SOCIETY
for Corporate Governance

June 11, 2021

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20548-1090

Re: Public Input on Climate Disclosure

Dear Ladies and Gentlemen:

The Society for Corporate Governance (the "Society" or "we") appreciates the opportunity to provide comments in response to former Acting Securities and Exchange Commission's (the "SEC" or the "Commission") Chair Allison Herren Lee's request for input on climate change disclosure (the "statement").[1]

Founded in 1946, the Society is a professional membership association of approximately 3,400 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive managements of their companies on corporate governance and disclosure matters.

Below are our comments for consideration on select questions encompassed in the statement.

Question 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?

1. <u>The Existing Framework Is Appropriate for Climate Disclosure</u>.

The Society believes that the SEC's existing principles-based disclosure scheme rooted in materiality is the best approach to provide investors with the information they need about companies and their securities offerings to make informed investment and voting decisions, particularly with respect to a topic as complex, rapidly evolving, and industry- and business-

[1] *See* SEC Acting Chair Allison Herren Lee, "Public Input Welcomed on Climate Change Disclosures," March 15, 2021, https://www.sec.gov/news/public-statement/lee-climate-change-disclosures?utm_medium=email&utm_source=govdelivery.

specific as climate change.[2] Some proponents of mandated climate disclosure have questioned public companies' commitment to make disclosure in accordance with current securities laws and/or have stated that new disclosure requirements are needed to ensure the "reliability" of the information provided.[3] However, new disclosure mandates are not needed to ensure that companies provide reliable information on climate change risks. The Society notes that companies are well aware that Rule 10b-5 prohibits them from "mak[ing] any untrue statement of a material fact or . . . omit[ting] to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. . . in connection with the purchase or sale of any security." And companies recognize that this rule applies to statements made by public companies in their periodic filings as well as on their websites and in press releases. Boards of Directors are also acutely aware that should the company be subject to a securities class action lawsuit pursuant to Rule 10b-5, there will likely follow a shareholder derivative action that includes the prospect of personal liability.

Companies are also required to maintain disclosure controls and procedures to ensure that information required to be disclosed is recorded, processed, summarized, and reported within the time frames required. Chief Executive Officers and Chief Financial Officers certify that every Form 10-K and Form 10-Q filing does not contain any untrue statement of a material fact or fail to state a material fact. They also certify that their company has established effective disclosure controls and procedures to ensure that any material information is made known to the CEO and CFO. These requirements are taken seriously by companies, their Boards of Directors and senior management, who act together to ensure that companies disclose information that a reasonable investor would consider material.[4]

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[2] Many large-cap companies have increased their disclosure on climate change risks, particularly over the last two years. According to a recent *Bloomberg Law* article, the number of S&P 500 companies addressing climate change or greenhouse gas ("GHG") emissions in their Form 10-K risk factors nearly quadrupled from 2019 to 2020. Climate change-related disclosure among these companies both within and outside of the Form 10-K risk factors section has also increased considerably from about 200 companies in 2019, to 342 in 2020. That same article notes that based on disclosures this year to date (through March 18, 2021), the percentage of companies making these types of disclosures in 2021 is likely to exceed 2020. *See Bloomberg Law*, "Climate Change Risks Surge in Companies' Annual Reports to SEC," March 25, 2021, https://news.bloomberglaw.com/environment-and-energy/climate-change-risks-surge-in-companies-annual-reports-to-sec.

[3] *See, e.g.*, SEC Commissioner Allison Herren Lee, "Living in a Material World: Myths and Misconceptions about 'Materiality'", May 24, 2021, https://www.sec.gov/news/speech/lee-living-material-world-052421?utm_medium=email&utm_source=govdelivery.

[4] Notably, existing disclosure requirements already elicit climate-related disclosure in Commission filings. Those industries most closely associated with material climate risk reflect the highest rates of climate risk disclosure in their Commission filings. For example, 86% of energy sector companies, 73% of utilities sector companies, and 63% of materials sector companies in the S&P Global 1200 already disclose climate-related risks in their annual reports. As one point of reference, these three industry sectors account for 63% of the companies on which one of the largest institutional investors, BlackRock, is focusing its climate engagement in 2021, with that engagement based on those companies that represent 90% of global Scope 1 and Scope 2 GHG emissions of BlackRock's client public equity holdings. *See* The Conference Board, "Sustainability Practices: 2020 Edition," January 2021, https://conference-board.org/topics/sustainability-practices/Sustainability-Practices-2020; BlackRock Investment Stewardship, Climate Focus Universe," April 2021, https://www.blackrock.com/corporate/literature/publication/blk-climate-focus-universe.pdf.

Additionally, there are robust and effective monitors in place today to ensure that issuers are disclosing reliable information to the market. With respect to disclosures in filed documents, these monitors include the Commission's comment letter process and enforcement actions; as noted above, regardless of the disclosures' location, the active plaintiffs' bar serves as another means of investor protection.

The Society believes there is no need to impose new disclosure rules on top of these oversight mechanisms, which have served as an effective check on public companies and benefited the capital markets for many decades. Corporate management is trusted to provide the market with materially accurate and complete information on many different topics; the reliability of sustainability-related information is no different from the reliability of any other type of information that issuers disclose (although arguably more costly to report).

Additional Guidance on Climate Change-Related Disclosure Would Be Welcome

Notwithstanding the foregoing, in light of developments in the 11 years since the Commission provided guidance on this topic, the Society would welcome updated or additional interpretive guidance regarding topics and considerations for companies to evaluate when identifying material information regarding climate change.[5] For example, the Financial Accounting Standards Board ("FASB") recently published an instructive Staff Educational Paper that provides examples of several ways a company may be required to disclose information relating to the impact of climate change on its business. These examples include assumptions about the future that will result in a material change to the carrying amount of assets and liabilities, considerations about a regulatory change that renders inventories obsolete, and environmental matters that could give rise to indicators requiring a company to test a long-lived asset for impairment.[6]

2. Any New Rules Should Be Principles-Based and Grounded in Materiality.

If the Commission is inclined to engage in rulemaking to promulgate new climate change-related disclosure requirements, the Society recommends that the requirements be principles-based and grounded in materiality.

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[5] *See* "Commission Guidance Regarding Disclosure Related to Climate Change," Rel. No. 33-9106, Feb. 2, 2010, https://www.sec.gov/rules/interp/2010/33-9106.pdf. The Commission's 2010 Guidance Regarding Disclosure Related to Climate Change, which continues to be relevant to issuers today, provided important interpretive guidance to companies regarding how existing disclosure rules may elicit information regarding climate change issues. The 2010 Climate Disclosure Guidance acknowledged the importance of the flexibility of public company disclosure requirements, noting that this flexibility "has resulted in disclosures that keep pace with the evolving nature of business trends without the need to continuously amend the text of the rule."

[6] *See* FASB, "FASB Staff Educational Paper—Intersection of Environmental, Social, and Governance Matters with Financial Accounting Standards," March 2021, https://fasb.org/cs/ContentServer?c=Document_C&cid=1176176379917&d=&pagename=FASB%2FDocument_C%2FDocumentPage.

New rules promulgated by the Commission could call for a company to disclose, to the extent material to an understanding of the company's business, how it considers climate issues in its business and operations, and how it manages the risks and takes advantage of the opportunities associated with climate change. Consistent with Regulation S-K Item 101's requirements for describing a company's business, such a rule could include a non-exclusive list of factors that may be addressed to the extent material to an understanding of the company, such as environmental sustainability programs and initiatives, the company's GHG emissions trends, its products or services intended to support the transition to a lower-carbon economy, and/or how its Board of Directors oversees climate-related risks and opportunities.

The Relevance and Materiality of Climate Change Risk Vary by Industry and Company

The relevance and materiality of climate change and related metrics vary widely across industries and, importantly, there are no metrics that are universally material across companies. For some companies, depending, in part, on their industry, measuring greenhouse gas ("GHG") emissions or water consumption may be integral to their business operations, or may provide important information for strategic planning and risk mitigation. For other companies, this information may not be relevant, let alone material, to internal business decision-making or to investors.

Some proponents of new climate disclosure rules contend that because investors embrace climate and environmental, social, and governance ("ESG") factors as significant drivers of decision-making, risk assessment, and capital allocation, these factors are per se material and therefore require new disclosure rules.[7] However, this view ignores the fact that many of these same investors understand and embrace the reality that materiality determinations are company-specific and that climate change and/or discrete climate-related metrics may not be material to all companies. Many large institutional investors' policies, including those of BlackRock,[8] Legal & General Investment Management,[9] State Street Global Advisors,[10] T.

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[7] *See, e.g.*, SEC Commissioner Allison Herren Lee, "Living in a Material World: Myths and Misconceptions about 'Materiality'," May 24, 2021, https://www.sec.gov/news/speech/lee-living-material-world-052421?utm_medium=email&utm_source=govdelivery.

[8] *See* BlackRock, "Proxy voting guidelines for U.S. securities," January 2021, https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf ("Disclosure of *material issues* that affect the company's long-term strategy and value creation, including *material ESG factors*, is essential for shareholders to be able to appropriately understand and assess how effectively the board is identifying, managing, and mitigating risks.") [*emphasis* added].

[9] *See* Legal & General Investment Management, " ESG Engagement Policy," 2020, https://www.lgima.com/landg-assets/lgima/insights/esg/esg-engagement-policy.pdf ("Identify the *most material* ESG issues."; "Following identification of the long-term themes and the building of a long-term strategy, we narrow our focus to *material and specific* ESG issues that we believe may impact long-term returns for our clients.") [*emphasis* added].

