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Gary Gensler, Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Via email to: rule-comments@SEC.gov

Re: Public Input Welcomed on Climate Change Disclosures ("Request for Information" or "RFI")[1]

Dear Chair Gensler,

We write in response to the Request for Information, which we hope will be but one of several significant regulatory actions in which the SEC may better address investors' and other market participants' need for information related to climate and other environmental, social, and governance (ESG) issues.

Investors and other market participants need climate-related information to make informed business decisions that are essential not just to protecting investors, but also for fair, orderly, and efficient markets, the promotion of capital formation, and accordingly protection of the public interest. As a result, the Commission should develop, implement, oversee, and enforce mandatory enhanced climate-related disclosures that are reliable, consistent, and comparable.

Introduction

The Center for American Progress (CAP) is an independent nonpartisan policy institute dedicated to improving the lives of all Americans. Over the past several years, our economic policy team has engaged in deep exploration of how the SEC can do better and, in particular, in the last two years, how financial regulation intersects with climate and ESG issues. We explored the buy side, the sell side, and so-called gatekeepers like auditors. We also looked at other government agencies, both in the financial regulatory space and capital markets, as well as other aspects of environmental policies, including environmental racism and justice. We also engaged with many stakeholders and coalitions. Our comments below are based on that body of work.

All of these efforts led to two fundamental conclusions.

First, climate risks are real and well within the purview of the SEC and its disclosure authority. The impacts of climate risks on companies, investors, the capital markets and the economy are now well documented. Like any risk, they need to be identified, measured, managed and disclosed by companies, so that the market can price them, capital can flow accordingly, and investors can be protected from the potential impacts of these risks on companies—impacts that are known only to management. Thus, the risks of climate change speak to every aspect of the Commission's three-part mission.

It is also well-documented that investors want and need this information as part of the information mosaic on which they make investment decisions. Asset managers are trying to respond to investor demand. Markets, gatekeepers, and private sector third parties have advanced the ball but have not provided the reliable, consistent and comparable information investors want and need. In fact, the U.S. is falling behind other countries in this area, and the competitiveness of our markets is at stake. We cannot afford to become a legacy market, away from the places where real innovation resides.

The federal securities laws are very clear that the Commission can require disclosures in furtherance of its three-part mission of protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. In the aftermath of the Great Depression, Congress not only wanted to promote full disclosure of financial information but also sought to prevent capital from being used for the private benefit of a few people to the detriment of millions. Similarly, today it is clear that, without full disclosure of greenhouse gas emissions and climate-related risks, capital will continue to be misallocated. Investors and other market participants will continue to be harmed by the market inefficiencies and distortions created by a lack of important information. This market distortion could additionally exacerbate a disorderly transition to a low-carbon economy, with all that implies for the capital markets and beyond.

Second, it is abundantly clear that the SEC must do much more if capital markets are to efficiently address both risks and opportunities associated with climate and other ESG issues. The ratio of signal to noise must improve to better inform decision-making and for market prices to provide the right signals for capital allocation. Many in industry are trying to respond but the capital markets need consistency across time and comparability across firms. Standardization of key disclosures is needed, including of underlying data and methodologies, not data from black box firms whose sources and processes are deemed proprietary. Private ordering has run its course. In fact, disparate private efforts in the absence of SEC line-item disclosures is leading to confusion, heightening the urgency to investors of SEC action.

Markets are built on trust. We must move beyond puffery and boilerplate emanating from corporate management towards SEC-mandated line-item disclosures that are rigorous, comparable, and based on actual business operations, and that have reasonable assurance behind them.

Background on Climate-Related Disclosure

The federal securities laws were established to "close the channels of … commerce to security issues unless and until a full disclosure of the character of such securities has been made."[2] Congress determined that public disclosures to investors and other market participants would help avoid the "wanton misdirection of the capital resources of the Nation" that had spurred the Great Depression.[3]

Unfortunately, investors and other market participants do not generally have reliable, consistent, or comparable climate-related information with which to make informed business decisions. Without adequate information about climate-related risks and opportunities, investors and other market participants (including credit rating agencies, lenders, suppliers, workers, competitors, index providers, and customers) are likely to misallocate their resources, leading to less fair, less orderly, and less efficient markets.

Climate and ESG-related risks are a clear problem area for the Commission's existing regulatory framework. Investors have spent several decades complaining to the Commission that they are not obtaining from U.S. issuers the information they need to make informed decisions.[4] This concern has persisted even though, as far back as 2017, more than 80% of non-ESG-focused investors were attempting to use ESG factors in their decision-making processes.[5]

In general, climate-related risks fall into two categories: physical risks and transition risks. Both sets of risks to a company may have dramatic impacts not just on the company, but also on other market participants who may have business relationships with that company and the public.

Physical risks may include losses arising from physical damage to property and reduced productivity and wealth caused by catastrophic weather events or environmental changes.[6] These include damages from hurricanes, floods, draughts, wildfires, and other storms, which have become increasingly common and severe around the country and world.

These risks may impact operational companies but will unquestionably also impact their lenders, suppliers, workers, and customers. In fact, more than a decade ago, the Commission expressly acknowledged some of these direct and indirect climate-related risks:

> These effects can impact a registrant's personnel, physical assets, supply chain and distribution chain. They can include the impact of changes in weather patterns, such as increases in storm intensity, sea-level rise, melting of permafrost and temperature

> extremes on facilities or operations. Changes in the availability or quality of water, or other natural resources on which the registrant's business depends, or damage to facilities or decreased efficiency of equipment can have material effects on companies. Physical changes associated with climate change can decrease consumer demand for products or services; for example, warmer temperatures could reduce demand for residential and commercial heating fuels, service and equipment.[7]

The second major category of climate-related risks is transition risks. As governments around the world and market participants seek to address climate change, the development and shifting of technologies and resources introduces new risks and opportunities. Again, the impacts on companies may be severe. For example, as cleaner forms of energy generation have become available at lower costs, the coal industry has seen its US and European demand and stock market capitalization decimated.[8] Similarly, the oil and gas industry has come under significant long-term pressure as the debt-fueled boom in US domestic production has gone bust.[9]

Another recent example of transition risks materializing is the United States Steel Corporation's April 2021 decision to abandon its previously announced investment to upgrade its facilities in Pittsburgh, Pennsylvania. When announcing the investments in May 2019, the company declared that the upgrades to its Pittsburgh plants would be "great for our stockholders" and "great for our employees."[10] Yet, less than two years later, the company scuttled the plans in part because of its recent commitment to reduce its future carbon impact and local environmental concerns.[11] In explaining the change of heart, the company's President and CEO noted that, after making the initial announcement of the new investment, the company "expanded our understanding of steelmaking's future in a rapidly decarbonizing world."[12]

Similarly, in May 2021, a Dutch court found that Royal Dutch Shell needed to cut its carbon emissions by 45% from its 2019 levels by the year 2030.[13] The impacts of this court order will not only touch upon the company and its shareholders, but also its lenders, suppliers, customers, workers, the communities surrounding its facilities, and more.

