



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
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Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

Via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Commissioner Lee's Timely Request for Comment on Climate Disclosure**

Dear Ms. Countryman:

I appreciate this opportunity to provide comments in response to SEC Commissioner Lee's Timely Request for Comment on Climate Disclosure. Last week's announcement that the G7 supports "moving towards mandatory climate-related financial disclosures that are based on the Task Force on Climate-related Financial Disclosures (TCFD) framework, in line with domestic regulatory frameworks," makes it even more imperative that the SEC establish such a regulatory framework for the U.S. market.

Commissioner Lee should be commended for seeking public input in advance of the SEC drafting proposed rules to provide long-term investors with the climate-related disclosures they need to assess environmental risk in portfolio companies and make informed investment and proxy voting decisions. Additionally, the Commission should adopt broader Environmental, Social, and Governance (ESG) disclosure rules and begin with the SEC rulemaking priorities set forth in Chair Gensler's May 26 Congressional testimony,<sup>1</sup> including proposing rules for issuer disclosure of climate risks and human capital.

As Comptroller of the City of New York, I am a trustee of four of the City's five retirement systems and investment adviser to all five systems (collectively, the "New York City Retirement Systems," or "NYCRS"). NYCRS had \$253 billion in assets as of March 31, 2021. These assets are invested to provide retirement security to generations of City employees. When a current 21-year-old City employee reaches age 80 and draws her pension, per capita global GDP is

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<sup>1</sup> Testimony before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee, available at [SEC.gov | Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee](https://www.sec.gov/testimony-before-the-subcommittee-on-financial-services-and-general-government)

projected to be 4% lower<sup>1</sup> and the U.S. is projected to suffer annual losses equivalent to about 0.5 percent of GDP<sup>2</sup> as a consequence of unmitigated climate change. As a trustee of broadly diversified, long-term global investors, I believe I have fiduciary responsibility to be acutely concerned about both the company-specific risks posed by climate change, as well as the broader, systemic risks posed to the stability of the global financial system. NYCRS has retained multiple expert consultants over time to analyze these investment risks and inform their response.

Earlier this year, three of the NYCRS<sup>3</sup> announced that they will divest an estimated \$4 billion from securities issued by certain companies owning fossil fuel reserves and already surpassed the goal they set to more than double investments in climate change solutions over three years by achieving over \$6 billion in funded and unfunded commitments across all asset classes. Currently, investors are forced to rely on companies' voluntarily disclosed and unvalidated climate-related information to inform their investment, capital allocation and proxy voting decisions, as well as to identify and prioritize portfolio companies for engagement.

NYCRS engages portfolio companies, often through shareholder proposals, to strengthen climate governance and advocate for climate-related policies, practices and financial disclosures in line with the Paris Agreement's goal of limiting average global warming to well below 2° Celsius, preferably 1.5° Celsius. NYCRS is an active participant in — and serve as lead investors at Ford, General Electric and General Motors on behalf of the Climate Action 100+, an ambitious global investor collaboration through which investors encourage the world's highest emitting companies to improve climate governance, curb greenhouse gas emissions, and strengthen climate-related financial disclosures (including lobbying disclosures), to achieve the goals of the Paris Agreement, consistent with the TCFD framework.

Even before the G7 endorsed the TCFD framework, there was a growing consensus among investors and businesses in support of mandatory disclosures based on the TCFD standards. Climate Action 100+, comprised of 545 global investors responsible for more than \$52 trillion in assets, demonstrates that investor support for TCFD-aligned reporting is deep and wide. In January 2020, the World Economic Forum released "Toward Common Metrics and Consistent Reporting of Sustainable Value Creation,"<sup>4</sup> which expressed support for TCFD-aligned reporting on material climate risks and opportunities.

The TCFD, however, principally provides a disclosure framework, not a set of specific disclosures. Certain climate-related risks are sufficiently endemic and significant in their

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<sup>1</sup> Kahn, Matthew E. et al, Effects of Climate Change A Cross: Country Analysis, IMF Working Paper, October 2019; available at <https://www.imf.org/-/media/Files/Publications/WP/2019/wpica2019215-print-pdf.ashx>

<sup>2</sup> Ten Facts about the Economics of Climate Change and Climate Policy, The Hamilton Project and The Stanford Institute for Economic Policy Research (SIEPR), October 2019; available at [https://www.brookings.edu/wp-content/uploads/2019/10/20191025\\_ES\\_THP\\_Environmental\\_Facts\\_FINAL.pdf](https://www.brookings.edu/wp-content/uploads/2019/10/20191025_ES_THP_Environmental_Facts_FINAL.pdf)

<sup>3</sup> The three NYCRS that announced fossil fuel divestment plans include the New York City Employees' Retirement System (NYCERS), the Teachers Retirement System (TRS), and the Board of Education Retirement System (BERS).

