June 11, 2021

<u>VIA ELECTRONIC SUBMISSION</u>

Chairman Gary Gensler
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Public Input on Climate Change Disclosures

Chairman Gensler:

The Commercial Real Estate Finance Council ("CRE Finance Council" or "CREFC") appreciates the opportunity to respond to the request for public input and information on climate change disclosure put forth by the Securities and Exchange Commission's (the "Commission").[1]

The CRE Finance Council is the collective voice of the $4.6 trillion commercial real estate ("CRE") finance market. Its members effectively include all of the major participants in the CRE finance industry, including the significant portfolio, agency, multifamily, and commercial mortgage-backed securities ("CMBS") lenders; issuers of CMBS; loan and bond investors (investment grade and non-investment grade) such as insurance companies, pension funds, specialty finance companies, REITs and money managers; loan servicers; rating agencies; accounting firms; law firms; diligence providers; appraisers; and other CRE service providers.

The CRE Finance Council – on behalf of its broad and diverse constituency within the commercial real estate finance industry – recognizes the complexity of this issue and supports the Commission's thoughtful efforts to evaluate its regulation of climate change disclosure; to ensure investors are adequately informed about climate change risk and other material environmental, social, and governance ("ESG") risks; and to facilitate the disclosure of "consistent, comparable, and reliable" information on climate change.

In an effort to provide the Commission with responsive information – and given our belief that climate-related risks will increasingly be a priority in decisions to own, lease, and finance commercial real estate – these comments are made primarily from the perspective of the participants in the CMBS industry[2] and are divided into three parts in which we seek to:

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[1] Public Statement, Public Input Welcomed on Climate Change Disclosures, Securities and Exchange Commission (Mar. 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

[2] Note, a core issue for the entire CRE finance industry will be identifying what data is collectable and relevant to commercial real estate transactions. Our comments are focused on CMBS because of the existing,

- Briefly outline, for context and background, the state of the CMBS industry and its current operation;
- Identify – as part of the CMBS loan origination process – the climate-related data currently available to lenders/typically disclosed to investors of CRE loans and the nature of the industry's ongoing efforts to secure such data; and
- Summarize our ongoing approach to build on existing processes and develop workable solutions to report and monitor adequate and accurate information for disclosure of climate risks.

Specifically, as the Commission contemplates its approach to climate risk-related disclosure for publicly regulated industries, CREFC recommends that the Commission continue to allow industry to leverage existing CMBS disclosure and reporting regimes, which are tailored to the commercial real estate mortgage pools that collateralize the bonds. For example, it is now common practice in CMBS transactions for issuers – to the extent they are attempting to depict their issuances as "green"-compliant offerings – to include descriptions of their "green" bona fides in their bond issuance documentation (e.g., via notations referencing their compliance with third-party designations or certifications like the "Green Bond Principles" formulated by the International Capital Markets Association).[3] If, however, the issuers are <u>not</u> attempting to market their issuances as "green," then the Commission should not mandate any affirmative disclosures in the issuance documents. Instead, investors can rely on the loan- and property-level detail provided within disclosure documents to understand or determine the climate impact of a given issuance.

With respect to loan- and property-level reporting – both at issuance and while the bonds are outstanding – the Commission should rely on industry to develop the appropriate standards, as it has done in the past. Nearly three decades ago, through CREFC, CMBS market participants developed the Investor Reporting Package™ ("IRP") – a comprehensive, customized disclosure framework – that provides CMBS investors with timely, relevant, standardized, and useful disclosure and reporting that is specifically tailored to the needs of CMBS investors to understand property-, loan-, and bond-level information and is now broadly used for investor reporting for all CRE structured products.[4] The IRP™ continues to evolve to respond to the needs of the CMBS industry, and reliance on the IRP is now not only widely accepted but also hardwired into the transaction documents of all CMBS products.

In response to many of the questions raised by the Commission's request for input, we believe that the IRP has proven effective and is the proper vehicle to facilitate ongoing climate-related disclosures for CMBS by providing the information relative to both the properties that

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standardized, and robust disclosure regime. The general principles (e.g., determining what the relevant and collectable data points are) could be applicable to all CRE finance participants who want to demonstrate sustainable lending.

[3] INTERNATIONAL CAPITAL MARKET ASSOCIATION, GREEN BOND PRINCIPLES (2018), https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/ [hereinafter ICMA GREEN BOND PRINCIPLES].

[4] Similarly, CREFC's "Annex A" – which is provided to investors as part of the CMBS offering materials/at issuance – provides detailed information on the securitized mortgage loans.

secure the commercial real estate mortgages and the mortgages themselves which in turn collateralize those securities. On the other hand, any attempt to create an alternate framework with incompatible criteria – or ultimately a failure to achieve a balanced and workable set of disclosure and reporting requirements – could be prohibitively costly, negatively impact an important source of liquidity for the CRE marketplace, and potentially drive borrowers and originators out of the publicly regulated markets and into private markets to which the Commission's disclosure mandates may not apply.

