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June 8, 2021

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

Dear Chairman Gensler,

The National Association of Manufacturers (“NAM”) appreciates the opportunity to provide comment to the Securities and Exchange Commission (“SEC”) in response to its request for public input on climate change disclosures.¹ The NAM believes strongly in the importance of ensuring that investors have access to disclosures on material climate-related metrics, risks, and opportunities. We commend the SEC for considering ways to enhance the comparability of climate information and other material environmental, social, and governance (“ESG”) metrics disclosed by publicly traded companies.

The NAM is the largest industrial trade association in the United States, representing small and large manufacturers in every industrial sector and in all fifty states. Manufacturers are leaders in combatting climate change and believe in an all-of-government approach to solving its enormous challenges. Over the past decade, manufacturers in the U.S. have reduced the carbon footprint of their products by 21% while increasing their value to the economy by 18%. The NAM has called on Congress to enact a single unified climate policy that meets science-based targets, ensures a level playing field without carbon leakage, and preserves consumer choice and manufacturing competitiveness, as laid out in the NAM’s climate policy blueprint, “The Promise Ahead.”² Our industry holds the keys to solving this global challenge—making the products and technologies needed to achieve ambitious goals.

Manufacturers are dedicated to being part of the solution to climate change and, importantly, to providing vital information about these efforts to their investors. The NAM supports a principles-based framework that enables publicly traded companies to efficiently report financially material climate-related metrics, as well as information about financially material climate-related risks and opportunities, to their shareholders.³ As the Commission works to advance a reporting framework for

¹ *Public Input Welcomed on Climate Change Disclosures* (15 March 2021). Available at <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

² *The Promise Ahead: Manufacturers Taking Action on Climate*. National Association of Manufacturers. Available at <https://www.nam.org/wp-content/uploads/2021/01/The-Promise-Ahead.pdf>.

³ The SEC’s request for public input focuses almost exclusively on climate-related disclosures, but public statements from SEC Commissioners and staff have indicated that the Commission is considering a reporting framework that incorporates a broader universe of ESG metrics. As such, the NAM’s comments refer to ESG in the general sense, as we strongly encourage the Commission to adhere to the principles-based approach described in our letter irrespective of whether its framework incorporates just climate or broader ESG reporting obligations. However, we respectfully urge the SEC to begin its work by focusing on climate disclosures. There is a higher degree of alignment, understanding, and experience among both public companies and investors with respect to material climate-related metrics—and the SEC’s request for public input solicits feedback only on these topics (outside of one mention of ESG in Question 15). The NAM’s principles and policy positions described herein apply to both climate and ESG reporting, but the NAM believes the SEC will be more successful in its attempts to enhance clarity and comparability if it takes the incremental approach of focusing first on financially material climate disclosures where there is sufficient data availability for effective reporting.

climate change disclosures and considers future action with respect to ESG disclosures, the NAM respectfully encourages the SEC to:

- **Focus any reporting requirements on metrics that are financially material to the investors in a specific business.** Conveying decision-useful information that issuers determine to be material to shareholders under the Supreme Court’s *TSC Industries* standard⁴ should be the mission of any disclosure regime. A materiality-based framework will support companies’ efforts to ensure that investors have information on metrics that drive value creation and long-term shareholder return.
- **Allow for flexible disclosures that reflect the diversity of climate- and ESG-related risks and opportunities that companies face.** Rather than imposing a one-size-fits-all mandate that would significantly increase costs and liability for public companies without providing a corresponding increase in useful information to investors, the SEC should advance a framework that provides companies the flexibility to report based on risks and opportunities relevant to their business and industry.
- **Provide clarity to businesses and comparability to investors.** The current lack of standardization with respect to climate change and ESG disclosures can create extra, potentially costly work for both issuers and investors. The NAM is hopeful that the SEC can enhance the clarity and comparability of this important data while adhering to the long-standing concept of materiality.⁵ Importantly, Commission-level rulemaking is the only way to provide certainty to the market—and to fully incorporate stakeholder feedback into the policymaking process.
- **Limit costs and liability for publicly traded companies.** The SEC can take simple steps—like allowing for furnished disclosures (rather than requiring filings), instituting a “comply or explain” mechanism, and leveraging companies’ experience with existing standard-setters—that will ease the cost and liability burden for public companies without reducing information availability or accuracy for investors. A flexible reporting framework that reduces the costs of data collection and assurance will preserve funds for actual company initiatives on climate- and ESG-related topics.
- **Allow the information infrastructure around climate change and ESG data to continue to evolve.** Publicly traded companies and their investors are all at different stages on the path toward standardized climate and ESG disclosures, and the associated reporting is a relatively new and still-evolving practice. Any SEC framework should encourage disclosure of available material information while businesses continue to enhance the data collection and assurance infrastructure around climate and ESG reporting. The SEC should also provide for an extended transition into any new framework and a scaled compliance burden for small and medium-sized companies.
- **Avoid reporting obligations designed to further specific policy goals outside the SEC’s purview.** Any disclosure requirements should support the SEC’s mission to protect investors, maintain efficient markets, and facilitate capital formation. Any climate or ESG reporting framework should provide a forum for material disclosures without attempting to pressure companies into specific policy or business choices.

⁴ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

⁵ Related to its efforts to enhance clarity via a new reporting framework, the SEC should also take this opportunity to provide oversight of third parties like ESG ratings agencies and proxy advisory firms, which may undercut clarity and comparability of information for investors by issuing conflicting and confusing ESG standards.

The NAM believes the SEC can advance a disclosure framework that achieves these goals by providing clarity to companies on how to disclose their individual, material risks and opportunities without instituting a one-size-fits-all mandate. We appreciate the SEC's efforts to enhance the availability and comparability of information reported to investors, and we respectfully encourage you to consider the following perspectives on principles-based reporting as the Commission works toward a concept release and, ultimately, a proposed rule on public company climate change (and, in the future, ESG) disclosures.

I. Any reporting framework should be principles-based and support the disclosure of financially material climate change and ESG information.

