



June 17, 2022

Chair Gary Gensler  
US Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549-0609

Re: Comment by Oxfam America Inc. on the enhancement and standardization of climate-related disclosures for investors

Dear Chair Gensler,

Oxfam America Inc. (Oxfam) writes in response to the Securities and Exchange Commission's (SEC or the Commission) File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rule"). We applaud the decision to introduce rules on climate-related disclosures. Oxfam recognizes the SEC's efforts in drafting this Proposed Rule. Our comment will discuss the SEC's legal authority to develop these disclosures, explain the benefits of the Proposed Rule, and offer recommendations on how the SEC could improve the Proposed Rule. Thank you for reviewing our comment.

## **I. Oxfam's Organizational Interest**

Oxfam is a global organization working to end the injustice of poverty by leading humanitarian responses to conflicts and disasters, building resilience, and supporting local organizations that develop the capacity of poor communities to grow nutritious food, access land and clean water, and obtain decent work and fair wages. Oxfam also tackles the systems, policies, and practices that keep people trapped in poverty by advocating for human rights, climate justice, gender justice, the dignity of survivors of conflicts and disasters, and against inequities in the food chain.<sup>1</sup>

Like many stakeholders, Oxfam plays multiple roles. Our organization holds shares in numerous companies, acts as a human rights and environmental risk advisor to firms with impact and ESG

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<sup>1</sup> Oxfam America website, <https://www.oxfamamerica.org/about/>

investing strategies, and supports other stakeholders in the advancement of human rights and economic development objectives. Because Oxfam engages with communities in more than 60 countries, we bring to the table information from the ground up regarding adverse human rights and environmental risks and on the global and national-level context in which companies are operating. Importantly, our employees through their pension plans hold shares in publicly listed companies and we are concerned about the health of their retirement savings.

We frequently advocate for improvements in disclosure and oversight of various social and environmental issues that help companies improve their financial prospects through sustainability and long-term value. Oxfam wholeheartedly supports the Commission's Proposed Rule to craft mandatory disclosure rules to address climate risk in financial disclosures. We believe that the Commission's efforts to maintain an effective climate-related disclosure regime for public companies is necessary and appropriate for the protection of investors and in line with public interest. The latest Intergovernmental Panel on Climate Change (IPCC) report underscores that climate change is not a future threat but a present emergency and its scale and severity continues to increase.<sup>2</sup> If insufficient action is taken to meet the Paris Agreement targets, the global economy could shrink by 10% in the next 30 years and shrink global wealth significantly by 2050.<sup>3</sup>

## II. Summary

The SEC is fulfilling its mandate to protect investors by requesting disclosure surrounding a material, if not existential, risk to shareholders--climate change. An overwhelming volume of evidence demonstrates that climate change and the accompanying natural disasters significantly alter the financial landscape for companies, and that those businesses that are transparent about the physical and transition risks better equip shareholders to determine the financial impact of investing in these companies. Investors already recognize the financial implications of climate change, with some of the world's largest asset managers like BlackRock and State Street Global Advisors (SsGA) calling upon the private sector to increase climate disclosure, and hint at using their power as shareholders to enhance climate-related financial disclosures.<sup>4</sup>

Oxfam believes the SEC has appropriately calculated the pitfalls of failing to disclose climate-related risks to investors in its economic analysis. In particular, the Commission's evaluation of a number of factors including the improved risk management, financial gains, and efficiency gains associated with such climate disclosures, shows careful consideration of the Proposed Rule's impact on efficiency, capital competition and capital formation. *See, e.g.* 15 U.S.C. § 78c(f). The Commission's thorough analysis supports its conclusion that the proposed changes are "necessary or appropriate in the public interest [and] for the protection of investors."

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<sup>2</sup> Intergovernmental Panel on Climate Change. (2022). *Sixth assessment report*. <https://www.ipcc.ch/assessment-report/ar6/>

<sup>3</sup> Guo, J., Kubli, D., & Saner, P. (2022, May 16). *The Economics of Climate Change*. Swiss Re. Retrieved June 14, 2022, from <https://www.swissre.com/institute/research/topics-and-risk-dialogues/climate-and-natural-catastrophe-risk/expertise-publication-economics-of-climate-change.html>

<sup>4</sup> See BlackRock CEO's 2022 letter to CEOs at <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter> and his 2022 letter to company Chairman's at <https://www.blackrock.com/corporate/investor-relations/larry-fink-chairmans-letter>. See State Street Global Advisors CEO's 2021 letter to on the proxy voting agenda of the company at <https://www.ssga.com/us/en/intermediary/ic/insights/ceo-letter-2022-proxy-voting-agenda> and his 2021 letter to on the proxy voting agenda of the company at <https://www.ssga.com/us/en/institutional/ic/insights/ceo-letter-2021-proxy-voting-agenda>

Oxfam recommends, however, that the SEC further improves certain facets of the rule with stronger disclosure requirements, including:

- Mandatory disclosure of Scope 3 emissions
- Sector-specific disclosure requirements
- Disclosing alignment of climate lobbying positions with Paris Agreement, and
- Ensuring that just transition disclosures are included in transition planning.

### III. The Proposed Rule is within SEC's purview

#### A. The SEC's disclosure goals are sanctioned by Congress

The Proposed Rule is consistent with the SEC's mandate from Congress in the Securities Exchange Act of 1933. Under Section 7 of the Securities Act [15 U.S.C. § 77(g)] and Sections 12, 13, and 15 [15 U.S.C. § 78(l), 78(m), and 78(o)], the SEC has authority to mandate disclosures where "necessary or appropriate in the public interest or for the protection of investors." The benefits of enhanced disclosure of climate-related financial risk information are significant, and the Commission has aptly evaluated the improved risk management, financial, and efficiency gains associated with such disclosures that will benefit investors and contribute to market stability. Importantly, Oxfam supports the Commission's thorough economic analysis in which the staff weighed the costs and benefits of the rule, compared the rule to reasonable alternatives, and assessed the anticipated effects on efficiency, competition, and capital formation. Ultimately, investors and companies will benefit from the Proposed Rule.

The SEC's regulatory authority to require disclosures is broad. "Rather than casting disclosure rules in stone, Congress opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable."<sup>5</sup> The Commission is aimed not only at regulating securities but also stopping corporate behavior that results in "manipulation and control" of prices.<sup>6</sup> Also, according to 15 U.S.C. § 77g, Congress mandated the SEC require disclosure of "such other information, and . . . such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors." Under 15 U.S.C. § 78c(f), "Whenever...the Commission is engaged in rulemaking...and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."<sup>7</sup>

The new disclosures will reduce financial risk to companies and help investors assess a security's value. For instance, in the real estate sector, climate change impacts property values in markets that are susceptible to risks from climate change, depressing the local price of homes.<sup>8</sup> In 2019, Pacific Gas and Electric Company filed for Chapter 11 bankruptcy protection citing \$30 billion in liabilities and 750

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<sup>5</sup> McGOWAN, C. J. (1979, April 20). *Natural Resources Defense Council, V. S.E.C.* Legal research tools from Casetext. Retrieved from <https://casetext.com/case/natural-resources-defense-council-v-sec>

<sup>6</sup> Legal Information Institute. (n.d.). *15 U.S. Code § 78B - Necessity for regulation*. Legal Information Institute. Retrieved from <https://www.law.cornell.edu/uscode/text/15/78b>

<sup>7</sup> Legal Information Institute. (n.d.). *15 U.S. Code § 78C - definitions and application*. Legal Information Institute. Retrieved from <https://www.law.cornell.edu/uscode/text/15/78c>

<sup>8</sup> Baldauf, M., Garlappi, L., & Yannelis, C. (2020, February 14). *Does climate change affect real estate prices? only if you believe in it*. OUP Academic. Retrieved from <https://academic.oup.com/rfs/article/33/3/1256/5735306>; Bernstein, A., Gustafson, M. T., & Lewis, R. (2019, March 23). *Disaster on the horizon: The price effect of sea level rise*. Journal of Financial Economics. Retrieved from <https://www.sciencedirect.com/science/article/abs/pii/S0304405X19300807?via%3Dihub>; and Giglio, S., Maggiori, M., Stroebel, J., & Weber, A. (2015, November 30). *Climate change and long-run discount rates: Evidence from Real Estate*. NBER. Retrieved from <https://www.nber.org/papers/w21767>

lawsuits from wildfires potentially caused by its power lines.<sup>9</sup> Impacts from climate change will fundamentally impact the balance sheets of companies across sectors.

The current corporate disclosure regime does not reflect that reality. Morgan Stanley compared sustainable and traditional funds from a period spanning 2004 to 2018 to assess performance and risk, and the findings revealed that among other things, sustainable investing represents lower risks.<sup>10</sup> Although the subject matter of the SEC's new Proposed Rule—climate change—implicates existential threats to businesses, the broader economy, and human inhabitants, from the vantage point of securities regulation, the Proposed Rule is simply part of a tradition spanning nine decades.

Importantly, the SEC is not adopting a climate policy, but asking for companies to enhance climate related disclosures. The Proposed Rule is grounded in the existing disclosure framework that serves to ensure investors have access to relevant information. It calls for increasing transparency that will allow financial market participants, business partners, and other stakeholders to engage with the disclosing firms in a more informed and orderly fashion. It is limited to disclosures on a technical topic, and the SEC has decades-long experience issuing disclosures on a variety of technical topics that are of interest to investors. As Commissioner Lee notes, “We have a responsibility to help ensure that investors have the information they need to accurately price risk and allocate capital as they see fit.”<sup>11</sup>

## ***B. The Proposed Rule is embedded in materiality considerations***

### **a. The disclosures that the Proposed Rule requires are material to investors**

Climate change poses systemic risks to capital markets. We are already experiencing the climate crises' impacts, and the effects will continue to worsen, all of which will impact investment portfolios. S&P Global Trucost reveals that almost 60% of S&P 500 companies (with a market cap of \$18 trillion) have at least one asset that is at high risk from climate change impacts.<sup>12</sup> In 2020, the US recorded 22 extreme weather events (6 more than any prior year), each of which cost over \$1 billion and collectively led to \$95 billion in damages.<sup>13</sup> According to the CDP, formerly the Carbon Disclosure Project, at least \$250 billion in assets of the world's largest companies may need to be written off or retired early as the planet heats up.<sup>14</sup> A report by the Principles for Responsible Investment (PRI) analyzed more than 2,700 companies in MSCI's ACWI Index and concluded those companies, with some of the highest level of carbon emissions, are expected to lose 43% of their value by 2025 owing to “abrupt and disruptive policy response to climate change.”<sup>15</sup>

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<sup>9</sup> Gold, R., Blunt, K., & Chin, K. (2019, January 24). *PG&E prepares for bankruptcy amid wildfire fallout*. The Wall Street Journal. Retrieved from [https://www.wsj.com/articles/pg-e-initiates-chapter-11-reorganization-for-utility-11547465293?mod=article\\_inline](https://www.wsj.com/articles/pg-e-initiates-chapter-11-reorganization-for-utility-11547465293?mod=article_inline)

<sup>10</sup> Morgan Stanley. (n.d.). *Analyzing risk and returns of sustainable funds - Morgan Stanley*. Retrieved from [https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable Reality Analyzing Risk and Returns of Sustainable Funds.pdf](https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable%20Reality%20Analyzing%20Risk%20and%20Returns%20of%20Sustainable%20Funds.pdf)

<sup>11</sup> Lee, A. (2022, March 21). *Shelter from the Storm: Helping Investors Navigate Climate Change Risk*. SEC Emblem. Retrieved from [https://www.sec.gov/news/statement/lee-climate-disclosure-20220321#\\_ftn9](https://www.sec.gov/news/statement/lee-climate-disclosure-20220321#_ftn9)

<sup>12</sup> S&P Global. (2021). *Seven ESG trends to watch in 2021*. Retrieved from <https://www.spglobal.com/en/research-insights/featured/seven-esg-trends-to-watch-in-2021>

<sup>13</sup> Id.

<sup>14</sup> CDP. (n.d.). *Global climate change analysis 2018*. Retrieved from <https://www.cdp.net/en/research/global-reports/global-climate-change-report-2018>

<sup>15</sup> PRI. (2021, March 17). *The inevitable policy response 2021: Policy forecasts*. Retrieved from [https://www.unpri.org/inevitable-policy-response/the-inevitable-policy-response-2021-policy-forecasts/7344\\_article](https://www.unpri.org/inevitable-policy-response/the-inevitable-policy-response-2021-policy-forecasts/7344_article)

The physical risks stemming from climate change can result in increasing economic uncertainty. Disruptions will impact supply chains and reverberate across global financial markets. For instance, increasing changes in temperature affect people's health and productivity and limit where and how companies can do business. The International Labor Organization (ILO) has estimated that an increase in heat related stress is likely to lead to global productivity losses that account for up to 80 million full time jobs in the year 2030.<sup>16</sup> Worker productivity will be especially compromised during the hottest months of the year.<sup>17</sup> Because of record breaking heat waves in the Pacific Northwest in 2021, the US is expected to lose on average \$100 billion in lost labor productivity.<sup>18</sup> Weather related displacements owing to floods, storms, droughts, wildfires, etc. continue to increase and can result in increasing worker shortages in downstream supply chains, disrupting trade.<sup>19</sup>

Climate change is slated to directly impact 70% of all economic sectors globally.<sup>20</sup> A survey conducted by Deloitte highlights that over 80% of executives across a range of sectors are apprehensive about the planet's future and almost 30% are already feeling the impacts.<sup>21</sup> The climate crisis will continue to impact consumers, communities, and workers across the value chain—all of which is material to shareholders.

Companies also face increasing legal challenges in court from investors, individuals, climate activists, states, and civil society. This makes disclosures materially relevant to reduce exposure to risks because of miscommunication and misinformation related to litigation brought against companies for their climate polluting activities. In the Netherlands, pension fund and asset managers are being sued in attempts to force their divestment from fossil fuels, with arguments based inter alia on fiduciary duties.<sup>22</sup> In the US, Baltimore sought damages from fossil fuel companies for climate change impacts.<sup>23</sup>

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<sup>16</sup> International Labour Organisation. (2019, July 1). *Increase in heat stress predicted to bring productivity loss equivalent to 80 million jobs*. Retrieved from [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_711917/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_711917/lang-en/index.htm)

<sup>17</sup> Masson-Delmotte, V., Zhai, P., Pörtner, H.-O., Roberts, D., Skea, J., Shukla, P. R., Pirani, A., Moufouma-Okia, W., Péan, C., Pidcock, R., Connors, S., Matthews, J. B. R., Chen, Y., Zhou, X., Gomis, M. I., Lonnoy, E., Maycock, T., Tignor, M., & Waterfield (eds.), T. (n.d.). *Global warming of 1.5°C*. IPCC. Retrieved from <https://www.ipcc.ch/sr15/>

<sup>18</sup> Arshat, A. (2021, October 29). *Extreme heat: The economic and social consequences for the United States*. Atlantic Council. Retrieved from <https://www.atlanticcouncil.org/in-depth-research-reports/report/extreme-heat-the-economic-and-social-consequences-for-the-united-states/>

<sup>19</sup> International Displacement Monitoring Centre. (2022). *2022 global report on internal displacement*. Retrieved from <https://www.internal-displacement.org/global-report/grid2022/>

<sup>20</sup> Brusset, X., & Bertrand, J. L. (2018). Hedging weather risk and coordinating supply chains. *Journal of Operations Management*, 64(1), 41–52. Retrieved from <https://doi.org/10.1016/j.jom.2018.10.002>

<sup>21</sup> Deloitte. (2021, May 19). *2021 climate check businesses views on environmental sustainability*. Retrieved from <https://www2.deloitte.com/global/en/pages/risk/articles/2021-climate-check-business-views-on-environmental-sustainability.html> and Swiss Re Institute. (2022, May 16). *The Economics of Climate Change*. Retrieved from <https://www.swissre.com/institute/research/topics-and-risk-dialogues/climate-and-natural-catastrophe-risk/expertise-publication-economics-of-climate-change.html>

<sup>22</sup> Hoekstra, T. (2021, September 15). *ABP brought to court over fossil fuel investments*. IPE. Retrieved from <https://www.ipe.com/news/abp-brought-to-court-over-fossil-fuel-investments/10054961.article> and McGuaghay, E. (2022, March 7). *Lawyer's crowdfunded case against pension scheme clears first hurdle*. King's College London. Retrieved from <https://www.kcl.ac.uk/news/lawyer-crowdfunded-case-against-pension-scheme>

<sup>23</sup> *Mayor & City Council of Baltimore v. BP P.L.C.* Climate Change Litigation. (2022, June 3). Retrieved from <http://climatecasechart.com/case/mayor-city-council-of-baltimore-v-bp-plc/> and Butler, M. (2022, April 7). *Fourth Circuit remands Baltimore's climate damage claims against oil companies to state court*. Courthouse News. Retrieved from <https://www.courthousenews.com/fourth-circuit-remands-baltimores-climate-damage-claims-against-oil-companies-to-state-court/>

Since then, several states and counties including Delaware,<sup>24</sup> New Jersey,<sup>25</sup> Hawaii<sup>26</sup>, and Vermont<sup>27</sup> have pursued suits over risks stemming from climate change. An oil major is fighting a securities fraud class litigation in Texas for failing to disclose climate risks.<sup>28</sup> Verisk Maplecroft's Climate Litigation Index identifies the United States as one of the countries' most ripe for climate change related litigation.<sup>29</sup>

Oxfam supports the addition of a new Subpart 1500 to Regulation S-K and new Article 14 to Regulation S-X to require specific disclosures of climate-related risks, greenhouse gas (GHG) emissions, and climate-related financial metrics. The risks required to be reported are those that are reasonably likely to have a material impact on a public company's business, operations, or financial conditions. The Proposed Rule notes the standard for materiality has not changed. It still stems from *TSC Indus., Inc. v. Northway, Inc.*, and subsequently *Basic Inc. v. Levinson*. A fact is material "[i]f there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."<sup>30</sup> The SEC continues to follow settled case law from the Supreme Court that evaluation of materiality should account for all relative facts, including qualitative and quantitative factors as part of the total mix.<sup>31</sup> Duties to disclose arise from existing disclosure requirements in Regulation S-K. This will help ensure that companies are making statements that are materially accurate and not misleading.

Domestic and foreign registrants would need to disclose physical risks that are acute and chronic as well as transition risks that may be technological, reputational, or regulatory in nature. These determinations are to "be similar to what is required when preparing the Management Discussion and Analysis (MD&A) section in a registration statement or annual report." The Federal Accounting Standards Advisory Board notes that a typical MD&A should "address significant events, conditions, trends and contingencies that may affect future operations."<sup>32</sup> This Proposed Rule clarifies that as climate change becomes a regular part of life, companies should disclose these risks as well and not silo or set them aside at investors' peril.

