July 21, 2016

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

Submitted via: http://www.sec.gov/rules/concept.shtml

Dear Secretary:

Re: File Number S7-06-16 - Release No. 33-10064; 34-77599 – Business and Financial Disclosure required by Regulation S-K

We are writing in response to the request for comments on the Concept Release on business and financial disclosure required by Regulation S-K.[1] We commend the Securities and Exchange Commission (SEC) for continuing to conduct extensive stakeholder consultation on its regulatory agenda.

NEI Investments is a Canadian investment management company with approximately C$6 billion in assets under management (AUM), and is the oldest and largest provider of retail responsible investment funds in Canada. Our approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will build long-term sustainable value for all stakeholders and provide higher risk-adjusted returns to shareholders. The company evaluations, corporate engagement and research activities we conduct to fulfill our responsible investment commitments give us insight into companies' progress in responding to sustainability risks, the obstacles they face, and how appropriate policy could support their efforts.

We note that a number of networks with which we are associated have submitted comments on the Concept Release, including the Principles for Responsible Investment (PRI), CDP, and the Interfaith Center for Corporate Responsibility (ICCR). We are signatory to a submission from the PRI-coordinated investor task force on corporate tax responsibility, providing information relevant for the tax disclosure matters covered in the Concept Release. We would also like to highlight the submission of the Sustainability Accounting Standards Board (SASB), as we are making significant use of SASB Provisional Standards and have participated in its consultations.

We are submitting these additional comments, focusing on ESG disclosure requirements, as a non-U.S. investor in U.S. securities, which represent a substantial proportion of our holdings. We encourage the SEC to take into account the perspective of non-U.S. investment institutions that are stakeholders in U.S. markets. In this context, we would like to share that within our materiality-based ESG evaluations practice, our experience is that disclosure by U.S. issuers of the ESG information that we consider to be material lags that of Canadian and European issuers of a comparable size. This impacts our investment decision-making and engagement activities regarding U.S. issuers, including proxy voting.

[1] SEC (2016). Concept Release on Business and Financial Disclosure Required by Regulation S-K. https://www.sec.gov/rules/concept/2016/33-10064.pdf

Key comments

We welcome the SEC's consultation on the potential to enhance ESG disclosure through requirements under Regulation S-K. As ESG investment practitioners, at present we cannot find material ESG information on a consistent and comparable basis in 10-K reporting, even though in theory at least some of this information should already be disclosed under current principles-based requirements. Clearly further policy intervention is needed, and we urge the SEC to promote the outcome that all U.S. issuers will provide meaningful, comparable disclosure on material ESG matters in their 10-K reporting, enabling ESG investment processes and spurring improved ESG performance by issuers. We believe that a mixed regulatory approach is likely to be the best way to achieve this outcome.

ESG disclosure requirements

We believe that the key to promoting better ESG disclosure at the specific issue level is to require better ESG disclosure at the strategic level. At the strategic level, we believe companies should be required to disclose if and how they are identifying and prioritizing the ESG issues that are material to their specific circumstances, and the outcome of this ESG materiality assessment. Any material ESG issues should then be integrated to the description of the company strategy. We believe requirements generating strategic ESG content would provide important information for investor decision-making and engagement with issuers, enable issuers to report more effectively on ESG matters at the specific topic level under principles-based requirements, and create a contextual framework for understanding the significance of those disclosures. Prescriptive requirements may be appropriate for strategic ESG disclosure. In this context, we would like to draw attention to the Integrated Reporting <IR> initiative, which focuses on holistic disclosure on business strategy.[2]

A limited range of specific ESG issues are near-universally material to all U.S. companies (such as employee diversity), or pose a systemic risk to markets and economies (such as climate change), so that investors may seek to understand the extent to which every company in their portfolio impacts or is impacted by that issue. We believe all companies should either disclose on these types of issues, or provide a meaningful explanation of why they are immaterial to the specific circumstances of the company. The SEC should consider creating a formal obligation to report on specific issues in these categories through prescriptive requirements if there is no other way to guarantee that all companies will "comply or explain", while directing companies to follow established ESG standards and guidelines with respect to the details of how to report. In this context we encourage the SEC to take into account the results of the ongoing Financial Stability Board (FSB) Task Force on Climate-related Financial Disclosure,[3] which is scheduled to report in late 2016; and we would also like to draw attention to the UN Guiding Principles on Business and Human Rights Reporting Framework.[4]

