Douglas Hileman Consulting, LLC
Van Nuys, CA 91405-4235
www.douglashileman.com

June 7, 2021

The Honorable Allison Herren Lee
Acting Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

SUBJECT: **Public Input on Climate Change Disclosures**
Response to March 15, 2021 Public Statement by Acting Chair Allison Herren Lee

Douglas Hileman Consulting (DHC, or "Commenter") appreciates the invitation from Commissioner Allison Herron Lee for public input on climate change disclosures (March 15, 2021). Commissioner Lee's "Living in Material World" (5/24/2021) was an excellent overview of common myths, and framework for the SEC's interest and these comments.

DHC supports SEC action on this topic. Comments are structured to map to each of the 15 questions, with the general subject for each indicated. My comments include several themes, including those listed below.

- Maintain focus on the reasonable investor; avoid trying to fulfill needs of all types of impact investors.
- Use precedents for existing financial reporting and financial disclosures wherever feasible.
- Minimize burden to the regulated community where possible. Leverage precedents from other non-financial reporting standards and frameworks already widely used by companies.
- Review and consider the Conflict Minerals Rule[1], including the comments received on the draft rule and SEC's rationale for decisions for the Final Rule. Relevant topics include: non-financial subject matter; standards; need to collect and analyze data from the supply chain; effective applicability to private sector and non-U.S. companies; signatory(ies); mechanism and timing of submittals; independent assurance; and transition periods. The Conflict Minerals Rule also offers lessons regarding First Amendment issues, which have already been cited in public input on climate change disclosures as grounds for litigation from one or more states.
- Make every effort to publish rules, requirements, or standards in plain English. This should be done to accommodate the wide range of interested parties.

[1] SEC's Final Rule for Conflict Minerals was published August 22, 2012. The "Conflict Minerals Rule" was required per Section 1502 of the Dodd-Frank Act, passed in 2010.

The comments here are my own, and do not represent the views of any client, group, or organization I am involved with.

Douglas Hileman, FSA, CRMA, CPEA
President, Douglas Hileman Consulting LLC

Attachments: Comments
Professional Highlights

Q1 How/ Where

DHC (or "Commenter") supports the production of consistent, comparable, reliable disclosure by companies in response to investor requests. Given the current extensive use of sustainability information to inform investment and voting decisions, DHC believes that mandatory disclosures are in the public interest. Climate change is a driver for risk to financial performance (even viability as a going concern in the long run) for some filers. In many cases these risks are not being sufficiently identified, evaluated, incorporated into companies' strategic plans, or disclosed to investors or the public.

Some existing accounting rules for financial reporting may apply to companies, if viewed through the perspective of climate change. Companies must evaluate and make appropriate financial provisions for Asset Retirement Obligations (AROs), for example. There must be appropriate internal systems and controls for this balance sheet item; these are subject to assurance. Specific amounts, changes in accruals, or discussion of basis for analysis is not subject to reporting or disclosure, unless deemed material. Accelerated requirements to retire assets due to factors related to climate change can impact financial performance. Commenter suggests more disclosures and transparency on ARO accruals, the basis for these accruals, and changes over time. The SEC should also consider disclosures and / or additional procedures for assets that were *actually* retired during reporting periods, and how costs actually incurred compared with the basis for accruals.

One member of the public that has already provided input noted applicability to AROs, and that disclosures are also required for contingent liabilities, suggesting that this existing requirement could also apply to climate change-related issues[2]. DHC also believes this should receive further attention from SEC and may deserve inclusion in further disclosures.

Commissioner Lee identified the presumption that disclosures related to climate change are already required in Management Discussion and Analysis (MD&A) section of Form 10-K as "Myth #1", and that those disclosures that <u>are</u> being made are sufficient as "Myth #2[3]." Commenter believes there should be an appropriate level of discussion & detail in MD&A in the Form 10-K. Disclosures should address risks to operations, compliance, and financial performance. A substantial portion of the market cap of many companies consists of intangible assets; to the extent that climate change risks are relevant to reputation, goodwill, or other intangible assets; these risks should also be considered and subject to disclosure.