Manufacturers are taking the lead in innovating solutions to climate change, ensuring clean air and water, and enhancing diversity and inclusion in the workforce and in the boardroom. Manufacturers have reduced the industry's carbon footprint by 21% over the last decade; the industry is also dedicated to increasing equity and parity for underrepresented communities in the U.S., with goals outlined in the NAM's "Pledge for Action" to create 300,000 pathways to job opportunities for Black people and all people of color by 2025.⁶

Moreover, manufacturers believe it is critical that publicly traded companies communicate material information, data, and risk factors about these important efforts to their shareholders. As such, many manufacturers are already taking steps—as appropriate for their businesses and in compliance with existing disclosure laws—to publicize climate- and ESG-related information, including by reporting data in their public filings and annual reports, publishing sustainability reports accessible to shareholders and the public, voluntarily complying with third-party standard setters like the Sustainability Accounting Standards Board ("SASB"), the Task Force on Climate-related Financial Disclosures ("TCFD"), and the Global Reporting Initiative ("GRI"), and more.⁷ Many investors are satisfied with these approaches, while some have called for enhanced ESG disclosures. Others rarely, if ever, consider ESG metrics. In brief, certain climate and ESG information may be material to a reasonable shareholder's investing decisions, and manufacturers are diligent in ensuring their investors have the information they need.

As the Commission considers how best to advance a principles-based framework for climate change or ESG disclosures, the NAM respectfully encourages the SEC to require disclosure of only those metrics that are financially material to a business's investors. Notably, materiality does not encompass information that may be interesting to a small subset of investors, or that some universe of outside stakeholders has deemed noteworthy. Rather, the Supreme Court has made clear that data is only material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."⁸ Investors are not unanimous in what, if any, climate and ESG metrics they would like to see from public companies, so the materiality standard's emphasis on the *reasonable* investor focuses public company disclosures on metrics that actually drive value creation and long-term shareholder return. In the context of a climate change or ESG reporting framework, the SEC should only require disclosures that meet this time-tested and well-understood standard.

⁶ *Pledge for Action*. National Association of Manufacturers. Available at <https://www.nam.org/wp-content/uploads/2020/07/nam-pledge-for-action.pdf>.

⁷ The SEC's work in this space should leverage companies' ongoing efforts to convey material ESG information to their investors, including their use of existing third-party standards.

⁸ *TSC Industries*, *supra* note 4; see also *Basic, Inc. vs. Levinson*, 485 U.S. 224 (1988).

Focusing only on material disclosures would also prevent information overload for investors. A broad requirement that public companies report immaterial ESG information could obscure the material information that businesses already provide to shareholders. The SEC has taken a stance against information overload in the past; for example, the Commission noted in its 2003 guidance related to Management's Discussion and Analysis that companies "should avoid the unnecessary information overload for investors that can result from disclosure of information that is not required, is immaterial, and does not promote understanding."⁹ In its efforts to inform and protect investors, the SEC should take steps to guard against this dynamic by requiring the disclosure of only material information.

This focus on materiality is all the more critical given the broad and largely undefined universe of topics that might fall under the ESG umbrella. While the request for public input focuses almost entirely on climate-related information, Question 15 solicits feedback on the broader universe of potential ESG disclosures. ESG as a term is amorphous and ill-defined, as are the individual E, S, and G components thereof. As with climate-related disclosures, certain ESG metrics may be material to a given business. However, there is not an agreed-upon definition of ESG writ large and there is little consistency among companies and industries as to what ESG-related information might be material. Furthermore, activists tend to define their preferred issue as a critical component of ESG, often claiming that disclosure about that issue is per se material to every business. As the SEC's request for public input does not solicit comment on ESG metrics beyond Question 15, it would be a challenge for the Commission to appropriately define ESG or to scope a broader ESG reporting requirement.

The NAM encourages the SEC to begin its important work by focusing on climate-related metrics. There is a higher degree of alignment among companies and investors as to which climate metrics are material for public company disclosure, and as such climate reporting is more mature, widespread, and well-defined. Both issuers and investors would benefit from the SEC taking an incremental approach as it embarks into this new, relatively unfamiliar territory. The SEC can better consider reporting obligations related to the broader universe of ESG information if it first advances and learns from companies' and investors' experiences with climate reporting. Irrespective of whether a disclosure framework (now or in the future) focuses on climate metrics or other ESG topics, the NAM encourages the SEC to require disclosure only of information that is financially material to a reasonable investor. The SEC can enhance the utility and comparability of public company reporting, better protect investors, and support useful, relevant disclosures by adhering to the financial materiality standard for both climate- and ESG-related metrics.

The NAM believes that a principles-based approach to climate and ESG disclosures, guided by financial materiality and designed to enhance clarity and comparability, can improve the existing disclosure environment.¹⁰ In particular, a focus on traditional concepts of materiality will ensure the reports include useful information for investors. The NAM respectfully encourages the SEC to advance a reporting framework only if it provides clarity to public companies and enables them to furnish decision-useful information about their material risks and opportunities to investors in a comparable manner.

⁹ *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, 68 Fed. Reg. 75056 (29 December 2003). Release Nos. 33-8350, 34-48960; available at <https://www.govinfo.gov/content/pkg/FR-2003-12-29/pdf/03-31802.pdf>.

¹⁰ The NAM believes that any such disclosures should be required at most on an annual basis (not more frequently), taking into account existing reporting deadlines for metrics that companies already disclose. For instance, reports pursuant to the EPA's Greenhouse Gas Reporting Program are generally due by March 31 of each year. The SEC should schedule the reporting deadlines under any climate or ESG reporting framework for mid-year, after these existing regulatory deadlines—as the data for climate or ESG disclosures will likely come from these reports.

II. Any reporting framework should be conducive to flexible and diverse climate change or ESG disclosures that reflect the disparate risks and opportunities faced by different companies and industries.

The NAM believes that any climate change or ESG reporting framework should provide clarity for businesses and comparability for investors. As the SEC strives for comparability and universality, however, it is critical to remember that climate- and ESG-related disclosures should be designed to communicate information about material risk factors to individual investors in individual businesses. As noted, financial materiality for shareholders should be the driving force behind any reporting requirement.¹¹ Given that risk factors differ from company to company and from industry to industry, the resulting disclosures under any reporting framework should be correspondingly diverse.¹² For the framework to be useful, there should be a clear link to a reasonable shareholder's use of the information to guide a financially-driven investing decision. For this reason, the NAM respectfully encourages the SEC to advance a flexible reporting framework grounded in materiality.

Mandating a top-down, one-size-fits-all ESG disclosure regime would not achieve the goal of providing material information to investors; rather, it would risk the opposite outcome. While the NAM understands that there is some inherent tension between enhancing comparability for investors and providing flexibility for publicly traded companies, information is only useful to an investing decision if it is relevant to a business's performance or an investor's evaluation thereof. It must also be high-quality and reliable to be useful to shareholders. We respectfully encourage the SEC to strike an appropriate balance between comparability and flexibility, and to avoid injecting speculative or low-quality information, in order to ensure that disclosures under any climate or ESG reporting framework are valuable for investors. For example, climate change and efforts to combat it will have different impacts on different companies and industries, so any climate-related disclosures required under the new framework should communicate company-specific information about these company-specific risks to investors so they can make informed capital allocation decisions.