While critics of the Proposed Rule have sought to portray the information required as though it is novel or unprecedented, current market conduct clearly shows otherwise.<sup>33</sup> In fact, many large companies have experience identifying similar sustainability issues as material for over a decade. For example, according to global accounting firm KPMG, 80 percent of the world's largest 250 companies were

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<sup>24</sup> Holveck, B. (2020, September 10). *Delaware sues oil companies for lying about their products' effect on climate change*. The News Journal. Retrieved from <https://www.delawareonline.com/story/news/2020/09/10/delaware-sues-exxon-chevron-and-bp-role-climate-change/3457202001/>

<sup>25</sup> *City of Hoboken v. Exxon Mobil Corp.*, Civil Action 20-cv-14243 (D.N.J. Sep. 8, 2021)

<sup>26</sup> *City and County of Honolulu vs. Sunoco LP*, Haw. Dist. Ct., No. 1CCV-20-0000380, Docket 3/16/22 and *Jedra, C.* (2022, February 28). *Honolulu scores a win against big oil in climate change lawsuit*. Honolulu Civil Beat. Retrieved from <https://www.civilbeat.org/2022/02/honolulu-scores-a-win-against-big-oil-in-climate-change-lawsuit/>

<sup>27</sup> Malo, S. (2021, September 14). *Vermont AG takes on Exxon, Shell over climate change in new lawsuit*. Reuters. Retrieved 2022, from <https://www.reuters.com/legal/litigation/vermont-ag-takes-exxon-shell-over-climate-change-new-lawsuit-2021-09-14/>

<sup>28</sup> [https://www.govinfo.gov/app/details/USCOURTS-txnd-3\\_16-cv-03111](https://www.govinfo.gov/app/details/USCOURTS-txnd-3_16-cv-03111)

<sup>29</sup> Franca Wolf and Liz Hypes, (2021, May 28) *Climate litigation woes rise for energy firms at home, but legal jeopardy set to go global*. Verisk Maplecroft. Retrieved from <https://www.maplecroft.com/insights/analysis/carbon-heavy-corporates-in-crosshairs-as-risks-of-climate-lawsuits-grow/>

<sup>30</sup> *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) & *Basic Inc. Vs Levinson*, 489 U.S. 224 (1988)

<sup>31</sup> Munter, P. (2022, March 9). *Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors*. SEC Emblem. Retrieved from [https://www.sec.gov/news/statement/munter-statement-assessing-materiality-030922#\\_edn4](https://www.sec.gov/news/statement/munter-statement-assessing-materiality-030922#_edn4)

<sup>32</sup> Gilliam, R. (2022, June 7). *Management's discussion and analysis (MD&A)*. The Federal Accounting Standards Advisory Board. Retrieved from <https://fasab.gov/projects/active-projects/mda-amendments/> and *Handbook sffac 3 - fasab*. (n.d.). The Federal Accounting Standards Advisory Board. Retrieved from [http://files.fasab.gov/pdf/files/handbook\\_sffac\\_3.pdf](http://files.fasab.gov/pdf/files/handbook_sffac_3.pdf)

<sup>33</sup> Pierce, H. (2022, March 21). *We are Not the Securities and Environment Commission - At Least Not Yet*. SEC Emblem. Retrieved from <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>

already identifying material sustainability issues in their reporting in 2013.<sup>34</sup> Partially in response to the fact that such reporting was already happening, but in different ways, in different places, and using different language, in 2020 the five framework and standard setting institutions for international reporting standards — CDP, Climate Disclosure Standards Board (CDSB), the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC), and the Sustainability Accounting Standards Board (SASB) -- came together to provide clarity and help eliminate confusion on sustainability disclosure.<sup>35</sup> The Task Force on Climate-Related Financial Disclosures (TCFD) has similarly taken on this role since 2015 to help provide clarity to a complex and evolving field.

As institutions grapple with double materiality, dynamic materiality, and other issues around the special complexities with climate and sustainability, it is important to note that materiality is meant to be flexible as times change. That underlying principal stems from the Supreme Court's holding that rejected a bright line test for materiality in *Basic*.<sup>36</sup> The SEC's action builds off those initiatives and will ensure that issuers speak in the same language. Given the increasing probability and magnitude of climate risks, the SEC is acting consistent with its authority to require disclosures of risks that are of material interest to the reasonable investor and providing clarity on how to go about reporting.

### ***C. The Proposed Rule fits within the Supreme Court definition of a reasonable investor's expectations***

There is significant evidence that climate change is material and relevant to investors. Investors are engaging companies individually and in coalitions to access more information about companies' actions to stem risks to their businesses from climate change. A survey in 2020 of over 400 institutional investors revealed that a majority value climate risk reporting as much as they do financial reporting, while one third were of the view that climate risk reporting is even more important than financial reporting.<sup>37</sup> Initiatives to ensure that companies are aligned with the goals set out in the Paris Agreement and with investors' own climate targets include the Climate Action 100+, the Institutional Investors Group on Climate Change, the recently formed Glasgow Financial Alliance for Net Zero (GFANZ), and the Investor Agenda: Accelerating Action for a Low Carbon World.

Investors have called on governments to mandate climate change related risk disclosures from companies that would be beneficial to aid them in managing investment risk. In April 2021, US investor groups Ceres and the PRI in conjunction with the CDP wrote to Congress supporting mandatory climate disclosure to protect investments.<sup>38</sup> In June 2021, more than 450 investors managing \$41 trillion in assets under management (AUM) wrote to world leaders calling for, among other things, the

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<sup>34</sup> KPMG *International Sustainable Insight*. (n.d.). KPMG. Retrieved from <https://assets.kpmg/content/dam/kpmg/pdf/2014/10/materiality-assessment.pdf>

<sup>35</sup> World Economic Forum and Deloitte. (2020, September). *Statement of intent to work together towards comprehensive corporate*. Retrieved from <https://29kjwb3armds2g3gi4lq2sx1-wpengine.netdna-ssl.com/wp-content/uploads/Statement-of-Intent-to-Work-Together-Towards-Comprehensive-Corporate-Reporting.pdf>

<sup>36</sup> *Basic, inc. v. Levinson*, 485 U.S. 224 (1988). Justia Law. (n.d.). Retrieved from <https://supreme.justia.com/cases/federal/us/485/224/>

<sup>37</sup> Krueger, P., Sautner, Z., & Starks, L. T. (2020). *The importance of climate risks for institutional investors*. *The Review of Financial Studies*, 33(3), 1067–1111. Retrieved from <https://doi.org/10.1093/rfs/hhz137>

<sup>38</sup> The Investor Agenda. (n.d.). *The investor agenda | accelerating action for a net-zero emissions economy*. Retrieved from [https://theinvestoragenda.org/wp-content/uploads/2021/04/FINAL\\_US-Investor-Groups\\_IA-Biden-Letter.pdf](https://theinvestoragenda.org/wp-content/uploads/2021/04/FINAL_US-Investor-Groups_IA-Biden-Letter.pdf)

implementation of mandatory climate risk disclosure requirements.<sup>39</sup> In October 2021, global institutional investors with over \$50 trillion AUM called on governments to implement mandatory climate risk disclosures among a suite of other measures to combat climate change.<sup>40</sup>

A state of the industry report, “Tipping Points 2016,” collected data from 50 institutions, including 28 asset owners and 22 asset managers.<sup>41</sup> The report found that institutional investors (1) consider and manage their impacts on environmental, societal, and financial systems, and (2) consider those systems’ impacts on their portfolios, with financial returns and risk reduction being two primary motivators for approaching investment decisions on a systemic basis.<sup>42</sup> The report shows asset owners not only consider the financial hazards they perceive from ESG risk at the level of specific securities and industries but are also concerned with measuring and managing climate risk on an overall portfolio basis. The combined effects of climate change across the economy are projected to have substantial negative, long-term, portfolio-wide implications.

Investor interest in this topic is further underscored through statements by the world’s largest asset managers. BlackRock CEO Larry Fink’s Annual Letter examined the ways in which “Climate Risk is Investment Risk,” observing:

**Climate change has become a defining factor in companies’ long-term prospects.** Last September, when millions of people took to the streets to demand action on climate change, many of them emphasized the significant and lasting impact that it will have on economic growth and prosperity – a risk that markets to date have been slower to reflect. But awareness is rapidly changing, and I believe we are on the edge of a fundamental reshaping of finance. **The evidence on climate risk is compelling investors to reassess core assumptions about modern finance.**<sup>43</sup>

BlackRock is hardly alone. SsGA followed suit soon after, issuing a statement that not only reaffirmed that climate poses a serious investment risk, but **telling companies that inertia on ESG issues poses a material risk and is unacceptable.**<sup>44</sup>

Other large institutional investors have expressed similar views. Anne Simpson, former Director of Board Governance and Strategy at California Public Employees’ Retirement System (CalPERS) stated: “Mapping a company’s carbon footprint, or the emissions it produces, and measuring its progress in this area is an important and growing part of our portfolio analysis. Over the long-term investors are saying to these companies that we want them to align their business strategy with the Paris Agreement.”<sup>45</sup> Ingrid Dyott, Portfolio Manager of the \$2.5 billion Neuberger Berman Socially Responsive Fund, notes the weaknesses companies expose themselves to when not setting Science-based Targets (SBTs): “If [companies] can’t show that they’ve systems in place to manage their environmental challenges then it suggests that

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<sup>39</sup> Egan, M. (2021, June 10). *Investors holding \$41 trillion demand action on climate - now*. CNN. Retrieved from <https://www.cnn.com/2021/06/10/investing/climate-change-g7-investors/index.html>

<sup>40</sup> The Investor Agenda. (n.d.). *Investor agenda for climate change – united nations environment – finance initiative*. UNEP FI. Retrieved June 14, 2022, from <https://www.unepfi.org/climate-change/investor-agenda-for-climate-change/>

<sup>41</sup> Burckart, W. (2022, April 21). *State of the industry analysis: Tipping points 2016*. TIIP The Investment Integration Project. Retrieved from <http://tiiproject.com/tipping-points-2016>

<sup>42</sup> Id.

<sup>43</sup> See Larry Fink CEO Letter at <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter> (emphasis added)

<sup>44</sup> Chasan, E. (2020, January 28). *State Street Tells Companies That ESG Moves Are No Longer Optional*. Bloomberg. Retrieved from <https://www.bloomberg.com/news/articles/2020-01-28/state-street-tells-companies-esg-moves-are-no-longeroptional> (emphasis added)

<sup>45</sup> See SBTi at <http://sciencebasedtargets.org/what-investors-are-saying/>

management may not be up to standard in other areas too.”<sup>46</sup> Likewise, Jeanett Bergan, Head of Responsible Investment at KLP, states: “If we as active owners improve the performance of CO2 intensive companies, that will help us secure better returns in the future.”<sup>47</sup>

In the absence of mandatory climate-related risk disclosures, investors have for the last several years been mounting pressure on companies via the shareholder resolution route to demand increased disclosure on climate. Shareholder resolutions on climate change have consistently been a prominent feature of companies’ annual meetings over the past decade. Investors have filed numerous resolutions at a host of companies asking for more disclosure related to companies risks from and impacts to climate change (94 in 2016, 82 in 2017, 82 in 2018, 43 in 2019, 44 in 2020, 66 in 2021)<sup>48</sup>. A study of shareholder activism at S&P500 companies between 2010 and 2016 revealed that after companies are induced to make climate change disclosures, their stock price increases on average by 1.21% (market-adjusted basis).<sup>49</sup> Many of the climate-related shareholder resolutions have received more than 30% support from investors, indicating the desire from a significant number of investors for more climate related information from companies.

The push for disclosure has come from small or retail investors and large investors alike. Large investors are increasingly willing to vote in favor of climate-related shareholder proposals and to reject corporate management that fails in disclosing climate risks. Some of the world’s largest shareholders, including BlackRock, SsGA, and Vanguard, are also asking companies to increase disclosure to assess risks and impacts to their investments.<sup>50</sup> This year, all three of these asset managers also updated their proxy voting guidelines which included voting considerations based on, among other things, companies’ climate related disclosures.<sup>51</sup> In 2020, following ExxonMobil’s successful efforts to block a resolution on alignment with Paris Agreement, the Church of England along with New York State Common Retirement Fund urged shareholders to vote against re-electing the company’s entire board.<sup>52</sup> In 2020, New York City’s pension system launched a Vote No campaign to remove former ExxonMobil CEO Lee Raymond from its board over lack of climate competency needed to fulfill his duties when it comes to climate-change risks.<sup>53</sup> Last year’s proxy season was clearly a watershed moment with the hedge fund Engine No. 1 and California State Teachers’ Retirement System (CalSTRS) presenting an alternate slate of

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<sup>46</sup> Id.

<sup>47</sup> See Case Study on KLP at <https://www.cdp.net/en/articles/investor/klp>

<sup>48</sup> Data sourced from annual Proxy Preview reports. Available at <https://www.proxypreview.org/previous-reports>

<sup>49</sup> Flammer, C., Toffel, M. W., & Viswanathan, K. (2021). *Shareholder activism and firms' voluntary disclosure of climate change risks*. *Strategic Management Journal*, 42(10), 1850–1879. Retrieved from <https://doi.org/10.1002/smi.3313>

<sup>50</sup> See BlackRock Investment Stewardship on climate risk and the global energy transition at <https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf>, BlackRock 2022 Letter to CEOs at <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>; BlackRock’s 2020 Letter to CEOs at <https://www.blackrock.com/us/individual/larry-fink-ceo-letter>; BlackRock’s 2018 Letter to CEOs at <https://www.nytimes.com/interactive/2018/01/16/business/dealbook/document-BlackRock-s-Laurence-Fink-Urges-C-E-O-s-to-Focus.html?dlbk>; Kerber, R. (2017, March 13). *Exclusive: Blackrock vows new pressure on climate, board diversity*. Reuters. Retrieved from <https://www.reuters.com/article/us-blackrock-climate-exclusive/exclusive-blackrock-vows-new-pressure-on-climate-board-diversity-idUSKBN16K0CR>; and See State Street CEO Letter on its 2022 Proxy Voting Agenda at <https://www.ssga.com/us/en/intermediary/ic/insights/ceo-letter-2022-proxy-voting-agenda>;

<sup>51</sup> See BlackRock proxy voting guidelines for U.S. Securities at <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>

<sup>52</sup> See Notice of Exempt Solicitation filed by the New York State Comptroller Thomas P. DiNapoli, Trustee of the New York State Common Retirement Fund at Exxon Mobil at <https://www.sec.gov/Archives/edgar/data/34088/000121465920003635/r422201px14a6g.htm>

<sup>53</sup> See NYC Comptroller Scott Stringer statement pm “Vote No Campaign launched against Lee Raymond at JPMorgan at <https://comptroller.nyc.gov/newsroom/comptroller-stringer-and-pension-fund-trustees-launch-vote-no-campaign-against-lee-raymond-at-jpmorgan/>

directors to ExxonMobil's Board (four directors), three of which were elected, while at Chevron, almost 50% of investors voted for a report on the business impact of achieving net zero emissions by 2050.<sup>54</sup>

#### ***D. The Proposed Rule delivers many benefits to shareholders***

Oxfam believes that the SEC has appropriately accounted for many of the financial benefits of climate disclosure. There is substantial evidence demonstrating the need for, and the benefits of disclosing climate-related financial risk information and metrics.

For example, according to the Commodity Futures Trading Commission (CFTC) of the Market Risk Advisory Committee, the benefits of climate-change disclosures to companies stem from the improved ability:

- (i) to identify, assess, manage, and adapt to the effects of climate change on operations, supply chains and customer demand;
- (ii) to relay risk and opportunity information to capital providers, investors, derivatives customers and counterparties, markets, and regulators; and,
- (iii) to learn from competitors about climate-related strategy.<sup>55</sup>

These benefits become all the more significant to companies as the world increasingly prioritizes lower emissions. As Michael Bloomberg stated, “[w]ithout reliable climate-related financial information, financial markets cannot price climate-related risks and opportunities correctly and [companies] may potentially face a rocky transition to a low-carbon economy.”<sup>56</sup> Research bears out the financial benefits that accompany such disclosures. In the days following disclosure on climate change risks, for example, “The disclosing firm’s stock price increases by 1.12% (on a market-adjusted basis). This suggests that investors value higher transparency with respect to climate change risks and that disclosure tends to benefit disclosing companies.”<sup>57</sup>

Additional research shows that companies that voluntarily disclose climate change risk following environmental shareholder activism also achieve a higher valuation, with post disclosure valuation increasing by 4.8-4.9%.<sup>58</sup> Furthermore, there are numerous examples of SBTs improving companies’ returns due to efforts to increase energy efficiency in order to meet GHG emission goals. To highlight a few:

- Honeywell reports in its 2015 CDP response that it has projects related to energy efficiency underway that will result in annual savings exceeding \$8 million, all with payback periods of 3 years or less.<sup>59</sup>
- In 2013, CDP found that four out of five companies earn a higher return on carbon reduction investments than on their overall corporate capital investments, and that energy efficiency

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<sup>54</sup> See ExxonMobil's Form 8-K/A filed with the SEC on May 26, 2021 at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000034088/000003408821000037/xom-20210526.htm> and See Chevron's Form 8-K filed with the SEC on May 26, 2021 at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000093410/000009341021000020/cvx-20210526.htm>

<sup>55</sup> Climate-Related Market Risk Subcommittee (2020). *Managing Climate Risk in the U.S. Financial System*. Commodity Futures Trading Commission, Market Risk Advisory Committee.

<sup>56</sup> See Michael Bloomberg speech at the One Planet Summit in France in October 2020 at <https://www.oneplanetsummit.fr/en/coalitions-82/task-force-climate-related-financial-disclosures-tcfd-180>

<sup>57</sup> Flammer, C., Toffel, M., & Viswanathan, K. (2021, April 22). *Shareholders Are Pressing for Climate Risk Disclosures. That's Good for Everyone*. Harvard Business Review. Retrieved from <https://hbr.org/2021/04/shareholders-are-pressing-for-climate-risk-disclosures-thats-good-for-everyone>

<sup>58</sup> Flammer, C., Toffel, M. W., & Viswanathan, K. (2021). *Shareholder activism and firms' voluntary disclosure of climate change risks*. SSRN Electronic Journal, 42(10), 1850–1879. Retrieved from <https://doi.org/10.2139/ssrn.3468896>

<sup>59</sup> See CDP report for Honeywell at <https://www.cdp.net/en/responses?utf8=%E2%9C%93&queries%5Bname%5D=Honeywell>

improvements earned an average return on investment of 196%, with an average payback period between two and three years.<sup>60</sup>

Investors and companies alike reap the rewards of climate disclosure – rendering it a very reasonable expectation that companies would disclose such material information.

While a subset of companies with high emissions may contend that climate disclosure will hurt them, that is grounded in uninformed self-interest. This is because “managers and directors of companies will often make decisions based on incomplete information and imperfect heuristics about the risks that they face....Managers and directors may have...short-term incentives to boost quarterly earnings....Taken together, cognitive biases and mismatched incentives can result in managers underestimating or failing to foresee the risks that climate change poses for the long-term fiscal well-being of their companies.”<sup>61</sup> Recent estimates from the National Oceanic and Atmospheric Administration (NOAA) indicate that the United States has experienced over \$50 billion in total costs from extreme weather events between 2015 and 2019.<sup>62</sup> 2021, the NOAA highlights was the seventh consecutive year where 10 or more billion-dollar climactic events have impacted the country.<sup>63</sup> The freeze in Texas will cost businesses \$90 billion.<sup>64</sup>

The SEC Proposed Rule is not taking place in a vacuum. Given the significant and sweeping risks to the economy, other regulatory agencies including the CFTC, the Federal Deposit Insurance Corporation (FDIC), the National Highway Transport and Safety Administration (NHTSA), the Department of Labor (DoL) and the Department of Treasury’s Office of the Comptroller of the Currency (OCC) are all taking action with respect to climate-related financial risk.<sup>65</sup> Many states are likewise introducing measures to require enhanced disclosures. In New York, insurers must disclose impact of climate risks and integrate into risk management and business strategies.<sup>66</sup> In California, the Senate passed the Climate Corporate Accountability Act (SB-260), which would require public and private US-based companies that do business in the state and have annual revenues over \$1 billion to report their Scope 1, 2 and 3 GHG emissions to the California Secretary of State.<sup>67</sup> The bill is at the California Assembly for further review.

Regulators in other nations, too, are moving to require climate-related risk disclosures. The European Commission’s Corporate Sustainability Reporting Directive, which was adopted in April 2021, would

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<sup>60</sup> These examples taken from supporting statement of a shareholder proposal at Emerson Electric. The proposal's full text is available online at: [https://www.iccr.org/sites/default/files/page\\_attachments/emerson\\_-\\_ghg\\_reduction\\_sbt.pdf](https://www.iccr.org/sites/default/files/page_attachments/emerson_-_ghg_reduction_sbt.pdf)

<sup>61</sup> Condon, M., Ladin, S., Lienke, J., Panfil, M., & Song, A. (2021). (rep.). *Mandating Disclosure of Climate-Related Financial Risk*. Institute for Policy Integrity. Retrieved from <https://policyintegrity.org/publications/detail/mandating-disclosure-of-climate-related-financial-risk>

<sup>62</sup> See National Oceanic and Atmospheric Administration overview at <https://www.ncei.noaa.gov/access/billions/>

<sup>63</sup> Id.