To that end, and as discussed in more detail below, CREFC has established an industry-wide initiative to leverage its existing process to develop concrete and quantifiable standards for climate-related disclosure with metrics that are compatible with the IRP framework which has previously been embraced by the Commission.

We hope to work together with the Commission as we develop these standards. For loan- and property-level data, the Commission has relied on and utilized CREFC's IRP data fields before in its development of Regulation AB and Schedule AL. During that process, the Commission attempted to align its requirements, as much as possible, with the IRP standards (and chose not to adopt certain data points that did not correspond to the IRP).[5] In an effort to minimize future compliance burdens for all participants, we plan to share our development of climate-focused IRP data fields with the Commission. As we have done successfully in the past, we look forward to continuing to work with the Commission as it undertakes efforts to regulate and promote meaningful climate risk disclosures in the CMBS marketplace.

I. <u>ROLE OF CREFC & CMBS OVERVIEW</u>

The members of CREFC essentially constitute the entire spectrum of the CRE finance industry and – individually and collectively – play a critical role in providing, maintaining, and servicing the financing of commercial real estate from all perspectives. Our members are instrumental in constructing, developing, managing, and occupying the land and improvements where Americans work, live, and play, including offices, single-family and multifamily homes, retail establishments where goods are bought and sold; the small business spaces on "Main Street" that drive local economies; the industrial complexes that warehouse goods, produce products, and create jobs; the hospitals and medical facilities where doctors tend to the sick; the restaurants where people eat; the entertainment venues and sports facilities where people gather and play; and the hotels where relatives, vacationers, tourists, and business travelers stay.

CREFC is a member-driven organization and our principal functions include setting CRE finance and capital market disclosure standards and best practices for all types of CRE finance, facilitating the free and open flow of market information among all participants, and providing comprehensive education at all levels of our complex and diverse industry. To this end, we have

[5] Asset-Backed Securities Disclosure and Regulation. 79 Fed. Reg. 57184, 57221-57222 (Sept. 24, 2014), https://www.govinfo.gov/content/pkg/FR-2014-09-24/pdf/2014-21375.pdf (noting that the Commission did not adopt "some data points that do not correspond to the CREFC IRP or are typically disclosed in Annex A because they are no longer necessary due to other changes we made . . . <u>or because [the Commission added] data points based on the CREFC IRP to capture the same or similar</u> information").

worked closely with policymakers to educate and inform legislative and regulatory actions to help optimize CRE finance-related market standards and regulations.

We recognize that securitization of commercial real estate loans is an essential process for the delivery of capital necessary for the growth and success of CRE markets. While our membership consists of all constituencies across the CRE finance industry, one of our core and founding missions has consistently been to foster the efficient and sustainable operation of CRE mortgage-backed securitization. Accordingly, we wish to note that our comments will focus primarily on the workability of a climate disclosure framework for conduit CMBS transactions (rather than CRE collateralized loan obligations ("CLO") or single asset single borrower ("SASB") CMBS transactions) because, as publicly registered transactions, conduit CMBS are directly subject to the Commission's existing Regulation AB and Schedule AL disclosure frameworks. Nonetheless, we anticipate that our proposed framework will have broad applicability to CRE CLOs, SASB CMBS transactions, and other privately placed CRE backed securities transactions – as well as to balance-sheet loans and other CRE lender types mentioned on page one – because CMBS regulation, disclosures, and other developed guidance and best practices have historically led the private, portfolio, and agency CRE mortgage markets.[6]

This alignment across lender types, we believe, stems in part from the desire of traditional and specialty CRE lenders to retain the flexibility to more readily sell, finance, or transfer loans. As a result, CRE loan originators often favor compliance with CMBS structure and data standards, even when they have no immediate plans to sell or securitize a loan, because it provides the maximum flexibility for future liquidity should they decide to sell. As such, CREFC expects that incorporating climate-focused data fields into the IRP will have a more comprehensive impact (given the existing reliance on the IRP) on both public and private transactions, as well as on portfolio lending activities.

As regulators continue to shape a climate risk disclosure framework for regulated markets, including CMBS, we appreciate the opportunity to help identify the innate and unique characteristics of CMBS. We believe the type of CMBS loan borrowers (i.e., the property owners); the structure of the loan- and property-level documentation and diligence; the structure of issued securities; the type and sophistication of the issuers of the securities; the many parties involved in servicing, managing, and rating the loans and properties underlying the securities on an ongoing basis; and the nature and use of the underlying commercial real property collateral – as well as the numerous layers of diligence performed by third-party providers – in CMBS transactions (as compared to other asset-backed securities) require special attention:

1. ***Commercial Real Estate Borrowers***. Commercial real estate borrowers – from Wall Street to Main Street – are businesses that own commercial real estate with cash flows based on business operations and/or tenants under leases (i.e., "income-producing" properties). Additionally, securitized commercial mortgages have different/varying terms (generally 5- to 10-year "balloon" loans), and they are – for the vast majority of securitized loans – "non-recourse" loans that rely solely on property-level cash flows, the value of the underlying

[6] In fact, we anticipate that the inclusion of climate-focused IRP data fields could have an even broader impact, potentially providing data to and informing how public companies (who are CRE lenders) demonstrate sustainable CRE lending.

collateral, the ability of the management, and the stability of tenants for repayment. The direct reliance on the stability and security of physically immobile assets has led to a special interest in climate risk factors, including how commercial properties may affect (and be affected by) the environment and climate.

