

June 14, 2021

Chairman Gary Gensler
 Commissioner Allison Herren Lee
 Commissioner Hester M. Peirce
 Commissioner Elad L. Roisman
 Commissioner Caroline A. Crenshaw
 Securities and Exchange Commission
 100 F Street, NE
 Washington, DC 20549-1090

Dear Chairman and Commissioners:

The Interfaith Center on Corporate Responsibility (ICCR) appreciates and welcomes the opportunity to respond to the Securities and Exchange Commission (SEC)'s request for input on climate and ESG disclosure of March 15, 2021.

About ICCR

Currently celebrating our 50th year, the Interfaith Center on Corporate Responsibility pioneered the use of shareholder advocacy to press companies on environmental, social, and governance issues. Our coalition of over 300 global institutional investors currently represents more than \$4 trillion in managed assets. Leveraging their equity ownership in some of the world's largest and most powerful companies, ICCR members regularly engage management to identify and mitigate social and environmental risks resulting from corporate operations and policies.

Our members represent faith-based organizations, socially responsible asset management companies, unions, foundations, and other responsible investors working alongside a global network of NGO and business partners. Together we are committed to moving business towards sustainable strategies that advance the common good.¹

While ICCR members never shy away from making the moral case for action, our fundamental proposition as investors is that responsible and sustainable business practices - and a strong corporate culture of ethics - are in the long-term interest of both companies and investors.

ICCR's members focus investment and engagement strategies on key areas of Environmental, Social, and Governance (ESG) concern, including human rights, health equity, economic fairness, food and water sustainability, and the protection of our environment (including climate change). Members integrate these concerns into their investment decision-making processes. Throughout our 50-year history, ICCR members and staff have engaged hundreds of global corporations annually to promote more sustainable and just practices.

ICCR's work is accomplished through corporate dialogues --annually our members conduct roughly 300 dialogues with over 200 companies on a wide range of issues. These dialogues have specific goals and often bear fruit in the form of meaningful reforms with long-term impact.

¹ Many of ICCR's member organizations are also members of other coalitions, including the United Nations-supported Principles for Responsible Investment (PRI), whose collective assets under management total \$60 trillion, and CDP which represents in excess of \$100 trillion in assets under management.

Examples of ICCR member initiatives include calling for increased due diligence to eliminate forced labor risks in global supply chains, curbing greenhouse gas (GHG) emissions to align with the 2-degree warming scenario established in the Paris Climate Agreement, pressing for more sustainable food systems, improved corporate water stewardship policies and more affordable and accessible health care and financial services. In instances where dialogue alone is unproductive, ICCR members sometimes file shareholder resolutions. Strong votes are a signal to management that change is needed. ICCR members filed 281 resolutions for the 2021 proxy season. These numbers indicate the commitment of faith and values-based investors to engage in shareholder advocacy on ESG issues.

This past season, ICCR members (and investors more broadly) demonstrated unprecedented support for improved climate and ESG disclosure, evidenced by a significant 76.4% increase in majority votes for ICCR member led resolutions compared to the previous year.² In 2020, 11 of 124 (8.9%) ICCR resolutions earned majority votes, and in 2021 we saw majority votes for 18 of 115 resolutions (15.7%). Almost half of these majority votes in 2021 were for climate-related proposals. Furthermore, there is a marked change in the size of majorities scored year on year. In 2020 the highest vote recorded by an ICCR member-led resolution was 79%, followed by 4 majority votes in the 60th percentile and 6 in the 50th percentile. In contrast, to date for 2021 we have recorded 6 votes in the 90th percentile range, 3 in the 80th and 2 in the 70th percentile alone.³ These high vote margins show growing investor support for the ESG issues raised.

The focus of the proposals ranged from disclosure of climate risk, to climate related lobbying policies, to related environmental and human rights issues. Through the groundswell of voting support, it is clear that investors understand the links to long-term value and seek better disclosure and performance on a range of ESG matters, and especially on climate change. This investor support extends beyond ICCR led proposals: the Exxon Mobil board upset and other recent climate-related votes for the oil and gas sector were an exclamation point on this extraordinary season, demonstrating that investors are increasingly calling on boards and companies to respond with much greater urgency to the scale and pace necessary to address the climate transition.⁴ It is clear that investors have concluded that attention to climate and ESG matters is necessary to ensure long term profitability, and also to secure a better future for employees, customers, and other stakeholders.

Supporting mandatory ESG disclosure

The SEC needs to establish mandatory disclosure rules on climate change and ESG. The urgency and importance of climate change risks necessitates an economy-wide baseline of climate disclosure and accountability. The goal of an SEC rulemaking should be to ensure that there is a baseline of disclosures in a clear disclosure format, so that analysts and active stewardship efforts begin with a common understanding of companies' performance on climate readiness and mitigation. Our members' painstaking, company-by-company dialogue and engagement will become far more efficient with a baseline of disclosure that allows our members to assess

² Data as of June 10, 2021. Additional votes pending.

³ Data sourced from the ICCR Shareholder Exchange Database as of June 8, 2021.

⁴ "A Bad Day for Big Oil," May, 26, 2021. Washington Post. <https://www.washingtonpost.com/climate-environment/2021/05/26/exxonmobil-rebel-shareholders-win-board-seats/>

company performance. The urgency of the climate crisis demands baseline disclosures from all companies to inform decisions that seek to mitigate the worst impacts of climate change.

In responding to the invitation for public comments, we are joining with numerous allied investors and organizations like the PRI, Ceres, CDP, and the US Forum for Sustainable and Responsible Investment (US SIF), who have made articulate cases for the need for mandatory disclosure to help investors meet their fiduciary obligations. As universal and/or diversified investors, ICCR members are concerned not just with the impact of corporate policies and practices on an individual company's bottom line, but also on the systems-wide risks that those policies and practices create – as these systems-wide risks impact the economic environment in which the companies operate, as well as the broader investment portfolio. Therefore, we want to ensure that disclosure requirements are not narrowed to the potential impact on an individual disclosing company's finances and operations, but also looks to the impact of the same corporate activity on society, particularly local communities, as well as on the environment and the impacts to natural resources.

In practice, current mandatory SEC disclosure requirements,⁵ even in combination with voluntary initiatives and shareholder engagement, do not lead to the disclosure of consistent and comparable ESG information that is decision-useful for investors in strategic investment planning. *Consistent and comparable* disclosures will allow investors to evaluate investment risks, assess industry leadership by sector, assess whether a given company is able to respond to changing regulations, and help us to better focus our engagement to where it can be most productive.

Corporate approaches to ESG issues and risks directly relate to value. Corporations that recognize the need to address ESG concerns are better positioned to anticipate changes and adapt most effectively.⁶ A company's ability to define and measure its progress will help investors consistently analyze portfolios, creating a more robust investment strategy. Instead of this more robust disclosure and associated strategic thinking being relevant to only a small subset of companies that have received pressure from investors or their customers to provide this information, the SEC should level the playing field and require *at least* a subset of information of

⁵ It has often been suggested that the Management Discussion and Analysis, as a narrative discussion of key trends, events and uncertainties that may affect financial outcomes, can serve as an existing locus for ESG disclosures. As an example of an element of the MD&A that might in some instances trigger ESG related disclosures, the issuer is required to:

(ii) Describe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. However, examination of the rule, including the 2020 promulgated revisions, demonstrates that effective disclosure of issues like those described above under the existing rule is improbable. As the Commission noted in its description of objectives of the MD&A in 2020:

The discussion and analysis must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations.¹

Under this framework, many ESG issues may escape disclosure due to the combination of interpretation of whether a trend or development is “known”, and possibly more importantly, whether a financial impact is “reasonably likely,” as well as judgments about what would have a material impact, would lead to an internal determination by an issuer that issues of high severity but, in the company's view, lower probability, might not meet the “reasonably likely” criterion and therefore would not be disclosed under the Management Discussion and Analysis.

⁶ ICCR, [Social Sustainability Resource Guide: Building Sustainable Communities through Multi-Party Collaboration](#)

all companies, to enhance the practices and performance of all issuers in this area. Additionally, as we will discuss further below, we recommend that the ESG data is verified externally.

Beginning with climate disclosure, we hope that the SEC will establish meaningful principles and standards of disclosure on ESG information to produce consistent, accurate, and reliable reporting by companies on these important and material items for investors.

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?

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)?

TCFD: A foundation for climate strategy and targets disclosure

Meaningful disclosure necessitates specificity from the Commission. We note that there is significant momentum in public comments in support of the SEC's incorporation of the 11 recommendations of the Financial Stability Board's Task Force on Climate Related Financial Disclosures (TCFD) into Regulation S-K. We view the TCFD's recommendations as helpful to provide a shell, or structure, into which meaningful information may be provided **depending on the Commission's guidance on the breadth of scope and details expected to be disclosed by issuers.**

TCFD includes requests for narrative disclosure on governance, strategy and risk management for instance, as well as metrics and targets used to assess and manage relevant climate-related risks and opportunities. The TCFD approach suggests that such information should be disclosed where it is material.

However, investors attentive to climate risks in their portfolios seek a consistent ability to rigorously benchmark strategies and targets. A key test of the efficacy of SEC disclosure rules will be whether or not investors will be able to benchmark companies against the more detailed metrics, such as the CA100+ net zero benchmarks. A workable standard will ensure a level of detail or clarity that will allow investors to assess companies against CA100+ benchmarks, such as whether the company has:

- Net-zero GHG emissions by 2050 (or sooner) ambition
- Long-term (2036-2050) GHG reduction target(s)
- Medium-term (2026-2035) GHG reduction target(s)
- Short-term (up to 2025) GHG reduction target(s)

- Decarbonization strategy
- Capital allocation alignment
- Climate policy engagement
- Climate governance
- Just Transition

The CA100+ has articulated these criteria in detail.⁷ In addition to its climate policy criteria, the organization draws on InfluenceMap, which provides detailed Paris-aligned analyses of corporate climate lobbying.⁸

Recommendations

Thus, consistent with TCFD and CA100+, as well as our experience in engagement with companies, there are a number of fundamental requirements we believe should be included in the baseline climate disclosure rules, including:

- Disclosure of climate governance and strategy, including *short-, medium-, and long-term targets* as part of climate transition plans;
- Disclosure of *data on progress* against any corporate climate commitments and targets;
- Audited tabular disclosure of a company's estimated scope 1, 2 and 3 GHG emissions as defined by the Greenhouse Gas Protocol. In our experience we have seen companies in the same sector using different calculation methods and reporting platforms (i.e., CDP and individual company reports), which make the information that is available difficult to understand, and difficult to assess how one company is managing the risk of GHG emissions against another;
- Reasonable assurance based on Public Company Accounting Oversight Board (PCAOB) audit standards on each of the required data points (discussed further below);
- Disclosure of internal GHG emissions pricing;
- Disclosure of capital expenditures in regulation S-X that are attributable to transition risks and opportunities and adaptation to physical risks associated with climate change;
- Disclosure of an audited net-zero scenario analysis in a supplemental schedule to the financial statements that describes any changes in the company's financial assumptions that would be associated with global policies implementing net zero (discussed further below);
- Disclosure of material climate-related environmental risks, such as community impacts, water shortages, physical risks from flooding or sea level rise, chronic heat waves as well as deforestation as a major contributor to climate change. In our experience, companies often provide climate-related risk disclosure in an inconsistent manner, especially when it comes to the scope of the value chain covered. For example, while some companies publicly disclose a climate risk management policy that applies to both their operations and supply chain, others will only have a policy that applies to their direct operations, and others will include only sparse information in a Supplier Code of Conduct that is difficult

⁷ CA100+ Benchmark Indicators: <https://www.climateaction100.org/wp-content/uploads/2021/03/Climate-Action-100-Benchmark-Indicators-FINAL-3.12.pdf>

⁸ https://influencemap.org/site/data/000/774/IM_SEC_Climate_Disclosure_May2021.pdf

to locate within their public website. Consistent requirements for ESG disclosure should lead to consistent, or at least clear, scoping of such policies.

All of these climate disclosure requirements are supported by compelling evidence for SEC regulatory action.

Challenges of existing disclosure frameworks and standards

Data provided by companies through CDP, GRI and other voluntary reporting mechanisms is often inconsistent

There are numerous voluntary reporting mechanisms eliciting information helpful to investors when evaluating ESG risks. Examples include CDP, the Global Reporting Initiative (GRI), the Corporate Human Rights Benchmark (CHRB), etc. ICCR members appreciate the extensive work done by these organizations over the years in creating standards for meaningful disclosure of vital ESG information. However, because each reporting standard is voluntary, each has weaknesses. Not all companies choose to disclose through these frameworks. In addition, some companies may respond to only partial sections of a disclosure questionnaire, leaving out portions of the answers that may be most material or relevant to investor concerns, and therefore the response has limited value. Voluntary standards are not producing consistent disclosure.

As with TCFD, we expect that the voluntary standards and related program resources will provide informative evidence and frameworks as input to SEC disclosure rules. Even in the absence of an SEC requirement, the Commission should recognize that disclosures of information voluntarily under these programs represents material communications to investors which are subject to the accuracy and completeness safeguards of the securities laws.

SASB offers too limited a scope of “materiality”

The Sustainability Accounting Standards Board (SASB) sector by sector guidance is clearly a valuable tool for companies that are beginning to assess issues that are likely to be financially material for their sector; However, in our experience and assessment SASB sector guides do not offer an off-the-shelf, adequately scoped delineation of the range of issues that the reasonable investor would find decision-useful in voting, portfolio management and active stewardship. In our experience, SASB sector guidelines are uneven and sometimes exclude issues that are of obvious materiality in investing decisions, engagement and voting.

Critical concerns for our members and for other diversified and universal investors are the externalities, cross-sectoral impacts, and systemic impacts of corporate activity, which are of equal interest and materiality as the narrower, company-specific financial materiality concerns that generally form the basis of SASB thresholds for inclusion in standards. In particular, the SASB standards have often neglected significant social or environmental disclosures that are broadly supported by investors. Examples that we are aware of in our experience includes some SASB sectoral guidance that omits critical social and human rights issues like respect for Free Prior and Informed Consent (FPIC) within raw materials supply chains, and failure to track emerging environmental and public health concerns such as the use of toxic materials in a

growing sector like renewable energy.⁹

Recommendations

The Commission should draw upon the work of organizations like TCFD, GRI, CDP and SASB, but should not be limited to requiring disclosures delineated by those organizations. Extensive information that is important and material to investors is omitted from guidance provided by TCFD and SASB, and therefore they do not provide an off the shelf model for an adequate SEC disclosure rule.