<sup>64</sup> Trent, S., Nguyen, R., & MacCaffrey, O. (2021, July 11). *Heat Wave Hit Northwest Businesses from Christmas Trees and Doughnuts to Fish*. The Wall Street Journal. Retrieved from <https://www.wsj.com/articles/heat-wave-hit-northwest-businesses-from-christmas-trees-and-doughnuts-to-fish-1162599580>

<sup>65</sup> Commodities Future Trading Commission. (2021, March 17). CFTC Acting Chairman Behnam Establishes New Climate Risk Unit. Retrieved from <https://www.cftc.gov/PressRoom/PressReleases/8368-21>, See FDIC’s Request for Comment on Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22013.html>, See NHTSA’s Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks at <https://www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy#40466>, See DoL’s News Release asking for public comment on protecting workers’ life savings, pensions from climate-related financial risks at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20220211>, and See OCC’s request for feedback on principles for climate-related financial risk management for large banks at <https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138.html>

<sup>66</sup> See NY Dept. of Fin. Serv., Guidance for New York Domestic Insurers on Managing the Financial Risks from Climate Change at <https://perma.cc/G8CD-FLCE>

<sup>67</sup> SB-260, California Legislature. 2021-2022 Regular Sess. (CA 2022). [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB260](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB260)

strengthen reporting requirements that were previously laid out in the Non-Financial Reporting Directive.<sup>68</sup> Over 200 countries have committed to align with the Paris Agreement, implying that companies should be prepared for stricter regulations. Both the United Kingdom and New Zealand have also implemented mandatory disclosure regimes for companies.<sup>69</sup>

In addition to showing broad consensus over the need for the type of information the SEC is proposing to require, such action in states and in other countries to require similar disclosures also mean the cost of compliance with the SEC's Rule will be far lower than it would otherwise be if the SEC were acting alone, as many companies will already be required to collect such information.

Elsewhere, the SEC has done a thorough job of assessing the cost benefit analysis and weighing the various options. In addition, without a climate-related disclosure rule, the cost of companies' noncompliance is costing investors. Investors must rely on costly third-party data providers as well as on proxy voting and filing shareholder resolutions to get access to climate related disclosures. ERM conducted a cost-benefit analysis in 2022 and disclosed that currently investors on average spend \$1.3 million to collect, analyze, and report climate data that is helpful in informing their investment decisions.<sup>70</sup> Further, data from third parties are not free from inconsistencies. There is substantial research that highlights gaps in assessment and alignment of different ESG data providers.<sup>71</sup> In addition, the data can be spotty and fundamental disagreements about the underlying data can result in divergence in ratings among the data providers.<sup>72</sup> Rating discrepancies add to market inconsistencies and can impact business judgement.<sup>73</sup> Quality data is critical for investment analysis, and the company is the best source for that data. Even for companies that have lacked transparency and would initially feel the burden of complying, the cost will decrease over time as institutional knowledge increases.

#### IV. The Proposed Rule will result in comparable, consistent, reliable, and standardized data

The increase in frequency and severity of climactic events makes understanding their impacts all the more significant for investors. Currently, as demonstrated in numerous places throughout this comment, investors have little information about companies' activities to respond to financial risks stemming from the impact of climate change on business operations. Current company disclosures are not consistent, reliable, or comparable across any given industry inhibiting investors from making effective assumptions and assessments about a company's long-term financial performance in relation

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<sup>68</sup> Schwartzkopff, F. (2021, April 21). *EU Wants Tougher Climate Disclosure Rule as Firms Lag Behind*. The Wall Street Journal. Retrieved from <https://www.bloomberg.com/news/articles/2021-04-21/eu-wants-tougher-climate-disclosure-rules-as-firms-lag-behind#xi4y7vzkg> and Bancelhon, C. (2021, July 6). *What business needs to know about the EU Corporate Sustainability Reporting Directive: Blog*. Business for Social Responsibility. Retrieved 2022, from <https://www.bsr.org/en/our-insights/blog-view/what-business-needs-to-know-about-the-eu-corporate-sustainability-reporting>

<sup>69</sup> Feijao, S. (2020, November 12). *UK paves way for mandatory TCFD climate disclosure for companies and other organisations by 2025*. Passle. Retrieved from <https://sustainablefutures.linklaters.com/post/102h22d/uk-paves-way-for-mandatory-tcf-d-climate-disclosure-for-companies-and-other-organi> and Duran, P. (2021, October 21). *New Zealand passes Climate Change Disclosure Laws for financial firms in World First*. Reuters. Retrieved from <https://www.reuters.com/business/sustainable-business/new-zealand-passes-climate-change-disclosure-laws-financial-firms-world-first-2021-10-21/>

<sup>70</sup> Survey by ERM and the SustainAbility Institute by ERM (together 'ERM') reveals what US private sector organizations currently spend measuring and managing climate change data and disclosure and is available at [https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/climate-disclosure-survey\\_fact-sheet-april-2022.pdf](https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/climate-disclosure-survey_fact-sheet-april-2022.pdf)

<sup>71</sup> Pucker, K. (2021). *Overselling Sustainability Reporting*. *Harvard Business Review*. Retrieved from <https://hbr.org/2021/05/overselling-sustainability-reporting>

<sup>72</sup> Berg, F., Kölbel, J., & Rigobon, R. (2019). *Aggregate confusion: The divergence of ESG Ratings*. *Forthcoming Review of Finance*. Retrieved from <https://doi.org/10.2139/ssrn.3438533>

<sup>73</sup> Bergman, M., Deckelbaum, A., Karp, B., Forrester, V., Grader, S., Mi, F., Curran, D., Cooper, L., Duran, L., & Pavamani, M. (2021, January 29). *ESG ratings and data: How to make sense of disagreement*. Paul, Weiss. Retrieved from <https://www.paulweiss.com/insights/esg-thought-leadership/publications/esg-ratings-and-data-how-to-make-sense-of-disagreement?id=39303>

to industry peers.<sup>74</sup> Oxfam supports many of the Proposed Rule's disclosure requirements the SEC is putting forward to mandate climate change related disclosures.

Importantly, voluntary disclosures are insufficient barometers for analyzing climate change related risks. In a study of climate-related disclosures of over 800 companies from 2015 to 2020 pre and post TCFD, researchers revealed only a small increase in information disclosed after the launch of TCFD in 2017. Much of these disclosures since the introduction of TCFD are not new but have been restructured to adapt to the TCFD recommendations.<sup>75</sup> The SEC's Proposed Rule will solve the information asymmetry by **requiring companies to standardize, regulate, and mandate disclosures**, in effect ensuring that companies can no longer cherry pick disclosures.

By taking a **value chain approach**, the Proposed Rule enables investors to assess not only risks stemming from operations across the companies they invest in but also to consider the impacts arising upstream and downstream along the value chain of companies. Understanding value chains' resilience to risks stemming from climate change is essential to minimize, among other things, operational disruptions. The SEC recognizes that the risks to companies and investors comes from emissions that extend beyond a company's own operations. Importantly, by taking this approach, the Proposed Rule protects investors of private companies. Any private company that is a supplier to publicly listed companies will be under scrutiny creating incentives for greater transparency. Even though private companies aren't under the purview of the SEC in this Proposed Rule, the actions by the SEC to take a whole of value chain approach will impact private companies.

By **requiring that companies file information** with the Commission, it better protects investors by ensuring the information is of sufficient reliability to be decision-useful to be filed as it will ensure that the likelihood of any omissions or misleading statements will be reduced. Investors assign greater value to a filed statement versus a furnished one given the protections of Exchange Act Section 18 liability.

Relatedly, the efforts by the SEC to require **disclosure of governance and risk management approaches** by the management and the board appear to be in line with what many investors are requesting of companies when they ask them to report according to the TCFD guidelines. Board level oversight of risks could offer an added layer of protection to increase the likelihood that companies are representing themselves accurately.

While the TCFD has been a useful tool, it is clear that the TCFD as a voluntary initiative is insufficient on its own. Indeed, the TCFD's latest assessment report identified significant gaps in company disclosure practices under its voluntary framework.<sup>76</sup> The SEC's Proposed Rule will **mandate and standardize disclosures that are relevant to assess climate risks**.

In addition, climate considerations will become a norm in succession planning with this rule, one for which many investors have asked (prominent among them being JP Morgan Chase's campaign against Lee Raymond launched by New York City and Majority Action and in 2021's Engine No. 1 and CalSTRS

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<sup>74</sup> Survey by ERM and the SustainAbility Institute by ERM (together 'ERM') reveals what U. private sector organizations currently spend measuring and managing climate change data and disclosure and is available at [https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/climate-disclosure-survey\\_fact-sheet-april-2022.pdf](https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/climate-disclosure-survey_fact-sheet-april-2022.pdf)

<sup>75</sup> Bingler, J. A., Kraus, M., & Leippold, M. (2021). *Cheap talk and cherry-picking: What Climate bert has to say on corporate climate risk disclosures*. Finance Research Letters. Retrieved from <https://doi.org/10.2139/ssrn.3796152>

<sup>76</sup> See TCFD's 2021 Status Report at <https://www.fsb.org/2021/10/2021-status-report-task-force-on-climate-related-financial-disclosures/> and Huw Jones and Simon Jessop. (2021, October 14). Companies' climate disclosures still lacking – Task Force.

proxy fight against an oil and gas major) and which the Proposed Rule will now compel companies to report.<sup>77</sup>

It is encouraging that the Proposed Rule asks companies to **disclose GHG emissions data in gross terms**. Doing so would ensure that companies will be more transparent about their purchased or generated offsets, enabling investors to assess the financial risks stemming from those offsets. Offsets in some cases do not create an absolute mitigation benefit from a climate change perspective.<sup>78</sup> Moreover, the quality of offsets are also an underlying concern which can result in material risks for investors and can threaten the functioning of a fair, orderly, and efficient capital market as prices for such offsets can plummet, impacting any investment product that is pegged to it.<sup>79</sup> Furthermore net zero targets can be a little more than a greenwashing exercise to enable the continuation of business as usual.<sup>80</sup> A study of climate strategies by 25 companies reveals that while almost all of them have net zero or carbon neutral targets, only three of them have made deep carbonization commitments.<sup>81</sup> Net zero commitment must be broken down into distinct targets for reductions and removals.<sup>82</sup> These disclosures would ensure that companies reconsider and possibly refrain from setting vague net zero targets that do little to reduce carbon emissions and reduce underlying risks associated with those emissions.

The **amendments to Regulation S-K** will improve comparison of disclosures. Within regulation S-K, if the Proposed Rule is introduced it would require new items 1501 (Governance), 1502 (Strategy, Business Model, and Outlook), 1503 (Risk Management), 1504 (GHG Emissions Metrics), 1505 (Attestation of Scope 1 and Scope 2 Emissions Disclosure), and 1506 (Targets and Goals). This will help increase transparency by standardizing disclosures, facilitating comparison of how companies manage risks, and importantly, housing them in one place and format.

Likewise, the **amendments to Regulation S-X** will improve reliability of disclosures. Financial statements include assumptions about the future. Declining demand for oil and gas, the switch to renewable energy, regulations to limit emissions, and the phase out of internal combustion engines are all assumptions that can directly and significantly affect financial statement results. By requiring investors to include a note to the audited financial statements (S-X), these metrics would be subject to audit by an independent registered public accounting firm and would come within the Scope of the registrant's internal control over financial reporting.

## V. **Recommendations to strengthen the Proposed Rule and better protect the interests of investors**

### A. ***The SEC should require Scope 3 emissions disclosures for all companies***

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<sup>77</sup> Kellaher, C. (2020, April 23). *New York City Pension funds urge Jp Morgan shareholders to oust Lee Raymond*. The Wall Street Journal. Retrieved from <https://www.wsj.com/articles/new-york-city-pension-funds-urge-jpmorgan-shareholders-to-oust-lee-raymond-11587591444> and CalSTRS statement on alternate board members for ExxonMobil is available at <https://www.calstrs.com/statement-on-alternate-board-members-for-exxonmobil>

<sup>78</sup> Sen, A. & Dabi, N. (2021). Tightening the Net: Net zero climate targets – implications for land and food equity. Oxfam. Retrieved from <https://www.oxfamamerica.org/explore/research-publications/tightening-the-net/>

<sup>79</sup> Jess Shankleman and Akshat Rathi. (2021, June 2). *Wall Street's Favorite Climate Solution Is Mired in Disagreements*. Bloomberg. Retrieved from <https://www.bloomberg.com/news/features/2021-06-02/carbon-offsets-new-100-billion-market-faces-disputes-over-trading-rules>

<sup>80</sup> Id.

<sup>81</sup> Day, T., Mooldijk, S., Smit, S., Posada, E., Hans, F., Fearnough, H., Kachi, A., Warnecke, C., Kuramochi, T., & Hoehne, N. (2022). *Corporate Climate Responsibility Monitor 2022*. New Climate. Retrieved from <https://newclimate.org/sites/default/files/2022/02/CorporateClimateResponsibilityMonitor2022.pdf>

<sup>82</sup> Sen, A. & Dabi, N. (2021). Tightening the Net: Net zero climate targets – implications for land and food equity. Oxfam. Retrieved from <https://www.oxfamamerica.org/explore/research-publications/tightening-the-net/>

We applaud the SEC for considering asking companies about Scope 3 emissions disclosures. Oxfam believes the Commission can do more on requiring companies to enhance Scope 3 disclosures. As currently written, it appears to allow companies to determine whether to report on Scope 3 emissions. Given how important Scope 3 data is to understanding risk, this is an area that must be strengthened. Further, evidence in the record already shows broad demand for Scope 3 data from investors and other market participants.<sup>83</sup>

Indeed, there is broad consensus that Scope 3 data is essential to understanding climate-related risk. The Climate Change Report of the Financial Stability Oversight Council (“FSOC”), published in October 2021 concluded that companies should conduct emissions inventories, including Scope 3, to assess transition risks acknowledging that “Scope 3 emissions provide a more complete picture of the transition risks facing an organization, because it includes the risks of increased costs or restrictions throughout its value chain.”<sup>84</sup> The newly released TCFD guidance in October 2021 strongly encourages Scope 3 disclosure, calling it an “essential component” of climate risk analysis.<sup>85</sup>

Without a clear requirement to disclose Scope 3 data, many companies will opt not to. The lack of this key data will pose significant challenges to efforts to understand climate-related financial risks and impact overall economic growth.<sup>86</sup> In 2021, Ceres commissioned research analyzing disclosures from S&P 500 companies and other high emitting companies in early 2022 and discovered that Scope 3 reporting often excludes categories most relevant to an industry, largely because the emissions represent a large portion of a company’s overall emissions indicating that Scope 3 emissions reporting is either inaccurate or not happening at all.<sup>87</sup> MSCI assessed the Scope 1, 2, and 3 disclosure requirements of companies in its Investable Market Index (MSCI USA IMI) and came to the conclusion that out of the 2,565 companies in the index, only 15% of companies provide Scope 3 disclosures.<sup>88</sup> It further states that:

15% is likely an overestimate of the number of companies that may already meet proposed Scope 3 disclosure requirements. Often, companies disclose only a portion of their Scope 3 emissions, such as business travel, but not other, potentially more relevant emission categories, such as emissions from the use of the products the company sells.<sup>89</sup>

Without Scope 3 tracking and disclosure, investors will lack key information necessary to calculate the risks companies face.

**Requiring scope 3 emissions data from all issuers would produce substantially greater benefits for investors.** Mandating disclosures of Scope 3 emissions is crucial as it can hinder or facilitate capital formation. A company can face high exposure to physical and transition risks because of its business model where it is likely to lead to asset stranding, asset repricing, and asset revaluations as a result of

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<sup>83</sup> Id.

<sup>84</sup> Financial Stability Oversight Council (2021). *Report on Climate-Related Financial Risk*. Retrieved from <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>

<sup>85</sup> Financial Stability Board. (2021). *Task Force on Climate-related Financial Disclosures: Guidance on Metrics, Targets, and Transition Plans*. Retrieved from <https://www.fsb.org/wp-content/uploads/P141021-2.pdf>

<sup>86</sup> Kiley, M.T. (2021). *Growth at Risk from Climate Change, Finance and Economics Discussion Series 2021-054*. Washington: Board of Governors of the Federal Reserve System, Retrieved from <https://www.federalreserve.gov/econres/feds/growth-at-risk-from-climate-change.htm>

<sup>87</sup> See comment from Ceres on Climate Change Disclosures at <https://www.sec.gov/comments/climate-disclosure/cl12-20109655-264012.pdf>

<sup>88</sup> Cote, C., & Watanabe, K. (2022, March 29). *Companies may not be ready for SEC Climate- Disclosure Rules*. MSCI, Inc. Retrieved from <https://www.msci.com/www/blog-posts/companies-may-not-be-ready-for/03092675115>

<sup>89</sup> Id.

climatic, regulatory, market or other shifts. For instance, North American and European oil and gas companies wrote down \$145 billion combined, or roughly 10% of the companies' collective total market value, in the first quarter of 2020 alone because of uncertainty over future demand for products amid the rise of electric cars, the proliferation of renewable energy, and growing concern about the lasting impact of climate change.<sup>90</sup> That figure does not include write-downs by oil majors ExxonMobil and Chevron which happened during other quarters.<sup>91</sup> Globally stranded assets are expected to exceed \$1 trillion as nearly 200 countries agreed to curb the use of fossil fuels.<sup>92</sup>

While there are costs associated with such reporting, those costs are outweighed by the benefits of this information, and the SEC has a number of ways it can implement this requirement that minimizes the burden on issuers in meaningful ways. For example, these disclosures can be staggered for smaller issuers. As the SEC itself noted in its Proposed Rule, many investors have asked the SEC to include these disclosures as mandatory.

If a less expanded approach to requiring disclosures on Scope 3 emissions is preferred, the SEC should consider requiring the companies to disclose Scope 3 emissions from all upstream suppliers. For instance, the CDP has highlighted the food and beverage sector as well as agriculture as those that are at high risk of having deforestation linkages.<sup>93</sup> In addition, regarding the food and beverage sector, Scope 3 emissions comprise the bulk and come largely from agriculture and land use change in its upstream supply chain.<sup>94</sup> In 2020, 230 investors with \$16.2 trillion AUM asked hundreds of companies to either meet their commodities supply chain deforestation commitments or risk economic consequences.<sup>95</sup> The letter outlines that “[c]onsidering increasing deforestation rates and recent fires in the Amazon, we are concerned that companies exposed to potential deforestation in their Brazilian operations and supply chains will face increasing difficulty accessing international markets.”<sup>96</sup> The letter asks companies to consider:

1. Publicly disclosing and implementing a commodity-specific no deforestation policy with quantifiable, time-bound commitments covering the entire supply chain and sourcing geographies.
2. Assessing operations and supply chains for deforestation risk and reduce this risk to the lowest possible level, disclosing this information to the public.
3. Establishing a transparent monitoring and verification system for supplier compliance with the company's no deforestation policy.

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<sup>90</sup> Eaton, C. and McFarlane, S. (2020, December 27). *2020 was one of the worst-ever years for oil write-downs*. The Wall Street Journal. Retrieved from <https://www.wsj.com/articles/2020-was-one-of-the-worst-ever-years-for-oil-write-downs-11609077600#:~:text=Oil%2Dand%2Dgas%20companies%20in,a%20Wall%20Street%20Journal%20analysis>

<sup>91</sup>Id.