The SEC's approach to the Conflict Minerals Rule could be a useful precedent. The Conflict Minerals Report is a separate filing (an attachment to the Form SD). SEC acknowledged challenges cited by

[2] See comments from "Old Man Millennial", posted on SEC website May 14, 2021
[3] "Living in a Material World: Myths and Misconceptions about 'Materiality'"; speech by Commissioner Allison Herren Lee; May 24, 2021.

several commenters to the proposed rule – including difficulties in collecting and evaluating data from the supply chain; resource constraints to ensure adequate internal controls over SEC filings, and availability of suitable resources for assurance (if pursued), among other factors. Climate change data and information also extends beyond the extent of the organization's complete control (Scope 3 Greenhouse Gas emissions, for example), posing similar challenges. The Conflict Minerals Reports follow a standard, comparable framework. The Conflict Mineral Reports cover calendar years [the typical cadence for generating the underlying data], with a due date of May 31 [in deference to resource constraints for the many companies that use calendar year as the fiscal year]. This approach of a standard framework for reporting and disclosures would apply without regard to financial materiality to the filer. This would enable comparability, which is a key driver of investor requests.

Q2 Measurements, Scalability / Phase-In, Price of Carbon

Measurements

Greenhouse Gas (GHG) emissions are arguably the most common metric that is relevant to climate change. Compilation of Scope 1 and Scope 2 emissions, while not trivial, is at least straightforward. Scope 3 emissions extend beyond organizational boundaries into supply chain and / or value chain. They are more difficult to control or influence, yet they can trigger risks to the organization. SASB's Implementation Supplement for Greenhouse Gas Emissions[4] provides disclosure topics relevant to sectors ranging from aerospace and defense (fuel economy and emissions in use-phase) to semiconductors (product life cycle management). Many topics are amendable to measurement; others would be more informative to investors as qualitative disclosures.

Commenter suggests that SASB's Implementation Supplement can be leveraged to identify measurements that would be meaningful to investors, and would also help organizations identify, monitor and mitigate risk to financial value (as well as reducing impact to climate change).

Scalability / Phase-In

Commenter believes that all filers should make climate change disclosures relevant to their industry sector. Commenter also suggests that the requirements could be phased in over time for smaller and medium enterprises (SMEs).

The adoption of recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) has been dramatic in a few short years. TCFD's Third Status Report[5] indicated that 42% of companies with a

[4] SASB Implementation Supplement: Greenhouse Gas Emissions and SASB Standards; September 2020.
[5] Task Force on Climate-Related Financial Disclosures, 2020 Status Report.

market capitalization greater than $10 billion disclosed at least some information in line with each TCFD recommendation in 2019, and nearly 60% of the world's 100 largest public companies support the TCFD, report in line with TCFD recommendations, or both.

Commenter notes that these larger companies have substantial resources. Most (if not all) of these companies have compiled GHG emissions information for the CDP, likely for a decade or more. They have organizations, systems, controls, resources, etc. to enable relatively quick adoption of TCFD recommendations. SMEs are not in the same position. Nor are private companies in the supply chain of these large filers, or the SMEs. The SEC's Conflict Minerals Rule provided for a two-year extension for SMEs to enable them to build capacity and leverage lessons learned from larger companies in preparing and submitting robust filings. SEC should consider this approach for climate change disclosures.

Price of Carbon

There have been numerous approaches to determining or estimating a price on carbon emissions for decades. Some companies have imputed a price on carbon emissions in evaluating capital improvements for years.

On January 20, 2021, President Biden issued Executive Order 13990[6], which re-established the Interagency Working Group on Social Cost of Carbon (SOC). The IWG published their Technical Support Document: Social Cost of Carbon, Methane and Nitrous Oxide … in February 2021[7]. This report presents tables showing SOC by emissions year, with 28 different discount SOCs of each GHG, using different assumptions for discount rates and statistics. For the emissions year 2030, the SOC ranges from $19 to $187 per ton. Commenter believes that this may be sound science, statistics, and modeling, but it does not resonate with the simpler data that most reasonable investors are likely to seek.

