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June 14, 2021

**Via Electronic Mail**

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0213

**Re: Request for Information, Climate Risk Disclosure**

Dear Chair Gensler:

The Climate Risk Disclosure Lab ("Lab") welcomes the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") March 15, 2021 request for information regarding climate risk disclosures. At the Climate Risk Disclosure Lab, we know this is a difficult topic to address, and we applaud the importance and prioritization given climate change disclosures by the Commission. The Lab stands ready and willing to further explain our answers below, provide background information, additional materials, and facilitate wide ranging conversations with stakeholders as the Commission further considers how best to tackle this urgent priority.

**About the Climate Risk Disclosure Lab**

The Climate Risk Disclosure Lab seeks to support those in government, the private sector, and civil society who are working to address climate change and the risks it poses to the global financial system, through effective implementation of climate risk disclosure rules. The Lab is an education and policy development initiative created and led by Duke Law's Global Financial Markets Center, the Nicholas Institute for Environmental Policy Solutions at Duke University, and the National Whistleblower Center.

As such, we act as a hub for sharing information and ideas on climate-related disclosure standards. Our in-house law and policy experts assemble research and contribute papers and policy-relevant reports to highlight current climate risk disclosure standards as well as proposals to improve them. Many of these products are developed collaboratively with academics, non-governmental organization (NGO) policy experts, and industry leaders. In addition, the Lab provides a forum for outside experts to submit their writings on proposed approaches to climate risk disclosure. Finally, we provide information and ideas that legislators and regulatory agencies can use in establishing and strengthening whistleblower programs.

Our vision is that this sharing of information and ideas will lead to more robust risk disclosure regimes and in turn, better-informed choices about managing climate risks by industry leaders, including investors, policymakers, law enforcement officials, regulators, NGOs, academics, and potential whistleblowers.

Over the course of several weeks, the Lab team held a series of workshops to discuss the issues raised by the SEC. After considerable research, outreach, and discussion, this letter provides the Lab's best attempt to provide consensus responses to the questions presented. While the Lab's Steering Committee[1] members do not agree with every single detail set forth in these responses, there is collective agreement that the SEC should adopt mandatory climate change disclosures in accordance with the Lab's recommendations. Finally, the Lab provides a response to every question posed. Our group felt it was important to consider and weigh in on each question, given the time and effort SEC leadership and staff clearly invested in developing these thoughtful and detailed questions.

**Summary Recommendations**

The Lab's summary recommendations for appropriate standards for climate risk disclosures and the procedures that the SEC can utilize to develop and adopt these standards are described below. Recognizing the complex task before the SEC and the necessity for immediate action on climate risk disclosures, the Lab strived to prioritize actions which the SEC can take administratively without delay.

*The Lab answered all the SEC's questions and arrived at the following conclusions:*

(1) Climate risk disclosures should be incorporated into Regulations S-X and, where appropriate, into Regulation S-K. Such an amendment to Regulation S-X could mandate, as appropriate, that

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[1] Climate Risk Disclosure Lab Steering Committee, *available at* https://climatedisclosurelab.duke.edu/about-us/steering-committee/.

certain climate disclosures are included in the footnotes to the financial statement. Any disclosures deemed to be inappropriate for inclusion in the financial statements of public companies through Regulation S-X should be mandated by amendment to Regulation S-K. Regulation S-K generally focuses on narrative disclosures, and it is therefore a good tool for incorporating climate risk disclosures. This is in line with SEC's 2010 interpretive guidance that identified four regulations of Regulation S-K that relate to disclosure of climate change risks.

(2) The Lab does not consider third parties to be appropriate standard setters of climate risk disclosures. The SEC should not delegate the Commission's rulemaking authorities regarding climate risk disclosures to a third party. Nevertheless, the standards created by third parties, e.g., Task Force on Climate-related Financial Disclosures ("TCFD"), can and should be utilized as a starting point for a new standard promulgated and enforced by the SEC.

(3) Issuers in the financial sector are uniquely exposed to the risks of climate change through their counterparties and the securities they trade and hold. In addition, unlike most sectors, they can amplify detrimental carbon emissions through their financing activity. Accordingly, initial climate risk disclosures by issuers should be categorized into two groups—financial companies and non-financial corporates. Over the long term, the SEC should consider a gradual phase-in of sector-specific disclosures.

(4) The TCFD recommendations are widely used and well-respected by many investors and registrants. Therefore, in its rulemaking, the SEC should reference the TCFD recommendations and use them as a starting point for developing its own standard for climate risk disclosure.

Our comments offer a comprehensive set of answers to each individual question asked by the SEC, along with a detailed accounting of these recommendations. The Lab looks forward to further constructive dialogue in the months ahead and appreciates the opportunity to share our opinions on this incredibly important matter.

## QUESTIONS FOR CONSIDERATION

### Question 1

**1.1. 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?**

To fulfill its mission of regulating, monitoring, reviewing, and guiding climate change disclosure, the SEC will have to develop the institutional expertise to fulfill this function. At minimum, this requires infusing existing SEC divisions with climate knowledgeable personnel and methodological resources.

The SEC may also want to consider a commission-wide task force made up of staff from each relevant division and office to coordinate climate risk disclosures and other relevant climate related matters. This group could be permanent or could sunset once climate disclosure rules have been in effect for some time and public company registrants, investors, and other relevant stakeholder are comfortable with the process and information being disclosed.

***Advisory Committee.*** The SEC should establish a new advisory committee with representatives from the private sector, the investing community, academia, and civil society to provide continuous guidance on the effectiveness of climate disclosure rules and the compliance burden for disclosing firms. This advisory committee can make recommendations for changes to the climate disclosure framework.

***Climate and ESG Task Force***. The SEC may consider making the Climate and ESG Task Force in the Division of Enforcement permanent. This Task Force may help better coordinate enforcement investigations seeking to identify material omissions or misstatements in disclosure of climate risks under the current, or future, climate risk disclosure standard.

***DERA***. The SEC's Division of Economic and Risk Analysis ("DERA") plays an important role in facilitating standardized disclosure and detecting violations of securities law. Within DERA, the Office of Structured Disclosure "works… to design data structuring approaches for required disclosures… and works with investors, regulated entities, and the public to support the submission and use of structured data."[2] DERA's Office of Risk Assessments and Office of Data Science facilitates the efficient enforcement of federal securities law by "developing customized, analytic tools and analyses to proactively detect market risks indicative of possible violations." DERA should ramp-up its climate risk capacity and play a role in both the dissemination of research on climate-related financial risks, as well as the technical design of climate risk disclosure frameworks.

***Corporation Finance***. The SEC Division of Corporation Finance is the group within the SEC responsible for reviewing registration statements (and periodic reports) of public companies for adherence to Regulations S-X and S-K. Corporate Finance seeks to ensure that investors are provided with material information in order to make informed investment decisions. This division should be the reviewer of disclosures by public companies pursuant to Regulation S-X and Regulation S-K.

***PCAOB***. To the extent new climate risk disclosures are mandated for inclusion in financial reports through Regulation S-X, auditors will play a critical role in assuring the material accuracy of the form and content of those disclosures. The Public Company Accounting Oversight Board (PCAOB) has responsibility to establish audit, quality control, ethics, independence, and other standards relating to public company audits.[3] The PCAOB should therefore review and modify, as appropriate, its standards to ensure effective application to any new climate risk disclosures mandated by the SEC in the financial statements of public companies.

### 1.2. Where and how should such disclosures be provided?

Climate risk disclosures should be included in companies' 10Ks and 10Qs. This will require amending Regulation S-X and S-K.

Where appropriate, the disclosures should be mandated by amending Regulation S-X. This is because disclosures provided in financial statements required by Regulation S-X will be subject to audit. Such an amendment to Regulation S-X could mandate that climate disclosures are included in

[2] U.S. Securities & Exchange Comm'n, *Office of Structured Disclosure*, *available at* https://www.sec.gov/structureddata.
[3] Public Company Accounting Oversight Board, *Standards*, *available at* https://pcaobus.org/oversight/standards.

the footnotes to the financial statement. The narrative footnote disclosures could discuss a company's emissions associated with the assets and cash flows itemized in the financial statement.

Other issues that could be included in footnotes are price of carbon assumptions made by the registrant, emissions embedded in the fossil fuel reserves of fossil fuel companies, annual emissions that are offset via purchase of carbon offsets, the names of the offset projects, and CAPEX considerations to determine the transition costs.

Any disclosures deemed inappropriate for inclusion in the financial statements of public companies through Regulation S-X should alternatively be mandated by amendment to Regulation S-K, which generally focuses on narrative disclosures. Such amendments would be in line with SEC's 2010 interpretive guidance that identified four regulations of Regulation S-K that relate to disclosure of climate change risks.[4]

Climate risk disclosures should also be reported in the "Risk Factors" section of 10Ks and 10Qs. In addition, particular aspects of climate risk could also be included in "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Another option is to mandate a new section entitled "Climate Risks." If the SEC decides not to mandate a new section, TCFD recommendations should be utilized and included within the appropriate items in the annual report on Form 10-K. Under TCFD recommendations, "Governance" can be included in Item 10 "Directors, Executive Officers, and Corporate Governance," and "Risk Management" can be included under Item 1A "Risk Factors." "Strategy" can be included in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations." "Metrics and Targets" can be included in Item 15, "Exhibits, Financial Statement Schedules."

**1.3. Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?**

Yes. As described above, the disclosures should be included in 10Ks and 10Qs.