2. ***Extensive Diligence and Review***. There are multiple levels of review and diligence concerning the collateral underlying CMBS, which help ensure that investors have a well-informed, thorough understanding of the risks involved with their investment. Specifically, in-depth property-level analysis is conducted on each loan by CMBS lenders on behalf of investors, who in turn utilize this information and the in-depth data provided as part of their due diligence when considering CMBS bond investment.

   Moreover, given that there are far fewer commercial loans in a CMBS pool (historically between 100 to 250 loans and more recently 30 to 40 loans) than is the case for residential mortgage pools with 1,000 to 4,000 loans, investors are able to conduct in-depth, non-statistical analyses on the majority of loans in a pool. The non-statistical analysis of the majority of loans in CMBS pools is made possible by the detailed data provided by the CMBS issuer. Such data include the experience and integrity of the borrower and its sponsors, the overall net cash flow of the property, and thus the ability of the borrower to service debt, tenant exposure, leases in place, rental rates, and lease expirations.

   Finally, as detailed in Section II.A, CMBS issuances typically require extensive analysis by appraisers, structural and environmental engineers, and insurance reviewers. These third parties detail the collateral's current market value, its environmental condition, cost estimates for immediate repairs and long-term capital requirements, and sufficiency of the insurance coverage.

   As climate risks have grown, so has the amount of analysis focused on environmental and climate factors.

3. ***First-Loss Investor ("B-piece Buyer") Re-Underwrites Risk***. CMBS issuances typically include first-loss and non-investment-grade classes. The third-party investors that purchase these subordinate securities (referred to as "B-piece" or "first-loss" investors) conduct their own extensive due diligence (usually including, for example, site visits to properties that collateralizes the loans in the pool) and re-underwrite all of the loans in a proposed CMBS pool. As climate risks increase, B-piece buyers have increasingly focused on climate resiliency as a key component of their review and investment decision-making. Because of this, in pooled transactions, the B-piece buyers typically either negotiate the removal of any loans they consider to be unsatisfactory from a credit perspective or negotiate price adjustments if the loans are to remain in the loan pool. They specifically negotiate with CMBS sponsors or originators to purchase this non-investment-grade risk component of the CMBS offering. This third-party investor due diligence and negotiation occurs on every transaction that includes a B-piece.

4. ***Legal Isolation of Securitized Assets***. CMBS issuances are structured to legally isolate the securitized assets from the originators of the assets. The originators and sellers of

securitized assets typically have little or no involvement with the assets after securitization occurs. This is distinguishable from typical operating companies issuing equity or debt, which typically retain operational control over their assets. The legal isolation of securitized CRE assets suggests that any ongoing, post-securitization disclosure regarding sustainability and climate risk should be primarily focused on the securitized assets rather than the originators, loan sellers, underwriters, or depositors in securitization transactions.

Given these unique characteristics, CMBS market participants have access to a wealth of information through initial offering documents that provide significant details on the loans, the properties that secure the loans, the borrowers, and the transaction structure. Just as importantly, CREFC has historically and will continue to work with all market constituencies to enhance existing industry standards and develop new ones when appropriate all with the objective of ensuring that the sector continues to be privy to significant transparency and heightened efficiencies.

In addition, the CREFC-developed IRP and "Annex A" provide access to standardized loan-, property-, and certificate-level information at issuance and while CMBS are outstanding, including updated loan and bond balances, ongoing property performance, the tracking of interest and principal received, and updated bond ratings. These standards continue to evolve and improve to meet the ever-changing standards of the market based on feedback from industry stakeholders. This evolution began with the initial CSSA 100 published in 1996 and has grown to the current CREFC IRP, Version 8.1.

Based on the uniqueness of the CMBS market, the current effectiveness of the IRP disclosure framework, and ongoing discussions within the industry, we believe that the IRP is the proper vehicle to facilitate climate-related disclosure for CRE market participants. As such, and as described further in Section III, CREFC – as part of its overall sustainability initiative – has proactively gathered participants from throughout the CRE finance industry to (1) determine what climate-related information is obtainable, relevant, and meaningful for borrowers, lenders, servicers, issuers, and investors <u>and</u> (2) develop climate-related data fields that can be incorporated into the existing IRP.

