk disclosure. Should the new SEC system be based on existing frameworks like TCFD that currently lack any policy engagement component, those frameworks may be required to be adjusted. The potential downside to this could be a lengthy process (e.g. further stakeholder engagement by the framework itself) to harmonize policy engagement disclosure.

InfluenceMap's experience shows that policy engagement priorities and practices within companies is generally guided by the CEO directing legal or regulatory affairs functions (as opposed to ESG or sustainability functions). Requiring companies to disclose on policy engagement in the three-step manner proposed in this paper and linking the results to CEO/CFO certification would result in material improvements in disclosure. As with mainstream financial disclosures, there would be a significant role for third parties (auditors and civil society groups) in checking such disclosures on behalf of investors. Whether mandatory auditing would be required is a matter likely addressed in the context of the SEC's wider climate risk disclosure rule framework and the progress of its implementation.

5. Conclusion

In the absence of rigorous disclosure from the corporate sector on the topic of climate policy engagement, InfluenceMap's methodology has generated meaningful metrics on corporate performance in widespread use by investors as noted above. The methodology does not require the cooperation of the companies being scored but does rely on numerous amounts of direct disclosures from the companies (including their submissions to regulatory consultation processes and existing SEC filings) within the public domain. Many of the consultation responses are obtained by Freedom of Information requests, and the aggregation of such data is likely beyond the scope of individual investors.

Our process shows the complexity of this topic, but also proves that it is entirely possible to measure corporate policy engagement, as the process is facilitated by the availability of detailed disclosures from companies themselves. It is highly likely that a binding requirement from the SEC could vastly improve the ability of scoring systems such as InfluenceMap's to assess companies as well as provide useful information for investors to directly use. Conversely, the lack of a binding requirement to provide detailed and complete information on this topic will likely continue to hold back the ability of investors to manage risk and conduct stewardship activities on this topic.[8]

[8] It is worth noting that the OECD will release a report *Lobbying in the 21st Century: Transparency, Integrity and Access* updating a 2010 document, guiding governments to tighten policy engagement disclosure rules and also broaden the definition of policy engagement beyond a narrow lobbying usage to one more akin to the UN Guide noted above.