**<u>Question 2</u>**

**2.1. What information related to climate risks can be quantified and measured?**

A significant amount of information related to climate risks can be quantified and measured. For non-financial corporations, physical risks may lend themselves to more precise measurement, but there remains substantive information pertaining to transition risk that can also be measured. The converse is true in the banking sector. According to the Basel Committee on Banking Supervision, "to date, measurement of climate-related financial risks by banks and supervisors has centered on mapping near-term transition risk drivers into counterparty and portfolio exposures."[5]

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[4] Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6289 (Feb. 8, 2010), *available at* https://www.sec.gov/rules/interp/2010/33-9106.pdf.
[5] Basel Committee on Banking Supervision, *Climate-Related Financial Risks – Measurement Methodologies* (Apr. 2021), *available at* https://www.bis.org/bcbs/publ/d518.pdf.

To elicit comparable, consistent, and credible information from issuers, the following disclosures should be mandated for all companies:

- Per TCFD's Metrics and Targets recommendation, companies can disclose "the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process."[6]
- Per TCFD, "Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks."[7] Per TCFD, "where relevant, organizations should provide their internal carbon prices as well as climate-related opportunity metrics such as revenue from products and services designed for a lower-carbon economy."[8]
- Location of corporate operations, the origins and routes of their supply chains, the sources, and quantities of inputs like water and energy, etc.
- Location and resilience of the facilities of key suppliers and distributors.
- Total amount of fossil-fuel related assets owned or managed by the company.
- Use of carbon offsets. How many offsets does the company retire each year? Which emissions (Scope 1,2,3) are offset? Which projects do the offsets come from?
- Annual capital expenditures to reduce emissions.
- For companies subject to "cap and trade" laws, expenses related to purchasing allowances where reduction targets cannot be met.
- Cost of compliance with environmental laws.
- Key Performance Indicators (KPIs) used to assess progress against climate-related targets.

The following material physical risks should be disclosed by all companies:

- The physical climate risks to which they may be exposed in the future due to the geographic location of their facilities.
- The estimated financial impacts from risks they have identified as being material.

Metrics for projected material impacts may include a combination of:

- The number of sites and business lines exposed to relevant and material climate impacts.
- Projected material changes in production, revenues, operational expenditure, or capital expenditure due to climate change.
- Value-at-risk from probabilistic estimates (for example, 1:100 or 1:200) of extreme weather event disruption to operations or production, key suppliers, customers, or markets.
- Annual average losses from projected climate impacts.
- Impact from recent extreme weather events, to include:
    - Decreased production capacity due to supply-chain interruption.
    - Reduced revenues.
    - Increase in operational expenditure.
- Increase in capital expenditure.

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[6] TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* (Jun. 2017), p. 22, *available at* https://www.fsb-tcfd.org/recommendations/.
[7] *Id.*
[8] *Id.*

Disclosures for financial institutions with material physical risks should include:

- Location data for mortgage collateral.
- Geospatial location of counterparties.
- Transition risk (counterparties' climate footprint or financed emissions).

**2.2. How are markets currently using quantified information?**

Market actors are currently using quantified climate risk disclosure metrics, although it is difficult to ascertain exactly which quantified metrics are more useful. The challenge is that any data points a market participant deems predictive are unlikely to be discussed, for fear of giving away a competitive secret and making the metric less predictive.

From the TCFD's 2020 status report, "as part of Climate Action 100+, more than 500 investors with over $47 trillion in assets under management are engaging the world's largest corporate greenhouse gas emitters to strengthen their climate-related disclosures by implementing the TCFD recommendations. In addition, many large asset managers and asset owners have asked or encouraged investee companies broadly to report in line with the TCFD recommendations and reflected this in their investment practices or policies."[9]

There exists data on climate change guidelines applicable to specific industries. One of "three asks" on the Climate Action 100+ is to, "Provide enhanced *corporate disclosure* [emphasis added] in line with the final recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and sector-specific Global Investor Coalition on Climate Change (GIC) Investor Expectations on Climate Change guidelines (when applicable)."[10] Current "Investor Expectation" reports cover: Real Estate, Construction Materials, Steel Companies, Oil and Gas, Automotive, Electric Utilities, and Mining.[11]

**2.3. Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)?**

All companies should disclose scope 1, scope 2, and downstream and upstream scope 3 emissions.

**2.4. What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision?**

See disclosures proposed in subsection 2.1.

**2.5. Should disclosures be tiered or scaled based on the size and/or type of registrant? If so, how?**

The disclosures should not be tiered based on the company's size or exposure to climate change risk. Ultimately, the point of disclosure is to provide consistent, reliable, and comparable information that investors need to efficiently allocate capital in accordance with their risk-return

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[9] TCFD, *2020 Status Report: Task Force on Climate-related Financial Disclosures* (Oct. 2020), p. 2, *available at* https://www.fsb.org/wp-content/uploads/P291020-1.pdf.
[10] Climate action 100+, *The Three Asks*, *available at* https://www.climateaction100.org/approach/the-three-asks/.
[11] Global Investor Coalition on Climate Change, *Reports*, *available at* https://globalinvestorcoalition.org/reports/.

profile. Investors want this information regardless of the company size. For companies with limited exposure to climate change risk, they can say as much in the narrative component of a climate risk disclosure standard. Any disclosure standard provides registrants with some discretion around the level of detail to be disclosed, particularly around the non-quantitative components. Such discretion serves to lessen the reporting burden for registrants with minimal exposure to climate risks.

The required disclosures should vary, based on whether the company is a financial institution or not. Financial institutions are uniquely exposed to the risks of climate change through their counterparties and the securities they trade and hold. In addition, unlike most sectors, they can amplify detrimental carbon emissions through their financing activity.

**2.6. Should disclosures be phased in over time? If so, how?**

Given that investors are asking for climate disclosures now, it would be preferable to mandate the disclosures with no phase-in period. However, for many firms, implementing climate disclosures will be costly and operationally complex. Thus, these firms will need some time before they can be in full compliance. If the SEC adopts the TCFD framework and supplements it with mandatory line-item disclosures, then it should require certain principles to be disclosed before full implementation. For instance, an organization should disclose their governance around climate-related risks and opportunities right away. Similarly, a firm should promptly disclose data on how it incorporates climate risk into existing risk management processes and frameworks. However, it may be prudent to give firms two years to be in full compliance with the "strategy" and "metrics and targets" that are core-elements of TCFD.

Even if climate disclosures are made immediate, the SEC would be wise to consider giving companies a one-to-two-year enforcement grace period.

**2.7. How are markets evaluating and pricing externalities of contributions to climate change?**

It is not entirely clear that markets are pricing externalities of the cost of, and contributions to, climate change. According to Madison Condon, four reasons why asset prices fail to properly account for climate risks are: 1) shareholders and analysts currently lack the fine-grained asset level data they need in order to make climate-risk assessments; 2) market actors continue to rely on risk assessment methodologies that are outdated in a climate-changed world; 3) corporate managers, with an eye toward maintaining a high share price, have little incentive to discover and disclose information that might reveal their company's stock price is overvalued; and 4) many physical climate risks will occur within the relevant horizon for valuing securities but outside of conventional risk assessment horizons for investors.[12]

BlackRock predicts that "within a decade, more than 15% of the current S&P National Municipal Bond Index (by market value) would be issued by [metropolitan areas] suffering likely average annualized economic losses of up to 0.5% to 1% of GDP" due to climate change.[13] Similarly, the International Monetary Fund found that present market-implied equity risk premiums are

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[12] M. Condon, *Market Myopia's Climate Bubble* (Feb. 9, 2021), *available at* https://ssrn.com/abstract=3782675.
[13] BlackRock, *Getting Physical: Assessing Climate Risks* (Apr. 2019), *available at* https://www.blackrock.com/ch/individual/en/literature/whitepaper/bii-physical-climate-risks-april-2019.pdf.

consistently lower than premiums calculated via an asset pricing model that takes temperature-induced disaster risk into account. It concluded that the discrepancy suggests "that equity markets may not currently price [physical] climate change risk."[14] Finally, there is a large gap between the economy-wide estimates of the impact of climate change in the financial sector (ranging broadly from $4.2 to $43 trillion), and the cumulative impacts disclosed by individual companies in their financial reporting.[15]

The above findings emphasize the point that investors are not currently pricing the externalities associated with climate change. Therefore, consistent, comparable, reliable, and mandatory climate risk disclosures are necessary so that investors can allocate capital efficiently.

**2.8. Do climate change related impacts affect the cost of capital, and if so, how and in what ways?**

Climate change related impacts clearly affect the cost of capital. For example, in the coal industry, the weighted average cost of capital (WACC) has increased substantially.[16] Investors are speaking with their feet. As capital flows out of sectors that are most at risk from the physical and transition risks associated with climate change, these sectors will see their cost of capital increase.

**2.9. How have registrants or investors analyzed risks and costs associated with climate change?**

From the registrant's standpoint, there are many companies that are disclosing climate risks in accordance with the TCFD framework.[17] One purpose of the TCFD is to get companies to incorporate climate-related risks into their existing risk management processes. In fact, across the 11 recommended disclosure items in the TCFD framework, "risks and opportunities" was the most commonly disclosed item the last three years (in 2019, 41% of companies disclosed information on this).[18]

Investors are increasingly incorporating climate risks into their decision-making process. In his January 2020 "Dear CEO" letter, BlackRock's CEO Larry Fink said "climate risk is investment

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14 IMF, *Global Financial Stability Report. Chapter 5: Climate Change, Online Boxes* (Apr. 2020), p. 4, available at https://www.imf.org/-/media/Files/Publications/GFSR/2020/April/English/onlinebox51.ashx.