A price on CO2 equivalent emissions could affect financial performance of companies, which (in turn) could influence investment decisions. One factor in demand for disclosures regarding potential regulatory actions is the potential imposition of a carbon emissions tax or similar financial levy on carbon emissions. The actual or potential cost of carbon is likely to be of interest to investors.

Nonetheless, Commenter does not believe it should be the role of the SEC to establish a price for carbon emissions. SEC should consider requiring companies to disclose basis for carbon emissions costs used as a basis for evaluating potential impact to financial performance in the short-, medium- and long-term.

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[6] "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis"; January 20, 2021 Presidential Action.

[7] Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide; Interim Estimates under Executive Order 13990; Interagency Working Group on Social Cost of Greenhouse Gases, United States Government; February 2021.

This is one topic where the SEC can continue to watch global regulatory developments, emergence of global alignment of ESG standards, and investor expectations.

Companies can disclose the actual monies paid in taxes, fees, or other arrangements imposed by governments for CO2 emissions. This need not be subject to minimum thresholds[8].

Commenter notes that the cost of CO2 equivalent emissions also offers opportunity. Financial performance can be affected in a positive way, as a result of increased revenues or margins for products or services that reduce the generation of GHG emissions. Socially conscious investment monies are flocking to this type of investment. It is, therefore of utmost importance that measurements of SOC and any other climate change-related data or information that underlies the *upside* potential of an investment should be subject to the same degree of disclosure and transparency.

Companies receive preferential treatments (tax credits or deferrals, rebates, etc.) from governments for efforts related to climate change mitigation or adaption. These include financial benefits from [motor vehicle] fleet conversion to retrofitting buildings with energy-efficient design. These favorable treatments affect financial performance; however, the government's ability to actually pay rebates or provide incentives may be contingent on tax revenues, funding cycles or other factors. Commenter suggests that SEC consider requiring filers to disclose funds received from government entities that are relevant to mitigating or adapting to climate change, categories of sources and anticipated timing of funds received, and risks of not receiving funds in full.

Q3 Standards

Scientific knowledge, market understanding and expectations, policy responses to climate change have developed rapidly in recent years and will continue to evolve. These factors can influence financial performance in the short- medium-, and long-term. Any standard setter must be in tune with myriad factors, and must be able to incorporate viewpoints, perspectives, and needs from a broad range of stakeholders. Furthermore, any standard-setters must be transparent in its processes.

Comments from SASB[9] laid out ample support for leveraging the head-start of SASB and / or groups with similarly rigorous basis.

SEC's Conflict Minerals rule provides another precedent here. The SEC Rule required that companies follow a nationally or internationally recognized framework in conducting due diligence of their supply chains for tin, tantalum, tungsten, and gold (the "Conflict Minerals"). The Rule referenced the OECD's

[8] See footnotes 41 – 43 in "Living in a Material World" (noted above)
[9] See comments from Ms. Janine Guillot of SASB, submitted May 19, 2021.

Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The OECD Guidance was the only logical framework at the time. The SEC Rule nonetheless left open possibility for filers to use a different framework at some point in time, so long as it was nationally or internationally recognized.

Q4 Industry-Specific

Commenter supports the concept of general and industry-specific climate change disclosures.

SASB has focused on industry-specific topics that have evidence of financial impact and investor interest. This has facilitated disclosure of decision-useful information to investors.

One key insight from SASB was that SIC/ NAICS codes are not necessarily well-suited for sustainability disclosures. SASB created the Sustainability Industry Classification System to more appropriately group operations and sustainability impacts. For example, for vertically integrated oil company, exploration resembles mining more than it resembles refining. SASB has [free] industry look-up tool on their website. SASB also describes how companies in multiple sectors should approach and explain their selection of appropriate Sustainable Industry Classification code(s) for disclosures.

The disclosure topics in SASB's Implementation Supplement for Greenhouse Gas Emissions illustrate the variability of relevant topics by sector.

Commenter notes that companies may have divisions or business units in several sectors. Climate change risks in a business with relatively little financial contribution to a company may have an outsize contribution to climate change. These may be of keen interest to investors. SEC should require companies to identify the sector(s) they used as the basis for climate change risk analysis and disclosures. Companies should also indicate business segments or other relevant exclusions from scope for purposes of climate change disclosures.

