ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA®

June 11, 2021

Chairman Gary Gensler
Securities and Exchange Commission
100 F Street NW
Washington, D.C. 20549

Re: Climate Change Disclosure

Dear Chairman Gensler:

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to provide comments in response to the Securities and Exchange Commission's (SEC) request for input regarding climate change disclosure. We support the SEC's goal of establishing a consistent and reliable way to measure and disclose, when material, the impact of climate change on publicly held companies. However, we are very concerned that the agency will go too far with its disclosure requirements. A significant number of community banks and bank holding companies in the U.S. are SEC filers and would be subject to additional regulatory burdens without commensurate benefits if disclosures regarding climate change and greenhouse gases became excessively complicated and were required for every annual Form 10-K filing.

Climate Change Disclosures Should Not be Mandated

Currently, it is up to the individual publicly held company to decide whether climate change risks are so material that they need to be disclosed in SEC filings. In 2010, the SEC issued Climate Change Guidance noting that, depending on the circumstances, information about

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

climate change-related risks and opportunities might be required in a registrant's disclosures related to its description of business, legal proceedings, risk factors, and management's discussion and analysis of financial condition and results of operations. The release outlined certain ways in which climate change may trigger disclosure requirements under the SEC rules.[2]

For instance, the Guidance indicates that when assessing potential disclosure obligations, a company should consider whether the impact of certain existing laws and regulations regarding climate change is material. In certain circumstances, a company should also evaluate the potential impact of pending legislation and regulation related to this topic as well as the impact of any international accords.

Also, legal, technological, political and scientific developments regarding climate change may create new opportunities or risks for companies. For instance, a company may face decreased demand for goods that produce significant greenhouse gas emissions or increased demand for goods that result in lower emissions than competing products. As such, a company should consider, for disclosure purposes, the actual or potential indirect consequences it may face due to climate change-related regulatory or business trends.

When the 2010 Climate Change Guidance was issued, then SEC Chairman Mary Schapiro said:

"We are not opining on whether the world's climate is changing, at what pace it might be changing, or due to what causes. Nothing that the Commission does today should be construed as weighing in on those topics. Today's guidance will help to ensure that our disclosure rules are consistently applied."

ICBA supports the intent of the 2010 Climate Change Guidance which was not only to ensure consistency in disclosure rules but help clarify when climate risks are considered material. According to the Supreme Court, an issue is considered "material" to an investment decision and therefore should be disclosed when there is a "substantial likelihood that the disclosure of the omitted fact would be viewed by the reasonable investor as significantly altering the total mix of information available."[3] If climate risks meet that standard of materiality as clarified by the Guidance, it should be disclosed in the company's SEC filings.

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[2] See *SEC Issues Interpretative Guidance on Disclosure Related to Business or Legal Developments Regarding Climate Change*, Release 2010-15, available at Press Release: SEC Issues Interpretive Guidance on Disclosure Related to Business or Legal Developments Regarding Climate Change; 2010-15; Jan. 27, 2010

[3] TSC Industries, Inc. v. Northway, 426 U.S. 438 (1976)

The SEC does not need to go any further with rules regarding climate risk disclosures other than ensuring the consistency of disclosures and updating its 2010 Climate Change Guidance. The materiality standard is quite adequate and should not be replaced by a prescriptive climate change disclosure standard that is based on what the SEC considers to be material. A one-size-fits-all uniform mandate would be particularly misguided since each company has different risks and a different carbon footprint. Since climate change models depend on predictions about what the weather will look like decades from now—predictions that climate scientists agree are inherently uncertain—the SEC should be concerned about the reliability and utility of any mandated climate change disclosures.

Furthermore, there is no evidence that companies are ignoring their disclosure obligations and are not making climate change disclosures. In fact, a recent Bloomberg analysis found that the number of Fortune 500 companies reporting risks relating to climate change and greenhouse gas emissions has quadrupled.[4] **Mandatory disclosure requirements for all SEC filers are unnecessary and would only lead to excessive regulatory burdens on smaller publicly held companies.** Many smaller companies would be forced to hire environmental consultants to help with their audits and to prepare their SEC disclosures. If mandatory disclosures were required, publicly held community banks and bank holding companies located in areas of the country subject to climate risks would seriously consider delisting their stock and/or terminating their securities registration under Section 12 of the Securities Exchange Act of 1934 just to avoid the regulatory burden and the concerns about SEC enforcement.

