Council of Institutional Investors®
The voice of corporate governance

June 11, 2021

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

Re: Public Input Welcomed on Climate Change Disclosures

Dear Chair Gensler:

I write on behalf of the Council of Institutional Investors ("CII"), a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds and defined contribution plans with more than 15 million participants - true "Main Street" investors through their funds. Our associate members include non-U.S. asset owners with about $4 trillion in assets, and a range of asset managers with more than $40 trillion in assets under management.

CII appreciates the opportunity to share our views related to the Securities and Exchange Commission's (SEC or Commission) March 15, 2021 request, *Public Input Welcomed on Climate Change Disclosures* (Request for Input).[1] As outlined in the Request for Input, "[s]ince 2010, investor demand for, and company disclosure of information about, climate change risks, impacts, and opportunities has grown dramatically."[2]

CII generally believes that climate change is a critical systemic risk that long-term institutional investors must address as part of their fiduciary duty.[3] Many institutional investors are

[1] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures (Mar. 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.
[2] *Id; see, e.g.*, CDP, Global Climate Change Analysis 2018 (2019), https://www.cdp.net/en/research/global-reports/global-climate-change-report-2018 ("Understanding that inadequate information can lead to the mispricing of assets and a misallocation of capital, more and more financial decision makers are demanding information on the business risks and opportunities associated with climate change.").
[3] *See, e.g.*, Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission 2 (June 2, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8880643-240113.pdf ("For the WSIB and other large institutional investors with long time horizons, climate change is a systemic risk that cannot be fully addressed through diversification.").

attempting "to assess climate risk and impact but are finding it difficult . . . ."[4] And we believe that current inadequacies of existing disclosures about climate change by companies can lead to mispricing of assets and a misallocation of investment capital.[5]

We are pleased with your recent statement statements that you plan to propose rules on climate change disclosure this year[6] and, more importantly, that the purpose of the rulemaking is to bring some consistency and comparability to those disclosures for investors.[7]

CII also generally believes that given the increasing importance to our members of sustainability reporting, the SEC should consider addressing other sustainability related disclosures after considering climate change.[8] Accordingly, our letter includes some observations and recommendations that pertain to both climate-related disclosures and sustainability reporting more broadly.

CII Policies

Our observations and recommendations are derived from our membership-approved policies and statements. Those policies that are particularly relevant to the Request for Input include the following:

> **Statement on Corporate Disclosure of Sustainability Performance**
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> Investors increasingly seek decision-useful, comparable and reliable information about sustainability performance in corporate disclosures in order to better understand how nonfinancial metrics can impact business and profitability. CII

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[4] Center for Innovation (C4i), Data, Sustainable Investing & the Biden Administration, Recommendation for Progress in Climate-Related Risk & Human Capital Management Reporting, Ctr. for Innovation, UC Hastings C. of L. 8 (draft June 3, 2021) (on file with CII).

[5] *See id.* at 4 (citing a report from the CDP that "inadequate information can lead to the mispricing of assets and a misallocation of capital, more and more financial decision makers are demanding information on the business risks and opportunities associated with climate change."); *cf.* Madison Condon, Market Myopia's Climate Bubble 1 (B.U. Sch. of L., L. & Econ. Res. Paper & Utah L. Rev. forthcoming Feb. 9, 2021) (on file with CII) ("This underpricing of corporate climate risk contributes to the negative effects of climate change itself, as the mispricing of risk in the present leads to a misallocation of investment capital, hindering adaptation and subsidizing future fossil combustion.").

[6] Katanga Johnson & Pete Schroeder, U.S. SEC chair tells Congress he plans new rules on climate risk, trading, Reuters (May 6, 2021), https://www.reuters.com/business/us-sec-chair-pledges-trading-rules-review-first-congressional-hearing-2021-05-06/#:~:text=Gary%20Gensler%20also%20told%20the,the%20second%20half%20of%202021 ("Gary Gensler also told the House of Representatives Financial Services Committee, just three weeks after being sworn in as Securities and Exchange Commission (SEC) chair, that he expected to propose new rules on corporate climate risk disclosures in the second half of 2021.").

[7] *Id.* (quoting Securities and Exchange Commission Chair Gary Gensler that "Investors do want to bring some consistency and comparability to climate disclosure").

[8] Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("In addition, we would encourage the SEC to consider the current rulemaking process in the context of how it might impact an array of other financially material ESG issues in the future.").

believes that independent, private sector standard setters should have the central role in helping companies fill that need. Market participants, non-governmental organizations and governments can aid the success of these standard setters by supporting their independence and long-term viability, attributes of which include: stable and secure funding; deep technical expertise at both the staff and board levels; accountability to investors; open and rigorous due process for the development of new standards; and adequate protection from external interference.