The primary goal of any climate change or ESG reporting framework should be to increase information availability for investors by facilitating disclosure of the impacts of climate- or ESG-related risks and opportunities on company business and strategy and how issuers identify, assess, and manage those risks. The NAM supports this goal. But for the disclosed information to be useful, the framework must be flexible enough that the disclosures can be tailored to the individual companies and industries complying. The varied risks and opportunities that companies face (and/or the wide range of metrics they might disclose) may be material to their business and those in their industry—but not necessarily to the entire public market. A one-size-fits-all mandate that imposes boilerplate reporting obligations on diverse companies will reduce information availability for investors and lessen the utility of the data disclosed. Instead of imposing a top-down, one-size-fits-all requirement, the SEC should allow for both qualitative and quantitative reporting under a principles-based framework that gives guidance to companies on *how to disclose* their individual, material climate or ESG risks and opportunities rather than mandating *what to disclose*. This approach will promote comparability for investors without artificially imposing uniformity among public companies (and thereby requiring costly disclosure of immaterial or speculative information). The NAM respectfully encourages the SEC to strike this critical balance between comparability for investors and flexibility that reflects the diversity of climate and ESG risks across different companies.

Question 4 solicits comment on whether and how the SEC should develop and implement different climate change reporting standards for different industries. The Commission is right to consider how

¹¹ Further, the standard for disclosure is based on the *reasonable* shareholder, an important caveat given the lack of unanimity among investors as to their desire for enhanced ESG disclosure.

¹² Some topics (e.g., governance) will be more universal, but key performance indicators related to climate and other ESG topics will more often than not vary across industries.

its framework can best reflect the range of ESG risks (climate-related and otherwise) that different industries face. Irrespective of the specific framework the SEC ultimately chooses to organize public company ESG reporting, it is critical that businesses can disclose based on industry-specific metrics (and, similarly, can omit disclosures on metrics irrelevant to a given industry or company). If the SEC's framework incorporates disclosure requirements for metrics that might be more relevant to one industry than another, it should allow issuers to comply with the standard where it is relevant and abstain where irrelevant.¹³ Question 12 specifically requests feedback on this “comply or explain” mechanism, which the NAM strongly believes should be a key feature of any new reporting framework.¹⁴ Irrespective of how industry-specific the individual disclosures that make up a climate or ESG reporting framework ultimately are, the critical point is that companies should have the flexibility to comply with the framework based on a materiality assessment for their individual business and industry.

Avoiding a one-size-fits-all standard is all the more crucial given that, for most public companies, climate and ESG data is not “on the shelf” and ready to be immediately disclosed. Depending on the scope of the SEC's final framework, some information may require the creation of new data collection protocols from scratch. Other data may currently be collected internally, but not aggregated or consistent throughout the business's footprint, particularly for multinational companies and downstream manufacturers with complex global supply chains. For other metrics, businesses may already report estimates or calculations that are well-understood industry standards—but if the SEC requires one-size-fits-all disclosures that do not reflect these existing practices, companies would be forced to double- or triple-report based on divergent methodologies.¹⁵ Further, certain data points included in a climate or ESG reporting framework may rely on information from suppliers, subsidiaries, purchasers, or consumers. The availability and reliability of the relevant data is not uniform across these various stakeholders, and there may be significant roadblocks related to data accessibility, sharing, or privacy—creating problems for both reporting and assurance.¹⁶ Creating a global infrastructure to collect and standardize ESG data to meet a one-size-fits-all standard would take years and present a significant burden, as would the challenge of building a corresponding assurance and controls infrastructure were these additional steps to be required.¹⁷

In advancing a climate or ESG disclosure framework, the SEC should remain mindful of the current status of the information and assurance infrastructure in the still-evolving ESG space—including existing regulatory reporting mandates that rely on estimates or modeling. In reporting pursuant to

¹³ To the extent that a framework includes industry-specific metrics, the SEC could provide guidance to issuers with respect to industry classifications (e.g., for companies that operate in more than one industry), as existing industry groupings (e.g., NAICS codes) may not always be appropriate for a given business's metrics or risks. Consistent with a principles-based approach to climate and ESG reporting, companies should have the flexibility to report based on industry standards that are relevant to them, irrespective of their specific industry categorization(s).

¹⁴ See *infra* at 10 for further discussion of “comply or explain.”

¹⁵ Also, both regulators and the market accept these estimates and calculations as appropriate and useful to understanding a business's reports on a given topic. But the degree of assurance in the context of an SEC disclosure mandate, if required, could complicate companies' ability to use these reports under the framework. The SEC should be clear that recognized methodologies, particularly those required by subject matter regulators (e.g., the EPA), are sufficient for SEC reporting purposes.

¹⁶ The current conflict minerals reporting requirement relies on difficult-to-access and complicated-to-verify information throughout the supply chain—and provides a cautionary example of roadblocks the SEC should avoid in working to advance a broader climate or ESG reporting framework. Conflict minerals reporting is one-size-fits-all, costly, time-consuming, and difficult; it was enacted to further policy goals outside the SEC's purview; and the disclosures required are not material to issuers nor utilized by investors. The NAM is hopeful that any climate or ESG reporting framework will avoid similar pitfalls.

¹⁷ Companies that collect ESG data do have controls in place to maintain accuracy and reliability, but they are not generally designed for financial reporting. As such, the NAM believes that certification, assurance, and internal controls should be voluntary under a climate or ESG reporting framework.

any new framework, companies should have the flexibility to disclose what they know, or can reasonably access, about various climate and ESG metrics, along with an explanation that contextualizes the data if necessary. A one-size-fits-all standard would likely not allow for this flexibility, both increasing costs on public companies (by requiring them to track down information that may be difficult to access or verify) and reducing the reliability of the disclosures for investors (by imparting a sheen of reliability where there is actually uncertainty¹⁸).

The NAM respectfully encourages the SEC not to institute a top-down, one-size-fits-all mandate—which would significantly increase costs and liability for public companies without providing a corresponding increase in useful information to investors. Rather, any reporting framework should foster a diverse range of disclosures that reflects the diversity of public companies on the market.

