SOCIAL VALUE
UNITED STATES

June 14, 2021

Re: Public Statement: Public Input Welcomed on Climate Change Disclosures, Acting Chair Allison Herren Lee, March 15, 2021.

Chair Gensler,

I am Policy Committee chair of Social Value US, a non-profit organization and member of Social Value International, a network of over 2,000 professionals with national chapters in 24 countries that seeks to improve how society accounts for and manages social value alongside financial value.

We appreciate the opportunity to comment on the above referenced Request for Input by the Securities and Exchange Commission (the "SEC" or the "Commission") which rightly identified the urgent need for mandatory climate and environmental, social, and governance (ESG) disclosures. The Commission should move quickly to propose, adopt, implement, and enforce detailed disclosure requirements for all issuers.

Though we have informed opinions on several of the questions posed by Acting Chair Allison Herren Lee, we limit our responses to those that directly relate to one or more of the seven principles of Social Value. For questions we do not address, we endorse the responses and comments to SEC's questions submitted by Public Citizen and Americans for Financial Reform Education Fund.

As noted, our comments derive from Social Value International's Seven Principles of Social Value[1]:

1. Involve stakeholders
2. Understand what changes
3. Value the outcomes that matter
4. Only include what is material
5. Do not over-claim
6. Be transparent
7. Verify the result

These principles are intended as a guide for organizations that seek to manage and/or report their social and environmental impacts.

Before turning to specific questions, two issues that cut across many of not all the questions posed by the SEC are: 1) involving stakeholders besides shareholders in disclosures; and 2) the breadth of disclosures (the climate portion of the E as well as other E, S, and G issues). While the second issue falls under question 15, its relevance to the other questions compels us to address up front.

Stakeholders – The Risk Considerations of Reasonable Investors

We believe SEC needs to ensure that reasonable investors have access to broader social and environmental impacts (and the risks they offer) of their current or potential investments. We also believe that for reasonable investors to have a sufficient accounting of such risks and impacts, the individuals, communities, and organizations, i.e., stakeholders, who experience the material financial, social, or environmental risks and rewards of an investment and investees' activities, need to be considered and accounted.

[1] https://socialvalueint.org/principles-of-social-value/

This position informs other aspects of ESG disclosure including:

- Determinations that reasonable investors should consult widely with stakeholders to define what is material.
- Decisions on how those material issues are measured, tracked, disclosed, and managed must adequately involve stakeholders.
- Processes and timeframes for identifying, convening, and consulting stakeholders as well how that information is used and reported.

This idea of an expanded view of reasonable investor is not new nor is our position on who are stakeholders. Key actors from the multilateral, investor, and corporate sectors have all weighed in on this issue. For example:

- The United Nations Development Program's Sustainable Development Goals Impact Standards for enterprises[2], private equity[3], and bond issuers[4], define stakeholders to include those most impacted environmentally and socially by investments and actions.
- The Impact Management Project ("a forum for building global consensus on measuring, managing and reporting impacts on sustainability"[5]) defines stakeholders to include "Those (people and planet) who are affected, intentionally or unintentionally, directly or indirectly, by an enterprise's activities and decisions (noting that inaction is also a decision), including local communities who are directly or indirectly affected by an enterprise's activities (e.g. unhealthy factory emissions that negatively affect surrounding local communities; or affordable housing units for underserved communities).[6]
- The World Economic Forum speaks to stakeholder engagement, "Effective stakeholder engagement should ensure a robust process for identifying and selecting relevant stakeholders (e.g., employees, customers, suppliers, local communities and shareholders) and for proactively soliciting their input, while outlining the frequency and method of engagement. Such engagement is vital in helping to frame effective, purpose-led strategy, to strengthen accountability for sustainable value creation and to advance trust in corporations."[7]

ESG – Disclose More than Climate

Like others, we believe that SEC must require disclosure of other material risks (as defined by reasonable investors informed by stakeholders) beyond climate risks. While climate change remains a singular threat to global ecosystems, and thus our economies and societies, there are a myriad of other environmental (E) and social (S) material impacts that reasonable investors need consider and that corporate entities need to disclose. We refer you to the seventeen UNDP Sustainable Development Goals (SDGs), which summarize the major categories of "E and S" well.[8] They also provide 169 targets, and 232 indicators, many of which align or are incorporated into several of the voluntary standards offered by GRI, SASB, and others.

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[2] https://sdgimpact.undp.org/practice-standards.html
[3] https://sdgimpact.undp.org/private-equity.html
[4] https://sdgimpact.undp.org/sdg-bonds.html
[5] https://impactmanagementproject.com/
[6] https://impactmanagementproject.com/wp-content/uploads/Guidance-on-engaging-all-affected-stakeholders.pdf
[7] https://www.weforum.org/reports/measuring-stakeholder-capitalism-towards-common-metrics-and-consistent-reporting-of-sustainable-value-creation
[8] https://www.undp.org/sustainable-development-goals

The rationale for expanding mandatory disclosures beyond climate have been articulated in several places. One of the most compelling in terms of risks to investors is from a May 2021 paper by Krueger et al, "The Effects of Mandatory ESG Disclosure Around the World", which assessed the impacts of mandatory ESG disclosure in 25 countries.[9] It concluded,