Many ESG issues are highly material to certain sectors or corporate structures, but immaterial to others. These issues are less suited to be addressed by prescriptive line-item requirements, and it would be challenging for the SEC to maintain up-to-date requirements covering the full range of potentially-material issues, as these can change over time. We believe principles-based requirements could steer companies to provide meaningful disclosure on the specific ESG issues that have been identified through the materiality assessment process. For comparability, this disclosure should be prepared in accordance with established standards and guidelines that have been developed and are

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[2] Integrated Reporting <IR>. http://integratedreporting.org/
[3] Financial Stability Board Task Force on Climate-related Financial Disclosure. https://www.fsb-tcfd.org/
[4] UN Guiding Principles Reporting Framework. http://www.ungpreporting.org/

regularly updated through a robust stakeholder process, and issuers should indicate which standards and guidelines have been used. In this context we draw attention to the industry-specific SASB Provisional Standards,[5] which have been designed to support ESG disclosure through the 10-K report. Where an issue is both complex and highly material, it would be helpful to investors if companies provided links within the 10-K to additional ESG information on company websites or in other reports.

The SEC should amend its approach so that issuers are positively encouraged to explain how ESG risks are being addressed and mitigated. It is critical to our investment processes that we should have access to information not only on the risks facing companies, but also on the policies and practices they have adopted to address those risks, and their performance in doing so.

Investors are the key audience for 10-K reporting, but they are not the only stakeholders for companies. As such, companies should in no way be discouraged by the SEC from also providing reporting in other formats oriented to other stakeholder audiences.

Evolution in definitions of "materiality"

We believe the quality of disclosure on ESG issues can be significantly enhanced under the current definition of materiality. However, we would like to draw the SEC's attention to several considerations regarding the scope of information that could be considered material in the context of "mainstream" investment decision-making.

Firstly, as noted above, it is clear that the range ESG issues that could be considered material under the current definition of materiality is in constant evolution. As an example: we faced considerable scepticism within the investment community a decade ago when we began to advance the idea that free, prior and informed consent (FPIC) was not only an ethical concern, but might be emerging as a material consideration for issuers developing extractives projects in Aboriginal traditional territories in Canada. Today, against the background of the Supreme Court of Canada's Tsilhqot'in decision[6] on Aboriginal title, the Government of Canada's announcements of support for the UN Declaration on the Rights of Aboriginal Peoples,[7] and demonstrated capacity of Aboriginal communities to halt projects, it is increasingly difficult to argue that FPIC is not a salient issue for companies seeking the successful development of extractive industry projects in Canada, and that it is anything other than a material issue for investors.

Secondly, evolution in our understanding of <u>investor</u> responsibilities may lead to changing expectations regarding <u>investee</u> disclosure. Various submissions have pointed to the growing consensus that consideration of ESG issues that are potentially material to the value of an investment is not only consistent with, but indeed an obligation under, the fiduciary duty of investment institutions. However, there is also an emerging international debate about the extent to which investors may be obligated to consider systemic risks and uphold sustainability norms, beyond consideration of the impact of ESG factors on the value of an investment. In this context, we would like to highlight the ongoing process to define responsible business conduct of financial institutions under the auspices of the Organization for Economic Cooperation and Development (OECD), of which both the U.S. and Canada are members.