<sup>4</sup> Available at [http://www3.weforum.org/docs/WEF\\_IBC\\_ESG\\_Metrics\\_Discussion\\_Paper.pdf](http://www3.weforum.org/docs/WEF_IBC_ESG_Metrics_Discussion_Paper.pdf)

implications that all companies should be required by the SEC to regularly provide investors with consistent and comparable disclosures needed to monitor, price, and manage them. Where necessary, these universal disclosures could be supplemented with industry-specific requirements. While focused on the highest emitting sectors, the Climate Action 100+ Framework (“CA 100+ Framework”) serves as the best guide for TCFD-aligned disclosures across all industries. The SEC should also incorporate the ten Disclosure Indicators in the CA 100+ Net Zero Company Benchmark (the “CA 100+ Indicators”) into its climate disclosure rules.<sup>5</sup>

Set forth below are recommendations to further inform the SEC’s efforts to develop TCFD-aligned disclosure requirements, as well as in response to select questions in Commissioner Lee’s request.

**Question 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?*

Climate change disclosures should be mandatory, included in primary SEC filings, such as the 10K (or proxy statement for disclosures related to governance and executive compensation), updated at least annually, and be enforceable by the SEC. As explained in my response to question 10, it is important that key quantitative metrics are disclosed in a document that auditors are at least charged to read.<sup>6</sup>

**Question 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)?*

With respect to climate-related risks, *all* registrants should be required to provide decision-useful disclosures, including quantitative metrics that are reliable, consistent and comparable across companies. Absent such data, investors are unable to benchmark the company’s risk profile and progress toward a successful transition to a low-carbon economy. As noted above, the CA 100+ Framework serves as the right guide for TCFD-aligned disclosures across all industries. The lack of adequate disclosures of certain CA 100+ Indicators informed NYCERS’ decision to submit shareholder proposals to particular companies during the 2021 proxy season. The SEC should require companies to disclose:<sup>7</sup>

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<sup>5</sup> Available at <https://www.climateaction100.org/wp-content/uploads/2021/03/Climate-Action-100-Benchmark-Indicators-FINAL-3.12.pdf>

<sup>6</sup> Ross, Samantha, The Role of Accounting and Auditing in Addressing Climate Change, Center for American Progress, March 1, 2021; available at <https://www.americanprogress.org/issues/economy/reports/2021/03/01/496290/role-accounting-auditing-addressing-climate-change/>

<sup>7</sup> Some of these disclosures are based on CA 100+ Indicators, all ten of which should be incorporated into the SEC’s climate disclosure rules and are cross-referenced, where appropriate.

- Scopes 1 and 2, and, especially, scope 3 greenhouse gas (GHG) emissions, where applicable (the Climate Action 100+ Net Zero Company Benchmark document hyperlinked in footnote 4 identifies industrial sectors for which Scope 3 emissions are applicable). Scope 3 disclosure is required to assess the carbon intensity of a company's activities in their entirety. While many global companies now at least account and report on their scopes 1 and 2 emissions, many companies have been reluctant to disclose scope 3 emissions in the absence of a mandatory disclosure requirement.
- Whether the company has set an ambition to achieve net-zero GHG emissions by 2050, or sooner, and whether its ambition covers the company's most relevant scope 3 GHG emissions (CA 100+ Indicator 1).
- Its long-term GHG emissions reduction goals, together with any short- and medium-term interim targets (and the basis for its targets—e.g., are they science-based<sup>8</sup>) to permit investors to assess a company's progress toward its long-term goal (CA 100+ Indicators 2, 3 and 4). While many companies have announced ambitious long-term decarbonization goals, including in response to engagement by NYCRS, companies are often silent on how they will achieve these laudable goals.
- What portion of the targets will be met through the use of carbon credits or carbon removals, and whether carbon credit purchases are certified under an established social and environmental standard.
- Proven, probable and possible oil and gas reserves; this could be accomplished by making mandatory the optional disclosures in Rule S-K item 1202.
- Its estimated GHG emissions from any carbon reserves (see the World Resources Institute's Recommended Methodology for Estimating and Reporting the Potential Greenhouse Gas Emissions from Fossil Fuel Reserves<sup>9</sup>).
- Scenario analysis, taking into consideration different scenarios, including a 2° Celsius or lower scenario. This is a key element of the TCFD framework (CA 100+ Indicator 10, Sub-indicator 10.2). To facilitate consistency and comparability across the market, the SEC should consider recommending or prioritizing some established scenarios. The 2020 Version of the International Energy Agency's World Energy Model Documentation<sup>10</sup> (last updated May 7, 2021), includes detailed projections for multiple scenarios, two of which are compatible with the Paris Agreement: the Sustainable Development Scenario and the Net Zero Emissions by 2050 case.