Investors in particular are increasingly sensitive to companies' transition risks. For example, in May 2021, shareholders voted to appoint two new independent members of the board at ExxonMobil and to require the company to disclose its climate-related lobbying efforts in part out of frustration with the company's failed efforts to manage these transition risks.[14] That same day, shareholders at another large fossil fuel company, Chevron, voted overwhelmingly "in favor of a proposal asking the oil major to cut its total greenhouse gas emissions, including customers' emissions, a category known as Scope 3, in addition to its own operations and supply chains."[15]

Contrary to the views of some other commenters, the Commission's mandatory disclosure regime does not exist solely to protect investors. The federal securities laws and the Commission's own mission make it clear that the role of public disclosures is also to promote "fair, orderly, and efficient" markets, promote capital formation, and – at root -- protect the public interest.

In fulfilling these responsibilities, the Commission must acknowledge that there are many different types of market participants that rely upon companies' public disclosures, each of which may impact the company, the markets, and the economy overall. For example, today, bank lenders and corporate bond purchasers often read a companies' public filings when making lending decisions and may use that information to determine whether and on what terms to extend credit. This information may have a direct impact on the financing costs for companies, with attendant effects on their finances, operations, and prospects.

Similarly, workers, existing and potential executives, and existing and potential board members (and their representatives) often read companies' regulatorily-mandated disclosures when making compensation and benefits decisions. Again, who works for the company and on what terms may have direct, material impacts on those companies.

Companies' competitors read their public filings and rely on that information when making decisions regarding their own business practices, strategy, compensation and more -- again, with potentially very significant impacts on not just individual companies, but whole industries.

Gatekeepers, such as index providers and credit rating agencies also review companies' public disclosures in making their business determinations, often with significant impacts on the companies and their investors.

And companies' customers may also rely upon publicly disclosed information when making their business decisions. For example, retail customers are increasingly seeking to exercise their "power of the purse" to support or deny business from companies based on particular issues, such as a firm's environmental practices or social justice record. Again, irrespective of whether such an underlying issue is something that a particular investor may believe is important, the ultimate impact of companies' disclosures on companies' sales, and in turn their finances, operations, and prospects, may be extremely significant.

Lastly, voluntary disclosures simply are not sufficient to fill these needs. To the extent that companies choose to make disclosures, they tend to skew heavily towards those disclosures that are likely to be viewed positively. Further, companies' discussion of climate-related physical and transition risks is often extremely generalized, limited to matters that management chooses to disclose, and not subject to reasonable assurance,[16] leaving investors and other market participants with inadequate information to make informed business decisions.

The Commission must act to ensure that investors have climate-related information, as well as information about corporate governance, human capital management, international tax practices, corporate political spending, and more—information investors need to make informed business decisions. That is the only way that the Commission can fulfill its mission to protect investors; promote fair, orderly and efficient markets; promote capital formation; and, in so doing, protect the public interest.

1. **How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?**

The primary objective for the Commission regarding climate-related disclosures should be to develop a core set of mandatory, reliable, consistent, and comparable disclosures that will provide investors and other market participants (including lenders, suppliers, workers, and customers) with information they can use to make informed business decisions.

More than a decade ago, the Commission offered guidance suggesting that firms report "material" climate-related risks.[17] However, that guidance has proven inadequate to ensure that investors and other market participants have the climate-related information they need. One of the key weaknesses of the guidance is that it generally leaves the determinations of what and how to disclose in the hands of company executives who may not fully understand what investors and other market participants want, may be overly optimistic about the company's ability to navigate risks, or may have incentivizes to obscure or under-represent risks that could negatively affect market participants' views of the company.

Another key weakness of that guidance seems to be that it was all but abandoned by the Commission until very recently. A 2018 report of the Government Accountability Office found "14 comment letters to 14 companies that SEC staff issued relating to climate-related disclosures out of the over 41,000 comment letters issued from January 1, 2014, through August 11, 2017."[18] Such a limited response seems woefully inadequate to the magnitude of concerns expressed in the comment letters and unlikely to be an accurate assessment of the items that might warrant further scrutiny.

Investors and other market participants have shared (voluminously) their frustrations with the inadequacies of the existing regulatory mandates,[19] and have even petitioned the Commission for new climate and ESG-related disclosure reforms.[20]

International securities regulators have not been as slow to respond to the pleas of investors and other market participants. For example, the International Organization of Securities

Commissions (IOSCO) has determined that investors are not receiving the information they need and is working with regulators to develop and implement comprehensive climate-related disclosures.[21]

Lack of mandatory, reliable, consistent, and comparable climate-related disclosures in the U.S. will not only put investors in U.S. companies at a disadvantage but also will harm the public interest by failing to ensure that the capital markets are functioning in a fair, orderly and efficient manner and that capital formation is based on accurate and complete information.

The voluntary nature of most existing climate-related disclosure frameworks has proven wholly inadequate to providing market participants with essential information about securities' and companies' climate risks and opportunities. SEC-mandated disclosures are essential. Further, the Commission should generally reject calls for a "comply or explain" regime, and instead require firms to provide reliable, substantive, comparable responses.