II. <u>CURRENT CLIMATE-RELATED DISCLOSURE IN CRE FINANCE</u>

As the Commission seeks to better understand the feasibility, relevance, and ultimate impact of climate-related disclosure for investors, it is critical that it consider the current state of climate-related disclosure, the availability of the type of information that may be sought, and what efforts are currently underway to increase the availability of more complete climate data.

Under the Commission's existing disclosure regime, we understand that climate-focused data must be reported if such information is deemed "material" (i.e., there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision in the context of all other available information).[7] In fact, the Commission's 2010 interpretive

[7] TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 444-49 (1976).

release explored how its existing disclosure requirements and the materiality standard may apply to climate-related issues, noting that:

> [T]here may be significant physical effects of climate change that have the potential to have a <u>material</u> effect on a registrant's business and operations . . . . They can include the impact of changes in weather patterns, such as increases in storm intensity, sea-level rise, melting of permafrost and temperature extremes on facilities or operations. Changes in the availability or quality of water, or other natural resources on which the registrant's business depends, or damage to facilities or decreased efficiency of equipment can have material effects on companies. Physical changes associated with climate change can decrease consumer demand for products or services; for example, warmer temperatures could reduce demand for residential and commercial heating fuels, service and equipment.[8]

CREFC members agree that, to the extent that sustainability or climate risk metrics are "material" to investors and fall within an existing disclosure regime, such information must be disclosed. Reliance on the (subjective) materiality standard, however, does not mean that all issuers will disclose the same data in a consistent manner and in a format that is comparable across issuers.[9]

At the property and loan levels, CREFC members believe that determining what is "material" to a CMBS investor may vary considerably depending on a number of factors (e.g., the type of collateral, the structure of the loan, diversity of tenants, location, etc.).

In addition, some issuers also are providing an expanded set of disclosures when they market the "green" status of their offerings. For instance, many issuers – primarily in the multifamily space – are asserting that their offerings are in alignment with ICMA's "Green Bond Principles." These principles provide voluntary process guidelines for the issuance of "green" bonds based on the use of proceeds, the process for project evaluation and selection, the management of proceeds, and reporting.[10] Several companies offer services to independently assess, verify, or certify a bond's compliance with these principles. CREFC members believe that

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[8] Commission Guidance Regarding Disclosure Related to Climate Change, Rel. No. 33-9106 (Feb 8. 2010), https://sec.gov/rules/interp/2010/33-9106.pdf; *see* William Hinman, Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks (Mar. 15, 2019), https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519 (highlighting examples of material risks from the 2010 Commission guidance).

[9] *See* GAO Report to the Honorable Mark Warner, U.S. Senate, Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them (July 2020), at 36-37 https://www.gao.gov/assets/710/707949.pdf (noting that, in its review of filings, SEC staff have found that most sampled companies included climate-related information "with varying levels of detail"); GAO Report to Congressional Requesters, "Climate-Related Risks: SEC Has Taken Steps to Clarify Disclosure Requirements," (Feb. 2018), at 14-15, https://www.gao.gov/assets/700/690197.pdf.

[10] *See* ICMA GREEN BOND PRINCIPLES, *supra* note 3.

– to the extent that an issuer wants to tout the sustainable, "green" status of an offering – it should be disclosed and subject to some form of verification. We do not, however, believe that the Commission has an obligation to – or should – define "green" or prescribe compliance with a particular framework or certain set of principles. Instead, the aim should be to ensure that issuers emphasizing the "greenness" of their offerings are able to support it via issuer-identified objective and identifiable standards.

CRE-specific disclosures that address environmental risks, for example, already are – as applicable – consistently included in CMBS offering documents and in the industry standard representations and warranties provided in a given transaction. CREFC has been evaluating the currently relevant data through two lenses:

1. The impact of climate on the building (e.g., ability to resist or mitigate the impact of flood, earthquake, fire, etc.; resilient construction; elevation).

2. The impact of the building on the climate, both during construction (e.g., construction practices, construction material sourcing, etc.) and once construction is complete (e.g., energy and water usage, carbon emissions, third-party certification, etc.).[11]

In our space, these factors present unique challenges, primarily in the lack of standardization, the difficulties associated with receiving/obtaining the data, and its impact on credit risk.

A. *Impact of Climate on the Building*

The data available today offers only a partial picture of the climate's impact on a given property. This is in large part because the associated assessments and disclosures are not specifically focused on climate change or required on or relevant to every property (i.e., rather than accounting for the effects of climate change – like forecasting for rising sea level – the assessments rely on historical and observable climate and weather patterns). For instance, certain components may or may not be incorporated into the representations and warranties/due diligence reports required in a given property transaction, including:

- *Phase 1 Environmental Site Assessments ("ESA").* Lenders often require commercial mortgage borrowers, including multifamily investors, to conduct a Phase 1 ESA in accordance with ASTM E1527-13 to assess the overall historical environmental condition of the commercial real estate site.[12] While this assessment may provide insight as to the climate's impact on a property, its overall purpose is to identify any attendant, contamination-related liabilities that may arise due to the property's historical use. Some

[11] In considering the climate risks borne by the building, it warrants noting that there may be unintended consequences of comprehensive climate-related disclosure (or any climate-related risk management practices borne out of such disclosure). For instance, if climate disclosure leads to moving capital out of certain areas (i.e., greenlining), there could be negative social implications.

