

Mr. Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

11 June 2021

Re: Request for public input on climate change disclosures

Ernst & Young LLP is pleased to provide comments in response to the 15 March 2021 request for public input on climate change disclosures and whether, and if so how, the Securities and Exchange Commission (SEC or Commission) should modify its rules and guidance.

As Commissioner Allison Herren Lee, the former Acting Chair, said in a recent speech, there is no historical precedent for the shift in investor focus toward the use of climate and other environmental, social and governance (ESG) information in investment decision-making.¹ We note that the request for input followed a recommendation by the SEC's Investor Advisory Committee that the SEC begin to update its reporting requirements for public companies to include ESG information.²

Our firm has been a strong supporter of private-sector efforts to help companies meet the growing needs of their investors and other stakeholders for decision-useful ESG information. We observe that investors are interested in how companies are creating long-term value³ and companies often disclose sustainability information as an indication of long-term value creation.⁴ Over the past several years, we have supported efforts to establish and improve ESG reporting by the World Economic Forum's International Business Council (WEF-IBC), the Sustainability Accounting Standards Board (SASB), the Task Force on Climate-related Financial Disclosures and the Embankment Project for Inclusive Capitalism, among others.

We support the SEC's effort to seek input as a critical first step in considering whether and how to adopt disclosure requirements that meet investors' needs in a cost-effective manner. Therefore, we provide below our perspective on rulemaking considerations at this early stage. We also encourage the SEC to engage in additional outreach beyond this request for input to inform any proposed rules.

¹ Allison Herren Lee, "[A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC](#)," SEC speech, 15 March 2021.

² "[Recommendation from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee Related to ESG Disclosure](#)," SEC, 14 May 2020.

³ "[Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation](#)," World Economic Forum, 22 September 2020.

⁴ "[The Embankment Project for Inclusive Capitalism](#)," Coalition for Inclusive Capitalism, 2018.

For example, the Commission could hold roundtable discussions like those it held on the proxy process.⁵ We believe that continuing to engage with investors and other market participants would be helpful as the Commission considers developing ESG disclosure requirements, and we would be happy to participate in such discussions.

Scope of disclosure requirements – consider investors’ needs for ESG information more broadly

Although the request for input is appropriately focused on climate-related disclosures as a first regulatory step given their significance, we believe that the Commission also should take this opportunity to consider investors’ need for information about ESG matters more broadly. We have observed that disclosure practices have evolved in response to the needs of stakeholders, so climate-related information is often presented alongside other ESG information (e.g., workforce diversity), suggesting that a holistic approach may be relevant for investors. If the SEC decides to propose rules, we would recommend explaining in the proposal how the new requirements are intended to interact with the SEC’s existing requirements (e.g., requirements related to governance, human capital resources, mine safety and conflict minerals).

Development of disclosure requirements – leverage the work to date from the private sector

We believe the SEC should leverage the work of private organizations that have developed frameworks for ESG reporting, including those mentioned above. While the frameworks developed by these organizations address a variety of topics and intended users and provide varying degrees of flexibility for companies to tailor their disclosures, the SEC should consider them in developing requirements for reporting in SEC filings. Below, we describe some alternatives that we believe the SEC should consider.

Reliance on one or more of the existing frameworks

The SEC could leverage the work that has already been performed in the private sector by requiring issuers to report ESG information using one or more of the existing frameworks, as long as the framework meets criteria deemed necessary by the SEC. We believe a framework should meet the following general criteria in order for the SEC to consider incorporating its use into SEC disclosure rules:

- ▶ The framework sets forth disclosures that investors consider material.
- ▶ The framework allows an issuer to tailor its disclosure to its particular facts and circumstances, which may include the industry in which it operates.
- ▶ The organization developing and maintaining the framework follows due process; is transparent and objective; and has the expertise, governance, funding and other standard-setting processes that the SEC believes are necessary for the framework to be incorporated into its disclosure rules.

⁵ [“Spotlight on Proxy Process,” SEC, 15 November 2018.](#)

When it considers whether to require reporting under a particular framework, we believe the SEC should compare the framework's disclosure threshold to the threshold for other SEC disclosure requirements. For example, existing SEC rules about an issuer's business, results of operations and the risks facing the company all require disclosure when information is material as defined by the SEC.⁶

If the SEC proposes requiring the use of a framework with a threshold for disclosure that departs significantly from those used in other SEC disclosure requirements, we believe it would be helpful to clarify in the proposal why a different approach is used and to offer the opportunity for the public to comment on it.