III. The SEC should leverage companies' experiences with existing standard-setters for climate and ESG reporting.

Many manufacturers are already taking steps to convey climate and ESG information to their investors by relying on third-party standards like those published by SASB, TCFD, and GRI. The existing standards can provide useful insight to the SEC as it considers how best to advance a climate or ESG reporting framework, and the NAM respectfully encourages the SEC to leverage these examples. Notably, many investors utilize and are satisfied with the data reported pursuant to these frameworks, so the Commission does not need to “reinvent the wheel.” The SEC should also look to existing reporting requirements in the U.S. and around the world to understand what multinational companies already disclose and how an SEC framework can align with existing regulatory practices. An SEC framework that builds off the progress made by existing models can minimize confusion for investors, avoid duplication of effort, and support companies' ongoing work to report material climate and ESG information.

Public companies with reporting infrastructures currently in place to comply with foreign or U.S. ESG reporting requirements or third-party frameworks could face significant costs if the SEC's framework substantially diverges from existing standards. And investors relying on the information reported pursuant to these frameworks could experience a reduction in comparability were the SEC to set a divergent standard. Starting from scratch on a framework that fails to take into account what many companies have been doing for years, both voluntarily and in response to requirements in the European Union and elsewhere, would make compliance incredibly burdensome—while reducing comparability and increasing investor confusion. This is particularly true for quantitative disclosures that rely on specific calculation methodologies. To the largest extent possible, the SEC should allow companies to utilize existing, well-understood protocols for data collection, evaluation, and reporting.¹⁹ Creating brand new standards not grounded in companies' and shareholders' experiences with climate and ESG disclosures (both via third-party standard-setters and in accordance with various U.S. and international requirements) would make reporting unnecessarily

¹⁸ Data collection and analysis processes continue to evolve, as do the standards for auditing and assurance of climate and ESG information. The current limited and often patchwork nature of these standards should be reflected under an SEC framework. If the SEC advances a framework based on specific disclosures, it should remain mindful that climate and ESG reporting does not benefit from the decades of long-established benchmarks, processes, and know-how associated with traditional financial reporting.

¹⁹ To the extent the SEC provides guidance on how to report specific metrics, it should take care to align public company disclosures with other regulatory mandates. For example, President Biden's recent executive order on climate-related financial risks directs the Federal Acquisition Regulatory Council to consider requiring greenhouse gas and climate risk reporting from major federal suppliers. The EPA's Greenhouse Gas Reporting Program already requires reporting of greenhouse gas data from facilities in the U.S. Multinational companies may face disclosure requirements with similar goals. In order to limit costs for issuers and reduce confusion for investors, the SEC should strive toward consistency with these approaches and coordination with other regulators to the extent the currently required reports are material to public companies.

complicated for businesses and result in data that may be confusing and counterproductive for investors.

In addition to the specific disclosures required under the existing frameworks, the SEC should also look to the structure of the frameworks themselves. The current standards allow for a significant degree of leeway and interpretation by companies that choose to utilize them for climate or ESG reporting. Existing standard-setters are not simply ESG versions of the Financial Accounting Standards Board (“FASB”) or the Public Company Accounting Oversight Board (“PCAOB”); rather, their non-binding guidance reflects the lack of standardization, market norms, and background literature available under the status quo for ESG reporting. This less-prescriptive, principles-based approach should guide the SEC’s work.

One critical feature of many of the existing standards is that they provide for differentiated reporting based on company- and industry-specific ESG risks and opportunities. For example, SASB’s description of its industry-specific standards notes that “[n]ot all sustainability issues matter equally to each industry, and the same sustainability issue can manifest differently across industries.”²⁰ As noted, the NAM believes strongly in the importance of conveying material information to investors—which, by definition, means different things for different companies and industries. These third-party frameworks are designed to provide comparability and consistency for investors while still granting companies the flexibility to provide disclosures that are actually relevant to their business.

Because the existing frameworks are currently voluntary, their disclosure standards are imbued with a de facto “comply or explain” mechanism. Companies are free to omit disclosures that would not be relevant to their investors, and they can choose to explain why a given disclosure was “skipped” and still report that they are in compliance with SASB, TCFD, or GRI.²¹ Similarly, company disclosures pursuant to these frameworks are provided to investors rather than filed with the SEC. This flexibility is an advantage, not a drawback, of the existing voluntary frameworks. As the SEC considers advancing an ESG reporting framework, it should note that disclosures not officially “filed” with the SEC and “comply or explain” reporting have not gutted the efficacy of these standards. As such, the SEC’s work to advance a climate or ESG disclosure framework should allow for similar flexibility.

While the NAM encourages the SEC to leverage companies’ experiences with existing climate and ESG frameworks, it is critical that Commission oversight and public comment be consistently incorporated into the standard-setting process. While often well-intentioned, these third parties are not governmental actors accountable to the public, and their mandate is not necessarily perfectly aligned with the SEC’s mission to provide transparency on material matters to investors. For example, the existing standard-setters have broader target audiences for their reports, including a wide range of stakeholders interested in businesses’ ESG data rather than the shareholders that SEC disclosures should be designed to inform. They might also have conflicts of interest, or seek to mandate specific policy approaches rather than just facilitate disclosure. In order to protect against these potential risks, the SEC should provide clear oversight of and invite direct public comment on any climate or ESG disclosure obligations for public companies—both now and in the future as the framework is reviewed and updated over time.

Despite these challenges, third-party frameworks’ expertise and experience can be useful to the SEC’s efforts. However, the SEC must apply a critical eye to any standards it might incorporate into its work and invite public participation in the standard-setting process. Leveraging the existing knowledge base of both issuers and investors will reduce costs for public companies and limit duplication of effort, while practicing appropriate regulatory due diligence will give the market

²⁰ *Examples of SASB’s Industry-Specific Approach*, available at <https://www.sasb.org/industry-specific/>.

²¹ In fact, given the voluntary nature of these frameworks, companies are not even required to “explain” if they choose to omit a given disclosure when it is not relevant to their business.

confidence that any new standards are for the protection of investors and in the best interest of the U.S. capital markets.

IV. The SEC should allow disclosures under any climate or ESG reporting framework to be furnished to, rather than filed with, the SEC.

Question 1 and Question 7 solicit comment on whether climate-related disclosures should be filed with or furnished to the Commission. It is critical to the success of any climate or ESG reporting regime that these disclosures be furnished to the SEC.²²

Regardless of the forum, public companies are held to a general standard for true and honest statements made in good faith and with due diligence—so the question of “filed vs. furnished” will not affect the accuracy or reliability of the information being disclosed. However, companies can be held to a more rigid liability standard for any material misstatement or omission in a statement filed with the SEC. For information furnished to the SEC, the statement itself must be materially misleading to trigger potential liability. This reduced liability standard—which, again, does not implicate the accuracy or reliability of the information—is critical to protecting public companies and providing useful information to investors in the context of a climate or ESG reporting framework.