[10] *See* State Street Global Advisors, "Global Proxy Voting and Engagement Guidelines for E&S Issues," March 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/global-Proxy-Voting-and-engagement-guidelines-es-issues.pdf ("While we believe that sustainability-related factors can expose potential investment risks as well as drive long-term value

Rowe Price,[11] and Vanguard,[12] explicitly recognize that what is material to one company might not be material to another company. Third-party sustainability frameworks, such as the Sustainability Accounting Standards Board ("SASB") (which recently completed its merger with the International Integrated Reporting Council to form the Value Reporting Foundation ("VRF"), similarly recognize this principle. According to SASB, its framework relies on the U.S. Supreme Court's definition of materiality to inform the company's determination as to "which SASB Standard (or Standards) are relevant to its business, which disclosure topics are reasonably likely to have material financial implications, and which associated metrics to report."[13].Even though its standard-setting is informed by a broader set of factors, including investor interest, out of its 77 industry standards, direct, Scope 1 GHG emissions are included as a disclosure topic in only 22 industry standards, and indirect, Scope 2 GHG emissions are a topic in 35 standards, clearly demonstrating that these types of GHG emissions are likely not material to many companies.[14]

This conclusion is corroborated by the results of a recent survey of approximately 150 issuer members of the Society, spanning different industries and market cap sizes, which revealed that investors request engagement or qualitative and quantitative information on a broad range

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creation, the *materiality of specific sustainability issues varies from industry to industry and company by company*.") [*emphasis* added].

[11] *See* T. Rowe Price, "Guidelines for Incorporating E&S Factors," June 2020, https://www.troweprice.com/content/dam/trowecorp/Pdfs/CCON0054749%20Responsible%20Investing%20Guidelines%20UPDATE%202%200720_P2.pdf ("As identifying the potential impact of environmental, social, or governance (ESG) factors can be a more subjective process than traditional financial analysis, each of our investors defines a potential investment's ESG-related risk and reward *based on its industry, geography, and company dynamics*. Our research analysts work closely with our in-house ESG specialists to determine *which factors will be most material* to the underlying fundamentals of a particular investment. Our approach to environmental and social factor integration is highly differentiated at the sector and industry level... *Materiality to the underlying business model* is one of the key determinants used in our analysis.") [*emphasis* added].

[12] *See* Vanguard, "Stewardship Insights: How we evaluate Say on Climate proposals," May 2021, https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/INSSAYC_052021.pdf. In explaining its approach to "Say on climate" proposals, Vanguard noted the importance of materiality: "*Where climate change is a material risk* for companies, we expect boards to disclose those risks along with the company's climate strategy and progress on goals. . . We evaluate Say on Climate proposals through a *lens of materiality* and consider a wide range of criteria in our analysis, including the reasonableness of the request, whether the proposal addresses a gap in disclosure, and its alignment with industry standards."). *See also* Vanguard, "Climate risk governance: What Vanguard expects of companies and their boards," June 2020, https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/ISCLRG_062020.pdf ("At *companies where climate matters present material risks*, the funds are likely to support shareholder proposals that seek reasonable and effective disclosure of greenhouse gas emissions or other climate-related metrics.") [*emphasis* added].

[13] *See* SASB, "Materiality: The Word that Launched a Thousand Debates," May 13, 2021, https://www.sasb.org/blog/materiality-the-word-that-launched-a-thousand-debates/ ("a company should—using the definition of materiality appropriate in the legal jurisdiction in which it operates—determine for itself which SASB Standard (or Standards) are relevant to its business, which disclosure topics are reasonably likely to have material financial implications, and which associated metrics to report.").

[14] *See* SASB, "SASB Implementation Supplement: Greenhouse Gas Emissions and SASB Standards," October 2020, https://www.sasb.org/wp-content/uploads/2020/10/GHG-Emmissions-100520.pdf.

of climate-related topics.[15] Such requests vary widely and are company-, industry-, and market cap-specific, in addition to investor-specific.

Moreover, in a recent institutional investor survey, a majority of investors identified, by a wide margin, "clear connections to financial risks/opportunities" and "time horizons in relation to impact on strategy" as the top two areas of companies' climate-related disclosure that could be improved.[16] Comparatively, less than one-third of investors identified disclosure on metrics, targets, and achievements as an area of disclosure that could be improved. This same survey showed that although investor sustainability reporting framework preferences vary considerably, nearly 40% of investors prefer their own in-house materiality-based proprietary framework. These survey results demonstrate that investors are focused on different disclosure topics and metrics and that there are no metrics universally important to all companies or to all investors.

<u>Principles-Based Disclosure Drives More Meaningful Disclosure and Consistency Over Time</u>

Climate-related disclosures, like the sustainability landscape more generally, are rapidly evolving. Given the industry- and company-specific nature of climate-related information (unlike accounting standards), companies, investors, and standard-setting organizations have not converged on specific metrics or disclosure topics that are relevant and material across industries and companies. For these reasons, any mandated disclosures should be principles-based, and not prescriptive, to allow for varying approaches depending on applicability and materiality to a particular company. To the extent the Commission concludes that rulemaking is necessary, we believe that this approach will result in more meaningful disclosure than imposing a one-size-fits-all disclosure requirement on all companies. By providing a list of non-exclusive, but specific, examples and requiring disclosure *to the extent material*, the resulting disclosure will provide consistency year-to-year, and investors will not be overloaded with information that is not relevant to a company's business or operations.

<u>Meaningful Comparability Across Industries Is Illusory</u>

Some proponents of new climate disclosure rules (and new ESG disclosure rules generally) assert that any such rules should be prescriptive rather than principles-based to ensure that the information provided is comparable across companies. Given the vast differences among issuers and the industry- and company-specific nature of relevant climate or other sustainability-focused information, however, it will be difficult for investors to make *meaningful* comparisons across different industries, or even, in some cases, across different companies within the same industry. Attempting to achieve comparability by imposing new prescriptive climate mandates regardless of materiality may lead to less meaningful disclosures. With respect to climate specifically, as

[15] Society for Corporate Governance, Investor Climate Disclosure Priorities, May 2021.
[16] *See* Morrow Sodali, "Institutional Investor Survey 2021," May 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Institutional_Investor_Survey_2021.pdf.

discussed below, the shift toward new corporate worksite models that increasingly rely on hybrid and remote work arrangements and shared office spaces, are likely to exacerbate the challenges with any attempt to require meaningful comparability across companies.

The existing CEO pay ratio disclosure rule is a prime example of a prescriptive, quantitative disclosure mandate that is not useful for comparing companies, as it is highly dependent on a company's business model, employee composition, and locations. As the Commission even acknowledged in its proposed rule release, "precise comparability across companies may not be relevant and could generate potentially misleading interpretations or conclusions."[17] This is equally true for prescriptive climate disclosures.

For these reasons, requiring disclosures that are not material in an attempt to enhance "comparability" could muddy disclosures and make it more difficult for investors to discern what is or is not material to a particular company.

3. Although the Commission has Authority to Mandate Non-Material Climate Disclosure, It Should Not Exercise that Authority.

The Society understands that the SEC's rulemaking authority is not limited to disclosure of material information, but rather extends to disclosures in the public interest and for the protection of investors. However, if the Commission exercises this authority, we believe it should take into account the potential costs and other unintended consequences of any new rule and consider reasonable alternatives.

The Costs for Companies Will Be Substantial

For information that is not material, it is important to weigh the burdens and costs of requiring disclosure against the potential benefits. Any new requirement for prescriptive, quantitative disclosures will result in significant direct and indirect costs to companies in the forms of data gathering and systems costs, legal expense, consulting expense, public relations expense, and litigation risk expense, among others. Specific climate-change metrics, for example, can be time-consuming and costly to measure and publicly report.[18]

In response to then-Acting Chair Allison Herren Lee's statement, the Society asked a small cohort of member public companies across industries that disclose climate change-related information to provide us with their approximate costs for compiling such disclosures beyond that which is already required under the securities laws.[19] Specifically, we asked:

- What climate-related metrics they gather and what they report on;

[17] *See* SEC, Pay Ratio Disclosure Release Nos. 33-9452; 34-7044 (Sept. 17, 2013) https://www.sec.gov/rules/proposed/2013/33-9452.pdf.
[18] For additional detail, please see the cost/benefit information provided under Section 3 below.
[19] The results of this survey are included in Appendix A to this letter.

- How many full-time employee equivalents are dedicated to climate reporting; how many hours annually are spent on reporting; and what functional areas are involved;
- The approximate or estimated annual costs for external advisors, such as environmental consultants, sustainability reporting consultants, outside counsel, and engineers; and
- Third party assurance costs by engineering, consultant, or audit firms.