<sup>92</sup> Semieniuk, G., Holden, P.B., Mercure, J-F., Salas, P., Pollitt, H., Jobson, K., Vercoulen, P., Chewpreecha, U., Edwards, N.R. and Viñuales, J.E. (2022, May 26). *Stranded fossil-fuel assets translate to major losses for investors in advanced economies*. Research Briefing. Nature Climate Change. Retrieved from <https://doi.org/10.1038/s41558-022-01356-y>

<sup>93</sup> CDP (2020). CDP research highlights deforestation risk in consumer good supply chains. Retrieved from <https://www.cdp.net/en/articles/media/cdp-research-highlights-deforestation-risk-in-consumer-goods-supply-chains>

<sup>94</sup> Climate Action 100+. (2021). Global sector strategies: Recommended investor expectations for food and beverage. Retrieved from <https://www.climateaction100.org/wp-content/uploads/2021/08/Global-Sector-Strategies-Food-and-Beverage-Ceres-PRI-August-2021.pdf>

<sup>95</sup> See Investor statement on deforestation and forest fires in the Amazon at <https://www.ceres.org/sites/default/files/Investor%20statement%20on%20deforestation%20and%20forest%20fires%20in%20the%20Amazon.pdf>

<sup>96</sup> Id.

4. Reporting annually on deforestation risk exposure and management, including progress towards the company's no deforestation policy.<sup>97</sup>

Alternatively, if asking companies to disclose Scope 3 emissions of upstream suppliers is not possible, then the SEC should consider asking companies to disclose Scope 3 emissions for high-risk sectors. Oxfam recognizes that the SEC's efforts to borrow from the GHG Protocol and declare Scope 3 as optional is in alignment with the GHG Protocol, but the framework also recognizes that for some companies or sectors – notably including the oil, gas, and coal industries – Scope 3 is the bulk of emissions. We believe that the SEC should adopt a quantitative threshold for Scope 3 emissions as a trigger for a registrant's disclosure. In determining which sectors are most ripe for Scope 3 emissions disclosure, the SEC should consider borrowing from the Science Based Targets Initiative (SBTi) Criteria and Recommendations.<sup>98</sup>

If the SEC nonetheless keeps the current materiality qualifier to Scope 3 in the final rule, as opposed to mandating such disclosures across the board, at the very least, the SEC should add a requirement that a company that determines that Scope 3 is not material provide an explanation of how it came to that determination and decision. Whether the data on Scope 3 emissions is material depends upon whether reasonable investors would find this information useful in their investing decisions. The Proposed Rule acknowledges that "it may be useful to investors to understand the basis for that determination". At the very minimum companies should be required to provide a narrative explanation about their decision should they choose to consider Scope 3 as materially irrelevant to their business operations. Those disclosures should be filed and not furnished so that companies can be held liable for material misstatements that would incur financial risks to investors because of these statements.

**Oxfam urges the Commission to require attestation and assurance for Scope 3 disclosures.** The Proposed Rule as it is currently written, appears to only require attestation and assurance for Scope 1 and Scope 2, but such safeguards are also necessary for Scope 3. Attestation along with reasonable assurance gives investors and other market actors confidence that the information the company is reporting is reliable and based on realistic assumptions. Indeed, because Scope 3 disclosures are largely based on estimates, it is important for a third party to verify and challenge the company process, standardization, and inputs used in emissions calculations to test those estimates. In 2020, the Government Accountability Office uncovered several instances where companies used different definitions or calculations for the same topics, particularly when it came to climate disclosures.<sup>99</sup> Attestation and reasonable assurance for Scope 3 will ensure that reliability will play a critical role in assessing and enforcing rigorous sensitivity analyses.

For similar reasons, we are concerned with the Proposed Rule for Safe Harbor provision for Scope 3 disclosures and that it would insulate a company from securities law liability. While we recognize the constraints surrounding data availability, quality, and accessibility for Scope 3, significant advances are already underway. Oxfam strongly urges the Commission to consider modifying the Safe Harbor to apply only during a temporary transition period, thus sunseting that provision. Importantly, we believe that the SEC should conduct an evaluation process to assess the evolution of Scope 3 emissions disclosures and uptakes and evaluate when would be the right time to sunset the disclosures. Such information should also be shared with the public to invite comments. Oxfam believes that as new research is

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<sup>97</sup> Id.

<sup>98</sup> About Science Based Targets Initiative: <https://sciencebasedtargets.org/>

<sup>99</sup> US Government Accountability Office. (2020). Report to the Honorable Mark Warner U.S. Senate. Public Companies: Disclosure of Environmental, Social, and Governance factors and options to enhance them. Retrieved from <https://www.gao.gov/assets/gao-20-530.pdf>

available or cutting-edge technology improves, it will become easier to calculate Scope 3 disclosures and hence it would make sense to **consider sunseting the Safe Harbor for Scope 3 emissions as the disclosure framework for Scope 3 develops over time.**

There is significant evidence of companies expanding reporting on Scope 3. For instance, in the food and beverage sector Oxfam commissioned research in 2016 to assess the GHG emissions targets and plans of front-running companies which entailed an assessment of supply chain wide climate goals and upstream Scope 3 agricultural emissions, implementation plans and organizational processes in place to achieve the targets.<sup>100</sup> In 2020, Oxfam commissioned research to assess climate progress of major food and beverage companies and evaluated action companies took within their operations and supply chains to reduce emissions, as well as evidence of capacity building to realize targets – through critical actions like measurement, reporting and engagement.<sup>101</sup> The results of the research revealed that 9 of 10 companies evaluated had science-based targets that covered Scope 3 emissions.<sup>102</sup> The data and methodologies have already evolved significantly and will continue to do so. In addition, many companies are already doing this across different sectors, and it is reasonable to require the reporting to happen in a way that is reliable to investors.

Given how important Scope 3 emissions data is to evaluating issuer risk, it is essential that the SEC strengthen the rule to ensure broader access to Scope 3 emissions data and greater reliability of that data as it develops over time.

### ***B. Sector specific disclosures will be crucial especially for high carbon emitting sectors***

Oxfam acknowledges the critical importance of the Proposed Rule as a first step. **We recommend that the Commission add additional sector-specific requirements as a way for the SEC to build on the foundation set by the Proposed Rule.** The disproportionate climate impacts, climate risks, and challenges of certain sectors merit additional attention. In particular companies' active in carbon intensive sectors should be required to provide supplementary industry-specific reporting. Tailoring standards within sectors is critical to ensure that investors can interpret data regarding carbon emissions in the appropriate context, comparing which companies within a given sector are industry leaders or industry laggards. Industry-focused standards should be developed by assessing the existing frameworks as templates and ensuring that they are updated based on our current understandings of climate science, new technologies available to companies, and so on.

Oxfam's experience on sector-specific disclosures is in the oil and gas industry and agriculture, food and beverage sector, so we will focus our efforts on highlighting what we believe are important climate-related financial disclosures that companies in those sectors should be required to provide.

- 1. Fossil fuels – and particularly oil and gas – merit a specific approach, including disclosures of all Scope 3 emissions, price sensitivity and closure costs by project, emissions at project-level, and emissions embedded in reserves, including through an update to the Modernization of Oil & Gas reporting rule**

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<sup>100</sup> Gowdy, J. and Winston, A. (2016, May 25). Evaluation of General Mills' and Kellogg's GHG Emissions Targets and Plans: Independent Assessment conducted by Winston Eco-Strategies for Oxfam's Behind the Brands Initiative. Oxfam. Retrieved from <https://policy-practice.oxfam.org/resources/evaluation-of-general-mills-and-kelloggs-ghg-emissions-targets-and-plans-indepe-610586/>

<sup>101</sup> Oxfam. (2021). Behind the Brands Independent Evaluation on the Implementation of Climate Commitments. Retrieved from <https://www.oxfamamerica.org/explore/research-publications/implementation-of-climate-commitments/>

<sup>102</sup> Id.

The fossil fuel sector is responsible for the greatest contributions to climate change, and it unquestionably faces the most significant risks due to the energy transition. The extraction, production, transportation and combustion of fossil fuels are responsible for the vast majority of global greenhouse gas emissions, representing some three quarters of all emissions.<sup>103</sup> There is no question that a transition to a lower carbon economy, and specifically the transition needed to align with the Paris Agreement, poses significant risk for this sector.<sup>104</sup> Analysis by the International Energy Agency, for example, showed that, accounting for current fossil fuel resources already under development, keeping climate change within a 1.5 degree Celsius scenario would preclude the development of any new oil, gas, and coal resources.<sup>105</sup> To achieve this scenario, some fossil assets currently in development or planned to be developed will ultimately need to be left underground; that is to say, these assets may potentially become stranded, leading to potentially massive write-downs on oil and gas balance sheets.

Concerned about both the significant climate impacts and risks, investors have particularly called for greater climate-related disclosures from issuers in the sector to be able to better understand the sectors, as reflected in numerous shareholder proposals.<sup>106</sup>

In response to investor demand and shareholder pressure, some oil and gas companies, including British Petroleum (BP),<sup>107</sup> ENI,<sup>108</sup> Equinor,<sup>109</sup> Repsol,<sup>110</sup> Shell,<sup>111</sup> and TotalEnergies,<sup>112</sup> have already begun to disclose some climate information, or create plans to transition to “net zero” emissions. However, many of these disclosures are inadequate. For example, these plans are usually limited to Scope 1 and Scope 2 emissions, and often either fail to address Scope 3 emissions altogether, or fail to address them in a reasonable time frame, i.e. before 2050, despite the fact that Scope 3 emissions represent some 88% of the sector’s total emissions.<sup>113</sup> Given the scale of Scope 3 emissions for this already high-emitting

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<sup>103</sup> See, e.g., Ritchie, H. “Sector by sector: where do global greenhouse gas emissions come from?,” Our World in Data, <https://ourworldindata.org/ghg-emissions-by-sector> (summarizing 2016 data from Climate Watch and the World Resources Institute finding that 73.2% came from energy-related sources available here: <https://www.climatewatchdata.org/ghg-emissions>)

<sup>104</sup> Rooze, J., Rutigliano, M., and Luan, J. (2020). *BNEF Oil and Gas Business Model Transition Scores*. BloombergNEF. Retrieved from <https://www.bloomberg.com/professional/blog/oil-and-gas-business-model-transition-scores-methodology/>

<sup>105</sup> International Energy Agency. (2021). *Net Zero by 2050: A Roadmap for the Global Energy Sector*. Retrieved from <https://www.iea.org/reports/net-zero-by-2050>

<sup>106</sup> Valle, S. (2022). *Shareholders at four U.S. oil companies to vote on climate proposals*, Reuters. Retrieved from <https://www.reuters.com/business/sustainable-business/shareholders-four-us-oil-companies-vote-climate-proposals-2022-03-14/> and Meredith, S. (2022, May 11). *Big Oil braces for shareholder revolt over climate plans in proxy voting season*. CNBC. Retrieved from <https://www.cnbc.com/2022/05/11/climate-big-oil-braces-for-shareholder-revolt-in-proxy-voting-season.html>

<sup>107</sup> Shell. (2020, August 4). *From international oil company to integrated energy company: BP sets out strategy for decade of delivery towards net zero*. Retrieved from <https://www.bp.com/en/global/corporate/news-and-insights/press-releases/frominternational-oil-company-to-integratedenergy-company-bp-sets-out-strategy-fordecade-of-delivery-towards-net-zero-ambition.html>

<sup>108</sup> See Eni’s 2021 Strategy Presentation 2021-2024, *Boosting Our Transformation* at <https://www.eni.com/assets/documents/eng/investor/presentations/2021/strategy-4q-2020/strategy-2021-2024.pdf> (data on website being updated).

<sup>109</sup> See an overview of Equinor’s 2022 which is available at <https://cdn.sanity.io/files/h61q9gi9/global/283da357bec808022a914e65c45b1daf61f9c421.pdf?climate-ambition-overview-cmu-2022-equinor.pdf>

<sup>110</sup> See Repsol’s Net zero emissions by 2050 commitment published in 22 which is available at

<https://www.repsol.com/en/sustainability/climate-change/net-zero-emissions-2050/index.cshtml>

<sup>111</sup> See Shell PLC’s climate target, <https://www.shell.com/energy-and-innovation/the-energy-future/our-climate-target.html#iframe=L3dlYmFwcHMvY2xpbWF0ZV9hbWJpdGlvbi8> and Shell Energy Transition Strategy at

<https://www.shell.com/energy-and-innovation/the-energy-future/shell-energy-transition-strategy.html>

<sup>112</sup> See TotalEnergies 2020 Getting to Net Zero, which is available on Pg. 6 at

<https://www.total.com/sites/g/files/nytnzq111/files/documents/2020-10/total-climate-report-2020.pdf>

<sup>113</sup> Oil Change International (2022). *Big Oil Reality Check: Updated Assessment of Oil and Gas Company Climate Plans*. Retrieved from <https://priceofoil.org/2022/05/24/big-oil-reality-check-2022/> and Saiyid, A. (2021, November 30). *Oil, gas companies under pressure to manage scope 3 emissions to reach net-zero goals: Analysts*. IHS Markit. Retrieved from <https://cleanenergynews.ihsmarkit.com/research-analysis/oil-gas-companies-under-pressure-to-manage-scope-3-emissions-t.html>

sector, there can be no question that Scope 3 emissions are not material. Further, they rely on offsets to achieve emissions reductions goals which can be problematic or misleading. Land-based offsets in particular are unrealistic and, if fully implemented, would require land on such a scale that it would compete with agricultural needs and exacerbate inequalities and hunger, particularly in the Global South.<sup>114</sup> Meanwhile, other oil and gas companies that had long refused to commit to emissions reduction targets at all have now begun to set and disclose at least some targets.<sup>115</sup>

The lack of any consistency in reporting and the risk of unreliable reporting inhibits the ability of investors to understand the exposure to risks from oil and gas companies and how well positioned they are placed to manage those risks. Risk in the financial markets should be borne by those most willing and able to support it, but that can only happen where there is sufficient transparency to assess the risks in the first place. In the case of the oil and gas sector, the risks are highly significant, but obscured by “cherry picked” data and non-comparable disclosures, creating exactly the “cheap talk equilibrium” that the SEC’s cost benefit analysis has described as a baseline prior to the Proposed Rule.<sup>116</sup> Further, agency problems of the kind described in the cost benefit analysis of the Proposed Rule – where management and investors’ interests may diverge due to “potential conflicts between short-term profitability and long-term climate horizons” – are particularly acute in the fossil fuel sector.<sup>117</sup> Rather than transparently disclose the sector’s climate impacts (and risks), some oil and gas companies have allegedly promoted climate disinformation to such a degree that it has become a subject of congressional inquiry as well as a component of numerous pending lawsuits brought by states, cities and municipalities for misleading or deceiving investors, consumers and/or the public.<sup>118</sup>

To combat these challenges in the fossil fuel sector, Oxfam supports the SEC action to improve upon the Proposed Rule with a view toward specific disclosures that would improve investor understanding of risks in the sector, reduce information asymmetries, and mitigate against systemic risk. Oxfam supports the recommendations included in a separate comment from Publish What You Pay – United States, building off that organization’s submission to the SEC in June 2021.<sup>119</sup> Oxfam also emphasizes several fossil-fuel-specific improvements to climate-related financial risk disclosures below.

#### **a. Ensure full and reliable Scope 3 reporting for the fossil fuel sector**

Several aspects of the Proposed Rule will particularly serve to address the information gaps and asymmetries in the oil and gas sector. The Proposed Rule’s reliance on well-established, clear standards for reporting – namely the GHG Protocol and the TCFD – also ensures that it adequately captures the oil and gas sector in particular; indeed, the GRI relied on the TCFD in its sector-specific Oil and Gas Sectors Standard, which can serve as a model for the application of Scope 3 reporting to the sector.<sup>120</sup> The SEC’s

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<sup>114</sup> Sen, A. and Dabi., N. (2021). *Tightening the Net: Net zero climate targets – implications for land and food equity*. Oxfam. Retrieved from <https://www.oxfamamerica.org/explore/research-publications/tightening-the-net/>

<sup>115</sup> Saiyid, A. (2021, November 30). *Oil, gas companies under pressure to manage scope 3 emissions to reach net-zero goals: Analysts*. IHS Markit. Retrieved from <https://cleanenergynews.ihsmarkit.com/research-analysis/oil-gas-companies-under-pressure-to-manage-scope-3-emissions-t.html>

<sup>116</sup> See SEC Proposed Rule, Pg.341-345 at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>

<sup>117</sup> Id.

<sup>118</sup> Marsh, R. (2022, January 21). *House committee schedules 2nd hearing on oil and gas industry's role in climate disinformation*. CNN. Retrieved from <https://edition.cnn.com/2022/01/21/politics/house-oversight-oil-and-gas-hearing-climate-disinformation/index.html> and Tabuchi, T and Friedman, L. (2021, October 28). *Oil Executives Grilled Over Industry's Role in Climate Disinformation*. The New York Times. Retrieved from <https://www.nytimes.com/2021/10/28/climate/oil-executives-house-disinformation-testimony.htm>

<sup>119</sup> See Publish What You Pay—US, Comments on Climate Change Disclosures submitted on June 13, 2021, which is available at <https://www.sec.gov/comments/climate-disclosure/cl12-8914437-244711.pdf>

<sup>120</sup> Global Reporting Initiative. (2021). *Oil and gas transparency standard for the low-carbon transition*. Retrieved from

alignment with TCFD on specific areas for disclosure, including Governance, Strategy, Risk Management, and Metrics and Targets, is particularly relevant for the Oil and Gas Sector, where there is a demonstrated elevated need for disclosures on all of these aspects. The Proposed Rule's approach, covering both S-K and S-X disclosures, and requiring disclosures of transition plans and internal carbon prices when used, will also provide a more comprehensive picture of how climate impacts and risks are accounted for and managed, with a view toward better understanding their financial impacts.<sup>121</sup> Further, this strong foundation in established standards also ensures that the SEC's rule will align well with emerging mandatory disclosure regimes in other major capital markets, including those where other oil and gas majors are listed (as in the EU).

While Oxfam supports the Proposed Rule's application to all sectors, the need for consistent, comparable, and reliable disclosures is especially acute in the oil and gas sector, where investors have practically cried out for SEC action; investors would be better served by additional disclosure requirements and industry-specific metrics for the sector.<sup>122</sup>

Oxfam strongly recommends that the SEC require Scope 3 emissions broadly. But if it keeps in the materiality qualifier, we urge the Commission to at a minimum eliminate any ambiguity about Scope 3 disclosures by making it explicit that Scope 3 disclosures are material and are required. It should be clear that this applies to all fossil fuel issuers, not just large accelerated filers and accelerated filers, even if a slightly longer phase-in period may be necessary for the SEC to consider as it develops a Final Rule. As discussed above, these disclosures should also be subject to reasonable assurance and not subject to Safe Harbor. The scale of the sector's Scope 3 impacts and the recent revelations about the extent of oil and gas climate disinformation efforts suggests a heightened need for safeguards as to reliability.

**b. Add requirement to disclose price sensitivity for oil and gas projects comprising all types of reserves as well as contingent resources**

Fossil fuel companies are also uniquely subjected to transition risks with respect to commodity prices. While commodity prices may fluctuate, issuers in the sector rely on projections to secure access to debt and attract equity investments, but their projections often diverge from those of independent analysts and provide more optimistic forecasts. As one prominent analyst noted in Forbes, "A company that produces oil has a preference for high price projections, because it implies higher revenue, allowing more investment and potentially better profits and a higher share price. But this can backfire if prices are below expectations, as high-cost projects struggle and international gas sales have a harder time competing with cheaper fuels."<sup>123</sup>

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<https://globalreporting.org/about-gri/news-center/oil-and-gas-transparency-standard-for-the-low-carbon-transition/> and Global Reporting Initiative. (2021). *GRI 11: Oil and Gas Sector 2021*. Retrieved from <https://globalreporting.org/standards/standards-development/sector-standard-for-oil-and-gas/>

<sup>121</sup> Task Force on Climate-related Financial Disclosures. (2022). Overview.