As discussed, the primary goal of any reporting framework should be to generate decision-useful information for investors. Given the evolving nature of climate and ESG data, a strict filing standard could actually reduce information availability by incentivizing boilerplate disclosures. The SEC should want companies to fulsomely describe risk factors and other relevant metrics, even when the data, models, and benchmarks (and companies’ understanding thereof) are still evolving. The liability associated with disclosures filed with the SEC would pose a significant limitation to these robust disclosures given the evolving state of the climate and ESG information infrastructure. Specifically, subjecting these disclosures to increased liability could disincentivize fulsome descriptions of forward-looking climate and ESG efforts and reduce the availability of data based on new and evolving models and methodologies. For example, disclosures of material information related to company actions predicated on projected global temperature increases, or on potential government actions to mitigate those increases, are exactly what any reporting framework should be designed to elicit—but the degree of certainty required to file a disclosure based on a forward-looking climate model or a prediction of policymakers’ actions would be extraordinarily difficult to meet.

It is also important to note the inherent uncertainty, wide variation, and ongoing evolution of much of the information that could be considered under the rubric of climate- or ESG-related disclosure. In the climate space, a considerable amount of data comes from estimates based on emission factors provided by government agencies (e.g., the Environmental Protection Agency (“EPA”)) or industry guidance, rather than direct measurement. As such, much existing climate reporting relies on calculations and models based on these factors rather than direct metering, resulting in reliable data that would be appropriate for a statement furnished to the SEC, but perhaps not for one subject to the liability associated with SEC filings. A “furnished” standard would grant investors full access to this information, and at a lower cost for companies. Requiring “filed” disclosures, on the other hand, would slow the evolution of robust climate and ESG disclosures and result in reduced information availability for investors. Under a framework based on disclosures furnished to the SEC, company reporting would still have to be accurate and made in good faith, but businesses would have more freedom to describe climate and ESG efforts that are aspirational or set goals predicated on inexact but still useful models or predictions.

²² Additionally, the NAM believes that ESG disclosures should be reported at most on an annual basis, not more frequently.

Manufacturers believe in the importance of accurate disclosures and of investor trust in the information disseminated by public companies. Reducing the liability on public companies will ultimately ensure that any reporting framework is more useful to investors by granting companies the flexibility to fulsomely describe their climate or ESG risks and opportunities and to be aspirational in setting their goals related to climate or ESG metrics and benchmarks.²³ As such, the NAM strongly encourages the Commission to allow disclosures under any reporting framework to be furnished to, rather than filed with, the SEC.

Further, the NAM encourages the SEC not to require in the context of a climate or ESG reporting framework the certification, assurance, and internal controls traditionally associated with financial reports. Irrespective of whether disclosures are furnished or filed, the costly process of internal and external review would be a significant cost and liability burden on public companies. This is especially true since the external audit and internal control standards that would be necessary to prepare and review ESG reports are not currently applied to ESG data and would take significant time and cost to implement. Measurement principles for climate- and ESG-related data are also relatively immature, especially when compared to financial data. If the Commission requires traditional certification, assurance, and internal controls, it would trigger significant costs and liability for businesses. Disclosures that are not subject to traditional certification, assurance, and controls, on the other hand, would more accurately reflect the evolving nature of the ESG information and assurance infrastructure and of the market's understanding of the impact of climate and ESG metrics on company performance.

Company financial filings are subject to strict audit and review requirements, and company auditors and the SEC insist on robust certification and control frameworks for information included in these filings. These steps are important, and achievable, for financial information with the benefit of long-established expertise, benchmarking, and assurance procedures. But for climate and ESG information in a relatively new and ever-evolving landscape, such controls would be overly rigid and ultimately would result in less-useful information for investors. It would be extraordinarily time-consuming and costly to create an infrastructure to standardize and review this non-financial data in order to ensure it can withstand assurance standards that were not designed for ESG reporting. Reports without financial assurance controls, on the other hand, can still have the comparability and trustworthiness that investors traditionally associate with SEC filings, without the unnecessary cost and liability on issuers. As such, the NAM respectfully encourages the SEC not to mandate third-party assurance and internal certification and control structures that are not appropriate or relevant for climate and ESG disclosures.

V. The SEC could incorporate a “comply or explain” mechanism into its climate or ESG reporting framework to focus the disclosures on relevant information.

Question 12 solicits comment on the advantages and disadvantages of a “comply or explain” mechanism for the disclosures provided pursuant to any new reporting framework. The NAM supports a “comply or explain” approach given the importance of flexibility and issuer-specific disclosures to the success of a climate or ESG disclosure framework. “Comply or explain” should not undercut the SEC’s focus on materiality in crafting a climate or ESG framework, but it could ease compliance and ensure useful disclosures depending on the scope of the reporting requirement. A clear, comparable framework for public companies that incorporates a “comply or explain” mechanism would ensure that businesses are only required to disclose information that is relevant to their investors.²⁴

²³ In addition to a requirement that disclosures be furnished to the Commission, the SEC should also confirm that any climate or ESG disclosures that are forward-looking would receive the customary safe harbor for such statements.

²⁴ “Comply or explain” also provides a built-in learning mechanism that the SEC can utilize in future years to improve the reporting framework.

A disclosure framework with a “comply or explain” mechanism would ensure that investors have relevant, decision-useful information that is pertinent to a given business or industry. As discussed, the primary goal of any disclosure framework should be to convey information about company-specific risks and opportunities to shareholders. Given that these risks and opportunities will differ between companies and industries, the disclosures furnished pursuant to the framework should be similarly diverse. A “comply or explain” mechanism would allow a company to disclose relevant information in a comparable manner, based on the standards advanced under the SEC’s framework (“comply”)—or, when a given disclosure would not be relevant to the business or its investors, to note the lack of relevance and describe why it is not providing the required information (“explain”). This would ensure investors have all relevant information about a company’s climate or ESG risks and opportunities without burdening businesses by forcing them to prepare disclosures that would be inapplicable to them.

A “comply or explain” mechanism would also be useful in instances where data, benchmarks, or models are uncertain, incomplete, or evolving. In such instances, companies could disclose whatever relevant information they have (“comply”) while supplementing the report with an explanation about the uncertainty of the underlying data (“explain”).²⁵ As noted, the information infrastructure around ESG data is still evolving, but a “comply or explain” mechanism would provide the needed flexibility for companies to make decision-useful disclosures in the face of this uncertainty.

