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June 12, 2021

VIA ELECTRONIC SUBMISSION: rule-comments@sec.gov

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for Comment on Climate Change Disclosures

Dear Chair Gensler:

The Institute for Market Transformation (IMT) appreciates the opportunity to submit comments in response to the Commission's statement, "Public Input Welcomed on Climate Change Disclosures" posted on March 15, 2021.[1]

Increased disclosure to dramatically increase the transparency of building energy and climate performance is necessitated by advancing knowledge regarding the impact of climate change in our communities and economy, increasing regulations to address these impacts, and the resulting increasing financial risks to registered companies and their shareholders.

The Institute for Market Transformation (IMT) is a national 501(c)(3) nonprofit organization that aims to decarbonize the economy by catalyzing widespread and sustained demand for high-performance buildings. Founded in 1996 and based in Washington, D.C., IMT leverages its expertise in the intersection of real estate and public policy to make buildings more productive, affordable, valuable, and resilient. A trusted, non-partisan leader, IMT focuses on innovative solutions that fuel greater investment in high-performance buildings to meet local market priorities. IMT offers hands-on technical assistance and market research, alongside expertise in policy and program development and deployment and promotion of best practices and knowledge exchange associated with building performance. Its efforts produce greater benefits for all people, the economy, and the environment. **Given this expertise, our recommendations focus on the known material risks,**

[1] "Public Input Welcomed on Climate Change Disclosures," Acting Chair Allison Herren Lee, March 15, 2021

uncertainties, impacts and opportunities to achieve greater consistency within climate reporting related to businesses that invest in and operate buildings as substantial portions of their assets.

The Need for SEC Action

Climate change threatens our people and poses a systemic risk to the economy. Climate change poses particular direct and indirect physical risks to buildings as a consequence of extreme weather, flooding, wildfires, and other hazards.

Recognizing the grave threat posed by climate change, federal, state, and local governments, as well as some global companies, have announced increasingly ambitious climate commitments. For example, the Biden Administration and many jurisdictions have committed to halve GHG emissions by 2030 and to achieve net zero carbon emissions by 2050. State and local jurisdictions frequently announce new climate commitments.

Buildings account for more than one third of the U.S.'s GHG emissions. Recent International Energy Agency scenarios for net zero carbon emissions by 2050 indicate that to achieve the critical milestone, by 2030 all newly constructed buildings will need to be zero carbon ready.[2]

Companies registered with the SEC account for a substantial fraction of large US buildings and their GHG emissions. To look at just one real estate asset class, there are more than 225 REITs in the U.S. registered with the SEC that trade on major stock exchanges. These REITs have a combined equity market capitalization of more than $1 trillion.[3] The number of American households and Americans living in them that own REIT stocks directly or indirectly through mutual funds, ETFs or target date funds was recently estimated at 145 million, or roughly 44% of American households.[4]

To achieve their climate commitments and to accelerate the change we need, localities and states are enacting policies to drive building owners to improve their existing buildings' energy performance and slash emissions, including Building Performance Standards (BPS) and pricing carbon. These policies can expose building owners and their investors to significant liability for non-compliance. A leading example is New York City, which adopted one of the first BPS. NYC's BPS sets

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[2] "Net zero by 2050 hinges on a global push to increase energy efficiency," International Energy Agency, 2021 -- www.iea.org/articles/net-zero-by-2050-hinges-on-a-global-push-to-increase-energy-efficiency

[3] Nareit, accessed June 10, 2021 -- www.reit.com/what-reit/frequently-asked-questions-about-reits

[4] Nareit, accessed June 10, 2021 -- www.reit.com/data-research/research/nareit-research/145-million-americans-own-reit-stocks

maximum GHG emissions per square foot for each building with 25,000 or greater square feet of gross floor area. The emissions limits enter into force in 2024 and decline at about five year intervals thereafter. Each building with emissions in excess of its limit is subject to annual civil penalties of $268/metric ton of CO2e.[5] Annual penalties for large poor-performing buildings can amount to millions of dollars and exceed those buildings net operating income. A mid-case estimate found that building owners would need to invest $20 billion to retrofit New York City buildings to comply with the limits that will enter into force in 2030.[6]

New York City, the District of Columbia, and Washington state are among the first jurisdictions that have adopted BPS. On June 8, 2021, the Colorado state legislature adopted a new BPS, and Gov. Polis is expected to sign it. Other jurisdictions have pending BPS legislation or have announced plans to adopt BPS. Prudent building owners and investors should prepare for the possibility of BPS proliferating across the U.S. and price that possibility into their investments.

