# INSTITUTE OF INTERNATIONAL BANKERS

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June 8, 2021

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Request for Public Input on Climate Change Disclosures

Dear Ms. Countryman:

The Institute of International Bankers (the "**IIB**") submits this letter in response to the statement "Public Input Welcomed on Climate Change Disclosures" issued by Acting Chair Allison Herren Lee on March 15, 2021 (the "**Request for Comment**").[1] We welcome the SEC's review of its regulation of climate change disclosures to facilitate consistent, comparable and reliable information on climate change, and we believe those elements are critical to achieving the SEC's mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation. This review presents an important opportunity to regulate in a manner with positive global reverberations.

## A. IIB's Distinctive Perspective

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches and agencies, bank subsidiaries and broker-dealer subsidiaries in the United States.

Our members have a distinct perspective on the Request for Comment because they are both consumers and producers of climate-change disclosure. As lenders and asset managers, our members rely on climate-change disclosures produced by borrowers and investees. Meanwhile as reporting companies and as regulated financial institutions, our members are increasingly required to provide climate change disclosures under the laws of their local jurisdiction, or are providing climate change disclosures to the market on a voluntary basis. Many of our members are reporting companies under the Exchange Act, and many of them have subsidiaries that are registered investment advisers. Consistent, comparable and reliable disclosure requirements will help our members to facilitate more informed investments for their clients and to produce more accurate, useful information themselves.

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[1] Acting Chair Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures*, SEC (March 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

The IIB's members operate in various jurisdictions outside the United States in which reporting about climate change topics is already required or is under consideration. In particular, many of them are subject to the supplemental climate change disclosure requirements applicable to large European financial institutions, or to additional requirements imposed at the national level by countries such as Canada. Many of our members also already provide extensive climate change disclosures under voluntary climate-related disclosure frameworks. Any change to the SEC disclosure regime should recognize the work that has already been done in the climate disclosure space and the efforts that are already being made by reporting companies.

### B. The SEC Should Adopt Rules Requiring Climate Change Disclosures

The IIB supports the SEC adopting new rules requiring reporting companies to provide climate change disclosures, subject to the following principles, which are discussed in more detail in parts C through G of this letter.

- The SEC should focus their initial efforts on eliciting climate-related disclosures that are material to investors.
- New SEC rules should leverage the high-quality disclosure frameworks and standards that have been developed by various initiatives of non-regulatory actors ("**Disclosure Frameworks**"), as addressed in section D below.
- The SEC should seek to coordinate (as to both requirements and timing) its disclosure rulemaking with the measures being undertaken in other significant jurisdictions around the world.
- SEC rules should protect reporting companies from opportunistic claims by private litigants in proceedings based on information contained in climate-change disclosures.
- The SEC should consider a substituted compliance option for reporting companies that are subject to disclosure requirements in other jurisdictions.

The IIB supports the SEC adopting new, mandatory rules on climate change for reporting companies because they would help foster consistency among reporting parties. Mandatory disclosure rules are preferable to merely adopting updated guidance or waiting while issuers and stakeholders develop new disclosure practices.

Consistent disclosure is critical for investors, for market efficiency, and for U.S. and international regulators. Consistency among reporting companies enables investors to make more accurately informed decisions, while consistency from a given company over time allows investors to assess its performance and provide tailored feedback to company management. For the reporting company itself, consistent reporting affords an ability to concentrate reporting resources on creating a cohesive disclosure product and on building expertise. Together, these benefits serve the SEC's mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation.

Investors, including our members, already rely on the climate-related disclosures made by public companies for investment decisions. One shortcoming of the current voluntary climate reporting system, however, is that companies can disclose in whatever format they develop, in a manner containing whatever information they select, or simply not disclose climate-related information at all. Inconsistencies in current reporting make it difficult for asset managers to make informed decisions for their clients, and increase the analytical burden of comparing one company to another based on climate impact. Consistency and comparability in climate disclosures are highly desirable, and reporting

companies should not be able to opt out of producing material, comparable information. Mandatory and consistent issuer disclosures will address investor needs and reduce over-reliance on the multiple scoring and indexing services currently in the market.