Q5 Existing Frameworks

Commenter supports leveraging existing frameworks.

SASB has a 10-year head start and has been focusing singularly on investor needs using existing law from the outset. In the months after SASB began publishing standards, approximately half of the downloads were from outside the U.S. (mostly from Europe). This indicated global applicability of SASB's approach. TCFD has also focused exclusively on investor needs. This head start reduces the "standard supply side effort" that would be required, were SEC to start from scratch.

Companies have developed processes, systems and controls to gather, evaluate and prepare climate change disclosures using the existing standards. Adopting standards reduces the financial and administrative burden on companies subject to these disclosures.

Investors, analysts, and other users of climate change disclosures at the "value chain" stage of this process are also familiar with the disclosure standards, as well as the processes involved in establishing and updating them.

SEC may also do well to monitor developments in the EU. The EU Technical Expert Group on Sustainable Finance published a Technical Report on "Taxonomy: Final Report of the Technical Expert Group on Sustainable Finance" in March 2020. Common nomenclature worldwide will reduce burden on the regulated community, and can facilitate comparison and analysis by investors.

Q6 Updates: Roles; Process; Cadence

Scientific climate change data continues to accumulate. Companies and investors continue to explore the interrelationship between climate change related issues and financial performance. The extent and duration of the financial impact on the "Texas Deep Freeze" of February 2021 to many companies in many sectors would have been difficult to predict just a few months ago.

Groups like SASB and TCFD are well-positioned to monitor these risks, potential impacts on financial performance, and the need for updates.

Q7 Approach to Disclosures

DHC supports disclosures in the Management Discussion and Analysis section of the Form 10-K, as suggested by many in the ESG reporting and investment community. DHC suggests consideration of a slightly different, two-pronged approach.

As Commissioner Lee noted as Myth 1, content of MD&A need not be restricted to topics that are financially material. Commenter suggests that users are most accustomed to this approach. Using traditional materiality criteria, some topics are not material for companies with much larger market capitalization or much larger profit margins, whereas they would be material for others. The same climate change related risk posing $100 million impact poses different materiality to a large cap company with $1 billion in net income, than to another company in a razor-thin profit sector (for example, a grocery retailer) with net income of $50 million.

SASB's rigorous process for identifying material ESG topics did not result in climate change being material for all industries. With climate change as arguably the ESG issue of single greatest impact and interest to investors, climate change disclosures should be required for all filers.

The contents of the Form 10-K are already substantial. They can also be confusing. The interest in climate change disclosures extends beyond sophisticated investors. Including a comprehensive suite of climate change disclosures in the Form 10-K runs the risk of these disclosures becoming indistinguishable from disclosures on other topics. Meaningful climate change disclosures should be accessible to all investors, in terms of location, format, and plain English. The disclosures should not require analysts to run a sophisticated algorithm to understand what they mean, or to enable comparison among investment options.

SEC's approach on the Conflict Minerals Rule offers another precedent for topic specific ESG reporting or disclosures. Nothing in the SEC rule added, changed or eliminated filers' requirements to include content in MD&A as it may apply for materiality purposes. The SEC Rule requires a standalone filing of a [very simple] Form SD, accompanied by a more detailed Conflict Minerals Report for companies that met a certain applicability threshold. The filing deadline is May 31 to accommodate several concerns expressed by filers during the comment period. This cadence allows time to gather meaningful data from supply chain, as well as avoiding additional burdens on resources responsible for financial filings. Conflict Minerals Reports is understandable, and easily accessible on company and SEC websites.

CDP (formerly Carbon Disclosure Project) provides another example. CDP has been a leader on voluntary climate change reporting for 20 years. CDP has been widely adopted, so many companies already have processes, systems, and controls in place to produce and publish these [voluntary] disclosures. CDP disclosures are consistent across all reporters, and not subject to variability according to sector, size, profitability, or other company-dependent criteria. This facilitates comparable analysis – a key objective cited by investors and financial analysts.

Commenter acknowledges there could be other nationally or internationally recognized frameworks that exist or could evolve to be fit for purpose. DHC also acknowledges a widespread sentiment for unified, integrated reporting. Nonetheless, DHC suggests that anything the SEC does to reduce the burden on the regulated community is likely to result in more thorough, higher-quality disclosures.

