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The Honorable Gary Gensler Chair
The Honorable Allison Herren Lee Commissioner
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

By email: rule-comments@sec.gov

June 11, 2021

Dear Chair Gensler and Commissioner Lee:

Re: Public Input on Climate Change Disclosures

Baillie Gifford appreciates the opportunity to comment on the March 15, 2021 request for public input on climate change disclosures.

Background and Executive Summary

Founded in 1908, Baillie Gifford is a privately-owned UK investment management firm based in Edinburgh, Scotland. The Baillie Gifford Group focus on long term, active investment management. Our client base is predominantly institutional in nature and located globally. Our experience of deploying clients' capital into tangible, returns-generating activities has taught us that investing responsibly for the long term is not counter to generating financial returns for clients, it is intrinsic to it. The overwhelming majority of accounts managed by Baillie Gifford follow a long-only, active approach to investment based on identifying and holding high quality growth businesses that enjoy sustainable competitive advantages in their marketplace. We look beyond current financial performance, undertaking proprietary research to build up our in-depth knowledge of an individual company and form a view on its long-term prospects. This focus on "bottom up" research also applies to our work on governance and sustainability. Financially material governance and sustainability issues (including climate risks and opportunities) are routinely considered throughout the investment process and are highly material considerations within our investment analysis.

As a financial market participant and financial adviser, we recognise that we have a role to play not only in mobilising capital towards sustainable investments but also in ensuring our clients are provided with relevant sustainability-related disclosures (including climate risks and opportunities) regarding their investments. However, in the absence of a mandatory reporting framework adopted globally, receiving reliable and consistent reporting from companies will continue to be a challenge. As such, we fully support the work that the Securities and Exchange Commission (SEC) is undertaking towards facilitating the disclosure of consistent, comparable, and reliable information on climate change. We believe that various frameworks already exist to facilitate the disclosure of climate-related information and that these frameworks should be used as the basis for any future reporting standards.

Response to Questions

1. How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?

   We believe that the demand for consistent, comparable and reliable climate change information will only continue to increase particularly due to the increasing awareness amongst investors that climate-related issues can have a material impact on a company's financial performance. To meet the increasing investor demand for information on climate risk and opportunities, we would support making climate change disclosures mandatory and for these disclosures to be included within the Form 10-K. As 10-K filings are available on the SEC website, this will not only allow the Commission to regulate and monitor climate change disclosures but will also make these disclosures more easily accessible to investors. Furthermore, by mandating for these climate change disclosures to be consistent with already existing frameworks, the Commission will be able to ensure comparability of information.

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 mentioned in the Background and Executive Summary section, we believe that various frameworks already exist to facilitate the disclosure of climate-related information and that these frameworks offer the best starting point for answering these questions (see our response to Question 5 regarding the various frameworks).

As a global financial market participant, we are subject to various regulatory obligations, with the European Union's Sustainable Finance Disclosure Regulation ('SFDR') being one of the most recent ones. Within SFDR, we are required to disclose not only the impact of sustainability risks on the value of the investments we manage but also the impact of these investments on the wider environment or society ('adverse impact') through various quantitative indicators (or metrics) that go beyond climate change. We would encourage the SEC to consider the inclusion of these non-climate related adverse impact indicators as part of the metrics that public companies need to disclose within the Form 10-K in addition to the following information: (a) scopes 1, 2 and 3 greenhouse gas emissions (b) relative and absolute emissions reduction targets and (c) avoided emissions.

We also believe that there is merit in adopting a phased-in approach with regard to the implementation of a mandatory reporting framework on climate related disclosures. This was a similar approach taken by the United Kingdom's Financial Conduct Authority (FCA) with Task Force in Climate-related Financial Disclosures (TCFD)-aligned disclosures first being mandated to premium listed companies before they are extended to a wider scope of listed companies a year after.

3. 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.)?

   Our preference is for the Commission to set clear minimum standards in reference to already existing disclosure frameworks. Whilst there is danger that minimum standards could lead to overly simplistic processes '(box-ticking)'), we believe that having minimum disclosure requirements will lead to consistency in reporting and will provide an overall framework which industry participants can then further develop.