Question 12 also solicits comment on whether a “comply or explain” mechanism should apply to all climate disclosures or just select ones. In line with our preferred principles-based approach to an ESG reporting framework, the NAM believes that “comply or explain” should be available for all climate and ESG disclosures. In practice, there are likely to be certain baselines that all, or mostly all, companies provide disclosure on. But given that the mission of any new framework should be to convey relevant information to investors, companies should only “comply” where doing so would provide said relevant information. If a given disclosure obligation is not appropriate for a business or its industry, the company should only be required to “explain” that metric’s lack of relevance in order to justify the choice not to make the described disclosure. This approach would allow the market to decide which disclosures investors truly value: if a company’s explanation for not reporting certain information does not pass muster with investors, then they can exert pressure that the issuer should “comply” rather than “explain” in future years.

While a “comply or explain” mechanism would provide needed flexibility to a climate or ESG disclosure framework, such an approach should not be used to dramatically expand the scope of the framework nor to undercut the materiality standard on which any disclosure requirements should be based. The NAM continues to believe that materiality should be the ultimate arbiter for public company reporting. Even if companies can “explain” out of certain disclosures, the SEC should not broaden the framework beyond the scope of material, decision-useful information. Disclosure requirements are not a substitute for policymaking, so the SEC should seek to craft a framework that consists solely of metrics and risk factors that are likely to be material to shareholders’ investing decisions. From that starting point, companies can use the “comply or explain” mechanism to decide whether to comply with a given reporting requirement or to explain why doing so would not provide material information to investors.

²⁵ This dynamic underscores the importance of allowing disclosures to be furnished to, rather than filed with, the SEC, as companies are unlikely to be willing or able to report on uncertain or incomplete data under a strict liability filing requirement.

VI. The SEC should provide certainty to the marketplace via Commission-level rulemaking that incorporates robust feedback from the public.

The NAM appreciates that the SEC is soliciting public input as it considers how it should approach climate and ESG disclosure obligations.²⁶ Given the importance of this issue and its wide-ranging impact on all sectors of the market, the NAM respectfully encourages the SEC to solicit public comment throughout the rulemaking process—and in the future as climate and ESG reporting standards evolve. Similarly, the NAM strongly believes that any substantive action to mandate enhanced climate or ESG reporting should come directly from the Commission in the form of rulemaking as required by the Administrative Procedure Act (“APA”).

Though guidance (both from the Commission and from SEC staff) can be very useful to companies’ understanding of and compliance with Commission rules, a new, wide-ranging reporting framework should be an official rule crafted through the recognized and statutorily mandated APA notice-and-comment process. The current unofficial comment period on climate disclosures is a welcome beginning to this process, but the next phase should be an official SEC concept release followed by a proposed rule, both of which would invite the public to weigh in with official comments. The SEC should take similar procedural steps if it expands the climate framework to include ESG information in the future. These critical steps will allow all relevant parties to understand the potential approaches to climate and ESG reporting the SEC is considering and to provide comment on how any such approaches would impact the market.²⁷

Commission-level APA rulemaking will also enhance the longevity of and certainty associated with any new disclosure requirements. This level of confidence is critical for any significant rulemaking, but it is particularly crucial for any proposed climate or ESG disclosure framework. ESG is an ever-evolving term, encompassing a variety of issues and topics. Public companies are all at different stages of their ESG journeys, and those journeys will continue to evolve even if the SEC adopts a new framework. A reliable Commission-level rule will give companies the confidence they need to build the systems necessary for climate and ESG reporting and to set benchmarks that will allow for relevant and useful analysis in future years. Taking the time to lay a strong foundation in the present, via APA notice-and-comment rulemaking, will provide the certainty needed for companies and investors to rely on any framework for years to come. Commission-level rulemaking—along with opportunities for public comment at every step—will ensure that any new framework is as workable as possible for public companies and as useful as possible for their investors.

VII. In advancing a climate or ESG reporting framework, the SEC should avoid disclosure obligations designed to further specific policy goals outside the SEC’s purview.

The NAM commends the SEC’s interest in enhancing the comparability of climate and ESG information disclosed by public companies. Assuming it adheres to the materiality standard critical to delivering decision-useful information to investors, a clear and comparable reporting framework can support each prong of the SEC’s tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Notably, the SEC’s mission does not extend further into the policymaking realm, and the NAM respectfully encourages the Commission to provide for

²⁶ Notably, the request for public input is focused primarily on climate reporting rather than ESG reporting, so if the SEC moves forward with a broader ESG framework then significant public input will be necessary to appropriately define the scope of the reporting regime and to determine the material ESG metrics companies would be required to disclose.

²⁷ Question 6 solicits comment on how disclosures should be updated over time. As with the initial framework, it is critical that changes to climate and ESG reporting requirements are subject to public comment and appropriate oversight by the Commission.

robust disclosure without attempting to advance policy goals beyond investor protection and capital formation.

The decisions made in promulgating a climate or ESG reporting framework should be made with the goal of informing investors about material business risks—not achieving specific policy outcomes. Businesses and investors will undoubtedly have a diversity of views about the myriad issues under the climate and ESG umbrellas, as well as the strategies to mitigate or address them. Disclosure about material actions, data, information, risks, and opportunities related to these issues can allow for informed investing decisions. But the SEC’s job is not to mandate a particular approach to a given policy issue, nor does it have the mandate or expertise to prescribe or proscribe steps that companies should take to address a given societal ill. Rather, the SEC’s mission is to facilitate reporting to investors so they can understand companies’ chosen approaches to these complex issues and act accordingly based on their own financial exposure to the relevant risks.

Congress has the authority, expertise, and mandate to pass substantive laws to effectively address complex policy questions. The SEC, on the other hand, has a much more limited (though still critically important) mission: to facilitate disclosures that protect investors and support efficient capital markets. It would not be appropriate for the SEC to stray from this mission by deciding that a given policy or business choice would be better for the nation or the world and to create a disclosure mandate based on that policy preference. The Commission can only provide a forum for issuers to make disclosures on material issues, at which point investors can decide if companies’ disclosures comport with their financial risk profile and/or their personal values. As such, disclosures under any climate or ESG reporting framework should be required because they are material to a reasonable shareholder’s investing decisions—not because a much wider range of stakeholders (rather than shareholders) might find the information interesting or because a reporting requirement might lead to a given policy outcome.

Manufacturers believe strongly in the importance of combatting climate change, enhancing diversity, ensuring clean air and water, and more. If the SEC’s framework is conducive to the disclosure of material information about these topics, investors will benefit from a robust information ecosystem that enables informed investing choices and ultimately furthers companies’ efforts to address these critical issues. By avoiding requirements that prescribe or proscribe company actions, or disclosures that would have a similar effect under the guise of transparency, the SEC can stay within its mandate while still providing information to the marketplace that can bolster climate- and ESG-related efforts by public companies.

