CENTER for INTERNATIONAL ENVIRONMENTAL LAW

June 14, 2021

Re: Public Statement: Public Input Welcomed on Climate Change Disclosures, Acting Chair Allison Herren Lee, March 15, 2021.

Chair Gensler,

The Center for International Environmental Law (CIEL) is a nonprofit 501(c)(3) legal organization with offices in Washington DC, United States, and Geneva, Switzerland. Since 1989, CIEL has used the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. We appreciate the opportunity to comment on the above referenced Request for Input by the Securities and Exchange Commission (the "SEC" or the "Commission") which rightly identified the urgent need for mandatory climate and environmental, social, and governance (ESG) disclosures. The Commission should move quickly to propose, adopt, implement, and enforce detailed disclosure requirements for all issuers.

CIEL is one of many signatories to the letter spearheaded by Americans for Financial Reform Education Fund and Public Citizen addressing a broad array of climate-related financial disclosures. We fully support the recommendations contained in that letter, and present this submission to highlight further opportunities for important specific disclosures around three issues—deforestation, carbon capture and storage, and asset retirement obligations.

Deforestation

Thirty-one percent of land on earth is covered in forests.[1] Although the total global deforestation rate is extremely difficult to calculate[2]—with recent estimates ranging from 10 million[3] to more than 25 million hectares per year[4]—it is a global problem causing biodiversity loss and carbon emissions at a vast scale. The primary cause of deforestation is land clearing for commercial agriculture.[5] Between 2013 and 2019 an estimated 60% of tropical forest loss was caused by commercial agriculture and at least 69% of that deforestation was illegal.[6] Illegal conversion of forests for agriculture has caused "at least 2.7 Gt of CO2e per year . . . and if it were a country, emissions from illegal agro-conversion would be third-largest globally after China and the US."[7]

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[1] FAO & UNEP, The State of the World's Forests (2020), at xvi.

[2] Fred Pearce, *Conflicting Data: How Fast Is the World Losing its Forests?*, Yale Environment 360 (2018).

[3] FAO & UNEP, *supra* note 1.

[4] The estimate of 25.8 million hectares is for tree cover loss in 2020, which includes loss of forests from fires and harvesting of trees on plantations, among other causes such as land clearing for agriculture. *Global Forest Review: Forest Loss*, World Resources Institute, https://research.wri.org/gfr/forest-extent-indicators/forest-loss (last visited June 10, 2021).

[5] FAO & UNEP, *supra* note 1.

[6] Cassie Dummet & Arthur Blundell, Forest Trends, Illicit Harvest, Complicit Goods: The State of Illegal Deforestation for Agriculture (2021), at 2.

[7] *Id.* at 20.

The Intergovernmental Panel on Climate Change has estimated that the gross emissions from agriculture, forestry, and other land use represent one-third of total global emissions from human activity, indicating substantial mitigation potential of reducing deforestation.[8] Net emissions from the sector, however, are estimated at nearly one-quarter of emissions[9]—demonstrating the important role that forests play as carbon sinks.

Many consumer goods companies and manufacturers do not include emissions from deforestation and forest conversion related to tropical agricultural commodities in their scope 3 reporting, and thus are likely underreporting total emissions and the overall climate impact of their business. Future SEC regulations on climate-related financial disclosures should explicitly require issuers to report on the contribution of their business operations and supply chains to deforestation and forest conversion. Information related to deforestation and compliance with laws in the country where an agricultural commodity was grown will help fulfil the SEC's mandates to protect investors; maintain a fair, orderly, and efficient market; and facilitate capital formation. Given the high levels of illegalities in the agricultural commodity sector and significant emissions resulting from deforestation, there is a need for clear and consistent reporting by companies to demonstrate legal compliance and contributions to climate change, to allow investors to compare companies and inform their investment decisions.

In response to Question 2, CIEL recommends that companies sourcing and financing agricultural commodities, including soy, palm oil, cattle, cocoa, rubber, pulp and paper, maize, and coffee, among others, be required to report on climate change risk, including risks resulting from deforestation and forest conversion in their operations and supply chains, in quarterly and annual filings. Such information should include, but not be limited to:

1. Total volume of commodity sourced, traced to its point of origin/country of origin
    a. For commodities sourced in countries at high risk for deforestation and land use change, traced to point of origin (i.e., farm or plantation level)
2. Evidence of compliance with laws in the country where the commodity was grown
3. Year in which the land was converted from forest to agricultural commodity, if applicable
4. Commitments to addressing deforestation and land use change; implementation plans for those commitments, including scope (i.e., how much of the value chain is addressed in plans) and target dates; and progress towards commitments
5. Land holdings with standing forests or other natural vegetation, including those at risk of being stranded as development and/or use opportunities are displaced by increasing conservation value

Carbon Capture and Storage

There is no longer any question that carbon risk—risk posed by holding fossil fuel reserves, producing fossil fuels, or emitting greenhouse gases—is financially material. Carbon capture technologies purport to eliminate

[8] Intergovernmental Panel on Climate Change, Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems (2019), at 45.
[9] *Id.* at 41.

or reduce this risk for emitters and therefore are financially material insofar as they do or do not deliver on that promise.

Carbon capture and storage (CCS) comprises a suite of technologies that capture carbon dioxide from an emitting source and subsequently store it underground. The promise of the technology is that it can reduce, but not eliminate, a significant percentage of emissions that would otherwise be released from fossil fuel combustion. As such, CCS is often invoked by corporations seeking to explain how they will reduce emissions from their operations, such as power generation or industrial production, without actually eliminating the sources of those emissions.