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[5] Sustainability Accounting Standards Board. http://www.sasb.org/
[6] Tsilhqot'in Nation v. British Columbia (2014). http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do
[7] Government of Canada (2016). "Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples." http://news.gc.ca/web/article-en.do?mthd=tp&crtr.page=1&nid=1063339&crtr.tp1D=1&_ga=1.40822306.1066794629.1422563602

These discussions focus on the responsibility of investors to conduct due diligence regarding actions by investee companies that may constitute rights abuses in the context of the OECD Guidelines for Multinational Enterprises, the only multilaterally-agreed and comprehensive code of responsible business conduct that governments have committed to promoting.[8] We also note the emergence of stewardship codes addressing investor responsibilities. In this context, the International Corporate Governance Network has recently adopted a set of global stewardship principles that acknowledge the need to prioritize the mitigation of systemic ESG risks and respect for basic norms such as human rights over short term value.[9] These developments are creating additional impetus for investors to conduct ESG monitoring of their investments and to engage in dialogue with companies in their holdings, extending the range of investment processes requiring ESG information. They may also lead to an extension of the scope of ESG information sought by "mainstream" investors, beyond that which may be recognized as immediately material to the value of an investee company, to encompass what is material to rights-holders negatively impacted by that company.

Request for Comment

Below we set out our comments on selected questions from the Request for Comment, focusing primarily on the question of how to improve ESG disclosure from the perspective of our institution as an ESG investment practitioner. As far as possible we have omitted questions where we felt we had nothing to add to the perspectives shared in other submissions by our networks.

Question 7

Should we limit prescriptive disclosure requirements and emphasize a principles-based approach? If so, how? How can we most effectively balance the benefits of a principles-based approach while preserving the benefits of prescriptive requirements?

We feel that a mix of prescriptive and principles-based requirements is likely to deliver the best results in terms of ESG disclosure. We are not getting the material ESG information we need now on a consistent and comparable basis in 10-K reporting, even though material ESG information should already be disclosed through current requirements under the principles-based approach. So it is clear that some further policy intervention is needed. However, over-use of prescriptive line-item ESG disclosure requirements may result in effort being directed to the disclosure of immaterial information at the expense of material information. In general, prescriptive requirements may be appropriate for disclosure relating to the company's overall strategy with respect to material ESG issues, and where an ESG issue is near-universally material or represents a systemic risk. A principles-based approach may be more appropriate where the materiality of an issue is defined by the industry within which a company operates, the corporate structure, or individual company circumstances.

Question 9

Do registrants find it difficult to apply principles-based requirements? Why?

As has been noted in other submissions, in theory several current principles-based requirements should already be generating material ESG information within 10-K reports, but in practice issuers are not disclosing meaningful information on a consistent and comparable basis. When it comes to ESG, it

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[8] OECD Responsible Business Conduct in the financial sector. https://mneguidelines.oecd.org/rbc-financial-sector.htm
[9] ICGN (2016). Draft ICGN Global Stewardship Principles. https://www.icgn.org/sites/default/files/Item%209_ICGN%20Global%20Stewardship%20Principles_1.pdf

seems clear that registrants are finding it difficult to apply principles-based requirements. In our view, some steps are missing that could enable issuers to provide effective ESG disclosure under principles-based requirements.

We believe that the key to promoting better ESG disclosure at the specific issue level is to require better ESG disclosure at the strategic level. At the strategic level, we believe companies should be required to disclose if and how they are identifying and prioritizing the ESG issues that are material to their specific circumstances, and the outcome of this ESG materiality assessment. Material ESG issues should then be integrated to the description of the company strategy. We believe requirements generating strategic ESG content would provide important information for investor decision-making and engagement with issuers, enable issuers to report more effectively on ESG matters at the specific topic level under principles-based requirements, and create a contextual framework for understanding the significance of those disclosures. Prescriptive requirements may be appropriate for strategic ESG disclosure.

If they are uncertain about whether information is to be disclosed, do registrants err on the side of including or omitting the disclosure? If registrants include disclosure beyond what is required, does the additional information obfuscate the information that is important to investors? Does it instead provide useful information to investors?

In our experience of examining disclosure in order to conduct our materiality-based ESG evaluations, it is more often the case that issuers omit important information when they are unsure if it is material, rather than include it. We certainly do not find it helpful when companies include pages of boilerplate disclosure on ESG risk without explaining its significance to the circumstances of the company, or what steps have been taken that could mitigate the risk. However, leadership companies should not be discouraged from providing additional ESG information beyond what is required, as these disclosure innovations are important contributions to the development of good practices.