CII encourages companies to disclose standardized metrics established by independent, private sector standard setters along with reporting mandated by applicable securities regulations to better ensure investors have the information they need to make informed investment and proxy voting decisions. CII believes those standards that focus on materiality, and take into account appropriate sector and industry considerations, are more likely to meet investors' needs for useful and comparable information about sustainability performance. CII also believes that over time, companies should obtain external assurance of the sustainability performance information they provide.[9]

Statement on Company Disclosure

In evaluating proposals to expand company disclosure, CII considers the following factors:

- Materiality to investment and voting decisions
- Depth, consistency and reliability of empirical evidence supporting the connection between the disclosure and long-term shareowner value
- Anticipated benefit to investors, net of the cost of collection and reporting
- Prospect of substantially improving transparency, comparability, reliability and accuracy.[10]

Independence of Accounting and Auditing Standard Setters

Audited financial statements including related disclosures are a critical source of information to institutional investors making investment decisions. The efficiency of global markets—and the well-being of the investors who entrust their financial present and future to those markets—depends, in significant part, on the quality, comparability and reliability of the information provided by audited financial statements and disclosures. The quality, comparability and reliability of that information, in turn, depends directly on the quality of the financial reporting standards that: (1) enterprises use to recognize, measure and report their economic activities and events; and (2) auditors use in providing assurance that the preparers'

[9] CII policies, Statement on Disclosure of Sustainability Performance (adopted Sept. 22, 2020), https://www.cii.org/sustainability_performance_disclosure.
[10] CII policies, Policies on Other Issues, Statement on Company Disclosures (adopted Mar. 10, 2020), https://www.cii.org/policies_other_issues#Company_disclosure.

recognition, measurement and disclosures are free of material misstatements or omissions. The result should be timely, transparent and understandable financial reports.

The Council of Institutional Investors has consistently supported the view that the responsibility to promulgate accounting and auditing standards should reside with independent organizations.

CII supports U.S. accounting and auditing standard setters cooperatively working with their international counterparts toward a common goal of high quality standards. This means maintaining a high degree of on-going communication among domestic and international standard setters to produce standards that first and foremost result in high quality financial reports, and secondarily result in consistent financial reporting outcomes. CII continues to be open to a transition to a single global set of high quality standards designed to produce comparable, reliable, timely, transparent and understandable financial information that will meet the needs of institutional investors and other consumers of audited financial reports. However, at this time CII does not support replacing U.S. accounting or auditing standards or standard setters with international standards or standard setters. Notwithstanding CII's current opposition to replacing U.S. standards or standard setters, in light of the globalization of the financial markets and the fact that U.S investors invest trillions of dollars in securities of enterprises that report their financial results in some form of international standards, we generally support high quality international accounting and auditing standards. In order to be high quality, accounting and auditing standards must be seen as meeting the needs of the investing public, and the standard setting process must be independent and free from undue influence. Attributes that underpin an effective accounting or auditing standard setter include:

- **Recognition of the Role of Reporting** – A recognition that financial accounting and reporting and the quality of auditing thereof is a public good, necessary to investor confidence in individual enterprises and the global capital markets as a whole;
- **Sufficient Funding** – Resources sufficient to support the standard setting process, including a secure, stable, source of funding that is not dependent on voluntary contributions of those subject to the standards (for international standard setters, such funding may depend on governmental and stakeholder cooperation from multiple jurisdictions, including the United States);
- **Independence and Technical Expertise** – A full-time standard-setting board and staff that are independent from prior employers or similar conflicts and possess the technical expertise necessary to fulfill their important roles;
- **Accountability to Investors** – A clear recognition that investors are the key customer of audited financial reports and, therefore, the primary role of audited financial reports should be to satisfy in a timely manner investors' information needs (this includes having significant, prominent and adequately balanced

representation from qualified investors on the standard setter's staff, standard-setting board, oversight board and outside monitoring or advisory groups);
- **Due Process** – A thorough public due process that includes solicitation of investor input on proposals and careful consideration of investor views before issuing proposals or final standards;
- **Adequate Protections** – A structure and process that adequately protects the standard setter's technical decisions and judgments (including the timing of the implementation of standards) from being overridden by government officials or bodies; and
- **Enforcement** – A clear, rigorous and consistent mechanism for enforcement by regulators of the accounting and auditing standards.[11]

Summary of Responses

The application of CII policies and prior public positions provide the basis for our responses to the Questions for Consideration raised in the Request for Input. The following is a bullet-point summary of those responses:

- Climate-related or other sustainability disclosure requirements should include consideration of the following factors:
  - Materiality to investment and voting decisions,
  - Depth, consistency and reliability of empirical evidence supporting the connection between the disclosure and long-term shareowner value,
  - Anticipated benefit to investors, net of the cost of collection and reporting, and
  - Prospect of substantially improving transparency, comparability, reliability and accuracy.
- CII is supportive of the SEC proposing climate change disclosures and creating a broader sustainability reporting system that includes other sustainability related disclosures consistent with the aforementioned factors and derived from existing standards and frameworks.
- CII believes that longer term, the SEC should consider establishing criteria to identify an independent, private sector standard setter or setters to develop industry specific sustainability standards and participate in reviewing, updating, improving, and augmenting existing sustainability disclosures.
- CII believes that the SEC's criteria to identify an independent, private sector sustainability standard setter or setters (potentially including an international standard setter) should include the following attributes:
  - Recognition of the Role of Reporting,
  - Sufficient Funding,
  - Accountability to Investors,
  - Independence and Technical Accountability to Investors,

[11] CII policies, Policies on Other Issues, Independence of Accounting and Auditing Standard Setters (updated Mar. 1, 2017), https://www.cii.org/policies_other_issues#indep_acct_audit_standards.