[https://assets.bbhub.io/company/sites/60/2022/05/TCFD\\_Overview\\_Booklet\\_Digital.pdf](https://assets.bbhub.io/company/sites/60/2022/05/TCFD_Overview_Booklet_Digital.pdf)

<sup>122</sup> See, e.g., Kirsty Jenkinson, Investment Director, California State Teachers' Retirement System and Aisha Mastagni, Portfolio Manager, California State Teachers' Retirement System, Comments on Climate Change Disclosures, June 4, 2021, <https://www.sec.gov/comments/climate-disclosure/cl12-8888208-240907.pdf>; Carine Smith Ihenacho, Chief Governance, Norges Bank Investment Management and Compliance Officer, and Severine Neervoort, Senior Analyst, Corporate Governance, Norges Bank Investment Management, Comments on Climate Change Disclosures, June 13, 2021, <https://www.sec.gov/comments/climate-disclosure/cl12-8906851-244201.pdf>; and Luan Jenifer, Chief Operating Officer, Miller/Howard Investments, Comments on Climate Change Disclosures, June 11, 2021, <https://www.sec.gov/comments/climate-disclosure/cl12-8916955-245033.pdf>

<sup>123</sup> Lynch, M. (2019, March 5). *Forecasting The Oil Price For Fun And Profit (But Not Accuracy)*. Forbes, Retrieved from <https://www.forbes.com/sites/michaelylynch/2019/03/05/forecasting-the-oil-price-for-fun-and-profit-but-not-accuracy/>

Unfortunately, investors are often unable to access the specific commodity price assumptions in the mining, oil, and gas sectors, as issuers do not disclose such data in any standardized way. Despite existing rules requiring the disclosure of estimates and assumptions in financial reporting, they are not always adhered to, and the climate-related commodity price assumptions are rarely mentioned. (However, at least one oil and gas company provided general, overall commodity price information in a submission to the SEC's request for comments last year.<sup>124</sup>)

The SEC has already developed an optional price sensitivity table that registrants may choose to use in their disclosures. To address the problem of inflated valuations, the SEC should now amend the 2010 Modernization of Oil and Gas Reporting Rule<sup>125</sup> to require the inclusion of price sensitivity analyses for all types of reserves as well as contingent resources, and require that the table be completed and disclosed annually.

Importantly, the SEC's Proposed Rule specifically requires the disclosure of analytical tools, like scenario analysis, that it uses to assess and manage climate-related risks. However, for upstream fossil fuel companies, scenario analysis often is specifically linked to analysis of significant projects' financials. A key metric used in the sector is the "project breakeven" commodity price – the price at which a project generates sufficient cash flow to cover all expenses and a standard return. These project break-evens are key to understanding the impact of the commodity price assumptions highlighted above. If a scenario would suggest commodity prices below the project breakeven prices for certain projects, they might not proceed to development. While some fossil fuel companies may sometimes elect to share this information voluntarily with investors, there is substantial inconsistency in how they calculate and disclose project breakevens. This makes comparing projects across companies difficult, and it has given rise to information asymmetry, as better resourced investors can access expensive databases of project-level economic data, like the Rystad UCube database,<sup>126</sup> but retail investors are left in the dark.

The SEC could address this information asymmetry by requiring fossil fuel companies to disclose project breakevens and document key assumptions, including assumed discount rates as well as information about remaining useful lives of assets that could be impacted by climate.

### **c. Companies should be mandated to disclose specific costs related to project closure**

The SEC should also include in its final rule on climate-related reporting a requirement that oil and gas companies disclose the specific costs related to project closure, in line with legal obligations to plug and abandon depleted wells. These asset retirement obligations (AROs) are routinely under-budgeted in financial statements, creating a later liability (and legal risk) to companies that understate them and underbudget for them. Further, because these AROs are based on a cost at the end of the life of the project, the costs are discounted more the further out into the future that they take place. But if climate-related transition risks would serve to shorten the project lifecycle for such projects, these ARO liabilities will increase and become due sooner. Investors have a material interest in understanding the assumptions behind these AROs, and in particular any climate-related risks that might shift the timeline (and estimates) for AROs.

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<sup>124</sup> TotalEnergies noted that "TotalEnergies integrates into the financial evaluation of its investments a long-term oil and gas price scenario of 50 \$/b and 2.5 \$/mmbtu (Henry Hub) respectively, and factoring in a long-term CO2 price of \$40 per ton(1) and a sensitivity analysis of \$100 per ton of CO2 as from 2030." TotalEnergies, comment on Climate Change Disclosures, June 13, 2021, <https://www.sec.gov/comments/climate-disclosure/cl112-8915246-244808.pdf>

<sup>125</sup> Regulation S-X, Section §210.4-10

<sup>126</sup> Rystad Energy, "UCube," <https://www.rystadenergy.com/energy-themes/oil-gas/upstream/u-cube/>

**d. The SEC should require disaggregated, project-level disclosures of fossil fuel issuers' emissions under Scopes 1, 2, and 3**

Investors in fossil fuel companies would also further benefit from an improved final SEC rule that required disaggregated, project-level disclosures of fossil fuel issuers' emissions under Scopes 1, 2, and 3 given the significant variation in emissions and emissions intensity between projects. A project-level standard for disclosures is already common within the sector, and disaggregating at this level would complement existing reporting in the sector as well.<sup>127</sup> This disaggregated information can allow investors an opportunity to critically assess fossil fuel issuers' project portfolios with a view toward differentiating between projects with more or less significant climate impacts and risks and assess how changes to project operations and the project portfolio might affect such impacts and risks. Such disclosures would also permit a clearer understanding of the local impacts associated with emissions. Indeed, some oil and gas companies are already disclosing some project-level emissions data, but there is a lack of consistency in such voluntary reporting, inhibiting comparability across projects and issuers.

**e. The Commission should require disclosure of emissions embedded in reserves**

While the SEC already requires specific reporting for oil and gas, as updated under the 2010 Modernization of Oil and Gas Reporting Rule, to ensure more accurate reporting of oil and gas reserves, it also fails to account for climate risks associated with different types of reserves. This is critical given that reserves may represent some 80 percent of the valuation of publicly traded oil and gas companies.<sup>128</sup> However, these reserves also represent future emissions (particularly Scope 3 emissions) when they are ultimately developed. While the modernization of this sector-specific reporting did update reserves reporting, the current rule does not yet require the climate-related impacts and risks inherent to these reserves' future emissions. Increased climate transition risk posed by many unconventional reserves – like bitumen or oil sands reserves that produce more emissions than oil and natural gas – is not yet incorporated into disclosures. However, these risks can be quantified by multiplying IPCC CO<sub>2</sub> emissions factors by each reserves category, as outlined in an investor analyst submission to the SEC from WK Associates (updating their earlier June 2021 submission to the SEC).<sup>129</sup> The SEC should require disclosure of these emissions embedded in reserves in its final rule, which would help investors to have a clear, forward-looking climate risk disclosure metric.

Investors and other market participants would particularly benefit from improvements to the 2010 Modernization of Oil and Gas Reporting Rule and through updates to Commission Guidance regarding Regulation S-K reporting requirements and to more detailed guidance as described above. Industry-focused standards should be developed by assessing the existing frameworks as templates and ensuring that they are updated based on our current understandings of climate science, new technologies available to companies, and so on. In terms of implementation, the companies should be responsible for modernizing their operations so that they comply with the SEC standards within their industry.

**2. The agricultural and food and beverage sectors are ripe for the adoption of a sector specific approach.**

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<sup>127</sup> See for example, project-level reporting of payments to governments across jurisdictions.

<sup>128</sup> Yergin, D. and Pravettoni, E. (2016). *Do investments in oil and gas constitute systemic risk?* IHS Energy, Retrieved from <https://ihsmarket.com/research-analysis/do-investments-in-oil-and-gas-constitute-systemic-risk.html>

<sup>129</sup> Alexander Schay, Managing Director, W.K. Associates, Inc., Comments on Proposed Rule: Disclosure of Payments by Resource Extraction Issuers [Release No. 34-87783; File No. S7-24-19]. Retrieved from <https://www.sec.gov/comments/s7-24-19/s72419-6961611-212817.pdf>

Oxfam urges the Commission to consider requiring sector specific disclosures for the food and beverage sector. The sector is responsible for up to 30% of the total global GHG emissions.<sup>130</sup> Deforestation and unsustainable land use linked to agricultural activity now account for over 20% share of global emissions and 36% of global deforestation.<sup>131</sup> Most of the emissions come from land use change which includes expansion of agricultural production into forests and other natural ecosystems as well as direct emissions from agriculture. Agricultural commodities--especially those produced and sourced industrially from tropical regions, including soy, palm oil, cocoa, and cattle--contribute significantly to deforestation and forest degradation, producing large amounts of carbon emissions. Most of the agricultural commodities are sourced from low- and middle-income countries and most are sourced from land that is illegally deforested.<sup>132</sup> At least 69% of forests converted to pastoral or crop land between 2013 and 2019 were done in violation of national laws and regulations.<sup>133</sup>

The current lack of enforcement has led to low and inconsistent disclosures in the sector; an assessment by Ceres of food company disclosures revealed that very few of them are comprehensively disclosing Scope 3 emissions, despite it being the bulk of their emissions.<sup>134</sup> In 2020, Oxfam's assessment also showed that companies in the US agricultural commodity sector lag behind their counterparts on climate-related disclosures.<sup>135</sup> The animal agricultural segment is especially unprepared for the transition needed to address climate change and risks; 86% of the 49 major meat and dairy suppliers assessed by FAIRR fail to declare or set meaningful reduction targets for all GHG emissions-including Scope 3, and only 18% partially report methane emissions.<sup>136</sup> Scope 3 disclosures in the sector would be particularly helpful to highlight the risks investors face from company inaction.

Companies' failure to address value chain emissions from agriculture and land use change will increase physical and transition risks for investors.<sup>137</sup> Investors have made clear that they find companies involvement in deforestation to be a major area of risk.<sup>138</sup>

The regulatory tide is changing in the US, and companies behind the curve will suffer the most. In 2021, US Senator Brian Schatz and US Representatives Earl Blumenauer and Brian Fitzpatrick have unveiled the Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act, bipartisan legislation that would create a framework for the federal government to combat illegal deforestation by prohibiting the importation of products made wholly or in part of certain commodities produced on land

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<sup>130</sup> Intergovernmental Panel on Climate Change. (2019). *Special report on climate change and land use*. Retrieved from <https://www.ipcc.ch/srccl/>

<sup>131</sup> Orbitas. (2020). *Agriculture in the age of climate transitions: Stranded assets. Less land. New costs. New opportunities*. Retrieved from <https://orbitas.finance/2020/12/03/ag-climate-transitions-risk-opportunities/>

<sup>132</sup> Id.

<sup>133</sup> Dummett, C. & Blundell, A. (2021). *Illicit Harvest, Complicit Goods: The state of illegal deforestation in agriculture*. Forest Trends. Retrieved from [https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods\\_rev.pdf](https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods_rev.pdf)

<sup>134</sup> Ceres. (n.d.). *Food Emissions 50*. Retrieved from <https://www.ceres.org/climate/ambition2030/food#company-benchmark>

<sup>135</sup> Oxfam International. (2021). *Shining a Spotlight: A critical assessment of food and beverage companies' delivery of sustainability commitments*. Retrieved from <https://www.oxfamamerica.org/explore/research-publications/shining-a-spotlight/>

<sup>136</sup> FAIRR. (2021, December 1). *Meat & Dairy Results Sour COP26 Ambitions on Methane and Deforestation*. Retrieved from <https://www.fairr.org/article/meat-dairy-results-sour-cop26-ambitions-on-methane-and-deforestation/>

<sup>137</sup> See comment on this Proposed Rule by Climate Advisors detailing these risks.

<sup>138</sup> BlackRock. (2020). Voting bulletin: The Procter & Gamble company," Blackrock. Retrieved from <https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-procter-and-gamble-oct-2020.pdf> and Fouche, G. (2019, August 27). *Norway urges its companies in Brazil to safeguard the Amazon*. Reuters. Retrieved from <https://www.reuters.com/article/us-brazil-environment-norway/norway-urges-its-companies-in-brazil-to-safeguard-the-amazon-idUSKCN1VH1RO> and Spring, J. (2020, June 19). *Exclusive: European investors threaten Brazil divestment over deforestation*. Reuters. Retrieved from <https://www.reuters.com/article/us-brazil-environment-divestment-exclusi/exclusive-european-investors-threaten-brazil-divestment-over-deforestation-idUSKBN23Q1MU>

undergoing illegal deforestation, and for other purposes.<sup>139</sup> In May, a bipartisan committee meeting was held in the US House of Congress on forest conservation.<sup>140</sup> In California and New York, members of the states' assemblies re-introduced bills on public procurement legislation; the two bills (one in California and one in New York) would require that state governments purchase products that are free of deforestation.<sup>141</sup> These laws will result in a major re-organization of supply chains in major markets and the demand for deforestation-free products will grow. In the US, 40% of the country's GDP is generated from sectors exposed to climate-related risks from the land use sector.<sup>142</sup> The EU in November 2021 has introduced a proposal for regulation that would require suppliers to prove that products in food sectors such as beef, soy, cattle, cocoa, and palm oil minimize the risk of deforestation, among others, in their supply chains.<sup>143</sup>

Asset write downs are not unique to the oil and gas sector. The food and beverage sector is a target for and faces high risk of asset stranding. Increased regulatory or legislative scrutiny, changing climate and increasing frequency of events such as floods and droughts, changing consumer demand, and market and policy shifts can disrupt production cycles, shift production patterns, and contribute to asset stranding in the food and beverage sector.<sup>144</sup> In Indonesia, the palm oil permit moratorium, which was launched in 2018 to try to stop deforestation caused by palm oil, ended in September 2021.<sup>145</sup> The government was urged to extend the legislation and has chosen to run the existing legislation though there were concerns that this has done little to stop businesses from continuing without a permit.<sup>146</sup> However, as regulators across developed countries are introducing legislation to ensure suppliers linked to deforestation don't make it past their borders, investors would benefit from knowing which companies are ahead of the curve and those among them that will either lose market share or be cut off from international markets if they fail to comply with regulations. Indonesia is the largest palm oil producer responsible for almost 60% of global production.<sup>147</sup>

Moreover, high levels of external inputs and methods used in industrialized agriculture are a roadblock to addressing climate change, as large-scale operations lower the cost of operations while significantly increasing emissions, the costs of which are externalized globally. At the same time, limited resources inhibit smallholder farmers from improving productivity, building climate resilience, and scaling up agroecological methods to effectively compete in supply chains that continue to push maximum cost savings to the bottom of the value chain.

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<sup>139</sup> FOREST Act of 202, S. 2950, 117<sup>th</sup> Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/2950/text>

<sup>140</sup> See the video of the bipartisan hearing on food conservation in the fight against climate change at <https://foreignaffairs.house.gov/hearings?ID=0D135075-5513-4205-955E-8787279C3856>

<sup>141</sup> A.B. 1979, 2022 California Legislature, 2021-2022 Regular Sess. (CA 2022). [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1979](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1979) and S5921A, 2021, 2021-2022 Regular Sess. (NY 2021). <https://www.nysenate.gov/legislation/bills/2021/s5921/amendment/original?intent=oppose>. Le

<sup>142</sup> McCarthy, N. & Piotrowski, M. (2022). *Climate-Related Forest, Food and Land Risks threaten US financial stability*. Climate Advisers. <https://www.climateadvisers.org/insightsfeed/climate-related-forest-food-and-land-risks-threaten-us-financial-stability/#:~:text=Close-Climate%2DRelated%20Forest%2C%20Food%2C%20and%20Land,Risks%20Threaten%20US%20Financial%20Stability&text=With%2040%25%20of%20US%20GDP,to%20protect%20US%20financial%20stability>

<sup>143</sup> See the European Commission's proposal for a regulation on deforestation-free products at [https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en)

<sup>144</sup> Orbitas. (2021). *Climate Transition Risk Analyst Brief: Indonesian Palm Oil*. Retrieved from <https://orbitas.finance/2021/08/27/indonesian-palm-oil-deforestation-climate-transition-risk/>, and Orbitas. (2021). *Climate Transition Risk Analyst Brief: Colombian Beef*. Retrieved from <https://orbitas.finance/2021/04/07/climate-transition-risk-colombian-cattle/>

<sup>145</sup> Reuters. (2021, September 16). *Environmentalists urge extension of Indonesian palm permit moratorium*. Retrieved from <https://www.reuters.com/world/asia-pacific/environmentalists-urge-extension-indonesia-palm-permit-moratorium-2021-09-16/>

<sup>146</sup> Reuters. (2021, September 22). *Indonesia to use "existing laws" as palm oil moratorium expires*. Retrieved from <https://www.reuters.com/business/environment/indonesia-use-existing-laws-palm-oil-moratorium-expires-2021-09-22/>

<sup>147</sup> See palm oil 2022 world production from the US Department of Agriculture at <https://ipad.fas.usda.gov/cropeplorer/cropview/commodityView.aspx?cropid=4243000>

The SEC should require the food and beverage sector to have a robust reporting framework. There are many good emerging practices that the SEC can draw from. Some of them can include:

- **The Accountability Framework Initiative:** The framework can be a good reference point to assess commitments with respect to addressing deforestation and land use change; implementation plans for commitments including Scope (i.e., how much of value chain addressed in plans) and target dates, as well as assessment of progress against commitments.
- **CDP Forest Survey:** Disclosures are targeted to commodities and countries at high risk of deforestation, and the Scope is clearly defined. CDP Forests is largely compatible with language used in the TCFD and could easily be integrated to provide a more complete view of tropical commodity dependencies and risk.
- **Convention on Biological Diversity:** The convention's post 2020 Framework includes a vision "By 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people."<sup>148</sup> Biodiversity is very much tied to food and agricultural systems. Oxfam recognizes that the US has not ratified the treaty (192 other countries have), citing sovereignty and intellectual property concerns.<sup>149</sup> However former President Bill Clinton dispelled these concerns by including seven understandings that seemed to allay those concerns and underscoring the US's right to retain sovereignty over its natural resources.<sup>150</sup>
- **Science Based Targets Initiative:** Companies should disclose emissions reductions across all scopes (Scopes 1, 2 and 3) in accordance with the SBTi.<sup>151</sup> For companies, it is important that long-term net zero targets are based on robust science-based targets aligned with the goal of limiting warming to below 1.5°C.
- **The Taskforce on Nature-related Financial Disclosures (TNFD):** Similar to the TCFD, it is a collaboration of investors, financial institutions, and corporations to work to create a framework modeled on TCFD. As the framework develops Oxfam would support the SEC in its efforts to require companies in the agriculture and food and beverage sector to disclose as per TNFD recommendations and guidelines with the qualifier that the Commission should closely follow developments and assess the robustness of disclosure rules under TNFD. The SEC should consider requiring companies to adopt it if at the very least, it is up to the same standards as the TCFD.

Oxfam believes by taking into consideration these recommendations, the SEC can be in a better position to protect investors from the climate-related financial risks that stem from the agricultural and food and beverage sector.

### ***C. The SEC should require disclosures on the degree of alignment between company lobbying activities and climate action***

The Proposed Rule is silent on companies' climate lobbying positions' disclosures and alignment with the Paris Agreement. At the outset, Oxfam recognizes that there is currently a rider in place, the Consolidated Appropriations Act 2021, that constricts the SEC from using funds to draft "disclosure on

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<sup>148</sup> See Convention on Biological Diversity at <https://www.cbd.int/doc/c/4a22/3eba/a499b54091a1c1e22bb7b54e/sbstta-21-02-en.pdf>

<sup>149</sup> See Convention on Biological Diversity's list of members who ratified the treaty at <https://www.cbd.int/information/parties.shtml>

<sup>150</sup> See Senate Consideration of Treaty Document 103-20 on the Convention of Biological Diversity at <https://www.congress.gov/treaty-document/103rd-congress/20/resolution-text?r=19&s=1>

<sup>151</sup> About SBTi at <https://www.sciencebasedtargets.org/>

political and tax-exempt contributions and dues paid to trade associations.”<sup>152</sup> However, we do not seek disclosure of such expenditures. All we ask companies to do is demonstrate that their lobbying and other political activities are aligned with and take into consideration the financial risks companies face from climate change.

