Flexible Packaging Association

June 14, 2021

rule-comments@sec.gov
Climate Disclosure

RE: Questions Regarding SEC Effort to Update Reporting Requirements for Issuers to Include Material, Decision-Useful Environmental, Social, and Governance, or ESG factors (Mar 15, 2021) SEC.gov | Public Input Welcomed on Climate Change Disclosures

Dear Commissioners:

The Flexible Packaging Association (FPA) was established in 1950 and is a national trade association comprised of manufacturers and suppliers of flexible packaging. FPA's members include publicly-traded and private companies that produce packaging for food, healthcare, and industrial products using coating and lamination of paper, film, foil, or any combination of these materials. Examples of flexible packaging include roll stock, bags, pouches, labels, liners, wraps, and tamper-evident packaging for food and medicine. Flexible packaging, a $31 billion industry, employs approximately 79,000 people in the United States and is now the second largest segment of the U.S. packaging market estimated at $162 billion. FPA's members include publicly-traded multi-national companies and privately-held companies. A number of them participate in the Climate Disclosure Project (CDP), at different commitment levels.

FPA appreciates this opportunity to submit comments to the SEC on its scoping questions regarding "environmental, social and governance (ESG)" criteria and disclosures at SEC.gov | Public Input Welcomed on Climate Change Disclosures. First, FPA views these questions with equal parts curiosity and alarm, to the extent that they appear to convey the Commission's intention to tightly regulate the behavior of registrants on climate risks and liabilities. While we applaud the dual goals of this inquiry—to establish criteria that would provide consistent, comparable and reliant information on climate risks and to provide clarity to registrants on SEC's expectations as to their discussion of climate risk—the scope of the questions goes far beyond risk characterization, and easily crosses-over into massive regulation of highly disparate

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U.S. economic sectors. To execute this authority would go far beyond the Commission's capabilities and, FPA respectfully submits, the SEC's statutory authority. In fact, the Environmental Protection Agency, with many times the funding and technical workforce of the SEC--and an established greenhouse gas reporting platform for most economic sectors--would be hard- pressed to implement and enforce a program to handle this information in any granular way.

A number of the questions that the Commission raise relate to the mechanics of how such a regulatory program would be rolled-out (i.e., by industry-category, size, etc.), and if the SEC should build on existing regulatory and voluntary climate disclosure programs. FPA can tell you that Climate Disclosure Plan participants in its membership in one NAICS six-digit code, include public registrants and private companies. Implementing this voluntary program requires large company technical and financial departments to track Scope 1 and Scope 2 emissions, and many participants eschew reporting Scope 3 emissions, because supply chain emissions are just completely out of a company's control or ability to authenticate.

For these reasons, we urge the SEC to exercise restraint in adopting detailed accounting or derivative climate disclosure reporting programs in S-K's or 10k,'s or other public disclosures that registrants must submit to the Commission. FPA's recommendation is that SEC update its 2010 interpretative guidance on climate disclosure, 75 Fed. Reg. 6,290 (Feb. 8, 2010), which already requires the parsing of the "materiality" of risks associated with existing and future climate-based financial and risk exposures. FPA recommends that Items 103 and 503(c), could be augmented with checklists on the existence of internal structures within registrants' companies that can be answered with a "yes" or "no." For instance:

- Does the registrant report publicly to EPA on its Scope 1 GHG emissions?
- Does the registrant report to any other federal or state entity on its Scope 1 and/or Scope to GHG emissions (*please identify the entities to which it reports*)?
- Does it report to any other public or private entity on its Scope 1 and Scope 2 emissions?
- Does the registrant report its Scope 3 emissions to any private or public entity?
- If the registrant does not report its Scope 1, Scope 2, or Scope 3 emissions to an external entity, does it attempt to track this information internally?
  - Are these reports audited at least annually internally?
  - Are these Scope 1 and/or Scope 2 emission estimates audited by an external independent entity?
- Does the registrant make confidentiality claims made for any company information reported to EPA or to any other public or private recipient?
- Has a facility operated by the registrant been subject to flooding from a hurricane or a 100-year flood in the past ten years?
  - Does it have a Spill Prevision, Control, and Countermeasure Plan for that facility? Allow registrants to provide more detail, if necessary.

- Does the registrant own an interest in a facility operated within [distance] of a coastal area?

FPA is certain that these and other similar types of questions that are not dependent on an assessment of materiality under the SEC's regulatory standards, can go a long way to elucidating for registrants, their investors, the public, and other public & private entities, including but not limited to financial institutions, climate factors to aid each group's evaluation of company financial risk and/or opportunities related to climate issues. At the same time, in our view, the Commission should not require information that is confidential, will be likely to expose registrants to "toxic tort" liability claims or to other types of prevailing litigation, or to claims of green washing.

FPA also urges the Commission to remember that while the behavior of publicly-traded companies is subject directly to SEC regulatory guidance, privately held companies will be heavily affected by SEC's pronouncements on climate, particularly with respect to capital-borrowing and debt-financing by financial institutions and by the insurance industry. We therefore appreciate that SEC questions appear to capture an awareness of the relationship of the upcoming rulemaking to the broader business community.

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FPA appreciates having this opportunity to provide input on SEC's questions regarding climate disclosures, and we look forward to participating in the coming rulemaking. If you have questions for FPA, or its members, or would like to discuss our comments or suggestions, please feel free to contact me.

Sincerely,

Ram Singhal,
Vice President Technology & Environmental Strategy
Flexible Packaging Association