15 TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* (Jun. 2017), pp. ii-iii, *available at* https://www.fsb-tcfd.org/recommendations/.

16 J. Mills, Petroleum Economist, *Capital Costs Rise on Sustainability Concerns* (Oct. 4, 2019), *available at* https://pemedianetwork.com/petroleum-economist/articles/corporate-finance/2019/capital-costs-rise-on-sustainability-concerns.

17 TCFD, *2020 Status Report: Task Force on Climate-related Financial Disclosures* (Oct. 2020), p. 2, *available at* https://www.fsb.org/wp-content/uploads/P291020-1.pdf. According to the TCFD's 2020 status report, "Over the past 15 months, the number of organizations expressing support for the TCFD has grown more than 85%, reaching over 1,500 organizations globally, including over 1,340 companies with a market capitalization of $12.6 trillion and financial institutions responsible for assets of $150 trillion."

18 *Id.*, p. 11.

risk"[19] and in his 2021 letter, Fink reiterated the importance of climate risk for the financial markets.[20]

In 2020, BlackRock made sustainability its new standard for investing and completed its goal of having 100% of its active and advisory portfolios ESG-integrated. As the world's largest asset manager, BlackRock's decision making on climate is illustrative and a harbinger of where the broader investor community is heading.

Thus, investors are analyzing risks associated with climate change at both the firm level and the sector level. These investors are likely relying on ESG assessment companies to help inform their decision making. However, investors have expressed frustration around the lack of standardization in ESG and the availability of data.[21]

**2.10. What are registrants doing internally to evaluate or project climate scenarios, and what information from or about such internal evaluations should be disclosed to investors to inform investment and voting decisions?**

One of the recommended TCFD disclosure items under the "strategy" component is: "Describe the resilience of the company's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario."[22] According to the TCFD 2020 status report, only 1 in 15 reporting companies that the TCFD reviewed disclosed information on the resilience of its strategy.[23] While scenario analysis is an important tool for proper climate risk management, few companies are doing it.

Part of the challenge associated with scenario analysis disclosure is that companies are hesitant to do it "because they include confidential business information." In fact, this is the second most cited implementation issue, according to the TCFD's 2020 status report.[24]

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[19] L. Fink, BlackRock, *2020 Letter to CEOs* (2020), *available at* https://www.blackrock.com/us/individual/larry-fink-ceo-letter.

[20] L. Fink, BlackRock, *2021 Letter to CEOs* (2021), *available at* https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter ("From January through November 2020, investors in mutual funds and ETFs invested $288 billion globally in sustainable assets, a 96% increase over the whole of 2019. I believe that this is the beginning of a long but rapidly accelerating transition – one that will unfold over many years and reshape asset prices of every type.").

[21] TCFD, *2020 Status Report: Task Force on Climate-related Financial Disclosures* (Oct. 2020), p. 46, *available at* https://www.fsb.org/wp-content/uploads/P291020-1.pdf. In Mid-2020, Blackrock surveyed a number of their clients to better understand their drivers and challenges to sustainable investing. According to Blackrock, 53% of global respondents cited the poor quality or availability of ESG data and analytics as the biggest barrier to deeper or broader implementation of sustainable investing, higher than any other barrier.

[22] TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* (Jun. 2017), pp. 21, *available at* https://www.fsb-tcfd.org/recommendations/.

[23] TCFD, *2020 Status Report: Task Force on Climate-related Financial Disclosures* (Oct. 2020), p. 4, *available at* https://www.fsb.org/wp-content/uploads/P291020-1.pdf (The TCFD's review "found that the percentage of companies disclosing the resilience of their strategies, taking into consideration different climate-related scenarios, was significantly lower than that of any other recommended disclosure.").

[24] *Id.*, p. 46. Still, there are companies who are relying on scenario analysis and disclosing such information. The TCFD 2020, status report highlights the case of Moody's who assessed exposure under two scenarios to understand the financial impact of transition and physical risks: 1) high emissions scenario (up to 5°C of warming) associated with major physical climate impacts and 2) low emissions scenario (below 2°C of warming).

In 2020, the TCFD released its Guidance on Scenario Analysis for Non-Financial Companies. The Guidance notes that "For a company, the ultimate purpose of scenario analysis is to understand how it might perform under different hypothetical future climate states—thus positioning itself to make better strategic decisions and improve its strategy resilience."[25]

The TCFD's guidance on scenario analysis should form the basis of scenario analysis disclosure. Importantly, the TCFD notes that "companies are unlikely to face material legal risk in disclosing forward-looking climate-related information if they take necessary precautions to ensure that their disclosures are not materially misleading or inaccurate, including cautionary statements."[26]

Specifically, the following should be disclosed:

- a brief description of each scenario narrative, time horizon, and endpoints used by the company with a discussion of why the company believes the range of scenarios used covers its plausible risks and uncertainties;
- whether a company's scenarios were developed internally or externally, and the methodology used;
- key forces and drivers taken into consideration in each scenario and why they are important/relevant to the company;
- key inputs and constraints of the scenarios;
- a description of the various pathways in each scenario and the key assumptions underlying pathway development over time in response to the forces and drivers;
- implications of scenarios for the company's strategy, if at all (e.g., how the scenario translates to changes in the company's markets, such as demand shifts), and operational changes that may be required in that scenario (e.g., changes to energy sources, technology deployment, feedstocks or raw materials, recycling, waste handling); and
- the potential orders of magnitude, ranges, or relative directional shifts in terms of the company's:
    - assets
    - capital investments
    - earnings before interest, taxes, depreciation, and amortization
    - and revenue potential.

**2.11. How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?**

The lack of an established global or a national U.S. carbon market that establishes a uniform value for carbon and offsets does influence firm-level analysis of risks and costs associated with climate change. However, just as importantly, it impacts the benefits.

The lack of a global or national carbon market lends greater uncertainty around transition risks. Under a cap-and-trade system, any firm that cannot remain below their statutory carbon dioxide (or carbon dioxide equivalent) emissions limit will be forced to purchase emissions credits on the open

[25] TCFD, *Guidance on Scenario Analysis for Non-Financial Companies* (Oct. 2020), p. 7, *available at* https://assets.bbhub.io/company/sites/60/2020/09/2020-TCFD_Guidance-Scenario-Analysis-Guidance.pdf.
[26] *Id.*, p. 43.

market, which is a cost to the firm. Any firm which can stay below their emissions limit may generate revenue from selling emissions credits.

The ability to have a price on carbon and to project the scarcity and market price of an emissions allowance through forward modeling is a great tool in assessing the transition risk associated with a corporation's emitting activities. The price represents a certain, quantified cost of doing business that will be projected to rise over time if the market is well designed, and thus it can provide a quantified risk for investors. If the cap is not set in the carbon market at a level sufficient to address the climate issue, there is always a risk of the market getting more restrictive, but even that risk is quantifiable with scenario modeling.

At the same time, it is critical to note that carbon credits are not substitutes for emissions reductions by corporations, and hence do not preclude the establishment of a carbon pricing regime—which is one of the most critical levers to price-in the externalities associated with GHG emissions—and correct for a market failure.[27]

## Question 3

### 3.1. What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them?

The advantage is that the process used to develop the standards would reflect the input of the investors (who already ask for these standards) and the registrants (who would be the most impacted by their implementation). In addition, an inclusive stakeholder process would ensure the most recent and advanced modeling capabilities, data, and science gets incorporated. It could also permit the development of industry-specific standards. What is more, admitting stakeholders to the table would reduce the risk that superfluous disclosures would be added to the standard. This may make the disclosure standards more durable and able to withstand legal challenges.

As for disadvantages, there is no guarantee that a process involving stakeholders will result in an optimal outcome. In many instances, the interests of investors can diverge from the interests of registrants, and this may be the case with climate disclosure. Investors tend to want more information, and registrants tend to want disclosure to be as limited as possible, or at least minimize the cost of disclosure. A process that involves both registrants and investors could lead to stalemate or watered-down standards.

Carbon emissions result in negative externalities that are borne by society. Therefore, the public should be allowed to play a role, either directly or via their government, in developing climate disclosure standards to ensure that the full costs and benefits be accounted for in the standard.

### 3.2. Should those standards satisfy minimum disclosure requirements established by the Commission?

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[27] Boston Consulting Group, Global Financial Markets Association, *Climate Finance Markets and the Real Economy: Sizing the Global Need and Defining the Market Structure to Mobilize Capital* (Dec. 2020), p. 88, *available at* https://www.sifma.org/wp-content/uploads/2020/12/Climate-Finance-Markets-and-the-Real-Economy.pdf.

If the investors, registrants, and other industry participants developed disclosure standards mutually agreed by them, they should meet minimum requirements set by the SEC. If the SEC adopts the TCFD framework, minimum disclosure requirements should amount to TCFD requirements.

**3.3. How should such a system work?**

A two-tiered system, whereby the SEC establishes minimum disclosure standards and a third-party standard setter then develops additional requirements on top of the minimum standard, would become overly complex. However, there are several existing models in place that provide examples of how it could work.

The SEC could advocate for the creation of a self-regulatory organization (SRO) in the vein of existing securities exchanges. Securities SROs are statutorily subject to the oversight of the SEC and the agency has the authority to adopt rules and regulations governing SROs' activities and operations to the extent consistent with its statutory authority. Similarly, Congress could create a new climate disclosure standard-setting body with the requirement that the rules and disclosures developed by that body must adhere to minimum standards developed by the SEC. The SEC would also have oversight authority over such a climate disclosure standard setting SRO.