Question 27

Should we revise Item 101(a)(1) to require disclosure of a registrant's business strategy? Would investors find such a disclosure important or useful? If so, should this requirement be included in a registrant's MD&A? Should we define "business strategy"? If so, how?

A requirement to disclose on business strategy, including ESG aspects, would create important context for other ESG disclosures. As a possible source of guidance for issuers, we would like to draw attention to the Integrated Reporting <IR> initiative, which focuses on holistic disclosure of business strategy.[10] As an element of ESG disclosure on business strategy, we believe all registrants should describe how the company is positioned and positioning to deliver long-term sustainable value in a future economy that, based on international agreements to address climate change, is likely to be carbon-constrained.

Question 145

How could we improve risk factor disclosure? For example, should we revise our rules to require that each risk factor be accompanied by a specific discussion of how the registrant is addressing the risk?

As has been noted in other submissions, much of the current disclosure on ESG risks is boilerplate, and there is a lack of disclosure on how risks are being mitigated. We outlined above the importance of

[10] Integrated Reporting <IR>. http://integratedreporting.org/

knowing if and how a company has identified and prioritized the ESG issues that are material to the specific circumstances of the company, what the outcome of this materiality assessment was, and how the results have been integrated to the company strategy. We believe requirements that elicit this strategic context would help to improve the quality of ESG risk disclosure.

In our sector-specific material risk ESG analysis process, we look for evidence of how companies are addressing material ESG risks that are associated with their industry. Where we are unable to establish that effective mitigation is in place, this can become a barrier to investment. Many of our corporate engagement dialogues are initiated precisely because although a company appears to share our perspective that a specific ESG issue is a material risk, we have been unable to ascertain from the 10-K or any other company disclosure what actions the company may be undertaking to mitigate this risk. We impress upon companies in our dialogues that if we both agree that a risk may be material it is incumbent on the company to inform all investors about what is being done to mitigate that risk. We would therefore welcome action by the SEC directing companies to discuss policies and practices that have been put in place to mitigate material ESG risks, as well as the company's performance in risk mitigation efforts.

Disclosure of Sustainability Factors

Question 216

Are there specific sustainability or public policy issues 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?

As expressed earlier, we believe that a missing step for enhancing disclosure is to elicit information on strategic ESG matters, including on the company's ESG materiality assessment. Once this framework was disclosed, the likelihood would be increased that principles-based requirements would deliver meaningful disclosure on specific ESG issues.

The range of ESG issues that can be potentially material continues to expand. While governance issues tend to be of universal relevance, many of the environmental and social issues that inform our investment processes are specific to particular industries or business approaches. By way of illustration, in the past we endeavoured to bring all the environmental and social issues that were relevant for our voting into our Proxy Voting Guidelines. Eventually our Guidelines became excessively long and impractical to update on this basis, and instead we moved to a system of including specific guidelines on a few widely-applicable environmental and social concerns, addressing other concerns by referencing sector and issue guidelines and initiatives that influence our investment decision-making.[11]

In the same way, we believe it would be impractical for the SEC to issue and keep updated specific rule-based disclosure requirements covering the full range of issues likely to be material in a specific company context. We would prefer to see the SEC steer issuers to the use of widely-accepted materiality-based ESG reporting frameworks that are subject to periodic update based on a robust stakeholder process, while requiring issuers to indicate which standards and guidelines have been used.

[11] NEI Investments (2016). Proxy Voting Guidelines. https://www.neiinvestments.com/documents/FlippingBooks/Proxy%20Voting%20Guidelines%202016/index.html

In this context we draw attention to the industry-specific SASB Provisional Standards,[12] which have been designed to support ESG disclosure through the 10-K report.

