

June 11, 2021

Mr. Gary Gensler, Chair
The Securities and Exchange Commission

Sent by email to: rule-comments@sec.gov and via the webform at www.sec.gov

Re: Feedback on SEC Consultation on Climate Change Disclosure

Dear Mr. Gensler:

With approximately C\$10 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best Environmental, Social and Governance (ESG) practices into their strategies and operations. Just under 30% of our total AUM is domiciled in the US, making the US our second biggest market exposure behind Canada, a clearly material part of our portfolio. We have been using ESG information in our investment process for over 35 years and have been engaging companies to provide better climate-related disclosure for the last 15 years. We welcome the Securities and Exchange Commission (SEC)'s focus on what we believe to be the most material ESG issue facing investors – the lack of robust, standardized and decision-useful climate-related disclosure. Climate-related disclosure is crucial in allowing us to meet our responsibility as a fiduciary seeking to maximize sustainable long-term value, through integrating proper consideration of climate-related risks and impact. We thank the SEC for the opportunity to provide comments and also echo the perspectives raised in the submissions of the Principles of Responsible Investment (UN PRI) and Ceres. Where possible we have referenced the specific questions raised by the SEC in our submission.

Question #1: How can the Commission best regulate, monitor, review and guide climate change disclosures? Where and how should such disclosure be provided?

The urgency of climate-related risks necessitates mandatory disclosure

The urgency with which companies (and their investors) need to address climate-related risks and opportunities, and the unsatisfactory state of this disclosure currently, speaks to the need for an SEC rule that mandates climate-related disclosure for all issuers, and to treat compliance with this mandate as it would any other SEC rule. We are already invested in markets that have either adopted mandatory climate-related disclosure or are in the process of implementing mandatory disclosure.¹ As such, we already see an asymmetry of information forming that puts US-based companies at a disadvantage. We also note the recent commitment from the G7 countries regarding mandatory Taskforce on Climate-related Financial Disclosures (TCFD) reporting for corporates.² The path of travel seems clear when it comes to climate-related disclosure – there will be no cessation in demand for it, only increasing expectations.

¹ See for example: <https://www.gov.uk/government/consultations/mandatory-climate-related-financial-disclosures-by-publicly-quoted-companies-large-private-companies-and-llps>

² <https://www.euractiv.com/section/energy-environment/news/g7-agree-on-historic-steps-to-make-climate-reporting-mandatory/>

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From the investor perspective this information is a critical input that allows us to meet our fiduciary duty. NEI is already using climate-related disclosure to determine eligibility for our portfolio, and we are not alone in doing so. As the number of investors who set net-zero targets continues to grow, the lack of disclosure will become a competitiveness issue for US based companies. As such, mandatory disclosure will make for a more efficient capital market that is better able to price in the risks and opportunities associated with climate change, while also benefiting corporate issuers who rely on continued access to public capital.

Disclosures should meet investor demand and should not be boilerplate

Regarding where this disclosure should be provided, we feel that the focus should be on investor demands of this information, and not its location. Namely, the disclosures should be public, easy to access, comparable, verifiable, and useful (i.e. not boilerplate). Elements of climate-related disclosure would be well suited to the annual report, such as the discussion of strategy, risk management and the disclosure of metrics and targets. We endorse an approach that would integrate climate-related information within financial documents, but disclosure should not be limited to this format. Not all climate-related information is well-suited to the audited financial reports of a company and the potential downside of limiting all mandatory disclosure to this venue is that investors will lose some of the richness of current best practice reporting. In particular, the reticence of companies to disclose forward-looking information, such as the results of scenario analysis, could lead to boilerplate disclosures that ultimately defeat the purpose of mandating disclosure.

Notwithstanding our concerns about the potential for boilerplate disclosures, we do note that the TCFD explicitly references the need to include material climate-related information in audited financial documents. We know from experience that issuers have raised concerns about providing forward-looking climate-related disclosures in these audited documents due to the uncertainty inherent in the discussion on climate change. One possible solution that could address the reticence of issuers to provide forward-looking information (such as scenario analysis) in audited financial statements would be to reaffirm that the “safe-harbor” provisions of the Private Securities Litigation Reform Act of 1995 would indemnify issuers looking to provide more advanced analysis of possible future scenarios. We believe the current provisions already allow issuers to provide the needed nuance and complexity investors require while ensuring they do not run the risks of legal peril. There may be no need to create a new statute specific to climate-related disclosures as the current measures are seemingly adequate.