The second model is that of the Credit Rating Agencies (CRAs). The SEC could designate one industry-led initiative as the body responsible for developing climate disclosure standards and regulate this body for internal processes, record-keeping, and certain business practices, just as it does for CRAs. The SEC could then mandate the disclosure of this new body's methodologies. There already exists the Office of Credit Ratings which was mandated by the Dodd-Frank Act. The SEC could create a similar Office of Climate Disclosure. However, Congress would likely need to pass legislation giving the SEC this authority.

While the SRO and CRA models have their relative strengths, they are merely illustrative of policy options that Congress may want to consider in the future. We believe the SEC already has existing authority to mandate consistent, reliable, and comparable climate risk disclosures. Therefore, we recommend against pursuing a near-term course that would require Congressional action.

**3.4. What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards?**

Regarding metrics, the SEC should require all firms to disclose scope 1, 2, and 3 emissions. The methodology of accounting for scope 3 emissions should be left to the industry-led body. The SEC should also require firms to disclose all elements under the TCFD's "Governance," "Strategy," and "Risk Management" core recommendations.

**3.5. What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?**

While generally accepted accounting principles (GAAP) currently have industry specific guidance when appropriate, we believe the SEC should not consider sector-specific disclosure standards for now (to the extent climate risk disclosures get incorporated into financial statements, the SEC should seek to minimize sectoral differences). It is important that the climate risk disclosure standards be uniform. Investors should be able to look at uniform data and be able to easily compare disclosures of companies from different sectors.

There are 83 two-digit groups and 1,005 four-digit sectors. Regulating for over a thousand industry sectors creates a risk of confusing investors and other stakeholders. The SEC should consider a gradual phase-in of sector-specific disclosures. Initially, climate risk disclosures for issuers should be divided into two groups—financial companies and non-financial corporates.

## Question 4

**4.1. What are the advantages and disadvantages of establishing different climate change reporting standards for different industries, such as the financial sector, oil and gas, transportation, etc.?**

The Sustainable Accounting Standards Board, or SASB, serves as a leading example of a set of standards that supplement the TCFD framework by providing detail and specificity. The SASB standards provide accounting standards for climate-related disclosure. SASB itself is modeled upon the Financial Accounting Standards Board ("FASB"), the SEC's designated accounting standard setter. SASB standards are tailored to U.S. securities law by focusing on factors that are most likely to be deemed material under existing case law and SEC regulations. The SASB standards offer perspective on the advantages and disadvantages of establishing climate change standards for different industries.

Note that even if the SEC mandates only one disclosure framework, there will be differences across industries due to the qualitative disclosure components such as governance, risk management, and strategy. Metrics will determine the biggest discrepancies across industries.

***Disadvantages of Multiple Standards***

Perhaps the main disadvantage of developing multiple standards is that it may overwhelm investors with information. The SASB standards are industry-specific, with quantitative metrics for 77 different sectors and each set of standards is very detailed. Requiring industry-specific disclosures may make it more difficult for the average investor to compare across sectors or assess the risks of their entire portfolio. The SEC could ameliorate this problem by mandating a two-fold disclosure format. In one section of the financial statements, the firms may be required to report climate-related information that is common to all firms. In a separate section, the firms may be required to disclose industry-specific information.

Industry-specific disclosures can also increase the burden on reporting companies. Registrants may be forced to report information that is difficult to measure or otherwise inaccessible.

Although auditors already must be expert in GAAP for specific industries, industry-specific climate standards will add to their workload by requiring them to develop the expertise and industry-specific knowledge to assess the adequacy of a given firm's financial climate risk disclosures. It also challenges the SEC's enforcement staff who must develop similar climate risk skills and knowledge.

Giving auditors and enforcement staff additional responsibilities without additional resources may result in adverse findings and material misstatements going unnoticed.

### *Advantages of Multiple Standards*

The primary advantage of developing multiple standards is that industry-specific standards result in the disclosure of information that is most relevant and predicative of a firm's climate risks and opportunities. In many ways, this mirrors GAAP, which has both general principles and industry specific guidance when the general principles are not sufficient. For investors who want to precisely manage their climate risk exposure, industry-specific standards are more beneficial than generic standards.

Industry-specific standards also delineate the differential impacts that climate change will have on various sectors. For example, an oil and gas company will have different risk exposures than a software company.

### 4.2. How should any such industry-focused standards be developed and implemented?

To the extent possible, the SEC should leverage existing disclosure frameworks and standards. The SEC will have to leverage these outside frameworks in such a way that is democratically accountable, transparent, minimizes litigation risk, and receptive to industry and investor feedback. Because it is investors who are demanding this information, it is important they have a seat at the table in a more formalized and involved way than typical investor advisory groups. Democratic accountability means that any outside frameworks that form the basis of a new rule are developed with input from those the rule will impact the most; this input can be provided directly or through elected representatives.

***FASB***. There are multiple existing models that can help inform the development and implementation of industry-focused standards. One example is the Financial Accounting Standards Board, or FASB. While FASB is an independent, private, non-profit organization that sets accounting standards (GAAP), the SEC has designated FASB as the accounting standard setter for public companies. Similarly, the SEC may consider designating FASB as the appropriate authority for setting industry-specific nonfinancial standards to complement its accounting standards. However, FASB has not yet provided comprehensive guidance around how the potential financial implications of climate change and related risks should be reflected in financial statements, and they may currently lack the expertise and resources to fulfill this broader function.[28]

***IFRS***. Another model is the International Financial Reporting Standards (IFRS) issued by the IFRS Foundation, who along with the International Accounting Standards Board (IASB), have developed standards which measures a company's financial performance and position so that financial statements are comparable internationally. In March 2021, the IFRS Foundation announced the formation of a working group to accelerate convergence in global sustainability reporting standards. The goal is to establish an International Sustainability Standards Board (ISSB) under the IFRS Foundation structure.

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[28] In May 2021, FASB released a staff paper that provides an overview of how ESG matters intersect with financial accounting standards. *See*, FASB Staff Educational Paper, *Intersection of Environmental, Social, and Governance Matters with Financial Accounting Standards* (Mar. 19, 2021), *available at* https://www.fasb.org/cs/ContentServer?c=Document_C&cid=1176176379917&d=&pagename=FASB%2FDocument_C%2FDocumentPage.

The SEC could leverage this initiative and adopt the industry standards developed by the ISSB. The challenge is that this would likely require a convergence of GAAP and IFRS, which presents many logistical challenges beyond just developing climate risk disclosures. It may be too ambitious to converge IFRS and GAAP while at the same time launching industry-specific climate disclosure standards.

***IOSCO***. Another model to develop industry-specific climate disclosures is to leverage the work done by the International Organization of Securities Commissions (IOSCO). IOSCO develops, implements, and promotes adherence to internationally recognized standards for securities regulation. It works intensively with the G20 and the Financial Stability Board (FSB) on the global regulatory reform agenda. IOSCO could take up the task of developing industry-specific standards, but the group has already endorsed the system architecture for sustainability standard setting under the IFRS Foundation.[29]

***SEC***. The SEC could also establish industry-specific standards on their own. This would require a significant ramp-up in institutional expertise on climate-risks within the SEC. The SEC can develop standards with input from various stakeholders (investors, reporting firms, voluntary standard setters, etc.). It could go through the establishment of advisory committees consisting of stakeholders and experts. One model could be a high-level climate risk disclosure advisory committee with sub-committees for each sector that will then develop recommended sector-specific disclosure requirements. These committees would develop non-binding recommendations that would be made public. It would be up to the SEC whether to implement their recommendations. These advisory groups would also benefit from the participation of other government agencies with expertise in financial markets and climate science. For example, the National Oceanic and Atmospheric Administration (NOAA) and the Environmental Protection Agency (EPA) have scientific expertise on how much the climate is expected to change over a given period of time. Interagency working groups may accomplish similar objectives.

***New agency?*** The SEC could recommend that Congress establish an entirely new agency to develop and implement climate disclosure standards. Such an agency could resemble the Financial Industry Regulatory Authority (FINRA), which is an SRO that regulates member brokerage firms and exchange markets. This seems like the least desirable option because of both the length of time required for implementation and the likelihood of legal challenges.

If the SEC wishes to develop sector-specific standards, the Lab recommends working with the ISSB established under the IFRS Foundation structure. Such standards should be drawn from the TCFD framework. This recommendation is in line with the June 5, 2021 communiqué issued by G7 Finance Ministers and Central Bank Governors.[30]

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[29] IOSCO, *IOSCO Sees an Urgent Need for Globally Consistent, Comparable, and Reliable Sustainability Disclosure Standards and Announces its Priorities and Vision for a Sustainability Standards Board under the IFRS Foundation* (Feb. 24, 2021), *available at* https://www.iosco.org/news/pdf/IOSCONEWS594.pdf.

[30] U.S. Department of Treasury, *G7 Finance Ministers & Central Bank Governors Communiqué* (Jun. 5, 2021), *available at* https://home.treasury.gov/news/press-releases/jy0215.

## Question 5

**5.1. What are the advantages and disadvantages of rules that incorporate or draw on existing frameworks, such as, for example, those developed by the Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), and the Climate Disclosure Standards Board (CDSB)?**

The advantage is that the SEC may build off an already well-established framework. For example, the TCFD is a widely followed standard which is respected by both investors and registrants.[31] Another advantage is that many of these frameworks are already in use. Thus, the SEC will have the opportunity to draw from the best and worst practices that these existing frameworks developed.