Building energy and environmental performance increasingly materially impacts property value, financial performance and risk; as a consequence of climate transition risk, actual building energy performance is a component of financial risk and should be disclosed to investors and the market.

BPS liability is driven by actual asset-level building performance. Unfortunately, few building owners disclose this performance to the market. Instead, most companies disclose only portfolio-level performance or only disclose plans and policies. Even in the absence of BPS, studies have shown that actual building performance is much more correlated with financial performance than are sustainability plans and policies.[7]

Despite helpful work related to ESG rating systems and protocols including the Greenhouse Gas Protocol, CDP and GRESB, even when companies include in financial reports their building portfolios' actual climate performance, the companies use different time periods, assumptions, conversion factors, and other inputs. This lack of standardization frustrates even determined investors' attempts to compare climate risk exposure across multiple companies or from year to year. And, few companies make any attempt to include in their reporting quantification of financial risks from climate change. A recent article summarized the problem: "Companies

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[5] New York City Local Law 97 of 2019 -- www1.nyc.gov/assets/buildings/local_laws/ll97of2019.pdf

[6] "Retrofit Market Analysis," Urban Green Council, 2019 - https://www.urbangreencouncil.org/sites/default/files/urban_green_retrofit_market_analysis.pdf

[7] Laser focus on actual performance information is the most effective disclosure strategy for managing climate-related investment risks and opportunities and for driving investment returns and climate progress. The Financial Rewards of Sustainability: A Global Performance Study of Real Estate Investment Trusts (Cambridge University 2015)

report their emissions in ways that defeat comparisons. Few quantify financial risks from climate change at all."[8]

Thank you for the opportunity to provide these comments.

Sincerely,

Cliff Majersik
Senior Advisor

[8] "Corporate emissions: the heat is on," Financial Times, June 3, 2021

Recommendations of the Institute for Market Transformation in response to the U.S. Securities and Exchange Commission's invitation to submit comments on climate change disclosures

RFI 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?

Require climate disclosures as part of routine reporting

IMT recommends that SEC issue Regulation S-K rules requiring that climate risk disclosures be included in annual reports. Information regarding company-wide and division-level risks should be summarized in the annual report. Information regarding individual assets, including individual buildings, may be disclosed online with a link to it from within each annual report.

RFI 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?

Establish climate change reporting standards by industry

Each industry contributes to climate change and bears climate-related risks differently. Establishing reporting standards by industry enables companies to consistently report on and manage climate risk. SEC should establish building reporting standards for businesses for which ownership or operations of buildings is financially material. SEC should provide guidance regarding when building performance is material to a company's financial performance. IMT suggests that SEC provide guidance that if buildings account for more than 5% of the value of a company's assets, its revenue or its net income, then building climate performance is financially material.[9]

- **Climate risks specific to the buildings industry include**
    - Direct and indirect risks to physical assets/portfolio risk exposure from extreme weather, wildfires, flooding and other climate-related hazards

[9] SEC has broad legal authority to require disclosure even when disclosed information is not uniformly material. "Living in a Material World: Myths and Misconceptions about 'Materiality'," SEC, 2021 -- https://www.sec.gov/news/speech/lee-living-material-world-052421

- Regional risks resulting from climate change, including risks to the surrounding area and climate-driven population migration that impair property value
- Regulatory risk and costs: Nearly 100,000 buildings collectively containing over 11 billion square feet of floor area are subject to building energy performance policies including benchmarking and transparency laws. Of those buildings, over 25,000 collectively containing over 3.5 billion square feet of space are subject to building performance standards.[10] Under BPS, owners of poor performing buildings who do not sufficiently improve their buildings' poor energy performance are subject to financial penalties as well as costly permitting restrictions. Under New York City's BPS, owners of large poor performing building can face millions of dollars in annual civil penalties for each building.
- Loss of competitiveness: Building owners experience four risks related to low-performing buildings 1) brand risk 2) difficulty in attracting and retaining tenants seeking to lease space in high performing buildings 3) difficulty in attracting and retaining employees 4) difficulty obtaining financing secured by the building as lenders become increasingly aware of risks associated with poor building energy performance

RFI Question #2:
What information related to climate risks can be quantified and measured? 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 phased in over time? If so, how? 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?