A smaller range of ESG issues are near-universally material, such as diversity, or represent a systemic risk, such as climate change (almost every company impacts or is impacted somehow by the climate issue, and the consequences will have impact across the economy). The public policy activities of companies may also present a systemic risk: for example, if companies are lobbying against policy that would be enabling for climate risk mitigation or adaptation, or that would mitigate risks to the economy and financial system as a whole. We believe all companies should either disclose on these issues, or provide a meaningful explanation of why they are immaterial to the specific circumstances of the company. The SEC should consider creating a formal obligation to report on specific issues in the universal and systemic categories through prescriptive requirements if there is no other way to guarantee that all companies will "comply or explain"; at least, the SEC should consider treating these issues differently from issues that are certainly material, but only in more restricted contexts. Once again, the SEC should direct companies to follow established ESG standards and guidelines with respect to the details of how to report on these issues. In this context we encourage the SEC to take into account the results of the ongoing Financial Stability Board (FSB) Task Force on Climate-related Financial Disclosure,[13] which is scheduled to report in late 2016; and we would also like to draw attention to the UN Guiding Principles on Business and Human Rights Reporting Framework.[14]

In general we favour the "comply or explain" approach to specific disclosure requirements: in our experience this approach is helpful to many companies for determining how to frame information, but also allows companies for which an issue is genuinely not relevant to explain why.

Question 217

Would line-item requirements for disclosure about sustainability or public policy issues cause registrants to disclose information that is not material to investors? Would these disclosures obscure information that is important to an understanding of a registrant's business and financial condition? Why or why not?

Line-item requirements may be more appropriate in the case of information that helps investors to understand the overall ESG strategy and approach of a company, and for ESG issues that pose systemic risk or are of near-universal materiality. If all companies were directed to provide disclosure on ESG materiality assessment, more meaningful disclosure on specific ESG risks might be generated under the current principles-based requirements – particularly if requirements on risk disclosure were revised to include disclosure on how risk is being addressed. For the reasons noted in comments on Question 216, wider use of line-item requirements could result in disclosure that is immaterial to the situation of a specific issuer. We are somewhat concerned that this would obscure understanding of the registrant's situation, but much more concerned that it might lead to limited reporting resources being diverted to providing disclosure on immaterial issues at the expense of disclosure on other issues that are material to the company, but not covered by explicit requirements.

Question 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

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[12] Sustainability Accounting Standards Board. http://www.sasb.org/
[13] Financial Stability Board Task Force on Climate-related Financial Disclosure. https://www.fsb-tcfd.org/
[14] UN Guiding Principles Reporting Framework. http://www.ungpreporting.org/

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?

Issuers should in no way be discouraged from providing separate corporate sustainability reports or sustainability website areas. Shareholders are important stakeholders, but they are not the only stakeholders with which a company may need to communicate on sustainability issues. Voluntary reporting by sustainability leadership companies may also help to surface emerging ESG issues that prove to be material to investors in the longer term. However, these reports are not ideal for communicating ESG information to investors because they must respond to the sustainability information needs of a wider group of stakeholders, which may differ from those of investors as to both topics covered and depth of coverage.

The SEC's disclosure regime should focus primarily on the information needs of investors. While we acknowledge the important rights of other stakeholders to information that is material to their needs, disclosure requirements regulated by the SEC should be oriented to effective communication from issuers to investors. Where there is a broader societal interest in mandating that companies should disclose sustainability information beyond what is material for investors, regulatory mechanisms other than SEC rule-making are more appropriate, and the company website or a centralized database may be the most appropriate location for such disclosures. For example, in the U.S. context, the California Transparency in Supply Chains Act requires retailers and manufacturers doing business in California to disclose their efforts to eradicate slavery and trafficking from the supply chain on their websites;[15] while in Canada, the Extractive Sector Transparency Measures Act requires extractives companies doing business in Canada to report on payments to governments to the ministry, Natural Resources Canada, which will host the reports on its website.[16] This approach also ensures that sustainability reporting requirements with a wider societal purpose do not discourage companies from listing, as they apply to both public-traded and private companies.

Issuers may choose to respond to requests for information from investor-oriented ESG research houses and benchmarking initiatives because a strong response has reputational benefits within the investment community, while a non-response may be viewed negatively. The reputational impact is likely to be amplified by recent initiatives to produce ESG ratings for investment funds based on the underlying ESG ratings of the issuers represented within the fund assets. However, the information collected through these research processes may extend beyond what is most material to a specific company, and in many cases may not be made available beyond the client or membership base of the research provider.

How important to investors is integrated reporting, as opposed to separate financial and sustainability reporting?