Question #2: What information related to climate risks can be quantified and measured? Should disclosures be tiered or scaled based on the size and/or type of registrant? Should disclosures be phased in over time?

Quantifiable information should be included as per the TCFD

Regarding what quantified information should be included, we would refer to the Taskforce on Climate-related Financial Disclosure (TCFD) and the metrics and targets it recommends. In short, quantifiable data should absolutely be part of the mandated framework, and the SEC notes some of the key data points in its consultation questions (Scope 1, 2 & 3 emissions, GHG reduction targets). Investors are already using this data to inform investment decisions but are hindered by the lack of good disclosure. As such, the primary value of mandating quantitative metrics will be to create a level playing field whereby investors can make informed decisions based on real data – not data modelled by a third-party due to a lack of disclosure.

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A phased in approach could apply to smaller issuers

We believe there is merit in considering a phased approach to implementation in respect of the issuer size. Smaller companies with fewer resources should be provided more time to comply, and a similar approach has been proposed in the recent recommendations of the Ontario Capital Markets Modernization Taskforce.³ We think it is reasonable to give some issuers a longer lead time to comply with all aspects of the disclosure requirements. However, we do believe that the TCFD framework is applicable to all of the companies in a high-risk sector regardless of size and as such while there could be leniency in timelines to reach compliance there is no rationale for creating a leniency in reporting content. In addition, if there is a phase-in period for smaller issuers, we believe there should be an accompanying comply-or-explain requirement for these issuers during the phase-in period. For example, if the phase-in period is three years, we believe it is material information for investors to know why a company might be waiting the full three years before meeting the disclosure requirements. Is it because of a lack of systems to capture data? Is it a resourcing issue? And what is the company doing to ensure it will be compliant with the timelines?

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.?

Sector-specific standards are needed to maximize the applicability and utility of disclosures

Based on the current consensus regarding materiality as the foundation for ESG disclosure, it is clear that there will need to be sector-specific standards that reflect the relevant context of those sectors. The TCFD envisions a suite of sector-specific metrics and disclosures precisely because of the difficulty in finding universal disclosure asks that would accurately capture the risks in, for example, the oil and gas industry and the IT industry. There will still be a number of climate-related disclosure asks common to all sectors – such as for governance. However, to have decision-useful information there needs to be a sector specific approach to developing the standards. Both the TCFD and the Sustainability Accounting Standards Board (SASB) have strong guidance on this approach and on related metrics.

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 TCFD, SASB, and the Climate Disclosures Standards Board (CDSB)?

Alignment with existing frameworks is strongly recommended

We believe that to the greatest degree possible, the SEC should align its reporting standards with these existing frameworks. All three of the frameworks cited have gone through years of issuer and investor engagement, consultation, and refinement. It would be unnecessary at this stage to recreate the wheel, as well as inefficient. Considering the pressing need for standardized reporting and the systemic nature of the risks associated with climate change, we strongly recommend that the SEC align with these existing frameworks for the sake of effectiveness and efficiency.

³ Reference the taskforce reccos

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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?

Disclosure on the connection of climate strategy to pay would be useful

We reference our response to question #5 and our endorsement of the TCFD framework with respect to the issue of disclosure of governance and oversight of climate-related issues. We encourage the SEC to refer to this existing framework as it provides a robust approach to considering climate-related governance issues and related disclosures. We correspondingly support disclosure on the connection between executive or employee compensation and climate change risks and impacts. This would be helpful in evaluating the nature of the commitment of the company to its climate strategy and objectives. That is to say, it would provide additional clarity for investors on one prong of a multipronged assessment of the robustness and competitiveness of a company's approach to climate-related risks and opportunities. We would note that investors are already asking for this information from companies, so including it in the framework would meet an explicit investor demand that already exists. For example, linking executive compensation to the achievement of climate change targets is an explicit ask for the Climate Action 100+ investor collaboration – a \$52 trillion AUM initiative that has targeted multiple US-based companies.⁴

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?

If a general (and not sector-specific) approach is taken a “comply or explain” approach could be adopted

We reference our answers to questions #2 and #4 for guidance on this question. Namely, “comply or explain” could be used in conjunction with a phased-in compliance period, where the issuer would be required to explain how and when it plans to comply with disclosure requirements. As noted in question #4, we believe there should be sector-specific disclosure standards that reflect the different contexts of sectors and their different risk profiles. As such, if there is a sector-specific approach that focuses on the material risks facing that sector, there should be no need for a “comply or explain” requirement, since all of the disclosures will be relevant, and thus required by investors. Should the SEC pursue a more general framework, there could conceivably be a place for “comply or explain” where certain metrics will not be relevant to an issuer.