  - Due Process,
  - Adequate Protections, and
  - Enforcement.
- CII believes that that in connection with requiring climate change or other sustainability disclosures, the SEC should consider:
  - The importance of strong governance processes and internal controls over the gathering and reporting of sustainability information, and
  - The importance of assurance of climate-related and other sustainability information.

Responses to Questions for Consideration

1. How can the Commission best regulate, monitor, review, and guide climate change disclosures in order to provide more consistent, comparable, and reliable information for investors while also providing greater clarity to registrants as to what is expected of them? Where and how should such disclosures be provided? Should any such disclosures be included in annual reports, other periodic filings, or otherwise be furnished?[12]

CII has for years advocated for more rigorous SEC staff oversight of climate change disclosures, including encouraging the issuance of more SEC staff comments to companies.[13] We, however, have also acknowledged that SEC efforts to improve issuer climate change disclosures are significantly constrained by the absence of an agreed upon framework for companies to use to report the disclosures.[14]

We observe that there is no shortage of existing climate change disclosure frameworks and metrics.[15] Rather than increase the existing sustainability reporting burden on companies, we

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[12] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.

[13] *See, e.g.*, Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Carolyn B. Maloney, Chair Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Committee on Financial Services, United States House of Representatives et al. 4 (July 9, 2019), https://www.cii.org/files/issues_and_advocacy/correspondence/2019/July%209%202019%20(finalI)%20Subcommittee%20hearing%20letter.pdf ("CII would expect that with more rigorous SEC staff oversight, issuer disclosures about climate related risks would be more robust.").

[14] *See id.* at 4 ("We acknowledge that the SEC's ability to improve climate related risk disclosures is, as indicated by the U.S. Government Accountability Office, significantly constrained by the absence of an agreed upon 'framework for companies to use to report these disclosures'").

[15] *See* Center for Innovation (C4i), Data, Sustainable Investing & the Biden Administration, Recommendation for Progress in Climate-Related Risk & Human Capital Management Reporting, Ctr. for Innovation, UC Hastings C. of L. at 5 (noting that voluntary climate disclosure standards are currently promulgated by "CDP (formerly the Climate Disclosure Project), the Climate Disclosure Standards Board (CDSB), the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC), the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD), among others [and] [a] new initiative called the Corporate Reporting Dialogue was established in 2017 with the goal of aligning various reporting frameworks [and] [i]t brings together CDP, CDSB, GRI, IIRC, and SASB [and] [t]hese organizations worked together to map their standards and showed how their respective standards align with the TCFD framework."); Rhonda Brauer & Glenn Davis, SUSTAINABILITY REPORTING FRAMEWORKS: A GUIDE FOR CIOS, CII Res. & Educ. Fund (Sept.

believe the Commission should review the existing frameworks and metrics to develop "a best in class" set of principles-based and rules-based disclosures that is generally consistent with one or more of the existing frameworks and metrics.[16] We believe that a combined approach permits an appropriate balance between specific rules-based quantitative information that provides for some level of consistency and comparability combined with more principles-based qualitative information that provides the context for understanding how the data benefits long-term shareowner value.[17]

Moreover, in determining the appropriate set of disclosures to propose for public comment, we respectfully request that the SEC consider the factors described in CII's Statement on Company Disclosure. As indicated, those factors are:

(1) Materiality to investment and voting decisions,
(2) Depth, consistency and reliability of empirical evidence supporting the connection between the disclosure and long-term shareowner value,
(3) Anticipated benefit to investors, net of the cost of collection and reporting, and
(4) Prospect of substantially improving transparency, comparability, reliability and accuracy.

In addition, we believe the initial climate change proposal or a follow-up proposal should include specified criteria for identifying an independent, private sector sustainability standard setter or setters. The Commission could designate the sustainability standard setter or setters with the responsibilities to (1) establish industry specific disclosure requirements for sustainability related disclosures; and (2) assist the SEC in updating, improving, and augmenting existing sustainability disclosure requirements.

Moreover, we believe the specified criteria for a sustainability standard setter or setters should be analogous to the attributes of an effective standard setter referenced in our policy on Independence of Accounting and Auditing Setters and Statement on Corporate Disclosure of Sustainability Performance. As indicated, those attributes are:

(1) Recognition of the Role of Reporting,
(2) Sufficient Funding,

2019), https://7677c7b7-7992-453f-8d12-4ccbdbee23c.filesusr.com/ugd/72d47f_e00c47786e17471fb3b8222e78427935.pdf ("This report focuses on four of the most commonly cited ESG reporting frameworks: the Carbon Disclosure Project (CDP), the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate-related Financial Disclosures (TCFD)").

[16] *See, e.g.*, Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("Rather than increase the existing sustainability reporting burden on companies, the SEC should support disclosures that are consistent with existing voluntary frameworks and standards, such as TCFD and SASB.").