If information is material for investors, it should be included in the 10-K report. If material ESG disclosures are confined to a report or website that also contains investor-immaterial information directed at other stakeholders, and isolated from material financial disclosures, a barrier is created to more effective integration of ESG information into investment decision-making in support of long-term sustainable value creation.

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[15] California Transparency in Supply Chains Act. http://www.state.gov/documents/organization/164934.pdf
[16] Extractive Sector Transparency Measures Act. http://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-2.html#docCont

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?

We do not believe that it would be acceptable to simply allow issuers to direct investors to their website for all ESG information, with no framework of ESG disclosure within the 10-K. Information on company websites can be difficult to locate and it is often unclear to us when it was posted or last reviewed. From our perspective, it would be acceptable for issuers to provide key information in the 10-K report and point investors to additional detail on the company website. As a concrete example: in the SASB Provisional Standards for Apparel, Accessories and Footwear, the topic of labour conditions in the supply chain includes an accounting metric for 10-K disclosure on supplier audit coverage, but directs registrants to disclose the location where its supplier code of conduct (which could be a lengthy document) can be viewed.[17]

Question 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?

As noted above, we are cautious about the need for line-item requirements in relation to many ESG issues. Rather than extracting line-item requirements from sustainability reporting frameworks, we feel that it would be more appropriate to steer issuers towards using established frameworks, guidelines and standards that are periodically updated based on a robust stakeholder process to report on any ESG issues that have been identified as material to the company. This would reduce the need for the SEC to devote resources to maintenance of its own ESG requirements. We draw attention to the following frameworks that have been mentioned earlier:

- the Integrated Reporting <IR> initiative, which focuses on holistic disclosure on business strategy;[18]
- the ongoing Financial Stability Board (FSB) Task Force on Climate-related Financial Disclosure,[19] which is scheduled to report in late 2016;
- the UN Guiding Principles on Business and Human Rights Reporting Framework;[20]
- the industry-specific SASB Provisional Standards,[21] which have been designed to support ESG disclosure through the 10-K report;
- the OECD Guidelines for Multinational Enterprises, and the various sectoral Due Diligence Guidance documents,[22] noting that the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high risk areas has already been referenced by the SEC in the context of its conflict minerals rule.[23]

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[17] https://navigator.sasb.org/consumption/apparel-accessories-and-footwear/cn0501-03/cn0501-03-01
[18] Integrated Reporting <IR>. http://integratedreporting.org/
[19] Financial Stability Board Task Force on Climate-related Financial Disclosure. https://www.fsb-tcfd.org/
[20] UN Guiding Principles Reporting Framework. http://www.ungpreporting.org/
[21] Sustainability Accounting Standards Board. http://www.sasb.org/
[22] https://mneguidelines.oecd.org/
[23] https://mneguidelines.oecd.org/mining.htm

Question 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?

As expressed earlier, climate change represents a systemic risk, as almost every company impacts or is impacted somehow, and the consequences will have impact across the economy. We believe all companies should either disclose on systemic ESG issues, or provide a meaningful explanation of why they are immaterial to the specific circumstances of the company. The SEC should consider creating a formal obligation to report on climate issues through prescriptive requirements if there is no other way to guarantee that all companies will "comply or explain"; at least, the SEC should consider treating this issue differently from issues that are certainly material, but only in more restricted contexts.

We encourage the SEC to review the approach to climate disclosure based on the results of the ongoing Financial Stability Board (FSB) Task Force on Climate-related Financial Disclosure,[24] which is scheduled to report in late 2016.

In our April 2016 submission to the FSB Task Force,[25] we identified five pieces of information that we believe are near-universally material for issuers: we quote this content below.