Require quantification and disclosure of climate-related information pertaining to buildings

Available information and information that SEC should require be disclosed

- Information regarding buildings' direct and indirect vulnerability to extreme weather, flooding, wildfires and other climate-fueled risks can be collected, disclosed and in many cases quantified. A rapidly increasing number of

[10] BuildingRating.org, accessed 6/8/2021 -- www.buildingrating.org/graphic/us-building-area-covered-annually and www.buildingrating.org/graphic/us-number-properties-covered-annually

companies now sell proprietary analytical tools for evaluating current and potential future financial risks of climate change.[11, 12] While many companies purchase these analyses, most do not disclose the findings of these analyses to the market. SEC should require that by 2023 companies apply state-of-the-art physical climate risk assessment tools and disclose in annual reports at least a qualitative review of the results of these analyses. In setting standards for collecting, organizing, quantifying and disclosing this information SEC should look to successful international and national existing frameworks, including TCFD, SASB, and GRESB (The Global ESG Benchmark for Real Assets).

- Pursuant to the Greenhouse Gas Protocol, buildings' scope 1, 2, and 3 GHG emissions are routinely measured, aggregated and reported. SEC should require the disclosure of buildings' scope 1, 2, and 3 GHG emissions. Additional standardization is needed regarding inputs for calculating emissions; EPA ENERGY STAR is the best source for this standardization – see below.
- In their reporting to GRESB, CDP and other ESG platforms, some companies currently include in their scope 3 emissions the energy consumption by the tenants in their buildings; other companies do not. In the interest of standardization and comparability, SEC should require that tenant emissions be included in scope 3 emissions. Similarly, some companies report emissions calculated using the Greenhouse Gas Protocol's location-based method while others use the market-based method or both methods. To standardize reporting, SEC should require that all companies use the ENERGY STAR platform to calculate all large buildings' GHG emissions and that they employ ENERGY STAR conversion factors (including factors from eGRID) in calculating emissions from all buildings.
- Buildings' energy and climate performance is routinely and objectively evaluated (or "benchmarked") by calculating the ratio of the amount of energy the buildings consume (as principally measured by utility meters) to the level of activity supported by the building and conducting apples-to-apples comparisons of this ratio to the ratios of buildings supporting similar activities. More recently, similar comparisons are conducted to evaluate certain buildings' water efficiency. For example, in this way, moderately densely occupied offices and compared to other moderately densely occupied offices, and hospitals are compared to other hospitals. These comparisons have been automated and standardized by the US EPA's ENERGY STAR free online platform for building energy and water evaluation and reporting. SEC should require that buildings' energy and water performance be evaluated and reported using ENERGY STAR – see below.

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[11] Examples of companies selling such climate risk assessment tools include Coastal Risk Consulting LLC; The Climate Service, Inc.; Four Twenty-Seven; and Jupiter Intelligence, Inc.

[12] In addition, a growing number of public reports lay out the financial risks to buildings posed by climate change. One example is "Underwater: Rising Seas, Chronic Floods, and the Implications for US Coastal Real Estate," Union of Concerned Scientists and Zillow, 2018 -- www.ucsusa.org/sites/default/files/attach/2018/06/underwater-analysis-full-report.pdf