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<sup>8</sup> As defined by The Science Based Targets initiative (SBTi), "[t]argets are considered 'science-based' if they are in line with what the latest climate science deems necessary to meet the goals of the Paris Agreement – limiting global warming to well-below 2°C above pre-industrial levels and pursuing efforts to limit warming to 1.5°C." The SBTi enables companies to set science-based emissions reduction targets and is working with more than 1,000 businesses to reduce their emissions in line with climate science. For more information, see <https://sciencebasedtargets.org/about-us>

<sup>9</sup> Available at [https://files.wri.org/d8/s3fs-public/A\\_Recommended\\_Methodology\\_for\\_Estimating\\_and\\_Reporting\\_the\\_Potential\\_Greenhouse\\_Gas\\_Emissions\\_from\\_Fossil\\_Fuel\\_Reserves.pdf](https://files.wri.org/d8/s3fs-public/A_Recommended_Methodology_for_Estimating_and_Reporting_the_Potential_Greenhouse_Gas_Emissions_from_Fossil_Fuel_Reserves.pdf)

<sup>10</sup> available at [https://iea.blob.core.windows.net/assets/bc4936dc-73f1-47c3-8064-0784ae6f85a3/WEM\\_Documentation\\_WEO2020.pdf](https://iea.blob.core.windows.net/assets/bc4936dc-73f1-47c3-8064-0784ae6f85a3/WEM_Documentation_WEO2020.pdf)

- Any internal cost of carbon assumed by the company to assess how existing and potential future climate regulations in relevant markets might affect product demand and/or projected expenses of potential investments or other operations.
- Decarbonization strategy to achieve its long and medium-term GHG reduction targets (CA 100+ Indicator 5).
- Capital allocation alignment with decarbonization goals (CA 100+ Indicator 6). Concerns with the apparent misalignment between planned investments in long-lived natural gas generation assets and commitments to achieve net zero GHG emissions by 2050 led NYCRS to submit shareholder proposals to strengthen independent board leadership at several high GHG- emitting electric utilities.
- Climate-related public policy advocacy and alignment (CA 100+ Indicator 7), including direct and indirect lobbying (via trade associations). Trade associations may provide a means for companies to advance policy positions that are inconsistent with their public statements and long-term interests. Of particular concern are the trade associations that have strenuously opposed policies to address climate change. In her recent speech, Commissioner Lee quoted Vanguard founder John Bogle that “corporate managers are likely to try to shape government policy in a way that serves their own interests over the interests of their shareholders.” This risk is especially acute when it comes to climate change policy. Corporate executives, whose long-term compensation performance period rarely exceeds five years, have a self-interest in opposing effective policies to address the long-term risks of climate change if those policies impose near-term costs on the company. Reporting on climate-aligned lobbying is now considered a best practice (Shell published the first Industry Associations Climate Review in 2020). In response to shareholder proposals by NYCRS, Ford is among the companies that report on its alignment with the climate change position and policy priorities of its trade associations, and General Motors disclosed in its 2021 proxy statement its commitment to provide such disclosure. However, reporting remains uneven and inconsistent, and the SEC should use its rulemaking process to solicit comments to inform and mandate a consistent reporting framework in the U.S.
- Any analysis of, and planned response to, impacts on the company’s employees from transitioning to a lower-carbon business model (CA 100+ Indicator 9). The Paris Agreement requires national plans on climate change to include just transition measures with a centrality of decent work and quality jobs, and investors have prioritized understanding the impacts and responses of individual companies.<sup>11</sup> Mandating disclosures regarding a just transition sits at the nexus of the SEC’s climate change and human capital management rulemaking priorities.
- Geographic location data that will allow investors to (1) assess the exposure of a company and its supply chain<sup>12</sup> to the physical risks of climate change (e.g., rising sea levels and severe weather events), and (2) monitor and manage portfolio-wide