Ultimately, we believe that the Commission must develop internal expertise, and consult extensively with key stakeholders, to be able to draw upon the various reporting standards to create a consistent mandatory reporting mechanism, but it should not be dependent on these entities for standard-setting. SEC guidance or rules should also encourage companies to disclose the reference standards or programs utilized.

Some Test Issues for a Disclosure Standard

The effectiveness of the SEC mandated disclosure framework will be heavily reliant on the degree that the Commission delineates sufficient details, whether as line items or clear principles and guidance, to ensure that companies drill down to the issues that are relevant to investor assessment of the effectiveness of companies' climate responses. Items of concern include:

- Whether transition reporting includes qualitative and quantitative disclosure of transitional equity and fairness considerations, sometimes referred to as “Just Transition”;
- Whether disclosure of a climate transition strategy includes disclosure sufficient to assess whether the company's lobbying and political spending activities are in alignment with the strategy;
- Whether climate-related claims regarding risk scenarios and performance targets, and climate-related assumptions implicit in financial statements, are accompanied by sufficient accounting safeguards and verification.

In the following sections, we will address each of these points in turn and connect them where applicable to the questions posed by the Commission.

15. How do climate-related disclosure issues relate to the broader spectrum of ESG disclosure issues?

13. 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?

⁹ SASB, Basis for Conclusions, Solar Technology & Product Developers, October 2018.

Concerns Regarding A Just Transition

As society rapidly shifts towards a low-carbon, Paris-aligned economy, investors will need to understand whether issuers are promoting a just and equitable transition for affected workers and communities. Scenario analyses such as those of the International Energy Agency (IEA) call for an unprecedented transformation of our energy systems in order to meet the goals of the Paris Agreement; however, such dramatic changes will come with significant impacts to society such as job displacements, potential increases in customer energy costs, and community impacts of plant closures and new energy infrastructure development, all with heightened risks of disproportionately impacting lower income communities and/or communities of color. The Paris Agreement acknowledges the importance of “the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities” and the importance of “taking into consideration vulnerable groups, communities and ecosystems.” Therefore, the urgency of a “Just Transition” must be reflected in the SEC’s disclosure requirements.

Investors seek to understand the societal implications of a company’s decisions and actions to meet the demands of the energy transition that are often overlooked in existing voluntary disclosure mechanisms. We believe these factors are of material interest to investors in order to assess the likelihood of success of companies’ transition plans, as well as to decide whether plans meet their criteria for investment. These factors will ultimately translate to long-term value propositions including employee loyalty, social license, regulatory risk and liability reduction. If unmanaged, these issues will further impact the health of the broader economy in addition to impacting communities, creating potential risks to investor portfolios.

To demonstrate this, 161 investors representing US \$10.2 trillion in assets, including many ICCR members, supported the “Statement of Investor Commitment to Support a Just Transition on Climate Change”, which notes that:

As investors with a requirement to act in the best interest of our beneficiaries and in line with our fiduciary duties, we believe that strategies to tackle climate change need to incorporate the full environmental, social and governance (ESG) dimensions of responsible investment. There is an increasing recognition that the social dimension of the transition to a resilient and low-carbon economy has been given insufficient attention, notably in terms of the implications in the workplace and wider community. Achieving a just transition, in line with the 2015 Paris Agreement on Climate Change, will help to accelerate climate action in ways that deliver the Sustainable Development Goals.¹⁰

Above and beyond consideration of whether the pace of decarbonization is consistent with global goals and science, investors will be attentive to disclosures that address board-level governance of the just transition,¹¹ particular commitments to decent work, access to jobs

¹⁰ <https://www.unpri.org/download?ac=10382>

¹¹ The [Initiative for Responsible Investment](#) suggests the following questions regarding governance and accountability:

- Has the Board established a policy ensuring:

for marginalized communities, and support for workers and communities negatively affected, and political or policy engagement that favors or impedes the necessary transition.

Further, governments are now recognizing the importance of a just transition and considering public policy changes that would create financial incentives or penalties to promote fair treatment for affected workers and communities. Investors need adequate disclosure of firms' strategies around a just transition to predict performance amid likely upcoming policy changes.

A focus on a *just transition* is thus a necessary strategy to enable investors to manage the systemic risks of climate change and to ensure that the massive change underway in society minimizes resulting social and human rights impacts.

Recommendations

To meet this investor need, the SEC should require all companies to disclose how they are incorporating elements of a just transition into their overall decarbonization strategy. This should be done in the form of a narrative discussion accompanying climate metrics. Simple metrics such as GHG emission levels can mask underlying issues of fairness and impact. For example:

- A ton of carbon reduced in different locations may have very different distributive impacts: increasing or decreasing disproportionate impacts of pollution on communities of color, and jobs displacement or transitions.
- Disclosure of a lower corporate GHG footprint may be deceptive if the means of reducing that footprint is simply to sell off assets that will continue to yield the same carbon emissions under different ownership. We have increasingly seen this pattern in instances where large oil and gas companies may appear to reduce their GHG footprint by selling off pipeline or other emitting operations. Either in the tabular disclosure or narrative form, such selloffs should be distinguished from actual reduction in GHG emissions to the atmosphere.

Within the aforementioned narrative disclosures, we recommend including specific line items on board-level governance and accountability on just transition issues. The task of the SEC as the promulgator or enforcer of disclosure rules is accompanied by a need for mechanisms of accountability for these secondary impacts of clear concern to investors.

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- All workers and communities vulnerable to the impacts of the company's decarbonization plans be identified;
 - Appropriate mechanisms are in place to engage vulnerable workers and communities in order to solicit their concerns and perspectives;
 - The concerns of workers and communities are incorporated into and adequately addressed by the company's transition plans.
 - Has the Board established an accountability mechanism by identifying which board committee is responsible for oversight of the just transition process?
 - Has the Board linked executive compensation to decarbonization commitments?

In addition, sectoral guidance is necessary. The report “Investor Expectations on the Just Transition: Publicly Traded Energy”¹² by David Wood and Vonda Brunsting of the Initiative for Responsible Investment (IRI) at Harvard University notes that there is a need for “sector-specific guidance laying out investor expectations of corporations on the just transition,” and should draw on existing protocols for managing worker and community issues such as the ILO’s guidelines for a just transition,¹³ the UN Guiding Principles on Business and Human Rights,¹⁴ the ITUC’s project on social dialogue on working conditions,¹⁵ and the OECD’s Guidelines for Multinational Enterprises.¹⁶ The IRI report includes recommended disclosure questions for companies in the utilities sector.

Corporate policy consistency and climate lobbying

Corporate lobbying activities that are inconsistent with meeting the goals of the Paris Agreement present several financial risks to investors, from reputational to regulatory to systemic economic risks. Investors recognize that there are critical gaps between the pledges and commitments national governments have made and the actions required to stave off the worst effects of climate change; therefore, investors understand that corporations have an important and constructive role to play in enabling policymakers to close the ‘ambition gap’, which would also contribute positively to the long-term value of their investment portfolios.¹⁷

As a result, investors have been increasingly engaging companies on the topic of whether their lobbying practices align with the goals of the Paris Agreement.

The issue of aligned climate policies is not confined to a single sector but is broadly applicable to public companies. Proposals filed in 2020 and 2021 with companies in sectors including oil and gas, railroads, energy utilities, airlines, and auto manufacturers, have been met with strong investor support. Of thirteen proposals filed on Paris-aligned climate lobbying disclosure in 2020 and 2021, six were withdrawn and seven went a vote, five of which received **majority votes**. At the time of this writing, one vote is outstanding.

Examples include a proposal filed by BNP Paribas in 2020 with Chevron, asking for a report “describing if, and how, Chevron’s lobbying activities (direct and through trade associations) align with the goal of limiting average global warming to well below 2-degrees Celsius (the Paris Climate Agreement’s goal), and to address the risks presented by any misaligned lobbying and the company’s plans, if any, to mitigate these risks” received a majority vote of 53.5%.

In another significant example, a proposal at Norfolk Southern filed in 2021 by Friends Fiduciary asking the board to conduct an evaluation and issue a report within the next year to address very

¹² [Investor Expectations on the Just Transition: Publicly Traded Energy](#), Initiative for Responsible Investment at Harvard University, October 2020

¹³ [ILO’s Guidelines for a just transition towards environmentally sustainable economies and societies for all](#)

¹⁴ [UN Guiding Principles on Business and Human Rights](#)

¹⁵ [ITUC’s project on social dialogue on working conditions](#)

¹⁶ [OECD’s Guidelines for Multinational Enterprises](#)

¹⁷ [Investor Expectations on Climate Lobbying Sign on Letter](#), Ceres, 2019

similar criteria as the Chevron proposal received a resounding 76% vote from shareholders. The resolution was originally filed to address Norfolk Southern's contradictory emissions reduction commitments and trade association activities. The company had set short-term greenhouse gas emission goals and has committed to adopting a science-based reduction target,¹⁸ which was positively received by investors; however, the company has also been funding lobbying organizations, such as the American Coalition for Clean Coal Electricity, that work to discredit climate science and oppose most federal climate policies. This lobbying behavior, which, according to press reports,¹⁹ reflects the fact that the transport of coal represents one of the company's primary business lines, raised significant concern for investors as it contradicts the company's science-based climate goals. These examples demonstrate the investor demand for disclosure from companies on their climate lobbying practices and why this information is material in investment decision-making.

Recommendations

We recommend that the SEC establish specific narrative disclosure requirements as suggested by the organization InfluenceMap²⁰ to be fundamental indicators of company performance on climate change policy engagement, including:

- The extent to which a company is actively engaged in seeking to influence climate change policy;
- The extent to which these political engagement activities are aligned with the goals of the Paris Agreement and/or the science of the Intergovernmental Panel on Climate Change (IPCC);
- Whether a company maintains links to third-party groups actively seeking to influence climate change policy (e.g., industry associations), and the extent to which the activities of these groups are aligned with the goals of the Paris Agreement and/or the science of the IPCC.

In addition, we believe that these disclosures should also indicate whether the company supports and aligns with public policy geared to achieving the goals of a just transition as outlined in the Initiative for Responsible Investment's report on Investor Expectations on the Just Transition.²¹

¹⁸ <http://nscorp.com/content/dam/nscorp/get-to-know-us/about-us/environment/Norfolk-Southern-2020-CDP-filing.pdf>, p. 15.

¹⁹ <https://www.theatlantic.com/science/archive/2019/12/freight-railroads-funded-climate-denial-decades/603559/>

²⁰ https://influencemap.org/site/data/000/774/IM_SEC_Climate_Disclosure_May2021.pdf

²¹ The [Initiative for Responsible Investment](#) suggests the following lobbying disclosure frameworks related to just transition for utilities, but could be used to inform similar disclosures for others sectors:

- Lobby in favor or against national, sectoral, or regional policies incentivizing deep decarbonization;
- Integrate distributional issues, especially those affecting vulnerable workers and communities, into their political engagement activities, for instance, by supporting policies that directly encourage diversity (e.g., by ensuring that social dialogue includes diverse voices with power from vulnerable communities by race, class and sector).
- Lobby in favor or against national, sectoral, or regional funds that support workforce transition and economic development.
- Align their corporate policies with national, regional, or community generated just transition plans.

Congruency analysis, fraud prevention and SEC rules and guidance

In the absence of line item or prescribed narrative disclosures on climate and carbon accounting, lobbying, just transition, or environmental risks, we can anticipate potential inconsistencies or incongruencies from company disclosures. The Commission should provide guidance that makes it clear that when companies describe their climate strategy and risks, they should ensure that they have included additional disclosures as needed to ensure that their statements are not misleading.

The disclosure of climate strategy, environmental risks, targets etc. as described by TCFD can be guided, through SEC interpretation, to integrate all of these issues as the types of issues that will often need to be disclosed by companies in order to make their disclosures complete, and not misleading. Especially with such guidance offered by the SEC, omissions of critical facts related to any of these topics may rise to the level of decision useful, materially misleading omissions of facts under rule 10b-5²² which prohibits, in investor communications, both “any untrue statement of a material fact” but also to “omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” For example, a strategy disclosure that fails to disclose inconsistent lobbying policies, or overstatement of a company’s commitment to its stakeholders, or failure to disclose carbon accounting devices used to arrive at a net zero calculation, might well trigger the rule.

Guidance from the SEC on interpretation of TCFD or similar disclosure rules can make a substantial difference as to whether these critical issues are disclosed as part of risk and strategy disclosures.

In particular, a Commission release could describe scenarios in which disclosure of just transition or lobbying related information would likely be necessary in order to make the disclosures on risk or strategy not misleading; for instance, where a firm is a member of a trade association that supports climate policies inconsistent with the firm’s own commitment to the Paris climate agreement goals, or where significant acceleration of worker displacement or community environmental justice impacts will occur on the company’s watch. Attention to these just transition issues is consistent with the Paris Agreement, as referenced earlier.

Thus, a company that makes significant disclosures that embrace the net zero future or a commitment to their stakeholders may have a concomitant responsibility to disclose any lobbying positions or trade association memberships that are contrary to the stated positions, on which ESG and other climate engaged investors may well find the contradictory information to be material to their voting or investing policies.

²² 17 CFR § 240.10b-5 - Employment of manipulative and deceptive devices. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

In the meantime, investors should be encouraged to report significant incongruities to the SEC, and file shareholder proposals as necessary, to highlight these incongruities to board and management.

2. 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?

10. What assurance framework should the Commission consider requiring or permitting? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance?

Providing reasonable assurance of climate related data, including carbon accounting, has become a critical, auditable aspect of corporate disclosure.

We recommend that all metrics related to climate and other ESG matters be subject to reasonable assurance as defined by the PCAOB. Carbon accounting related data, in particular, including underlying net zero/offsetting assumptions and calculations and progress against science-based targets, should be among the data subject to reasonable assurance. Sufficient expertise should be developed within the Securities and Exchange Commission staff to assess and identify misleading carbon accounting and net zero claims, consistent with financial statement accounting. Companies should be encouraged or required to include disclosure of climate related assumptions in Critical Audit Matters disclosures (more detail below), as well as in supplemental filings that document the extent to which financial statement assumptions would need to be modified in a global net zero by 2050 scenario.