If the SEC determines that more than one framework might meet its criteria, we believe that the SEC should consider the advantages and disadvantages of using multiple frameworks for the US market. Factors to be considered may include the comparability of the disclosures required under those frameworks and the potential efficiencies achievable by allowing issuers currently using a framework to continue to do so.

If the SEC chooses to use one or more frameworks, we recommend that the Commission make clear that it will monitor compliance with its criteria and take action to address instances of noncompliance. For example, the Division of Corporation Finance could announce when it observes that a framework is no longer in compliance, effectively preventing issuers from using it to report ESG information until the noncompliance is cured.

Setting new requirements based on existing frameworks

The SEC could also develop and maintain its own disclosure requirements. If the SEC chooses that path, it could still leverage the work performed by other organizations by proposing for public comment requirements to disclose information that is common across the existing frameworks. For example, the SEC could consider the recent efforts of the WEF-IBC to identify a set of core quantitative and qualitative disclosures based on the existing frameworks.

International collaboration in global standard setting

We recognize and support the collective efforts of various organizations to make their frameworks interoperable to meet the needs of various stakeholders. For example, the CDP Global System, Climate Disclosure Standards Board, Global Reporting Initiative, International Integrated Reporting Council and the SASB jointly issued a prototype climate-related disclosure standard⁷ following their Statement of Intent to Work Together Towards Comprehensive Reporting.⁸

⁶ As defined in Securities Act Rule 405 and Exchange Act Rule 12b-2, the term "material," when used to qualify a requirement for the furnishing of information on any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered. Existing SEC disclosure requirements that use this term include the following: Item 101(c) of Regulation S-K requires a company to describe its business by including only information that is material to an understanding of the business as a whole; Item 105 of Regulation S-K requires a company to disclose the material factors that make an investment in the company or offering speculative or risky (i.e., risk factors); and Item 303 of Regulation S-K states that the objective of management's discussion and analysis disclosure is to provide material information relevant to an assessment of the financial condition and results of operations of the company.

⁷ ["Reporting on enterprise value: Illustrated with a prototype climate-related financial disclosure standard," December 2020.](#)

⁸ ["Statement of Intent to Work Together Towards Comprehensive Reporting," September 2020.](#)

We also support the IFRS Foundation's efforts to create and oversee a new board tasked with developing a single set of global ESG disclosure standards. We believe that having a widely used single set of globally accepted ESG disclosure standards in place could benefit both the global capital markets and investors. A single set of high-quality global standards could facilitate efficient capital allocation decisions by simplifying comparisons among global investment opportunities. We recommend that the SEC actively participate in these efforts to convey the US regulatory perspective through its work on ESG as part of the Monitoring Board and Technical Expert Group of the International Organization of Securities Commissions.

Although we understand that the SEC may act prior to the completion of these efforts,⁹ we support the SEC's engagement with global standard setting that works toward a goal of a single set of global standards for ESG reporting for investors while recognizing and addressing differences that may be unique in the US markets. In order to facilitate this process, the SEC could consider the establishment of a separate board (e.g., under the Financial Accounting Foundation) to approve, or if necessary modify, such standards before they are incorporated into the SEC's requirements.

Placement and timing of required disclosures and transition

Investors' needs should drive decisions about where and when companies would be required to provide disclosures, in addition to the type of ESG disclosures that would be required. The SEC could leverage its existing forms and integrate ESG disclosure into the relatively short annual reporting or proxy reporting cycles (e.g., annual reports are due for large accelerated filers within 60 days after year end). However, we believe the SEC should consider investors' needs for integrated reporting, with the ability of issuers to report such disclosures on that timeline, considering existing accelerated filing deadlines and related constraints.

If the costs of integrated reporting outweigh the benefits, we believe that there are practical alternatives that could be utilized, as part of a transition to integrated reporting. For example, the SEC could create a new ESG disclosure form (e.g., Form ESG) with a later due date, balancing the needs for timely reporting and the costs and effort to provide (and potentially obtain third-party assurance on) such information. This could help get ESG information into the hands of investors sooner than might otherwise be possible by initially providing flexibility for issuers to provide the information after the annual report and proxy reporting cycles are complete for the year.¹⁰ In addition, the information could be furnished (rather than filed) as companies transition to the new requirements.¹¹

If the SEC were to choose this alternative, we would recommend that it also undertake a comprehensive post-implementation review once investors have gained sufficient experience using the required disclosures and companies have experience with the reporting processes established to prepare the new form. A post-implementation review would allow the SEC to determine its next steps regarding the timing and method of communication based on the practical experience of its constituents.