Notice-and-comment rulemaking is important for the development of a workable and enduring regulatory approach. Careful, thorough rulemaking would reinforce the leadership role of the SEC in shaping climate-related disclosure. And to facilitate consistent, comparable, reliable information, mandatory disclosure is preferable to private ordering, published interpretations of existing rules, or case-by-case enforcement action. New mandatory rules best achieve the goal of a coherent climate disclosure regime.

**C. The SEC Should Initially Limit the Scope of Mandatory Disclosure Requirements**

The SEC should initially focus its rulemaking attention on climate change topics and not on broader ESG topics. This is not to say that other ESG issues are secondary in importance – rather, the SEC's initial regulatory framework for climate change should, if possible, be designed in a manner that would allow it to be either broadened in scope or duplicated for other ESG disclosure categories in the future, as appropriate.

Our members have a current need for comparable and reliable information on the physical and transition climate risks and opportunities faced by public companies. These risks and opportunities relate to the potential impact of climate change on the enterprise, but they also relate to how the impact of the enterprise on climate affects its competitiveness, its costs of capital, and its ability to attract and retain talent. Information of this kind is material to our members in their capacity as asset managers.

The SEC should focus first on disclosure of decision-useful information. As consumers of climate disclosure information, our members need to be able to efficiently analyze data when making investment-related decisions. As producers of climate disclosure information, the ability to focus on producing useful information saves time and resources, and hones in on information that may be largely comparable.

The SEC should also require publication of certain metrics, once they can be produced accurately, verifiably and comparably over time and across multiple reporting companies. We support required disclosure metrics if these criteria are respected, including the disclosure of all three scopes of carbon emissions, which are essential to give investors the full picture of a company's profile. However, the SEC might reasonably determine that disclosure of Scope 1 and Scope 2 emissions should be required initially, because they can be presented accurately, verifiably and comparably, while the disclosure of Scope 3 emissions should be deferred until such time as the challenges in eliciting comparable data and methodology for Scope 3 can be surmounted.

For all these reasons, the SEC should adopt an approach that combines principles-based climate disclosure requirements with discrete mandatory requirements that elicit more specific disclosures on topics that are common to all issuers or within specified sectors. The rules could mandate specific metrics over a narrow range for which comparable quantitative information can be reliably produced. For a broader range of quantitative information, reporting companies could have more discretion to present information they consider material and reliable. And for other topics, the rules could set forth principles governing the required disclosures and permit reporting companies to provide qualitative or narrative information supplemented by any quantitative information they consider useful. This approach would further the SEC's core mission of investor protection, capital markets integrity, and capital formation facilitation. It would also give disclosing companies the space to disclose tailored information that is useful to investors while promoting consistency where it is most important.

### D. The SEC Should Build on and Leverage Established Disclosure Frameworks

The SEC climate disclosure rules should permit a reporting company to rely on a Disclosure Framework. Disclosure Frameworks include the framework of the Task Force on Climate-Related Financial Disclosures ("**TCFD**") and the standards published by the Sustainability Accounting Standards Board ("**SASB**"), as well as those that may be developed in the future by organizations such as the Value Reporting Foundation and the IFRS Foundation. SASB has been promoting for a decade standards upon which many companies rely. With time and experience, they have obtained a level of knowledge that cannot be surpassed in the course of a single rulemaking. TCFD has a similar depth of experience, and the backing of more than 500 corporations and financial institutions, including many of the IIB's members. Disclosure Frameworks themselves, and the disclosures that have developed in reliance on them, reflect an intensive effort among many stakeholders to establish expectations and practices.

Reliance on Disclosure Frameworks would also provide a way for practices and expectations to evolve flexibly in the future, which will be difficult to achieve with detailed disclosures that are adopted by SEC rulemaking.

The SEC could use its resources more efficiently by focusing on determining the characteristics of acceptable Disclosure Frameworks, rather than developing a competing framework. Given the work that has been done already by standard-setters like SASB and the TCFD, the SEC should not devise its own detailed framework. Even if it does so in part, the SEC should also permit reliance on a Disclosure Framework that meets criteria established under SEC rules.