[17] *See, e.g.*, Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, Securities and Exchange Commission 1 (Oct. 17, 2019), https://www.sec.gov/comments/s7-11-19/s71119-6312521-193620.pdf ("[a] combined approach permits an appropriate balance between specific rules-based quantitative information that provides for some level of consistency and comparability combined with a more principles-based qualitative information that provides the context for understanding how the data benefits long-term shareowner value").

(3) Accountability to Investors,
(4) Independence and Technical Expertise,
(5) Due Process,
(6) Adequate Protections, and
(7) Enforcement.

We observe that the "majority of climate related risk disclosures currently take place outside of financial statements."[18] We do not have a position as to where and how the disclosures should be provided, but we do believe the disclosures must be reliable. As indicated in our Statement on Corporate Disclosure of Sustainability Performance, investors are demanding disclosures that provide "reliable information about sustainability performance . . . in order to better understand how the metrics can impact business and profitability."

We generally believe reliable information requires, at a minimum, that issuers design, implement, and maintain a system of strong governance processes and internal controls and procedures around the gathering and reporting of climate change and other sustainability related disclosure matters that is comparable to the system used by the issuer for financial reporting.[19] In addition, after there has been sufficient implementation of processes and controls over the disclosure requirements,[20] we believe reliability also requires that public companies obtain external assurance of the sustainability information they provide.[21]

2. What information related to climate risks can be quantified and measured? How are markets currently using quantified information? Are there specific metrics on which all registrants should report (such as, for example, scopes 1, 2, and 3 greenhouse gas emissions, and greenhouse gas reduction goals)? What quantified and measured information or metrics should be disclosed because it may be material to an investment or voting decision? Should disclosures be tiered or scaled based on the size and/or type

[18] Center for Innovation (C4i), Data, Sustainable Investing & the Biden Administration, Recommendation for Progress in Climate-Related Risk & Human Capital Management Reporting, Ctr. for Innovation, UC Hastings C. of L. at 7.
[19] *See id.* ("There appeared to be a consensus among attendees that more of this off-financial statement information should be subject to the internal controls over financial reporting"); Letter from Janine Guillot, Chief Executive Officer, Sustainability Accounting Standards Board to Chair Gensler 15 (May 19, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8819945-238161.pdf ("Reporting companies should be encouraged to design, implement and maintain a system of internal controls and procedures around developing and disclosing sustainability information that is comparable to the system used by the entity for financial reporting.").
[20] *See, e.g.*, Soyoung Ho, A Conversation with SASB Member Daniel Goezler, Thomson Reuters Tax & Acct. (Apr. 20, 2021), https://tax.thomsonreuters.com/news/a-conversation-with-sasb-daniel-goelzer/ (commenting that "[b]efore jumping to assurance, I think there is a lot of work to be done, probably a lot of work to be done by accounting firms as advisers to companies to putting in these controls in place over the information.").
[21] *See, e.g.*, Center for Innovation (C4i), Data, Sustainable Investing & the Biden Administration, Recommendation for Progress in Climate-Related Risk & Human Capital Management Reporting, Ctr. for Innovation, UC Hastings C. of L. at 10 (recommending that "the SEC should consider whether and what independent verification or assurance should be provided to ensure that such disclosures are reliable."'); *cf.* Commissioner Elad L. Roisman, Speech: Putting the Electric Cart before the Horse: [1] Addressing Inevitable Costs of a New ESG Disclosure Regime (June 3, 2021), https://www.sec.gov/news/speech/roisman-esg-2021-06-03 ("I would have concerns about subjecting any such new requirement to heightened verification measures—such as an audit or an attestation").

> of registrant)? If so, how? Should disclosures be phased in over time? If so, how? How are markets evaluating and pricing externalities of contributions to climate change? Do climate change related impacts affect the cost of capital, and if so, how and in what ways? How have registrants or investors analyzed risks and costs associated with climate change? What are registrants doing internally to evaluate or project climate scenarios, and what information from or about such internal evaluations should be disclosed to investors to inform investment and voting decisions? How does the absence or presence of robust carbon markets impact firms' analysis of the risks and costs associated with climate change?[22]

We generally believe that, at a minimum, information about Scope 1 and Scope 2 greenhouse gas emissions can be quantified and measured and should be reported by registrants.[23] While greenhouse gas emissions may not be critical to the health of every registrant, this issue has become critical for many investors who are serious about assessing the climate-related risks and opportunities across their portfolios.[24] As indicated, we believe these and other potential climate change disclosures should be evaluated based on the factors contained in our Statement on Company Disclosure.

3. What are the advantages and disadvantages of permitting investors, registrants, and other industry participants to develop disclosure standards mutually agreed by them? Should those standards satisfy minimum disclosure requirements established by the Commission? How should such a system work? What minimum disclosure requirements should the Commission establish if it were to allow industry-led disclosure standards? What level of granularity should be used to define industries (e.g., two-digit SIC, four-digit SIC, etc.)?[25]

CII generally believes that it is appropriate for investors, registrants, other industry participants to develop disclosure standards mutually agreed by them if that process is ultimately subject to a public due process of (1) the Commission or (2) an SEC recognized independent, private sector standard setter or setters with the attributes described in our policy on Independence of Accounting and Auditing Standard Setters and our Statement on Corporate Disclosure of Sustainability Performance.