[12] Standard Practices for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process, ASTM E1527-13, https://www.astm.org/Standards/E1527.htm.

lenders have started asking for climate risk to be considered within a Phase I ESA; however, there is no industry standard for how to do this yet.

- *Property Condition Assessment ("PCA").* Lenders typically require commercial real estate purchasers, including multifamily investors, to conduct a PCA in accordance with ASTM E2018-15 to assess building condition and provide cost estimates for immediate repairs and long-term capital requirements.[13] Some lenders have started asking for climate risk to be considered within a PCA so that replacement costs can be "climate informed"; however, there is no industry standard for how to do this yet. To the extent that climate (or weather factors) are relevant, however, the PCA will generally incorporate it anecdotally (e.g., if an area is prone to hurricanes, it may recommend certain types of roofing or other wind protection improvements; in a flood zone, it may recommend certain elevation or insurance requirements).

- *Probable Maximum Loss Reports*. Probable Maximum Loss Reports document risks in areas prone to seismic activity. Lenders typically require such reports in certain "Seismic Zones," in accordance with ASTM E2557-16a.[14]

- *Flood Determinations.* Most lenders require borrowers to provide flood insurance/assess their flood risk if they are located in a flood zone. This may require providing a flood hazard determination or otherwise reviewing the flood maps developed by the Federal Emergency Management Agency ("FEMA"). This data, however, is not necessarily fool-proof, as FEMA flood risk metrics – which rely on backward-looking/historical data and do not account for future sea level change or increased flooding estimates – can be outdated and unreliable.

- *Insurance and Third-Party Insurance Review*. Lenders frequently require third parties to review both the insurance policies and the loan documents to ensure that (1) the policy coverage meets the requirements outlined in the loan documents and (2) the loan's required coverage is consistent and sufficient with prudent lending practices.[15]

Beyond the existing data available via due diligence reports, climate risk models are also commercially available (e.g., third parties are utilizing specific metrics like impacts from water scarcity, extreme weather events, and sea level rise to assign climate risk scores or ratings to certain properties), though such models are often plagued by uncertainty.[16] In fact, one report suggests

[13] Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process, ASTM E2018-15, https://www.astm.org/Standards/E2018.htm.

[14] Standard Practice for Probable Maximum Loss Evaluations for Earthquake Due-Diligence Assessments, ASTM 2557-16a, https://www.astm.org/Standards/E2557.htm.

[15] In addition to these due diligence reports, most lenders require certifications of compliance with zoning regulations and building codes. At this time, these reports do not address climate issues directly, instead they may tangentially document specific weather effects or land use trends in an area/their impact on the environment. These reports, however, are evolving to address climate-related issues and – as that happens – such information will be incorporated into IRP data fields.

[16] *See* Tanya Fiedler, et al., *Business Risk and the Emergence of Climate Analytics*, 11 NATURE CLIMATE CHANGE 87, 89 (Feb. 2021), https://www.nature.com/articles/s41558-020-00984-

that "[c]alls for the integration of climate science into risk disclosure and decision-making across many levels of economic activity has leap-frogged the current capabilities of climate science and climate models by at least a decade."[17]

Thus, while there are multiple levels of assessments that have been developed in the climate risk and resiliency space, there is currently no generally accepted industry standard for what data are included or the minimum qualifications of those providing such assessments. In fact, some reports suggest that ASTM is in the process of developing an assessment standard for climate risk and resilience, and it may become available in 18-24 months. This standard report could be aligned with the existing set of due diligence reports, and it is our hope that widespread use of the new ASTM climate risk and resilience standard will dovetail with our ongoing work to develop climate-focused IRP fields.

B. *Impact of the Building on Climate*

While there are several existing, external certification options available that can speak to the building's overall impact on the climate and their "green" status (e.g., LEED, C-PACE, EnergyStar, USGBC WELL, BREEAM, etc.), access to ongoing information showcasing a building's impact on climate is often extremely difficult to capture. This is largely because the data (e.g., use of electricity and how it is generated, water, gas, etc.) often come through utilities, flow through the building owners, and are not directly provided to the lenders/investors. Moreover, the fact that tenants are the ones who operate the properties – and the fact that the nature of their operations can vary significantly – combined with the general difficulties associated with data gathering – can make it very difficult to undertake comprehensive, ongoing reporting on certain factors, like energy usage. As such, unlike the data available documenting the climate's impact on a building, there is rarely any concrete data for many of these climate risk factors.

At this point, to require disclosure of climate risk (either those borne or caused by the building) would be premature because – to date – there is no comprehensive reporting standard currently in use (and, often, there is no available data). As the Commission considers varying approaches to climate disclosure – particularly as applied to the commercial real estate financing arena – the priority should be to identify the necessary data; ensure the availability of the necessary data (or develop mechanisms to determine, identify, and render available the necessary data); and, using the data, develop a standardized format to report such data to investors.