The responses we received varied by company based on their current reporting scope, size and, complexity of their organizations; the nature and locations of their operations; and other factors. With respect to scope, the companies reported variously: Scope 1, Scope 2, and/or Scope 3 or material Scope 3 emissions; energy use year-over-year; the percentage of renewable energy sourced to support the company's operations; and metrics relating to carbon offsets and abatement. The responses were not uniform; nonetheless, they underscore the substantial costs involved:

- Headcount requirements ranged from two to 20 full-time equivalents or near full-time equivalents, plus involvement by personnel from numerous functional areas.
- One large-cap company in the energy industry described its TCFD reporting process as involving 40 people from the company and six months of nearly full-time participation by 20 core team members. Employee hours spent on climate reporting for the two companies that provided data on this point ranged from 7,500 to 10,000 annually.
- One company said their reporting requires approximately four months for the CDP response, and two companies reported approximately nine months for their TCFD reports. Another company collects data for the first 12 weeks in each year; then compiles, reviews, and finalizes information over the next ten weeks; and then obtains external third party validation. That company spends approximately three months building out the responses for CDP Climate, CDP Waste, ESG reporting, and corporate website updates.
- External advisory services commonly consist of environmental engineering consultants; emissions, climate science, and modeling consultants; outside counsel; and sustainability or sustainability reporting consultants, with costs ranging from $50,000 to $1.35 million annually.
- In addition, one company shared that it experienced one time start-up costs of approximately $1.3 million to establish a baseline for SASB and TCFD reporting; another company estimated new/enhanced systems, controls, audit and other costs associated with any additional disclosure requirements at over $1 million.
- Third-party assurance costs ranged from $10,000 to $600,000.

Importantly, these costs reflect largely voluntary disclosure. Many of the same companies expect that if prescriptive climate-related disclosure is mandated, costs will be significantly higher than what they are today. We also expect that data collection and reporting efforts associated with GHG emissions, goals, and year-over-year comparisons at any given company may be further complicated and subject to much greater uncertainty going forward, as a result of new work-from-home and hybrid work models.[20]

[20] Teleworking emissions are mentioned briefly and without further guidance in the GHG Protocol's Category 7: Employee Commuting guidance document, "Companies may include emissions from teleworking (i.e., employees working remotely) in this category." *See* "GHG Protocol Category 7: Employee Commuting,"

The questions raised for consideration in then-Acting Chair Lee's statement address climate change-related impacts on the costs of capital and climate change-associated risks and costs, but do not query direct and indirect costs to issuers associated with new prescriptive disclosure requirements, such as the types of costs summarized above. While we understand that any subsequent climate disclosure rulemaking will be subject to a fulsome analysis and evaluation of the proposed rule's potential quantitative and qualitative costs and benefits, the above data illustrate the substantial burdens and costs for companies to gather and report on various climate-related metrics.

Mandated Prescriptive Climate Disclosure Will Not Ease the Burden on Companies

Given the significant differences among institutional investors and their investment methodologies, the Society believes that mandated climate disclosure requirements will not decrease the costs and burdens on public companies and likely will increase them. Society members report receiving dozens of information requests or surveys from asset managers and third-party data providers on climate and other ESG issues each year. If the Commission mandates a particular disclosure framework, we do not believe the requests for companies to provide information will stop or decrease in any meaningful way. Instead, we believe that companies will make the required disclosures, but still be faced with requests to respond to new third-party surveys and/or direct requests from asset managers.[21]

Many companies strive to meet the continuously evolving expectations of and reporting requests from their significant investors. New disclosure mandates are unlikely to reduce these investors' requests since, as asset managers, they compete for assets and increasingly seek to differentiate themselves by creating more and better "ESG" investment products for their clients. These asset managers develop products through proprietary models based on information they either gather themselves or purchase from third parties – in either case, data that originates from company disclosure. Regardless of what companies are required to disclose, we believe asset managers

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https://ghgprotocol.org/sites/default/files/standards_supporting/Chapter7.pdf. Most companies that report GHG emissions historically have not included these emissions to date in their annual GHG inventories because the percentage of teleworking employees before the COVID-19 pandemic was nominal; how to account for this rapidly evolving, significant shift from the office/facility-dominant model to a predominantly hybrid/remote work model that increasingly includes some employees working fully remotely all of the time; all employees working remotely some of the time; office hoteling both within a company's workplace, and office share arrangements wherein workspaces accommodate multiple companies' employees, is very much evolving and in flux. *See, e.g.*, EcoAct/Lloyds Banking Group/NatWest Group, "Homeworking Emissions Whitepaper," October 2020, https://info.eco-act.com/hubfs/0%20-%20Downloads/Homeworking%20emissions%20whitepaper/Homeworking%20Emissions%20Whitepaper%202020.pdf.

[21] See *The Wall Street Journal*, "How ESG Stocks Perform Depends on Who Ranks Them," June 11, 2021, https://www.wsj.com/articles/how-esg-stocks-perform-depends-on-who-ranks-them-11623403803?st=k25uxrq7hej6oh5&reflink=article_email_share ("The reason for the disparity [in ESG scores] is that each rater creates scores using different data sources and procedures, often emphasizing different aspects of the companies' behavior. Some methodologies assign scores relative to competitors in the same industry and others assess absolute risk based on a firm's material exposure to ESG issues. "'Many of our institutional investor clients require multiple, diverse viewpoints on ESG to help them make more informed decisions,'" said Sustainalytics' executive director of methodology and portfolio research, Hendrik Garz.")

will continue to seek a competitive edge by requesting companies provide additional data to fit their own models, and companies will continue to endeavor to be responsive to these requests. It stands to reason, then, that as many of our member companies have reported, satisfying the investor community collectively is likely an impossible feat.

Our members report that even when companies provide data requested by one asset manager, other investors nevertheless seek more or different data on the same topics.[22] And, often, asset managers seek disclosure aligned with the TCFD framework and/or the SASB standards, while requesting additional information.

Issuers will also continue to receive survey and data verification requests from a variety of third-party ESG data providers, whose reports and scores are often used by institutional investors. As an example, we ask the Commission to consider R-Factor™, State Street Global Advisors' ("SSgA") proprietary ESG score. While SSgA indicates that its scoring system is based on SASB's Materiality Map, it also acknowledges that it is currently sourcing its data for R-Factor™ from third-party data providers – namely, Sustainalytics, Vigeo-Eiris, ISS-ESG, and ISS-Governance.[23] SSgA also states that publishing a SASB-aligned report "should improve a company's R-Factor™ score. This will take time, as the third-party data providers whose metrics power R-Factor™ absorb this new information and update their data."[24]

The R-Factor™ example underscores that even companies that are providing disclosure consistent with one or more accepted frameworks/standards continue to be assessed by institutional investors based upon the third-party data provider scores. We are skeptical that asset managers will abandon their proprietary scores or their reliance on third parties even if the SEC mandates climate-related disclosure.[25]

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[22] For example, one large-cap company -- in its engagements with a substantial portion of its investors -- found that the majority of large institutional investors that requested disclosure under the TCFD and/or the SASB standards also requested additional qualitative and/or quantitative information spanning a variety of other topics. In addition, each investor showed interest in a *different* set of issues and metrics not captured in the TCFD framework or the SASB standards for the company's industry. Importantly, even with respect to the same issues, investors often asked different questions, emphasized different areas, and sought different data points. As another example, one member company discloses its EEO-1 data, as well as its voluntary employee turnover rate, in its sustainability report. Nonetheless, it recently received a request from one of its largest institutional investors to separately disclose the percentage of females in management and the percentage of minorities in management, as well as its involuntary turnover and total turnover rates, among other metrics.
[23] *See* State Street Global Advisors, "R-Factor™ for Companies: Frequently Asked Questions," October 2020, https://www.ssga.com/library-content/pdfs/esg/r-factor-for-companies-faqs.pdf
[24] *Id*.
[25] Such assessments can have real consequences for companies. For example, State Street CEO Cyrus Taraporevala referenced that his firm would vote against "companies in the bottom 10% of R-Factor score that could not articulate a plan to improve their score." *See* State Street Global Advisors, "CEO's Letter on Our 2021 Proxy Voting Agenda," January 11, 2021, https://www.ssga.com/us/en/institutional/ic/insights/ceo-letter-2021-proxy-voting-agenda.

4. Any New Climate Disclosures Should Be Required on a Company's Website or in a Separate Report.

If new climate change-related disclosure is mandated, we believe the disclosure framework should provide that such disclosure can be posted to a company's website or included in a separate report (similar to the Form SD used for conflict minerals reporting, but without the related audit or assurance requirement as discussed further below) that is furnished, not filed, with the Commission.

Locating these disclosures on a company's website or in a separate report would expressly distinguish them from disclosures in periodic reports, which are incorporated into registration statements. Public company disclosures included or incorporated by reference into registration statements and prospectuses filed with the Commission are subject to potential strict liability for misstatements or omissions under Section 11 of the Securities Act. In light of the inherent challenges in quantifying climate-related metrics and the evolving nature of climate-related disclosures, if any disclosure is mandated, such information should be expressly excluded from and not incorporated by reference into Securities Act filings. Climate change-related disclosures also should not be required to be included in Exchange Act periodic reports that are incorporated by reference into Securities Act filings. Similar to the audit committee report required to be included in a company's proxy statement and specified in Regulation S-K Item 407, these new disclosures should not be deemed to be soliciting material or filed with the Commission, or subject companies to liability under either Section 17(a) of the Securities Act or Sections 13(a) or 18 of the Exchange Act.

In addition, to the extent that any climate change-related disclosures could potentially be considered to be subject to management's report on internal control over financial reporting, or to the officer certification requirements for Exchange Act periodic reports, they should be excluded from these requirements. Confining any such required disclosures to a website or a separate report would clarify that the disclosures are not a part of a company's financial reporting or subject to rules regarding internal control over financial reporting or disclosure controls and procedures.

