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MORTGAGE BANKERS ASSOCIATION

June 14, 2021

Commissioner Allison Herren Lee
The Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-0213

Re: Response to SEC's Climate Risk and Disclosure RFI

Dear Commissioner Lee:

The Mortgage Bankers Association (MBA)[1] respectfully submits this response to the U.S. Securities and Exchange Commission's (SEC) Request for Input (RFI) on climate-related disclosures you announced on March 15, 2021.[2] As you described, the RFI requests input to inform SEC staff evaluation of disclosure rules "with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change."

We commend the SEC for requesting public input on climate-related disclosures. MBA represents the broad cross-section of participants in the single-family, multifamily, and commercial real estate financing industry. Our members are actively engaged in the fluid process of identifying, assessing, collecting, and reporting information related to climate-change risk and to Environmental, Social, and Governance (ESG) investing from the perspective of commercial and multifamily lenders and investors.

As an organization, MBA is working to help our members navigate these dynamic issues. In the last year, MBA has created a Commercial Real Estate Finance (CREF) Green Lending Roundtable of MBA commercial and multifamily members to gather and share information on emerging investor expectations and appetites.

MBA and its members are also working with MISMO, the real estate finance industry's standards organization, to facilitate the development of green lending and ESG standards, including, but not limited to data, terms, and definitions, to support the flow of clear, consistent information throughout the mortgage finance ecosystem. MISMO's work is grounded in an open process to develop, promote, and maintain voluntary consensus-based standards that allow market participants, including lenders, investors, servicers, mortgage insurers, vendors, regulators, and

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] Available here: https://www.sec.gov/news/public-statement/lee-climate-change-disclosures

Government Sponsored Enterprises to exchange information more securely, efficiently, and economically.

While we are still in the early days of the development of a consensus on the salient data and models on climate-change risk and ESG, we would be happy to serve as a resource as these markets develop.

GUIDING PRINCIPLES

As the SEC gathers information and determines the best ways to facilitate the disclosure of consistent, comparable, and reliable information on climate change, we recommend the Commission continue to follow the following principles that have guided its work thus far:

- Clearly distinguish between climate-change risk and ESG.
- Focus on the SEC's statutory mission and authority.
- Apply a principles-based vs. prescriptive approach.
- Employ an iterative and interactive process.
- Balance costs and benefits.
- Harmonize efforts with other standard setters.

Clearly distinguish between climate-change risk and ESG.

Climate-change risk and ESG are related and are often spoken of together. The RFI, for example, describes the SEC's efforts on both climate-change risk disclosures and ESG disclosures, and Question 15 of the RFI asks about disclosures that might usefully overlap disclosures of climate-change risk and ESG investing. As a result, it can be easy for policymakers, companies, investors, and other stakeholders to think of climate-risk and ESG disclosure as the same thing.

It is important, therefore, to explicitly recognize that climate-change risk to one's portfolio and ESG investment decisions are related, but they involve two distinct categories of disclosure. Climate-risk disclosures, for example, focus on how a company or investment may be affected by a changing climate, whereas the "E" in ESG is related more to how a company's investments or action may affect the extent to which the climate does change. ESG also includes non-environmental Social and Governance elements, and there may be factors related to the Environmental element of ESG that are not directly related to climate change.

To avoid confusion across these two different categories of disclosure, we urge the SEC and other policymakers and stakeholders to clearly distinguish between the two in all communications.

Focus on SEC statutory mission and authority.

This RFI was issued in conjunction with SEC staff evaluation of disclosure rules "with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change." We believe this is in line with the SEC's core mission and statutory authority.

We urge the Commission to continue to address climate-change risk disclosures through the lens of transparency for investors, in line with its mission and authority. That is, the SEC should resist also taking on a role of addressing underlying climate change issues, or the role of supervising companies' management of climate-change risk, both of which fall within the missions and authorities of other federal agencies.

Apply a principles-based vs. prescriptive approach.