III. THE INDUSTRY'S APPROACH

In general, and as the Commission notes in its request for public input, standards for how to report climate risk do not yet exist, and methods to determine what qualifies as "material" – or

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[17] *Id.*

even relevant – for disclosure purposes has not been established. CREFC is strongly positioned to determine what disclosures are feasible for its originator and issuer members and how such disclosures should be presented, so as to provide the insight that CREFC's investor members find meaningful and useful.

CREFC is taking a proactive approach toward addressing climate change risks, the potential for implementing ESG objectives, and the future implications to our industry. In February 2021, CREFC launched its Sustainability Initiative ("SI"), seeking to align the objectives of its members and the commercial real estate finance industry with the opportunities and challenges of environmental, social, and corporate sustainability. Given the acute impact of climate change on commercial real estate, and the infrastructure-related changes that can help mitigate climate risk, the SI has focused initially on the "E" in ESG. Within the SI, CREFC launched a series of working groups – comprised of all CRE finance constituencies (e.g., investors, issuers, lenders, and third parties) – to focus on the following:

- Educating our members about the science, physical risks, financing, legal, and regulatory implications of climate change;
- Evaluating the available climate-related data across the industry (and identifying the data that will help investors determine climate risk/impact); and
- Building upon existing industry data and disclosures to create IRP reporting standards to enhance transparency and investor awareness as to the climate impacts both to and from a given property.[18]

As we consider implementing climate-focused fields into the IRP, our working groups want to ensure that the disclosures are sufficiently definable, accurate, and clear such that investors can make educated decisions based on climate impact. Specifically, with respect to format, to fold climate data into the existing IRP framework, it must be codable and objective, rather than descriptive or subjective. Therefore, the aim is to create IRP fields that are specific and quantifiable (e.g., "Is the property LEED certified?" or "Is the property in a Flood Zone?") in lieu of allowing broader, more discursive responses via questions seeking to assess how the climate has positively/negatively affected a particular property (e.g., "Describe the climate-related risks facing the property.").

As has been stated previously, CREFC believes that the IRP framework is the appropriate vehicle for climate disclosures for three critical reasons. First, the IRP is a dynamic and constantly evolving disclosure tool. The original version of the IRP – the CSSA 100 – was published in 1996 and included more than 100 standardized loan-level fields to disclose information for the CMBS market. As noted above, since then, it has grown, via several version updates, to include an ever-expanding aggregation of loan-, property-, bond-, and securitization-level information within standardized data files, reports and templates.

[18] CREFC has a number of ESG-focused working groups covering a range of action items (e.g., transparency, liquidity, education, policy/advocacy, etc.) to allow members to exchange views, discuss shared challenges and opportunities facing the industry, and collaborate where appropriate. Throughout these ongoing dialogues, we seek to ensure that all market perspectives are represented in each working group.

Second, the framework is already operational, providing investors with regular, detailed reports; ensuring information is presented in a uniform and understandable manner; and offering industry a clear, familiar, and standardized disclosure framework. In fact, the IRP is either distributed directly to investors or made easily accessible to investors electronically on the date distributions are made to investors; the timing for investor access is therefore much quicker through the IRP than it would be if they sought information via filings with the Commission.

And third, the CRE finance industry is already trending toward green, climate-friendly construction, much of which comes with an array of “green” claims and associated certifications. The IRP is well suited to incorporate fields to ensure that statements made to investors about a building’s “green” status (whether looking at the building’s impact on the climate or the climate’s impact on the building) are verifiable, accurate, and truthful. Likewise, an IRP-focused approach to disclosure would preserve a degree of flexibility necessary for today’s commercial real estate market. For instance, new IRP fields could allow for the distinction between new and old construction, requiring submission of certain data for new construction (e.g., the materials used for new construction/the broader supply chain) that would be impossible to ascertain for existing/older buildings. This prospective approach would ensure application only to new issuances, as the data will not be available to populate many of the data fields for loans made prior to the development of these standards.

Identifying climate risks and the relevant metrics is likely to be a moving target for the foreseeable future. The IRP is uniquely suited to address these ever-changing conditions. Allowing time for CREFC and market stakeholders to develop an IRP-compatible framework will provide the surest foundation for the effectiveness of future disclosures.

IV. <u>CONCLUSION</u>

While we recognize that the Commission is still in the initial phase of evaluating potential climate disclosure frameworks, we applaud your efforts thus far to seek important industry feedback. As this process progresses, we look forward to engaging with you on CRE-related climate disclosure and sharing our work on incorporating climate-focused data fields into the IRP.

Sincerely,

Lisa Pendergast
Executive Director
CRE Finance Council

APPENDIX

While many of the questions posed by the Commission are addressed in the letter, we have also attached an Appendix with brief responses to specific questions, informed by the broader industry discussion included in this comment letter.