Evidence suggests that company talk is not on par with action. Three-quarters of S&P 100 companies are members of the U.S Chamber of Commerce, which has actively fought climate change policy reforms, with only 7 percent disclosing on how they challenged the Chamber to change its position on climate change.<sup>153</sup> Since COP26, companies have made a slew of commitments to reduce their emissions.<sup>154</sup> Yet in 2019, InfluenceMap revealed that the five largest publicly traded oil and gas companies — BP, Chevron, ExxonMobil, Shell, and TotalEnergies — invested more than \$1 billion into "misleading climate branding and lobbying" in the three years following the Paris Agreement.<sup>155</sup> In 2021, an Exxon lobbyist was caught on tape describing the company's aggressive fight to scale back climate provisions in President Biden's infrastructure bill, including meeting with US Senators.<sup>156</sup> In addition, a Ceres report found that companies actively lobbied against science-based climate policies for oil and gas majors and some of the companies' lobbying activities run counter to their internal emissions reduction goals.<sup>157</sup> The inconsistencies between company public positions on climate and company action via lobbying are not only common in the fossil fuel sector; agriculture and food and beverage companies have also undermined efforts to develop climate policies by lobbying government officials or releasing research that minimizes the climate change impacts of the industry.<sup>158</sup>

The financial implications of such inconsistencies can cost investors dearly, especially as companies are ill-prepared to deal with the physical and transition risks stemming from climate change. Many investors are aware of that. In 2017, nearly 400 investors representing nearly \$22 trillion in AUM wrote to G7 and G20 nations urging them to urgently put in place policies to achieve their nationally determined contributions (NDC) in alignment with the Paris Agreement.<sup>159</sup> In 2021, a survey conducted by Institutional Shareholder Services revealed investors growing concern with companies' climate positions and actual action; almost 50% of investors in the survey believe that companies' lobbying activities should align with the Paris Agreement.<sup>160</sup>

As governments implement policies to address the climate crisis, it is key that companies do not act as a roadblock and inadvertently worsen the impacts of climate change. The financial risks stemming from climate change will reverberate across multiple sectors, causing spillovers and creating feedback loops resulting in contagion across various portfolios and asset classes simultaneously. Larry Fink, CEO of

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<sup>152</sup> Consolidated Appropriations Act, 2021, H.R. 133, 116th Congress, (2020). <https://www.congress.gov/bill/116th-congress/house-bill/133/text>

<sup>153</sup> Ceres. (n.d.). *Practicing Responsible Policy Engagement*. Retrieved from <https://www.ceres.org/practicingRPE>

<sup>154</sup> Jessop, S., James, W. & Carey, N. (2021, November 11). *Countries, cities, carmakers commit to end fossil-fuel vehicles by 2040*. Reuters. Retrieved from <https://www.reuters.com/business/cop/six-major-carmakers-agree-phase-out-fossil-fuel-vehicles-by-2040-uk-says-2021-11-10/> and Timperley, J. (2021, July 26). *The truth behind corporate climate pledges*. The Guardian. Retrieved from <https://www.theguardian.com/environment/2021/jul/26/climate-crisis-green-light>

<sup>155</sup> InfluenceMap. (2019). *Big Oil's Real Agenda on Climate Change*. Retrieved from <https://influencemap.org/report/How-Big-Oil-Continues-to-Oppose-the-Paris-Agreement-38212275958aa21196dae3b76220bdc>

<sup>156</sup> Tabuchi, H. (2021, June 30). *In video, Exxon lobbyist describes efforts to undercut climate action*. The New York Times. Retrieved from <https://www.nytimes.com/2021/06/30/climate/exxon-greenpeace-lobbyist-video.html>

<sup>157</sup> Ceres. (n.d.). *Practicing Responsible Policy Engagement*. Retrieved from <https://www.ceres.org/practicingRPE>

<sup>158</sup> Lazarus, O., McDermid, S. & Jacquet, J. (2021). *The climate responsibilities of industrial meat and dairy producers*. *Climatic Change*. 165, 30. Retrieved from <https://doi.org/10.1007/s10584-021-03047-7>

<sup>160</sup> Belyeu, K., Lloyd, C., Ramming, A. & Riggs, S. (2021). *2020 Global Policy Survey – Climate*. Institutional Shareholder Services. Retrieved from <https://www.issgovernance.com/file/publications/2021-climate-survey-summary-of-results.pdf>

Blackrock, Inc. has also reiterated these concerns in his 2020 annual letter to CEOs and shareholders. In it, he underscored that:

The evidence on climate risk is compelling investors to reassess core assumptions about modern finance. Research from a wide range of organizations—including the U.N.’s Intergovernmental Panel on Climate Change, the BlackRock Investment Institute, and many others, including new studies from McKinsey on the socioeconomic implications of physical climate risk—is deepening our understanding of how climate risk will impact both our physical world and the global system that finances economic growth.

These questions are driving a profound reassessment of risk and asset values. And because capital markets pull future risk forward, we will see changes in capital allocation more quickly than we see changes to the climate itself. In the near future—and sooner than most anticipate—there will be a significant reallocation of capital.<sup>161</sup>

In fact, in the past two years investors have ramped up efforts asking companies for more transparency on climate lobbying. 2020 was the first year investors started filing climate-specific lobbying resolutions that requested companies to disclose lobbying efforts and/or the degree of alignment with the Paris Agreement. Though only 4 resolutions were filed that year, they received 33% investor support.<sup>162</sup> Since then, climate lobbying resolutions have gained increased momentum.<sup>163</sup> In 2021, 20 resolutions were filed and 13 went to vote and averaged 47% support (some of them were withdrawn).<sup>164</sup> That year, six lobbying resolutions won majority votes, including two at Exxon and one at Phillips 66, one of the largest publicly traded downstream and midstream petroleum companies in the US.<sup>165</sup> Since last year, the resolutions filed have more than doubled; in 2022 46 climate-related lobbying proposals have been filed with 21 seeking proof that a company’s climate lobbying is aligned with the Paris Agreement.<sup>166</sup> Of those filed, to date 18 have been withdrawn after companies negotiated agreements with investors.

The reason investors have resorted to such action is because of the companies’ inconsistent positions. In its 2022 Guidance on Climate-Related disclosures, SsGA identified that when evaluating climate related shareholder proposals, it considers “[i]f the company performed a gap analysis of its stated positions on climate change versus those of its trade associations.”<sup>167</sup> Climate Action 100+’s assessment notes that 81% of the companies on the organization’s focus list (166 total companies) are part of one or more trade associations that lobby against climate legislation. The group, one of the largest US investor networks on climate representing over \$65 trillion AUM, issued a Net Zero Company Benchmark that includes recommendations on how companies should establish a reporting mechanism to ensure that

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<sup>161</sup> See BlackRock CEO’s 2020 Letter to CEOs at <https://www.blackrock.com/americas-offshore/en/larry-fink-ceo-letter>

<sup>162</sup> Data sourced from proxy insight at <https://www.proxyinsight.com>

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> See also, Kirsty Jenkinson, Investment Director, California State Teachers’ Retirement System and Aeisha Mastagni, Portfolio Manager, California State Teachers’ Retirement System, Comments on Climate Change Disclosures, June 4, 2021, 3, <https://www.sec.gov/comments/climate-disclosure/cl12-8888208-240907.pdf>

<sup>166</sup> Ceres. (2022, March 14) *Shareholders Escalate Campaign Pressing Companies to ‘Walk Their Talk’ on Climate Lobbying*. Retrieved from <https://www.ceres.org/news-center/press-releases/shareholders-escalate-campaign-pressing-companies-walk-their-talk>

<sup>167</sup> See State Street Global Advisors Asset Stewardship Guidance on Climate-related Disclosures at <https://www.ssga.com/library-content/pdfs/asset-stewardship/guidance-on-climate-related-disclosures.pdf>

investors know that both the company and all its trade associations are lobbying in a manner that is consistent with the goals of the Paris Agreement.<sup>168</sup>

In 2022, investors representing more than \$130 trillion published a new standard, the Global Standard on Responsible Climate Lobbying, in light of the misalignment between what companies are saying on climate and actually doing.<sup>169</sup> The Global Standard on Responsible Climate Lobbying has attracted almost 4,000 signatories and members.<sup>170</sup> Investors such as BNP Paribas Asset Management and the Church of England Pension Board both helped develop the plan.<sup>171</sup> Oxfam believes that the company standards under Responsible Climate Lobbying can act as the stern for the SEC. It explicitly asks companies to:

- Align all of [their] climate lobbying with best practice<sup>172</sup>
- Prioritise and publish an annual review of how [they] are lobbying responsibly in support of ambitious climate policy<sup>173</sup>

Investor's lack of clarity with and alignment on a company's climate change related goals, targets, and climate action plans can impact their modeling and evaluation as they assess climate risks. Oxfam specifically asks that the Proposed Rule consider requiring companies to address the alignment between a company's climate strategies and goals and its political and public engagement. We also request that companies be asked to conduct a gap analysis to enable investors to assess the inconsistencies. Last but not the least, the SEC should also require that the information is filed to reduce misinterpretation and material inconsistencies.

#### ***D. Efforts to inhibit a just transition can jeopardize companies transition plans***

##### ***a. Investor support for a just transition***

*For climate change, "a successful transition — one that is just, equitable, and protects people's livelihoods — will require both technological innovation and planning over decades,"*

Larry Fink, CEO of Blackrock, Inc.<sup>174</sup>

Over the past five years, there has been growing recognition among investors about the dangers posed to their portfolios by companies not considering the just transition impacts of climate change. Concerned about the rising climate-related financial just transition risks, a growing number of investors are reaching out to companies to ensure that just transition is a consideration when assessing financial risks stemming from a transition to a low carbon economy. In February 2022, 96 investors with almost \$3.8 trillion AUM published a statement of expectations for a just transition that highlighted among

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<sup>168</sup> Climate Action 100+. (2021). *Climate Action 100+ issues its first ever net zero company benchmark of the world's largest corporate emitters*. Retrieved from <https://www.climateaction100.org/news/climate-action-100-issues-its-first-ever-net-zero-company-benchmark-of-the-worlds-largest-corporate-emitters/>

<sup>169</sup> About Responsible Climate lobbying: The Global Standard. <https://climate-lobbying.com/>

<sup>170</sup> Id.

<sup>171</sup> Holger, D. (2022, March 14). *Investors dial up pressure over companies' climate lobbying*. The Wall Street Journal. Retrieved from <https://www.wsj.com/articles/investors-dial-up-pressure-over-companies-climate-lobbying-11647272299>

<sup>172</sup> See Responsible Climate Lobbying standard's indicators at [http://climate-lobbying.com/wp-content/uploads/2022/03/2022\\_global-standard-responsible-climate-lobbying\\_APPENDIX.pdf](http://climate-lobbying.com/wp-content/uploads/2022/03/2022_global-standard-responsible-climate-lobbying_APPENDIX.pdf)

<sup>173</sup> About Responsible Climate lobbying: The Global Standard. <https://climate-lobbying.com/>

<sup>174</sup> See BlackRock CEO's 2021 Letter to CEOs at <https://www.blackrock.com/corporate/investor-relations/2021-larry-fink-ceo-letter>

other things, community impacts.<sup>175</sup> Elsewhere, a letter coordinated by PRI that included 161 investors representing \$10.2 trillion in AUM underscored their commitment to support just transition, which among other things, highlights that “[t]he responsible management of workforce and community dimensions of climate change are increasingly material drivers for value creation.”<sup>176</sup>

Leading initiatives have been launched over the past two years by investors to assess company financial risks stemming from not only environmental externalities but also social ones resulting from the transition to a low carbon economy. The latest among these efforts include the Glasgow Financial Alliance for Net Zero (GFANZ) which laid the groundwork during COP26. In its 2021 report, GFANZ stated that it would consider “approaches to responsibly retire carbon-intensive assets in a way that maximize real world decarbonisation using science-based targets, whilst seeking to minimise social and economic damage.”<sup>177</sup> The G7 Impact Taskforce, which includes investors such as BlueOrchard and Schrodgers, committed to ensure that the “just transition” represents much more than another lens for investment strategies.<sup>178</sup> The World Benchmark Alliance (WBA) launched in 2021 includes an assessment of 450 companies that operate in high carbon emitting sectors on their efforts toward ensuring a just transition.<sup>179</sup> As the impacts of transition are becoming more visible and known, Climate Action 100+ has also added just transition while assessing companies on climate change.<sup>180</sup>

Some investors have also initiated a warning shot to companies for failing to consider just transition as a risk in transition planning. For instance, in May 2022, along with the WBA, Newton Investment Management and NinetyOne sent letters to 100 oil and gas companies to, among other things, consider the needs of its employees and the frontline communities who will be impacted by an industry-wide transition to a low-carbon economy and have stated that they intend to follow-up the letter with company dialogue. Additionally, Collective Impact Coalition (CIC), a multi-stakeholder effort led by the WBA will aim to tackle the failure by oil and gas companies to “identify, prepare for and mitigate the social impacts of their low-carbon strategies”.<sup>181</sup>

Other investors have taken a more aggressive approach and filed shareholder resolutions at companies asking for a host of issues related to just transition. For example:

- In 2022, a first-time resolution filed at Republic Services, Inc. received over 35% support; the resolution asked the company to commission an environmental audit emphasizing the disproportionate impacts stemming from the “placement of high-polluting facilities in communities of color in the United States.” The proposal cited the increased regulatory risk

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<sup>175</sup> Interfaith Center for Corporate Responsibility. (2022, February) *Global Investors Representing Over US\$3.8T Issue Statement of Principles for Job Standards and Community Impacts for a Just Transition*. Retrieved from <https://www.iccr.org/global-investors-representing-over-us38t-issue-statement-principles-job-standards-and-community>

<sup>176</sup> See Statement of Investor Commitment to Support a Just Transition on Climate Change at <https://www.unpri.org/download?ac=10382>

<sup>177</sup> GFANZ. (2021). *The Glasgow Financial Alliance for Net Zero: Our progress repand plan towards a net-zero global economy*. <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf>

<sup>178</sup> The Impact Taskforce brings together 120 leading voices from the worlds of business, investment and public policy, representing over 100 institutions across 40 countries. More about the Impact Taskforce is available at <https://www.impact-taskforce.com/about/>

<sup>179</sup> WBA. (n.d.). *Just Transition*. <https://www.worldbenchmarkingalliance.org/just-transition/>

<sup>180</sup> Climate Action 100+. (2021). *Climate Action 100+ issues its first ever net zero company benchmark of the world's largest corporate emitters*. <https://www.climateaction100.org/news/climate-action-100-issues-its-first-ever-net-zero-company-benchmark-of-the-worlds-largest-corporate-emitters/>

<sup>181</sup> Gambetta, G. (2022, May 17). *Oil and gas challenged by investor coalition on Just Transition strategy*. Responsible Investor. Retrieved from <https://www.responsible-investor.com/oil-and-gas-giants-challenged-by-investor-coalition-on-just-transition-strategy/>. See WBA (2021). *Introducing WBA's Collective Impact Coalitions*. Retrieved from <https://www.worldbenchmarkingalliance.org/news/launch-collective-impact-coalitions/>

which could impact its “ability to win and retain contracts and uphold strong relationships with the communities in which it operates.”<sup>182</sup>

- At Wells Fargo’s 2022 annual meeting a shareholder resolution asking the company to provide a report to shareholders disclosing the effectiveness of its policies, practices, and performance indicators when considering the rights of Indigenous Peoples garnered almost 30% support from investors such as the CalPERS, Legal and General Investment Management, the Florida State Board of Administration, and the Louisiana State Employees’ Retirement System.<sup>183</sup>
- Honeywell International Inc.’s meeting included a host of proposals, including one on asking the company to issue a report on its due diligence processes to identify and address environmental and social risks, citing as reasons for such a request as risks stemming from litigation, project delays, and significant fines and identifying the cost of doing business entailing “disparate and significant costs for community members, public health, and the environment.” The proposal received 21.4% investor support.<sup>184</sup>

While only three shareholder resolutions were filed on topics in 2022 related to just transition disclosure, the support for these first-time resolutions were 20% and above. This indicates a higher-than-average level of support for first time shareholder resolutions, and signals that an increasing number of shareholder resolutions on just transition are likely to be filed in the years ahead. The growing support among investors for ensuring that companies are transparent about their plans for a just transition demonstrates that shareholders consider this important information, and that the absence of such disclosures may pose a serious financial risk.

***b. The regulatory context is changing and companies that are planning and preparing for a just transition will be ahead of the curve***

As increasing regulation becomes the norm, it will become more important for investors to know how companies are preparing themselves for the transition to a low carbon economy. Just transition has already moved into the mainstream with increasing investor demand for company disclosure.

During the 26<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in November 2021 (COP26) in Glasgow, Scotland, governments committed to consider “the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities” as part of the Paris Agreement.<sup>185</sup> At Glasgow half a dozen initiatives were introduced to tackle just transition, including the Climate Investment Funds initiative to provide support to, in the first phase, India, Indonesia, the Philippines, and South Africa, in their efforts to ensure a just transition away from coal which was endorsed by G7 members.<sup>186</sup> Companies that are lagging behind on including just transition best practices in transition planning will bear the financial costs as regulatory efforts could be underway in these countries (either

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<sup>182</sup> Republic Services SEC filings available at [https://www.sec.gov/Archives/edgar/data/0001060391/000156459022012242/rsg-def14a\\_20220516.htm#PROPOSAL\\_5\\_Shareholder\\_Proposal](https://www.sec.gov/Archives/edgar/data/0001060391/000156459022012242/rsg-def14a_20220516.htm#PROPOSAL_5_Shareholder_Proposal) and

<https://www.sec.gov/ix?doc=/Archives/edgar/data/0001060391/000119312522154026/d335060d8k.htm>

<sup>183</sup> Wells Fargo’s SEC filings are available at <https://www.sec.gov/Archives/edgar/data/72971/000119312522074612/d304150ddef14a.htm> and <https://www.sec.gov/ix?doc=/Archives/edgar/data/72971/000007297122000111/wfc-20220426.htm> and voting data obtained from Proxy Insight at <https://www.proxyinsight.com/>

<sup>184</sup> Honeywell’s SEC filings are available at

<https://www.sec.gov/Archives/edgar/data/773840/000077384022000024/a2022honeywellproxy.htm> and

<https://www.sec.gov/ix?doc=/Archives/edgar/data/773840/000119312522127973/d337864d8k.htm>

<sup>185</sup> UNFCCC. (n.d.). Just Transition of the workforce, and the creation of decent work and quality jobs.

<https://unfccc.int/sites/default/files/resource/Just%20transition.pdf>

<sup>186</sup> About Climate Investment Funds: <https://www.climateinvestmentfunds.org/news/cif-highlights-cop26>

by their own will or because of pressure from other countries and stakeholders to develop policies and practices related to accelerating a just energy transition). Almost all countries receive a significant amount of foreign direct investment from a multitude of international investors, including US investors.<sup>187</sup> Trade and arbitration agreements overseeing foreign direct investments may contain provisions forcing just transition actions. Additionally, in the run up to or at COP26, some countries preemptively drafted regulations and policies meant to counter the threat of an unjust transition.<sup>188</sup>

In 2020, the European Parliament approved the European Green Deal, which requires the EU to “reach net-zero greenhouse-gas (GHG) emissions by 2050; decouple economic growth from resource use; and leave no person and no place behind.”<sup>189</sup> These requirements have informed the development of the Sustainable Finance Disclosure Regulation (SFDR)’s social taxonomy, which consists of three objectives to address impacts on different stakeholders, including workers consumers, and communities.<sup>190</sup> Though the social taxonomy is distinct from the environmental taxonomy, the European Parliament is exploring ways to integrate the two that would accentuate the interrelation between social and environmental impacts of corporate action and financial decision-making.