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<sup>11</sup> Also, see “Climate change and the just transition: A guide for investor action” from the Harvard Initiative For Responsible Investment at <https://iri.hks.harvard.edu/files/iri/files/jtguidanceforinvestors.pdf?m=1554219326>

<sup>12</sup> According to Climate Change Risk Management Strategy, a January 2018 Mercer report to NYCRS, physical risks are most likely to impact companies with extensive supply chains in physically vulnerable locations.

accumulations of exposures in geographies with high vulnerability to physical climate risks.

***Question 2:*** *How have registrants or investors analyzed risks and costs associated with climate change?*

NYCRS has taken the following steps: (1) retained expert consultants to determine how to incorporate the realities of global warming into their asset allocation, manager selection, and risk management processes (2017); (2) retained consultants to perform a carbon footprint analysis to determine portfolio carbon emissions (total apportioned carbon emissions/ total value of investment) and the weighted average carbon intensity (company carbon intensity times company weighting in portfolio) of their public equity portfolio (2017); and (3) retained consultants to analyze potential climate-related financial risks of fossil fuel reserve owners and to evaluate and identify prudent strategies to divest from public securities of such companies (2020). Three of the NYCRS' systems decided to commission an updated carbon footprint analysis to cover their public equity and corporate debt portfolios. The update will include scopes 1, 2 and 3 GHG emissions.

***Question 3:*** *How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?*

The availability of a market price on carbon would allow investors to better price and hedge risk and assess the reasonableness the company's internal cost of carbon assumptions. It could also improve the reliability of those assumptions, and thus lead to better sensitivity analyses and improved management decision-making.

***Question 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?*

Certain climate-related risks are sufficiently endemic and significant in their implications that the SEC should require them to be regularly reported by all companies, and these universal disclosures could be supplemented by any industry-specific requirements. The SEC should prioritize those industries that are most affected by climate change. The TCFD, for example, has established reporting standards specific to the financial, energy and transportation sectors, among others.<sup>13</sup>

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<sup>13</sup> Additional sectors for which the TCFD has established standards are materials and buildings, and agricultural, food, and forest products.

**Question 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?*

The SEC is best positioned to develop, interpret and enforce its climate-related financial disclosure rules. Given the evolving nature of both investors' understanding of the risks that climate change poses to NYCRS' portfolio companies, as well as of climate change regulations, any disclosure rule should be periodically reviewed and updated.

**Question 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?*

See response to question 1 above.

**Question 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?*

Robust and transparent climate governance (CA 100+ Indicator 8) is the starting point for a board of directors' response to climate risk. It is not surprising that governance forms the first of the TCFD's four pillars. In his seminal 2015 speech that led the Financial Stability Board (FSB) to establish the TCFD, FSB Chairman Mark Carney defined climate change as a "tragedy of the horizon" because its catastrophic impacts will be felt beyond the traditional horizons of most actors. While Carney was directing his message to the government representatives who would soon be convening in Paris at the COP21 summit to consider global governments' response to climate change, investors face a similar paradox when it comes to their portfolio companies' response to climate change. Many CEOs may have little incentive to make major investments and strategic choices whose payoff—no matter how substantial or critical to their company's future viability—is decades down the road. They will not be rewarded for those decisions, nor will they be around to be held accountable for failing to make the decisions necessary to avoid costly emissions and consequences decades from now.

Institutional investors, with an investment time horizon that far exceeds the tenure of virtually all CEOs, rely on the independent directors they elect to provide the oversight, including oversight over governance and executive compensation policies and processes, to ensure that management acts in the best long-term interests of the corporation and its shareholders. Investors expect "climate competent" boards comprised of directors who, collectively, have the diverse skills, experience and perspectives needed to understand and respond to climate-related risks. Investor expectation in this regard have become evident from the recent contested election at Exxon



Mobil in which three dissident nominees with relevant energy industry and environmental expertise unseated three well-respected former CEOs who had experience running three of the largest U.S. companies, but who lacked meaningful energy or environmental expertise.