The disadvantage is that there are no guarantees that existing frameworks are perfect or that they require disclosure of the information that a reasonable investor seeks when determining whether to buy, sell or hold registrant's securities. There also exists a risk that drawing from too many voluntary frameworks may muddle up the standard and confuse investors.

**5.2. Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?**

The SEC should model any disclosure rule as closely as possible to the TCFD recommendations. TCFD is the gold standard and is widely used. It was developed through the FSB, whose membership is comprised of ministers of finance, central bank governors, and supervisory and regulatory authorities from member jurisdictions. Because the FSB is primarily made up of political appointees, it provides a degree of democratic accountability to their proposals and recommendations, including the TCFD.

The TCFD's recommendations are also flexible enough to apply to all public companies, and with slight modifications, can be put into a two-tier framework for application to financial companies and non-financial corporates.

SASB frameworks apply to more than just climate and include 77 different standards. Incorporating SASB frameworks in their entirety into the mandatory disclosure standard will likely result in too much granularity for an initial SEC rulemaking on climate risk disclosure.

For the financial sector rulemaking, the SEC should draw on the Partnership for Carbon Accounting Financials (PCAF), which many large banks are already adhering to.[32] The SEC should especially consider drawing from PCAF's approach to metrics.

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31 TCFD, *2020 Status Report: Task Force on Climate-related Financial Disclosures* (Oct. 2020), p. 2, *available at* https://www.fsb.org/wp-content/uploads/P291020-1.pdf ("Over the past 15 months, the number of organizations expressing support for the TCFD has grown more than 85%, reaching over 1,500 organizations globally, including over 1,340 companies with a market capitalization of $12.6 trillion and financial institutions responsible for assets of $150 trillion.").

32 PCAF, *The Global GHG Accounting & Reporting Standard for Financial Industry* (Nov. 18, 2020), p. 4, *available at* https://carbonaccountingfinancials.com/files/downloads/PCAF-Global-GHG-Standard.pdf.

## Question 6

**6.1. How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time?**

There should be a process to improve the disclosure requirements, which is why it may be wise to initially adopt a minimum set of universal standards before proceeding further with additional industry-specific standards. Ultimately, the purpose of disclosure standards is to ensure investors have the necessary information they need to efficiently allocate capital according to their risk tolerance. The investors will be the ones signaling whether the standards are appropriate and are functioning correctly. Therefore, it may be wise to create an advisory committee through which the SEC can hear directly from investors.

The actual process to update the standards can be done with the standard notice and comment process. Alternatively, the standards can be updated via the processes in place at the standard setter chosen to develop the standards, such as the new IFRS Foundation led International Sustainability Standards Board.

**6.2. Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so?**

The SEC should play some role in updating the standards, should there ever be a need to do so. Ultimately, if these standards are to be legally enforceable, a government agency should be involved. The SEC must have a transparent and accountable process for updating standards. If the standards are developed by a third party, this entity may be able to make minor changes to the framework or governance process without the SEC's approval or through a streamlined approval process. However, larger changes must be reviewed and approved by the SEC.

**6.3. If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding?**

See above. The SEC should play a role and not just be a passive observer/recipient of whatever rules are developed and changed.

**6.4. Should the Commission designate a climate or ESG disclosure standard setter?**

No. The SEC should draw from well-respected standards such as TCFD recommendations and SASB standards. However, it should not formally designate a third-party standard setter. To the extent possible, the SEC should leverage existing disclosure frameworks and standards. Should the SEC eventually move to mandating industry specific disclosures, it may make sense at that time to designate a third-party standard setter (see response to 4.2).

**6.5. 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?**

See above.

**Question 7**

**7.1. What is the best approach for requiring climate-related disclosures? For example, should any such disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or should a new regulation devoted entirely to climate risks, opportunities, and impacts be promulgated?**

The SEC should initially seek to amend, as appropriate, Regulation S-K and Regulation S-X to address climate-related disclosures. Investors need regulation in this area as soon as possible. Thus, the SEC should use its existing authority which enables the SEC to introduce climate-related disclosures without undue delay.

**7.2. Should any such disclosures be filed with or furnished to the Commission?**

Yes. Registrants should file climate risk disclosures in their 10Ks and 10Qs. Filing with the SEC creates an implied private right of action for material omissions and misrepresentations in the filed report, whereas furnishing a report to the SEC does not. Therefore, filing is critical because it allows investors to enforce effective climate risk disclosures and will lead to greater consistency and reliability of disclosed information.

**Question 8**

**8.1. How, if at all, should registrants disclose their internal governance and oversight of climate-related issues?**

The SEC should adopt a model set out in TCFD recommendations on Governance and Risk Management. Pursuant to TCFD, registrants should "disclose the organization's governance around climate-related risks and opportunities."[33] This includes (1) describing the board's oversight of climate-related risks and opportunities and (2) describing management's role in assessing and managing climate-related risks and opportunities.[34]

Registrants should also "disclose how the organization identifies, assesses, and manages climate-related risks."[35] This includes describing (1) the organization's processes for identifying and assessing climate-related risks, (2) the organization's processes for managing climate-related risks, and (3) how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.[36]

Even if some consider these disclosures to be "immaterial" and therefore not subject to mandatory disclosure, the SEC still has the statutory authority under Section 7 of the Securities Act of 1933 to disclose them.[37] Section 7 gives the SEC full rulemaking authority to require disclosures in the public

[33] TCFD, *Recommendations of the Task Force on Climate-related Financial Disclosures* (Jun. 2017), p. 19, *available at* https://www.fsb-tcfd.org/recommendations/.
[34] *Id.*
[35] *Id.*, p. 21.
[36] *Id.*
[37] *See* 15 U.S.C. § 77g(a)(1) ("Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.").

interest and for the protection of investors. It is clearly in the public's interest to know how public companies are managing climate-related risks and opportunities.

**8.2. 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?**

The main advantage is that tying executive/employee compensation to quantifiable metrics incentivizes meeting those metrics. Tying behavior or outcomes to compensation focuses the executive/employee on the task and ensures that generic corporate sustainability pledges are not simply "greenwashing."

One disadvantage is that mandating additional information on executive compensation may make firms/executives that are otherwise supportive of mandatory climate risk disclosure resistant to a proposed rule.

Including compensation could also slow the rulemaking process down. Unsurprisingly, regulating executive compensation is highly contentious and difficult to accomplish. For example, U.S. federal banking regulators have still not finalized a financial institution incentive compensation rule, as required under Section 956 of the Dodd-Frank Act (Dodd-Frank). Dodd-Frank also mandated shareholder approval of executive compensation, or say-on-pay. Under the SEC's final rules, say-on-pay consists of a non-binding vote of the company's shareholders on the compensation of its named executive officers. Evidence to date suggest the rule has had little impact on curbing executive compensation in the U.S.[38]

Despite these potential drawbacks, disclosing how the compensation of named corporate executives is influenced by climate risks provides investors with material information they can use to assess how registrants are incorporating climate change into their overall governance process.

## Question 9

**9.1. What are the advantages and disadvantages of developing a single set of global standards applicable to companies around the world, including registrants under the Commission's rules, versus multiple standard setters and standards?**

There are significant advantages of developing a single set of global standards pertaining to climate risk disclosure. Climate science is as true in one nation as in another, even if the impacts vary. One global standard lends itself to comparability and consistency. Foreign investors also may be more comfortable allocating capital to U.S. companies when they are familiar with, and have confidence in, a single set of global standards. Since 2007, hundreds of foreign private issuers listed on U.S. stock exchanges have been able to report financial information using International Financial Reporting Standards (IFRS) without reconciliation to GAAP, making comparison of financial information difficult. Such a situation should be avoided, if possible, when it comes to climate disclosures.

[38] S. O'Byrne, The Harvard Law School Forum on Corporate Governance, *Say on Pay: Is It Needed? Does it Work?* (Jan 25, 2018), *available at* https://corpgov.law.harvard.edu/2018/01/25/say-on-pay-is-it-needed-does-it-work/.

One global standard also reduces the reporting burden on registrants who may have to report according to different standards in multiple jurisdictions. It also saves registrants the time and cost of having to field multiple data requests from investors throughout the world.

The Lab does not see any technical disadvantages to such a solution, but the legal impediments may be high. To be enforceable by the SEC, any global standard would need to be within the SEC's jurisdictional authority.

**9.2. If there were to be a single standard setter and set of standards, which one should it be?**

The minimum set of standards should be modeled after TCFD recommendations with industry-specific issues regulated by the Sustainability Standards Board (SSB).

**9.3. What are the advantages and disadvantages of establishing a minimum global set of standards as a baseline that individual jurisdictions could build on versus a comprehensive set of standards?**

The advantage of a baseline global set of standards is that it would permit individual jurisdictions to adjust the standards to suit their needs, including to comply with their own legal and regulatory regimes, and local market idiosyncrasies. They may also be more durable because countries and politicians would be granted more flexibility in amending and expanding the minimums set of standards. The model here would be the Basel Committee on Banking Supervision (BCBS). The BCBS works with national regulators to develop common standards for the prudential regulation of banks, but it is up to each member country to implement these standards in their home jurisdiction.

The disadvantage is that there could be major discrepancies in legal regimes, impacting what countries ultimately adopt, which would result in loss of consistency and comparability. For instance, countries may seek a competitive advantage by implementing a less stringent disclosure regime than the global standard. Another disadvantage is that companies doing business internationally may be obligated to report under multiple varying standards.