Regulation S-K forms the backbone of the Commission's general public company disclosure regime,[22] and Regulation S-X provides the details for the reporting of public companies' financial statements.[23] In fact, the Commission has explicitly stated that it adopted Regulation S-K "to foster uniform and integrated disclosure" by companies that issue or trade securities in U.S. markets.[24] Yet there is no uniform and integrated disclosure regarding climate-related and other ESG information. The Commission should revise both Regulations S-K and S-X to adopt and implement its new and clarified climate-related disclosure obligations. To the extent that specific disclosures can be included in the financial statements, they should be. This inclusion would bring along with it the protections afforded by auditor reviews, appropriate internal controls, and executive and board oversight.

It is essential that climate-related disclosures be "filed" with the Commission and thus subject to the applicable assurances and liability. The Commission should seek to adopt a format that integrates this information into the rest of the disclosure regime, and not create a separate climate disclosure form or section. Segmenting off or separating climate-related disclosures from other disclosures would inappropriately separate this information from related information and improperly suggest that this information should be treated as different from other types of important information contained in regular disclosures.

Lastly, it may be appropriate to include additional climate-related disclosures in proxy materials, such as climate-related lobbying spending, as those disclosures reflect upon executives' management and judgment.

2. **What information related to climate risks can be quantified and measured? How are markets currently using quantified information? 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)? What quantified and measured**

information or metrics should be disclosed because it may be material to an investment or voting decision? Should disclosures be tiered or scaled based on the size and/or type of registrant)? If so, how? Should disclosures be phased in over time? If so, how? How are markets evaluating and pricing externalities of contributions to climate change? Do climate change related impacts affect the cost of capital, and if so, how and in what ways? How have registrants or investors analyzed risks and costs associated with climate change? 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? How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?

The Commission should begin to establish a basic initial set of disclosures and analysis required of all public companies. The need for core standardized climate-related disclosures is urgent, and the Commission should begin with the most important—the disclosure of greenhouse gas (GHG) emissions. All U.S. public companies, including their domestic and international subsidiaries, should disclose their direct and indirect emissions, including Scopes 1, 2, and 3 emissions, anywhere in the world in accordance with the Greenhouse Gas Protocol. The disclosures should include negative emissions—the increase in future emissions resulting, for example, from deforestation activities and land use—across the company's supply chain anywhere in the world. These disclosures will enable boards and managements to set and be held accountable to GHG emissions reduction targets.

Importantly, emissions disclosure should not be based on net emissions. Rather, negative and positive emissions should be reported separately. This is essential due to the uncertainty around most measures and technologies designed to remove carbon from the atmosphere.[25] Claimed offsets should be reported in a manner that can be assured at the reasonable assurance level, and any uncertainty should be subject to review by the board.

Twenty-six percent of the largest companies surveyed by the Task force on Climate-Related Financial Disclosures (TCFD) reported this type of data in 2019.[26] While this is woefully inadequate compared to the significant risk to the capital markets of climate disruptions, it demonstrates that the disclosure of this data is not particularly difficult for firms.

A critical and early part of the GHG emission disclosure regime should be the disclosure of Scope 3 emissions by financial institutions—essentially the GHG emissions embedded in their portfolios. This is the largest share of financial institutions' emissions. The U.S. financial sector controls the flow of tens of trillions of dollars in the global economy. But by financing carbon emissions, the financial system is essentially digging its own grave, exposing itself to physical and transition risks that could be sudden and lead to a chain reaction of harm to the system, including the capital markets.[27] This systemic risk has extraordinarily negative implications for investor protection; fair, orderly and efficient capital markets; and capital formation—the SEC's vital mission priorities. Mandating financed emissions disclosures also acknowledges that today's investors are universal owners, often invested in broad-based portfolios where it is not possible to diversify away from the risks to any individual firm.

In establishing financed emissions disclosure, as with all climate-related disclosures, it is critical that the Commission consider standardizing the appropriate data, assumptions and methodologies underlying the calculation of emissions. The Partnership for Carbon Accounting Financials is one standard that the Commission can draw from and build on in establishing these parameters for financial institution disclosure of Scope 3 emissions. Within financed emissions disclosure rules, the Commission should prioritize disclosure requirements for the forms of finance that have greater potential to increase the level of global emissions, such as industries that combust fossil fuels or that have significant deforestation impacts.

Prioritizing financed emissions makes sense because financial institutions have the resources and capacity to make these calculations, initially in a top-down manner based on EPA data on the amount of greenhouse gases emitted by certain high-emitting industry sectors. But these institutions also are in a position, through due diligence in the course of their financing transactions and through their relationships more generally, to secure emissions-related information directly from their clients. Importantly, such an approach would provide the right incentives for investors to support firms that are lending into a sectoral transition away from high-emission activities. In other words, disclosure of financed emissions would support capital formation that is aligned with lower-risk and improved values. Finally, financial firms would have equal incentives to encourage both public and private company clients to improve emissions reduction and would provide a useful check on the trend of companies avoiding the public markets.

The SEC should require publicly listed financial firms, including bank holding companies, insurance companies, and asset managers to disclose financed emissions, as well as all mutual funds. Private equity and hedge funds should be required at a minimum to collect the data and provide it to the SEC and other financial regulatory bodies. The Commission can enlist the resources of other federal agencies, such as the EPA and the Office of Financial Research, to convene experts and ensure that data and methodologies are standardized and publicly available.

Publicly-listed financial firms should disclose financed emissions in the business description of annual financial reports to the SEC. Negative emissions, or the increase in future emissions that results when carbon-absorbing forests are cleared, should also be reported, and qualitative disclosure can support enhanced transparency of these practices. Additional details should be required, such as the maturity of investments in high-carbon sectors, the value and number of investments in new projects in high-carbon sectors, and details of investments in deforestation activities.

With respect to both public company disclosure of Scopes 1-3 emissions and financial institution disclosure of financed emissions, any claimed offsets should not be permitted to be netted against emissions. Instead, negative and positive emissions should be fully disclosed separately.

The Commission should prescribe additional climate-related disclosures, many of which can be quantified, such as assets and facilities that companies have committed to owning or operating in regions scientists have identified as very likely to have high or extremely high water stress or to experience increased storms or wildfires in the coming years. Companies should also disclose their total energy consumption, broken down by energy source and type. For more details on these types of specific climate-related disclosures, see the Center for American Progress's report entitled "The SEC's Time to Act," published February 19, 2021.[28]

In addition to the above disclosures, the Commission should require the disclosure in MD&A of the board and management strategy regarding targets and performance for the firm's decarbonization and GHG reduction efforts. In particular, the SEC should require firms to disclose a company transition plan that includes interim targets to accomplish a transition to net-zero GHG emissions in accordance with the relevant international commitment, but no later than 2050. Net-zero emissions economywide by 2050 is the widely accepted, science-based minimum action necessary to avoid the worst impacts of climate change.[29] Disclosure of transition plans is central to the priorities laid out by former Bank of England Governor Mark Carney in his priorities for the critical 26th U.N. Climate Change conference of the Parties (COP26) in Glasgow.[30]

The Commission should consider requiring data tagging to make information more accessible and comparable for investors and other market participants.

The SEC should complement its new set of mandatory corporate disclosures with an all-of-agency approach to integrating climate by bringing climate expertise onto all of its advisory committees and standing up dedicated climate staff expertise within each of its divisions and offices.

Economic Externalities

The negative impacts of climate change are often referred to by economists as negative externalities. By definition, externalities are not well priced into the markets, resulting in less efficient markets. There are a number of ways to internalize these externalities, and disclosures, including the measurements underlying disclosures, can help internalize those costs.

Although some market actors currently disclose climate risks voluntarily or for certain purposes, such as to obtain certain kinds of insurance, this disclosure is ad hoc and the information is not generally available to investors and other market participants, and is often not assured. A recent study looked at equity valuations in many countries and found that, while some physical risks of climate change do have a modest impact on equity prices in some markets, those impacts did not appear to fully reflect predicted climate change risks.[31] We posit that unsatisfactory information helps explain this fact pattern.

Properly priced risks allow investors to make better decisions and incentivize firms to engage in risk mitigation, such as changes in activities, insurance, mitigation efforts, and changes in technologies. Meanwhile, the lack of sensitivity to climate risks can constitute a risk in and of itself, heightening the negative consequences and perhaps the probability of climate events. And those events, in turn, may prompt the sudden repricing of assets in a disorderly manner. Indeed, the authors of the above study concluded that "better measurement and increased disclosure of exposure and vulnerability to climatic hazards would help reduce investors' informational challenges and facilitate risk pricing."[32] Even studies that have found evidence that markets are pricing climate risks have often indicated that the pricing would be improved with better, more standardized information, implying and in some cases stating that this should come from government.[33] There is also evidence that climate change-related impacts negatively affect the cost of capital.[34]

Despite differing conclusions about the extent to which financial markets are incorporating climate risks into prices, a common thread among the studies is the need to measure and disclose pollution metrics in a rigorous, comparable and standardized fashion in order for markets to incorporate these risks more effectively into prices and for researchers to improve the quality of their assessments on the topic. Under business as usual, however, externalities are not priced in consistently or fully, despite decades of improving climate research making the risks abundantly clear. When companies report climate-related disclosures in varying formats, investors and other market participants may find it difficult to navigate through the filings to identify, compare, and analyze the climate-related disclosures across filings, especially given the size of each individual filing.

Today, many investors spend significant resources seeking climate-related information from companies, including hiring staff and consultants, acquiring data and analytics, engaging legal counsel, and more. These investors and other market participants read securities filings and press clips of not just the companies, but their peers, suppliers, customers, lenders, and more. They follow regulatory and legal developments around the world. And they engage companies on their policies, procedures, practices and various business decisions implicated by climate-related risks and opportunities. They put forth shareholder proposals – often navigating a myriad of archaic and legally complex processes – and retain expertise to help them make informed voting decisions consistent with their fiduciary obligations.

And despite all of these expenses, which may run into the millions of dollars for some investors, they still may not have enough information to make informed business decisions. And that is where pure economic waste comes into play.

Without that information, investors and other market participants may – as the drafters of the federal securities laws feared – misallocate capital. Good companies may be underfunded while those with greater risks or worse long-term prospects may be over-funded. Put simply, despite incurring enormous expenses to try to ascertain the information to make better business decisions, they may still suffer significant economic losses because those efforts were insufficient—not through any fault of theirs, but because the Commission has enabled companies to keep investors in the dark.

3. **What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission? How should such a system work? What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards? What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?**

Answered below in combination with Question 6.

4. **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.? How should any such industry-focused standards be developed and implemented?**

The Commission must adopt qualitative and quantitative climate-related disclosures that apply to all public issuers and all large issuers and companies, whether public or private. However, some industries have very different risk profiles than others, and so additional information is not just desired, but essential. The Commission has long understood these types of industry-specific disclosure needs and has adopted industry guides that provide greater detail and clarity for investors and other market participants with respect to public companies in specific industries.[35] The Commission should adopt the same approach with climate-related disclosures, with a particular focus on the energy and financial services sectors.

In constructing climate-related industry guides, the Commission should consider and pull specific disclosure requirements from (1) existing voluntary disclosure frameworks, (2) international disclosure frameworks, including those that may already or may soon apply to some US-issuers abroad, and (3) investors and other industry experts (including respondents to this RFI). For example, the Sustainability Accounting Standards Board has 77 industry-specific sets of disclosures[36] from which the Commission could pull specific requirements. However, the Commission should not adopt alternative formulations of materiality found in some of these sources.

As discussed more fully in response to Question 6, below, we also urge the Commission to reject calls for outsourcing the development and implementation of these industry-specific disclosures to any third parties. The Commission should undertake the governmental task itself, while drawing upon the voluntary disclosure frameworks that have been developed over the past several years and from the expressed needs of investors and other market participants. At the same time, we recognize that there is a role for the development of best practices that go above and beyond Commission-mandated disclosures and guidance, led by third parties on a voluntary basis. The combination of science-based, uniform and rigorous SEC-mandated disclosures and private ordering of best practices that go beyond Commission regulatory mandates is most likely to yield the greatest benefits.

Procedurally, we urge the Commission to prioritize implementation of mandatory disclosures for all issuers, as well as a limited set of additional disclosure requirements for the energy and financial services sectors. We expect the development and implementation of climate-related industry guides may take time and continued refinement, but that should not stand as a barrier to overall progress on cross-industry and generalized minimum disclosure obligations.

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

Investor and consumer groups have been pushing the Commission to adopt enhanced climate-related disclosures for several decades,[37] with extremely limited success. The Commission has adopted no formal rules for climate-related disclosures and has only offered very limited guidance,[38] which has itself not been robustly enforced.

Over the past several years, a range of voluntary standards have proliferated in an attempt to help fill the need for climate-related information, including the Financial Stability Board's Task Force on Climate-Related Financial Disclosures (TCFD), the Sustainability Accounting Standards Board (SASB), the Carbon Disclosure Standards Board (CDSB), the Global Reporting Initiative (GRI), and the Partnership for Carbon Accounting Financials (PCAF).[39]

These private sector third-party frameworks and standard setters have identified and created a broad range of thoughtful, achievable disclosure expectations for companies, including financial firms. Thousands of companies around the world are currently providing climate-related disclosures pursuant to one or more of these various standards. The Commission should obviously seek to pull from each of the frameworks above and incorporate these existing disclosure obligations into its climate and ESG-related disclosure requirements. Notably, the merger and reconciliation of many of the third-party frameworks over the past few years will make this process much easier today than it might have been just a short time ago.

Importantly, the Commission should reject calls to simply refer to or delegate to any of them or to adopt alternative conceptions of materiality they may propose. As an initial matter, each of these voluntary disclosure frameworks is -- at root -- voluntary. The parties responsible for developing these frameworks have had to balance the desire for more comprehensive, reliable, consistent, and comparable data with companies' willingness to voluntarily provide that information. A voluntary framework would not gain any traction if no companies were willing to comply with it.

Companies may be extremely reluctant to disclose information that might be viewed negatively by investors, lenders, workers, customers, or governmental entities. In fact, a corporate executive might argue that it would be contrary to her fiduciary obligations to voluntarily disclose such information. Each of the voluntary disclosure frameworks and standard setters has wrestled with concerns about how to incentivize companies to utilize their regimes. In these environments, the existing voluntary frameworks have historically tended to be either issuer dominated or, alternatively, enjoyed only modest levels of compliance.

The Commission should not be guided -- at all -- by what company executives may want or be voluntarily willing to disclose. Rather, the Commission should be guided by its mission, which is to require disclosure of climate-related and other information that investors and other market participants believe is important to their decision-making (which is a prerequisite for fair, orderly, and efficient markets, the protection of investors, the promotion of capital formation, and the promotion of the public interest).

Substantively, different disclosure frameworks have very different contributions to make to the Commission's efforts. For example, the TCFD framework takes a very comprehensive approach to many of the key issues, and the substance of each of the core 11 recommended disclosures should be mandated by the Commission.[40] However, the open-ended nature of the specific requirements leaves company management and disclosure professionals with significant discretion over the details and specificity of the responses, which often leads to extreme variability and lack of comparability for the resulting disclosures. Worse, to the extent that disclosures may be comparable, it is often because they are merely recitations of boilerplate climate-related risks. If the Commission mandates these broadly descriptive disclosures, it should provide significant guidance and FAQs -- as well as examinations and enforcement support -- to ensure that issuers provide the detailed, consistent, and generally comparable information investors and other market participants need.

Additionally, qualitative disclosures, such as those recommended by the TCFD, should also be supplemented with detailed, mandatory, line-item disclosures that provide very specific information that can be readily compared across issuers -- such as metrics that would be provided in a machine-readable format. Some of these may be potentially taken from some of the industry-specific disclosures outlined by SASB, as well as from foreign regulatory requirements and other voluntary frameworks.

With respect to financial services firms, the Commission should review and seek to pull into its disclosure regime the processes of the Partnership for Carbon Accounting Financials (PCAF), which also has significant financial-industry support.[41] The Commission may be able build upon PCAF's processes using the capacity and resources of federal government agencies, such as the Environmental Protection Agency.

With all of these potential sources of metrics, the Commission should consider standardizing not only the metrics themselves but also the data, assumptions and methodologies that issuers must use in calculating their firm's performance under the metric. Without this, two different firms may arrive at the same metric measurement using different underlying data, assumptions and methodologies, resulting in information that is neither reliable nor comparable. Standardizing underlying sources and assumptions also facilitates the participation of mid- and even small-size firms in climate-related disclosure regimes.

The Commission should not seek to rely upon any single existing framework, but rather choose the best components of each, and supplement them, where appropriate, to ensure reliability, consistency and comparability.

6. **How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?**

In response to Questions 3 and 6, the Commission should take complete and direct responsibility for the development, implementation, oversight, and enforcement of climate-related and other ESG disclosures. If the Commission nevertheless determines to delegate some of its responsibilities regarding climate-related disclosures to a third party, the delegated entity should, at a minimum:

1) Include members that are selected by the Commission only, who shall represent relevant market participant and governmental interests, and a majority of which shall be investors;

2) Be funded pursuant to express direction of the Commission and should not rely on the discretion of market participants. For example, a formula could be established based on objective factors beyond the discretion or control of market participants, with compulsory participation by issuers and Commission approval of the budget on an annual basis. Moreover, funding should not be overly reliant on any single market participant, segment, or industry; and

3) Be subject to Commission and public accountability regarding its processes for developing and implementing its work as well as the substance of its work.

We have significant concerns with the Commission's ability to effectively address each of these three elements, and, even if so, question whether any responses may introduce other unnecessary risks and costs.

Unquestionably, any delegation could give rise to a number of additional procedural complexities and potential delays. As mentioned above, funding is important. However, the Commission would be very likely challenged on any action to authorize or approve a third party's assessment of a mandatory fee. The Public Company Accounting Oversight Board, for example, is subject to Commission review and approval of its budget and fees, but the authority of the Commission to exercise these powers is expressly provided for by the Sarbanes-Oxley Act of 2002.[42] Similarly, while the Commission reviews and approves fees of exchanges and the Financial Industry Regulatory Authority, those powers are expressly granted by the Securities Exchange Act of 1934 (as amended by the 1975 Amendments). Again, we expect the Commission would be legally challenged on any similar assertion of authority for a third-party standard setter made in the absence of such an express Congressional grant.

Procedurally, any delegation may lead to significant delays in implementation of new disclosure requirements. As a practical matter, the insertion of a new third party at the front end of the disclosure regulation process adds at least a layer of process. The entity must first develop and seek to implement a rule, then seek the Commission's approval, and then implement it. The Commission's side of the process, however, would likely have to involve its own "notice and comment" process related to whatever the third party proposed. Thus, there would be essentially two stages for market participants to weigh in and lobby for changes--neither of which may be particularly short in duration. Further, and at the end of either approach -- and regardless of the outcome -- the Commission's determination to approve a new requirement may be challenged in federal court.[43] So, while a delegation may add potentially significant delays, it would not avoid legal challenge risks: rather, it may exacerbate them.

Substantively, delegation to a third party to establish or maintain disclosure requirements may also create new risks. In particular, who will be performing those functions and what are their objectives? Investors of different types have different informational needs. But how are those needs aligned (or not) with the concerns of others who use and rely upon companies' disclosures, such as lenders, suppliers, workers, customers, and even governments? And how are all of these needs balanced against the concerns of the parties upon whom the disclosure obligations are to be imposed?

The Commission would need to establish for itself a clear set of expectations for any third-party responsible for mandated or prescribed disclosure obligations, as well as a process for reviewing and approving any third-party actions. For example, under the Exchange Act, the Commission is obligated to review and make findings about exchange rules. Fees must be "reasonable" and "equitably allocated."[44] Exchange rules must be "non-discriminatory" and not pose an undue burden on competition.[45] And they must be consistent with the public interest. The Commission would need to impose analogous demands regarding climate-related disclosure obligations.

It is also unclear whether and how the Commission could ensure that a third-party standard setter is adopting the disclosures the Commission deems necessary and appropriate. Suppose, for example, that the third-party standard setter decides not to require any specificity on a particular topic of interest. Can the Commission compel the entity to make such a change? If so, how? It is unclear what tools the Commission would have to ensure the third party complies with the Commission's expectations, and any action by the Commission to direct a specific outcome would likely lead to further legal challenge.[46]

In this regard, we have yet to identify an unequivocally successful example of the Commission delegating its governmental powers to a third party -- whether it be to the Financial Accounting Standards Board, the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, the Financial Industry Regulatory Authority, the registered securities exchanges, the more than a dozen exchanges, or the securities clearinghouses. That comes despite the fact that most of these delegations were pursuant to Congressional mandates and all ostensibly have features intended to ensure their integrity and efficacy.

Several leading accounting and investor protection experts recently summed up the disappointments of the FASB and PCAOB, "today, FASB remains both glacially slow and unresponsive to investor concerns, and the PCAOB seems to have become more focused on protecting audit firms than protecting investors."[47] And these are arguably two of the Commission's most successful delegations. In other areas, such as the Commission's delegations to the exchanges and FINRA, not only have some existing market problems been inadequately addressed, but also the Commission sometimes even finds itself in litigation with the parties to whom it is entrusting governmental functions and power.[48]

Outside the U.S., the International Organization for Securities Commissions (IOSCO) has been engaged with the IFRS Foundation in the creation of a Sustainability Standards Board.[49] The SEC could draw from its work and progress, just as the Commission can and should draw from the work of any credible third-party standard setter. However, the Commission's work is too urgent to delay the adoption of mandatory climate-related disclosures. It simply cannot wait for an international process. Further, while the Commission should work to harmonize US disclosure standards with those of the international regulators to the extent possible, the Commission should not cede its authority. Rather, the Commission should retain its jurisdiction, oversight, and accountability, and, if it chooses to follow a path similar to the one taken by foreign regulators, it may. Ultimately, there will be many areas where substantive expectations should be similar – as that consistency would greatly ease burdens on both disclosing parties and the parties who benefit from disclosures.

While not outsourcing standard setting to one or more third-party organizations, the Commission should consider establishing a standing Advisory Committee with a broad charter and by-laws. This Advisory Committee, which should include a majority of investor members, should also include accountants, academics, analysts, issuers, lenders, organized labor, and other stakeholders, including non-governmental standard setters. This Advisory Committee structure could make recommendations to the Commission for developing ESG disclosure standards not already prescribed by the Commission and recommend updates to existing rules, given investors' and other market participants' informational needs. In addition to this Advisory Committee, the Commission should also consider the establishment of a joint task force with the Environmental Protection Agency that would identify informational needs and make recommendations to the Commission on mandatory disclosure reforms, including updates on underlying data, assumptions and methodologies. This could be modeled on the Commission's now-dormant, but once successful Joint Advisory Committee with the Commodity Futures Trading Commission.

Lastly, under no circumstances should the Commission delegate any of its enforcement responsibilities to any third parties. To summarize, leadership by the Commission, setting and enforcing strong standards, informed by science and a standing Advisory Committee, and supplemented by private-sector-led best practices that go above and beyond, in our judgment is the most appropriate structure in this area.

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

As discussed in response to Question 1, the enhanced climate-related disclosures should be specifically included in Regulations S-K and S-X. To promote reliability and accountability, these climate-related disclosures must be "filed" with the Commission and subject to the applicable liability. Simply furnishing disclosures that are not integrated into S-K and S-X severely undermines the reliability of such disclosures, and any potential use of this approach should be extremely limited.

Importantly, the Commission should not segment or separate climate-related disclosures from other disclosures, as this would inappropriately separate this information from related information, and improperly suggest that this information should be treated as different from (or less relevant to) other types of information contained in the Commission's other mandated disclosures. Put another way, the Commission should integrate climate-related information into the rest of the disclosure regime and not create a separate "climate" form or disclosure section.

8. **How, if at all, should registrants disclose their internal governance and oversight of climate-related issues? For example, what are the advantages and disadvantages of requiring disclosure concerning the connection between executive or employee compensation and climate change risks and impacts?**

The Commission must require parties responsible for making disclosures to have the appropriate policies, procedures, and processes in place to ensure that any climate and ESG-related disclosures are reliable, consistent, and comparable. However, as CAP explained in a report earlier this year, currently companies' climate-related disclosures "are not audited, and auditors have no duty even to read them, much less evaluate whether the financial statements are consistent with the assertions in them."[50]

Strong internal policies and procedures, as well as external audits, are essential elements to ensuring that companies' disclosures are reliable. These mechanisms are especially critical in climate-related areas, where companies have generally been afforded wide discretion regarding whether, when, how, and why to disclose information.

Further, a Government Accountability Office report from 2020 makes it extremely clear that the companies must get these disclosures right -- because the Commission is unlikely to provide meaningful accountability on its own. For example, that report found that Commission staff acknowledged that they may "generally defer to companies' determinations about which ESG information is relevant to their business and should be disclosed."[51]

The fallout from the 2020 collapse of the oil and gas industry provides a clear example of companies changing their own assumptions. Between mid-2019 and the end of 2020, oil and gas companies re-evaluated their assumptions about future oil prices and reportedly dropped the values of their assets by more than $145 billion.[52] A few of these companies explicitly admitted that their assumptions changed, in part, because of potential demand impacts resulting from the Paris Agreement. Others did not make such disclosures, and so it is unclear to what extent global climate-related policy changes may be reflected in companies' assumptions. These disparities make it extremely difficult for investors or other market participants to readily compare the climate-related assumptions across these companies.

Internal processes, auditor reviews, and executive attestations would go a long way toward ensuring that assumptions are made in good faith and changes, if necessary, are not intended to obfuscate important information from investors and other market participants, but instead improve the quality of it.

9. **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? If there were to be a single standard setter and set of standards, which one should it be? 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? If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability? What should be the interaction between any global standard and Commission requirements? If the Commission were to endorse or incorporate a global standard, what are the advantages and disadvantages of having mandatory compliance?**

Please see response to Question 6, above.

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

Climate-related disclosures are not qualitatively different from other types of disclosures mandated by the Commission and thus should be treated similarly to other disclosures mandated by the Commission. This means that the Commission should retain for itself the ability to investigate and take enforcement actions for non-compliance. Further, to the extent that the Commission imposes new accounting and auditing standards, those standards should be developed and enforced consistent with the existing processes for accounting and auditing standards. Put simply, the Commission can and should utilize the existing accounting and auditing rules and oversight mechanisms, such as the FASB and PCAOB. That said, as discussed above, FASB and PCAOB also need significant reforms to ensure that they are capable of fulfilling their obligations for investors and the public.[53]

While these standards should be applied to all issuers, if the Commission seeks to lessen the burden of such processes on smaller issuers, it should consider drawing the line at "accelerated filers," with all others generally meeting the new obligations.

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

As demonstrated by the Enron and Worldcom scandals of a generation ago, the reliability of disclosures is essential. Unfortunately, in areas where there may be ambiguity of methodologies or baselines, there exist very significant risks of unreliable or inconsistent disclosures over time.

In accounting and auditing contexts, these risks have been addressed by (1) adopting relatively clear guidelines and standards; (2) ensuring that companies establish and maintain auditing procedures and processes (e.g., internal controls over financial reporting); and (3) requiring executive and board-level reviews, attestations, and representations (with potential accompanying legal liability).

The Commission should directly adopt each of these features for climate-related disclosures.

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

The Commission should reject "comply or explain" disclosures, as such a regime would directly undermine the objectives of consistent and comparable disclosures. In such regimes, some issuers would likely comply, while other issuers would opt to avoid compliance, thus altering the different degrees of information available about the different firms, and in so doing, altering the competitive balance between them.

If the Commission nevertheless considers adopting a "comply or explain" framework, it should limit the application of it, so that only a small subset of disclosure obligations may be treated this way. Further, if the Commission determines to permit the avoidance of a disclosure through an "explanation," the Commission should recognize that it will deprive investors and other market participants of information they may value, and so this regulatory relief should be afforded only to issuers that do not qualify for accelerated or large accelerated filer status.

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

As stated above, the Commission should require both qualitative, principles-based disclosures and quantitative, prescriptive line-item disclosures of climate-related and other ESG disclosures. Further, to the extent possible, disclosures and the processes through which they were determined and made should be reviewed, audited, and certified. Lastly, the Commission should not seek to create a new "sustainability" disclosure section. To the contrary, the Commission should simply demand important disclosures and include them in the applicable portions of financial statements and annual reports, as well as proxy materials.

14. 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?

The means through which companies and funds raise money are unlikely to have a material impact on the climate-related risks and opportunities faced by those companies' and funds' investors, lenders, suppliers, workers, and customers.

However, in general, the Commission's disclosure requirements and investor rights protections only apply to companies that are "public." A company generally becomes a "public" company after it engages in an initial public offering, but a company may also become a "reporting company" if the company hits certain thresholds, such as a sufficient number of "shareholders of record."[54]

As a result of issuers' increasing reliance on offering registration exemptions, such as Rule 506 and Rule 144A, there are many large private companies and offerings for which no initial or detailed ongoing disclosures are specifically mandated. This results in a massive gulf between what investors and other market participants know about "public" companies versus what they may know about even similarly sized "private" ones.

Private companies generally enjoy a significant regulatory advantage over their public competitors when it comes to disclosing information that may cast the firms in a negative light. Put simply, private companies may be under no obligation to share bad news with anyone. This regulatory advantage could also act like a tarp that conceals a company's actions from public scrutiny, as well as scrutiny from creditors (including suppliers), investors, consumers, and competitors.

Private companies — especially those pursuing commercial endeavors that have negative impacts on climate change — can also selectively disclose self-serving information while omitting the type of information that could give rise to concerns or actions by their shareholders or other market participants. For example, in June 2021, Apollo Global Management announced that it was acquiring a natural gas transportation company, which Apollo argued had a "commitment to sustainability and emissions reduction [that] aligns with Apollo's environmental and social governance priorities."[55] Yet it is unknown how or why that investment is viewed as sustainable, or what climate-related risks may be associated with it. There are generalized claims of sustainability, but there are no disclosures about what that might mean (or not mean).

In particular, as the fossil fuel industry has come under pressure in recent years, the financing for fossil fuels has generally shifted away from public, equity-based financing to more private, debt-based financing. Unfortunately, accurately assessing the risks of those securities without mandatory, standardized, reliable, useful information will be difficult, if not impossible.