VIII. The SEC should provide for increased oversight of ESG ratings agencies and effectively enforce its rule and guidance on proxy advisory firms.

As noted, the NAM believes that a climate or ESG reporting framework can provide important clarity to businesses and comparability for investors. However, the data reported pursuant to any such framework is only one piece of the puzzle in terms of information required of businesses and available to investors. At present, the marketplace is saturated with a wide variety of ESG raters and rankers. For the SEC’s reporting framework to be successful, it should reduce the cost and burden that companies presently experience due to the current proliferation of these third parties. The SEC should also take care not to inadvertently empower these firms as it works to advance a reporting framework. The NAM respectfully encourages the SEC to maintain its recent rule on proxy advisory firms and to provide for enhanced transparency with respect to ESG ratings agencies in order to reduce investor confusion with respect to climate and ESG information.

The most prominent ESG raters on the market are the proxy advisory firms. The NAM strongly supported the SEC’s work over the past several years to provide greater transparency into the conflicts of interest endemic to these firms and to ensure that investors can understand company

perspectives on the firms' voting recommendations, which can be misleading or contain errors. We were extremely concerned to see the recent announcement²⁸ that the SEC is considering whether to revisit its recently finalized rule on exemptions from the proxy rules for proxy voting advice provided by proxy advisory firms²⁹ and its interpretation and guidance on the application of the definition of "solicitation" to the firms' voting recommendations.³⁰ We were similarly concerned by the statement³¹ by the Division of Corporation Finance that it does not intend to enforce the rule while this review is ongoing, despite its lawfully adopted December 1, 2021 compliance date. These announcements—coming less than a year after the rule was finalized and before its critical reforms can take effect and be fairly evaluated—seem designed to undercut the years-long public debate that led to the final rule and cement in place a status quo that largely ignores the proxy firms' conflicts of interest, lack of transparency, and significant errors. The NAM strongly opposes any efforts to review or rescind the issuer and investor protections promulgated by the SEC in recent years, and we respectfully urge the SEC to maintain and enforce its rule and the associated guidance. As we noted throughout the APA-mandated notice-and-comment process, proxy firms often have agendas outside of shareholder value creation. As the SEC works to advance a climate or ESG reporting framework, it should bolster and enforce—rather than review and rescind—the transparency reforms included in its proxy firm rule in order to ensure that investors have an accurate and complete understanding of these firms' climate and ESG standards and the impact of their voting recommendations on company climate and ESG policies.

During the notice-and-comment process that ultimately led to the finalization of the proxy advisory firm rule, the NAM called on the SEC to define ESG ratings as "solicitation"³²—as it did for proxy firm recommendations in its final rule. Like proxy advisory firms, ESG ratings agencies are largely unregulated, and they often set standards for public companies that are not driven by shareholder value creation. Instead of publishing voting recommendations based on their ESG policies (as the proxy firms do), ESG ratings agencies drive their preferred agendas by boiling a complex issue (or, often, multiple complex issues) down into a single numerical score or letter grade with little to no disclosure as to how such score or grade is calculated. The methodology underpinning these grades is opaque to issuers, and the data relied upon by the raters is uncertain at best. The ratings agencies may also offer paid consulting services to counsel companies on how to improve their ESG scores—a clear conflict of interest.³³

At a minimum, a climate or ESG disclosure framework would provide comparable data to the marketplace that ESG raters would presumably utilize for their grades rather than the cavalcade of surveys and unsourced reports on which they currently rely. However, even with improved data, these raters and rankers are still largely unregulated and do not owe a fiduciary duty to the investors

²⁸ *Statement on the Application of the Proxy Rules to Proxy Voting Advice* (1 June 2021). Available at <https://www.sec.gov/news/public-statement/gensler-proxy-2021-06-01>.

²⁹ *Exemptions from the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55082 (3 September 2020). Release No. 34-89372, available at <https://www.govinfo.gov/content/pkg/FR-2020-09-03/pdf/2020-16337.pdf>.

³⁰ *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, 84 Fed. Reg. 47416 (10 September 2019). Release No. 34-86721, available at <https://www.govinfo.gov/content/pkg/FR-2019-09-10/pdf/2019-18355.pdf>.

³¹ *Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(1), 14a-2(b), 14a-9* (1 June 2021). Available at <https://www.sec.gov/news/public-statement/corp-fin-proxy-rules-2021-06-01>.

³² NAM Comments on File No. S7-22-19 (3 February 2020). Available at <https://www.sec.gov/comments/s7-22-19/s72219-6735396-207626.pdf>.

³³ The final proxy firm rule enhances transparency into the conflicts inherent in proxy firms' similar consulting businesses; defining ESG ratings as "solicitation" would have the same—much-needed—effect for ESG raters' conflicts.

whose shares are often traded or voted based on their ratings. ESG raters' grades can be used to guide ESG investing strategies and proxy votes on ESG issues, despite the fact that they have no fiduciary duty to provide grades that enhance the value of investments nor any track record of nor transparency into whether their grades actually advance the environmental, social, and governance goals they claim to support. Because of their clear desire to influence proxy votes on ESG topics, the NAM believes that ESG ratings agencies' grades should be viewed similarly to proxy advisory firms' voting recommendations: as communications that generally constitute a "solicitation" under Exchange Act Section 14(a).

The SEC's August 2019 guidance regarding the applicability of the proxy rules to proxy voting advice makes clear that "the federal proxy rules apply to any person seeking to influence the voting of proxies by shareholders, regardless of whether the person itself is seeking authorization to act as a proxy."³⁴ As with proxy firm recommendations, ESG ratings are clearly designed to influence proxy voting, and manufacturers have found that institutional investors' reliance on these ratings is increasing. As the Commission works to enhance comparability for investors, the NAM respectfully encourages the SEC to institute appropriate oversight of ESG ratings agencies' methodologies, sources of information, and influence on proxy voting decisions. Such oversight would improve the climate and ESG information ecosystem in conjunction with any new reporting framework.

IX. The SEC should allow for an extended transition period into any new climate or ESG reporting framework and provide scaled compliance options for small, medium-sized, and newly public companies.

If the Commission adopts a new climate or ESG reporting framework, the NAM respectfully encourages the SEC to provide flexibility in the form of an extended transition period for businesses to adjust to the new disclosure regime, as well as scaled compliance obligations for small, medium-sized, and newly public companies.