Climate Data Takes Time to Gather and Certain Data May Not Be Available

Including any newly mandated climate disclosures in a separate report or on the company website would have the benefit of creating a more appropriate reporting cadence for climate change-related disclosures. Many climate change-related metrics are complex and require significant data gathering and processing, not only from the issuer itself, but often from a number of third parties. Climate-related information and metrics are often not available or able to be gathered by the time many companies file their Form 10-Ks. As discussed above and in Appendix A to this letter, a number of companies surveyed that voluntarily report climate information described lengthy processes of collecting, reviewing, finalizing, and validating climate data before they are in a position to report it externally. Largely due to the time it takes for information to be available, gathered, and verified, many companies that provide robust sustainability reports publish their reports six months or more after the end of the calendar year, or their fiscal year. To give companies the time they need to collect and synthesize accurate information, the Commission should provide additional time to report any prescriptive, quantitative disclosures, similar to conflicts mineral reporting.

In addition, the data some issuers seek in response to third-party requests or new disclosure requirements to quantify climate risk, such as certain emissions data or data underlying third-party scenario analyses, may not be available and/or may be subject to significant and variable assumptions, estimates, and modeling techniques, factors which are expected to be compounded going forward as the traditional work model evolves.[26] For example, particularly with respect to financial institutions, their clients' transition plans to a lower carbon environment or the geographical location of their operations and facilities may not have been disclosed to them or if so, not in a standardized way. Or, if specific client data is available for the parent company of the client, it may not have disclosed that data to the company for its subsidiaries. In the case of any climate scenario analyses, the scenarios against which registrants may be required to disclose are developed by third parties pursuant to processes that are unknown to companies and impossible to validate.

<u>External Assurance Should Not Be Required</u>

Regardless of location and whether or not climate information is required to be disclosed in a "filed" document, external assurance of climate or other sustainability-related information should not be mandated. Currently, the auditor's responsibility does not extend beyond the financial information identified in the auditor's report.[27] The auditor is only required to read other information in documents containing audited financial statements for consistency with the financial statements or for material misstatements of fact. Thus, there can be (and often is) a lot of information, including quantitative data, in "filed" documents outside the financial statements that do not have audit procedures performed by auditors. Rather, company management is responsible to ensure that those disclosures are accurate in all material respects and, as noted above, there are already effective mechanisms in place that serve as a check on management.

Moreover, as noted above, some quantitative climate-related data is not readily available, is inherently imprecise, and is often based on sources outside of the company's control. Such information is thus not conducive to mandatory audit or attestation.

<u>Consider "Disclose or Explain" Framework</u>

For all of the above reasons, to the extent the Commission proposes new disclosure rules with specific quantitative metrics, the rules should permit companies to either provide the requested disclosure or explain why they have not (for example, if the measure has not yet been implemented, if they do not yet have the data available, or if the metric is not material to the company).

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[27] For the avoidance of doubt, we include internal control over financial reporting under the general term "financial information" in the interest of brevity and since ICFR relates directly to the accuracy and completeness of financial statements.

Challenges Warrant Disclosure Relief

In light of all of the above challenges, we believe the SEC should provide relief to companies when they cannot obtain information needed to make any required climate-related disclosures. The Commission has done something similar before. For example, Rule 409 under the Securities Act and Rule 12b-21 under the Exchange Act provide relief from disclosure obligations for information that is unknown and not reasonably available to registrants. Those rules provide relief to registrants when they cannot obtain information needed to make otherwise required disclosures in prospectuses and Exchange Act reports. We urge the Commission to consider similar relief for climate-related disclosures.

5. Companies Need Safeguards Against Meritless Litigation Over New Climate Disclosure.

Any new rulemaking regarding climate change-related disclosures should provide safeguards against meritless litigation.

Companies should be safeguarded against potential liability with respect to any new disclosure requirements on climate change-related matters, whether such requirements are principles-based or prescriptive and quantitative. Liability protections are needed not because public companies do not have adequate controls over their reporting, but because corporations are regularly targeted with meritless suits, particularly over new disclosure rules, imposing undue burdens on companies and unnecessary costs on shareholders.

If the Commission requires new mandated, quantitative disclosure to be disclosed in a periodic filing rather than in a separate, furnished report or on the company's website, these new disclosures should receive the benefit of a safe harbor from Securities Act and Exchange Act liability for the same reasons discussed above. This would encourage robust disclosure and limit the potential that such disclosure obligations will discourage private companies from becoming public reporting companies.

6. Any New Mandates Should Be Limited to Large Public Companies and Provide a Phase-In Period for Compliance.

We believe any new requirement for prescriptive, quantitative disclosures should be limited to large accelerated filers and should have a phase-in period to provide sufficient time for compliance.

The costs to comply with mandatory quantitative climate change disclosure are expected to be substantial, as discussed above and in Appendix A to this letter. Requiring specific quantitative metrics to be disclosed would disproportionately impact smaller reporting companies and could also discourage companies from going public. For smaller reporting companies to which specific climate change-related issues are material, the Commission's existing rules already address disclosure considerations. However, if new disclosure requirements are implemented and applicable to smaller reporting companies, we believe the costs of accurately collecting, assessing, verifying, and reporting such metrics would be overly burdensome and substantially outweigh the potential benefit to investors. As such, the Society recommends that any new mandatory quantitative climate disclosure requirements should be limited to large accelerated filers that generally have more resources to absorb the additional costs of compliance. We also believe that any new climate mandates should not be applied to private companies.

In addition to the timing concerns discussed above, any new requirement should allow sufficient time before the first disclosures are due for companies to establish the necessary internal infrastructure for compliance, including potentially hiring additional personnel and engaging third parties. Even Society member companies that already publish sustainability reports that include global Scope 1 and 2 GHG emissions information have indicated they would have to spend significant additional time, money, and effort to ensure compliance with any new disclosure requirements. Companies that have not yet started to voluntarily report such metrics would need substantial lead time to become compliant. Any rulemaking that contemplates specific quantitative disclosure should account for the significant time and effort it will take for companies that are not already reporting this information to prepare for the first reporting cycle. Likewise, a transition period should be provided for newly public companies, which will also need additional time to prepare for their first disclosures.

Question 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?

<u>Any Climate Disclosure Standards Should Be Developed by the Commission</u>

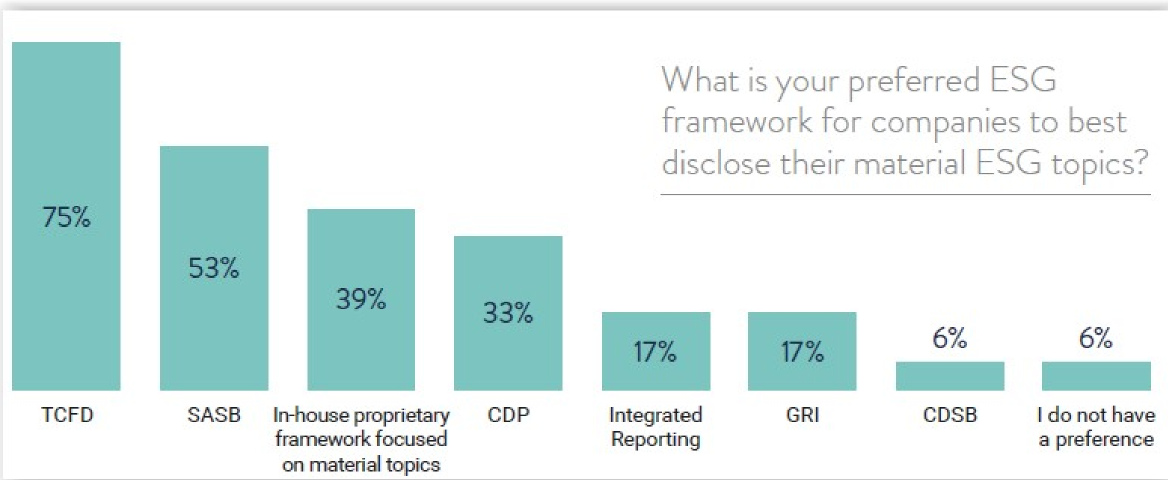
Any new climate or sustainability-related disclosure requirements the Commission imposes in the first instance, and as updated, augmented, or otherwise changed over time, should be governed by the Administrative Procedure Act ("APA"), i.e., undertaken only with proper notice of proposed and final rulemaking and with ample opportunity for public comment. Moreover, while a number of non-governmental organizations have developed and promoted their own disclosure frameworks and standards for sustainability (including climate issues), if the SEC seeks to move forward with new or additional disclosure requirements, the SEC should itself develop such disclosure requirements, including, as necessary, acquiring and retaining the requisite in-house expertise to respond to changing conditions over time.

Third-party standard-setters are not guided by the same mission as the SEC: to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Allowing a third party to promulgate new disclosure rules could therefore result in disclosure requirements that are inconsistent with the federal securities law regime. Additionally, third-party standard-setters hold differing views of materiality and have widely divergent perceptions of what topics and subtopics each company (or each industry) should be disclosing. These third parties also are at risk of being swayed by various environmental, social, and political agendas, unlike the FASB and other accounting standard-setters, which are subject to SEC oversight, as well as structural, independence, and other governance safeguards.

There Is No Consensus on a Single Existing Climate Framework

Moreover, there are a number of disclosure frameworks that include climate, including the TCFD, SASB (VRF), the Greenhouse Gas Protocol, the Climate Disclosure Standards Board, and the Global Reporting Initiative, but at this relatively early point in the evolution of the sustainability landscape, there is no consensus among investors or issuers on any particular standard/framework. The wide variability among third-party frameworks is among the reasons investors and issuers use different, and typically multiple, frameworks to inform both their decision-making and disclosures.