Therefore, consistent with the TCFD recommendation that companies disclose their governance around climate-related risks and opportunities, the SEC should require companies to:

1. Disclose a director skills and experience matrix to give investors a “big-picture” view of the criteria the board deems appropriate in selecting a board slate for election each year in light of the company’s particular and evolving long-term business strategy and climate-related goals. By requiring that a matrix that goes beyond the minimum qualifications that nominating/governance committees expect of all board nominees, boards enable investors to better (a) assess how well suited individual director nominees are for the company, (b) identify any gaps in skills, experience or other characteristics, and (c) more fully exercise their voting and director nomination rights. Such a matrix would also be a helpful connection with the SEC’s consideration of board diversity disclosures with respect to the self-identified gender and race/ethnicity of individual directors. The SEC should also include safeguards to limit a board’s ability to engage in “grade inflation,” in which all directors are claimed to possess all, or virtually all, of the various skills and experiences identified as relevant to the company and its board.
2. Identify which board committee(s) have responsibility for overseeing some or all climate-related risks, policies, and practices, and how those responsibilities are defined in the committee’s charter. Committees can be encouraged to describe their oversight in the Committee report included in the annual proxy statement.
3. Describe any audit committee review of the company’s climate-related estimates, assumptions, and financial disclosures.

Describe how climate change, among other ESG-related risks, is integrated into short- and long-term executive compensation (CA 100+ Sub-indicator 8.2), including the specific metrics and targets. While many companies have announced ambitious long-term decarbonization goals, often it is not evident how the companies will get there. While these long-term targets may be thirty years out (e.g., net zero by 2050), this is well beyond both the tenure of virtually all CEOs and the duration of long-term executive compensation (typically five years). One way that boards can align executive incentives with the company’s long-term goals is to establish interim goals that are necessary to achieve the long-term goal, and to align the CEO’s short and long-term compensation with these interim goals.

**Question 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?*

Given the global nature of both climate-related risks and investment portfolios (e.g., NYCRS hold public equities listed in more than 80 countries), the SEC should seek to align its rules with a single set of global standards.

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

According to the International Financial Reporting Standards Foundation (IFRS), “to achieve globally consistent sustainability reporting practices, sustainability information reported by companies will ultimately need to be subject to external assurance.”<sup>14</sup>

The SEC should require external investor-grade assurance performed by qualified and knowledgeable professionals to enhance investor confidence in key quantitative disclosures (e.g., GHG emissions) on which investors base important investment, capital allocation and proxy voting decisions. As noted in- response to question 1, key quantitative metrics should be disclosed in a document that auditors are at least charged to read, so that they can consider whether the financial statements are missing key information that could bear on whether they are fairly presented and free of material misstatement.”<sup>15</sup>

**Question 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 disclosures recommended above should be mandatory. In addition, the benefits of mandatory metrics disclosure go beyond their analytical value to investors and will also drive improved climate-related company performance and oversight: what gets measured and disclosed, gets managed.

Without a mandatory requirement, when presented with a “comply or explain” or principles-based framework for climate change disclosure, many executives may take the opportunity to avoid data disclosure, as we have seen in disclosures under the SEC’s principles-based human capital management disclosure rule. Intelligize, an aggregator of SEC filings that serves corporate and investors clients, recently assessed responses to the SEC’s amendments to Rule S-

<sup>14</sup>Consultation Paper on Sustainability Reporting, September 2020; available at <https://www.ifrs.org/content/dam/ifrs/project/sustainability-reporting/consultation-paper-on-sustainability-reporting.pdf>

<sup>15</sup> Ross, Samantha, The Role of Accounting and Auditing in Addressing Climate Change, Center for American Progress, March 1, 2021; available at <https://www.americanprogress.org/issues/economy/reports/2021/03/01/496290/role-accounting-auditing-addressing-climate-change/>

K. Based on its analysis of 427 10-Ks filed by S&P 500 companies between November 9, 2020, and March 5, 2021, Intelligize concluded that “filers capitalized on the fact that the new rule does not call for specific metrics. Relatively few issuers provided meaningful numbers about their human capital, even when they had those numbers at hand.”<sup>16</sup> As explained in response to question 15 below, the SEC should strengthen its disclosure requirements to include quantitative metrics with respect to human capital management as well as climate risk.