**9.4. If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability?**

It would have to be done through existing multilateral channels. IOSCO would be the most likely venue to drive comparability and reliability.

**9.5. What should be the interaction between any global standard and Commission requirements?**

The U.S. has the deepest, most liquid, and most efficient capital markets in the world. This is due in large part to the rules and regulations the SEC has implemented and enforced. As the world's most respected securities regulator, the SEC must play a role in developing a global standard if there is one. This would allow the global standard to benefit from the SEC's unique expertise and ensure that U.S. capital markets remain the envy of the world. The SEC should also use the global standard as a minimum requirement for its own rulemaking.

**9.6. If the Commission were to endorse or incorporate a global standard, what are the advantages and disadvantages of having mandatory compliance?**

One advantage of the SEC endorsing a global standard is that investors get access to comparable, reliable, and consistent information on a global basis. Another advantage is attracting capital from foreign investors who are familiar with, and have confidence in, a global standard. A disadvantage is that there may be legal challenges, and it may go above and beyond what the United States would do individually. The rest of the world, particularly Europe, is more concerned about ESG and double materiality.[39]

## Question 10

**10.1. 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?**

Disclosures should be assessed within the reporting firm and by an independent third party. The SEC should also support whistleblower activity. Ultimate enforcement authority must rest with the SEC and private litigants through the private rights of action for material omissions or misrepresentations in filings made with the SEC.

**Internal assessment**. For medium to large issuers, the SEC should require that CEOs and a board member who has been given responsibility for climate issues both assess and certify the accuracy and completeness of climate and ESG related disclosures—including for subsidiaries. All quantitative disclosures of climate and ESG metrics should be tagged in a machine-readable format to allow investors, academics, and other stakeholders to easily use this information to compare, analyze, and identify discrepancies which could be the basis for shareholder pressure and enforcement action.

**Third-party assurance**. Audit assurance gives investors greater confidence that climate disclosures were developed and reported according to the appropriate standard. Independent third-party review helps provide this confidence. Auditors also provide the benefit of reviewing multiple standards and can thus provide reporting firms with a necessary horizontal/peer perspective that will drive greater consistency and comparability across firms. Auditors, through their ability to flag issues, can also alert investors to any issues within the firm's climate reporting framework.

The disadvantage is that audit/third-party assurance imposes additional costs on registrants. Also, as we have seen with accounting, audit assurances requires "reasonable assurance," not absolute

[39] *See, e.g.*, Non-Financial Reporting Directive (2014/95/EU), *available at* https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en; European Commission, *Guidelines on Reporting Climate-related Information* (Jun 17, 2019), p. 6, *available at* https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf ("In effect, the Non-Financial Reporting Directive has a double materiality perspective: (1) The reference to the company's 'development, performance [and] position' indicates financial materiality, in the broad sense of affecting the value of the company. Climate-related information should be reported if it is necessary for an understanding of the development, performance and position of the company. This perspective is typically of most interest to investors. (2) The reference to 'impact of [the company's] activities' indicates environmental and social materiality. Climate-related information should be reported if it is necessary for an understanding of the external impacts of the company.").

assurance of material accuracy. There are well established and understood conflicts of interest between firms and their auditor. In addition, climate disclosure is new, and time may be required to ensure auditors can receive required training to properly examine climate risk disclosures. Nevertheless, the advantages of subjecting climate-related risk disclosures to audit and/or third-party assurance outweigh the disadvantages.

Many firms who are already voluntarily reporting climate risk information are also getting third-party verifications of their disclosures, especially around greenhouse gas emissions. For instance, on their website, Goldman Sachs lists a "Verification Opinion Declaration" from Apex Companies LLC.[40] In cases where firms do engage third-party verifiers outside their financial statement auditors, they should be required to disclose their verifier's opinion declaration.

**SEC Enforcement**. Public disclosures related to climate must be vigorously enforced by staff within the Division of Enforcement with specific expertise on this issue. The SEC should consider increasing the climate-related expertise at Regional Offices, particularly those offices responsible for areas most affected by climate change. The SEC's Division of Enforcement must prioritize climate-related cases and quickly respond to tips and complaints received by the SEC and support the efforts of the Whistleblower Program to process climate-related whistleblower claims effectively and quickly.

The Division of Corporation Finance must establish a climate-related disclosure review team to commence the immediate review of climate disclosures and issue clarifying bulletins designed to answer frequently asked questions or correct for any common deficiencies or omissions in disclosures. Ultimately, all staff members within the Division of Corporate Finance must be trained in climate risk disclosure as these disclosures will apply to all public companies. This will require the SEC to update its internal training programs and processes.

**Whistleblowers**. Congress has long endorsed and encouraged whistleblowers by incorporating comprehensive protections and incentives for corporate whistleblowers into law. To maximize the capacity of regulators and law enforcement in preventing a repeat of the financial crisis of 2008, Congress included Section 922 in Dodd-Frank to incentivize and protect corporate whistleblowers and mandate the creation of whistleblower programs at the SEC and the CFTC. These provisions demonstrate Congress' belief that whistleblowers are essential to preventing many of the abuses that caused the financial crisis and to "protect the integrity of the markets."[41] As noted by Commissioner Allison Herren Lee, "[c]limate risk and sustainability are critical issues for the investing public and our capital markets."[42]

[40] Apex Companies LLC, *Verification Opinion Declaration: Greenhouse Gas Emissions and Renewable Energy* (Mar. 31, 2021), *available at* https://www.goldmansachs.com/our-commitments/sustainability/sustainable-finance/documents/carbon-emissions-verification.pdf.

[41] *See*, S. Rep 111-176 (2010), p. 112, *available at* https://www.congress.gov/111/crpt/srpt176/CRPT-111srpt176.pdf. Recognizing that whistleblowers often face the difficult choice between telling the truth and the risk of committing "career suicide," the program provides for amply rewarding whistleblower(s), with between 10% and 30% of any monetary sanctions that are collected based on the "original information" offered by the whistleblower for actions over $1M. The Committee intends for this program to be used actively with ample rewards to promote the integrity of the financial markets.

[42] U.S. Securities & Exchange Comm'n, *SEC Announces Enforcement Task Forces Focused on Climate and ESG Issues* (Mar. 4, 2021), *available at* https://www.sec.gov/news/press-release/2021-42.

The importance of the SEC Office of the Whistleblower in assisting the Division of Enforcement in uncovering securities violations is well established. Whistleblowers have assisted the SEC in conducting thousands of financial fraud investigations and obtaining billions in penalties, judgements, and restitution. They have exposed misconduct by large companies such as Merrill Lynch, Bank of America, and J.P. Morgan Chase relating to misleading disclosures, financial performance, risk factors, known industry trends, and illegal manipulation of the price-setting mechanisms used in the private derivatives markets, among other fraudulent activities. In fact, 2020 was a momentous year for the SEC whistleblower program: on its 10-year anniversary, the whistleblower program demonstrated record-breaking accomplishments in terms of individuals and dollars awarded, claims processed, and tips received.[43]

The SEC's own actions of including the Office of the Whistleblower as a member of the Climate and ESG Task Force reflect the Office's potential value in enforcing climate and ESG-related securities violations.[44] Given the increasing investor focus and reliance on climate and ESG-related disclosures, as well as the priority that the issue is being given by Division of Enforcement, the SEC should seek to encourage the assistance of whistleblowers. Detailed discussion of applicable SEC Dodd-Frank rules applicable to whistleblowers is set forth below for the SEC's consideration.

**Rule on Determining the Amount of an Award**. The SEC has broad discretion on setting the amount of a reward paid to a fully qualified whistleblower. Congress set forth specific criteria that the SEC was required to apply, and the SEC adopted implementation rules.[45]

The SEC's Dodd-Frank rules are consistent with this Congressional mandate. In Rule 17 C.F.R. § 240.21F-6(a)(3) the SEC stated that it could increase the amount of an award based on "law enforcement interest." Among the factors the SEC stated it would apply when considering whether to increase the amount of an award was the "degree to which an award encourages the submission of high-quality information from whistleblowers" and "*whether the subject matter of the action is a Commission priority.* [emphasis added]."

Consistent with the compliance and enforcement priority on climate and ESG-related disclosures, the SEC may wish to consider awarding whistleblowers who provide information relating to potential disclosure violations the maximum amounts permissible in accordance with the factors set forth in Exchange Act Rule 21F.

**Related Action Rule**. The Dodd-Frank rule on related actions is particularly relevant to climate and ESG disclosure cases. Under Dodd-Frank, if the SEC issues a sanction of $1 million or more for a violation of the securities laws, whistleblowers can thereafter obtain rewards based on violations of other federal laws, provided that the other federal agencies relied upon the information provided to the SEC by the whistleblowers.[46] For example, if the SEC sanctions a public company $1 million for violating a climate and ESG disclosure rule, and the U.S. Environmental Protection Agency uses the

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[43] U.S. Securities & Exchange Comm'n, *SEC 2020 Annual Report to Congress* (2020), available at https://www.sec.gov/files/2020%20Annual%20Report_0.pdf.
[44] U.S. Securities & Exchange Comm'n, *SEC Announces Enforcement Task Forces Focused on Climate and ESG Issues* (Mar. 4, 2021), *available at* https://www.sec.gov/news/press-release/2021-42.
[45] 15 U.S.C. § 78u-6 ("In determining the amount of an award… the Commission shall take into consideration… the programmatic interest of the Commission in deterring violations of securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws.").
[46] 15 U.S.C. § 78u-6(b)(1).

whistleblower's information to sanction the company another $9 million, the whistleblower is entitled to a full award based on $10 million in total sanctions.[47]

It is imperative that the whistleblower be incentivized not only to disclose information to the SEC, but also to work closely with federal criminal and regulatory authorities whenever the climate-related securities disclosure violation also constitutes violations of other federal laws. The related action provision will encourage whistleblowers to fully cooperate with all federal agencies with an interest in policing climate-related disclosure violations.