While manufacturers strive to provide decision-useful information (ESG and otherwise) to investors, issuers' approaches to climate and ESG disclosures vary from business to business and from industry to industry. The relatively new and constantly evolving nature of climate and ESG reporting means that some companies are further along than others, and those that do have robust procedures in place utilize a diversity of standards, practices, and frameworks to convey climate and ESG data to investors. It could take multiple years for public companies to establish internal systems and processes to extract and track data that reliably adheres to any new standard. Applying audit protocols to such processes, if required, would create an additional substantial burden.³⁵ The final rule that creates an SEC-driven disclosure framework should reflect this reality by clarifying that third-party assurance would be voluntary and by including a significant transition period that will allow companies to take the time necessary to align their reporting methodologies with the new SEC standards.³⁶

³⁴ SEC Proxy Advice Guidance, *supra* note 30, at 47417.

³⁵ The NAM believes that any third-party assurance should be voluntary. If, however, the SEC mandates assurance requirements with respect to ESG disclosures, they should not apply during the first several years of the new framework given the extraordinary difficulty of building the necessary compliance protocols. The SEC should also recognize that such assurance should be appropriately limited, given the widely varying reliability and utility of such assurance for different types of ESG disclosures. This approach accords with prior SEC practice; for example, neither the proxy nor significant portions of the 10-K are subject to third-party assurance.

³⁶ An extended transition into the framework will be even more critical if the SEC requires reporting on a wide range of ESG topics beyond the climate-focused metrics contemplated by the request for public input. The NAM encourages the SEC to first focus its efforts on climate reporting given that such disclosures are more mature, and therefore more implementable, at present.

It is critical that the SEC's framework include an implementation period, including liability protections, that lets companies take the time to get climate or ESG reporting right. Some companies have not yet set benchmarks like key performance indicators for the various metrics on which the framework is designed to solicit information. Setting those benchmarks will take multiple years; it will then take at least an additional year or two for there to be any data with respect to how the company performed against those benchmarks. Even for those businesses that already have robust climate and ESG disclosures (and, where relevant, the associated benchmarks), it will take some longer than others to adjust to the new standard based on how close their status quo is to the SEC's framework.³⁷ Granting time for businesses to transition into the new reporting regime will ultimately result in better, more comprehensive, and more useful information for investors.³⁸ Businesses should be allowed to transition earlier to the new framework, and it might even be the case that market pressures lead to earlier rather than later compliance on the whole. But an extended transition period for all public companies³⁹ would allow businesses the time they need to adjust to and adopt the framework, resulting in better reporting across the board.

In addition to relief related to the transition to a new reporting framework, the SEC should provide for a scaled disclosure requirement for small, medium-sized, and newly public businesses, including but not limited to smaller reporting companies, non-accelerated filers, and emerging growth companies. These smaller and newly public companies are less likely at present to report on climate and ESG metrics, and their relatively small size significantly reduces their climate and ESG risk exposure as well as investor interest therein.⁴⁰ Further, as with any compliance burden, preparing climate or ESG disclosures would represent a higher cost burden on smaller businesses, which already struggle with the significant costs associated with being a public company. Taken together, these factors present a compelling case for scaled disclosure obligations for small, medium-sized, and newly public businesses, including but not limited to smaller reporting companies, non-accelerated filers, and emerging growth companies. These smaller and newly public businesses should still be obligated to provide disclosures on material risks, but the SEC should grant them significant flexibility with respect to the specifics of any new framework and the form and content of any climate or ESG disclosures they choose to make.

Finally, Question 14 solicits comment on whether and how the SEC should apply the rules of any climate or ESG disclosure framework to private companies. The SEC does not have the authority to require ongoing reporting, ESG-related or otherwise, from non-reporting companies. Attempting to mandate private company climate or ESG reporting would exceed the SEC's statutory mandate and represent a significant overreach. The NAM respectfully encourages the SEC to focus its attention on public company disclosures rather than expanding any reporting framework to include private companies not subject to regular public reporting obligations.

³⁷ The SEC could also consider what forms of technical assistance might be useful for companies seeking to understand and implement any new standard.

³⁸ On a going forward basis, the SEC should also allow for transition flexibility after corporate acquisitions. The acquirer in a transaction may not be able to furnish fulsome ESG disclosures on the acquired company in the first year after an acquisition, so the SEC should provide a grace period similar to the one-year exclusion for management's ICFR reports for acquired businesses in the fiscal year when acquired.

³⁹ As it considers an extended transition period for any climate or ESG reporting framework, the SEC should provide specific transition relief to small, medium-sized, and newly public businesses, including but not limited to smaller reporting companies, non-accelerated filers, and emerging growth companies. These businesses would face significant start-up costs from climate or ESG reporting (both due to their size and due to their reduced risk exposure) and therefore will likely need even longer to effectively transition into any new framework.

⁴⁰ An ESG framework grounded in materiality would reflect this reality by de facto reducing disclosure obligations for smaller businesses that have fewer material ESG risk factors.

While the SEC does have jurisdiction over the disclosures required of businesses raising capital via exempt offering pathways like Regulation D and Regulation Crowdfunding, these businesses are generally not subject to ongoing reporting obligations, and the disclosures required to conduct the offerings themselves are by design extremely limited.⁴¹ The SEC should not use its authority over the rules for exempt offerings to mandate climate or ESG disclosures from these businesses. The disclosures required under the SEC's exempt offering frameworks do not, and should not, approach the level of complexity and ongoing obligation found in public company reporting. Mandating climate or ESG reporting would dramatically increase the cost of conducting an exempt offering for the small businesses that depend on these frameworks for capital formation. Moreover, requiring climate or ESG reports would not enhance investor protection for individuals participating in these offerings. The SEC would be better served focusing its efforts on enhancing the comparability of information disclosed by public companies subject to ongoing reporting obligations.

* * * *

The NAM is hopeful that any new climate or ESG reporting framework will be flexible, principles-based, and materiality-driven while providing clarity to publicly traded companies and supporting their efforts to furnish material information about risks and opportunities to investors in a comparable manner. We respectfully encourage the SEC to take this approach to climate and ESG disclosures and avoid the pitfalls of a one-size-fits-all mandate that increases costs and liability for businesses without providing decision-useful data to investors. The NAM appreciates the opportunity to provide comment on the SEC's work to enhance the availability and comparability of climate and ESG information, and we look forward to working with you to ensure that any reporting framework protects investors by facilitating material disclosures by publicly traded manufacturers.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Netram". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Netram
Vice President, Tax and Domestic Economic Policy

⁴¹ Many exempt offerings are available to only a limited universe of investors (usually just accredited investors) and/or have limits on the total dollar amount that can be contributed or raised. As such, the disclosures required of companies conducting these offerings are often relatively limited—and they certainly do not encompass ESG metrics.