Question 2
What information related to climate risks can be quantified and measured? How are markets currently using quantified information? Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision? Should disclosures be tiered or scaled based on the size and/or type of registrant)? If so, how? Should disclosures be phased in over time? If so, how? How are markets evaluating and pricing externalities of contributions to climate change? Do climate change related impacts affect the cost of capital, and if so, how and in what ways? How have registrants or investors analyzed risks and costs associated with climate change? What are registrants doing internally to evaluate or project climate scenarios, and what information from or about such internal evaluations should be disclosed to investors to inform investment and voting decisions? How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?

As described in Section III, CREFC is currently in the process of ascertaining the answers to these questions via operation of its ongoing sustainability initiative. Specifically, we are:

1. Evaluating and documenting the climate-related data that are available across the industry,
2. Identifying the data that will be most helpful to investors seeking to understand a given property's climate risk/impact, and
3. Determining the feasibility of obtaining such data.

Based on our work to date, and as we evaluate data fields for inclusion in the IRP, while some data are currently accessible via due diligence documents (e.g., flood zone status, seismic risk), the quantifiable data points (e.g., energy and water usage/management, wastewater management) – though undoubtedly useful in trying to determine climate risk and impact – are harder to obtain given that the tenants and/or borrowers are often the ones with direct access to such data.

We plan to use the industry data gathered to create loan- and property-level IRP reporting standards that could be used in the market to enhance transparency and investor awareness as to the climate impacts both to and from a given property.

Questions 3 & 7

What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission? How should such a system work? What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards? What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?

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

For decades, CREFC has worked with key industry participants (e.g., servicers, trustees, commercial and investment banks, rating agencies, insurance companies, traders, and B-piece and investment-grade investors) to establish comprehensive and standardized disclosure frameworks, perhaps the best example of which is its development of the Investor Reporting Package in 1996. Developing standards for the industry, by the industry is our bread and butter. In fact, when the Commission was preparing Regulation AB for securitization, it even acknowledged that there was a "general preference for the IRP in lieu of proposed requirements" for both information in the prospectus and ongoing reporting.[19] Ultimately, in its promulgation of the final Regulation AB, the Commission made efforts to align its requirements as much as possible with the IRP, requiring disclosure of information that was substantially the same as what was included in the IRP.

Today, the IRP remains a widely used data reporting methodology for disclosing loan-, property-, and bond-level information on a pool-specific basis and it is used in virtually all domestic CMBS transactions (i.e., in both public and private transactions). CREFC believes that the IRP framework is the appropriate vehicle for climate disclosures because of the variety of stakeholders involved in the process. The diversity of our constituent members ensures our ability to develop a comprehensive, responsive, and meaningful disclosure. Moreover, to the extent that there are efforts underway to promote "green" offerings in the commercial real estate space (e.g., compliance with the "Green Bond Principles" or other third party certification programs), many companies are already including those statements – which are often validated by third party entities – in their prospectus/offering documents.

With respect to property- and loan-level data, and given the industry's focus on climate risks, CREFC has taken a proactive approach toward updating the IRP to incorporate climate risk-specific data fields. Before the Commission considers developing its own climate-focused disclosure framework applicable to CMBS (and imposing an onerous compliance obligation), it should first allow industry participants – from investors, to issuers, to processors – to identify

[19] Asset-Backed Securities Disclosure and Regulation. 79 Fed. Reg. 57184, 57221 (Sept. 24, 2014), https://www.govinfo.gov/content/pkg/FR-2014-09-24/pdf/2014-21375.pdf.

meaningful data, ensure accessibility of such data, and incorporate the relevant climate-related data fields into the already successful IRP framework.

As we continue down this road, the CRE Finance Council hopes to work with the Commission to ensure the inclusion of all relevant data fields and develop a framework that can be incorporated into Regulation AB's Schedule AL.

Question 4

What are the advantages and disadvantages of establishing different climate change reporting standards for different industries, such as the financial sector, oil and gas, transportation, etc.? How should any such industry-focused standards be developed and implemented?

For conduit CMBS transactions, some of the relevant or available data may vary by underlying industry and/or property type (e.g., office, industrial, multifamily), but the overarching framework and general reliance on the IRP should be the same across the CRE sector.

Question 5

What are the advantages and disadvantages of rules that incorporate or draw on existing frameworks, such as, for example, those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the Climate Disclosure Standards Board (CDSB)? Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?

Many of the existing frameworks utilize – at least in part – a discursive model (e.g., describe the organization's processes for identifying and assessing climate-related risks, description of approach to incorporation of ESG factors in investment processes and strategies, explain the material current and anticipated environmental risks and opportunities affecting the organization, etc.).