### E. The SEC Should Pursue International Regulatory Coordination

The SEC can play an important role in shaping climate-related global disclosure standards and in influencing the requirements that are adopted in other jurisdictions. Given the importance of comparability and consistency in climate disclosure regimes, to both registrants and users of those disclosures, coordination with other regulators and developers of international standards is essential. To this end, the SEC should continue and intensify its coordination with IOSCO, with the European Union ("**EU**"), with national regulators and with the sponsors of Disclosure Frameworks. The SEC should also engage with the IFRS Foundation with a view to producing a robust, durable and consistent international framework. Promoting consistency of metrics across different standard setters, and building on the work that has been done in other jurisdictions in a way that is interoperable, are critical to achieving the SEC's mission.

Our members have a particularly strong interest in this kind of inter-jurisdictional consistency because they depend on climate-related information produced by customers and investees around the world, and by non-reporting entities as well as by reporting companies. They also benefit from this kind of consistency as producers because it mitigates redundancy and duplicative reporting in the various jurisdictions in which they report.

### F. The SEC Should Seek to Mitigate Related Liability Risks For Reporting Companies

Our members seek to provide and to obtain information that is useful to investors and the capital markets. Producers of information should be motivated to produce accurate, meaningful information, and to do so in innovative ways against a background of fast-evolving expectations and methodologies. Both the risk of private litigation and the risk of government enforcement should be tempered so they do not deter reporting companies from doing so or make it unnecessarily burdensome to do so.

So, while the risk of enforcement and civil litigation are important elements in ensuring useful disclosures, they can also limit the effectiveness of disclosures by discouraging adaptation and by eliciting the over-long, defensive and conformist approaches often referred to as "boilerplate." The adoption of new rules should not become a business opportunity for plaintiffs and law firms who would take advantage of rules that are intended to facilitate meaningful information. We note six possible approaches the SEC should consider to mitigate this danger.

- Develop a pilot program prior to full adoption of the new disclosure regime. Such a program could focus on a specific sector, or seek disclosure on a single climatic sub-topic from a broader range of reporters.

- Implement phased-in disclosure rules, applicable first to sectors where climate-related disclosures are especially pertinent and feasible.

- Implement disclosure requirements that become applicable in stages, starting with a narrower set of topics and expanding to their full scope over several years. Starting with a narrow scope of requirements would provide the SEC with implementation experience to inform additional requirements and make its review of initial compliance less burdensome. It would also enable reporting companies to focus on producing quality information of limited scope.

- Design the location of new disclosures with a view to liability risks. For example, disclosures in an annual report on Form 10-K or Form 20-F would ordinarily be subject to incorporation by reference in Securities Act registration statements, and to the officer certification regime under Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. Climate-related disclosure under the new requirements could be located outside the annual report and the proxy statement, so these specific elements of risk would not apply, and for purposes of liability and incorporation by reference they could be furnished rather than filed.

- Encourage effective compliance and disclosure quality broadly. When the new rules take effect, the Division of Corporation Finance should review reporting company practices and publish broadly applicable guidance where possible. This would be a more effective way to encourage quality disclosure than comment letters addressed to particular issuers. At least for an initial period, the SEC should not emphasize enforcement against particular issuers as a means to monitor and encourage quality disclosures under the new rules.

- Develop safe harbors against civil litigation arising from climate-related disclosure under new SEC rules. This would help to ensure that reporting companies provide useful information without risking unproductive proceedings, especially while methodologies continue to evolve.

### G. The SEC Should Consider a Substituted Compliance Option

Many of our members, and many of the entities that produce disclosures on which our members rely, have reporting obligations in multiple jurisdictions. We would strongly encourage the development of rules that are consistent across jurisdictions, so these entities can produce a single set of information to meet requirements in each jurisdiction. If SEC rules impose different requirements, we would urge that the SEC consider a substituted compliance approach, under which disclosure that substantially meets the requirements of another jurisdiction would be acceptable under SEC rules if that other jurisdiction has been specified by the SEC as equivalent.

A flexible regime of substituted compliance would achieve many of the purposes of international cooperation. By allowing dual reporting companies to avoid duplicative reporting, it is consistent with the SEC's mission of fostering fair, orderly and efficient markets.

**Conclusion**

The IIB supports the SEC's initiative to review the disclosure regime for climate matters on the terms described above. We are of course available to discuss these comments and the specific concerns and perspectives of our members. Thank you for your consideration.

Sincerely,

Briget Polichene
Chief Executive Officer
Institute of International Bankers