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[22] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[23] *See* Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("A good starting point would be the reporting of greenhouse gas emissions in line with the TCFD, which requires disclosure of scope 1, 2, and (if appropriate) scope 3 greenhouse gas emissions."); World Resources Institute, The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard 25 (rev. ed. Mar. 2004), https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf ("Companies shall separately account for and report on scopes 1 and 2 at a minimum.").
[24] *See, e.g.,* Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("While greenhouse gas emissions may not be directly or dramatically material to the financial health of every public company, this issue has become critical for investors who are serious about assessing the climate-related risks and opportunities across their portfolios").
[25] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.

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?[26]

CII generally believes, consistent with our Statement on Corporate Disclosure of Sustainability Performance, that climate change reporting standards that take into account appropriate sector and industry considerations, when combined with a set of principles-based and rules-based disclosures for all public companies, are more likely to meet investors' needs. Industry specific standards are an important component of an overall disclosure framework.[27]

As indicated in response to question 1, we generally believe that industry-focused standards should over time be developed by an independent, private sector standard setter or setters that the SEC determines has met the attributes of an effective standard setter as described in our policy on Independence of Accounting and Auditing Standard Setters and Statement on Corporate Disclosure of Sustainability Performance.

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)? Are there any specific frameworks that the Commission should consider? If so, which frameworks and why?[28]

CII believes that an advantage of rules that incorporate or draw on existing frameworks is that the rules could build upon years of thought leadership and stakeholder engagement by many organizations whose frameworks are already used as a basis for voluntary reporting on climate change by many public companies. A potential disadvantage of rules that incorporate or draw on existing frameworks is that those frameworks may not capture new information that may prove responsive to investor information needs or may otherwise crowd out the consideration of higher quality disclosures. Another disadvantage, in CII's view, is that existing frameworks are the result of varying levels of investor engagement in their standard-setting processes. As a result, some frameworks may better reflect the views of their staff and governing boards than the views of the users of the information.

We believe that among the many frameworks that the Commission should consider is the framework developed by Task Force on Climate-Related Financial Disclosures (TCFD).[29] We

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[26] *Id.*
[27] *See, e.g.,* Letter from Janine Guillot, Chief Executive Officer, Sustainability Accounting Standards Board to Chair Gensler at 14 (illustrating a framework for sustainability disclosures that includes both "cross-industry targets and metrics" and "industry-specific topics and metrics").
[28] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[29] *See, e.g.,* Center for Innovation (C4i), Data, Sustainable Investing & the Biden Administration, Recommendation for Progress in Climate-Related Risk & Human Capital Management Reporting, Ctr. for Innovation, UC Hastings C. of L. at 10 (recommending that the "SEC should consider requiring the use of a reporting framework such as the one created by the . . . TCFD); s*ee generally* Task Force on Climate-Related Financial Disclosures, Recommendations of

note that the group of seven countries' finance ministers recently communicated the view that mandatory climate disclosures should be made according to the TCFD.[30] And the TCFD framework is currently supported by more than 1,000 global organizations making it "the de facto reporting standard for climate related risks."[31]

The SEC should also consider the framework of the Sustainability Accounting Standards Board (SASB),[32] and the prototype climate disclosure standard co-developed by SASB (which also incorporates elements of the TCFD framework).[33] Incorporating any of these frameworks into an SEC rulemaking will likely facilitate more widespread adoption of the rules that we believe would benefit institutional investors. We also note that these three frameworks generally focus on information that is material to investors in a manner that we believe is generally consistent with the use of "materiality" in our Statements on Corporate Disclosure of Sustainability Performance and Company Disclosure.[34] We underscore that current statistics on particular frameworks' voluntary use

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the Task Force on Climate Related Disclosures (final report June 2017), https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf.

[30] *See, e.g.,* United Kingdom, G7 backs making climate risk disclosure mandatory, Reuters (June 5, 2021), https://www.reuters.com/business/environment/g7-backs-making-climate-risk-disclosure-mandatory-2021-06-05/.

[31] Center for Innovation (C4i), Data, Sustainable Investing & the Biden Administration, Recommendation for Progress in Climate-Related Risk & Human Capital Management Reporting, Ctr. for Innovation, UC Hastings C. of L. at 5.

[32] *See* Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("Commenting that the Task Force on Climate-Related Financial Disclosures and the Sustainability Accounting Standards Board "represent orderly, best-of-breed approaches to the issue of evaluating ESG factors in an investment context."); *see generally* Sustainability Accounting Standards Board, SASB Conceptual Framework (under review Feb. 2017), https://www.sasb.org/wp-content/uploads/2020/02/SASB_Conceptual-Framework_WATERMARK.pdf.

