

Chris Jahn
President & CEO



June 11, 2021

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

Re: **The American Chemistry Council Letter on SEC's Climate Change Disclosure Initiative**

Dear Chair Gensler:

The American Chemistry Council ("ACC") appreciates the opportunity to submit the following comments for consideration in response to the request from the Securities and Exchange Commission (the "SEC" or the "Commission") for public input on climate change disclosures.¹ ACC commends the Commission for its ongoing efforts to address climate change matters. ACC supports a principles-based approach built off existing climate change frameworks guided by materiality to ensure that investors have useful and comparable climate change information that does not add excessively burdensome costs to corporate reporting.

ACC represents a diverse set of companies engaged in the business of chemistry, an innovative, US\$565 billion enterprise. We work to solve some of the biggest challenges facing our nation and our world. Our mission is to deliver value to our members through advocacy, using best-in-class member engagement, political advocacy, communications, and scientific research. We are committed to fostering progress in our economy, environment, and society.²

ACC believes that climate change is a global challenge that requires long-term commitment and action by every segment of society.³ America's chemical makers are leaders in promoting a sustainable future and creating innovative products that help protect the environment, such as electric and high-efficiency vehicles, building materials that reduce energy consumption, lightweight and recyclable plastic packaging, and glass- and carbon-fiber composites for wind turbines. The chemical industry plays a critical role in delivering sustainable development, and we

¹ Allison Herren Lee, Public Statement on Public Input Welcomed on Climate Change Disclosures (March 15, 2021).

² From the ACC Website, "About," at: www.americanchemistry.com/About/ (accessed on June 2, 2021).

³ From the ACC Website, "Environment — Climate-Change," at: www.americanchemistry.com/Climate-Change.html (accessed on June 2, 2021).



are therefore committed to support society's transition towards greater sustainability. We support a flexible approach guided by material climate change-related risks, opportunities, and other factors based on a business-specific materiality assessments. We believe "furnishing" such disclosures, as a matter of liability, would strike the right balance of promoting the disclosure of decision-useful information to investors in light of the potential cost burden to companies.

Material and Relevant Business-Specific Climate Change Information. We believe a business-specific "materiality" standard that acknowledges differences across and within industries would further serve as an effective compass for companies, guiding them in choosing the disclosures most relevant to investors. It would also minimize unnecessary costs to companies and avoid overload of complex information for investors, an excess of which the Commission has stated can serve to obscure the key information of most interest to investors. "Materiality" assessments also have unique significance in the context of climate change disclosures. Because climate-related metrics, risks, and opportunities depend on the operations of a specific business and may differ significantly across and within industries, information is useful to investors only when it is material and tailored to a registrant's business. Further, the production of climate change disclosures will likely be costly for companies, as it depends on evaluation of facts external to the company. Such costly disclosure can be justified only where material and relevant, from an investment or voting perspective, to a specific company.

Existing Third-Party Frameworks with a Flexible Approach. We encourage the SEC to build off the comprehensive experience of existing reporting frameworks, such as SASB and TCFD, as a starting point in the Commission's evaluation of its regulation of environmental, social, and governance ("ESG") disclosures and in developing an ESG disclosure regime. We believe a key advantage of this approach is to incorporate the value of the years of evidence-based research and the input of thousands of market participants — including corporate professionals, investors, other providers of financial capital, and other subject matter experts — into the standards reflected in these private market frameworks. ACC, for example, has consistently been involved in the course of the development of the SASB standards and has provided detailed comments to SASB on specific metrics and procedural issues. Many companies, including chemistry companies that ACC represents, already utilize these frameworks to disclose their voluntary ESG disclosures initiatives, assessments, commitments, and performance. Furthermore, some of these frameworks capture the unique context for different industries, which ACC believes are essential to providing comparable and decision-useful disclosures to investors. The SEC should fully avail itself of the private market's efforts on this front.

In leveraging these frameworks, however, the SEC should maintain a critical eye towards the third-party standards, bearing in mind that these third parties are non-governmental actors and have neither the authority nor the accountability the SEC holds. SASB's standards and practices are built upon the assumptions of voluntary adoption and "best practice" principles rather than a set of mandatory disclosure rules that subject companies to legal liability. While well-informed, these private market standard-setters often develop climate change disclosures with an implicit bias based on their perception of an industry's reputation. To avoid any such prejudice and help ensure the accuracy and usability of information made available to the investor community, the SEC

should consider implementing appropriate oversight, processes, and controls applicable to third-party standard-setting.