⁹ John Coates, Acting Director of the SEC's Division of Corporation Finance, [reportedly](#) indicated that the SEC is poised to act "promptly" and that action on ESG disclosure is "overdue" at the [Spring 2021 Roundtable](#) hosted by New York University.

¹⁰ When it adopted rules implementing Section 404(a) of the Sarbanes-Oxley Act, the SEC did not require that management's evaluation take place on the last day of the period but that the statement of effectiveness of the issuer's disclosure controls and internal control over financial reporting be as of the end of the period. See [Release No. 33-8238, Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports \(Final Rule\)](#).

¹¹ When it adopted its interactive data requirements in 2009, the SEC allowed companies to initially furnish rather than file the data. See [Release No. 33-9002, Interactive Data to Improve Financial Reporting \(Final Rule\)](#).

We encourage the Commission to consider phasing in any new requirements to give companies at an early stage in their ESG journey (those that haven't been devoting resources to these disclosures) time to adapt. For example, large accelerated filers could be subject to the requirements sooner than smaller issuers. This approach would provide an opportunity for other companies to observe best practices of larger issuers and for the SEC staff to share observations and guidance as appropriate prior to broader adoption. We have observed that this approach has been successful in implementing other rulemaking and standard setting by the SEC, the Financial Accounting Standards Board and the Public Company Accounting Oversight Board (PCAOB).

Reliability of the disclosures

Investor confidence in the reliability and consistency of disclosures required by the SEC is critical to the capital markets. Part of that confidence can be attributed to requirements that all information required to be disclosed in reports filed or submitted to the SEC under the Exchange Act is subject to a company's disclosure controls and procedures (DCPs).¹² Management is responsible for maintaining effective DCPs and must evaluate and report on their effectiveness every quarter. If the SEC requires companies to file or furnish ESG information to the SEC, that information will be within the scope of the DCP requirements. Depending on the nature and location of these disclosures, officer certifications may also be required. We believe that the SEC should engage with investors and issuers to evaluate the benefits and costs of any additional protections with respect to ESG information.

Different forms of assurance on required disclosures may be useful to investors

Additional protections may be available through assurance provided by independent auditors of public companies. For many years, independent auditors have served as critical gatekeepers in the US capital markets by performing audits of issuers' annual financial statements and internal control over financial reporting and reviews of their interim financial statements. This assurance has long been a driving force behind the high confidence that investors have in the financial reporting of companies that participate in the US capital markets, which has been further enhanced since the Sarbanes-Oxley Act by the regulation of the PCAOB and a commitment to maintaining:

- ▶ High standards of professional competency, including providing different forms of assurance, while following a consistent methodology
- ▶ Ongoing investments in professional continuing education and specialist training
- ▶ Rigorous standards of professional ethics, including the SEC's independence requirements
- ▶ Robust systems of quality controls

¹² Exchange Act Rules 13a-15(b) and 15d-15(b).

We believe that the SEC can consider these aspects of the financial reporting system, with input from investors and companies, to determine whether and what form of assurance is appropriate for disclosures about ESG matters. We note that many issuers have already engaged auditors to perform assurance services over certain ESG information (e.g., greenhouse gas emissions) following the American Institute of Certified Public Accountants (AICPA) attestation standards.¹³

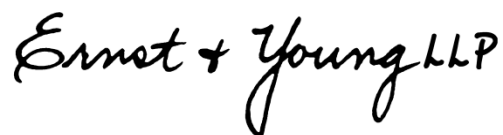
As with financial reporting, different levels of assurance can be provided, and any required assurance over ESG information can be appropriately tailored to meet the needs of investors. For example, independent auditors can provide reasonable assurance through examination or limited assurance with a review. An examination is more extensive than a review since the auditor opines on whether the ESG information is stated, in all material respects, in compliance with the relevant ESG framework. In contrast, a review is less extensive because the auditor reports, based largely on inquiries and analytical procedures, whether any material modifications must be made in order for the ESG information to comply with the relevant framework.

If the SEC believes assurance over ESG reporting should be required, we recommend that it engage with the audit profession, including through the Center for Audit Quality and the attestation standard setters, to make sure that its requirements are both operational and cost-effective.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Yours sincerely,



¹³ See [AICPA sustainability attestation guide](#). This guide is intended to assist users with interpreting and applying the Statements on Standards for Attestation Engagements No. 18 when performing examination or review engagements on sustainability matters.