Q8 Internal Governance and Oversight

The Institute of Internal Auditors published a position paper on the Three Lines of Defense in Effective Risk Management and Control in January 2013. Updated in July 2020 to simply the "Three Lines Model", this has been widely adopted or referenced by organizations as a useful model for governance. The

model references external assurance, including its depiction in the seminal graphic. It does not expressly call it a "fourth line (of governance)", but Commenter suggests it serves as such.

Many companies use first- and second-line governance practices to improve and ensure reliability of ESG data and information – including that related to climate change. Environmental Auditing arose as a profession in the 1980s and 1990s, as organizations saw value in having a safeguard to many significant compliance requirements imposed by laws and regulations. ISO 14001 is a model used by many organizations globally for environmental management systems, focusing on processes to improve environmental performance. The ISO 14001 revision in 2015 emphasized a life cycle approach, reaching back into supply chain, and considering product use, end-of-life (and beyond) as issues influencing risks, opportunities, and management priorities. Environmental topics (including climate change) have found their way into supply chain due diligence, onboarding, and recurring checks and oversight.

Companies engage in voluntary ESG reporting, such as via GRI and CDP reports. Organizations already have internal processes, controls and governance structures for these. These may also be subject to internal management-sponsored audits. There are many firms that audit GHG emissions, using methodologies and protocols developed by nationally or internationally recognized bodies. Each of these "second line" oversight functions originated to fulfill specific needs. Not all have adjusted to changing risks and needs, resulting in overlap and gaps – not to mention "audit fatigue" cited almost universally by auditees.

Internal Audit is the third line (of governance). Internal Audit is an independent activity, chartered by – and reporting to – the Board. Internal Audit is in an ideal position to play a governance role for climate change disclosures. In an ESG Symposium available to IIA members in April 2021, one polling question asked about Internal Audit's role in nonfinancial reporting and disclosures. Responses from over 300 attendees (visible on screen) indicated that over 40% consistently include ESG in risk assessments and audit plan, or review internal controls over non-financial reporting. Nearly as many indicated they were beginning a role in nonfinancial reporting and disclosures. Thus, over four-fifths indicated some Internal Audit involvement. Commenter suggests that this role is likely to grow.

Internal Audit plays a prominent role in assuring internal controls over financial reporting (ICFR), as well as advisory and assurance roles for all types of risk. These skill sets are adaptable for internal controls over non-financial reporting, including climate change disclosures.

The audits and governance mechanisms listed above are by no means exhaustive. Audits vary in objective, scope, and degree of rigor. Management has recognized that audits are a proven mechanism to improve reliability of data and information. Companies already invest in audits to improve reliability of ESG data and information.

DHC suggests that SEC should encourage filers to describe relevant governance, oversight and audit mechanisms ("second line" audits, Internal Audit, etc.) used. To the extent that some audits are publicly disclosed (for example, to CDP and on their website), the SEC filings can include this reference.

Q9 Single Set of Global Standards

DHC echoes SASB comments, noting that the burden of regulatory fragmentation falls on users and providers of financial capital. The Investment Company Institute encouraged US public companies to provide enhanced reporting consistent with recommendations of the TCFD and SASB[10].

This burden is felt most acutely on companies that must compile data and information to meet different requirements: different scope; reporting periods; methods for calculating emissions; topics to be discussed or disclosed. Companies note this burden (and the associated costs) for topics that are clearly aligned with accounting rules or SEC requirements. Climate change is complex scientific issue, with new and emerging regulatory requirements, and many ways to affect financial performance. Scope 3 GHG emissions (a topic of interest to many investors) extends into supply chains and value chains; even SMEs "only" located in the U.S. are likely to be drawn into global disclosure standards. Multiple standards for climate change disclosures would be burdensome, not only to filers but to any company in the supply chain of a filer making climate change disclosures.

Q10 Enforcement, Assessment, Audits

<u>Enforcement</u>

DHC suggests that SEC use existing authority for review and enforcement of appropriate accounting for AROs and contingent liabilities as may be influenced by climate change related factors. SEC should encourage the PCAOB to incorporate this into their reviews, so financial auditors can incorporate this into their procedures and use specialist support to ensure the quality of their efforts.