Flexibility with Respect to Key Metrics. To further encourage decision-usefulness of disclosed metrics, ACC requests the SEC to align with a flexible company-specific approach where companies can choose the “off the shelf” metrics developed from existing frameworks as appropriate to their specific business operations. Applying this flexible approach, companies would assess and disclose information on their specific climate change risks and opportunities where such information is relevant, material, and useful to their investors. Such flexibility would avoid ineffective “one-size-fits-all” standards, accommodate the differences across companies and industries, and facilitate readability of reports by encouraging companies to focus on the disclosures that are most relevant to their investors and material to their businesses.

Comply or Explain. Based on the same rationales that justify flexibility, ACC supports the adoption of a “comply or explain” regime using the foundation of these third-party frameworks. While companies enjoy flexibility in choosing metrics appropriate to their specific business operations, a complementary “explain stick” would provide investors with essential decision-making information as to why companies decide not to disclose particular information or metrics. Companies would be required to “comply” and provide disclosures applicable and material to their businesses and industries. If a given metric is not material to a company’s business or its industry, the company should only be required to “explain” that metric’s lack of relevance. Such a “comply or explain” mechanism would ensure investors receive the comparable and consistent disclosures appropriate for informative decision-making, help investors understand climate-related risks and opportunities on a company-by-company basis, and provide the right degree of flexibility necessary for companies to communicate information through the lens of their management and board.

Furnished Rather Than Filed. Unlike many disclosure items that companies provide, climate change disclosure (in particular disclosure about risks and opportunities) is often based upon projections and assumptions to a considerable extent. The liability standard imposed on information filed with the SEC is an inappropriate standard for such forward-looking and aspirational disclosures. ACC believes the appropriate liability standard for any new climate change disclosures should be the standard of liability applicable to “furnished” information rather than “filed.” It is only where the aspirational statement itself is materially misleading that imposition of liability can be justified. In our experience, chemical companies are leaders not only in promoting a sustainable future but also in making public their climate change-related information. Other industries have voluntarily adopted similar standards and investors continuously incentivize them to do so. The application of the “furnished” standard of liability would bolster the current ecosystem in which companies get a platform to set their good-faith inexact goals, yet provide a useful model of disclosing predictions and assessments to investors. As an alternative, the SEC could also provide a general liability safe harbor for disclosures made pursuant to a new climate change framework. Such a regime would also allow the Commission to protect investors, yet maintain fair, orderly, and efficient markets, without compromising the reliability of the disclosure.

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For similar reasons, in particular that useful disclosure about climate risks and opportunities would generally be significantly forward-looking in nature, the ACC does not believe that requiring a certification by the CEO, CFO, or another corporate officer would further the goal of the proliferation of decision-useful information to investors.

Notice and Comment: Administrative Procedure Act. We request the Commission to provide fair notice well in advance of a possible change in SEC disclosure requirements and adhere to the Administrative Procedure Act. Climate change information depends — to large extent — on data external to the company and may also depend on third-party providers and consultants. Transition to a regime that requires the production of such information on a timely basis that is subject to liability under the federal securities laws requires thoughtful consideration, input from all market participants, and a long enough period for companies to respond, prepare, and adapt. Providing companies with clear expectations and advance notice of a possible change in SEC rules will ensure the certainty that companies need for conducting their businesses and that investors need for making informed investment and voting decisions.

ACC applauds the Commission for its ongoing efforts to address climate change matters, and we respectfully request the SEC to consider our views. We support a flexible, principles-based, company-specific approach to material disclosures, building off existing third-party frameworks and experience. We encourage the Commission to adopt a liability standard applicable to “furnished” information to strike the right balance among investor protection, encouraging the production of decision-useful information, and the cost burden to companies. ACC remains committed to promoting a sustainable future.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'CJahn', with a long horizontal flourish extending to the right.

Chris Jahn
President and CEO
American Chemistry Council

cc: [Hester M. Peirce, Commissioner]
[Elad L. Roisman, Commissioner]
[Allison Herren Lee, Commissioner]
[Caroline A. Crenshaw, Commissioner]
[John Coates, Director, Division of Corporation Finance]