Corporate insiders have long warned that oil and gas companies have strong incentives to understate risks posed by climate change to their financial condition and to the economy at large. In a recent report,²³ the National Whistleblower Center noted, “Fossil fuel companies, fearful of losing access to investment capital and loans, are therefore highly motivated to conceal their exposure to these risks.... The potential for rapid asset deflation at large fossil fuel companies is a ticking time bomb that, if not detected and addressed, could make the global financial system implode... because banks, insurers and other globally significant financial institutions are heavily invested in these companies...” The report illuminates powerful economic forces²⁴ at

²³ National Whistleblower Center, *Exposing a Ticking Time Bomb: How fossil fuel industry fraud is setting us up for a climate & financial implosion – and what whistleblowers can do about it*, 2020, page 4.

²⁴ The Whistleblower Center notes that the report is the first to use the methods of professional fraud investigators to identify fossil fuel industry financial disclosure practices that are likely to be fraudulent and that deception about the financial risks of climate change is pervasive across the fossil fuel industry. Two categories of material information are routinely omitted from companies’ statements to shareholders, the immediate risks that climate change poses to companies’ financial condition, and the risk that the company’s asset deflation will contribute to an economy-wide financial downturn.

work behind the scenes in the sector to incentivize climate related obfuscation, including overvaluation of assets by underestimating potential impacts of external events (e.g., market and price changes and regulatory restrictions). It also highlights specific concern at Exxon Mobil, including complaints of a former Exxon Mobil accountant lodged with the SEC alleging overvaluation of its shale assets.²⁵

Auditing against net zero expectations

On January 27, 2021, the US joined eight of the 10 highest-emitting nations that have committed to seeking net zero GHG emissions in line with many corporate and financial leaders. The net zero 2050 Scenario published by the IEA has calculated that GHG emissions globally must be cut by 45% within nine years' time. In May 2021, the IEA published a further net zero pathway, describing the energy sector efforts needed through 2050.

The IEA net zero scenarios and pathways have profound implications for the oil and gas sector. The initial assessment of the IEA looking at what is needed through 2030 concluded that demand for oil declines from 98 million barrels per day (mb/d) in 2019 to 65 mb/d in 2030, an annual average decline of more than 3.5%.²⁶ The initial IEA net zero scenario published in 2020 was through 2030. The 2021 development by IEA of a roadmap toward net zero by 2050 concluded that no additional oil exploration or development beyond projects committed as of 2021 will be necessary under the scenario to fulfill relevant oil and gas demand.²⁷

The net zero scenario by 2050 is ambitious; yet, the urgency of climate change and the massive implications for all life on earth, as well as national and global economies, necessitate just such an ambitious all hands on deck global effort of innovation, investment and behavioral changes, much of which starts with access to climate-related information.

This includes the need for oil and gas companies to begin rethinking and disclosing their business plans and financial assumptions to comport with the scenario. For the 2021 proxy season, Christian Brothers Investment Services and As You Sow filed shareholder proposals at Exxon Mobil and Chevron respectively asking the companies to prepare an audited report on the net zero scenario and its impact on future fossil fuel demand volumes, and report to shareholders how that would change financial statement assumptions. Investors were seeking disclosure of how a significant reduction in fossil fuel demand envisioned in IEA Net Zero would alter the companies' assumptions such as future commodity prices, useful lives, and asset retirement obligations.²⁸

²⁵ We note that Exxon Mobil has done some write-downs on shale assets, but that the whistleblower has asserted that those write-downs are too little, too late.

²⁶ IEA, World Energy Outlook 2020, Chapter 4: Achieving net zero emissions by 2050, page 151.

²⁷ <https://www.iea.org/reports/net-zero-by-2050>

²⁸ In January 2021, S&P cut the credit rating of Exxon Mobil, motivated by the concern that the Company is underestimating climate transition risk. S&P noted in its release that "One of the main drivers for our revised industry risk assessment and the related changes in business risk profiles is the energy transition...The outlook revisions and CreditWatch placements reflect our reassessment of the industry's and companies' risk profiles, in part due to these environmental risks." <http://press.spglobal.com/2021-01-26-S-P-Global-Ratings-Takes-Multiple-Rating-Actions-On-Major-Oil-And-Gas-Companies-To-Factor-In-Greater-Industry-Risks>

Recommendations

The proposals at Exxon and Chevron, supported by 48.9% and 48.0%, respectively in the 2021 votes, may provide a concrete model for the SEC in establishing disclosure requirements, either across all sectors or specific to the oil and gas sector. Under this approach, companies would provide an audited report assessing how a net zero scenario would change assumptions in their financial statements on items like cash flow, future commodity prices, useful lives, and asset retirement obligations.

Critical Audit Matters

The Commission should encourage all relevant companies and sectors to include in Critical Audit Matters sections in financial statements a narrative discussion of the climate change issues that required extra attention, reflection and care in the course of an auditor's work. The requirement has led some companies (as discussed below) to identify climate change as a critical area of uncertainty that affects the valuations and assumptions underlying financial statements.

Jay Brown, as a member of the PCAOB noted,²⁹ "the discretion used to analyze the effects of climate change on the financial statements has narrowed. The days of optimistically thinking that the effects of climate change would be insignificant or modest appear to be over for many public companies. Climate change is accelerating and the likely impact on estimates and valuations is becoming more pronounced. Analyzing the impact, therefore, requires consideration of scenarios or models with increasingly severe outcomes. Simply assuming no effect or assuming the least disruptive effect will not in many cases be reasonable.... [I]ndependent accounting firms examine these estimates and valuations as part of the audit. Increasingly, the failure to consider the impact of climate change or the unreasonable assumptions of the impact will make more and more difficult for firms the ability to obtain the necessary degree of assurance required for an audit."³⁰

We believe that the Commission should require all companies to follow the model of National Grid, and where appropriate include net zero assumptions as among the candidate issues raised in a company's report on Critical Audit Matters. The National Grid Critical Audit Matters report stated:

...the auditor discussed management's estimates that were inconsistent with the 2050 "net zero" commitment. The auditor also observed that depreciating the assets in line with net zero targets would result in additional reductions to net income that were not reflected in the financial statements. The report also discussed how the auditor challenged management's assertion that carbon-emitting equipment could be used in alternative ways after a net-zero target date that supported management's estimate of operation until 2070.³¹

²⁹ Brown resigned from the PCAOB in January 2021.

³⁰ <https://corpgov.law.harvard.edu/2020/11/19/revealing-esg-in-critical-audit-matters/>

³¹ See REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM, *Form 20-F, National Grid, plc*, filed June 25, 2020. <https://www.sec.gov/Archives/edgar/data/1004315/000100431520000053/nationalgrid20f2020redacdoc.htm>

National Grid had announced a commitment to reduce its greenhouse gas emissions to net-zero by the year 2050. To the Proponent, this example demonstrated that auditors can and should consider the implications of net zero scenarios in current financial statements for high-emitting companies.³²

Examination of disclosures by some oil and gas companies demonstrate the feasibility of including these issues in critical climate change related assumptions. Through shareholder engagement with oil and gas companies and their auditors, other oil majors have already moved toward bringing their disclosures in line with a low-carbon energy transition:

- BP, Shell, and Total all re-assessed how the Paris Agreement and the drive to lower emissions worldwide might impact commodity prices and impairment rates. All three companies decided to alter their future commodity price assumptions for oil and natural gas and report them to shareholders.
- All three also announced major write-downs of assets due to this exercise. BP, Total, and Shell connected their write-downs and changed views of impairments to their consideration of climate change in the financial reporting process. BP noted that its \$17B write-down was largely because of climate change. Shell reduced refining margins by 30% triggering a \$6.5bn impairment (versus total \$50 billion refining assets). BP restructured its business, eliminating an Upstream Division.
- BP and Shell began listing climate risk as a Key Audit Matter (KAM) in the auditor's report. BP references price tests against Paris, demonstrating that a forward-looking scenario test proposed by the proposal is reasonable.

Thus, the SEC should mandate these narrative disclosures by all relevant companies in Critical Audit Matters sections of financial statements and should provide guidance for such disclosures by citing similar examples from the oil and gas sector.

Net zero, carbon accounting and securities regulation

With investors increasingly focused on global climate goals, the growth of corporate commitments focused on **net zero commitments** is a positive development that we are actively promoting, and we anticipate that the existence of the commitments, as well as the disclosure of consistent targets and strategies, will factor significantly into investment decisions. Yet, along with the rising importance of these disclosures comes the importance of accuracy and reliability, and of potential incentives for greenwashing to attract capital and consumers.

The proliferation of claims regarding “net” impacts depend upon very significant carbon accounting issues, which must be articulated, monitored and verified to head off what otherwise could lead to disclosures that are increasingly rife with carbon accounting fraud.

The calculation of “net zero” is complex and subject to potential interpretive judgments and accounting devices that could undercut our reliance on those claims. For example, net zero

³² In contrast, Exxon's business strategy assumes continuing *growth* in demand for hydrocarbons for the next several decades, reaching 110 m/bpd in 2040. Global convergence on net zero by 2050 could interfere with those expectations.

claims will turn increasingly on issues like the baseline for calculating deforestation, the applicability or non-applicability of regulatory standards that might give net zero status to activities that pose current carbon emissions, reliance in establishing targets on unproven technologies like carbon capture and sequestration, or in the purchase of renewable energy credits that may lack sufficient assurances to prevent multiple participants in the economy from claiming the carbon reductions from the same underlying activity. **The extent to which such reductions are additive, trackable, reliable, and not double counted will determine whether these disclosures, of material interest to investors, will have assurances associated with them sufficient to be reliable.** Inevitably there will follow consumer and investor litigation asserting greenwashing where the carbon emissions are being undercounted, or where offsetting claims or activities do not stand up to scrutiny.

With so much emphasis on the achievement of “net zero”, SEC rules and guidance should ensure transparency and accountability of the net zero claims. Company claims regarding targets, offsets, emissions, and strategies should be subject to audit and verification, with particular attention to carbon accounting claims.

To that end, we urge the SEC to use this rulemaking process to implement the February 27, 2019 petition³³ for ESG disclosure regarding the biomass sector filed by the Partnership for Policy Integrity and 27 institutions, investors and advisors that utilize ESG and Socially Responsible Investment (SRI) strategies, that seek to invest in companies offering climate change mitigating innovations and operational strategies.

As the petition states, “companies manufacturing and selling biomass-based fuels and products often make dubious or unsubstantiated claims that the products reduce GHG emissions. The growth of these products and a surge of interest in investments that promise to reduce GHG emissions mean that such claims are likely to be material to an increasing number of investors. A survey of public-facing materials and SEC disclosures of 10 US companies selling biomass-based fuels and products revealed that in each case, disclosures about GHG emissions were largely unsubstantiated and sometimes misleading. To ensure consistency and to avoid misleading investors, the SEC should issue guidance on required disclosures to companies making claims about biogenic emissions. Such disclosures could rely on easy-to-obtain information, and would be consistent with both the SEC’s 2010 Climate Guidance, and protective guidance adopted by the Federal Trade Commission (FTC).” We believe the petition on the biomass sector represents but *one* priority sector in which the commission will increasingly find itself drawn into important issues of carbon accounting that will make a material difference in the accuracy and completeness of SEC regulated disclosures.

Other examples include the increasing practices of disclosure by banks of financed emissions, which will open important questions regarding the accounting methods used, and carbon accounting in the oil and gas sector, which is marked by variable and often opaque mechanisms for disclosure.

It will be important for the SEC to establish internal capacity to verify climate and carbon accounting related claims for filing review and enforcement. In addition, the agency should

³³ <https://www.sec.gov/rules/petitions/2019/petn4-741.pdf>

provide avenues and incentives for investors and whistleblowers to identify greenwashing and carbon fraud and to provide evidence for SEC or investor enforcement actions.

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

Executive Compensation and Board Oversight

The TCFD guidelines include disclosures related to Governance and Risk Management that are intended to provide necessary context for the metrics, and also recommends that those additional disclosures be “included in annual financial filings.”³⁴ Such governance disclosures can and should include discussion of any linkage between executive compensation and climate and other sustainability targets.

Our members have engaged companies on the topic of executive compensation for over twenty years. Through these engagements we have seen a number of situations in which companies have asserted the presence of compensation linkages to climate or environmental metrics, but on further examination, the links were too vague to be considered meaningful.

Recommendations

Disclosure should ensure sufficient detail to allow investors to assess whether the potent tool of executive compensation is being utilized to meaningfully incentivize management performance on climate and sustainability, including, to the extent possible, descriptions of how particular climate targets factored into compensation or bonus formulas.

Other aspects of governance disclosure that also merit clear SEC directives include describing how the board integrates an accurate assessment of risk exposure into plans and performance metrics, including how the board structures its oversight of these issues, frequency of assessment or reporting to the board, and how the board obtains expertise or training when needed.³⁵ This may include:

- Integrating knowledge of material sustainability issues into the board nominating process to recruit directors that ask the right questions;

³⁴ [TCFD Recommendation Report](#) (2017), p. 17

³⁵ See Ceres, *Running the Risk: How Corporate Boards Can Oversee Environmental, Social and Governance (ESG) Issues*, November 2019, https://www.ceres.org/sites/default/files/reports/2020-01/Running%20the%20Risk_Ceres_2020.pdf; See also Ceres, Roadmap 2030, “Board Oversight” <https://roadmap2030.ceres.org/sbi-expectation/board-oversight>

- Educating all directors on material sustainability issues to allow for thoughtful deliberation and strategic decision-making at the board level;
- Engaging regularly with external stakeholders and experts on relevant sustainability issues.³⁶

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?

Priorities for sectoral guidance

Our members have prioritized certain sectors for climate change focus, particularly the utility, oil and gas, banking, and transportation sectors, each of which will play a significant role in determining the pace of decarbonization of the US and global economy. The thrust of this sectoral focus, and the voting outcome of proposals in these sectors, demonstrates the enormity of investor interest in particular areas of disclosure that are both of material interest to investors and subject to the **potential omission** from disclosures under a framework such as TCFD unless supplemented with clear commission rules or guidance to ensure inclusion of these issues. For example, our engagement with utilities and oil and gas companies has highlighted the concern that the rapid transitions of these sectors may result in significant job displacements and community impacts, and that disclosure of these impacts and efforts to mitigate them, is a necessary part of the current transition.

We urge the Commission to, at its earliest opportunity, update and expand industry-specific disclosure requirements to incorporate industry-specific climate metrics, focusing initially on the utility, oil and gas and financial sectors. Guidance for these sectors should expand the baseline disclosure requirements, and also articulate critical nuances of climate disclosure discussed above, such as carbon accounting, just transition, climate policy, and environmental impacts. We favor the development of additional requirements or guidance in some of the various mechanisms used for providing guidance including Commission Industry Guides³⁷ and Division of Corporation Finance Disclosure Guidance.³⁸

Utility sector

Our members' engagement has concentrated in the last few years on decarbonization in the electric utility sector, seeking both disclosures of risk under current practices and trajectories, and an assessment of the prospects for more ambitious performance targets and goals.