For example, according to a recent institutional investor survey[28] in response to the question: "What is your preferred ESG framework for companies to best disclose their material ESG topics?" 75% of investors selected TCFD, 53% selected SASB, and nearly 40% selected their in-house proprietary frameworks focused on material topics.[29]



Another recent global institutional investor survey conducted by MSCI,[30] which asked investors that use ESG frameworks which ones they had chosen, revealed the following responses:

- PRI: 76%

[28] *See* Morrow Sodali, "Institutional Investor Survey 2021," May 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Institutional_Investor_Survey_2021.
[29] *See*, *e.g.*, Legal & General Investment Management, "Active ownership," March 2021, 16, https://www.lgima.com/landg-assets/lgima/insights/esg/active-ownership-report-2020.pdf
[30] *See* MSCI, "Global Institutional Investor Survey," February 2021, 23, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/MSCI-Investment-Insights-2021-Report.pdf.

- TCFD: 57%
- CDP: 48%
- GRI: 38%
- SDGs: 31%
- SASB: 30%
- Own framework: 20%

Numerous surveys have also shown that institutional investors use multiple third-party ESG research/rating firms which, in turn, have widely varying views about companies' disclosure and performance on sustainability-related matters, such that companies frequently receive high and low scores/ratings from different research firms based on the same disclosures at the same point in time.[31] A recent survey of the top 50 asset managers revealed that 40% use four or more ESG research and data providers; more than three-quarters use at least two.[32] Investors reportedly rely on multiple providers because of their different perspectives and approaches, not one of which is deemed by most investors to be "the one."[33] So long as investors continue to rely on multiple "ESG" research and data providers – and regardless of whether climate disclosure is mandated by the SEC – issuers will continue to be bombarded by numerous and varied disclosure requests and will continue to feel pressured to respond to them in order to avoid negative implications associated with their failure to do so by investors that rely on these service providers.

Similarly, although many companies disclose climate and other sustainability information, at this point there is no consensus among the issuer community on any particular reporting standard/framework. Issuers that report sustainability information tend to use or reference – in whole or in part – multiple frameworks to disclose information in a manner that they believe

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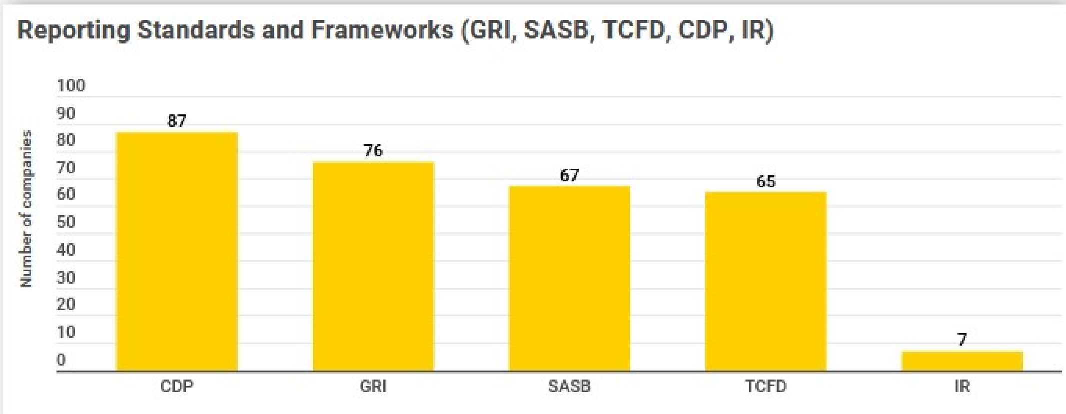
[31] *See*, *e.g.*, State Street Global Advisors, "The ESG Data Challenge," March 2019, https://www.ssga.com/investment-topics/environmental-social-governance/2019/03/esg-data-challenge.pdf (revealing the inconsistencies among ESG ratings or, more specifically, a correlation of just 0.53 among ESG scores for four leading ESG data providers for MSCI World Index companies. "These differing methodologies have implications for investors. In choosing a particular provider, investors are, in effect, aligning themselves with that company's ESG investment philosophy in terms of data acquisition, materiality, and aggregation and weighting."); Feifei Li, PhD / Ari Polychronopoulos, CFA, "What a Difference an ESG Ratings Provider Makes!", January 2020, https://www.researchaffiliates.com/content/dam/ra/documents/770-what-a-difference-an-esg-ratings-provider-makes.pdf.; *The Wall Street Journal*, "How ESG Stocks Perform Depends on Who Ranks Them," June 11, 2021, https://www.wsj.com/articles/how-esg-stocks-perform-depends-on-who-ranks-them-11623403803?st=k25uxrq7hej6oh5&reflink=article_email_share ("Many companies were ranked differently by each of the rankings firms. Refinitiv ranked Wells Fargo & Co. in the top 10% of all 917 banking services companies tracked. MSCI gave the bank an average rating and Sustainalytics ranked them poorly. The bank's stock was one of the best performing of the 494 firms scored by all three raters in the first five months of 2021, climbing 57% to $46.72, helping to lift each index the *Journal* calculated.").

[32] *See* SquareWell Partners, "A Look at the World's Largest 50 Asset Managers," March 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/2021_-_SquareWell_-_Top_50_-_Asset_Managers_Approach_to_ESG.pdf

[33] *See* SustainAbility, "Rate the Raters 2020: Investor Survey and Interview Results," March 2020, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/ESG/RateTheRaters2020-Report.pdf.

would be most meaningful and responsive to their investors.[34] In that regard, the Center for Audit Quality's review of S&P 100 companies' public ESG disclosures as of March 24, 2021, revealed that most companies referenced at least one of these frameworks and standards, with the plurality of companies (44%) referencing four of the five.[35]



<u>If the SEC Delegates Standard-Setting to a Third-Party, It Should Provide Robust Oversight</u>

In light of the above, the Society believes that the Commission's delegation of climate-related and/or other sustainability disclosure standards to a third-party standard setter, or the endorsement or appointment of a third-party standard setter, would be inappropriate. However, in the event the SEC decides to take this approach, the designated organization should be subject to the same level and type of SEC oversight that is in place for the FASB and/or the Public Company Accounting Oversight Board ("PCAOB"). That oversight would include: standard-setting due process safeguards, leadership independence, term and tenure requirements, funding assurances, budgetary requirements, and other governance formalities. The governance structure should further ensure that any SEC-recognized or designated standard-setter is fixed, i.e., cannot merge or evolve into another organization unless the resulting organization is subject to the same governance and other requirements outlined above.[36]

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[34] *See, e.g.,* The Conference Board, "Sustainability Practices," January 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/TCB-Sustainability-Practices-2020.pdf; Society for Corporate Governance: "Sustainability Practices Benchmarking Survey," January 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Data_All_210204.pdf; KPMG. "KPMG Survey of Sustainability Reporting 2020," November 2020, 37, https://assets.kpmg/content/dam/kpmg/xx/pdf/2020/11/the-time-has-come.pdf.

[35] *See* The Center for Audit Quality, "S&P 100 and ESG Reporting," April 2021, https://www.thecaq.org/sp-100-and-esg-reporting/.

[36] *See* Value Reporting Foundation, *"IIRC and SASB form the Value Reporting Foundation, providing comprehensive suite of tools to assess, manage and communicate value,"* June 9, 2021, https://www.valuereportingfoundation.org/news/iirc-and-sasb-form-the-value-reportingfoundation-providing-comprehensive-suite-oftools-to-assess-manage-and-communicate-value/?utm_medium=email&_hsmi=132648974&_hsenc=p2ANqtz---HYFQIiudGlD1j7Qgsplcci-5T2WlrATHF.

In addition, as is the case with SEC rulemaking, any new climate or sustainability-related disclosure requirements the SEC imposes – directly or indirectly – in the first instance, and as updated, augmented, or otherwise changed over time, should be governed by the APA.

Furthermore, in the event the SEC determines to pursue this approach, any existing standards promulgated by another organization that the SEC selects that have not been subject to the notice and comment process pursuant to the APA should be subjected to the rigors of the APA rulemaking process at the outset, with additions, amendments, and deletions also subject to that process.

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?

Item 407(h) Already Requires Risk Oversight Disclosure For Material Climate Risks

Item 407(h) of Regulation S-K requires that companies "disclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure." Risk oversight encompasses climate, as well as the numerous other risks companies may encounter, including competition, business interruption, information and cybersecurity, pandemics, natural catastrophes, macroeconomic developments, and other risks. In this regard, the current disclosure requirement regarding risk oversight implicitly recognizes the integrated nature of risk management oversight and would necessitate the disclosure of governance and oversight of climate risk, if material.

For this reason, an additional disclosure requirement specific to board climate risk oversight would be duplicative and unnecessary. Instead, as noted earlier in our letter, the Society would welcome additional SEC guidance on material climate risk disclosure, which could include a reminder to companies to consider climate risk in conjunction with their Item 407(h) disclosure. This disclosure could include information about the board oversight structure and process.

In recent cybersecurity disclosure guidance, for example, the SEC noted that, to the extent cybersecurity risks are material to a company's business, Item 407(h) should include a discussion of the nature of the board's role in overseeing the management of that risk.[37] Referencing that guidance, the SEC's Director of Corporation Finance reiterated in a 2019 speech on disclosure of sustainability, climate, and other complex and evolving risks, that companies' Item 407(h) disclosure should discuss the nature of the board's role in overseeing the management of material risks[38]

[37] *See* "Commission Statement and Guidance on Public Company Cybersecurity Disclosures," Rel. Nos. 33-10459; 34-82746 (February 20, 2018), https://www.sec.gov/rules/interp/2018/33-10459.pdf.
[38] *See* William H. Hinman, Director of the Division of Corporation Finance, "Applying a Principles-Based Approach to Disclosing Complex, Uncertain and Evolving Risks," March 15, 2019, https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519.