Disclosure on scope 3 emissions could merit a “comply or explain” approach

One area of disclosure that might merit a “comply or explain” approach would be the disclosure of scope 3 emissions. While we believe the tracking and reporting of scope 3 emissions (as well as setting of scope 3 targets) is an important tool for companies that need to envision transformative change (for example the auto industry), we also acknowledge the nascent state of scope 3 methodologies and the challenges associated with calculating these emissions. The current state of play regarding scope 3 methodologies makes comparisons between companies challenging. Having a mandated methodology would help with comparability, but it would not necessarily address the challenges of accuracy or usefulness. However, even at the current level of maturity, scope 3 emissions can provide valuable insights to challenge assumptions in corporate strategy. As such, the comply or explain ask could address the disclosure of scope 3 emissions but should also be focused on whether the company considers its scope 3 footprint, and if so, how? As the measurement and disclosure of scope 3

⁴ <https://www.climateaction100.org/>

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emissions evolves, the SEC could consider whether this disclosure could be mandatory.

Question #13: How should the Commission craft rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities?

Alignment with the TCFD would assist in rule-setting on qualitative, explanatory disclosure

We believe that the complexity and uncertainty associated with climate-related risks and opportunities requires a significant amount of nuance when disclosing a strategy related to these issues. We do not think it is possible to capture this level of nuance with metrics alone, and there will be a need for a qualitative discussion similar to the discussion contained in the current Management's Discussion and Analysis of Financial Condition and Results of Operations. We believe that aligning with the TCFD framework will, by default, capture this qualitative discussion. The TCFD provides useful guidance regarding qualitative disclosure and when and where to use it.

Question #15: Should climate-related requirements be one component of a broader ESG disclosure framework?

A standardized ESG framework should be aligned with the SASB framework

Investors would benefit from having access to standardized, comparable ESG disclosures. The absence of such data represents a significant challenge for investors looking to integrate ESG information into their investment process. With the rapid growth of ESG investing, the demand for robust data will continue to grow, and the lack of ESG data will become a competitiveness issue for US companies and ultimately impact their access to capital. Moreover, having a standardized ESG framework would ease the reporting burden for issuers. In this respect, we believe that the SEC should align ESG disclosure requirements with the SASB framework, as it is already very aligned with current SEC reporting requirements.

While there is an urgent need for better climate-related disclosure, we don't believe that it can be considered in isolation of broader ESG disclosures. Existing climate-related disclosure frameworks have been created within the rubric of ESG disclosure standards so that they might best be understood and utilized by investors. Moreover, the context provided by broader ESG disclosure is often required to fully understand the implications of climate-related data. For example, understanding a company's strategic approach to climate change can be facilitated by understanding its performance on diversity. Long-tenured boards and executive teams that lack diverse voices and perspectives may be challenged to get ahead of the curve when it comes to the transformative demands of the energy transition. The disproportionate impact of climate-change on marginalized communities is also a notable intersection of climate-related risk with social issues. These impacts can contribute to social inequities that can have negative implications for the economy and for issuers. There are many other aspects of ESG reporting frameworks that provide similar context to allow investors to consider the company as a whole and not through the myopic lens of individual climate metrics.

The investor demand for standardized, comparable ESG disclosure continues to grow and is reflected in the rapid growth of ESG-themed investment products. To effectively meet the market demand for ESG products there is a critical need for better disclosure. It would be a missed opportunity if the SEC did not at least lay the foundation for mandatory ESG disclosure requirements. An interim measure the SEC could consider while it seeks more input on what an ESG framework would look like would be to mandate issuers to provide disclosure on their governance processes in relation to material ESG risks and opportunities, and on how the issuer oversees the identification, assessment and management of material ESG risks. This would not mandate ESG disclosure in line with a specific framework but would mandate disclosing if and how the company is assessing key ESG risks. This

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would provide useful information for investors while also sending a strong signal to corporate issuers on the need to assess the materiality of ESG factors to their business and prepare them for a potential enhancement in mandatory ESG disclosure, beyond climate-related data.

In closing, thank you very much for the opportunity to share our perspective on the SEC's consultation on climate change disclosure. We reiterate our strong support for mandatory disclosure of climate-related information and look forward to developments from the SEC on this front. If you have any questions about this submission, please do not hesitate to reach out.

Sincerely,

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