DHC does not believe that climate change disclosures should be subject to mandatory assurance by financial auditors. Management Discussion and Analysis is not subject auditor effort as part of their assurance opinion now. Financial auditors read MD&A for substantive inconsistencies with data and information that was subject to procedures supporting the audit opinion. This does not involve the same degree of rigor as procedures used to get comfort over the income statement and balance sheet.

[10] Investment Company Institute, 2020 Annual Report to Members (January 2021).

Surveys of Boards, CAEs and Management consistently show that these groups recognize ESG (including climate change) as a risk. The same surveys indicate that other risks (cybersecurity, third party risks, business continuity) are regarded as more important[11]. Cybersecurity risk consistently ranks as the top concern by Boards and CAEs. Colonial Pipeline paid a reported $4.4 million in ransom to hackers in May 2021. If Colonial had been a publicly traded company, this incident would have caused a substantial hit to share price, from the ransom paid and from investors' estimates or concerns for future liabilities or costs. Commenter is not aware that content regarding cybersecurity risk in Management Discussion and Analysis is subject to assurance. Commenter believes it does not make sense for climate change disclosures in MD&A to be subject to mandatory assurance by the financial auditor, when other content in the same section of the 10-K is not. Commenter does not believe SEC should set this precedent for climate change disclosures.

The SEC Conflict Minerals Rule offers another example for an approach to external assurance. This Rule provided that filers could procure an Independent Private Sector Audit (IPSA) to demonstrate assurance over key aspects of the filing. The content of Conflict Minerals Reports includes description of processes and systems. The Final Rule included requirements to make specific determinations[12], with only the determination of "DRC Conflict Free" triggering the requirement for an IPSA. Any filer could, of course, procure an IPSA of they chose. Since much of the filing content is process-oriented, the SEC provided that the IPSA could be done by CPAs or non-CPA auditors, using Generally Accepted Government Audit Standards (GAGAS - GAO's "Yellow Book") attestation or performance audit standards, respectively. The Rule listed two simple objectives. One objective is the assessment of conformance to the OECD Due Diligence Guidelines (which are globally recognized, and free). Companies obtaining an IPSA must submit the audit report with their filing. Companies procuring IPSAs over the years have chosen among all the options for IPSA providers: their financial auditors; other CPA firms; and non-CPA auditors[13]. Both the Conflict Minerals Reports and the IPSAs have migrated towards common formats, facilitating comparative analysis by investors and a broad range of stakeholders. Commenter acknowledges that Section 1502 of Dodd-Frank caught many in the regulated community by surprise and is not among their favorite compliance requirements. Still, the SEC's navigated expectations from Congress, investors, ESG stakeholders, and regulated entities deftly, resulting in several approaches that could be useful for climate change disclosures.

[11] See "On Risk; a Guide to Understanding, Aligning and Optimizing Risk 2021"; published by the Institute of Internal Auditors.
[12] Specific disclosure requirements were challenged on First Amendment grounds; this provision of the final SEC Rule is not yet required for all filers.
[13] Commenter disclosure: DHC was among the first cohort to perform IPSAs, as a non-CPA auditor.

Q11 Reliability and Accountability; Internal Controls; Signature

See comments provided for Q8 (Governance) regarding reliability and internal controls.

The SEC Conflict Minerals Rule offers precedent on the topic of signatory. There is an arc of thought from the proposed rule, through SEC's consideration of numerous comments to the Final Rule. The Final Rule requires Conflict Minerals Reports [a standalone submittal] to be signed by an Executive Officer - but not necessarily by the CEO or CFO. Titles of signatories on recently submitted Forms SD include: General Counsel; Chief Compliance Officer; Chief Risk Officer; Secretary. Commenter suggests these Executive Officers have sufficient authority for oversight of climate change disclosures. This flexibility is more easily provided to the regulated community if the disclosures are in a document separate from the Form 10-K.