1. ***Company strategy for mitigating the risks of climate change****. This is the key piece of information that we believe is material to every sector. This should be in a narrative form and should provide details on any concrete strategies the company employs to mitigate risks and identify opportunities, including a discussion of any targets or objectives the company has set in relation to the issue. It would ideally address both short and long-term strategies and, at a high level, detail the company's assessment of its strategic resilience to a low carbon economy. This metric may not be quantifiable but we believe that not all climate-related disclosure need or should be quantifiable. The strategic orientation of the company is a fundamental piece of information that we actively incorporate into our final investment decision for those sectors most exposed to climate risks.*
2. ***Responsibility for climate change within the company.*** *This will also be in narrative form and should detail company oversight of climate change issues. This would include a discussion of the board's oversight role, senior management ultimately responsible for performance, whether the company ties compensation to performance against specific climate related objectives, and whether the company has specific staff responsible for managing the issue.*
3. ***Absolute and Intensity Metrics for Greenhouse Gas Emissions (GHGs****). Fundamentally, investors need to have measurable data on the actual GHG footprint of the companies they invest in. Current data on emissions is spotty and not standardized. Perhaps most importantly, not all companies provide intensity disclosures (e.g. tonnes CO2 per barrel of oil equivalent) and investors are left to estimate these on their own. Having a standardized intensity measurement for various sectors would be very useful.*

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[24] Financial Stability Board Task Force on Climate-related Financial Disclosure. https://www.fsb-tcfd.org/

[25] NEI Investments (2016). Comments on the Task Force on Climate-Related Financial Disclosure's Phase II Questions https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2016/Financial%20Stability%20Board%20Task%20Force%20on%20Climate-Related%20Disclosure%20-%20Phase%20II%20Consultation.pdf

4. ***Carbon price scenario planning.*** *This is a piece of information that is currently underreported yet would provide investors with material information. Specifically, we refer to the practice of utilizing a "shadow price on carbon" against internal decisions on capital expenditures. This would ideally incorporate disclosure of the range of prices used in the scenario planning (e.g. $15 - $70 per tonne of CO2e), discussion of how this information feeds into capital spending decisions, and a broad discussion of the materiality of the impacts of a price on carbon on the business. Essentially, we are looking for evidence that the company is stress-testing its long-term projects against the backdrop of a steadily rising price on carbon. Note that this should not be confused with asking the company to project what the price on carbon itself will be. Rather, we want to know the resilience of the company against a plausible range of carbon prices.*
5. ***Climate-related public policy and lobbying positions.*** *In the near-term, one of the biggest impediments to the adoption of robust climate change regulations is the active lobbying of individual companies and industry associations against the adoption of credible climate change legislation. While some sectors may benefit from the stalling or elimination of regulatory action on climate change in the near to mid-term, ultimately all sectors will experience negative impacts from unmitigated climate change. As such, any action taken by companies to delay effective regulations will bring risk to the entire economy, and consequently impact all investors regardless of whether they are avoiding high-carbon sectors. Companies should disclose their general position on climate change regulation, describe any lobbying activity they have engaged in, and provide disclosure on the lobbying activities of any industry associations or other third party organizations they provide funding to.*

Conclusion

Once again, we commend the SEC for seeking comments on this issue, and reiterate the following suggestions:

- To encourage better disclosure on specific ESG issues through principles-based requirements, the SEC should introduce prescriptive strategic-level requirements on ESG materiality assessment and the integration of material ESG issues to discussion of corporate strategy.
- A limited range of specific ESG issues are near-universally material, or represent systemic risk. The SEC should give special consideration to how best to ensure that all issuers either disclose on these matters, or explain why they are not material in the specific context of the company.
- Other specific ESG issues are only material to certain sectors or corporate structures, and principles-based requirements have the potential to steer companies to provide meaningful disclosure, as long as there is a requirement to disclose on the ESG materiality assessment.
- For disclosure on specific ESG issues, issuers should be directed to established materiality-based standards and guidelines that are developed and regularly updated through a robust stakeholder process. Issuers should indicate which standards and guidelines are used.
- The SEC should take into account that the scope of material ESG issues is constantly evolving, and that emerging debate on investor responsibilities and stewardship could expand the scope of information sought by investors beyond what is immediately material to the financial value of an investee company.

Please do not hesitate to contact me if you have questions about this submission.

Sincerely,
NEI Investments

Michelle de Cordova
Director, Corporate Engagement & Public Policy
[redacted]

CC:
Board of Directors, NEI Investments
Mr. Robert Walker, Vice President, ESG Services, NEI Investments
Mr. Rob Gross, Manager, ESG Operations, NEI Investments
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