Under Item 407(h), a company facing material climate-related risks might describe aspects of the board's oversight of such risks in the context of its oversight of all its material risks and in such detail as a company determines would be appropriate to inform a reasonable investor. The Society does not believe it would add significant value to investors to mandate additional disclosure about the detailed internal governance by a particular company of its enterprise risk management program with respect to one or more categories of risk, which may or may not be material to a particular company. Rather, as noted in response to Question 1, we believe the current principles-based disclosure requirements are sufficient to elicit from issuers material information as to oversight of risk management specifically relating to climate change issues when appropriate. In the event the Commission nonetheless determines that prescriptive disclosure requirements are warranted, the Society suggests the SEC consider the recommended board oversight disclosure encompassed in the Governance section of the TCFD's Recommendations: "Describe the board's oversight of climate-related risks and opportunities."[39]

Item 402 of Regulation S-K Already Requires Disclosure of Material Compensation Elements

With respect to disclosure concerning the connection between executive compensation and climate change risks, Item 402 of Regulation S-K, already requires disclosure of all material elements of the compensation of the company's named executive officers. Item 402, for example, requires how each compensation element fits into the overall compensation objectives and affect decisions regarding other elements; what specific items of corporate performance are taken into account in setting policies and making decisions; and the relationship of different forms of long-term awards to the achievement of long-term goals. To the extent climate or other sustainability matters are material to a company's business and to the extent a company's executive compensation program incentivizes long-term value creation, such matters are commonly incorporated, both indirectly (e.g., strategic objectives) and increasingly directly (as illustrated below and in Appendix B with current benchmarking information), within companies' executive compensation programs.

The Society believes that if climate change presents material risks or opportunities to a company, companies can and should consider disclosure, under this item and/or associated supplemental Commission or staff guidance, of how the design of its employee compensation program or other elements of its human capital management relate to the company's efforts to address such risks and opportunities.

[39] *See* TCFD, "Recommendations of the Task Force on Climate-related Financial Disclosures" June 2017, 19, https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf. In guidance with respect to this recommendation applicable to all sectors, the TCFD Report states: "In describing the board's oversight of climate-related issues, organizations should consider including a discussion of the following: – processes and frequency by which the board and/or board committees (e.g., audit, risk, or other committees) are informed about climate-related issues, – whether the board and/or board committees consider climate-related issues when reviewing and guiding strategy, major plans of action, risk management policies, annual budgets, and business plans as well as setting the organization's performance objectives, monitoring implementation and performance, and overseeing major capital expenditures, acquisitions, and divestitures, and – how the board monitors and oversees progress against goals and targets for addressing climate-related issues."

Stock exchange standards also address responsibilities of compensation committees (or similar board bodies), whose oversight responsibilities are subject to fiduciary duties. These responsibilities include determining the appropriate levels and forms of executive compensation and incentive structures in the context of the company's specific business priorities and risks.[40] For example, in determining long-term incentives, the NYSE recommends that the committee consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the company's CEO in past years.[41]

In response to changing market conditions, companies are increasingly voluntarily incorporating various discrete sustainability metrics and goals, addressing both risks and opportunities, in their executive and workforce incentive compensation programs. Recent benchmarking data illustrates this evolving practice. A March 2021 report on a survey of nearly 100 companies revealed that the use of environmental, social, and governance metrics in incentive compensation plans increased from 44% to 63%, 84% to 87%, and 40% to 47%, respectively, year-over-year (i.e., 2020 plans compared to 2021 plans).[42]

Not surprisingly, the types of sustainability metrics implemented in executive compensation programs vary widely by company size and sector, with overall use by larger companies far more prevalent than small- and mid-cap companies, and environmental metrics, specifically, largely concentrated among Energy, Materials (e.g., mining), and Utilities sector companies. Farient Advisors' review in 2019 of environmental and social metrics in Russell 3000 executive compensation plans revealed that 86% of the environmental metrics used were concentrated among companies in those three industries. And, S&P 500 companies represented 42% of companies that incorporated environmental metrics. Relatedly, 82% of the diversity-linked pay metrics were among S&P 500 companies, compared to less than 1% of S&P Smallcap 600 companies.[43]

Among larger companies, where such metrics are much more prevalent, Willis Towers Watson found that 49% of the S&P 500 incorporated a social measure; 18% included a governance measure; and 12% included an environmental measure in their incentive plans, as shown in Appendix B.

Depending on their overall compensation program, companies incorporate measures in different ways, i.e., in the individual portion of the executives' incentive award, as a weighted component of the total incentive, and/or as a qualitative component of the incentive award.

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[40] *See* Wachtell, Lipton, Rosen & Katz, "Some Thoughts for Boards of Directors in 2021," December 2020, https://www.wlrk.com/webdocs/wlrknew/ClientMemos/WLRK/WLRK.27168.20.pdf.

[41] *See* NYSE, Listed Company Manual, 303A.05 Compensation Committee, https://nyseguide.srorules.com/listed-company-manual/document?treeNodeId=csh-da-filter!WKUS-TAL-DOCS-PHC-%7B0588BF4A-D3B5-4B91-94EA-BE9F17057DF0%7D--WKUS_TAL_5667%23teid-73.

[42] *See* Pay Governance, "Inclusion of ESG Metrics in Incentive Plans: Evolution or Revolution?" March 2021, https://files.constantcontact.com/e3819448101/5f453a30-deac-4cb9-b2df-79cfd19d1c8b.pdf.

[43] *See* Farient Advisors, "Environmental and Social Compensation Metrics: Walking the Talk?" April 2019, https://farient.com/environmental-and-social-compensation-metrics-walking-the-talk/.

Deloitte's review of proxy statements filed between February 2020 and January 2021 among Fortune 100 companies revealed a number of companies incorporating ESG measures in their executive incentive plans.[44] Those that did so most commonly used one or more social metrics (with human capital/culture and diversity, equity, and inclusion being most prevalent) in their annual incentive plans. See Appendix B.

In addition, Equilar's recent analysis of ESG compensation metrics for the 94 publicly traded Fortune 100 companies over the last year revealed 38 companies disclosing ESG–compensation links.[45] Based on Equilar's categorization of the wide variety of metrics used, culture and diversity (which Equilar posits tend to cross industry boundaries, unlike some other ESG metrics) were the most common, as shown in Appendix B.

The Society also believes that any metrics used (sustainability or otherwise) should be company-specific, based on an assessment of materiality, and aligned with the company's strategic priorities. Another recent study of the Fortune 200 shows that environmental metrics including carbon footprint, emissions/chemical containment, energy efficiency/renewable energy, and sustainable/responsible sourcing are much more prevalent in Energy and Utilities sector companies, whereas Consumer Staples sector companies are more apt to include talent-related metrics.[46] Moreover, other companies may (and do) elect to include strategic plan-related metrics that integrate long-term sustainability in lieu of discrete sustainability metrics.

Importantly, companies should not be pressured by disclosure mandates to link their incentive compensation to particular types of metrics (sustainability or otherwise). Rather, boards and compensation committees should continue to have the flexibility and the duty to determine the appropriate compensation incentive structures and metrics in the context of the company's business priorities, risks, and other relevant factors, and to make appropriate disclosure under existing SEC requirements. Along those lines, Glass Lewis's recent report, "In-Depth: Linking Compensation to Sustainability," addresses potential upsides, downsides, challenges, and opportunities associated with linking compensation to sustainability metrics.[47] While investor interest in sustainability-linked pay seems to be on the rise and companies are increasingly responding accordingly, the report shows that the evidence is quite mixed as to whether, to what extent, and under what circumstances sustainability-linked pay achieves its intended objectives consistent with optimal value creation.

As Glass Lewis observed: "Undoubtedly, the most important facet of any compensation plan is that it is properly linked to long-term and sustainable corporate performance. To this end, many

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[44] *See* Deloitte, "Incorporating ESG measures into executive compensation plans," April 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/us-incorporating-esg-measures-into-executive-compensation-plans-new-1.pdf

[45] *See* Equilar, "Creating Long-Term Value With ESG Metrics," March 2021, https://www.equilar.com/blogs/502-creating-long-term-value-with-esg-metrics.html.

[46] *See* Semler Brossy, "ESG + Incentives 2020 Report," September 2020, https://semlerbrossy.com/CORPORATE-PURPOSE-GUIDANCE/.

[47] *See* Glass, Lewis & Co., "Linking Compensation to Sustainability," April 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/In-Depth-Linking-Compensation-to-Sustainability-2.pdf.

companies may find the use of sustainability-related compensation metrics to be beneficial in driving behaviors focused on long-term performance. Companies should employ strategies and incentivize behaviors that leverage their unique strengths and competitive advantages. It is important that companies assess sustainable opportunities through the lens of long-term growth and shareholder returns without losing sight of future profitability."[48]

For the above reasons, the Society believes that any new disclosure requirement on the connection between compensation and climate-related risks is not needed, is not necessarily in the best interest of investors, and would only impose additional costs on public companies.

Question 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?

Because of the virtually limitless scope of issues that potentially fall within the rubric of "ESG" and lack of consensus among investors as to which "ESG" topics are consistently material, or even universally relevant, across industries, businesses, and market caps, and the fact that the relevance and significance of particular ESG topics are rapidly evolving, the Society strongly recommends the SEC limit its current initiative to the discrete topic of climate-related disclosure.