***Question 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?*

Disclosed metrics are essential to enable investors to assess and benchmark performance, and to systematically screen portfolios and investment opportunities. A discussion of a company’s climate-related financial disclosures and decarbonization strategy, analogous to Management’s Discussion and Analysis of Financial Condition, would be extremely useful to investors. Given that some investors encourage companies to integrate their climate change response into their overall business strategy, the SEC should consider permitting companies to include the climate change discussion in the existing Management’s Discussion and Analysis of Financial Condition, subject to some minimum enforceable requirements.

***Question 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?*

Private markets investments, including private equity, real estate, and infrastructure, are a significant portion of NYCRS’ portfolio, but the most lacking in regard to climate-related disclosures. With much of NYCRS’ private markets investments in real assets (real estate and infrastructure), energy efficiency and climate-related physical risks of private assets are particularly material considerations. For instance, NYCRS has more than \$11 billion invested in private real estate assets. Buildings consume 40% of the nation’s energy. According to Secretary of Energy Jennifer M. Granholm, “America’s path to a net-zero carbon economy runs straight through our buildings, which means we need to help households and commercial buildings across the nation reduce their emissions and convert to cheaper, cleaner energy,”<sup>17</sup>

Accordingly, NYCRS periodically conducts a process to request and obtain information from their asset managers on the Energy Star and LEED certifications of all U.S. properties. Investors would benefit from more accessible and standardized information about the energy efficiency as well as geographic locations and physical risks of real assets globally. In addition, it is commonly accepted that carbon emissions data from private companies is much less available

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<sup>16</sup> Human Capital Disclosure Report: Learning on the Job, April 2021; available at [https://go.intelligize.com/2021\\_Downloads\\_Human\\_Capital\\_Management\\_Report\\_Blog](https://go.intelligize.com/2021_Downloads_Human_Capital_Management_Report_Blog)

<sup>17</sup> Secretary Granholm Unveils National Actions to Increase Energy Efficiency for Homes and Buildings and Save Costs for Consumers, Department of Energy press release, May 17, 2021,; available at <https://www.energy.gov/articles/secretary-granholm-unveils-national-actions-increase-energy-efficiency-homes-and-buildings>

than from public companies and needs to be estimated in most cases. Greater mandatory disclosure and standardization of climate-related data specific to the nature and industries of the assets is necessary to ensure investors have adequate information to assess and monitor the climate risks in their private markets portfolios.

***Question 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?*

Consistent with NYCERS policy, which states that “[e]nvironmental, social, regulatory, operational, and other matters may present risks or opportunities for firms’ ability to create and sustain long term value” and that “robust corporate reporting should go well beyond financial reporting,”<sup>18</sup> investors would benefit from enhanced disclosure of a broad range of ESG-related risks, and welcome comprehensive SEC rulemaking on disclosures related to ESG matters.

The SEC’s Spring 2021 Unified Agenda appropriately prioritizes disclosure relating to climate risk, and human capital, including workforce diversity and corporate board diversity, all of which are also NYCERS priorities that have been the subject of its 2021 shareholder proposals to enhance board oversight and/or disclosure.<sup>19</sup>

The past year has been defined by the COVID crisis, which demonstrated the importance of human capital management across industries and by the racial justice protests across the U.S., which elevated the importance of racial and ethnic diversity in the workplace — as evidenced by the many leading companies that responded with statements affirming support for racial equity and diversity.

In my experience, many public companies highlight their commitment to diversity and describe various policies and efforts to recruit, retain and promote minorities and women. Many companies also highlight their board diversity policies and practices. But far fewer companies provide objective performance data. Absent quantitative data that is both consistent and comparable, investors and the public have no way to evaluate and benchmark the effectiveness of these efforts, both over time and relative to peers.

Consistent with my October 22, 2019 comment letter on Modernization of Regulation S-K Items 101, 103, and 105, the SEC should require a modest number of specific metrics to provide investors with a -baseline -of human -capital disclosures that are material, consistent and comparable, and universally applicable across companies. These are:

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<sup>18</sup> Corporate Governance Principles and Proxy Voting Guidelines (February 2019); available at [https://comptroller.nyc.gov/wp-content/uploads/documents/NYCERS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines\\_2019-Revised-February-2019.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/NYCERS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines_2019-Revised-February-2019.pdf)

<sup>19</sup> For the 2021 proxy season, NYCERS submitted shareholder proposals to promote diversity in the boardroom, C-Suite, and across the workforce, and to request disclosures relating to employee diversity, and health and safety.