In the last few years, just transition actions have been taken by US policy makers as well. In 2021, a just transition bill was introduced in Congress.<sup>191</sup> Since his time in office, President Biden has introduced multiple Executive Orders in response to the climate crisis that also address managing a just energy transition for Black Indigenous and People of Color (BIPOC) communities.<sup>192</sup> At the state level, California Governor Gavin Newsom signed an executive order in 2020 outlining a just transition roadmap that will focus on “communities and workers that rely heavily on fossil fuel or other traditional industries, and on creating economic opportunity for disadvantaged communities most burdened by the climate crisis.”<sup>193</sup> The success of California’s efforts can serve as a roadmap for other states to follow suit. Colorado and New Mexico also recently passed just transition legislation in 2019.<sup>194</sup>

Other countries beyond the US and the EU are also setting up efforts to consider, commit to or approve just transition plans.<sup>195</sup> Elsewhere in the UK, in 2020, banks, investors and other financial institutions including institutions such as Legal & General Investment Management, Aviva Investors,

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<sup>187</sup> See 2021 annual report of Reserve Bank of India at <https://m.rbi.org.in/Scripts/AnnualReportPublications.aspx?Id=1336>; see information on foreign direct investment inflows in Indonesia at <https://www.statista.com/statistics/1085899/indonesia-inward-fdi-flows-by-country/>; and see information on foreign direct investment inflows in The Philippines at [https://www.pna.gov.ph/articles/1169514#:~:text=MANILA%20%E2%80%93%20The%20Philippines%20recorded%20its,Pilipinas%20\(BSP\)%20reported%20Thursday](https://www.pna.gov.ph/articles/1169514#:~:text=MANILA%20%E2%80%93%20The%20Philippines%20recorded%20its,Pilipinas%20(BSP)%20reported%20Thursday).

<sup>188</sup> See climate Watch’s National Determined Contribution’s tracker at <https://www.climatewatchdata.org/2020-ndc-tracker>

<sup>189</sup> See information about the European Green New Deal at [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>190</sup> EU Platform on Sustainable Finance. (2022). Final Report on Social Taxonomy: Platform on Sustainable Finance. [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/280222-sustainable-finance-platform-finance-report-social-taxonomy.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/280222-sustainable-finance-platform-finance-report-social-taxonomy.pdf)

<sup>191</sup> Just Transition for Energy Communities Act, H.R. 5193, 117<sup>th</sup> Congress. <https://www.congress.gov/bill/117th-congress/house-bill/5193/text?r=6&s=1>

<sup>192</sup> See Executive Order 14057 available at <https://www.federalregister.gov/documents/2021/12/13/2021-27114/catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability> and Executive Order 14008 available at <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>

<sup>193</sup> Available on the website of the State of California’s Governor Office of Planning and Research at <https://opr.ca.gov/economic-development/> and the California Governor’s executive order at <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>

<sup>194</sup> For Colorado, CO HB1314: Just Transition From Coal-based Electrical Energy Economy was signed in May 2019 and is available at <https://www.billtrack50.com/BillDetail/1114411> and for New Mexico’s Energy Transition Act was signed in March 22 and is available at <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=489&year=19>

<sup>195</sup> Available on the website of the Government of Canada : <https://www.canada.ca/en/environment-climate-change/services/climate-change/task-force-just-transition.html> and for New Zealand, available at <https://www.beehive.govt.nz/release/nz-commits-just-transition>

HSBC and Barclays urged the British Government to “make the just transition a core element of implementation of the government’s Net Zero Strategy that could prompt regulation.”<sup>196</sup>

Ultimately companies that do not anticipate the potential for regulation will face severe headwinds as the global transition to a low carbon economy moves full steam ahead.

***c. In the absence of a just transition, the financial risks associated with social impacts pose significant cost burdens on companies***

Ignoring the broader social risks that stem from ignoring the transition to carbon neutrality can present significant financial costs.<sup>197</sup> Knowing that companies are planning for a just transition, and disclosing those plans to investors, can be of material importance and those that will help them to decide whether such issues can pose long-term risks to investment portfolios. BlackRock identified that “companies that position themselves to navigate a strategic, timely, and just transition toward net zero, including considerations of broader stakeholder impacts, are those more likely to avoid operational disruptions, secure the support of their key stakeholders, and provide shareholders with durable investment returns.”<sup>198</sup> Even the industry group International Capital Market Association recognizes the risk that not acting towards a just transition poses recommending that “where a transition may have negative impacts for workers and communities, issuers should outline how they have incorporated consideration of a ‘just transition’ into their climate transition strategy, and may also detail any ‘social’ expenditures that are considered relevant within the context of transition finance.”<sup>199</sup>

Financial risks from this coming social and economic transition are real and are likely to reverberate across the economy. The WBA’s Just Transition Assessment 2021 highlights the lack of preparedness by companies to deal with the risks stemming from a societal transition and further goes on to state that “[t]he risk of leaving many behind is high and can have momentous impact on supply chains and energy access.”<sup>200</sup> Elsewhere Professor David J. Doorey of York University in the United Kingdom documented that “[a] just transition envisions an active state using law to tame market forces, which if left unchecked, could produce environmental and economic catastrophe.”<sup>201</sup> Thus, government action is necessary to ensure that investors are protected from companies that may try to hide information about their lack of preparation for a just transition.

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<sup>196</sup> Robins, N., Muller, S., Tickell, S. and Szwarc, K. (2021) *Just Zero: 2021 Report of the UK Financing a Just Transition Alliance*. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science. Retrieved from <https://www.lse.ac.uk/granthaminstitute/publication/just-zero-2021-report-of-the-uk-financing-a-just-transition-alliance/>

<sup>197</sup> Williamson, V. (2018, December 20). *What France’s yellow vest protests reveal about the future of climate action*. Brookings. <https://www.brookings.edu/blog/fixgov/2018/12/20/what-frances-yellow-vest-protests-reveal-about-the-future-of-climate-action/>; Bouye, M. (2019, November 27). *Chile’s protests offer lessons on social inequality and climate action*. World Resources Institute.

<https://www.wri.org/insights/chiles-protests-offer-lessons-social-inequality-and-climate-action>, Randow, J. and Pickert, R. (2021, November 17). *Climate change will boost inequality. So could the solution*. Bloomberg News. Retrieved from <https://www.bloomberg.com/news/articles/2021-11-11/climate-change-will-exacerbate-inequality-so-could-the-solution#xj4y7vzkg>, and Alderman, L. (2021, November 1). *Europe fears that rising cost of climate action is stirring anger*. The New York Times. Retrieved from <https://www.nytimes.com/2021/11/01/business/energy-environment/europe-climate-action-cost.html>

<sup>198</sup> See BlackRock’s investment stewardship approach on Climate Risk and the global transition at <https://www.blackrock.com/corporate/literature/publication/blk-commentary-climate-risk-and-energy-transition.pdf>

<sup>199</sup> International Capital Markets Group. (2020). *Climate Transition Finance Handbook: Guidance for Issuers*. Retrieved from <https://www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/Climate-Transition-Finance-Handbook-December-2020-091220.pdf>

<sup>200</sup> World Benchmarking Alliance. (2021). *Just Transition Assessment 2021 Are high-emitting companies putting people at the heart of decarbonisation?* Retrieved from <https://www.worldbenchmarkingalliance.org/research/2021-just-transition-assessment/>

<sup>201</sup> David J. Doorey. (2021). *Just Transitions Law: Putting Labour Law to Work on Climate Change*, Journal of Environmental Law and Practice 201, 30(2), Retrieved from <https://ssrn.com/abstract=2938590>

Oxfam recognizes that the Commission has already considered the impacts to workers when identifying transition risks; in Section B.2., the SEC highlights that the “central focus of the Commission’s proposed rules is the identification and disclosure of a registrant’s material climate-related risks.”<sup>202</sup> Further down, the SEC cites the following as an example of a climate related condition “that can present risks related to the physical impacts of the climate (“physical risks”) and risks related to a potential transition to a lower carbon economy (“transition risks”)” which is that increased heat temperatures materially impact workers performance and hence those in the construction industries would be required to disclose “the physical risk of increased heat waves that affect the ability of its personnel to safely work outdoors, which could result in a cessation or delay of operations, and a reduction in its current or future earnings.”<sup>203</sup>

The SEC has defined transition risk as “actual or potential negative impacts on a registrant’s consolidated financial statements, business operations, or value chains attributable to regulatory, technological, and market changes to address the mitigation of, or adaptation to, climate-related risks.” The Commission can enhance this definition by including various scenarios where companies would have to provide information about the impacts to the stakeholders, investors and customers, most affected by a transition.

The two big risks we see to companies from not preparing for a just transition are the risk of litigation and operational disruptions.

### **i. Litigation Risks**

Companies that fail to disclose information related to the social and environmental impacts of their climate footprint are exposed to increasing litigation, jeopardizing shareholders’ investments. In countries where legislation is absent, stakeholders are using litigation to compel action. A successful lawsuit could prompt governments to either regulate companies or to fast track any reform measures to ensure a just transition. As the space is evolving, companies can face an increasingly complex legal ecosystem where stricter climate change policies and harsher penalties for inaction could become the norm.<sup>204</sup> Failure to ensure a just transition could be potentially very costly for companies, especially laggards on just transition, and incur legal liabilities.

Costly litigation challenging companies that have failed to adapt to consider the voices of those most impacted by the just transition include, are not limited to:

- ***The legal battle by Eversource to build the new power line (The Northern Pass):*** The planned 1,090 megawatt high voltage direct current transmission line would interconnect from the Québec-New Hampshire border in Canada to Franklin, New Hampshire in the United States.<sup>205</sup> However legal challenges brought upon by frontline communities have resulted in the New Hampshire Supreme Court rejecting the company’s appeal to obtain a siting permit.<sup>206</sup> New Hampshire’s Site Evaluation Committee denied a permit for the project in Feb 28 “question[ing]

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<sup>202</sup> See page 56 of the Proposed Rule at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>

<sup>203</sup> Id.

<sup>204</sup> Mishra, S. (2022, March 3). *The Rise of Climate Litigation*, Harvard Law School Forum on Corporate Governance, Retrieved from <https://corpgov.law.harvard.edu/2022/03/03/the-rise-of-climate-litigation/>

<sup>205</sup> See Eversource Energy Form 8-K SEC filing on July 25, 2019 at <https://www.sec.gov/Archives/edgar/data/72741/000007274119000031/form8-knpt.htm>

<sup>206</sup> Id.

the project's promised benefits and worried about the impact it would have on rural communities.”<sup>207</sup> The company decided to pull the plug after this decision citing in its SEC filing that “the construction of Northern Pass was not probable.”<sup>208</sup> Had the company undertaken a thorough impact assessment early on and ensured Free Prior and Informed Consent (FPIC), the company may not have lost an approximate \$240 million pre-tax impairment charge.<sup>209</sup> Prior to the impairment charge, the capitalized project costs were approximately \$318 million.<sup>210</sup>

- **Legal Challenges posted against Perpetua Resources:** The challenge is coming from the Nez Perce Tribe from a legacy project alleging that Perpetua Resources (formerly Midas Gold) violated the Clean Water Act with its early exploration activity on the site beginning in 2009. Both parties have agreed to explore Alternative Dispute Resolution (ADR) options.<sup>211</sup> Yet as the ADR process continues, the company is awaiting approval for an open-pit gold mine project in the same Stibnite-Yellow Pine district of central Idaho that will mine for antimony which could be critical to manufacturing the high-capacity liquid-metal batteries necessary for transitioning to clean energy.<sup>212</sup> Energy security interests defined by the Biden administration under the conduit of national security could signal the potential that the project is approved.<sup>213</sup> The project threatens the local fish populations and raises increasing pollution concerns. Moreover, the technology is untested and hence there is no guarantee of its effectiveness to power battery technology. While it is unclear whether legal avenues will be explored by affected communities, ADR itself costs the company and in turn investors’ money, and potential for litigation remains.
- **Suspension of Tahoe Resources, Inc.’s license over FPIC concerns:** Guatemala’s Supreme Court suspended Tahoe Resources, Inc.’s license in 2018 after an anti-mining group filed a claim against Guatemala’s Ministry of Energy and Mines, alleging that the Ministry didn’t do robust FPIC before awarding a license to the company to build the Escobal silver mine.<sup>214</sup> The company’s license was suspended on the grounds that it violated indigenous rights.<sup>215</sup> The company derived 45% of its revenue from that mine in 2016.<sup>216</sup> The company has incurred a loss of \$100 million and its shares lost more than half their value since work on the mine was suspended. In 2019, Tahoe Resources was sold to Pan American Silver Corp.<sup>217</sup> At the time, although it was sold at a premium, the share price has fallen dramatically from \$27 to \$5 since

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<sup>207</sup> Brooks, D. (2019, July 26). *Eversource gives up Northern Pass hydropower project*. Concord Monitor. Retrieved from <https://www.concordmonitor.com/northern-pass-eversource-hydroquebec-27284387>

<sup>208</sup> Id.

<sup>209</sup> Id.

<sup>210</sup> Id.

<sup>211</sup> See Perpetua resources Corp. Form 10-K SEC filing for the year ended 2021 at

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1526243/000110465922035631/ppta-20211231x10k.htm>

<sup>212</sup> Oppie, T. and Schmidt, L. (2021, July 22). *Plans to restart mining in the historic Stibnite District raise environmental concerns*. Boise State Public Radio. Retrieved from <https://www.boisestatepublicradio.org/environment/2021-07-22/restart-mining-historic-stibnite-district-raise-environmental-concerns>, Healy, J. and Baker, M. (2021, December 27). *As miners chase clean-energy minerals, tribes fear a repeat of the past*. The New York Times. Retrieved from <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>, Catenacci, T.

(2022, February 11). *Biden Administration rolls out \$3 billion EV battery program*. Daily Caller. Retrieved from <https://dailycaller.com/2022/02/11/joe-biden-administration-energy-department-electric-vehicle-battery/> and

<sup>213</sup> Department of Energy. (2022, June 6). *President Biden Invokes Defense Production Act to Accelerate Domestic Manufacturing of Clean Energy*. Retrieved from <https://www.energy.gov/articles/president-biden-invokes-defense-production-act-accelerate-domestic-manufacturing-clean>

<sup>214</sup> Menchu, S. (2018, September 4). *Guatemala court confirms suspension of Tahoe Mining Licenses*. Reuters. Retrieved from <https://www.reuters.com/article/us-guatemala-mining-idUKKCN1LK074>

<sup>215</sup> Id.

<sup>216</sup> Scheyder, E. (2018, November 6). *For Tahoe Resources, Guatemala troubles underscore tense outlook*. Reuters. Retrieved from <https://www.reuters.com/article/us-tahoe-resources-guatemala/for-tahoe-resources-guatemala-troubles-underscore-tense-outlook-idUSKCN1NB1J6>

<sup>217</sup> Business Wire. (2019, February 22). *Pan American silver completes acquisition of Tahoe Resources*. Retrieved from <https://www.businesswire.com/news/home/20190222005093/en/Pan-American-Silver-Completes-Acquisition-of-Tahoe-Resources>

the company lost its permit in Guatemala.<sup>218</sup> Investors could have avoided such a steep drop in share price if they were provided adequate information about the company's activities while securing FPIC enabling them to make an informed investment decision.

By enclosing transition risks in this Proposed Rule, the SEC has itself included among its list of potential risks from the transition to a low carbon economy the risk stemming from litigation.<sup>219</sup> The risk of climate-related litigation can be significantly mitigated if companies conduct thorough transition planning that weighs the risk of litigation stemming from the company ignoring changes to or failing to adhere to its social license to operate. Investors would be better served if particular disclosures (cited below) are given due consideration for inclusion by the SEC.

## ii. Operational Risks

Operational disruptions are also a key financial risk if companies do not create an enabling environment that ensures a just transition; it is just this type of environment that the SEC's Proposed Rule would facilitate. Operational delays that stem from worker dissatisfaction or community opposition can translate into project delays; higher cost of financing, insurance and security; poor labor relations; breakdown of trust with unions; lower output resulting from delayed production; and the possibility that projects can be cancelled and impacts to worker morale that can affect productivity levels. Ignoring social impacts that stem from the climate transition can result in significant financial costs impacting the nature and pace of transition.<sup>220</sup> Oxfam believes that the disclosures recommended below can help investors understand and evaluate the perceived level of risk that they can face if a company loses its social license to operate. Right now, there is a big information asymmetry gap. The SEC efforts to reduce the gap can serve investors well as they engage with companies to either reform behavior or take other actions that serves the benefits of their clients. In 2020, failing to obtain a social license to operate was recognized as one of the biggest risks for mining companies.<sup>221</sup> That same year, the Justice and Corporate Accountability Project analyzed six cases of community-company conflict involving mining companies which revealed that information pertaining to community conflicts to be financially material in each case.<sup>222</sup> But the mining sector is not alone. Other sectors won't be spared. As we proceed over the years to ensure a just transition, more and more sectors might consider identifying social license to operate as a material business risk.

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<sup>218</sup> Imai, S., & Colgrove Adjunct Law Professor, S. (2022, January 24). *Investors are increasingly shunning mining companies that violate human rights*. The Conversation. Retrieved 2022, from <https://theconversation.com/investors-are-increasingly-shunning-mining-companies-that-violate-human-rights-154702> and Staff Writer. (2019, February 22). *Pan American silver completes \$1b-buyout of Tahoe Resources*. MINING.COM. Retrieved from <https://www.mining.com/pan-american-silver-completes-1b-buyout-tahoe-resources/>

<sup>219</sup> Securities and Exchange Commission (2022, March 21). SEC Proposes Rules to enhance and standardize climate-related disclosures for investors. Retrieved from <https://www.sec.gov/news/press-release/2022-46>

<sup>220</sup> Williamson, V. (2018, December 20). *What France's yellow vest protests reveal about the future of climate action*. Brookings. Retrieved from <https://www.brookings.edu/blog/fixgov/2018/12/20/what-frances-yellow-vest-protests-reveal-about-the-future-of-climate-action/>, Bouye, M. (2019, November 27). *Chile's protests offer lessons on social inequality and climate action*. World Resources Institute. Retrieved from <https://www.wri.org/insights/chiles-protests-offer-lessons-social-inequality-and-climate-action>, Randow, J. and Pickert, R. (2021, November 17). *Climate change will boost inequality. So could the solution*. Bloomberg News. Retrieved from <https://www.bloomberg.com/news/articles/2021-11-11/climate-change-will-exacerbate-inequality-so-could-the-solution#xj4y7vzkg>, and Alderman, L. (2021, November 1). *Europe fears that rising cost of climate action is stirring anger*. The New York Times. Retrieved from <https://www.nytimes.com/2021/11/01/business/energy-environment/europe-climate-action-cost.html>

<sup>221</sup> Mitchell, P. D. (2021, October 7). *Top mining and metals risks and opportunities in 2022*. EY. Retrieved from [https://www.ey.com/en\\_gl/mining-metals/top-10-business-risks-and-opportunities-for-mining-and-metals-in-2022](https://www.ey.com/en_gl/mining-metals/top-10-business-risks-and-opportunities-for-mining-and-metals-in-2022)

<sup>222</sup> Imai, S. and Ross, S.G. (2020). *Empirical Data on How Investors are Harmed When Companies Do Not Disclose Information about Violence and Lack of Indigenous Consent*. Osgoode Legal Studies Research Paper, York University, Toronto. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=%203690013](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=%203690013)

Getting community consent through FPIC does represent a predictable cost, whereas trying to resolve community opposition and rebuild trust, paves the way for uncertain and possibly more costly outcomes.<sup>223</sup> One study also cited that the average cost of undertaking FPIC across certain sectors on average can cost a company \$10 million (2% of overall project expenditure).<sup>224</sup> That study found the cost of securing community buy-in was far less than the cost of mitigating social conflict once it had arisen, a cost they conservatively estimated at \$24-40 million based on their model.<sup>225</sup> Other cases in the oil and gas sector illustrates how the costs of social conflict can skyrocket; the cost in the Dakota Access Pipeline (DAPL) project was estimated at \$7.5 billion and \$8 billion in the Atlantic Coast Pipeline; both of these projects have been either stalled/delayed or abandoned.<sup>226</sup> As we move into the energy transition, it will be useful to know how companies that are transitioning to low carbon future do not take deliberate action that harms frontline communities.