³⁶ Ceres, 2017, [Lead from the Top: Building Sustainability Competence on Corporate Boards](#)

³⁷ <https://www.sec.gov/files/industryguides.pdf>

³⁸ <https://www.sec.gov/corpfin/cfdisclosure#cfguidancetopics>

For instance, ICCR member engagement with AES Corporation demonstrates investor interest in disclosures on climate risk and scenario analysis in the electric utilities sector. A 2017 proposal filed at AES by Mercy Investment Services sought an assessment of the long-term impacts on the company's portfolio and of public policies and technological advances that are consistent with limiting global warming to no more than 2° Celsius over pre-industrial levels. The proponent suggested that the report include how AES could adjust its capital expenditure plans to align with a 2° scenario and plans to integrate technological, regulatory and business model innovations such as electric vehicle infrastructure, distributed energy sources (storage and generation), demand response, smart grid technologies, and customer energy efficiency as well as corresponding revenue models and rate designs. This 2017 proposal, initially filed in 2016, received a vote of 42.2%, and was followed by a similar proposal filed in 2018 that was withdrawn for agreement. After this series of engagements, the company now produces one of the best scenario analysis reports in this sector in the US, and investors have had productive conversations with the company on just transition issues.³⁹

For the utility sector, clarity on the need for clear decarbonization plans has become sufficiently widespread that we are finding that our members' engagements and proposals often lead to productive negotiation and withdrawal of the proposals. Examples from recent years include at CMS, MGE (physical and transition risks), and WEC (long-term impacts on portfolio of public policies and technological advances consistent with 2-degree scenario). At CMS, for example, the company announced a Clean Energy Breakthrough Goal and agreed to publish a Climate Assessment Report, which will include a 2-degree scenario assessment as requested in the proponent's proposal. Subsequent engagement resulted in the company's adoption in November of 2020 of a stepped-up goal to achieve net zero carbon emissions by 2040. The company is also incorporating just transition considerations in their transition planning.

While many utilities have committed to a low or net-zero carbon transition and have outlined preliminary plans to achieve those goals, the plans vary in their ambition regarding the rate at which the utilities will move away from coal and natural gas. In addition, disclosures are at an early phase regarding inevitable effects on ratepayers, communities, and workers for all of these plans. Investor attention to those impacts, and thus the need for adequate disclosure, is inevitable.⁴⁰

³⁹ https://www.aes.com/sites/default/files/2021-03/2021_AES_Climate_Scenario_vFinal.pdf

⁴⁰ The [Initiative for Responsible Investment](#) suggests questions for utility sector investor engagement including:

- When closing carbon-intensive plants, how does the utility:
Provide for retention, retraining, redeployment, or retirement support for existing workers negatively impacted by a plant closure?
- Address community concerns for lost jobs, negative impacts on the local tax base, and the loss of collateral public benefits from plant closure?
- Support social dialogue among public, private, and civil society stakeholders (including ratepayers and affected communities) to address the crucial issues of (1) who pays for plant closures, and (2) what systems are in place to support reinvestment for affected workers and communities?
- If utilities continue to invest in new fossil fuel assets or maintenance of existing fossil fuel assets, how does the utility:
Consider the impacts on ratepayers of investments in assets whose useful life must be shortened beyond traditional depreciation timelines to meet climate goals?
Facilitate the wind down of fossil fuel-reliant systems without burdening remaining customers?
Conduct due diligence and incorporate community consultation on new renewable developments.
Investors will have related concerns about the new jobs and economic development created in the transition to low-

Recommendations

We encourage the Commission's proposed climate disclosure framework to include adequate depth and guidance to address the range of issues raised by the above shareholder proposals and engagements, including 2-degree scenario assessment, just transition issues, and climate-related physical and transition risks. But we also anticipate the need for utility sector standards that drill down further on the specific needs of investors in this sector.

Oil and gas sector

As discussed throughout the above sections, our members' long-standing work in the oil and gas sector indicates that a rigorous approach to disclosure by the sector is necessary. This is clearly a sector in which detailed revisions to industry guidance is appropriate. The range of issues on which regulatory attention will be necessary is broad, ranging from calculating scope 3 emissions, financial statement assumptions, accounting for offsets, lobbying and just transition.

To provide some additional examples of how sector specific issues necessitate sectoral guidance, consider the issue of methane leaks from natural gas operations. Methane is the main chemical component of natural gas. Methane emissions are a significant contributor to climate change, with a global warming impact roughly 84 times that of CO₂ over a 20-year period according to the IPCC. Research indicates that across the global economy, methane leaks of only 3.2% across the natural gas supply chain -- from production through distribution -- could fully erase the climate benefits of replacing coal with gas. Leaked methane is also a loss of product; across the US economy it is enough to fuel 10 million homes per year according to EDF's 2018 report in Science.⁴¹

An ICCR member proposal in 2019 at Atmos Energy was based on concerns that methane leaks from Atmos' aging infrastructure create significant climate risk. Atmos' methane leaks expose the company to climate change-related regulatory risk. In recent years state-level regulations on greenhouse gas emissions have become increasingly stringent. States in which Atmos operates are pressing forward with methane reduction policies, including for instance, Texas' new Administrative Code requirements for leak surveys and repairs. The proposal on management of methane leaks at Atmos was supported by 34.81% of voting shareholders.

Similarly, another ICCR member proposal at Ovintiv in 2020 received 56.41% vote in favor. While the proposal focused on seeking disclosure of climate-related targets that are aligned with

carbon production and transmission:

What policies are in place to support decent work and quality jobs standards in the jobs created in the transition? These may include responsible contracting protocols, worker retention, wage and benefit standards, health and safety protocols and training and workforce development.

- How does the utility ensure that job creation and economic development are delivered to vulnerable communities, especially to women and people of color? These may include diversity and inclusion standards, local hire provisions, and environmental justice analysis of new activities.

What steps are in place to ensure worker and community input into the creation of physical infrastructure and workforce development related to the low-carbon transition?

⁴¹ <https://science.sciencemag.org/content/361/6398/186>

the goal of the Paris Agreement, because the company is one of the largest natural gas producers in North America this amounted to a request to reduce methane emissions.

The votes on methane-related shareholder proposals demonstrate that investors want more granular disclosure and better methane management in company operations. Companies have noted in dialogues that investors are now asking detailed questions about the climate and environmental impacts of their operations. In 2016, investors successfully weighed in with CDP to request that more granular questions on methane management and disclosure be included in the oil & gas supplement to the Climate Change questionnaire.⁴²

Recommendations

These examples demonstrate an example of the imperative for both industry-wide and sectoral disclosure requirements. Broadly applicable Scope 1, 2 and 3 GHG footprint disclosures mandated by the SEC across all sectors could include a requirement to disclose categories and details regarding specific emission streams that are a priority for a given company or its sector. This would, as an example, mean that an oil and gas company with significant methane emissions would be expected to provide particular reporting on this issue.

In addition to the recommendations cited above as applicable to the oil and gas sector, sectorally-focused guidance for the sector should prescribe details, similar to that included in shareholder proposals, to disclose methane reduction targets, mitigation measures and to benchmark these issues against peers. As an example of the types of disclosures needed on methane in a sector guidance, consider the language of the Atmos proposal asking the company to describe its actions to reduce its greenhouse gas emissions and associated climate risk by monitoring and minimizing its methane emissions, and suggesting specifically that the company describe its methane reduction program and quantitative indicators, such as:

- Any company plans to replace leak prone pipeline or implement other emission reduction practices;
- Any deployment of leak detection and repair technologies, including timelines;
- Amount of methane emissions reduced annually (and how emissions are calculated), including any goals or targets for methane reduction.

Banking sector

While banks can and should be subjected to the generic requirements of TCFD as well as the TCFD financial sector guidance⁴³, we are concerned that the TCFD is written in such general language, lacking in any rigorous benchmarks for appropriate level of effort or even measurement and disclosure of a financial institution's carbon footprint.

⁴² See the latest [CDP oil & gas climate change questionnaire](#) for the specific questions and datapoints collected on methane management: C4.2, C4.2b, C-OG4.2d, C-OG4.6, C-OG4.7, C-OG4.7a, C-OG4.7b, C-OG6.13, C-OG7.1b

⁴³ <https://assets.bbhub.io/company/sites/60/2020/10/FINAL-TCFD-Annex-Amended-121517.pdf>

Therefore, we believe it is necessary for the Commission to ensure that full scope 1, 2 and 3 carbon footprint measures, as well as the company's targets and analysis of consistency with global climate goals, are disclosed by a financial institution.

In recent shareholder engagements, it has become apparent that some banks are prepared to undertake such analyses. For instance, the proxy statement of the Bank of Nova Scotia included a statement of agreement to a proposal, asking for targets: "Scotiabank agrees on the importance of this proposal and commits to establishing bank-wide, quantitative, time-bound targets for reducing GHG emissions associated with our underwriting and lending activities. Such plans would include a quantitative analysis of the GHG intensity of the bank's loan book and underwriting activities to establish a baseline, research on pathways to net zero for a bank, development of options for quantitative targets for reducing GHG emissions and creation of a report outlining GHG emission reduction plans, targets and timelines. Once such targets are established, the bank will report annually on plans and progress towards achieving these targets." This example demonstrates a strong model for what comprehensive climate disclosure from financial institutions could look like.

In other instances, responsive action by banks has been triggered by shareholder votes. J.P. Morgan Chase is the largest source of financing to fossil fuel companies globally, averaging \$65 billion annually since the Paris Agreement was signed. This funding creates systemic portfolio risks to the global economy, investors, and the company's own operations. Other large banks have begun to recognize these risks: the European Investment Bank, the biggest multilateral lender in the world, announced that it will stop funding fossil fuel projects in 2021. In 2020, 49.6% of voting shareholders supported the proposal at J.P. Morgan Chase & Co. filed by As You Sow seeking a report on if and how it intends to reduce the GHG emissions associated with its lending activities in alignment with the Paris Agreement's goal of maintaining global temperature rise below 1.5 degrees Celsius.⁴⁴ In May 2021, the company released its statement of steps it is taking to align finance with the Paris Agreement, including carbon reduction targets.⁴⁵ We note that the near-term targets established by the company are based on carbon intensity of sectoral activity, and operational carbon neutrality of the bank's operations itself, rather than fully embracing a program that targets the total amount of emissions posed by financed activities. The focus on sectoral emissions through carbon intensity targets could be negated by economic growth or sectoral growth, leading to continued growth in emissions in conflict with the Paris goals.

Another example is the 2021 proposal at the Royal Bank of Canada, ranked fifth globally in its exposure to carbon intensive industries, filed by SumofUs, which received voting support of 31% of shareholders. The proposal asked the company directly to adopt company-wide, quantitative, time-bound targets for reducing GHG emissions associated with the company's

⁴⁴ The proposal also recommended that the company consider reporting on

- Any actions JPMorgan is taking to measure and disclose its full carbon footprint (Scope 1-3 emissions, including GHG emissions associated with its lending activities);
- Whether the bank is considering setting targets, and on what timeline, to reduce the carbon footprint of its lending activities.

⁴⁵ <https://www.businesswire.com/news/home/20210513005492/en/JPMorgan-Chase-Releases-Carbon-Reduction-Targets-for-Paris-Aligned-Financing-Commitment>

underwriting and lending activities and issue an annual report, at reasonable cost and omitting proprietary information, discussing its plans and progress towards achieving these targets. Even though the company has announced a financing target of \$100 billion in sustainable financing by 2025, the proposal noted that this does not address the much greater risks arising from exposure to high carbon projects in its lending portfolio and underwriting.

Recommendations

As with the other priority sectors, for the banking sector we hope that the Commission's general climate disclosure rulemaking will have sufficient breadth to bring about disclosure of Scope 1, 2 and 3 emissions and targets. This should include greenhouse gas emissions resulting from real economy activities that issuers finance or underwrite, and regardless of whether the financing occurs on a project basis or on the basis of general commercial lending.

In adopting further standards for the sector, we expect it will be useful for the Commission to consider and apply particular carbon accounting methods appropriate to financed emissions, such as that developed by the Partnership for Carbon Accounting Financials (PCAF).

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?

Broad ESG Standards

ICCR strongly believes in the importance of disclosure of relevant and significant information that, regardless of whether it is considered "material" in the short-term, has a clear and direct impact on financial performance, and when taken together with other information, may have the potential to damage or strengthen a company's reputation, impact its social license to operate, or affect its sales and business relationships. This information would be relevant to an investor's assessment of the company and may at a future date be clearly within the definition of "material" information. This also includes information that, whether or not it impacts the individual company's bottom line, has the potential to create systems-wide risks that could impact investors' broader portfolios. We include below examples of ESG disclosure that should be part of a broader ESG disclosure framework mandated by the SEC. Also, for reference, we have attached ICCR's views on disclosure outlined in our submission to File No. S7-15-16 - Disclosure Update and Simplification, dated October 31, 2016.

Beyond climate change, our members have concluded after decades of engagement that mandatory disclosure of a wide array of ESG information under Regulation S-K or other SEC regulations is necessary for investors to make informed decisions. While voluntary measures have served an important role in providing increased ESG information to investors, this information is inconsistent across corporate sectors, and leaves investors with an unclear basis upon which to build our investment strategies. In Appendix A we include comments submitted on October 31, 2016 to the Securities and Exchange Commission regarding an array of ESG disclosure issues on which consistent, reliable, comparable, and verifiable ESG information is needed, both by investors to make more informed investment decisions across their portfolios and to enable investors to encourage companies to do better. ICCR's members have identified a number of topics that should be disclosed in mandatory SEC filings. Mandatory disclosure would strengthen investor knowledge and decision making. Opening the path for SEC regulation, global stock exchanges and other jurisdictions such as the European Union have begun to use sustainability as a listing or business operation requirement.⁴⁶

ESG information is material to understanding a company's financial performance and quality of management, and helps to contextualize an investor's assessment of the company relative to the whole portfolio. ESG issues present portfolio-wide risk; issues such as climate change and human rights are relevant beyond a specific company. The ability of investors to assess systems-wide risks to the entire portfolio fits within the U.S. Supreme Court definitions of "materiality" and "a reasonable investor,"⁴⁷ as it is critically important for investors to avoid risks resulting from corporate failure to address matters of ESG concern.