These requests for broad summary statements or general descriptions generally do not comport with the standardized, data-driven framework of the IRP, though they may – in some instances – mirror the descriptive disclosures that some companies are now incorporating into their offering documents. At the loan- and property-level, however, the IRP presents very substantial financial and statistical data with respect to each individual loan and related property in a format that allows investors to undertake a comprehensive comparison. We believe that such data fields are the best indication of the unique loans in a CMBS pool and convey more information than any summary descriptions could.

While we do support the decision by some companies to incorporate detailed information about their "green" offerings in their filings with the Commission,, we believe that – for the purposes of our industry – a descriptive disclosure framework like those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards

Board (SASB), and the Climate Disclosure Standards Board (CDSB) would not meaningfully enhance an investor's understanding of the climate risks or climate-related characteristics of a particular CMBS loan pool.

Question 6

How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?

As discussed in more detail in Section III, the benefit of using an industry-built framework like the IRP – which is now on its eighth major iteration – is that it is constantly being updated based on feedback from industry stakeholders, unlike a static regulatory disclosure framework. Even now, CREFC members are working to make further improvements and incorporate climate-related data fields into the IRP.

If the Commission is contemplating adopting its own disclosure criteria, it should ensure that any data applicable to the CRE space can be included in Schedule AL and comport with the climate-focused data fields incorporated into the IRP, as it did in its promulgation of Regulation AB.

Question 8

How, if at all, should registrants disclose their internal governance and oversight of climate related issues? For example, what are the advantages and disadvantages of requiring disclosure concerning the connection between executive or employee compensation and climate change risks and impacts?

We do not believe that such disclosure would be applicable or meaningful in the commercial real estate space. CMBS issuances are structured to legally isolate the securitized assets from the originators of the assets. As described in Section I, unlike how operating companies typically issue equity or debt, the originators and sellers of securitized assets typically have little or no involvement with the assets after securitization occurs.

The legal isolation of securitized CRE assets, therefore, suggests that any ongoing, post-securitization disclosure regarding sustainability and climate risk should be primarily focused on the securitized assets rather than the originators, loan sellers, underwriters, or depositors in securitization transactions.

Question 11

Should the Commission consider other measures to ensure the reliability of climate-related disclosures? Should the Commission, for example, consider whether management's annual report on internal control over financial reporting and related requirements should be updated to ensure sufficient analysis of controls around climate reporting? Should the Commission consider requiring a certification by the CEO, CFO, or other corporate officer relating to climate disclosures?

The Commission should not impose a certification requirement on CMBS issuers. As detailed in Section II, the existing and available data surrounding climate risk and impact lacks standardization, flows through multiple sources, and – at times – is entirely unattainable. These difficulties – combined with an affirmative certification requirement – could discourage issuers from making any climate-focused disclosures.

As such, in lieu of imposing an affirmative certification obligation/requiring issuers to guarantee the accuracy of the data provided, the issuers (and their executives) – in accordance with existing Commission rules and regulations – should solely be responsible for ensuring that they are disclosing the data available to them.

Question 12

What are the advantages and disadvantages of a "comply or explain" framework for climate change that would permit registrants to either comply with, or if they do not comply, explain why they have not complied with the disclosure rules? How should this work? Should "comply or explain" apply to all climate change disclosures or just select ones, and why?

CREFC is hoping to use industry expertise to develop a comprehensive climate risk disclosure regime for the commercial real estate finance industry. Our focus, particularly in the climate context, will be to ensure that investors are receiving the necessary information to understand the meaning behind a given property's "green" claims.

At the pool level, some issuers are already incorporating descriptions of their "green" offerings – or compliance with existing "green" standards – in their issuance/prospectus documentation. To the extent that such information is offered, we believe that it must be supported via compliance to an existing set of standards. We do not, however, believe that the Commission is in the position to determine what qualifies as "green" for a given industry. Likewise, if the issuers are <u>not</u> attempting to market their issuances as "green," then the Commission should not mandate any affirmative disclosures in the issuance documents.

Instead, investors can rely on the property- and loan-level detail provided in the IRP – an existing voluntary disclosure regime that has been adopted by the CRE finance industry. As with these existing disclosures, we do not believe that use of the IRP should be mandatory, particularly given that disclosure of the climate elements for older properties or existing loans is often impossible because there is a lack of access to the relevant data.

Question 15

In addition to climate-related disclosure, the staff is evaluating a range of disclosure issues under the heading of environmental, social, and governance, or ESG, matters. Should climate-related requirements be one component of a broader ESG disclosure framework? How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard? How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?

CREFC – in its approach to updating the IRP data fields – is contemplating all three pillars of the ESG framework, as there may be unintended consequences of comprehensive climate-related disclosure (or any climate-related risk management practices borne out of such disclosure), particularly to the degree it intersects with the “social” pillar. For instance, if climate disclosure leads to moving capital out of certain areas (i.e., greenlining), there could be negative social implications with respect to affordability.

As such, while the Commission should be evaluating the entire range of ESG disclosure issues, CREFC believes that the update to the IRP could assist the Commission in understanding how – in the commercial real estate space – these data points relate to each other and may coincide in practice.