Q12 Comply or Explain

Climate Change is a global issue, with all organizations contributing to and affected by it to some extent. Commenter believes that all filers should comply with disclosure requirements. However, Commenter suggests that a version of "comply or explain" could be useful during a transition period.

The SEC Conflict Minerals Rule had a two-year transition period, with an additional two years for smaller entities. Commenter suggests a transition period for filers would be helpful, to enable filers to develop systems, controls, and governance mechanisms for climate change disclosures. Companies can disclose efforts to date, plans to develop or improve their systems and controls, and data – to the extent it is available, of sufficient quality to disclose, and the companies elected to do it.

So long as the "comply or explain" follows a comparable format, reasonable investors can review and analyze these disclosures. This has been done: SASB published "State of Disclosure" reports for the first few years after the SASB standards had been published.[14]

Q13 Disclosure and Analysis

Companies use many terms to convey their commitment or progress in the area of climate change: Carbon Footprint; Carbon Neutral; Climate Resilient; Net Zero Emissions – even "renewable." Investors are seeking company information on climate change that is informative, relevant, and reliable. Interest in climate change span the gamut from technical specialists who know the ESG and climate change – related lingo to investors with good intentions who seek simple mechanisms to inform thoughtful

[14] "The State of Disclosure; An Analysis of the Effectiveness of SEC Filings; 2017"

investment decisions. Sophisticated investors use algorithms to seek specific terms. Less sophisticated investors may simply scan disclosures seeking terms that convey commitment and progress. Common terminology is important. There is risk that companies may use terms as a mechanism to attract investors; indeed, even with the maturation of GRI, SASB and other ESG reporting frameworks and standards, "greenwash" is still a concern. When unsubstantiated claims are used to attract investment, Commenter suggests this goes beyond greenwash – potentially into fraud.

Commenter suggests that SEC learn lessons from the Conflict Minerals Rule regarding specific terms and requiring them in disclosures. Of all the provisions of the Conflict Minerals Rule that were challenged, the one citing First Amendment rights had the greatest impact on fulfillment of the entire Final Rule. Parties objected to the requirement to possibility of having to use the term "Not Found to be DRC Conflict Free", on the grounds that companies should not be compelled to make statements (in SEC filings, no less) that could reflect poorly on themselves. Use of the term "DRC Conflict Free" was not often mentioned in the challenge; however, use of this term was voluntary (at least for the first two years, as anticipated in the Final Rule), and the filer making such a statement is required to procure and submit an Independent Private Sector Audit. One state Attorney General has already submitted comments indicating likely suits on the basis of First Amendment[15].

Commenter suggests that the SEC should not define specific climate change related terms, and should not require filers to use specific terms in their disclosures. The U.S. EPA maintains a Glossary of Climate Change Terms, which is publicly available on the US EPA website. The EU's taxonomy could gain widespread acceptance, as many US filers also file in the EU. Many other companies will be in the supply chain of EU filers, and will eventually have to apply these terms to their operations for Business-to-Business disclosures. The SEC could require or strongly suggest that filers note the source of key terms and definitions, with a clear preference for terms used by other US Government agencies (the EPA), or nationally- or internationally-recognized organizations (SASB, TCFD, WRI, etc.).

Q14 Private Companies

Commenter is not in a position to opine on what SEC should require of private companies, since Commenter does not know the extent of SEC authority over private companies.

It is inevitable that private companies will develop information similar to any disclosures required by SEC. Climate change is a truly global issue. Activities, risks and impacts extend beyond the boundaries of any single company, into both the supply chain and the value chain (through use of products or

[15] Letter from Patrick Morrisey, Attorney General of the State of West Virginia; March 25, 2021; re: March 15, 2021 Remarks for the Center for American Progress Regarding Compulsory Environmental, Social, and Governance Statements; on SEC website

services, and at / beyond end of life). Companies making meaningful disclosures will need to gather information from both avenues. The SEC Conflict Minerals Rule ensnared private companies and non-US filers via the need for US filers to gather data and information from supply chain. Commenter predicts that climate change disclosures will do the same.

The U.S. Government is taking other steps to reduce the government's role in climate change. Government procurements are likely to require some type of statement, commitment, or actions on climate change. Private sector companies that do business with the Federal government (or who sell to customers that do) will need to address climate change via this avenue.