> *Mandatory ESG disclosure increases the accuracy of analysts' earnings forecasts, lowers forecast dispersion, reduces negative ESG incidents, and lowers the likelihood of stock price crashes. Overall, our results provide evidence in support of the view that mandatory ESG disclosure regulation improves the corporate information environment and leads to beneficial real outcomes. Our results are encouraging and support more regulatory changes for other countries that do not have mandatory ESG disclosure regimes yet.*

The corporate point of view also supports ESG disclosure. The World Economic Forum September 2020 paper, "Measuring Stakeholder Capitalism Towards Common Metrics and Consistent Reporting of Sustainable Value Creation" states:

> *The absence of a generally accepted international framework for the reporting of material aspects of ESG and other relevant considerations for long-term value creation contrasts with the well-established standards that exist for reporting and verifying financial performance. The existence of multiple ESG measurement and reporting frameworks and lack of consistency and comparability of metrics were identified as pain points that hinder the ability of companies to meaningfully and credibly demonstrate the progress they are making on sustainability, including their contribution to the SDGs.*[10]

Finally, as SEC is aware, there are competitive reasons for expanding disclosures beyond climate. The European Union is moving aggressively with such requirement.[11] Moreover, they will be applicable to any firms operating in the EU including US firms.

That said, Social Value US supports SEC's inclination to phase in disclosure on climate impacts first, then the other critical ESG issues swiftly thereafter.

We turn now to addressing Commissioner Lee's specific questions.

Question 1. *How can the Commission best regulate, monitor, review, and guide climate change disclosures 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?*

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[9] Krueger, Phillip, Zacharias Sautner, Dragon Yongjun Tang, and Rui Zhong. 2021. The Effects of Mandatory ESG Disclosure Around the World. Working Paper 754; European Corporate Governance Institute; http://ssrn.com/abstract_id=3832745

[10] https://www.weforum.org/whitepapers/toward-common-metrics-and-consistent-reporting-of-sustainable-value-creation

[11] See the European Commission/s Non-Financial Reporting Directive (https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf), and Corporate Sustainability Reporting Directive, https://ec.europa.eu/info/publications/210421-sustainable-finance-communication_en#csrd

The above referenced reports make plain that the SEC needs to mandate ESG disclosure. To make disclosure reports useful to reasonable investors, they need to include:

- ESG indicators specific to the company and to the sector in which the company operates.
- A description of how those indicators were measured, and the frequency at which they are monitored and measured.
- The rationale for the indicators selected and measured.
- The long-term target or goal for each of the ESG indicators, and annual progress towards those targets. This will help investors better understand both immediate and longer-term risks.
- The action plan for managing ESG to ensure that targets will be met or the rationale for why they cannot be met or why the targets have changed. This management plan helps investors better understand the ways in which companies are managing current and future risks.
- The ways in which stakeholders have been involved in ESG-related decisions, and the ways in which stakeholders have been notified about the disclosure report, how they can access it, and how it has been disseminated.

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

Disclosure reports need to be subjected to robust SEC and third-party programs to monitor, assure the quality and veracity of the reporting, and undertake enforcement actions as needed. Internally, the SEC needs to establish an ESG monitoring and enforcement arm and direct the Public Company Accounting Oversight Board to review and to develop necessary audit and attestation ESG standards.

To expedite the efficient and timely access to ESG monitoring, disclosure, and management information, the SEC needs to require tagging of specific sections or subsections of the reporting including, but not necessarily limited to:

- the specific ESG indicators, the monitoring data, and the year-over-year trend data for each.
- stakeholder engagement processes and practices, and the results of them.

This will ensure that third-party actors can access, assess, and compare ESG information, determine its veracity as well as utility, and make their own determination as to whether the reports adequately meet the SEC mandates as well as whether enforcement actions are warranted.

Regarding the legal standing of such third parties and private right of action, we recognize that the SEC may be limited by statutory authority and case law. We strongly urge SEC to test the limits of such authority. For example, SEC should:

- Articulate the rationale for including a broader set of stakeholders – individuals, communities, and organizations who experience the material financial, social, or environmental risks and rewards of an investment and investees' activities – in the ESG disclosure issues discussed above.

- Articulate and support a private right of action that has a less stringent intentionality standard and a "cause harm" standard not based on financial harm but one based on social and environmental harm.
- Include categories of rebuttal evidence that would encourage courts to include stakeholder groups that will more fairly represent the interests of the class.
- Study whether private rights of action need to be expanded to properly enforce ESG disclosure rules.

If SEC determines that it cannot pursue such monitoring and enforcement actions within current statutory constraints, then we urge it to: i) suggest new legislative language to give it the legal authority; and, ii) look to other agencies that could support SEC actions under their own authority.

Social Value US appreciates and supports SEC's efforts to address ESG issues. We value the opportunity to help it advance an effective ESG disclosure, management, and enforcement scheme that will protect reasonable investors' financial interests by ensuring they have adequate knowledge of, and access to, material environmental and social information on, and risks of, companies.

Sincerely,

John Sherman, Chair
Social Value US Policy Committee

David Pritchard, President
Social Value US