**Sharing Anonymous Information**. Dodd-Frank authorizes whistleblowers to file anonymous complaints with the SEC. This rule has proven to be critical in incentivizing employees to take the risk associated with becoming a whistleblower.

The SEC can share a whistleblower's information with other federal law enforcement agencies whenever the other agency agrees to honor the confidentiality and anonymity of the whistleblower in a manner consistent with Dodd-Frank rules.[48] However, in practice, this sharing requirement has been problematic, as many agencies do not understand this requirement or are reluctant to enter into confidentiality agreements.

The SEC should enter into sharing agreements with other federal agencies directly involved in climate and ESG disclosures to allow for the sharing of confidential information from whistleblowers without forcing the whistleblowers to waive or compromise their right to confidentiality or anonymity.

**10.2. 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?**

Wherever appropriate, disclosures should be integrated into the issuer's financial statements, which brings the benefit of requiring this information to be audited. This would also trigger Section 404(b) of Sarbanes-Oxley, which requires a publicly held company's auditor to attest to, and report on, management's assessment of its internal controls.

To the extent that climate change disclosures are not incorporated into the financial statements via Regulation S-X, they too should still be validated, ideally by independent professionals providing assurance as to their material accuracy. Also, because section 404(b) of Sarbanes-Oxley only requires management to attest to the internal control environment around financial reporting, the SEC may want to consider expanding management's attestation requirements for other aspects of the control environment. Under the framework developed in the early 1990s and amended in 2013 by the Committee on Sponsoring Organizations (COSO), internal control is defined as follows:

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[47] *See* 15 U.S.C. § 78u-6(h)(2)(D)(i)(II) (permitting related action awards based on sanctioned issued by any U.S. "appropriate regulatory authority.").
[48] 15 U.S.C. § 78u-6(h)(2)(D)(ii).

*"Internal control is a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance."*[49]

The COSO framework recognizes three categories of internal control objectives: operations objectives, reporting objectives, and compliance objectives. Because climate change touches on each objective, the SEC could try, under its existing authority, to require management to attest to the control environment around developing climate risk disclosures. For example, the SEC could implement an assurance framework where:

- Management picks a climate risk disclosure framework to apply and then provides a narrative description of the company's climate risk disclosure program and the ways in which the company identifies, measures, and reports on climate-related matters and risks.
- Management then attests to the appropriateness of the framework selected and whether relevant controls are suitably designed and operate effectively to implement the framework.
- Finally, an auditor could opine on the accuracy and completeness of management's description as well as whether the company's climate-risk disclosure controls are suitably designed and operate effectively.

Instances where a company selects and applies a framework, and an auditor independently attests to management's application of that framework, have been used in contexts beyond Sarbanes-Oxley §404. The American Institute of Certified Public Accountants (AICPA) employed this assurance approach in connection with attesting to cybersecurity risk management programs and controls.[50]

**<u>Question 11</u>**

**11.1. Should the Commission consider other measures to ensure the reliability of climate-related disclosures? Should the Commission, for example, consider whether management's annual report on internal control over financial reporting and related requirements should be updated to ensure sufficient analysis of controls around climate reporting?**

Yes. The framework and requirements of the internal control report can be applied to climate risk disclosures.

Presently, issuers utilize multiple processes and different personnel for climate reporting. Some issuers have dedicated sustainability staff and divisions, others rely on human resources or human capital management staff, while others may rely on the risk office or even the finance office. There should not be a prescriptive requirement in any rule that dictates where and how climate risk information is gathered and collated within by an issuer. Nevertheless, management should be required to disclose the control environment around climate risk reporting.

If climate risk gets incorporated into Regulation S-X, then it will automatically get incorporated into existing management internal control reporting. However, if climate risk reporting is mandated by

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[49] COSO, *Internal Control - Integrated Framework. Executive Summary* (May 2013), *available at* https://www.coso.org/Documents/990025P-Executive-Summary-final-may20.pdf.
[50] AICPA, *AICPA Unveils Cybersecurity Risk Management Reporting Framework* (Apr. 26, 2017), available at https://future.aicpa.org/news/article/aicpa-unveils-cybersecurity-risk-management-reporting-framework.

amending Regulation S-K or adopting a new regulation, then incorporating climate risks into internal control over financial reporting will be more difficult because that requirement was mandated by section 404 of the Sarbanes-Oxley Act.

However, under the COSO framework, there are internal controls that (1) affect a company's operations, (2) affect a company's compliance with laws and regulations, and (3) affect a company's financial reporting. Therefore, if the SEC implements a new climate risk disclosure framework, it may also want to consider asking Congress to amend Sarbanes-Oxley to require management attestation of the entire internal control environment.

It is critical that auditors be empowered to assess and attest to the validity of a firm's climate risk reporting. Under existing SEC and PCAOB rules, material weaknesses in internal control over financial reporting (ICFR) must be publicly reported. If possible, climate risk disclosures should fall under the same threshold.

**11.2. Should the Commission consider requiring a certification by the CEO, CFO, or other corporate officer relating to climate disclosures?**

Such a certification would mirror section 302 of Sarbanes-Oxley, which requires the CEO and CFO of publicly traded companies to certify the appropriateness of their financial statements and disclosures and to certify that they fairly present, in all material respects, the operations and financial condition of the company. Many believe that ensuring the accuracy of financial reporting was one of the most important provisions of the Sarbanes-Oxley Act. Requiring CEO and CFO certifications of their company financial reports increases compliance as well the validity of the disclosures.

That said, if the SEC where to require climate risk disclosures in Regulation S-X, as we recommend, certification by the CEO and CFO would become redundant. If climate disclosures are not required to be disclosed in Regulation S-X, mandating CEO and CFO certification in the disclosure framework would likely be met with significant pushback from industry. It would attract criticism from CEOs and issuers who are otherwise amenable to mandating climate risk reporting and enforcing such requirement would require a great deal of micromanagement.

We believe that the experience with Sarbanes-Oxley merits CEO and CFO attestation of climate disclosures. While many companies are already disclosing climate related information, it is still a new practice that may not be ingrained throughout a company's governance and risk managed processes. There is no surer, or faster, way to obtain such integration than by requiring CEO and CFO certification.

## Question 12

**12.1. What are the advantages and disadvantages of a "comply or explain" framework for climate change that would permit registrants to either comply with, or if they do not comply, explain why they have not complied with the disclosure rules?**

In response to issuance of the SEC's guidance on climate disclosure in 2010, most SEC registrants have employed a minimalist approach to climate disclosure—typically issuing vague boilerplate qualitative remarks that are of little value to investors and markets. More recently, climate-related financial risk disclosures are becoming more quantifiable as disclosure methodology evolves. For example, some registrants are applying scenario analysis to provide information about the potential financial impact of climate change on their company. More ambitious firms have started disclosing this information.

In general, a comply-or-explain approach promotes what is essentially voluntary compliance with best practice principles but with a mandatory disclosure requirement relating to both compliance and justifying any non-compliance.

Advantages of the "comply or explain" framework include:

- Flexibility: Comply-or-explain allows companies to adapt their corporate governance to their specific situation taking into consideration their size, ownership structure, and scope levels of greenhouse gas emissions such as Scope 1, 2, and 3.
- Market Competition: Companies benefit from complying with the strongest corporate governance practices by attracting more investors that reduces the cost of capital.
- Self-Regulation: Companies that implement a comply-or-explain approach focus on shareholders and public interests making them more efficient, more competitive, and more resilient to future crisis.

One disadvantages of the "comply or explain" framework is that implementation costs for small and medium sized registrants can be cost-intensive.

**12.2. How should this work? Should "comply or explain" apply to all climate change disclosures or just select ones, and why?**

Assisted by third-party disclosure regimes such as the TCFD, the quantity and quality of the climate-related information registrants disclose has the potential to increase with much of the disclosure information incorporated in the Management's Discussion & Analysis (MD&A) section of their financial reports. The SEC could consider requiring registrants to provide structured narratives on the "four pillars" established by the TCFD for climate disclosures, as they have been embraced widely by certain investors. The TCFD four pillars include:

- **GOVERNANCE**. Disclose the organization's governance around climate-related risks and opportunities.
- **STRATEGY**. Disclose the actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning where such information is material.
- **RISK MANAGEMENT**. Disclose how the organization identifies, assesses, and manages climate-related risks.
- **METRICS AND TARGETS**. Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.

As the four pillars indicate, climate risk disclosures will require quantitative as well as qualitative responses and certain items will be inapplicable to certain registrants.

Qualitative disclosure factors are better suited to a "comply or explain" approach rather than quantitative measures. SEC registrants could provide qualitative disclosure that are relevant to its business on a "comply or explain" basis, meaning that the registrant should explain its rationale for omissions or modifications.

It is important to continue to be mindful that climate disclosures methodologies and frameworks are constantly evolving. Whatever climate and ESG-related disclosure framework the SEC ultimately adopts, they may want to build-in some flexibility in that framework to accommodate future improvements to disclosure methodologies in order to avoid time consuming and resource intensive regulatory promulgation procedures.