- Over 30 localities and states around the U.S., including the three largest cities and the state of California, have regulations addressing energy and water performance in nearly 100,000 buildings collectively containing over 11 billion square feet of floor area. These jurisdictions exclude from these benchmarking and transparency laws buildings containing less floor area than a specified threshold (typically 25,000-50,000 square feet). Every jurisdiction with such regulations requires the use of ENERGY STAR and the publication of ENERGY STAR scores and other ENERGY STAR outputs.[13] SEC should require disclosure of similar information (see next bullet) and of the compliance status of each building subject to such state and local climate-related laws, including benchmarking laws and BPS laws.
- SEC should require that owners disclose actual performance at the building level for large buildings to the extent that values can be calculated by ENERGY STAR for the following metrics: ENERGY STAR scores, site energy use intensity (EUI), water use intensity, scope 1, 2 and 3 GHG emissions along with annual like-for-like changes in each metric. SEC should require that owners explain which values cannot be calculated by ENERGY STAR and why it cannot be calculated.
- Tenants significantly impact building performance, often accounting for the majority of energy use and GHG emissions. Landlords and tenants must work together to improve building performance. SEC should require disclosure of the percentage of square feet, energy use and GHG emissions covered by leases that align landlord and tenant incentives such that each benefits from improving building performance in proportion to their contribution to that improvement. Aligned leases result in the landlord and each tenant benefitting from reduced energy consumption to the extent that they drive those reductions. Two examples of aligned leased are 1) long-term leases where the tenants purchase, install and maintain all energy-using equipment (including all HVAC equipment) and pay all utilities 2) leases where the landlord owns, operates and maintains equipment, the tenant pays for certain utilities, and there are robust tenant cost recovery provisions to allow the landlord to recover invested capital to the extent that it reduces tenant utility costs. (For example, a lease provision requiring amortization of invested capital over the 30-year life of a chiller replacement, but which has a five-year simple payback in savings to the tenant is not "robust.") IMT and DOE's Better Building Alliance program has many resources to create aligned leases at www.greenleaseleaders.com.

Timing: SEC should phase in disclosure requirements over time

- Buildings' total floor area is strongly correlated with both their property value and their energy consumption. In contrast, large and small buildings often take similar amounts of time and effort to energy benchmark. Accordingly, the return on

[13] BuildingRating.org, accessed 6/8/2021 -- www.buildingrating.org/graphic/us-building-area-covered-annually and www.buildingrating.org/graphic/us-number-properties-covered-annually

investments in benchmarking tends to be higher for larger buildings and a greater proportion of larger buildings are voluntarily benchmarked. Large buildings are also more likely to be owned by large sophisticated building owners, which further increases the likelihood that a large building is already voluntarily benchmarked.

- Accordingly, IMT recommends that SEC phase in ENERGY STAR benchmarking and reporting requirements starting in 2023 with buildings with floor areas of 100,000 square feet and greater and extending in 2025 to buildings with floor areas of 50,000 square feet and greater, and finally extending in 2027 to buildings with floor areas of 25,000 square feet and greater. SEC should phase in all building-specific disclosure, including GHG emissions on this schedule. SEC should not require companies to benchmark smaller buildings or to report building-specific energy information for smaller buildings, but should require that companies calculate and report GHG emissions from smaller buildings in a manner similar to other company-owned assets (e.g. vehicle fleets) in accordance with the Greenhouse Gas Protocol.
- In order to ENERGY STAR benchmark a building, one must input into the ENERGY STAR online platform all of the energy consumed in the building, including energy purchased by tenants directly from utilities. One of the biggest challenges to building owners and operators benchmarking buildings can be accessing such tenant energy purchase data. This problem has been successfully addressed in a number of ways, including 1) utilities aggregating all of the tenant energy purchases for each building and sharing the aggregate data with building owners, and 2) leases that require that commercial tenants share their energy consumption data with their landlords. SEC should require that building owners "comply or explain" by requiring that owners make all required disclosures or explain why they cannot do so. SEC should require that to the extent that explanations point to an inability to access energy consumption data for commercial tenants, then such explanations shall include the date that such tenants signed their leases. SEC should expect that any leases signed with a commercial tenant in or after 2023 will provide a means for the landlord to have sufficient access to that tenant's energy consumption to enable required reporting. SEC should also require owners to disclose in annual reports the percentage of their building portfolio by floor area for which the companies are disclosing both building-specific and aggregate data; the percentages should be calculated following GRESB rules.
- IMT recommends that SEC issue Regulation S-K rules requiring that by 2023 for each of their buildings, owners begin to quantify and disclose by reference in annual reports risks and liabilities stemming from existing regulations (including BPS and carbon pricing) related to building performance. The need for this transparency is particularly great for buildings in jurisdictions with BPS, but SEC rules should account for the possibility that other jurisdictions including federal regulators could adopt BPS that are similar to or stronger than existing BPS. This