[33] Letter from Janine Guillot, Chief Executive Officer, Sustainability Accounting Standards Board to Chair Gensler at 14 (describing and illustrating the "SASB recently co-developed a prototype climate disclosure standard that employs a mix of qualitative and quantitative disclosures, and cross-industry and industry-specific metrics."); *see generally* CDP et al., Reporting on enterprise value, Illustrated with a prototype climate-related financial disclosure standard (Dec. 2020), https://29kjwb3armds2g3gi4lq2sx1-wpengine.netdna-ssl.com/wp-content/uploads/Reporting-on-enterprise-value_climate-prototype_Dec20.pdf.

[34] *See* Task Force on Climate-Related Financial Disclosures, Recommendations of the Task Force on Climate Related Disclosures at 14 ("In most G20 jurisdictions, public companies have a legal obligation to disclose material information in their financial filings— including material climate-related information; and the Task Force's recommendations are intended to help organizations meet existing disclosure obligations more effectively."); Sustainability Accounting Standards Board, SASB Conceptual Framework at 9 ("SASB standards address the sustainability topics that are reasonably likely to have material impacts on the financial condition or operating performance of companies in an industry."); CDP et al., Reporting on enterprise value, Illustrated with a prototype climate-related financial disclosure standard at 8 ("While financial accounting and disclosure and sustainability-related financial disclosure are concerned with reporting on enterprise value to providers of financial capital, sustainability reporting includes information that informs the assessment and decisions of a wide range of users"); *cf*. Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Vanessa A. Countryman, Secretary, Securities and Exchange Commission at 10 ("In contrast, our preferred definition of "material" is information in which there is a substantial likelihood that disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly altered the total mix of information available in deciding how to vote or make an investment decision."); Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Erkki Liikanen, Chairman, IFRS Foundation 11 (attachment Dec. 17, 2020), https://www.cii.org/files/issues_and_advocacy/correspondence/2020/Attachment-ABedits.docx%20(Final)%20LN.pdf ("We acknowledge that [our] . . . proposed approach to materiality may not

by registrants may reflect those frameworks' longevity in the market more than registrants' views about the adopted frameworks' materiality to investment decision-making."

6. How should any disclosure requirements be updated, improved, augmented, or otherwise changed over time? Should the Commission itself carry out these tasks, or should it adopt or identify criteria for identifying other organization(s) to do so? If the latter, what organization(s) should be responsible for doing so, and what role should the Commission play in governance or funding? Should the Commission designate a climate or ESG disclosure standard setter? If so, what should the characteristics of such a standard setter be? Is there an existing climate disclosure standard setter that the Commission should consider?[35]

CII believes that any disclosure requirements for climate or more broadly for sustainability will need to evolve over time to meet investors' needs for useful and comparable information for investment and voting decisions.

As indicated in response to question 1, we believe that the Commission and one or more independent, private sector standard setters (potentially including an international standard setter) should share the responsibility for updating, improving, and augmenting climate and other sustainability related disclosures. As also indicated in response to question 1, we believe Commission should adopt criteria for identifying an appropriate independent, private sector standard setter or setters to preform that role. Those criteria should be generally consistent with the attributes referenced in our policy on Independence of Accounting and Auditing Standard Setters and Statement on Corporate Disclosure of Sustainability Performance. Those attributes address, among other issues, governance and funding.

7. What is the best approach for requiring climate-related disclosures? For example, should any such disclosures be incorporated into existing rules such as Regulation S-K or Regulation S-X, or should a new regulation devoted entirely to climate risks, opportunities, and impacts be promulgated? Should any such disclosures be filed with or furnished to the Commission?[36]

CII does not currently have a view as to where the required climate-related disclosures should reside. Ideally, companies would integrate their financial accounting and reporting disclosures with their climate-related disclosures "in investor-focused communications, making explicit how performance on one influences the other."[37] As indicated by the question, there may be a variety of approaches in which this goal could be achieved.

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include all sustainability information that some investors and market participants might find relevant . . . however, believe that [our] . . . proposed approach would allow [a] . . . baseline for decision-useful sustainability performance information to investors that would increase comparability").

[35] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.

[36] *Id.*

[37] Letter from Janine Guillot, Chief Executive Officer, Sustainability Accounting Standards Board to Chair Gensler at 15.

8. How, if at all, should registrants disclose their internal governance and oversight of climate-related issues? For example, what are the advantages and disadvantages of requiring disclosure concerning the connection between executive or employee compensation and climate change risks and impacts?[38]

CII currently does not have a view on whether registrants should disclose their internal governance and oversight of climate related issues. We, however, believe that as a reference point the Commission should consider the TCFD recommended disclosures on governance.[39] We note that those disclosures include a description of "the board's oversight of climate-related risks and opportunities."[40]

In addition, consistent with our membership approved policies, we would generally support required disclosure in the proxy statement about any climate-related goals or metrics that impact executive compensation.[41] We believe those disclosures would be critical to shareholder voting on say-on-pay and the election of the chair and members of registrants' compensation committees.