ICCR members have requested disclosure of meaningful sustainability information for 50 years. We are pleased to see that hundreds of companies are now providing some sustainability reporting. Shareholder requests for more responsible policies and practices around a variety of ESG issues have been the subject of over 2,800 shareholder resolutions filed by ICCR members between 2011 and 2021.⁴⁸ Companies have begun to respond to the request for this information from investors, as it has become increasingly clear to shareholders that evaluating corporate risk management around sustainability issues is critical. This increase in ESG disclosure follows the recent trend of increasing investor support for ESG disclosure in shareholder resolutions.

As we have discussed above, shareholder proposals and engagement are important to progress, but they are poorly suited to producing consistent, reliable and comparable, industrywide disclosure on climate and other ESG issues. It is far more expensive and economically inefficient for investors to seek this information on a company by company basis than to establish public policies that create the informational baseline across all companies. With better baseline disclosure, our members' time and resources can be better spent on developing investment strategy and working with our portfolio companies on how to improve performance on climate goals.

The needs of investors for consistent disclosure encompass an array of issues that confront

⁴⁶ Ceres, [Stock Exchanges and Sustainability](#)

⁴⁷ [TSC Industries, Inc. v. Northway, Inc.](#) 426 U.S. 438 (1976)

⁴⁸ [ICCR Shareholder Exchange Database](#)

companies. In developing responsive disclosure requirements, we suggest that as the Commission develops requirements for disclosure, the disclosure rules and principles should be assessed against whether they will yield disclosure on the kinds of ESG scenarios we routinely encounter, such as the following:

- Financial impact of accelerated climate change policy responses for a company whose business model relies on continued growth in fossil fuel sales. Continued growth in fossil fuel production and sales poses high severity impact on society; restrictive policies could have existential risks for the company.
- Accelerated deployment of a new technology that is coupled with a significant toxic footprint (e.g. rapid deployment of new energy efficient solar technologies that may be reliant on the use of toxic lead), therefore causing significant workforce exposures. For example, careless manufacturing of solar panels back in the early 2000s in China resulted in silicon tetrachloride contamination there. Electric vehicles and solar panels both increase the demand for lithium, and lithium mining can have deep and undesirable impacts on the environment.
- Failure to address economic transitions of workforce affected by climate change related policies that require a transition from their areas of employment and expertise, which will cause economic disruption if not addressed (as referenced above, in the section on just transition).
- Unique operational risks that are faced by a social media company: Users may post damaging, untrue or conspiracy theory materials or hate speech that may be corrosive to society in many ways, and yet restricting the content raises difficult issues of freedom of expression, e.g. allowing anti-vax or political disinformation communications to be disseminated on a platform that undercuts the health of the public or of our democracy.

Additional ESG Issues for Mandated Disclosures

Corporate Political Activity

ICCR members believe that the SEC should mandate disclosure of corporate political activity, including election spending and lobbying. Disclosure on corporate political activity is vital to shareholders because such political activity can present significant serious reputational risk if not disclosed and managed properly. Corporate political activity can also create systems-wide risks that can impact the broader economic environment in which companies operate, which in turn impacts the value of investors' broader portfolio.

Increasingly, the public, and consumers, are taking note where corporate political activity does not align with stated corporate values. The public furor over corporate political spending in support of members of Congress who voted to overturn the results of the November 2020 presidential election are a clear and recent example. If there is a disconnect between corporate political activity and stated corporate values, companies can face negative publicity that can have a detrimental impact on the corporate brand.

Investors have overwhelmingly been calling for disclosure of corporate political spending. The 2011 petition to the SEC calling for such disclosure has received more than 1.2 million comments in support, more than any such petition in history. Shareholders have filed hundreds of

proposals in the last ten years calling for disclosure of corporate lobbying and political spending, and those proposals are receiving increasingly high votes.

As discussed above, transparency on corporate political activity is essential to understanding corporate climate risk. A corporation can make every effort to manage its climate risk, but if the corporation is also funneling money to trade associations that are actively undermining efforts to mitigate climate change, without disclosing those payments to investors, it actively undermines both the credibility and effectiveness of those positive corporate efforts and jeopardizes the company's viability over the long term.

Companies should be required to disclose itemized expenditures for both direct and indirect election spending and lobbying including payments to trade associations, politically active nonprofits, and party committees. Companies should be also required to disclose their policies and procedures regarding their corporate political activity; and a description of the management and board decision-making and oversight processes, including processes for ensuring that corporate political activity does not conflict with stated corporate values.

Human Capital Management

The COVID pandemic has laid bare the critical role that workforce issues play in long-term corporate sustainability, and has highlighted the materiality of human capital management. Poor human capital management practices can create substantial risks for investors, including difficulty with workforce retention that impacts operations, and reputational and legal risks that can lead to depressed financial performance. A large body of empirical evidence underscores the link between the effective management of human capital and better corporate performance across a number of metrics.

ICCR strongly supports the viewpoint expressed in the Human Capital Management Coalition's (HCMC) petition for rule-making submitted on July 5, 2017.⁴⁹ We believe that more robust human capital disclosures would assist investors in evaluating risk, and would help companies in evaluating operations, mitigating risk, and creating long-term value. As long-term investors, we have seen the value of providing investors with an improved ability to ascertain information important to their investment decisions. We also recognize, as the HCMC petition states, that the "Material risks related to human capital management can create substantial risks for companies and investors, damaging corporate reputation, generating legal liabilities and undermining relationships with key stakeholders."

Investors need more complete information on human capital management to adequately assess the performance of the companies they own and to hold boards accountable for oversight of the legal, reputational, and financial risks related to human capital management. Greater transparency would allow investors to more efficiently direct capital to its highest-value use, thus lowering the cost of capital for well-managed companies. Developing consistent and comprehensive standards would give investors the best "window" into a company's performance and future prospects (both human capital management performance and overall performance).

⁴⁹ <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

We believe that guidance by the SEC on human capital management disclosure can help stakeholders gain a fuller understanding of a company's business model, strategies and conditions for value-creation not only in the short-term but more importantly in the long-term. We also recognize that some disclosure requirements may need to be tailored to specific industries or individual companies, but support the HCMC petition's listed categories of information, agreeing that they are vital to human capital analysis and should be required. The HCMC petition lays out nine such categories: workforce demographics; workforce stability; workforce composition; workforce skills and capabilities; workforce culture and empowerment; workforce health and safety; workforce productivity; human rights; and workforce compensation and incentives.

Corporate Tax Policies

Aggressive corporate tax policies can create earnings risk, damage corporate reputation and brand value, and cause significant harm to local and national economies. As practiced by large multinational companies, we believe that aggressive tax strategies have become a key systemic risk that can impact the profitability of a company and have broader impacts on portfolio returns. Current rules do not provide investors the information we need to evaluate and address these substantial risks.

Enhanced disclosure on corporate tax practices should allow investors to understand how corporate boards identify tax-related risks and respond to government and other stakeholders' expectations. It should also allow investors to identify a potential aggressive approach to tax planning.

To this end, we strongly support the FACT Coalition's call for the following mandated corporate disclosure, on an annual, country-by-country basis:⁵⁰

- Profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.⁵¹

Human Rights Risks

Information about the human rights risks present in a company's operations and value chain, as

⁵⁰ <https://thefactcoalition.org/fact-sheet-endorsements-for-country-by-country-reporting/>

⁵¹ The Fact Coalition, [FACT Comments to SEC on Concept Release Urge Public Country-by-Country Reporting](#)

well as the management of those risks, is relevant information for an investor in assessing a company's performance and management approach in both the short- and long-term. Poor management of human rights risks can lead to significant reputational, operational, regulatory, and litigation risk for a company and can have a material impact on financial performance.⁵² The adoption of the UN Guiding Principles on Business and Human Rights (UNGP) in 2011 has made it clear that there is an expectation of businesses and investors to respect human rights.⁵³ Information about how a company is meeting its responsibilities under the UNGP would be relevant for investors, particularly in industries where there are known salient human rights risks and abuses such as those related to working conditions, labor rights, race and gender discrimination, forced labor, data privacy and free expression, and business impacts on local communities throughout the global supply chain.

There are tools that are evolving to assess and benchmark companies on their human rights policies, practices, and disclosure, including the Corporate Human Rights Benchmark,⁵⁴ Ranking Digital Rights,⁵⁵ and Know the Chain.⁵⁶ However, these tools primarily rely on information that is publicly disclosed by companies, and because there are not clear standards, this information is inconsistently provided or is of varying quality, not comparable, and does not always include reliable data.

Furthermore, these tools are sector specific and unable to assess all companies, and are therefore of limited value to investors with a diversified portfolio. Therefore, it would be beneficial to require mandatory disclosure of several key elements related to management of salient human rights risks. The experience from the mandatory disclosure related to conflict minerals demonstrates that requirements for further disclosure encourage companies to better understand their risks and develop the internal infrastructure, policies, and practices to mitigate those risks.

Such disclosures would be in keeping with EU requirements under the Corporate Sustainability Reporting Directive (formerly the Non-Financial Disclosure Requirements) whereby certain large companies must disclose information on the way they operate and manage social and environmental challenges. This includes information on respect for human rights. The CSRD aims to help investors and other stakeholders to evaluate the non-financial performance of large companies and encourages these companies to develop a responsible approach to business.

There are several critical pieces of information that would enable investors to better understand and assess the human rights risks and management practices of a company to inform their investment and voting decisions. Disclosure of the following would provide consistent information available to all investors:

- Whether an issuer has a Human Rights Policy that applies to direct operations and throughout its value chain, and how it is implementing the human rights policy.
- Governance and Board responsibility for human rights risks.

⁵² See e.g. The Wall Street Journal, [Accused of Labor Trafficking, Oil-Rig Repairer Files for Bankruptcy](#)

⁵³ UN, [Guiding Principles on Business and Human Rights](#)

⁵⁴ Business & Human Rights Resource Centre, [Corporate Human Rights Benchmark](#)

⁵⁵ [Ranking Digital Rights](#)

⁵⁶ [Know the Chain.org](#)

- Human Rights Due Diligence processes in place to identify and account for how they address their actual and potential impacts on human rights.
- Existence and effectiveness of Remediation and Grievance mechanisms.
- The company's approach to stakeholder engagement.

Recommendations for generalized ESG disclosure principles

It is clear that line item standards are needed on a sector-by-sector basis to encourage consistent and effective disclosure of the ESG information that investors want and need. Establishing a process to do so will take a significant amount of time and also will not replace the need for **disclosure principles** relative to ESG. Experience shows that standard setters such as SASB can provide a baseline of disclosures, but are never able to keep up with emerging material concerns in a fast changing, innovative economy. This demonstrates the need for principles when developing a disclosure standard to set a baseline for broad ESG disclosure expectations. These principles should include:

1. Identifying material ESG issues.

We recognize that there is some value in the Commission directly asking companies to perform a materiality assessment to identify the ESG issues most relevant to their businesses. However, we are concerned that any such assessment will be incomplete if it neglects systemic impacts on society as identified by the company's stakeholders, alongside assessment of the potential impact on the company's bottom line. We believe that the disclosure rules can and should include some baseline principles to ensure disclosure of ESG issues that might otherwise remain undisclosed.

There are a number of developments that should constitute a trigger for disclosure of ESG as potentially material issues for a company:

- Any company-adopted codes and value statements on ESG matters, which demonstrate the issues that the company has prioritized.
- ESG trends or developments, such as significant peer-reviewed studies in scientific journals, or significant reports of regulatory bodies, multilateral institutions, universities, or other civil society organizations. These significant developments should be seen as a trigger for disclosure on an issue on which the company may have exposure. There is almost never an issue that is *not* debated in the scientific community. The existence of debate, including debate that is contrived or sponsored by companies themselves, is not a reason to ignore scientific evidence or forecasting.
- Recognition of peer practices, including the firm's standing among its peers as between best practices and lagging performance, and in consideration of available market standards.
- Regulatory trends: European ESG-related regulatory trends should be considered a significant risk. It should not be necessary to assess the likelihood of US adoption of European regulatory trends in order to assume that European regulatory trends that have not yet reached the US be considered a significant risk.

2. Delineating extent of company exposure to the monitored issues.

Even where quantification of financial impacts is difficult, disclosures should aid in understanding the extent of the company's potential exposure to the issues identified above, such as the degree to which employees or operational neighbors may be exposed to the identified risk. Disclosure should be conducted early and not limited to situations in which the company has quantified anticipated liabilities or operational disruptions.

3. Discussion of mitigation measures.

Disclose measures being taken to diminish or adapt to adverse impacts or expand business opportunities associated with the issue. Most importantly, the issuer should disclose any third-party standards or certifications relative to ESG matters that the company has adopted, as well as any verification measures (such as independent auditing) that are utilized in relation to those standards or certifications. The issuer should also be encouraged to include a narrative discussion of other measures taken to mitigate the issue of concern including consumer education, research, materials modification or substitution, development of new products or services, exposure reduction, public policy efforts, fieldwork, insurance, employee training or other actions.

4. Sustainability Discussion and Analysis disclosure.

Provide management's discussion and analysis of how the issuer's ESG performance relates to its long-term business plan, strategy and performance, including global trends such as the increasing global commitment to attain a net zero GHG footprint by 2050.

5. Applicability of antifraud rules.

It should be clear that the embrace of ESG standards and frameworks by the company should be understood as implicit recognition of importance for the company. Therefore, the disclosure of these standards and policy positions which are important to many investors also raises the possibility that additional disclosures are necessary to ensure that these stated standards and values give a materially correct portrayal of the issues to investors. The requirements of rule 10b-5 to disclose additional information needed to make a statement not misleading may apply, for instance, when a company's lobbying positions, trade association funding, job dislocations or other impactful actions are inconsistent with statements regarding alignment with Paris goals.

Conclusion

The climate crisis requires immediate action to mitigate the growing threats to financial markets and the economy, as well as to the people and communities that exist within them; therefore, we ask the SEC to act urgently in its climate disclosure rulemaking process based on the above recommendations and principles.

Our members look forward to a future of work on climate change in which we have comparable, company-by-company climate change disclosures that enable informed investment decisions, and that make our engagement process more effective and efficient by focusing our efforts less on developing a baseline of disclosure, and more on supporting a "race to the top" among our portfolio companies for effective scaling and implementation of climate strategies.

We appreciate the opportunity to participate in the SEC's request for information and thank you for your consideration of our comments. If you have any questions, please contact Christina Herman at [REDACTED] or Stephanie Lavallato at [REDACTED].