For example, in its recent publication, "ESG and Responsible Institutional Investing Around the World," the CFA Institute Research Foundation notes the difficulty in defining the scope of ESG topics:

> **Defining ESG.**
>
> Table 1 highlights some of the major ESG issues that companies typically face in seeking to generate long-term value. There is *no consensus on the exact list of issues and their materiality*, but the concern is that some of them may affect the value creation by a firm.[49]

[48] *Id* at 11.
[49] *See* CFA Institute Research Foundation, "ESG and Responsible Institutional Investing Around the World," May 2020 https://www.cfainstitute.org/-/media/documents/book/rf-lit-review/2020/rflr-esg-and-responsible-institutional-investing.ashx [*emphasis* added].

Table 1. Main ESG Issues		
Environmental	Social	Governance
• Climate change and carbon emissions • Natural resource use and energy and water management • Pollution and waste • Ecodesign and innovation	• Workforce health and safety, diversity, and training • Customer and product responsibility • Community relations and charitable activities	• Shareholder rights • Composition of boards of directors (independence and diversity) • Management compensation policy • Fraud and bribery

The CFA Institute also notes on its website an overlapping but different set of ESG issues, accompanied by the accurate statement that "[t]here is *no one exhaustive list of ESG examples*. ESG factors are often interlinked, and it can be *challenging to classify an ESG issue* as only an environmental, social, or governance issue, as the table below shows. These ESG factors can often be measured (e.g., what the employee turnover for a company is), but it can be *difficult to assign them a monetary value* (e.g., what the cost of employee turnover for a company is)."[50]

Table 1. Examples of ESG Issues		
Environmental Issues	Social Issues	Governance Issues
■ Climate change and carbon emissions ■ Air and water pollution ■ Biodiversity ■ Deforestation ■ Energy efficiency ■ Waste management ■ Water scarcity	■ Customer satisfaction ■ Data protection and privacy ■ Gender and diversity ■ Employee engagement ■ Community relations ■ Human rights ■ Labor standards	■ Board composition ■ Audit committee structure ■ Bribery and corruption ■ Executive compensation ■ Lobbying ■ Political contributions ■ Whistleblower schemes

As discussed above, even institutional investors that call for additional sustainability disclosure requirements do not agree on the same sustainability topics and issues that should be disclosed. Those that agree on the same topics and issues don't necessarily agree on the appropriate mix of principles-based and prescriptive, or qualitative and quantitative, disclosure. There are myriad examples that illustrate the lack of consensus among investors, ratings providers, proxy advisors, and other stakeholders on what ESG encompasses (or perhaps more easily explained, what ESG does not encompass), which topics or issues are most important across companies universally or

[50] *See* CFA Institute, "ESG Investing and Analysis," https://www.cfainstitute.org/en/research/esg-investing (webpage) [*emphasis* added].

on an industry-specific basis, and how discrete topics or issues should be evaluated, weighted, and applied in the context of any given company's overall operations.[51] This problem is exacerbated by the continually evolving views of investors and other stakeholders on these ESG topics.

If, however, the SEC elects to broaden its review to include a broader spectrum of "ESG" issues, the Society urges the SEC to apply to its review and recommendations the above-discussed considerations – including with respect to materiality for different industries/companies, timing and location of disclosure, protections from frivolous lawsuits, regulatory relief for smaller reporting and newly public companies, compliance with the APA, and the appropriate level of regulatory oversight, governance, and control.

Concluding Observation

The Society believes that public companies have been, and will continue to be, responsive to information requests from investors, in addition to adhering to all disclosure requirements. We acknowledge that some companies have articulated different views from those expressed in this letter. Like any other large group, our individual members' views are not uniform. Some companies may take the position that their business purpose includes advancing social and environmental issues and that their corporate disclosures promote those interests. While we welcome those perspectives, we believe that is not an appropriate role for SEC rulemaking. We also do not believe new SEC rulemaking is necessary at this time for all the reasons outlined above.

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[51] *See, e.g.,* Legal & General Investment Management, "LGIM ESG scores," 2020, 6 (The 28 key LGIM ESG metrics to monitor companies), https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Methodologyforratingcompanies.pdf; State Street Global Advisors, "R-Factor™ - A Transparent ESG Scoring System" (webpage), https://www.ssga.com/us/en/institutional/ic/capabilities/esg/data-scoring/r-factor-transparent-esg-scoring; MSCI, "Deconstructing ESG Ratings Performance: Risk and Return for E, S, and G by Time Horizon," February 2021, 4, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Research-Insight_Deconstructing-ESG-Ratings-Performance.pdf; Principles for Responsible Investment, "Sustainability issues" (webpage), https://www.unpri.org/sustainability-issues; PwC, "ESG oversight: The corporate director's guide," November 2020, https://www.pwc.com/us/en/services/governance-insights-center/esg-guidebook-layout-final.pdf.

* * *

We appreciate the opportunity to provide comments in response to the statement. We would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

Darla C. Stuckey

Darla C. Stuckey
President and Chief Executive Officer
Society for Corporate Governance

Appendix A

Climate Disclosure Cost and Reporting Data

The Society asked a small cohort of member companies we expected, based on their operations, to be relatively experienced in climate reporting, to provide us with data on costs relating to climate disclosure beyond that which is already required under the securities laws.

We asked specifically:

- What climate-related metrics do they gather and what do they report on?
- How many full-time equivalents (FTE) are dedicated to climate reporting; how many hours annually are spent on reporting; and what functional areas are involved?
- What are the approximate or estimated annual costs for external advisors such as environmental consultants, sustainability reporting consultants, outside counsel, and engineers?
- What are the company's third-party assurance costs by engineering, consultant, or audit firms?

The responses we received were varied but underscore the substantial costs involved.

Here is a summary of the responses:

Basic Materials

One large cap company completes GRI and SASB requirements for reporting climate data, including Scope 1, Scope 2, and Scope 3 carbon dioxide equivalent, plus energy use in total and broken down by source and renewable vs. non-renewable.

The company estimates that it uses the equivalent of 10 FTEs in the Operations, Environmental, Sustainability, Finance, Legal, Financial Reporting, Communications, and Land & Water functional areas for its climate reporting.

It further reported that it expects to spend approximately $350,000 or so annually on external advisory services/resources going forward on top of approximately $1 million spent in connection with its inaugural report for sustainability consultants to build a database for target baseline and projections.

Approximate costs are as follows:

- Environmental engineering consultants for software and reporting system development: $200,000/year for climate and energy alone
- Outside counsel fees: $100,000+/year
- PR/marketing report design services: $30,000
- Third-party assurance costs for GHG data (e.g., engineering firm, consulting firm, auditor): $30,000, and an additional $20,000 for assurance activities related to climate

Financial Services

One large cap company completes the CDP Climate Change Questionnaire and the TCFD report. It reports on its progress towards its low-carbon financing and carbon-neutrality goals; the percentage of renewable energy sourced to support its operations and the percentage of energy reductions year over year; and its Scope 1 and Scope 2 emissions and material Scope 3 emissions, such as business travel and downstream leased assets.

The reporting requires approximately four months for the CDP response and approximately nine months for the TCFD report. (Note that another member company that did not provide cost data also indicated that their sustainability reporting, including TCFD reporting, is a nine-month process.) It involves the equivalent of three FTEs (two focused on climate change and another more broadly focused on sustainability) plus others from the following functional areas: Sustainability, Legal & Compliance, Investor Relations, Finance, Human Resources, Risk Management, Corporate Services, Corporate Communications, and representatives from each business segment.

Sustainability consultant costs are estimated at $50,000 annually and third-party assurance costs at $10,000 annually.

* * * * *

Another financial services company reported its costs currently to be about $250,000 annually, which does not include building systems that would be required if additional disclosure requirements are required. The company estimates the new/enhanced systems, controls, audit, and other costs associated with any additional disclosure requirements at over $1 million.

Energy

One large cap company responded that its TCFD-aligned reporting process involved 40 people from the company and took six months of nearly full-time participation by 20 core team members. In addition, the company sought input or assistance on its reporting from outside counsel in the disclosure, environmental, and litigation disciplines; consultants in emissions, climate science, and modeling; third-party assurance providers; and senior management and the board of directors.

The company described the following skills needed to support reporting under the TCFD pillars:

- Governance: legal expertise; governance expertise; board expertise
- Risk: external consultant with climate science and modeling expertise; engineering expertise; disclosure, policy, and environmental legal expertise; finance expertise; and risk management expertise
- Strategy: commercial functions including economists, engineers, traders, and decision analysts; policy analysts; public affairs; accounting and finance professionals; and internal auditors
- Metrics: multiple engineering disciplines; voluntary and jurisdiction-specific GHG emissions reporting expertise; external assurance provider.

Communications Services

A large cap company reported that it gathers metrics/data in the following categories:

GHG Emissions: Scope 1, Scope 2, and Scope 3 (including breakdown on types of emissions, e.g., CO_2 | methane | NoX); Renewable Energy; Buildings; E-waste; Fleet; Carbon Abatement (metric tons); Water Conservation; Tree planting; SASB-Data Center PUE (power usage effectiveness); and Green Bonds.

The company has four FTE who spend approximately 8,000 hours annually to perform materiality assessments, research, engagement of relevant stakeholders, information collection, drafting, reviewing, vetting / internal controls, reporting, and providing data to third parties. The functional areas involved are: Engineering, Environmental Health & Safety, Supply Chain, Sustainability, Finance, Legal, Real Estate, Strategy, and Internal Audit.