9. What are the advantages and disadvantages of developing a single set of global standards applicable to companies around the world, including registrants under the Commission's rules, versus multiple standard setters and standards? If there were to be a single standard setter and set of standards, which one should it be? What are the advantages and disadvantages of establishing a minimum global set of standards as a baseline that individual jurisdictions could build on versus a comprehensive set of standards? If there are multiple standard setters, how can standards be aligned to enhance comparability and reliability? What should be the interaction between any global standard and Commission requirements?[42]

CII generally believes that a single set of global sustainability standards applicable to companies around the world, including registrants under the Commission's rules, would be the ideal solution to addressing investor needs for that information.[43] We, however, do not disagree with the recently reported view of the Acting Director of the SEC's Division of Corporation Finance

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[38] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[39] *See* Task Force on Climate-Related Financial Disclosures, Recommendations of the Task Force on Climate Related Disclosures at 14.
[40] *Id.*
[41] *See* CII, Corporate Governance Policies, § 5.3 Transparency of Compensation (updated Sept. 22, 2020), https://www.cii.org/files/policies/09_22_20_corp_gov_policies.pdf ("Compensation committees should make compensation disclosures (including those in the U.S.-style Compensation Disclosure and Analysis), as clear, straightforward and comprehensible as possible [and] [e]ach element of pay should be clear to shareholders, especially with respect to any goals, metrics for their achievement and maximum potential total cost.").
[42] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[43] *See* Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Erkki Liikanen, Chairman, IFRS Foundation 4 (Dec. 17, 2020), https://www.cii.org/files/issues_and_advocacy/correspondence/2020/December%2017%202020%20comment%20letter%20(final)-AB%20LNF.pdf ("And we agree that a single, global set of high quality sustainability standards could be responsive to meeting investor needs for that information.").

John C. Coates "that it would not be practical to establish uniform international disclosure requirements due to political and legal differences between countries . . . ."[44]

We also note that that we have identified a number of governance-related conditions that we believe the IFRS Foundation and the proposed new international sustainability standards board (SSB) must, at a minimum, meet in order to establish an effective international sustainability standard setter that would meet investor needs.[45] Those conditions include the following:

> . . . at a minimum, we believe the governance structure of the IFRS Foundation must be improved to include:
> - A mechanism to increase funding (from sources other than voluntary contributions of those subject to its standards) to provide for a stable, secure and independent source of funding for the IFRS Foundation, the IASB, and an SSB;
> - Significant, prominent and adequately balanced representation from qualified investors as Trustees of the IFRS Foundation, including that at least half of the investor Trustees possessing significant knowledge of, or have experience with, financial and investment analysis incorporating sustainability issues; and
> - A thorough public due process that results in standards that satisfy in a timely manner investors' information needs.
>
> . . . In addition, at a minimum, we believe the governance structure of the proposed new SSB must include the following attributes:
> - A full-time board and staff that are independent from prior employers or similar conflicts and possessing significant knowledge of, or experience with, financial and investment analysis incorporating sustainability issues;
> - Significant, prominent and adequately balanced representation from qualified investors on the board of an SSB; and
> - An investor advisory council to an SSB comprised of chief investment officers or equivalent from asset owners and asset managers possessing significant experience with financial and investment analysis incorporating sustainability issues.[46]

It is not yet clear whether those minimal conditions will be achieved. That said, we encourage the SEC to consider the global frameworks and standards when proposing disclosures on climate change and other sustainability-related standards. We also encourage the SEC to continue to work cooperatively with international regulators, policymakers, and investors to try to establish a

[44] Peter Rasmussen, News Article, Corp Fin Director Expects Quick Action on ESG Rules: Analysis, Bloomberg L. (May 12, 2021) (on file with CII).
[45] *See* Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Erkki Liikanen, Chairman, IFRS Foundation at 5-6.
[46] *Id.*

minimum international set of sustainability standards as a baseline that individual jurisdictions, including the United States, could consider and potentially build on.

10. How should disclosures under any such standards be enforced or assessed? For example, what are the advantages and disadvantages of making disclosures subject to audit or another form of assurance? If there is an audit or assurance process or requirement, what organization(s) should perform such tasks? What relationship should the Commission or other existing bodies have to such tasks? What assurance framework should the Commission consider requiring or permitting? [47]

As indicated in response to question 1, following the sufficient implementation of processes and controls over the disclosure requirements, public companies over time should obtain external assurance of the sustainability information those requirements provide. The assurance should be assessed pursuant to a framework and process that results in the level of reliability that is responsive to investors information needs.

11. Should the Commission consider other measures to ensure the reliability of climate-related disclosures? Should the Commission, for example, consider whether management's annual report on internal control over financial reporting and related requirements should be updated to ensure sufficient analysis of controls around climate reporting? Should the Commission consider requiring a certification by the CEO, CFO, or other corporate officer relating to climate disclosures?[48]

As indicated in response to question 1, CII generally believes reliable information requires, at a minimum, that issuers design, implement, and maintain a system of internal control and procedures around developing and disclosing climate-related disclosures. Consistent with that view, we believe the Commission should consider whether management's annual report on internal control over financial reporting and related requirements should be updated to ensure sufficient analysis of controls around climate reporting.