transparency will aid investors in making informed decisions regarding where to invest their assets. Accordingly, SEC should announce that 1) by 2023, SEC will provide guidance for quantifying potential financial risks faced by owners of buildings with poor energy and climate performance stemming from possible future regulations, and 2) by 2025, SEC will require that owners use this new guidance to quantify and include in annual reports the potential risks and liabilities stemming from possible new regulations for each of their buildings not already subject to such regulation.

See also "The Need for SEC Action" above regarding climate-related information available to registrants and investors as well as how they use such information.

RFI Question #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)?[7] Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?

In writing rules incorporate or draw on existing frameworks especially ENERGY

- As noted above, IMT recommends that as it sets rules regarding buildings' direct and indirect vulnerability to extreme weather and flooding, SEC look to successful international and national existing frameworks, including TCFD, SASB, and GRESB. Doing so will shorten the learning curve and ease the transition for building owners already using those frameworks for reporting and for investors which rely on those frameworks.
- IMT recommends that SEC require that buildings be publicly benchmarked using EPA ENERGY STAR.
- ENERGY STAR for buildings serves as a de facto national standard for tracking energy use, energy efficiency, water use, and greenhouse gas emissions for buildings in the United States and Canada. In both countries, ENERGY STAR is 1) widely used voluntarily by building owners to evaluate their buildings and identify opportunities to lower energy and water costs, and 2) mandated by regulation at the subnational level. Corporate building owners have broadly embraced ENERGY STAR as user friendly, reliable and actionable. ENERGY STAR has time-tested standards for data inputs and calculation algorithms. ENERGY STAR also imposes standard, specific, and clear rules regarding inputs including data sources, and collection and calculation methodologies. Collectively these rules enable ENERGY STAR to generate replicable, objective, "apples to

apples" comparable benchmarks of existing buildings' energy and water performance to a degree unrivaled by any other rating system with the possible exception of a rating system principally used only in Australia.

- US EPA created ENERGY STAR in 1999 and has since continuously maintained and improved the system with extensive input from building owners, service providers and other stakeholders. ENERGY STAR is widely referenced by ESG rating systems including LEED. This long track record, broad usage, and responsiveness to stakeholders give ENERGY STAR unrivaled industry acceptance and will ease the transition for building owners required to report.
- The main disadvantage of requiring ENERGY STAR is that it is not broadly used outside of the U.S. and Canada. But, there is no single system that is as broadly used globally as ENERGY STAR provides robust, objective, and comparable ratings of the energy or climate performance of existing buildings. (Most systems for rating the energy performance of existing buildings serve just one country.)

RFI 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?

SEC should employ a "comply or explain" framework for reporting of information that is dependent on registrants' access to data from their tenants

- As noted above, in order to ENERGY STAR benchmark a building, one must input into the ENERGY STAR online platform all of the energy consumed in the building, including energy purchased by tenants directly from utilities. One of the biggest challenges to building owners and operators benchmarking buildings can be accessing such tenant energy purchase data. IMT recommends that SEC require that building owners "comply or explain" by requiring that owners make all required building-specific disclosures or explain why they cannot do so. SEC should require that to the extent that explanations point to an inability to access energy consumption data for commercial tenants, then such explanations shall include the date that such tenants signed their leases. SEC should expect that any leases signed with a commercial tenant in or after 2023 will provide a means for the landlord to have sufficient access to that tenant's energy consumption to enable required reporting. SEC should also require owners to disclose in annual reports the percentage of their building portfolio by floor area for which the companies are disclosing both building-specific and aggregate data; the percentages should be calculated following GRESB rules.