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?

   In its most recent Climate Risk Technical Bulletin (April 2021), the Sustainability Accounting Standards Board's (SASB) research demonstrated that 68 out of the 77 industries in SASB's Sustainable Industry Classification System (SICS) are significantly affected in some way by climate risk. The Technical Bulletin referred to climate risk as being both 'ubiquitous' and 'diverse', with the latter referring to the fact that it manifests itself differently from one industry to the next. We completely agree with this sentiment and we believe that any future *standards should provide some form of differentiation between industries. Furthermore, we also believe that any future standards should cater for both 'double' and 'dynamic' materiality assessments.*

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)?[7] Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?

   In her remarks to the Institute of International Finance in April this year, the Secretary of the Treasury Janet L. Yellen alluded to the importance of building on existing work to improve climate-related financial risk disclosure. She specifically referenced that the Financial Stability Board's TCFD provides a solid framework for climate disclosures.

   TCFD is a globally acknowledged and accepted standard and although a voluntary framework, based on 2020 Status Report, organisations expressing support for the TCFD has now reached over 1,500 organisations globally, including over 1,340 companies with a market capitalisation of $12.6 trillion and financial institutions responsible for assets of $150 trillion. Furthermore, over 110 regulators and government entities from around the world already support the TCFD.

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?

   If the standards envisaged as part of this consultation will be based on the TCFD framework (complemented by other frameworks e.g. SASB, CDSB), then responsibility for any updates, improvements or changes should fall on the owners of the relevant frameworks.

7. 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?

   Given we favour the integration of climate change disclosures within the Form 10-K to make climate change disclosures more easily accessible to investors, our preference is to amend existing rules rather than introduce new rules. Regulation S-K already includes various disclosure obligations where specific climate change disclosures can be reinforced. For example, Regulation S-K already requires the disclosure of risk factors (Item 105) and material effects of compliance with environmental laws (Item 101).

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?

   Governance is one of the four core elements of the TCFD framework. Disclosing in line with the TCFD recommendations (particularly the Governance element) should address the internal governance and oversight of climate-related issues.

   As a global financial market participant, we are already required under SFDR to disclose how our remuneration policies are aligned with the integration of sustainability risks within our investment process. As long-term investors, we believe it is equally important for the companies we invest in to disclose the connection between executive or employee compensation and consideration of sustainability risks including climate change risks and impacts. In a study published by the European Commission last year on directors' duties and sustainable corporate governance, it has found that one driver of short-termism is 'board remuneration structures that incentivise the focus on short-term shareholder value rather than long-term value creation for the company'.

9. What are the advantages and disadvantages of developing a single set of global standards applicable to companies around the world, including registrants under the Commission's rules, versus multiple standard setters and standards? If there were to be a single standard setter and set of standards, which one should it be? What are the advantages and disadvantages of establishing a minimum global set of standards as a baseline that individual jurisdictions could build on versus a comprehensive set of standards? If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability? What should be the interaction between any global standard and Commission requirements? If the Commission were to endorse or incorporate a global standard, what are the advantages and disadvantages of having mandatory compliance?

   We welcome the formation of a working group to accelerate convergence in global sustainability reporting standards under the governance of the International Financial Reporting Standards (IFRS) Foundation. We fully support the plan of the working group to use the TCFD recommendations as a potential basis in developing standards for climate-related reporting and other sustainability topics. We are aware that the US Securities and Exchange Commission (SEC) has been named as co-lead of the International Organization of Securities Commission (IOSCO) Technical Expert Group (TEG) on sustainability standards and will have a crucial role to play in determining whether IOSCO endorses the standards that will be developed by the IFRS Foundation's working group. Without pre-empting TEG's formal assessment, we believe that the standards should not only allow for greater comparability but also provide flexibility to cater for relevant jurisdictional or sectoral reporting requirements. This will help ensure the concerns and risks associated with 'greenwashing' are, as a minimum visible, and hopefully minimised.