Q15 Climate Change, Broader ESG

SEC should focus this wave of activity – rules, requirements, or guidance – solely on climate change.

Climate change risks can be considered in three categories: physical; transitional; and regulatory. Climate change can pose risk to operations, compliance, financial performance and reputation. It is also likely the single ESG issue where more companies have developed some sort of systems and controls for gathering data and information than any other. Even so, companies' experience with GRI, CDP, the Conflict Minerals rule, SASB and TCFD have shown that compiling information for management use and for submittal to SEC are two very different things.

Commenter suggests SEC limit this first wave of mandatory ESG disclosures to climate change. SEC should consider this a pilot, learning from the experiences of a range of stakeholders to adjust the approach for the next ESG issue – such as human capital management.

The SEC Conflict Minerals Rule provides a useful precedent here as well; it requires GAO to conduct an annual audit. The GAO has published a series of audits, with objectives and focus evolving over time as the adoption and maturity of companies' conflict minerals programs and disclosures matured. The audit reports reflect GAO's standard approach of outlining objectives, methodology, conclusions, recommendations, and supporting information – all in easily digestible plain English. The scope, impact and interest in climate change disclosures to SEC is far broader than [16]the interest in conflict minerals. Commenter urges the SEC to find a prominent role for GAO for climate change disclosure requirements.

[16] For example, GAO-16-805; SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups; August 2016

DOUGLAS HILEMAN PROFESSIONAL HIGHLIGHTS

I founded Douglas Hileman Consulting LLC ("DHC") in 2008. DHC helps clients with ESG issues including compliance, risk, non-financial reporting, audits, audit readiness and other advisory services.

I have over four decades of experience in the ESG space. I have the distinction of professional experience in multiple "lines" [of governance], using the Institute of Internal Auditor's "Three Lines" position paper as a model. I have experience in operations, facility and corporate compliance ("first line"); environmental, safety and sustainability auditing ("second line"); and Internal Audit ("third line"). I joined a Big 4 accounting firm just as Sarbanes-Oxley was passed. I supported dozens of financial audits, specializing in processes, systems, internal controls and compliance with contingent environmental liabilities, Asset Retirement Obligations. During six audit cycles, I supported dozens of financial audits, involving US and International accounting rules. As President of my firm, I led Independent Private Sector Audits pursuant to the SEC Conflict Minerals Rule, as a non-CPA auditor using "Yellow Book" performance audit standards. This assurance engagement could be considered a "fourth line." I recently completed a multi-year effort as senior environmental management and auditing specialist on a monitorship effort involving a global organization. Aspects of this engagement could be considered a "fifth line" of governance. over five filing cycles. This independent assurance

I am familiar with many standards and frameworks relevant to the ESG space. These include regulatory compliance, GRI (formerly Global Reporting Initiative), COSO Enterprise Risk Management, OECD Due Diligence Guidelines, industry benchmarks, ISO management system standards, and Compliance and Ethics Institute.

I have reviewed and submitted comments on ESG regulations or [private sector] frameworks and standards; I have also supported professional organizations in their review of ESG-related topics for their own comments. My submittals have included those for: SEC's draft Conflict Minerals Rule, the initial proposal for International Integrated Reporting Framework, SEC's Regulation S-K Concept Release; GRI's Exposure Draft of Universal Standards; SASB's Conceptual Framework and Rules of Procedure; and IFRS Consultation Paper on Sustainability Reporting.

I am active in the Institute of Internal Auditors (IIA), a professional organization with more than 180,000 members worldwide. I have been an officer in local IIA chapter, on a global committee to write supplemental guidance. I have presented on ESG at several chapters, district, regional and a national meeting. I have been on the Advisory Board of the IIA's EHS Audit Exchange, and an officer of legacy organizations. I hold the Fundamentals in Sustainability Accounting (FSA) credential, which is granted and managed by the Sustainability Accounting Standards Board (SASB). I hold Certified Risk Management Assurance (CRMA) and Certified Professional EHS Auditor (CPEA), granted by the Institute of Internal Auditors. I am a Professional Engineer (Chemical), in Ohio and California. I am not a CPA.