



June 18, 2021

Via Email: rule-comments@sec.gov

The Honorable Allison Herren Lee
Commissioner
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Subject: NIRI CT/Westchester County Chapter - SEC Comment Letter on Climate Disclosure

Dear Commissioner Lee:

The Connecticut/Westchester County Chapter of the National Investor Relations Institute (NIRI) appreciates the opportunity to communicate its views in response to your request for written comments regarding climate change disclosures.¹

We represent the members of our chapter who are investor relations officers of public companies headquartered in Connecticut and Westchester County, New York. These companies, listed on the New York Stock Exchange and the Nasdaq, have a combined market capitalization of over \$500 billion. We also represent investor relations counselors who advise public companies across the country and in other countries on a variety of investor communications issues.

In response to your request for comments, The NIRI Connecticut/Westchester County Chapter offers the following views on climate-related disclosures:

1. **The SEC Should Not Alter the Materiality Standard.** Existing disclosure standards in the United States require disclosure of information by public companies that is “material” to a reasonable investor in making informed investment and proxy voting decisions. Any new disclosure standards should be rooted in this materiality standard and should preserve the ability of investors to identify and act on decision-

¹ See Acting Chair Allison Herren Lee, Public Input Welcomed on Climate Change Disclosures, March 15, 2021.

useful information. Even though many public companies operate businesses that do not emit greenhouse gases, we believe that the materiality standard forms a solid foundation that can support the goal of enhanced climate change disclosures by public companies.

As an example, one of the leading third-party standard setters, the Sustainability Accounting Standards Board (“SASB”), has developed standards for 77 industries where sustainability risks and opportunities are “reasonably likely to materially affect the financial condition, operating performance, or risk profile of a typical company within an industry.”²

As a result of the uniqueness and diversity of American companies, the SEC should refrain from imposing a “one-size-fits-all” disclosure regime that would end up generating an abundance of climate-related information of interest only to a minority of shareholders and investor activists.

2. **The SEC Should Encourage Private Ordering to Continue.** Voluntary disclosures by public companies in sustainability reports and other public statements have increased dramatically over the past several years, in response to investor interest and marketplace demands. Similarly, there are positive trends in the use by public companies of third-party disclosure frameworks. These third-party frameworks are still at relatively early stages and should be given time to develop further. And companies should continue to have the flexibility to use one or more of these frameworks, depending on their business needs and/or their industry sector.

We believe that the current “private ordering” process should continue to proceed without interference. The imposition of prescriptive disclosure rules at this time would have unintended consequences, largely because there is no consensus among public companies or their investors about what climate change metrics are relevant, calculable, and material across different companies and industries.

3. **The SEC Should Utilize Principles-Based Regulation.** If the SEC decides to proceed with a rulemaking, the Commission should employ a flexible, principles-based approach, as it has done successfully in the past.³ This approach could establish principles for the required disclosures and provide guidance about how best to meet their terms.

² Sustainability Accounting Standards Board, *Proposed Changes to the SASB Conceptual Framework & Rules of Procedure*, at 30 (Aug. 28, 2020), available at <https://www.sasb.org/wp-content/uploads/2020/08/Invitation-to-Comment-SASB-CF-RoP.pdf>.

³ See, e.g., Modernization of Regulation S-K Items 101, 103, and 105, 85 Fed. Reg. 63,726 (Oct. 8, 2020).

Public companies should also have additional flexibility to either provide the requested disclosure or explain why the information is not material, relevant, or available to be disclosed.

4. **The SEC Should Evaluate the Liability Risks in Climate Disclosures.** Since there is no widespread consensus among companies and investors about specific climate change metrics and risks, public companies are concerned about their potential liability if a new climate change disclosure regime is promulgated. Unlike quantitative financial information, climate change metrics and data points are currently difficult to collect in a reliable and standardized manner. They are also not comparable in their application or impact across companies and industries.

The SEC should also consider providing companies with a safe harbor for good faith company statements about climate change risks and opportunities. For almost every public company, the future is difficult to predict with precision and the science of climate change is complex and evolving. These disclosures should be considered similar to forward-looking statements and companies should be protected from liability (and frivolous lawsuits) if they comply with appropriate conditions and their statements later turn out to be incorrect.

5. **The SEC Should Consider Scaled and Phased Disclosure.** In developing any new disclosure requirements, the SEC should provide for “scaled” disclosure, which would allow smaller issuers more time to comply and would subject these companies to less onerous requirements. The SEC should also consider phasing in any new rules, to permit companies enough time to gather data, assess risks, and prepare their disclosures.

Thank you for the opportunity to present the views of the NIRA Connecticut/Westchester County Chapter on this important topic.

Sincerely,

NIRA Connecticut/Westchester County Chapter

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