12. What are the advantages and disadvantages of a "comply or explain" framework for climate change that would permit registrants to either comply with, or if they do not comply, explain why they have not complied with the disclosure rules? How should this work? Should "comply or explain" apply to all climate change disclosures or just select ones, and why? [49]

CII believes a comply or explain framework may be appropriate for the Commission to consider for select climate change or other sustainability-related disclosures that may not be appropriate

[47] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[48] *Id.*
[49] *Id.*

for all companies.[50] As one example, the comply or explain framework may be appropriate for the required disclosure of Scope 3 emissions.

It is clear to us that many investors are demanding that more information about Scope 3 emissions. A shareholder resolution asking Chevron to make substantial reductions to its Scope 3 emissions gained 61% of the vote this proxy season.[51] However, as SEC Commissioner Elad L. Roisman has argued: "[a] company's ability to calculate Scope 3 emissions depends on it gathering information from sources wholly outside the company's control, both upstream and downstream from its organizational activities."[52] There may be other examples where an evaluation of the costs of "collection and reporting" or the balancing of other factors in our Statement on Company Disclosure could appropriately lead the Commission to requiring a disclosure subject to a comply or explain framework.

13. How should the Commission craft rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities? What are the advantages and disadvantages of requiring disclosed metrics to be accompanied with a sustainability disclosure and analysis section similar to the current Management's Discussion and Analysis of Financial Condition and Results of Operations? [53]

As indicated in response to question 5, CII believes the Commission, at a minimum, should consider the framework of the TCFD. That framework recommends specific disclosures that may assist the Commission in crafting rules that elicit meaningful discussion of the registrant's views on its climate-related risks and opportunities.[54]

14. What climate-related information is available with respect to private companies, and how should the Commission's rules address private companies' climate disclosures, such as through exempt offerings, or its oversight of certain investment advisers and funds? [55]

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[50] *See, e.g.,* Soyoung Ho, A Conversation with SASB Member Daniel Goezler, Thomson Reuters Tax & Acct. (commenting that "there may have to be a 'comply or explain' element so that if a company felt that a particular . . . type of disclosure didn't fit for its situation, it would have latitude and disclose why that was the case.").
[51] *See, e.g.,* Jeremy Hodges & William Mathis, News Article, How Chevron Vote Puts Focus on 'Scope' of Emission's: QuickTake, Bloomberg (June 5, 2021) (on file with CII) ("The shareholder resolution asking that Chevron make 'substantial' reductions to its Scope 3 emissions gained 61% of the vote on May 26").
[52] Commissioner Elad L. Roisman, Speech: Putting the Electric Cart before the Horse: [1] Addressing Inevitable Costs of a New ESG Disclosure Regime; *cf.* Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("A good starting point would be the reporting of greenhouse gas emissions in line with the TCFD, which requires disclosure of scope 1, 2, and (if appropriate) scope 3 greenhouse gas emissions").
[53] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[54] *See* Task Force on Climate-Related Financial Disclosures, Recommendations of the Task Force on Climate Related Disclosures at 14 (describing recommended disclosures about climate related risks and opportunities).
[55] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.

CII understands that capital providers for some private companies are requesting that the companies report climate disclosures, including in some cases Scope 1 and 2 emissions.[56] We believe that investor demand for, and private company reporting of, climate change would likely increase were the SEC to require climate disclosures for public companies.[57] We believe that would be a positive development for institutional investors. We, however, do not currently have a position on whether the Commission's proposed rules on climate-related information should address private company disclosures.

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? [58]

CII believes that the Commission should treat climate related disclosure as one component of a broader environmental, social, and governance (ESG) disclosure framework. There are a number of other disclosure issues that may be classified as ESG disclosures that may meet the factors contained in our Statement on Company Disclosure. Those issues for which CII currently supports improved disclosures that we believe the Commission should consider either individually or as potential component of a broader ESG framework include the following:

- Diversity of boards and executive officers,
- Key workforce metrics, and
- Political spending.[59]

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[56] *See, e.g.*, Letter from Theresa Whitmarsh, Executive Director, State of Washington, State Investment Board to Gary Gensler, Chair, U.S. Securities and Exchange Commission at 2 ("We are encouraged that some of our general partners are starting to ask their private companies to report scope 1 and 2 emissions; it is becoming more accepted as standard business practice and therefore is likely less of a burden than critics suggest.").
[57] *See id.* at 2 ("Standardized disclosure has the potential to reduce the voluntary reporting burden on private companies [and] [l]imited partners who seek emissions data from general partners would be able to point to the SEC disclosure rules as a standard for what they request.").
[58] Acting Chair Allison Herren Lee, Public Statement, Public Input Welcome on Climate Change Disclosures.
[59] *See, e.g.*, Council of Institutional Investors, CII Advocacy Priorities- 2021, Corporate Disclosures (2021), https://www.cii.org/corporate_disclosure.

We appreciate the opportunity to provide our views on the Request for Input. We would be pleased to discuss our comments or answer any questions regarding the views expressed in this letter.

Sincerely,

Jeff Mahoney

Jeff Mahoney
General Counsel

cc:
Caroline A. Crenshaw, Commissioner
Allison Herren Lee, Commissioner
Hester M. Pierce, Commissioner
Elad L. Roisman, Commissioner
John C. Coates, Acting Director, Division of Corporate Finance
Paul Munter, Acting Chief Accountant