Sincerely,

Josh Zinner
CEO

Christina Coburn Herman
Program Director, Climate & Environmental Justice

Stephanie Lavallato
Associate Program Director, Climate & Environmental Justice



INTERFAITH CENTER ON CORPORATE RESPONSIBILITY
Inspired by faith, Committed to action

October 31, 2016

Mary Jo White, Chairman
Kara M. Stein, Commissioner
Michael S. Piwowar, Commissioner
Brent J. Fields, Secretary

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email to: rule-comments@sec.gov

Re: File No. S7-15-16 - Disclosure Update and Simplification

Dear Chairman, Commissioners, and Secretary:

The Interfaith Center on Corporate Responsibility (ICCR) appreciates and welcomes the opportunity to respond to the SEC's File No. S7-15-16, *Disclosure Update and Simplification*. The proposed *Disclosure Update and Simplification* rule was issued on July 13, 2016, eight days prior to the close of the comment period for the Concept Release on *Business and Financial Disclosure Required by Regulation S-K* (July 21, 2016). The timing could not have afforded the SEC the opportunity to review, consider and integrate appropriate feedback into the proposed rule.

Below we wish to resubmit our views which were expressed in a letter dated July 14th, 2016, regarding the SEC's Concept Release on *Business and Financial Disclosure Required by Regulation S-K*. We wish to express our support for the SEC's evaluation of disclosure under Regulation S-K and the establishment of enforceable SEC requirements for companies to report on sustainability issues. While we note the importance of the entirety of this complex review, we will focus our comments on Section F, *Disclosure of Information Relating to Public Policy and Sustainability Matters*, as well as *Number of Employees* under Section IV.A.5.

ICCR is a coalition of investors driven by faith and values who view the management of our investments as a catalyst for both change and economic stability with the companies where we are shareowners. Our membership comprises nearly 300 organizations, including faith-based institutions, socially responsible asset management companies, and unions and other pension funds that collectively represent over \$100 billion in invested capital. Many of ICCR's member organizations are also members of other coalitions, including the United Nations-

supported Principles for Responsible Investment (PRI), whose collective assets under management total \$60 trillion, and CDP which represents in excess of \$100 trillion in assets under management.

ICCR's members focus on key areas of Environmental, Social, and Governance (ESG) concern, including human rights, public health, economic fairness, food and water sustainability, and the protection of our environment. Members integrate these concerns into their investment decision-making processes. Throughout our 45 year history, ICCR members and staff have engaged hundreds of global corporations annually to promote more sustainable and just practices. We believe this work has a positive impact on companies' long term profitability and shareowner value as it helps companies to improve financial performance and sustain shareholder and long-term value while securing a better future for their employees, their customers, their investors, and other stakeholders.

ICCR and its members ardently endorse disclosure of sustainability information that is material and comparable, and that affects our financial interests as shareholders, as well as our communities. Numerous investors and organizations like the PRI, Ceres, CDP, and the US Forum for Sustainable and Responsible Investment (US SIF) have made articulate cases for the need for such information to meet our fiduciary obligations as investors. We are aware that hundreds of global companies embrace the case for such disclosure as they publish useful annual sustainability reports. They understand the business and financial case for addressing these issues. The value of such information is affirmed by an expanding number of global investors and companies alike, and has been an issue that ICCR members have raised with companies over decades of engagement. However, this disclosure is done on a voluntary basis. Because the disclosure is voluntary, the reporting is inconsistent and therefore insufficient for investor needs.

The ICCR membership believes in the importance of disclosure of relevant and significant information that may not be deemed "material" in the short-term, but has a clear and direct impact on financial performance, and when taken together with other information, may have the potential to damage or strengthen a company's reputation, impact its social license to operate, or affect its sales and business relationships. This information would be relevant to an investor's assessment of the company and may at a future date be clearly within the definition of "material" information. There are several examples where this has manifested with respect to our engagement with companies, including: our members' concerns over abusive and risky practices in the financial services industry leading up to the 2008 financial crisis and subsequent economic recession; early concerns raised in the 1990s around climate change impacts; urging companies to recognize the need to address public health threats, from global health risks of antibiotics in meat supply chains, which is now an issue that companies must address in their product development, to the unaffordability of basic life-saving medicines; and to address risks around water sustainability, which is now seen as a significant risk for corporations. In short, increased disclosure related to sustainability issues is critical to create transparency for investors regarding a company's interactions with, and impact on, employees, communities, and customers. Frameworks and processes associated with disclosing ESG information may help a company – and society – to mitigate future risks.

ICCR members use ESG disclosure to evaluate companies for investment, thus informing our investment strategies and stock selection decisions, and to inform our proxy voting. We also use existing disclosure to help us identify appropriate companies for shareholder engagement with corporate management, where we address current practices and policies that expose companies to risks. We believe that mandatory disclosure of ESG information under Regulation S-K is necessary for investors to make informed decisions. While voluntary measures have served an important role in providing increased ESG information to investors, this information is inconsistent across corporate sectors, and leaves investors with an unclear basis upon which to build our investment strategies.

Mandatory disclosure would provide more consistent, reliable, comparable, and verifiable ESG information that would allow educated investors to make more informed investment decisions across the portfolio and advance effective engagement strategies.

Section F, Disclosure of Information Relating to Public Policy and Sustainability Matters

216. Are there specific sustainability or public policy issues [that] are important to informed voting and investment decisions? If so, what are they? If we were to adopt specific disclosure requirements involving sustainability or public policy issues, how could our rules elicit meaningful disclosure on such issues? How could we create a disclosure framework that would be flexible enough to address such issues as they evolve over time? Alternatively, what additional Commission or staff guidance, if any, would be necessary to elicit meaningful disclosure on such issues?

Disclosure of financially material sustainability information is already required under current rules. However, the resulting disclosures fail to meet investors' needs. Disclosure of ESG information is useful to investors and necessary for strategic investment planning. Disclosure allows investors to identify industry leadership in each sector, tells investors how well positioned a company is to respond to changing regulations, is essential to the evaluation of investment risks, and informs overall investment and engagement strategies. The current framework, which leaves it up to the corporation to determine when such an item is material, however, has not produced the comprehensive and comparable information that we are seeking.

ESG information is material to understanding a company's financial performance and quality of management, and helps to contextualize an investor's assessment of the company relative to the whole portfolio. ESG issues present portfolio-wide risk; issues such as climate change and human rights are relevant beyond a specific company. The ability of investors to assess the entire portfolio fits within the U.S. Supreme Court definitions of "materiality" and "a reasonable investor,"¹ as it is critically important for investors to avoid risks resulting from corporate failure to address matters of ESG concern.

¹ [TSC Industries, Inc. v. Northway, Inc. 426 U.S. 438 \(1976\)](#)

ICCR members have requested disclosure of meaningful sustainability information for 45 years. We are pleased to see that hundreds of companies are now providing some sustainability reporting. Shareholder requests for more responsible policies and practices around a variety of ESG issues have been the subject of 1,177 shareholder resolutions by ICCR members between 2011 and 2016.² Companies have begun to respond to the request for this information from investors, as it has become increasingly clear to shareholders that evaluating corporate risk management around sustainability issues is critical. This increase in ESG disclosure follows the recent trend of increasing investor support for ESG disclosure in shareholder resolutions. For example, a 2016 shareholder resolution on sustainability reporting at CLARCOR, Inc. received a 60.8% vote.³ As a second example, a 2016 shareholder resolution on reporting of methane emissions management at WPX Energy, Inc. received a 50.8% vote.⁴ While shareholders currently use the resolution process to convince companies to disclose more and better ESG information, our time would be better spent meeting with companies on performance improvements and risk mitigation strategies – rather than basic requests for commonplace sustainability reporting that we expect to now see across all sizes of companies.

For example, with respect to GHG emissions data, we have found that several companies in the same industry will use different calculation methods and reporting platforms (i.e. CDP and individual company reports), which make the information that is available difficult to understand, and make it difficult to assess how one company is managing the risk of GHG emissions against another. An additional example exists related to management of water risk throughout corporate supply chains. While some companies publicly disclose a water management policy that applies to their operations and supply chain, others will only have a policy that applies to their operations, and others will include only sparse information in a Supplier Code of Conduct that is difficult to locate within their public website. Instead of making the case company by company through engagement, as well as to better enable ICCR investors to make use of the information, it is preferable to require a clear disclosure format, consistent expectations, and guidance on how companies should implement it.

Corporate approaches to ESG issues and risks relate directly to value. Corporations that recognize the need to address ESG concerns are better positioned to anticipate changes and adapt most effectively.⁵ A company's ability to define and measure its progress will help investors consistently analyze portfolios, creating a more robust investment strategy. Instead of this more robust disclosure and associated strategic thinking being relevant to only a small subset of companies that have received pressure from investors or their customers to provide this information, ICCR members recommend that the SEC should require at least some subset of information of all companies, to enhance the practices and performance of all issuers in this area. Additionally, we want to see that the ESG information provided is verified externally, which would ensure best practice reporting.

² ICCR, [2016 Proxy Resolutions and Voting Guide](#)

³ Walden Asset Management, [Walden's ESG Reporting Resolution at CLARCOR Earns Majority Support](#)

⁴ Ceres, [WPX Energy Methane Emissions Management](#)

⁵ ICCR, [Social Sustainability Resource Guide: Building Sustainable Communities through Multi-Party Collaboration](#)

Disclosure of ESG information demonstrates how well positioned a company is to respond to changing regulation and/or its context. ICCR members are also concerned about the external impact of corporate policies, which helps us to evaluate systemic risk. We look to the impact of corporate activity on society, particularly local communities, as well as on the environment and the impacts to natural resources.

ICCR's members have identified a number of very relevant and important topics that should be disclosed in mandatory SEC filings. While we appreciate the work being done by some companies to provide verification of some reporting, we believe that, as ESG evaluation has become common practice by large asset managers, mandatory disclosure would strengthen investor knowledge and decision making. On a larger scale, global stock exchanges have begun to use sustainability as a listing requirement.⁶

The SEC could create meaningful disclosure on ESG information by ensuring that there is mandatory disclosure with consistent, accurate, and reliable reporting by companies on these important and material items for investors.

218. Some registrants already provide information about ESG matters in sustainability or corporate social responsibility reports or on their websites. Corporate sustainability reports may also be available in databases aggregating such reports. Why do some registrants choose to provide sustainability information outside of their Commission filings? Is the information provided on company websites sufficient to address investor needs? What are the advantages and disadvantages of registrants providing such disclosure on their websites? How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting? If we permitted registrants to use information on their websites to satisfy any ESG disclosure requirement, how would this affect the comparability and consistency of the disclosure?

ICCR members recognize that hundreds of companies are providing sustainability reporting to differing degrees on their websites. A significant reason that companies are now reporting on ESG issues is the history of active engagement by investors.

Available information related to ESG performance and disclosure on company websites is insufficient for investor needs. While listing this information on company websites can be helpful, this type of voluntary disclosure is inconsistent, is provided with varying frequency, and is often very difficult to find. Additionally, information companies provide in corporate sustainability websites and online reports is information intended for all stakeholder audiences. We appreciate this information, but seek mandatory reporting of information that is necessary for investor decisions. We agree with CDP's statement to the SEC that if information is deemed necessary or appropriate to protect investors, then this material ESG data should be included in a company's annual report and 10-K filings.⁷ This would ensure

⁶ Ceres, [Stock Exchanges and Sustainability](#)

⁷ [Response from CDP to: Concept Release: Business and Financial Disclosure Required by Regulation S-K](#)

that investors have access to regularly reported data in a more consistent and easy-to-find way. Sustainability reports that are filed on corporate websites are not comparable, are inconsistent, are not audited, and are therefore unreliable. As just a few illustrative examples of the challenges, some reports are only several pages long, while others are over a hundred pages; some are formatted as an online web platform, while others are a well-indexed report; some include information on climate change management and scenario planning, while others focus on corporate philanthropy and employee wellness initiatives. While all this information is valuable to a certain audience, having the most relevant information available to investors in a simple format at the same location would be ideal and most efficient.

Investors have had to spend significant amounts of time and money to get the level of disclosure that currently exists. Companies are providing some information on websites, through sustainability reports or other voluntary disclosure, but this information is not easily searchable and investors cannot benchmark companies on the basis of varied disclosure. The result is that there is hidden risk for investors due to this inadequate and uneven disclosure. ESG information is critical for investors to understand what they own and to implement their priorities in their investment decision-making.

We urge the SEC to establish mandatory disclosure requirements, and that those requirements are made through annual filings in a consistent and comparable manner. We believe such disclosures should be a combination of qualitative and quantitative reporting, so that companies have clearer expectations for metrics regarding certain types of risk, and so that they have narrative discussion to explain in more detail to investors the risks and opportunities of an ESG factor that may impact the business.

219. In an effort to coordinate ESG disclosures, several organizations have published or are working on sustainability reporting frameworks. Currently, some registrants use these frameworks and provide voluntary ESG disclosures. If we propose line-item disclosure requirements on sustainability or public policy issues, which, if any, of these frameworks should we consider in developing any additional disclosure requirements?

There are currently several voluntary reporting mechanisms that are each gathering some information which is helpful to investors when evaluating ESG risks. From the Sustainability Accounting Standards Board (SASB), CDP, and the Global Reporting Initiative (GRI), ICCR members appreciate the extensive work done by these organizations over the years in creating standards for meaningful disclosure of vital ESG information. However, because each reporting standard is voluntary, each has weaknesses. Not all companies choose to disclose through these frameworks. In addition, some companies may respond to only partial sections of a disclosure questionnaire, leaving out portions of the answers that may be most material or relevant to investor concerns, and therefore the response has limited value. While investors appreciate knowing which reporting standards companies are working with, as well as the information in them, without specific mandatory standards, the information is difficult to compare. For example, while the SASB tool is valuable for sector specific guidance, it has a narrower definition of materiality that might not capture issues of systemic risk which ICCR members consider to be important. While the CDP is valuable for

specific indicators on climate, water, and forestry, the voluntary corporate reporting results are not consistently comprehensive across issues. ICCR urges the SEC to build further expertise in the information that is material around a variety of subject areas and across industries, and to consider each of these reporting standards in order to draw from them and create a consistent mandatory reporting mechanism that provides investors with the critical information they need to evaluate a full spectrum of ESG risks. SEC guidance or rules should encourage companies to disclose the reference standards or programs utilized.

220. Are there sustainability or public policy issues for which line-item disclosure requirements would be consistent with the Commission’s rulemaking authority and our mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation, as described in Section III.A.1 of this release? If so, how could we address the evolving nature of such issues and keep our disclosure requirements current?