1. Workforce composition, including the number of people employed by the company, broken down by (a) gender, race, and ethnicity, including among senior management, and (b) by full-time and part-time and contingent status.
2. Workforce cost, including salaries and employee benefits.
3. Workforce stability (i.e., turnover).

These metrics are aligned with the metrics recommended by the Human Capital Management Coalition (HCMC), comprised of 35 institutional investors representing over \$6.6 trillion in assets.

To provide investors with decision useful workforce diversity data, I strongly recommend the SEC require companies to disclose the Comprehensive EEO-1 report that companies with over 100 employees disclose annually to the U.S. Equal Employment Opportunity Commission (EEOC). The EEO-1 report breaks down a company's U.S. workforce by race, ethnicity, and gender according to 10 employment categories, including senior management, defined to incorporate individuals within two reporting levels of the CEO. Mandating EEO-1 report disclosure would not impose significant additional costs on companies, because they already collect the data for submission to the EEOC. Disclosure of this report will provide investors with critical information, including:

- Standardized, quantitative, and reliable data that is comparable across companies and industries, enabling investors to assess the representation of Black employees and other employees of color and women at various levels of the company; specific data on senior management diversity; and
- Particularized data that allows investors to assess the representation of specific racial and ethnic groups by gender, such as Black female employees, in a job category – and to make meaningful, year-over-year comparisons.

Voluntary disclosure is becoming standard market practice. Since July 2020, when NYCRS launched an ambitious disclosure campaign, my office has negotiated commitments from 62 of the initial 67 S&P 100 focus companies selected based on their issued racial justice statements. As a result, 76% of companies in the S&P 100 either disclose or have committed to disclose their EEO-1 report, up from only 13% one year ago. In addition, investors have voiced strong support for EEO-1 report disclosure, casting 84% and 86% of their votes, respectively, at Dupont and Union Pacific for NYCRS' spring 2021 shareholder proposals requesting such disclosure.

In addition to firm-wide disclosure on the race and gender of employees, the SEC should require companies to provide a breakdown of the number of full-time, part-time and contingent workers. Such disclosures would be consistent with investor requests, the SEC's Investor Advisory Committee's recommendation in connection with proposed amendments to Rule S-K, and also with the spirit of the term "workforce" in the December 2017 Proposed Revisions to the UK Corporate Governance Code. According to the UK Financial Reporting Council (FRC),

“the revised Code asks [UK] companies to take into account the views of the ‘workforce’. This term has been carefully chosen to capture the complexity and diversity of modern contractual relationships between companies and individuals undertaking work for them. The culture of the company, its strategy and values, and decisions made by the board and senior management, will have impact on all those paid to work for the company. In return, these individuals will have a direct impact on the success of the company.”<sup>20</sup>

Regarding the above workforce stability disclosure recommendation, many investors consider turnover to be a fundamental quantitative human capital data point that is universally applicable to all issuers and relatively straightforward to measure.

The above-recommended universal mandatory disclosures should be supplemented with principles-based disclosures that will provide investors with a more comprehensive understanding of a company’s human capital management practices and strategy, particularly with respect to:

- Workforce Pay & Incentives
- Workforce Health & Safety
- Workforce Skills & Capabilities
- Workforce Culture, Engagement, and Empowerment
- Human and Labor Rights

Finally, if human capital management is sufficiently important to precipitate SEC rulemaking, it is also sufficiently important to necessitate explicit board of director oversight. Accordingly, companies should be required to disclose which board committee(s) have responsibility for overseeing human capital management, and how those responsibilities are defined. Relatedly, companies should include director expertise related to human capital management as a dimension of the director skills and experience board matrix recommended in my response to question 8.

I am hopeful that the above comments will meaningfully strengthen any proposed rules. Please contact Michael Garland, Assistant Comptroller for Corporate Governance and Responsible Investment [REDACTED] if you would like to discuss these matters further.

Thank you for your consideration.

Sincerely,



Scott M. Stringer  
New York City Comptroller

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<sup>20</sup>See Proposed Revisions to the UK Corporate Governance Code, December 2017, available at <https://www.frc.org.uk/getattachment/31897789-cef6-48bb-aea9-f46b8cf80d02/ProposedRevisions-to-the-UK-Corporate-Governance-Code-Dec-2017-1.pdf>