## Question 13

**13.1. How should the Commission craft rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities?**

The SEC should propose rules that minimize the potential for boiler plate language in registrants' climate-risk disclosures. Ultimately, investors will be the final arbiters of the quality of disclosure through their decisions on whether to invest or divest from a specific registrant, industry, or sector. For this reason, there will be a level of subjectivity by reporting firms when it comes to describing risks and opportunities, although subjectivity can be mitigated if registrants are required to have a consistent methodology to identify climate related risks and opportunities.

The language for recommended TCFD disclosures around Strategy are sufficiently open-ended that registrant's will be able to express their unique views on climate-related risks and opportunities. We encourage the SEC to implement similar language in their rulemaking.

**13.2. What are the advantages and disadvantages of requiring disclosed metrics to be accompanied with a sustainability disclosure and analysis section similar to the current Management's Discussion and Analysis of Financial Condition and Results of Operations?**

The primary advantage of requiring disclosed metrics in a particular section is that investors will have access to uniform quantitative information assisting them and markets in comparing and contrasting the climate risks of particular issuers. This type of uniform disclosure would force companies to incorporate and reflect on the metrics and what they mean for their respective climate-related strategy and governance.

The disadvantage of disclosing climate risk information in a separate or stand-alone section is that it segregates climate-related risk information from the rest of reporting on management discussion and analysis, when in fact climate risk it is just as critical to the overall business risk of an issuer.

## Question 14

**14.1. What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds?**

In general, given its mission to protect investors, the SEC should reconsider the appropriateness of allowing the movement of capital out of public equity markets through new exemptions (e.g., Rule 144A or Rule 506). Climate financial risk is growing without scrutiny in the private markets, and steps must be taken to reverse this migration. The vast majority of companies in the U.S. are privately held. As of 2012, there were 27 million firms in the U.S. and only 5,000 were listed on a U.S. exchange. [51]

It is reasonable to assume that if the SEC expands its disclosure requirements and accountability apparatus for public companies, there is likely to be tremendous pressure to go or stay private. This pressure will likely be greatest in industries with perhaps the largest climate-related risks, such as fossil fuels, real estate, and financial services. For example, in the fossil fuel industry, the financing for fossil fuels has generally shifted from more public, equity financing to more private financing and more debt securities.[52]

Climate and ESG-related disclosures are critical for continued robust functioning of the U.S. capital markets and to keep U.S. markets competitive with the rest of the world. If the U.S. disclosure requirements fall behind the rest of the world, it will put U.S. based public and private funds at a competitive disadvantage. In contrast, if the U.S. takes the lead in this space, it will attract global capital that is seeking to have access to robust ESG information.

First, the SEC should amend its rules to push all large companies (including the many large private companies owned by private equity firms and hedge funds) and large offerings of securities into the public markets reporting regime.[53]

Second, the SEC should also consider conditioning any remaining registration exemptions upon the disclosure of details of the securities, including financial information and climate and ESG-related requirements for all public companies. For example, the SEC could revise Rule 144A, Rule 506, and Regulation AB to mandate disclosures similar to those required in a registered (aka public) offering.[54]

Third, the SEC should also revisit its implementation of Section 12(g) of the Exchange Act to ensure that large, widely owned companies are in fact public, and should be treated as public reporting companies. Notably, revising its interpretation of the "shareholder of record" to reflect the actual owners of securities would ensure that large companies with a significantly broad ownership

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[51] *See* M. Biery, Forbes, *Four Things You Didn't Know About Private Companies* (May 26, 2013), *available at* https://www.forbes.com/sites/sageworks/2013/05/26/4-things-you-dont-know-about-private-companies/?sh=43d8df82291a

[52] *See, e.g.*, Exxon Mobil Corporation, 2020 10K, p. 90, *available at* https://corporate.exxonmobil.com/-/media/Global/Files/investor-relations/annual-meeting-materials/annual-report-summaries/2020-Annual-Report.pdf (reflecting billions of debt outstanding at interest rates below 7% that would not be due until 2038 and later); see *also* K. Al Ansary, K. Crowley, Bloomberg, *Exxon Puts Iraq Field Up for Sale With Debt Mountain Looming* (Apr. 15, 2021), *available at* https://www.bloomberg.com/news/articles/2021-04-15/exxon-puts-iraq-field-up-for-sale-with-debt-mountain-looming (explaining how the company may be selling assets to pay off its large corporate debts).

[53] T. Gellasch, L. Reiners, Global Financial Markets Center at Duke University School of Law, *From Laggard to Leader: Updating the Securities Regulatory Framework to Better Meet the Needs of Investors and Society* (Feb. 2021), *available at* https://web.law.duke.edu/sites/default/files/centers/gfmc/From-Laggard-to-Leader.pdf.

[54] See, e.g., L. Aguilar, U.S. Securities & Exchange Comm'n, *Correcting Some of the Flaws in the ABS Market* (Aug. 27, 2014), *available at* https://www.sec.gov/news/public-statement/2014-08-27-open-meeting-statement-abs-laa("It is therefore crucial that the Commission ... "requir[e] issuers to provide the same disclosure for ABS issued pursuant to private offerings and resold under Rule 144A, as is required for registered offerings.").

base cannot avoid triggering public company reporting requirements. This revision would put the U.S. more on par with how other jurisdictions identify "large" companies that are subject to a public reporting regime by bringing more, larger companies into the public company reporting framework. This change can be made without legislation and avoids any potential legitimate claims that the changes would hinder the ability of small companies to raise capital.

Finally, the SEC should require all large private funds to provide details of their climate-related practices and holdings, including risks.[55] These disclosures should mirror, to the extent possible, requirements on public funds, and complement disclosures required of registered investment advisers.

**<u>Question 15</u>**

**15.1. 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?**

Climate-related risks pose the greatest potential for catastrophic financial loss of all of the ESG factors. The threat of a multi-trillion-dollar climate change carbon bubble, larger in scale than the 2008 mortgage bubble, has the potential to harm investors and markets by destabilizing the economy, stranding assets, devaluing investments, and causing severe job losses, in addition to causing irreparable harm to physical assets, the environment, and human health. Accordingly, climate should be the focus of any disclosure frameworks of social and governance issues that the SEC proposes and ultimately adopts. In addition, as the SEC has noted, investors and markets are increasingly demanding comparable, reliable, and transparent climate risk information of issuers. For all these reasons, the SEC should prioritize promulgating and adopting comprehensive climate-related financial risk disclosure rules.

**15.2. How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard?**

The SEC could require firms to disclose their governance around all ESG issues.

**15.3. How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?**

ESG issues fall under the "stakeholder" primacy theory, which many large companies claim to support. ESG issues also seek to remedy the negative externalities that a company's actions create on local communities, the environment, and workers. Climate change has been shown to disproportionally impact lower income communities and communities of color, thereby tying the E (environment) to the S (social).[56]

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[55] Americans for Financial Reform and Public Citizen, *Climate Roadmap for U.S. Financial Regulation* (2021), pp. 28–30, 2021, *available at* https://mkus3lurbh3lbztg254fzode-wpengine.netdna-ssl.com/wp-content/uploads/Climate-Financial-Reg-Report.pdf.

[56] *See, e.g.*, A. Leiserowitz, K. Akerlof, Yale Project on Climate Change, George Mason Center for Climate Change Communication, *Race, Ethnicity, and Public Responses to Climate Change* (2010), *available at* https://environment.yale.edu/climate-communication-OFF/files/Race_Ethnicity_and_Climate_Change_2.pdf; J.

The Lab supports Commissioner Lee's push for standardized ESG disclosure more broadly and SEC attempts to advance ESG disclosures on a standalone basis when possible.[57] To that end, we were pleased to hear Chairman Gensler recently note that human capital disclosures will be one of his top priorities and an early focus during his tenure.[58]

But the urgency of the climate crisis and the growing chorus of investors clamoring for consistent, reliable, and comparable climate risk information means the SEC cannot delay in implementing a mandatory climate risk disclosure regime. We therefore recommend that the SEC immediately propose a climate risk focused disclosure rulemaking.

**Conclusion**

The Lab is encouraged by the emphasis and attention given by the SEC to climate risk disclosure. The disclosure of climate-related financial information by issuers is necessary to protect investors, maintain fair, orderly, and efficient markets, and continue to facilitate long-term capital formation.

In forthcoming reports by the Lab, we seek to further explore these matters by engaging with experts to better understand and answer the questions posed by the SEC, as well other U.S. financial regulators. It is our hope that this research and reporting will inform regulators and lawmakers decision-making and assist in fully understanding the necessity of requiring clarifying, comparable, consistent, and credible climate risk disclosures. We welcome further engagement on these and other topics. Again, we are grateful for the opportunity to submit our ideas and look forward to a continued dialogue.

Respectfully submitted,

Climate Risk Disclosure Lab[59]

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[57] A. Lee, U.S. Securities & Exchange Comm'n, *A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC* (Mar. 15, 2021), *available at* https://www.sec.gov/news/speech/lee-climate-change.

[58] K. Johnson, Reuters, *U.S. SEC Chair Planning New Workforce Data Disclosures for Public Companies* (May 14, 2021), *available at* https://www.reuters.com/business/sustainable-business/us-sec-chair-planing-new-workforce-data-disclosures-public-companies-2021-05-13/.

[59] Climate Disclosure Lab, *Steering Committee Members, available at https://climatedisclosurelab.duke.edu/about-us/steering-committee/*