ICCR urges the SEC to adopt a policy where line-item disclosure of material information across sectors is required, but is also flexible so that requirements can be amended as risks evolve within corporate sectors. We also recommend that the Commission develop a process for regularly gathering ESG disclosure views from both companies and investors to identify emerging issues and track the evolution of disclosure needs in this space.

ICCR’s coalition of investors works across a variety of ESG issue areas. With members’ decades of experience across the ESG spectrum, there are a number of key indicators that we would suggest across the following areas:

Human Rights

Information about the human rights risks present in a company’s operations and supply chain, as well as the management of those risks, is relevant information for an investor in assessing a company’s performance and management approach in both the short- and long-term. Poor management of human rights risks can lead to significant reputational, regulatory, and litigation risk for a company and can have a material impact on financial performance.⁸ The adoption of the UN Guiding Principles on Business and Human Rights (UNGP) in 2011 has made it clear that there is a role for business to play in respecting human rights.⁹ Information about how a company is meeting its expectations under the UNGP would be relevant for investors, particularly in industries where there are known risks and violations related to working conditions, labor rights, race and gender discrimination, forced labor and modern day slavery, and business impacts on local communities throughout the global supply chain.

⁸ See e.g. The Wall Street Journal, [Accused of Labor Trafficking, Oil-Rig Repairer Files for Bankruptcy](#)

⁹ UN, [Guiding Principles on Business and Human Rights](#)

There are tools that are evolving to assess and benchmark companies on their human rights policies, practices, and disclosure, including the UNGP Reporting Framework,¹⁰ the Corporate Human Rights Benchmark,¹¹ and Know the Chain.¹² However, these tools rely on information that is publicly disclosed by companies, and because there are not clear standards, this information is inconsistently provided or is of varying quality, not comparable, and does not always include reliable data.

Furthermore, these tools are unable to assess all companies, and are therefore of limited value to investors with a diversified portfolio. Therefore, it would be beneficial to require mandatory disclosure of several key elements related to management of human rights issues. The experience from the mandatory disclosure related to conflict minerals demonstrates that requirements for further disclosure encourage companies to better understand their risks and develop the internal infrastructure, policies, and practices to mitigate those risks.

There are several critical pieces of information that would enable investors to better understand and assess the human rights issues and management practices of a company to inform their investment and voting decisions. Disclosure of the following would provide consistent information available to all investors:

- Whether an issuer has a Human Rights Policy that applies to direct operations and throughout its supply chain that includes prohibition of child and forced labor, and how it is auditing the human rights policy.
- Governance and Board responsibility for human rights issues.
- Data from an independent Human Rights Risk Assessment to define the primary human rights challenges to inform the company's approach to human rights issues in its operations and value chain.
- Existence and effectiveness of Remediation and Grievance mechanisms.
- The company's approach to stakeholder engagement.
- Reporting on traceability, purchasing practices, recruitment, worker voice, and monitoring.¹³

Climate Change

Climate change poses material financial risk to investors, and over the past several years it has been increasingly recognized by the financial community as an area of investor concern. This has been demonstrated by the broad investor action in support of the Paris Climate Agreement, the 52 shareholder proposals filed by ICCR members in 2016,¹⁴ and the number of investor statements about climate change. The Paris Climate Agreement, adopted in Paris in December 2015 by 195 countries, included a commitment to limit global average

¹⁰ [UN Guiding Principles Reporting Framework](#)

¹¹ Business & Human Rights Resource Centre, [Corporate Human Rights Benchmark](#)

¹² [Know the Chain.org](#)

¹³ Know the Chain, [ICT Benchmark: Themes Key Findings](#)

¹⁴ ICCR, [2016 Proxy Resolutions and Voting Guide](#)

temperature increases to 2°C or less above pre-industrial levels. Countries have made initial commitments in line with this aspirational goal and will be increasing their regulatory efforts to further align with the 2 degree target. Companies must be prepared to operate in a carbon constrained economy and additional disclosure about their strategies to do so is necessary.

Disclosure of the following would provide consistent information available to all investors related to climate change:

- Climate change policy and Governance of climate change issues.
- Greenhouse Gas emission reduction targets for scope 1, 2, and 3 emissions and progress against these targets.
- Energy efficiency of operations and products.
- For relevant companies in the oil and gas industry, stress testing and scenario planning for alignment with the 2 degree objective adopted in Paris.
- How climate change strategies are connected to a company's public policy agenda and activities.
- Renewable energy procurement targets.

Water

Water has been declared a human right by the United Nations. The Earth is challenged by the supply and demand imbalance, the lack of good substitutes, and political controversies surrounding the issue. Corporations have a critically important role to play in addressing the freshwater crisis as their agricultural and industrial consumption increases and water stress becomes a more prominent issue due to climate change and competing interests. Presently, agricultural and industrial water use account for 70 and 22 percent of total water use respectively. Apart from the stresses on water supply generated by industrial use, declining water quality due to agricultural runoff, industrial wastewater, improper disposal of human waste, and many other issues are contributing to the acute water crises around the world that the World Economic Forum has identified as a top global risk in its most recent 2016 Risk Report. Affected communities, civil society, investors, consumers, and the general public are increasingly engaged in issues of water sustainability.

Beyond the obvious social impact to affected communities, water issues pose a range of risks to business – from higher costs to major business disruptions stemming from supply chain interruptions and a possible loss of license to operate. It is imperative that companies publicly disclose ways in which they seek to identify and assess water use in core businesses and key suppliers, and how they incorporate these findings into business decisions and a water stewardship policy. This process helps businesses and institutional investors to better understand the risks and opportunities associated with water scarcity and other water-related issues. Disclosure facilitates a company's journey towards water stewardship and water mapping, delivering insight that enables companies to take intelligent action to manage this critical resource. Further, disclosure communicates and builds trust with shareholders, clients, communities, and the public audience.

Disclosure of the following would provide consistent information available to all investors related to water management:

- Identification and assessment of water use in core businesses and key suppliers.
- Assessment of water availability, issues, challenges, and levels of sustainable use around business operations.
- Performance measured against baselines and goals.
- Data on water for operations and supply chain, especially in water stressed or scarce areas (including seasonal or periodic water stress or scarcity). Report in the context of local climate, ecology, human population, economy (agriculture, industry, service) and define the term “local” and the “watershed” area(s) covered.

Food

Given the fragility of the current food system and the need to feed an ever-growing global population, it is incumbent on all companies in the food supply chain (producers, processors, and distributors) to ensure that their policies and practices do not further contribute to the growing crisis, but instead advance innovative solutions that will help create a more sustainable and resilient food system. The industrialization of agriculture, intended to help feed the Earth’s growing population, has had unintended environmental and social consequences. Food operations powered by fossil fuels to produce and ship foods around the world, the overuse of artificial fertilizers and pesticides, and the enormous quantities of animal waste and other “externalities” are fouling the soil, air, and water – to the detriment of both communities and other businesses relying on uncontaminated resources for their operations.

Companies then need to be publicly transparent on the food security implications of land and water use along the value chain. Further, consumers and public health and government officials are increasingly alarmed about the public health risks associated with obesity which is particularly acute in emerging markets and, increasingly, among young people. As consumer demand builds for healthier alternatives and growth in these segments continues to outpace the category, long-term investors will be attracted to those companies best able to capitalize on these emerging market trends.

Disclosure of the following would provide consistent information available to all investors related to food:

- For relevant sectors: sustainable agriculture policies, applicable across the value chain, that demonstrate how the company business model is consistent with long-term environmental and social sustainability.
- Acknowledge that agricultural land needs to be managed sustainably.
- Up-to-date and complete information on their policies, practices and performance on an ongoing basis, integrating a clear narrative about how addressing nutrition issues is benefitting their business.

Political Spending and Lobbying

Another vitally important issue upon which we urge disclosure is on a company's political spending and lobbying activities. While laws require full disclosure of PAC contributions gathered by companies from employees, there is no requirement to make parallel disclosure of expenditures using company funds. Disclosure of lobbying and political spending would allow shareholders to evaluate whether these expenditures are consistent with a company's expressed goals and are in the best interests of the company and shareholders.

As the SEC is well aware, over 1.2 million petitions and letters have been submitted to the agency urging mandatory disclosure by companies of their political spending. This is an issue of huge public importance and we wish to add our support for such specific disclosure. Understanding the importance of such disclosure, approximately 160 companies have volunteered to publish such information, given the clear relevance to investors and the public alike.¹⁵ Specific details regarding questions to be addressed are outlined in the standard shareholder proposal seeking disclosure on direct or indirect expenditures to affect election of candidates.

In addition, we would encourage clear guidelines for disclosure of information on corporate lobbying directly and through third parties. Again, the specific questions that a company should address are stipulated in the standard lobbying disclosure resolution including a summary of primary lobbying priorities, summary of expenditures federally and in states where the companies lobby, whether the company engages on grassroots lobbying, Trade Associations a company is a member of, payments made to the Association and the percent spent on lobbying, and whether the company is a member of any organization which compiles model legislation for lobbying.

We believe a company's political spending and lobbying activities can certainly affect the company's brand or reputation. Examples include the controversy about specific companies lobbying against action on climate change, for higher drug prices, or against public health measures like anti-smoking laws.

Disclosure of the following would provide consistent information available to all investors related to political spending and lobbying:

- Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, or (b) influence the general public, or any segment thereof, with respect to an election or referendum and which includes a description of the decision making process and oversight by management and the Board for making payments.
- Disclosure of monetary and non-monetary contributions and expenditures (direct and indirect), including the amount of payment and recipient.

¹⁵ PoliticalAccountability.net

- Policies and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
- Disclosure of payments used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
- Any membership in and payments to any tax-exempt organization that writes and endorses model legislation.
- Include a description of the decision making process and oversight by management and the Board for payments for lobbying communications and to tax-exempt organizations.

Board Diversity, Non-Discrimination, and Pay Equity

ICCR supports the strengthening of the existing proxy rules to require companies to disclose the gender and racial composition of their nominees for directors and their plans to achieve greater gender and racial diversity among their leadership groups. We believe this proposal is entirely consistent with the interests of investors.

As Chair White stated clearly in an address at ICGN in June 2016, broadening diversity on company boards is an important priority. At present, under 20% of board seats in S&P 500 companies are held by women. Investors and women's organizations have joined together under the umbrella of the Thirty Percent coalition and have pressed companies with no or inadequate diversity to add women and people of color to their boards. They have done this through letters, discussions with management and boards, and the filing of shareholder resolutions.

Workplace discrimination and unequal pay is not just a social issue but a critical business issue that can affect the performance of the businesses in which we invest. Unfair social practices within companies can lead to negative outcomes including damaged reputations, limited internal competition, poor morale, higher turnover, not to mention the risk of legal violations and lawsuits.¹⁶ As a result, investors are becoming increasingly interested in these issues.

An earlier requirement in 2009 from the SEC for companies to report on board diversity did not define the term and as a result, companies created their own definitions. Many companies chose to define diversity on their boards as consisting of members with different professional experience or even those hailing from different geographic regions. Though this is no doubt a form of diversity, very little progress has been made on increasing the racial, ethnic, and gender representation of boards or senior managements within firms which are the areas of diversity that are most lacking.

As a network of investors with investments spanning a multitude of countries, cultures, and languages, we are ourselves committed to fostering a diverse and inclusive work environment. We believe diversity enriches our efforts and aligns with our desire to consider

¹⁶ Vivek Wadhwa, Bloomberg News, [The True Cost of Discrimination](#)

the full range of social justice, environmental, and corporate governance factors that influence the long-term performance of our investments.

With regard to greater information on pay gaps by gender and race, the SEC has already mandated disclosure of the pay gap between public company executives and their workforce as part of the implementation of the Dodd-Frank Act. Collecting and disclosing pay data across gender, race, and ethnicity would significantly increase investor confidence in the commitment of firms to address the issue. The requirement that companies disclose this data is a critical first step in addressing the significant pay gap by gender and race. Investors and the companies themselves must first understand the extent of this problem before attempting to formulate solutions.

Having a diverse set of skills, experience, and backgrounds on boards is, in our view, an essential component of good corporate governance and long-term business success. Similarly, the disclosure of the pay gap analysis by gender, race, and ethnicity will allow investors to understand the extent of the problem across industries and sectors. Data collected across sectors will also allow companies that are outperforming on these metrics to self-identify and to be rewarded by the marketplace.

We believe the proposed SEC rule should include information about the company's policy on board diversity, as well as steps taken to implement a diverse board in terms of gender and race. In addition, we believe there should be disclosure on how the company instructs its search firm or search committee to provide a diverse candidate pool and successes or challenges the company has faced in the last year in meeting those goals. Investors have asked companies to ensure the Charter of their Nominating Committee includes an affirmation of a diverse board.

Disclosure of the following¹⁷ would provide consistent information available to all investors related to diversity and pay equity:

- The inclusion of women and minority candidates in every pool from which board nominees are chosen.
- Plans to advance board diversity.
- An assessment of challenges experienced and progress achieved.
- Disclosure of pay ratios by gender, race, and ethnicity on an annual basis.

Indigenous Rights and Community Relations

ICCR members who invest in extractives industries urge these companies to address the concerns of local communities and indigenous populations. The need to respect the rights of indigenous peoples and local communities relevant to natural resource extraction comes from more than a community need; there are clear financial risks. When communities do not

¹⁷ The first two disclosure indicators listed are reflected in 2016 shareholder resolutions filed with Cabot Oil & Gas Corporation, Cognizant Technology Solutions Corp, Discovery Communications, Inc., and Stifel Financial. See ICCR, [2016 Proxy Resolutions and Voting Guide](#)

give companies a social license to operate, it has significant financial implications, as has been seen with the Newmont Mining Minas Conga location in Peru. As stated by Professor John Ruggie, “for a world-class mining operation...there’s a cost somewhere between \$20 million to \$30 million a week for operational disruptions by communities” and the time it takes to bring oil and gas projects online has “doubled over the course of the previous decade, creating substantial cost inflation.”¹⁸

A 2011 study by Environmental Resources Management of delays associated with a sample of 190 of the world’s largest oil and gas projects (as ranked by Goldman Sachs) found that 73% of project delays were due to “above-ground” or non-technical risk, including stakeholder resistance.¹⁹ In 2014, Ernst and Young elevated the “social license to operate” to the third place on its list of the greatest business risks to the mining industry, citing that “the frequency and number of projects being delayed or stopped due to community and environmental activists continues to rise.”²⁰

In 2013 a dispute between Southwestern Energy and the Elsipogtog First Nation in Canada resulted in a blockade that halted exploration activities for several weeks, and ended in violent confrontation with police that made international headlines. An injunction filed by Southwestern Energy to dismantle the blockade cited losses of \$60,000 a day.²¹ However, this number is likely an underestimation of the actual cost to investors because it only factored in the costs of rental equipment that was unusable during the blockade. It did not factor legal fees, lost productivity, staff and executive leadership time, or the public relations expenditure needed in response to the surge in bad press. It also did not account for the fact that hydraulic fracturing was later banned in New Brunswick, rendering its \$37 million investment in the province stranded until further notice.