The SEC should require companies asserting such claims to articulate the true costs and potential emissions impacts of their proposed or intended CCS programs. Recent studies call into question both the economics of CCS and claims that it is necessary from a climate perspective. A May 2021 report from the International Energy Agency outlining a path to limit atmospheric warming to 1.5 degrees, in accordance with the Paris Agreement, projects very limited use of CCS, and almost no use for primary energy production in the United States.[10] Absent specific disclosures regarding the costs of deploying carbon capture technology and the availability of uses, markets, and/or storage sites for the captured carbon, representations that a corporation will pursue a program of carbon capture to reduce its emissions may mislead investors as to the program's financial feasibility. The failure of pledged CCS programs to deliver on their stated aims could lead to significantly increased costs for the company, stranded assets, carbon risk, or all of the above.

There are several challenges to the successful deployment of CCS. Primarily, it is very expensive. A recent study of the economic viability of carbon capture indicated that it would only be appropriate for a small minority of emissions sources.[11] The premise of large-scale carbon capture and use relies on end markets for the captured carbon that in large part do not exist, exacerbating the financial difficulties of any particular attempt relying on selling carbon to end markets. Where the carbon is intended for storage, it requires sufficient sites for underground injection. In either case, the process requires an infrastructure of pipelines to move captured carbon from its point of capture to its destination. All of these create a much more complicated financial picture for corporations seeking to use the promise of CCS to reduce emissions while continuing business-as-usual.

For companies claiming that they will use CCS to meet net zero, climate-neutral, Paris-aligned, or other climate-related decarbonization targets, investors need to know significant material information to determine whether the plans are viable from a financial and regulatory perspective, or are based on unrealistic expectations. Furthermore, complete information regarding the assumptions underlying CCS plans is necessary to assess liability risk associated with safety hazards of transporting compressed CO2 and storing it underground, potentially in perpetuity. Accordingly, in response to Question 2, CIEL recommends issuers planning to use or actually deploying CCS disclose information including:

1. **The cost to capture carbon.** The cost of carbon capture varies between facilities to which the technology is applied. Investors need to know what the cost of CCS will be for current or

[10] IEA, Net Zero by 2050: A Roadmap for the Global Energy Sector (2021).
[11] *See* Hélène Pilorgé et al., *Cost Analysis of Carbon Capture and Sequestration of Process Emissions from the U.S. Industrial Sector*, 54(12) Envtl. Sci. & Tech. 7524-7532 (2020).

planned facilities, and companies should disclose reasonable cost estimates for carbon capture at such facilities.

2. **The intended destination of the captured carbon.** If it is intended for permanent underground storage, the company should disclose where it intends to store the carbon and whether it will rely on new pipelines being built or plan to use existing infrastructure. If the company plans to use the captured carbon, it should specify the ultimate use to which it intends to put such carbon, or at least which markets, if any, into which it intends to market the carbon.
3. **Remaining and additional emissions.** Post-combustion carbon capture does not remove all carbon dioxide from waste streams, and the energy required for carbon capture itself may emit additional carbon dioxide, depending on its source. To ensure investors are not misled into believing that carbon capture is a cure-all for carbon dioxide emissions, companies should disclose the *disaggregated emissions and emissions reductions from carbon capture units*. This should include: (a) the absolute and relative amounts of emissions captured for the underlying facility or activity to which the technology is applied; (b) the remaining emissions that are *not* captured; and (c) the *additional* emissions from powering the CCS unit.

Asset Retirement Obligations

The costs of plugging and decommissioning oil and gas wells poses a significant financial risk to oil and gas operators and their investors. These end-of-life costs, called asset retirement obligations (AROs), are reported by companies in their financial statements. However, there is good reason to believe the true costs of these AROs are not being accurately reflected on corporate balance sheets, particularly as mounting climate risk and the accelerating transition away from fossil fuels means wells may need to be closed sooner and faster than anticipated.[12]

The costs of AROs are often reported with heavy discounting on the premise that they will come due long in the future. However, increasing climate transition and regulatory risk is shrinking the time horizon for oil and gas production. Accordingly, decommissioning and closure costs may not be so far off. To ensure that investors have an accurate picture of their exposure to these liabilities, the SEC should require oil and gas producers to disclose information on actual and projected AROs, reflecting both the increased uncertainty regarding the timing of well closure and the speed at which companies may be required to decommission wells. Such information is also necessary to permit investors to assess the financial implications of various climate policy scenarios for the company's business, because the pace of the transition will affect timing and cost of closures.

It is also noteworthy that asset retirement obligations for unconventional ("hydraulic fracturing" or "fracking")[13] and deepwater[14] wells will be larger than those for conventional wells due to the increased depth and length of the wells themselves.

The greater cost of closure and more rapid timelines for retirement present significant financial risks for investors in oil and gas companies, especially those with significant fracking and deepwater operations.

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[12] Carbon Tracker Initiative, It's Closing Time (2020), at 14-18.
[13] *Id.* at 19-35.
[14] Center for International Environmental Law, Toxic Assets: Making Polluters Pay When Wells Run Dry and the Bill Comes Due (2021), at 19.

Investors should have access to information regarding the likely cost and timeline of closure for oil and gas operators' wells, beyond the opaque, discounted figures presented in balance sheets.

In response to Question 2, CIEL recommends the SEC require companies with upstream oil and gas operations to disclose adequate information for investors to understand the true scale and scope of the company's AROs. This could include:

1. The number of producing and idle wells, and wells under development, in an operator's portfolio and the average actual or projected length of wells;
2. A reasonable estimate of the cost of closing wells based on length, depth, complexity, location, and other relevant factors;
3. A reasonable estimate, for each well or group of wells, of when its functional operating life will end, whether or not it is permitted to remain idle for some period thereafter.

Thank you for your attention to this urgent issue. We look forward to continuing to engage in subsequent rulemaking to support the SEC in producing a robust and comprehensive framework for climate-related financial disclosures.

Sincerely,

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