The best way to establish regulatory standards for an evolving area such as climate-change disclosure is to adopt a principles-based rather than a prescriptive approach. A principles-based approach can reasonably apply to future facts and circumstances that are not known or knowable at the time a standard is established, leaving room for evolution and innovation. In contrast, a prescriptive standard, even if it is appropriate at the time it is put into place, may not remain appropriate over time.

Here, a principles-based disclosure standard should be grounded in principles of materiality and prevention of misleading disclosures, together with the objective of facilitating the disclosure of consistent, comparable, and reliable information on climate change. Applying such an approach will allow both the industry and the SEC to adapt disclosures over time to facts and circumstances that will evolve continuously.

Employ an iterative and interactive process.

Disclosure standards must focus on information that is material to investors' investment decisions. Investors with transparent and material disclosures will be able to make informed decisions that fit their risk profile.

Materiality effectively is a conclusion of fact rather than a policy decision and so is not something than can be ordained. At any given time, the market will determine the information it considers germane. The SEC should plan for a process that can respond to market changes, rather than one in which the Commission attempts to lead the market.

To stay aligned with what investors consider material, the SEC should pair a principles-based approach with an iterative and interactive process to climate-change risk disclosure. Such a process will enable the SEC to monitor and respond to the continuing evolution of climate-change risk factors. This RFI is an example of such a process, and we urge the SEC to continue this approach to its disclosure-development process.

We further recommend that the SEC establish working groups to focus on any specialized disclosures that may relate to particular asset classes. Such working groups can help the SEC determine materiality for each type of asset class, where needed. Such partnerships have previously helped policymakers address industry-wide issues as they have evolved, as has been done with the Alternative Reference Rates Committee, sponsored by the Federal Reserve, as it relates to the LIBOR transition. Such working groups could benefit from the MBA's work via MISMO and its Green Lending Roundtable in both the commercial and residential real estate spaces.

Balance costs and benefits.

Every regulatory action should be supported by a consideration of both the costs and benefits of that action. We appreciate that, in the context of ESG disclosures, the SEC recently highlighted the need to do a cost-benefit analysis of any actions is considers on climate risk disclosure.[3]

The Commission similarly should conduct a cost-benefit analysis of any actions it considers on climate-change risk disclosure. We caution, however, that, given the variety of businesses and investments affected by such disclosures, and the breadth and range of climate- and ESG-related issues, a one-size-fits all approach to a cost-benefit analysis for either climate-change risk or ESG disclosures clearly will not work.

Harmonize with other standard setters.

The interests of investors can be served by disclosure standards that are comparable across standard setters, and the SEC can play a leading role in the development of a baseline global framework for disclosure of climate-change risk.

We appreciate that the SEC recognized in the context of ESG that disclosure comparability is a worthy goal, and also recognized that establishing comparable disclosure standards is complex and raises a number of important considerations.[4] To the extent feasible and appropriate, the SEC also should consider harmonizing disclosures on climate-change risk with federal banking agencies' supervisory requirements for risk management, as well as accounting disclosures.

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MBA appreciates the thoughtful, open, and deliberative approach the SEC is taking on climate- and ESG-related disclosures, an approach that recognizes the extraordinary impacts these issues could have on markets. We also appreciate the opportunity to respond to this RFI and look forward to participating in the SEC's process of facilitating the disclosure of relevant and reliable information on climate change and on ESG.

Respectfully,

Robert D. Broeksmit, CMB
President and Chief Executive Officer

cc: Chairman Gary Gensler

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[3] See Public Statement of John Coates, Acting Director, Division of Corporate Finance, *ESG Disclosure – Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets* (March 11, 2021).

[4] Id. ("Establishing a global framework … is complex and raises a number of considerations. Funding, governance and public accountability are all critical elements of a reliable, trusted disclosure system. Funding needs to be reliable and adequate, both now and over a reasonable time period into the future, and should not detract from other essential elements of the system for public company disclosures.").