One time start-up costs of approximately $1.3 million were spent for performing gap analyses to establish a baseline for SASB and TCFD reporting, developing a data governance framework for reporting non-financial operating information with program-level standards, developing metric specific documentation, implementing documentation preparation, and using a certification tool.

The annual recurring costs are estimated to be approximately $1.25 million for monitoring and data quality; supporting CDP, TCDF, carbon abatement and Scope 3 reporting, disclosure preparation tool license; and materiality assessments.

Finally, third-party assurance costs for the company are approximately $600,000 annually.

Consumer Staples

One large cap consumer wholesaler gathers and reports data on its operational energy and water usage, GHG emissions (Scope 1 and Scope 2) and waste diversion; RSPO certified palm oil and CDP - Emissions and Forests.

The company currently has two FTEs (with one additional FTE planned) dedicated to climate reporting who spend 7,500 to 10,000 hours annually in the sustainability and energy departments with support from Legal and Financial Reporting (planned). Costs for sustainability consultants are approximately $300,000 annually.

Health Care

One large cap company gathers Total Energy & GHG Emissions for Scope 1, 2 and 3 (business air travel only), Total Water Use, Waste Generated (Haz/Non-Haz), and Waste Recycled (Haz/Non-Haz) for direct reporting for CDP and for collecting, analyzing, and reporting environmental metrics (not the full scope of work) for TCFD disclosure. The company follows the GHG Protocol to establish the boundaries for collection, apply the appropriate factors for calculations and baseline setting.

The company collects data for the first 12 weeks in each year; another 10 weeks to compile, review, and finalize; and then obtains external third-party validation. The company spends ~12 weeks building out the responses for CDP Climate, CDP Waste, ESG reporting, and corporate website updates.

The company has 3.2 FTE dedicated to climate reporting over 10 weeks. Estimated hours spent annually within the company on reporting efforts (e.g., materiality assessments, research, engaging relevant stakeholders, collecting information, drafting, reviewing, vetting / internal controls, reporting, providing data to third parties, etc.) are 2,940.

Functional areas involved in reporting efforts are Environmental, Occupational Health Safety & Sustainability, Global Engineering & Sustainability Services, Site EHS, Site Facilities, Corporate Affairs, Legal, Business Continuity, and Global Procurement.

In lieu of certain external advisory services companies commonly retain due to expertise needs that they don't have in-house, this company has the requisite in-house expertise for the environmental engineering, legal services, financial services, industry, and PR/marketing associated with/to support their reporting.

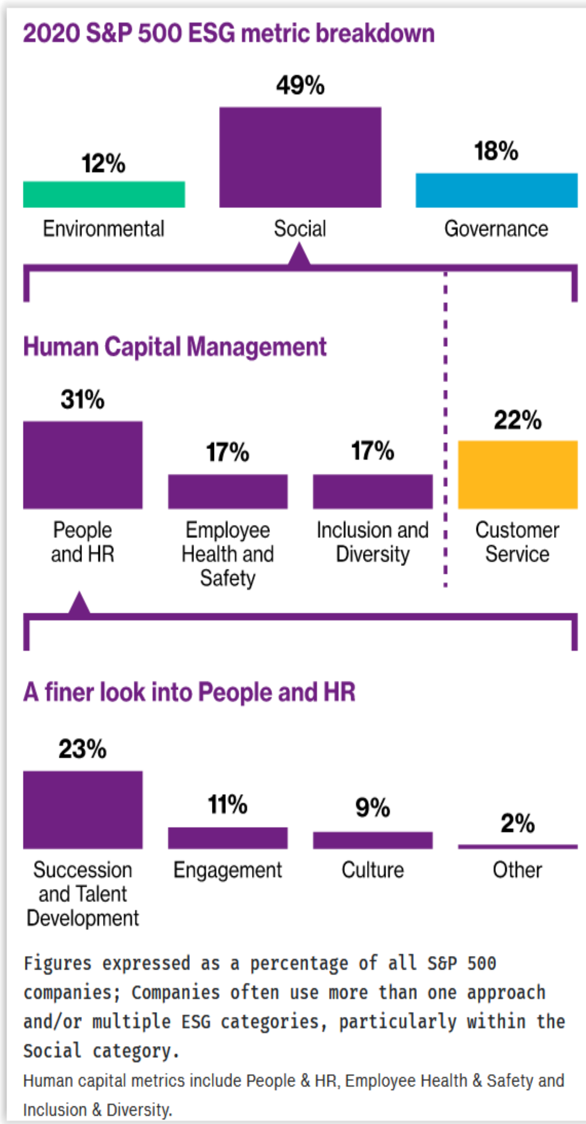
Approximate costs for external advisory services are as follows:

- Sustainability consultants: $390,000 to support Energy & Water invoice processing, data roll up, management & emission calculation, CDP reporting support
- Other: $90,000 for CDP, EcoDesk & EcoVadis Climate Supply Chain Surveys
- Assurance costs: $22,000.

Appendix B

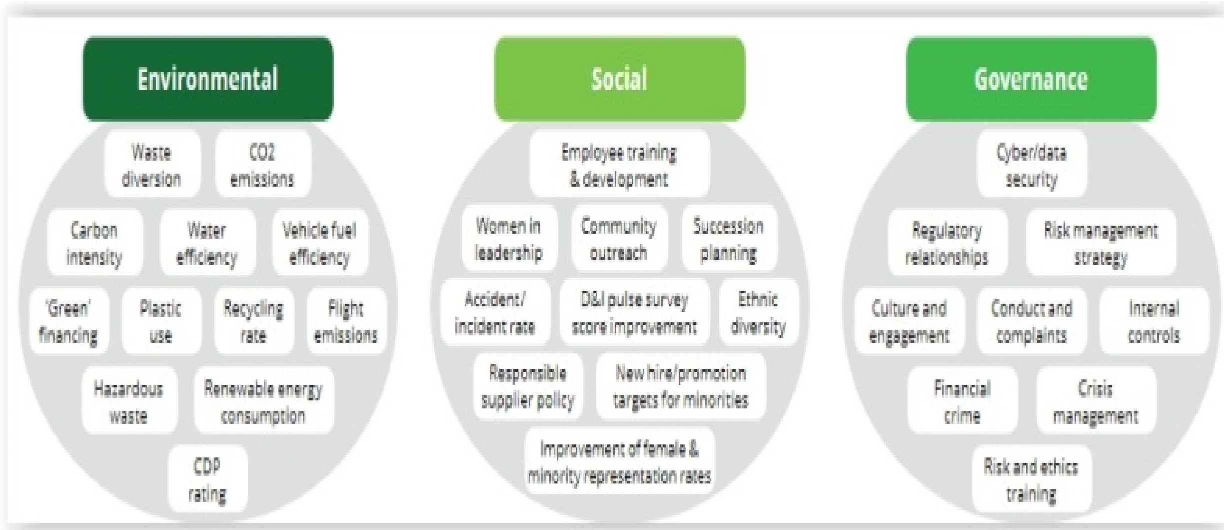
Supporting Data in Response to Question 8

Willis Towers Watson[52]

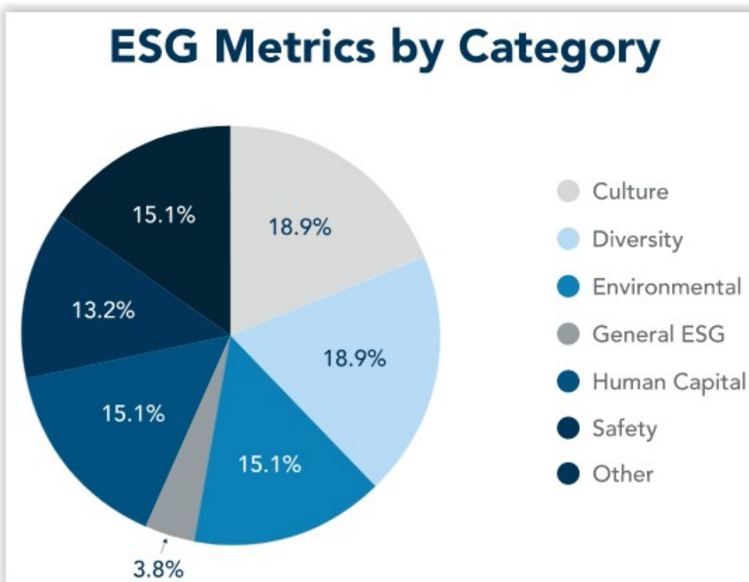


[52] *See* Willis Towers Watson, "The growing importance of ESG measures in incentives," November 2020, https://www.willistowerswatson.com/en-us/Insights/2020/11/The-Growing-Importance-of-ESG-Measures-in-Incentives?utm_source=Marketo&utm_medium=email&utm_content=HCB.EC.NAR.NAR.EN.20201123.Executive.Pay.Memo.23Nov2020.EBP2843A1&utm_campaign=Other-HCB_&utm_ter.

Deloitte[53]



Equilar[54]



[53] *See* Deloitte, "Incorporating ESG measures into executive compensation plans" April 2021, https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/us-incorporating-esg-measures-into-executive-compensation-plans-new-1.pdf.
[54] *See* Equilar, "Creating Long-Term Value With ESG Metrics," March 2021, https://www.equilar.com/blogs/502-creating-long-term-value-with-esg-metrics.html.