The SEC should not politicize the agency and jeopardize its independence by taking a position on climate change and requiring annual disclosures of climate risks by all SEC filers. Instead, the agency should continue with its voluntary disclosure regime, complete its review of the 2010 Climate Change Guidance that was started last February and make appropriate changes where the guidance needs to be updated or clarified.

Any SEC-Adopted Mandatory Climate Change Disclosures Should be Scalable and Coordinated with Other Agencies

If the SEC adopts required climate disclosures for all SEC filers, those disclosures should be scalable so that "smaller reporting companies" do not face the same disclosure requirements as larger companies. Under SEC rules adopted three years ago, a company qualifies as a "smaller reporting company" if (1) it has a public float of less than $250 million or (2) it has less than $100 million in annual revenue and (a) has no public float or (b) has a public float of less than

[4] Andrew Ramonas and Jacob Rund, *Climate Change Risks Surge in Companies' Annual Report to SEC* (March 25,2021) available at Climate Change Risks Surge in Companies' Annual Reports to SEC (bloomberglaw.com)

$700 million. **At a minimum, smaller reporting companies should be exempt from climate related disclosures since those companies typically have fewer shareholders and are less able to comply with such disclosures.** In many cases, such disclosures would require assistance from outside consultants which would be an additional regulatory expense for smaller companies.

Furthermore, the SEC should coordinate with the banking agencies, i.e., the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, on the drafting of any climate-related disclosure requirements for financial institutions. Whatever metrics the SEC adopts for financial institutions to determine greenhouse gas emissions or climate risk exposure should be similar if not identical to those used by the banking agencies. If the banking agencies exempt community banks with consolidated assets less than $50 billion in assets from such disclosure requirements (which ICBA recommends), then the SEC should exempt such institutions from its disclosure requirements.

Disclosures Need to be Consistent and Include Safe Harbors

Achieving effective disclosure from financial institutions is contingent on the quality and comprehensiveness of disclosure by their corporate counterparties. For instance, to determine the exposure of a community bank's commercial lending portfolio, the bank would need to rely on the representations made by its commercial borrowers. Therefore, consistency in disclosures made by counterparties is essential to an effective disclosure program and without such consistency, banks will be unable to comply with any prescriptive requirements issued by the SEC. Community banks in particular are also reliant on their core processing service providers and other critical service vendors for retrieving the data necessary to determine their exposure to climate change. It is essential that all the bank's corporate counterparties are using the same metrics as the bank to calculate climate risk exposure.

At present, there is a multitude of metrics proposed across the many established and emerging climate disclosure frameworks that attempt to measure different aspects of information or use different measurement approaches. To ensure consistency and comparability across markets and to avoid regulatory fragmentation, a recognized and uniform baseline framework for the reporting of climate-related information is needed which at the same time allows for flexibility to allow data, model, and metric improvement.

Disclosure requirements also need to include safe harbor protections broad enough to encourage companies to be candid, but narrow enough to ensure that the information provided is useful. Not only should the existing safe harbor rules on forward-looking statements apply, but there should also be specific climate safe harbor rules for any statements that necessarily rely on data from third parties that are outside of the financial institution's control.

Any disclosure requirements should also provide long transition periods to comply, particularly for smaller reporting companies.

Conclusion

Consistent with SEC Chairman Shapiro's remarks in 2010, the SEC should not take a position on climate change and adopt mandatory disclosures. Rather, the agency should continue requiring filers to disclose climate risks only when they are material to the company.

If climate change disclosures are required, they should be scalable so that smaller reporting companies are exempted and, in the case of financial institutions, should be coordinated with the banking agencies. For any disclosure system to work and be effective, it is essential that all the bank's corporate counterparties are using the same metrics as the bank to calculate climate risk and that safe harbors are included.

ICBA appreciates the opportunity to comment on the SEC's request for input regarding climate change disclosures. If you have any questions or would like additional information, please do not hesitate to contact me a [redacted]

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel