

**June 14, 2021**

**Via Electronic Mail**

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**Re: Public Input on Climate Change Disclosures:**

Dear Ms. Countryman:

I write on behalf of the Insurance Coalition (“the Coalition”), a group of insurance companies that share a common interest in federal regulations affecting insurers. We appreciate this opportunity to respond to the March 15, 2021 request for public input on climate change disclosures. Insurance Coalition members include a uniquely broad cross-section of the industry, including life insurers and property and casualty insurers, both domestic and international. Several Insurance Coalition members are Securities and Exchange Commission (SEC) registrants and thus would be directly subject to any additional disclosure requirements that may be introduced. We hope that our perspective is useful as you consider this important set of issues.

**Executive Summary**

Insurance Coalition members have a direct stake in all material risks that may affect the ability to protect policyholders, employees, shareholders and other critical stakeholders. This includes climate-related risk. The trust our policyholders and other stakeholders place in us to manage risk is critical to our business model. Thus, the Insurance Coalition member companies are keenly focused on understanding how climate change may impact them as both insurance providers and institutional investors.

We believe that the public at large could generally benefit from clearer, more uniform information on Environmental, Social, and Governance (ESG) factors and ratings. Below we provide specific recommendations to consider should Congress mandate or the SEC decide to require material climate-related disclosures above those contemplated under current law.

- First, we believe that any new climate disclosure requirements should be flexible and principles-based, to accommodate changing science and circumstances.
  - Second, we believe that the SEC should coordinate with other prudential regulators, including state insurance commissioners.
  - Third, we agree with other commenters regarding providing initial flexibility in the format and location of disclosures.
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- Lastly, we believe that any required disclosure should be accompanied by a limited safe harbor to protect good-faith actors from private plaintiff actions.

We look forward to continued engagement on this issue as the rulemaking process unfolds.

### **Any Required Disclosures Should be Principles-Based**

Climate change presents a clear example of the need for flexible standards. Climate science, our understanding of that science, and on-the-ground circumstances are ever evolving. Given this landscape, any climate disclosure framework must be principles based so it can easily adapt to scientific, industry, and market developments and accommodate companies in different industries, of different sizes, and at different stages with respect to their ability to assess climate-related risk.

### **Disclosures Should Leverage Existing Frameworks**

Many companies across the globe have invested significant time and resources in the voluntary reporting and accounting standards developed by the Task Force on Climate-Related Financial Disclosures (TCFD) and/or the Sustainability Accounting Standards Board (SASB). We believe that any new regime should not be inconsistent with the TCFD and SASB frameworks, in addition to being principles-based. While it is useful for the SEC to leverage the work that these institutions have undertaken, we also believe that the development of any framework itself, as well as any material changes to an SEC framework, should be subject to an Administrative Procedures Act rulemaking process to ensure opportunity for initial and ongoing public input.

### **Disclosures Should Permit a Company-Specific Assessment of Material ESG Factors and Use a “Comply or Explain” Framework**

We agree with other commenters who have encouraged the Commission, if additional disclosures are required, to consider permitting a company-specific assessment of which SEC-specified ESG factors are material to each registrant. In such a regime, the SEC may identify disclosures across the economy, or by sector, and companies may explain why a specific factor is not material to their business (comply or explain) but should not be required to disclose specific information on all/non-material ESG factors.

Any required climate-related disclosures should also be grounded in the concept of materiality. As Commissioner Lee has noted, current law only requires the disclosure of material factors where there is an affirmative duty to disclose. We understand that the Commission may consider disclosure where such disclosure is not mandatory today but would also suggest that the concept of materiality remains a critical touchstone for any additional requirements. We believe that the concept of materiality should be used across all ESG factors, to the extent that disclosure beyond climate risk is required.

## **Disclosures Should Coordinate with and Integrate Insurance-Specific Regulatory Activity**

The strong interest in climate-related risk, and ESG factors more broadly, has driven a proliferation of ratings and standards across the globe. The current system involves many overlapping and voluntary disclosure frameworks, with ratings and scores that are in some cases, directly contradictory, and confusing to investors. The current system has led to countless direct requests to companies for information via voluntary surveys. Additionally, in many cases, corporations have been assigned stand-alone ESG ratings by third parties based on information obtained from public data and sources. Such practices, and the lack of consensus on how best to define and measure climate risk, only serves to confuse investors and fails to focus disclosure where it matters most – in the case of material risks that may affect a company’s financial health. Insurers are at the forefront of risk mitigation and in the best position to understand the materiality of climate risk and its potential impact on the business of insurance.

The Coalition, therefore, respectfully suggests that to maximize the utility of disclosures, the SEC should carefully consider how any new SEC requirements around climate-related risk, and ESG more broadly, will fit in with existing and emerging standards and practices. Because state insurance commissioners serve as the primary insurance regulators, their activity in particular is of paramount importance to Coalition members, including SEC registrants. The National Association of Insurance Commissioners (NAIC) and individual state regulators have been active in examining ESG disclosures. The NAIC’s Climate and Resiliency (EX) Task Force is currently charged with considering appropriate climate risk disclosures, including alignment with other sectors and international standards. The Task Force is also examining financial regulatory approaches to climate risk and resiliency, including an examination of climate modeling, stress testing, solvency exposure, and rating agency practices.

In addition to NAIC activity, individual states are addressing these issues as well. The New York Department of Financial Services (DFS) issued a statement in September 2020 indicating that DFS expects all New York insurers to begin integrating consideration of financial risks from climate change into their governance frameworks, and that the agency will incorporate questions regarding climate risk into DFS’ exam process starting in 2021. The agency also stated, “In addition, insurers should start developing their approach to climate-related financial disclosure and consider engaging with the Task Force for Climate-related Financial Disclosures framework and other established initiatives when doing so.”<sup>1</sup>

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<sup>1</sup> Insurance Circular Letter No. 15 (2020), New York Department of Financial Services (Sept. 22, 2020), available at: [https://www.dfs.ny.gov/industry\\_guidance/circular\\_letters/cl2020\\_15](https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2020_15).

While the purposes of the SEC and state insurance regulators are not entirely the same, the Coalition believes that any SEC-required disclosures should reflect industry-specific concerns and leverage or complement the robust NAIC and state regulatory focus on climate-related risk and disclosure.

Ongoing international work will also affect insurers as well. On May 25, 2021, the International Association of Insurance Supervisors (IAIS) and the Sustainable Insurance Forum (SIF) published an application paper with recommendations to insurance supervisors. Among the paper's recommendations were that climate risks should be disclosed by insurers and that supervisors may use the TCFD framework when designing best practices.

Given the activity of state insurance regulators, the NAIC, and international bodies on climate risk disclosures, we respectfully suggest that the Commission coordinate with other regulators. The coordination with and integration of prudential regulators in the process is especially important to avoid duplication, overlap, and frustration of purpose.

### **Flexibility for How Disclosures are Provided**

We agree with other commenters regarding the need for flexibility in the public positing of company disclosures.<sup>2</sup> Over time, as progress is made on developing and implementing critical foundational elements (– e.g., common taxonomy, requisite expertise in assessment work within the company, etc.) that can facilitate more robust, reliable and decision-useful disclosures, the use of SEC disclosures for climate-related reporting could be reassessed.

### **Limited Legal Liability**

New climate disclosure requirements could enhance the information available to investors. To serve that end, facilitate the disclosure of decision-useful information, and account for the ever-evolving nature of climate science, company understanding of that science, and climate risk assessment capabilities, we believe the Commission should provide registrants with a safe harbor from private plaintiff liability. To encourage meaningful reporting, safe harbor rules should initially cover all required and supplemental disclosure, historical information, and forward-looking statements. Further, we believe that safe harbor rules should be multi-year or applied with a “light” sunset (i.e., with a review regarding ongoing need in 3 years). Additionally, safe harbor rules should provide relief from both private litigation and enforcement actions.

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<sup>2</sup> See e.g., Standards Board to Securities and Exchange Commission, Comment Letter on request for public input on climate-related financial disclosures (May 19, 2021), available at: <https://www.sec.gov/comments/climate-disclosure/cl12-8819945-238161.pdf>.

**Conclusion**

We appreciate the SEC's goal of providing investors with consistent, comparable, and decision-useful information on all material risks, including climate risk. Thank you for the opportunity to provide these comments and we appreciate your consideration of our views. We would be pleased to engage in further discussion on these matters as the SEC work on this topic moves forward.

Sincerely,



Bridget Hagan  
Executive Director, The Insurance Coalition