Since the Standing Rock protests by Indigenous Peoples against the construction of DAPL, companies are increasingly recognizing the risks posed from community opposition.<sup>227</sup> While the particulars of DAPL are confined to the operations of an oil and gas company, it does not take away from the fact that frontline communities will use this strategy in other instances. Elsewhere Indigenous Peoples' opposition to a lithium mine's operations in Nevada over concerns that it contaminates natural habitats poses challenges for the company's ability to obtain a social license to operate.<sup>228</sup> Interruptions of mining site operations due to community-company conflict can cost the mining company up to \$10,000 per day during initial exploration, \$50,000 per day during advanced exploration, and \$20 million per week during operations.<sup>229</sup> Community opposition can drain resources and impact the viability of projects and also delay the pace of transition.

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<sup>223</sup> For Indigenous peoples, the power to give or withhold consent to extractive industries or other large-scale infrastructure projects is a right protected by international law, one that has become a crucial safeguard for the protection and realization of their collective autonomies, resilience, and self-determination. FPIC is also recognized around the world as a best practice standard for affected local communities who do not fit the international law definitions of rights-holding Indigenous entities. In this way, FPIC represents a principle of best practice for sustainable development generally, a crucial project safeguard that can increase the legitimacy of a project for frontline communities. Companies spanning the extractive industries and agribusiness sectors, as well as international financial institutions and global banks, have already committed to upholding FPIC in their corporate policies and lending conditions, recognizing that respecting Indigenous sovereignty makes good business sense.

<sup>224</sup> Feyertag, J. and Bowie, B. (2021, September). *The final costs of mitigating social risks: Costs and effectiveness of risk mitigation strategies for emerging market investors*. Overseas Development Institute and TNP Systems. Retrieved from <https://odi.org/en/publications/the-financial-costs-of-mitigating-social-risks-costs-and-effectiveness-of-risk-mitigation-strategies-for-emerging-market-investors/>

<sup>225</sup> Id.

<sup>226</sup> Fredericks, C., Meaney, M., Pelosi, N. & Finn, K. (2018, November). *Social cost and material loss: The Dakota Access pipeline*. First Peoples Worldwide University of Colorado Boulder. Retrieved from [https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social\\_cost\\_and\\_material\\_loss\\_0.pdf](https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf); Associated Press. (2022, February 22). *Supreme Court won't take Dakota Access Pipeline case*. Retrieved from <https://apnews.com/article/us-supreme-court-lawsuits-environment-missouri-river-dakota-access-pipeline-0fb252648183fb20d5a9c2f163a7c3aa>; DiSavino, S. (2020, May 5). *Update 1: Dominion confirms \$8 bn Atlantic Coast natgas pie cost, early 2022 in service*. Reuters. Retrieved from <https://www.reuters.com/article/dominion-us-pipelines-atlantic-coast/update-1-dominion-confirms-8-bln-atlantic-coast-natgas-pipe-cost-early-2022-in-service-idUSL1N2CN144>; and PR Newswire. (2020, July 5). *Dominion Energy and Duke Energy cancel the Atlantic Coast Pipeline*. Retrieved from <https://www.prnewswire.com/news-releases/dominion-energy-and-duke-energy-cancel-the-atlantic-coast-pipeline-301088177.html>

<sup>227</sup> Montare, A.S. (2018, May/June). *Standing Rock: A case study in civil disobedience*. GP Solo Magazine. Vol 35(3). The American Bar Association. Retrieved from [https://www.americanbar.org/groups/gpsolo/publications/gp\\_solo/2018/may-june/standing-rock-case-study-civil-disobedience/](https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2018/may-june/standing-rock-case-study-civil-disobedience/); Levin, S. (2016, November 3). *Dakota Access Pipeline: the who, what and why of the Standing Rock protests*. The Guardian. Retrieved from <https://www.theguardian.com/us-news/2016/nov/03/north-dakota-access-oil-pipeline-protests-explainer>; Hersher, R. (2017, February 22). *Key moments in the Dakota Access Pipeline fight*. National Public Radio. Retrieved from <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>

<sup>228</sup> Penn, I. & Lipton E. (2021, May 6). *The Lithium Gold Rush: Inside the race to power Electric Vehicles*. The New York Times. Retrieved from <https://www.nytimes.com/2021/05/06/business/lithium-mining-race.html>

<sup>229</sup> Davis, R. and Franks, D.M. (2014). *Costs of Company-Community Conflict in the Extractive Sector*. Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School. Retrieved from <https://www.csr.uq.edu.au/publications/costs-of-company-community-conflict-in-the-extractive-sector>

If issues of fairness are not well managed, disrupting the livelihoods of workers, it can lead to production delays arising out of worker resistance. In Minneapolis in 2017, workers staged a protest alleging a renewable energy company uses out of state workers who do not receive a “fair wage.”<sup>230</sup> The renewable energy sector is plagued with worker rights violations and other concerns. The Business and Human Rights Resource Center revealed its first Renewable Energy and Human Rights Benchmark in 2020 and the results highlighted that some of the largest wind and solar companies lack essential policies that would help avoid abuse of frontline communities and workers in a just transition.<sup>231</sup> According to the report, “Since 2010, Business & Human Rights Resource Centre has identified 197 allegations of human rights abuses related to renewable energy projects.”<sup>232</sup> The report goes on to further state that:

Allegations have been made in every region and across each of the five sub-sectors of renewable energy development: wind, solar, bioenergy, geothermal, and hydropower. The region with the highest number of allegations is Latin America (121 allegations since 2010, 61% of allegations globally). Eight of the 16 companies ranked in this benchmark have allegations of human rights abuse linked to their renewable energy operations.<sup>233</sup>

As worker abuses continue, operational disruptions can result in worker unrest, high turnover, or low morale.

Investors would be well served if companies are required to disclose all information about not only the environmental but social impacts of a project. The recommended disclosures can serve as a good baseline for the SEC for inclusion into its definition of transition risk and transition planning.

d. ***The actors impacted in or by a just transition need to be considered when assessing transition risks***

This section highlights those most impacted by a just transition: communities of color, and indigenous communities.

i. ***Communities of Color***

In the US, Black and Brown communities bear the disproportionate costs of climate change.<sup>234</sup> Research has found that GHG emitting facilities are disproportionately located in marginalized communities citing California as an example.<sup>235</sup> The research goes on to further recognize that the reduction of emissions under the California cap-and-trade program has not resulted in meaningful reduction in pollution levels

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<sup>230</sup> Adams, G. (2017, October 28). *Union laborers in Midtown protest hiring out-of-state workers at unfair wages to build N.Y. wind energy farm.* Daily News. Retrieved from <https://www.nydailynews.com/new-york/union-members-protest-hiring-out-of-state-workers-wind-farm-article-1.3595231>

<sup>231</sup> Business and Human Rights’ Renewable Energy and Human Rights Benchmark is available at: <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>

<sup>232</sup> Id.

<sup>233</sup> Id.

<sup>234</sup> Smith, K.A. (2021 June). *How communities of color are hurt most by climate change.* Forbes. Retrieved from <https://www.forbes.com/advisor/personal-finance/communities-of-color-and-climate-change/>

<sup>235</sup> Cushing, L. et al., (2018, July 10). *Carbon Trading, Co-Pollutants, and Environmental Equity: Evidence from California’s Cap-and-Trade Program (2011–2015)*, PLOS Medicine 15(7). Retrieved from <https://doi.org/10.1371/journal.pmed.1002604>

in these communities, including hazardous material sites, water pollution and traffic density.<sup>236</sup> Essentially, researchers found that the pollution burdens placed upon communities of color “exceeds the share of employment and exceeds their share of higher paying jobs by a wide margin.”<sup>237</sup>

According to the American Public Health Association, communities of color are more likely to experience among other things pre-existing health conditions.<sup>238</sup> Importantly, increasing exposure to pollutants can result in heart disease, asthma and other respiratory disease, cancer, premature death, adverse birth outcomes, diabetes, and affects lung and brain development in children, and mental illnesses.<sup>239</sup> These communities of color are often ignored by decision makers that do not consider their perspectives and needs, which contributes to health inequities and limits their ability to adapt to climate change.

Net zero commitments that do not meet the mark can also cause serious harms to communities of color. COP26 revealed a framework of net zero commitments, carbon capture, and storage and offsets. However, net zero commitments also give companies the license to operate as business as usual which could imply that activity in high polluting industries could continue in localities that are densely populated by communities of color as long as they net those emissions someplace else.<sup>240</sup> For example, activists in California continue to push for regional caps on emissions, after analysis by ProPublica showed that carbon emissions from California’s oil and gas industry actually rose 3.5% since cap and trade began.<sup>241</sup>

A survey conducted in 2009, though dated and representing a small sample size indicates that communities of color are more supportive of national climate and energy policies.<sup>242</sup> But as Marine Biologist Ayana Elizabeth Johnson in the Washington Post rightly concluded that “How can we expect black Americans to focus on climate when we are so at risk on our streets, in our communities, and even within our homes?”<sup>243</sup> Risks stemming from the impacts of climate change to investment portfolios cannot be mitigated without the support from communities of color. Johnson goes on to emphasize that “[i]f we want to successfully address climate change, we need people of color.”<sup>244</sup> Black communities represent a big and powerful voting block in the United States. The election of President Biden and a majority in the US House of Congress, though narrow, would not have been possible without the support of Black communities and other people of color in the US.<sup>245</sup> If we want to mitigate the financial risks stemming from climate change, buy-in from communities of color will be essential in pushing the

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<sup>236</sup> Cha, M., Pastor, M., Wander, M., Sadd, J., & Morello-Frosch, R. (2019, April). *A Roadmap to an Equitable Low-Carbon Future: Four Pillars for a Just Transition*. Equity Research Institute. University of Southern California. Retrieved from <https://dornsife.usc.edu/pere/roadmap-equitable-low-carbon-future/>

<sup>237</sup> Ash, M. & Boyce, J.K. (2018, October 16). *Racial Disparities in Pollution Exposure and Employment at US Industrial Facilities*. Proceedings of the National Academy of Sciences. 115(42). Pg10636–41. Retrieved from <https://doi.org/10.1073/pnas.1721640115>

<sup>238</sup> Rudolph, L., Harrison, C., Buckley, L. & North, S. (2018). *Climate Change, Health, and Equity: A Guide for Local Health Departments*. Public Health Institute and American Public Health Association. Retrieved from <https://www.apha.org/topics-and-issues/climate-change/guide>

<sup>239</sup> Wilkinson, P., Smith, K., Davies, M., Adair, H., Armstrong, B., Barrett, M., et al. (2009, November 25). *Public health benefits of strategies to reduce greenhouse-gas emissions: household energy*. *Lancet*, 374 1917–1929. Retrieved from [https://doi.org/10.1016/S0140-6736\(09\)61713-X](https://doi.org/10.1016/S0140-6736(09)61713-X)

<sup>240</sup> Tongia, R. (2021, October 25). *Net zero carbon pledges have good intentions. But they are not enough*. Brookings. Retrieved from <https://www.brookings.edu/blog/planetpolicy/2021/10/25/net-zero-carbon-pledges-have-good-intentions-but-they-are-not-enough/>

<sup>241</sup> Song, L. (2019, November 15). *Cap and Trade Is Supposed to Solve Climate Change, but Oil and Gas Company Emissions Are Up*. Pro Publica. Retrieved from <https://www.propublica.org/article/cap-and-trade-is-supposed-to-solve-climate-change-but-oil-and-gas-company-emissions-are-up>

<sup>242</sup> Leiserowitz, A. & Akerlof, K. (2010) *Race, Ethnicity and Public Responses to Climate Change*. Yale Project on Climate Change. Yale University and George Mason University. Retrieved from <http://environment.yale.edu/uploads/RaceEthnicity2010.pdf>

<sup>243</sup> Johnson, A.E. (2020, June 3). *I’m a black climate expert. Racism derails our efforts to save the planet*. The Washington Post. Retrieved from <https://www.washingtonpost.com/outlook/2020/06/03/im-black-climate-scientist-racism-derails-our-efforts-save-planet/>

<sup>244</sup> Id.

<sup>245</sup> Cava, M.D., Jervis, R., Berry, D.B. Gomez, A. & Hughes, T. (2020, November 3). *Black, Latino, Asian and Native Americans flock to polls amid deadly, difficult year for Brown and Black people*. USA Today. Retrieved from <https://www.usatoday.com/story/news/nation/2020/11/03/how-black-latino-voters-vote-could-decide-who-new-president/6129556002/>

regulatory and legislative need on actions to ensure that the US is aligned with the Paris Agreement. This will be particularly significant as the last census conducted showcases a changing racial and ethnic population composition.<sup>246</sup>

## ii. *Indigenous Peoples*

Indigenous rights and human rights should be important considerations for companies when trying to incorporate strategies to mitigate climate related financial risk. International standards and norms protect the rights of Indigenous People. On the top of the list is the UN Declaration on the Rights of Indigenous People (UNDRIP) which provides the basis for FPIC.<sup>247</sup> The International Covenant on Economic, Social, and Cultural Rights (Covenant) states that all people and the Articles in the Covenant committing the parties to work toward granting of economic, social, and cultural rights to the Non-Self Governing and Trust Territories and individuals.<sup>248</sup> Indigenous Peoples have used these international norms and standards to fight for their rights and actions range from protests to posing legal challenges to company and/or state authority to infringe on those rights as mentioned in the examples in this comment.

Importantly, Indigenous People have been shown to do a better job in mitigating climate change impacts.<sup>249</sup> Worldwide, they are estimated to number 380 million, embody and nurture 80% of the world's cultural and biological diversity, and occupy a quarter of the world's land surface.<sup>250</sup> Researchers provide evidence that protecting Indigenous rights helps countries honor local and global conservation goals and result in more collaborative partnerships between indigenous peoples and governments that garner benefits to conserve high-priority landscapes, ecosystems, and biodiversity.<sup>251</sup> Globally, Indigenous Peoples have been forced to abandon livelihoods and ancestral lands because of large scale commercial projects, as some of the examples cited in this comment suggest. This has proven to be detrimental to the climate and represents one of the reasons that the nature and pace of physical events stemming from climate change continue to accelerate.

According to the World Bank, "A low carbon future will be mineral intensive because clean energy technologies need more materials than fossil-fuel-based electricity generation technologies."<sup>252</sup> This urgency to respond to the climate crisis is already leading to a rush for increasingly finite land for the extraction of minerals such as lithium, cobalt, nickel, manganese, graphite, copper, and gold which are

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<sup>246</sup> See the demographic breakdown from the 2021 US Census Bureau at <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>

<sup>247</sup> Ignelnik R. & Budiman, A. (2020, September 23). *The changing racial and ethnic composition of the U.S. electorate*. Pew Research Center. Retrieved from <https://www.pewresearch.org/2020/09/23/the-changing-racial-and-ethnic-composition-of-the-u-s-electorate/>. About UNDRIP: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>248</sup> About the Covenant: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>249</sup> Food and Agriculture Organization of the United Nations and Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean. (2021). *Forest governance by indigenous and tribal peoples. An opportunity for climate action in Latin America and the Caribbean*. Retrieved from <https://www.fao.org/documents/card/en/c/cb2953en>

<sup>250</sup> Garnett, S.T., Burgess, N.D., Fa, J.E. et al. (2018, July). *A spatial overview of the global importance of Indigenous lands for conservation*. *Natural Sustainability*. 1, 369–374. Retrieved from <https://doi.org/10.1038/s41893-018-0100-6> and Raygorodetsky, G. (2018, November 15). *Indigenous peoples defend Earth's biodiversity—but they're in danger*. National Geographic. Retrieved from <https://www.nationalgeographic.com/environment/article/can-indigenous-land-stewardship-protect-biodiversity->

<sup>251</sup> Garnett, S.T., Burgess, N.D., Fa, J.E. et al. (2018, July). *A spatial overview of the global importance of Indigenous lands for conservation*. *Natural Sustainability*. 1, 369–374. Retrieved from <https://doi.org/10.1038/s41893-018-0100-6>

<sup>252</sup> Hund, K., La Porta, D., Fabregas, T.P., Laing, L. & Drexhage, J. (2020). *Minerals for Climate Action: The mineral intensity of the clean energy transition*. International Bank for Reconstruction and Development. The World Bank Group. Retrieved from <https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>

used in clean energy infrastructure. Within the United States, almost 50% of these reserves lie on the ancestral lands of Indigenous people and many of the companies operating in these lands face severe community opposition because of poor regard for the rights of communities.<sup>253</sup> The energy security crisis will only mushroom if companies do not consider the rights and protections of Indigenous Peoples.

***e. The SEC should enhance transition risk disclosures to include just transition***

It would behoove companies to consider giving due consideration to risks stemming from failure to consider the negative social impacts on workers, suppliers, and frontline communities in the race to transition to a low carbon economy. **Mandatory disclosures of companies' efforts to ensure a just transition must be included in companies' definition of transition risks.** Issuers should be required to disclose transition strategies (including the identification of material risks) and risk management that will be relevant to ensure a just transition. The Commission should also give due consideration to extending the TCFD framework to include the social dimension using consistent approaches such as the Global Reporting Initiative, the UN Guiding Principles Reporting Framework, the Workplace Disclosure Initiative, ILO guidelines for a Just Transition, and UNDRIP which provides the basis for FPIC. Integration of the social dimension into TCFD will become increasingly important in the coming decades for investors to manage environmental and social aspects of climate-related financial risks.

Any disclosures should include:

- Disclosure of information related to how they companies are providing support within the supply chain to manage climate related financial risk, including how companies are supporting those most vulnerable in the supply chain to secure a living income and a living wage,<sup>254</sup>
- Any worker related or community opposition should be disclosed and the SEC should consider requiring these disclosures from high risk sectors, especially those identified in Section V.B. of this comment,
- Management of land tenure and resource management as it pertains to communities,
- Project level disclosure of data by race and ethnicity, and
- Wage related data, broken down by gender and race, and efforts companies are making to ensure a living wage to workers.

The SEC can also consider supporting international frameworks such as the International Financial Reporting Standards Foundation's International Sustainability Standards Board (IFRS-ISSB) which is working to create a global reporting "baseline" and "will play a vital role in building the trust and transparency needed to foster economic stability and contribute to the transformation of sustainable economic, social and environmental systems and a just transition for a better future."<sup>255</sup> These disclosures will reduce fragmentation of sustainability disclosure requirements.

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<sup>253</sup> Block, S. (2021, April). *Native Americans' pivotal role in US climate change agenda*. MSCI ESG Research LLC Industry Insight, MSCI; <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

<sup>254</sup> For the food sector, this can include "offering farmers longer-term contracts, guaranteeing minimum prices and premiums, engaging in more direct trading relationships with farmers, and supporting farmers' upgrading to higher value-added activities. For more information, see Uwe Gneiting. (2021). *Living Income: From Right to Reality*. Oxfam Briefing Paper. Oxfam America. Retrieved from <https://www.oxfamamerica.org/explore/research-publications/living-income-from-right-to-reality/>

<sup>255</sup> See IFRS-ISSB announcements about global baseline disclosures at <https://www.ifrs.org/news-and-events/news/2022/05/issb-outlines-actions-required-to-deliver-global-baseline-of-sustainability-disclosures/> and opportunity to comment is available at <https://www.ifrs.org/projects/open-for-comment/>

Further, the SEC should also consider requiring companies to disclose a report, with due consideration to omitting confidential and proprietary information, on environmental and social impact assessments (ESIA) and provide disclosures on due considerations giving when conducting ESIA's. Particularly disclosures could include the development permit/license (which should include any development approval conditions limited to the environmental and social impact mitigation conditions).

Conclusion: We thank you for your time and consideration of our comment. We applaud your efforts in asking for public input and incorporating elements from our input into the Proposed Rule. We appreciate the thoroughness of the process in drafting this Proposed Rule as well as the economic and legal analysis accompanying it.

Sincerely,

Irit Tamir  
Director, Private Sector Department  
Oxfam America