In 2020, Exxon Mobil Corporation sold billions of dollars of debt securities, some of which were for under 7% interest, and some of which do not come due for a dozen years or more.[56] What are the climate-related risks associated with those securities? Should it matter how the proceeds were used? Credit rating agencies, index providers, investors, and competitors, for example, might want to know if a company raises funds to finance solar investments or stock buybacks, or to upgrade fossil fuel extraction infrastructure in the Permian Basin. However, it might be difficult, if not impossible, for a bank or investment manager to assess those risks, if they are not provided with basic information from the issuer first.

Importantly, consistent with the Paris Agreement, institutional investors now expect banks to assess their climate-related risks.[57] The quality of those assessments will be materially undermined if they continue to have little or no detailed information from the issuers of those securities regarding those securities' specific climate and ESG-related risks and opportunities.

Unfortunately, because Commission rules have exempted most corporate debt offerings from registration, investors and other market participants may not receive any detailed information related to various climate or other ESG-related risks for those debt securities. To the extent investors may receive information, it may not be reliable, audited, or comparable to information received from other issuers. Further, the risks for investors in these specific securities may be very different than the risks for the shareholders of the underlying issuers.

Further, to the extent that banking regulators and other governmental entities are focused on potential systemic risks related to climate change, they must also rely on information that is mostly, if not entirely, within the possession of the issuers of the securities held by banks and asset managers.

The Commission must recognize that its disclosure rules determine what, if anything, banks, investment advisers, and other market participants may receive, which will significantly impact the overall quality of those firms' climate-related analyses.

If the Commission 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 greatest climate-related risks, such as fossil fuels, real estate, and financial services. In fact, that pressure has already begun. In recent years, we have already seen a significant evolution in the methods of financing fossil fuel projects. Fossil fuel assets are increasingly funded using private offerings of debt and held by private equity investors. Meanwhile, for example, the public market capitalization of the coal industry has shrunk by more than 80% over the past decade.[58]

Private equity investors have been acquiring various fossil fuel industries, often leaving pensioners with significant climate-related investment risks. For example, on June 3, 2021, it was reported that a private equity investment that included state teachers pensions suffered material losses on an investment in a US Virgin Islands oil refinery after the "U.S. Environmental Protection Agency ordered the plant shut for at least 60 days after the refinery sprayed nearby neighborhoods with a petroleum mist."[59] Contractors who were also hired to revive the refinery are also reportedly losing millions.[60]

The Commission must not create a regulatory arbitrage that deprives investors and other market participants (including workers and regulators) of essential climate-related information.

As discussed above, companies that have a large number of shareholders of record may be required to become public reporting companies. However, the Commission has historically defined a "holder of record" in a manner that does not take into account the number of actual "owners" of those securities.[61] By refusing to look through omnibus holders like banks and brokers, the Commission is essentially protecting nearly all companies from ever tripping over the threshold. This interpretation is one of the primary reasons why there are now many very large, very widely held "private" companies.[62] State securities regulators and many other capital market experts have long sought to close this loophole.[63]

The Commission must close this loophole and also impose mandatory disclosure obligations on large securities offerings and large companies if market participants, regulators, and the public are to have accurate assessments of companies and investors' climate-related risks and opportunities.

With respect to private companies, we have four specific recommendations to ensure that the Commission fulfills its commitment to promote "fair, orderly, and efficient markets," as well as protect investors, promote capital formation, and protect the public interest.

First, the Commission should eliminate the ability of issuers to rely upon Rule 144A, Rule 506, other exemptions for offerings in excess of $100 million.

Second, the Commission should consider conditioning the applicability of any registration exemptions upon the public disclosure of basic financial information about the securities, including details related to climate-related and other ESG factors.

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

Fourth, the Commission should require all large private funds to provide details of their climate-related practices and holdings, including risks.[64] These disclosures should mirror, to the extent possible, requirements on public funds, and complement disclosures required of registered investment advisers.

15. **In addition to climate-related disclosure, the staff is evaluating a range of disclosure issues under the heading of environmental, social, and governance, or ESG, matters. Should climate-related requirements be one component of a broader ESG disclosure framework? How should the Commission craft climate-related disclosure requirements that would complement a broader ESG disclosure standard? How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?**

Many of the transparency concerns raised above are not unique to climate risk, and we have included some discussion of recommended Commission approaches to ESG matters in response to the preceding questions. Most ESG matters represent areas where the Commission similarly needs to ensure that investors and other market participants have reliable, consistent and comparable information, in order to carry out its three-part mission. The Commission already has announced its intention to require disclosures in at least one of those areas—human capital management. This is a vital area for disclosure, and CAP looks forward to commenting further on that initiative in the near future. Other areas ripe for Commission action include international tax transparency, human rights practices, financial stability risks including from derivatives, political spending, and other environmental issues such as biodiversity impacts.

Investors and other market participants have been urging the Commission to require more specific disclosures in these areas for years. For example, in April of 2016, the Commission issued a Concept Release on whether and how it should change its core disclosure rules.[65] The Commission received more than twenty-five thousand comments – an overwhelming public response from a wide range of commenters. An independent analysis of the comments found that, while a handful of commenters—many with connections to a few industries like oil and gas—called for fewer disclosures, an overwhelming number of commenters called for more disclosures on a wide range of issues, including those mentioned above.[66] Since then, investors have raised additional areas where information is needed in response to recent events and trends, including cybersecurity threats, supply chain resilience, and more.

The Commission should recognize that these ESG matters and other information are needed by investors and other market participants. It should continue to adopt mandatory climate disclosures while also moving forward on enhanced disclosures elsewhere.

Conclusion

Even as the risks to companies, market participants, the capital markets and the economy have grown, the Commission's mandatory disclosure regime has been used as a shield against those who need climate-related information to make informed business decisions. It is time for the Commission to act on investors' and other market participants' loud and frequent calls for more information from companies on climate risks and other ESG matters. Only by making real progress in these areas will the Commission fulfill its obligation to protect investors, as well as the public interest through ensuring fair, orderly and efficient capital markets; and facilitating well-informed capital formation.

Sincerely,

Andres Vinelli

Vice President, Economic Policy

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