Disclosure of the following would provide consistent information available to all investors related to indigenous peoples and community relations:

- Policies and practices for obtaining community support and, where required by the UN Declaration on the Rights of Indigenous Peoples, Free Prior and Informed Consent from Indigenous Peoples.
- Project-level assessments of negative social and environmental impacts to communities, with specific attention given to Indigenous Peoples, women, and other vulnerable groups.
- Steps being taken in relevant industries (such as trucking and extractives) to monitor and reduce human trafficking and violence against women that may be directly or indirectly caused by their operations.

Taxes

¹⁸ Business-Ethics.com, [Business and Human Rights: Interview with John Ruggie](#)

¹⁹ BSR, [Commercial Value From Sustainable Local Benefits in the Extractive Industries: Local Content](#)

²⁰ EY, [Business risks facing mining and metals 2015](#)

²¹ Al Jazeera America, [Shale gas company loses bid to halt Canada protests](#)

Aggressive corporate tax planning can create earnings risk, damage corporate reputation and brand value, and cause significant harm to local and national economies. As practiced by large multinational companies, we believe that aggressive tax strategies have become a key systemic risk that can impact the profitability of a company and have broader impacts on portfolio returns. Current rules do not provide investors the information we need to evaluate and address these substantial risks.

In 2013, PRI convened a group of global investors to explore the issue of corporate tax planning and produce a guide on how to engage with companies on this topic. We would commend this report to your attention, to gain a better understanding of the range of concerns raised by investors.²² We would also commend to the Commission's attention the comment letter submitted by the FACT Coalition, a coalition of tax-justice organizations.²³ The recommendations below are drawn from this letter and the PRI's comment letter.

Enhanced disclosure on corporate tax practices should allow investors to understand how corporate boards identify tax related risks and respond to government and other stakeholders' expectations. It should also allow investors to identify a potential aggressive approach to tax planning. At a minimum, this requires companies to disclose meaningful information on the following areas:

- Corporate tax policy and principles, governance and oversight frameworks, and management systems for tax-related risks.
- What drives the gap between effective tax rate shown on income statement and the weighted average statutory rate based on the firm's geographic sales mix.
- Explanation of the difference between the foreign effective tax rate and the average statutory rate of the countries where companies do business, particularly the key tax strategies employed and the risks of those strategies, including regulatory risks; currently, this figure is not explained within the tax footnote. Currently, companies are not required to disclose their foreign effective tax rate. This would also be an important indicator to signal to investors whether a company is engaged in aggressive tax avoidance in other countries.
- An overview of what is driving unrecognized tax benefit (UTB) changes; UTBs display the tax positions being taken by companies that management believes are less than 50% likely to be upheld by a tax authority.
- Disclosure on intracompany debt, including the countries where the debt is held, the amount of intracompany debt, and the average interest rate paid by other subsidiaries on that debt. This would allow investors to evaluate whether multinationals are shifting profits between subsidiaries in order to avoid tax, or for appropriate business purposes.
- The most financially material tax incentives across jurisdictions; information on expiries of all incentives, investment requirements and commentary regarding the likelihood that such incentives will not be renewed should be provided.

²² The report is available at: https://www.unpri.org/download_report/8531

²³ The Fact Coalition, [FACT Comments to SEC on Concept Release Urge Public Country-by-Country Reporting](#)

It is impossible for an investor to understand a company's tax strategy without understanding its global structure, including the business nature of existing subsidiaries, as well as the overall approach to the use of secrecy jurisdictions, or "tax havens." Currently, however, a number of large companies are failing to disclose their subsidiaries, presumably because they do not deem them to be "significant" under the SEC's current rules. We would recommend that the SEC eliminate the significance test for subsidiaries, and simply require companies to disclose all subsidiaries. The information would provide more insight on corporate tax practices and would be valuable for investors. We also recommend that the SEC's disclosure requirements be aligned with evolving international standards on country by country reporting (e.g. the OECD- Base Erosion and Profit Shifting project and relevant template for Country by Country reports).

We also support the FACT Coalition's call for the following company disclosure, on an annual, country-by-country basis:

- Profit or loss before taxes;
- income tax accrued for the current year;
- revenues from unrelated parties, related parties, and in total;
- income tax paid (on a cash basis);
- effective tax rate;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents.²⁴

Conflict Minerals

While disclosure on conflict minerals is required under the Dodd-Frank Act, additional requirements from the SEC are necessary for investors to accurately review extractives companies in their portfolios. Over 1200 companies have now reported to the SEC regarding their sourcing of conflict minerals – tin, tantalum, tungsten, and gold – for three years in a row. Companies have reported on the advantages they have seen to increasing transparency in their supply chains, having a clearer understanding on the origin of their raw materials, and looking at their human rights risks.

The consistent disclosures that companies have submitted to the SEC over the last three years have allowed investors to start tracking companies' progress in improving their activities to address the risk that minerals used in manufacturing may support conflict in the DRC. Reports such as Responsible Sourcing Network's reports (2014, 2015) *Mining the Disclosures: An Investor Guide to Conflict Minerals Reporting*²⁵ have offered investors an

²⁴ The Fact Coalition, [FACT Comments to SEC on Concept Release Urge Public Country-by-Country Reporting](#)

²⁵ Responsible Sourcing Network, [Mining the Disclosures](#)

analysis of individual companies' and industrial sectors' performance, have ranked companies, and have pointed out best practices.

Several lessons have been learned from the implementation and evaluation of reporting under 1502. Having the OECD Due Diligence Guidance as the de facto framework has been hugely useful. Frameworks are constantly being revised and updated. The OECD guidance itself does not limit reporting to a specific geographic region, mineral, or issue, and increasingly conversations among leading conflict minerals stakeholders have turned to other DRC-related human rights risks, as well as other minerals that are involved in such risk. The mandatory aspect of this reporting has led to new companies and new industries putting standardized programs and procedures in place, which has a greater impact on suppliers.

However, a company does not have to establish that it conducted a "good faith" Reasonable Country of Origin Inquiry (RCOI), it only needs to assert it. There needs to be more accountability about how companies decide whether they should be reporting. Allowing companies who may conduct a less thorough RCOI to skip out on more comprehensive reporting incentivizes risky behavior, and as a result punishes companies who are more transparent.

Disclosure of the following would provide consistent information available to all investors related to minerals/raw materials sourcing:

- A strong policy and an effective system to implement it.
- An assessment of identified risks in the chain of custody of minerals/raw materials.
- A due diligence report on steps taken to manage risk.
- A report on progress toward meeting established goals to source conflict-free (ethical and sustainable) minerals/raw materials.

223. In 2010, the Commission published an interpretive release to assist registrants in applying existing disclosure requirements to climate change matters. As part of the Disclosure Effectiveness Initiative, we received a number of comment letters suggesting that current climate change-related disclosures are insufficient. Are existing disclosure requirements adequate to elicit the information that would permit investors to evaluate material climate change risk? Why or why not? If not, what additional disclosure requirements or guidance would be appropriate to elicit that information?

Existing disclosure requirements are somewhat helpful to investors in assisting them to evaluate material climate change risks. However, to realize their full potential, they must be fully enforced by SEC staff with expertise in the materiality of climate impacts. Unfortunately, current rules have not produced sufficient information for investors to evaluate climate risks. While ICCR members appreciate the SEC's 2010 interpretive guidance on climate change-related disclosure, its potential to elicit information essential for investors has been largely unrealized. We are concerned that even in the midst of increasing regulatory and policy action on climate change, staff have issued very few comment letters regarding the

inadequacy of current disclosures and have not pursued enforcement actions for failure to meet disclosure requirements, despite a very active financial risk and disclosure enforcement agenda. Such actions would ensure that companies were updating their disclosures to reflect the evolving material risks associated with climate change.

In some cases, line item disclosure rules that apply to industry sectors may be useful here. Many investors are long-term shareowners, and hold companies representing the breadth of the economy. Interested in reducing climate risks in their portfolios, they seek disclosure that enables them to evaluate climate-related risk in exposed industry sectors. Also, with such broad holdings, these investors are interested in reducing GHG emissions throughout the economy to reduce systemic risks from climate impacts that are accruing to the portfolio. For example, rules regarding the disclosure of GHG reduction targets, progress against these targets, the energy efficiency of operations and products, and climate-related initiatives would be useful.

Other disclosures that provide investors with more critical tools of the management of such issues include:

- Climate competency of directors – both existing and those running for election.
- Executive compensation that may be tied to reducing climate risks or developing opportunities.
- Disclosure of Scope 1, 2, and 3 greenhouse gas emissions, and where relevant, newly coined “Scope 4” emissions (avoided emissions).
- Year over year performance of greenhouse gas emissions, their reductions, and energy efficiency rates.

In some cases, industry specific rules may be appropriate. For instance, many investors are concerned that the business plans of oil and gas, electric power, and coal companies pose financial risks in the short- and long-term because they do not sufficiently factor in the ongoing transition to a low carbon global economy. In this case, rules regarding disclosure of 2-degree scenario planning results and methodologies may be needed.

Section IV.A.5: *Number of Employees*

56. Should we require registrants to distinguish among their total number of persons employed, such as by distinguishing between:

- full-time and part-time or seasonal employees;
- employees and independent contractors; or
- domestic and foreign employees?

Why or why not?

It is important to require registrants to distinguish between the types of workers employed. Prevalence of migrant workers (domestic or foreign) might indicate a higher risk for violations of human and labor rights – namely, forced or bonded labor, exploitation, overtime violations, discrimination, deductions from wages related to the migrant status, or other

scenarios that lead to exploitation of a worker's vulnerable status. In addition, where a company employs a higher number of migrant workers, particularly foreign migrant workers, we see a higher rate of workplace accidents due to improper or insufficient training related to language barriers, as well as other related health and safety issues.

Additionally, investors may flag when rates of temporary or contract workers rise substantially, indicating high turnover, possible lack of training and experience, and lost institutional knowledge in the enterprise.

57. Rather than requiring registrants to disclose the number of employees or independent contractors, should we require or permit registrants to provide a range? Why? Should we allow for different ranges based on the size of the registrant? Would reporting a range rather than a specific number reduce the costs of producing this disclosure?

Companies should be required to report the exact number of employees in the different categories and by region or core business segment. Enabling companies to report ranges would deprive investors of accurate information about material risk that companies may face with potential labor and human rights violations. Ranges would also make company to company comparisons less accurate and valuable. However, a range for a number of contractors or subcontractors may be acceptable only if the exact number is not known by the registrant. The acceptable estimate should be a narrow range accompanied by a disclosure why the exact number is not available.

58. Should we require disclosure of additional information about a registrant's employees or employment practices? What would be the challenges of requiring disclosure of any additional information, and what would be the benefits to investors?

Companies should be required to disclose additional information about their employment practices, to ensure that investors have accurate information about a company's material risk. As one example, for investors concerned about a company's risk with human trafficking, such additional information should include: what is the protocol for hiring workers? Is the company using agents, recruiters, labor brokers or other third party contractors to recruit workers? If a third party is used for hiring, is a third party licensed in the location it operates? Does the company ban fees charged for employment? Does the company provide written contracts in the employee's language? Does the company prohibit retention of any work documents including passports? What is included in the benefit package for the migrant workers? Is there adequate health coverage? What are the grievance mechanisms for such workers?

Companies should also be required to disclose information about pay equity by gender, race, and ethnicity, as described above.

59. As outsourcing and subcontracting have become more prevalent in the last few decades, what, if any, additional information about a registrant's outsourcing or subcontracting arrangements should we require? Would this information be most

useful in the context of the description of the registrant's business, disclosure about trends and developments affecting results of operations, or in a discussion of risk and risk management? What would be the challenges of requiring disclosure of this information?

Disclosure for investors about a company's outsourcing and subcontracting is vital in understanding a company's risks related to supply chain operations. Supply chain risks related to labor and human rights violations, as well as environmental impacts, are increasingly recognized by investors as material to the long-term health and sustainability of a company. Investors believe that the most profitable companies over the long-term will be those which are creating transparent, ethical, and accountable corporate cultures reflected by improved disclosure and reporting, especially on the issue of worker rights in their supply chains.

CONCLUSION

To summarize our answers to *Section F* of the *Comment Release*, it is our view that:

1. Disclosure of material ESG information should be required as it is useful to investors.
2. Material ESG data should be included in corporate Annual Reports and 10-K filings to address the insufficiency and inconsistency of voluntary reporting.
3. Line-item disclosure of material information across sectors should be required, but should be flexible so that it can be amended as risks evolve within corporate sectors.
4. Voluntary reporting frameworks provide information on many companies but without providing consistency across companies and sectors, and without providing the checks on accuracy and completeness that are inherent in securities filings.

To summarize our answers to *Section IV.A.5* of the *Comment Release*, it is our view that:

1. Disclosure of material information pertaining to worker recruitment practices and the types of workers employed directly or by the suppliers (migrant, contract, temporary) should be required as it is useful to investors.
2. Reporting the exact number of employees is essential to the understanding of material risk that companies may face with potential labor and human rights violations. A narrow range for a number of contractors or subcontractors may be acceptable in lieu of the exact number only when accompanied by a full disclosure of why the exact number is not available.
3. Companies should be required to disclose additional information related to hiring practices, benefits, and grievance mechanisms to ensure that investors have accurate information about company's material risk.
4. Disclosure for investors about a company's outsourcing and subcontracting is vital in understanding a company's risks related to supply chain operations.

We wish to thank the SEC for this opportunity to comment on the important topic of sustainability disclosure. We urge the SEC to act and develop mandatory reporting on ESG

issues as described above. We would welcome the opportunity to discuss this matter with you further at your earliest convenience.

Sincerely,

A stylized, handwritten signature consisting of several overlapping loops and a long horizontal stroke extending to the right.

Josh Zinner
Chief Executive Officer
Interfaith Center on Corporate Responsibility

A handwritten signature in cursive script, reading "Sarah Margolis".

Sarah Margolis
Associate Program Director
Interfaith Center on Corporate Responsibility