10. How should disclosures under any such standards be enforced or assessed? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance? If there is an audit or assurance process or requirement, what organization(s) should perform such tasks? What relationship should the Commission or

other existing bodies have to such tasks? What assurance framework should the Commission consider requiring or permitting?

There is already an existing requirement for auditors to ensure that there are no inconsistencies between the audited financial statements and other parts of the report. An assurance requirement on climate-related disclosures will always provide added confidence to the quality, reliability and comparability (from year-to-year) of data relied upon in the reporting. Furthermore, we are already seeing a huge growth in the ESG assurance capabilities of the Big 4 accountancy firms, mid-tier accountancy firms as well as specialist ESG consultants. An assurance should be an expectation of those firms that are aspiring to be considered best-in-sector. Furthermore, the European Commission's proposal on Corporate Sustainability Reporting Directive (CSRD) amends existing an existing directive to require the statutory auditor to perform a limited assurance engagement on a company's sustainability reporting.

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?

We believe that the disclosure on an organisation's governance around climate-related risks and opportunities as prescribed by the TCFD framework should also include a description of the internal oversight or governance structure in relation to climate-related disclosures.

Principle 1 of the World Economic Forum (WEF) White Paper on setting up effective climate governance on corporate boards states that 'The Board is ultimately accountable to shareholders for the long-term stewardship of the company. Accordingly, the board should be accountable for the company's long-term resilience with respect to potential shifts in the business that may result from climate change.' We believe that collectively the Board has a duty to identify and manage material climate risks in the same way as they would in relation to all other significant risks to the company's operational activities. As such, we do not believe that the Commission should consider requiring a certification from a C-suite individual at this stage.

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?

If used appropriately, we believe 'comply or explain' is a powerful tool that provides opportunity and flexibility for the reporting organisations. However, the 'explain' element should be the weightier component. If an organisation chooses not to comply, the audiences' expectations of the explain element should be high. We also believe that the use of 'comply or explain' should just be used a starting point (e.g. temporary) rather than a permanent framework such that the disclosure requirements for those that choose to 'explain' should *include information regarding when an organisation is expected to fully comply with the disclosure rules.*

We believe the disadvantages of 'comply or explain' occur when the explain element is weak and goes unchallenged by users of the climate-related information.

13. How should the Commission craft rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities? What are the advantages and disadvantages of requiring disclosed metrics to be accompanied with a sustainability disclosure and analysis section similar to the current Management's Discussion and Analysis of Financial Condition and Results of Operations?

    We believe that the reporting organisation should be required to link its views on its material climate-related risks and opportunities with its short, medium- and long-term strategic plan. This will allow different companies in different sectors to contextualise their reports.

14. What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?

    In addition to imposing a limited assurance requirement on sustainability-related reporting, the CSRD also extends the scope of reporting to non-listed entities categorised as 'large' companies under the European Union's Accounting Directive. This expanded scope will mean that approximately 49,000 entities in the EU including foreign subsidiaries will be reporting sustainability-related information compared to the current 11,600 entities. To future proof any contemplated climate disclosure rules, we believe it is important to consider potentially expanding the scope to cover private companies as well. This is also consistent with the United Kingdom Government's Roadmap towards mandatory climate-related disclosures across the United Kingdom economy, with both listed issuers and large private companies being in scope.

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?

    As per our response to Question 9, we support IFRS Foundation's strategic direction of prioritising climate-related reporting while also working towards meeting information needs of investors on other ESG matters. The Covid-19 pandemic has pushed the 'S' in ESG into the spotlight as investors became more interested in how companies manage its relationship with employees, suppliers, customers and wider community. Whilst it is right to prioritise climate-related reporting, we believe it is equally important to develop disclosure standards outside climate-related matters given that the pandemic has further accelerated the demand for wider sustainability-related information. Our preference is for any contemplated ESG disclosure framework to consider the European Union's 'double-materiality' principle which not only looks at how sustainability issues affect a company's performance but also how a company's operations affect the environment and wider society ('adverse impact').