

June 14, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Dear Chair Gensler and Commissioner Lee:

Thank you for the opportunity to provide comment to the March 2021 Request for Public Input by the U.S. Securities and Exchange Commission (“the Commission”) related to the need for mandatory climate and environmental, social and governance (“ESG”) disclosures by issuers. The U.S. Impact Investing Alliance (“the Alliance”) strongly urges the Commission to adopt and implement clear and comparable disclosure requirements in this regard.

The Alliance is an organization committed to catalyzing the growth of impact investing in the United States. Members of our boards and councils include individual and institutional investors collectively owning hundreds of billions of dollars of invested assets, in addition to asset and fund managers collectively managing over one trillion dollars in assets. We define impact investing broadly to include those investments that create financial returns alongside measurable and positive social, economic or environmental impacts across asset classes.

The Alliance frequently engages with federal policymakers to promote an enabling public policy environment to flow more private capital for public good. Impact transparency – clear and readily available information regarding the impact of one’s investments – is foundational to our work in this regard. Yet, impact is largely opaque to investors despite their demands for broader transparency and accountability in the capital markets. Furthermore, systemic risks posed by existential threats like climate change are largely unaccounted for across our financial system, threatening not just the wellbeing of our planet but also the economic future of companies, investors, retirement savers and others. Additionally, major events like the COVID-19 pandemic and ensuing crises of the past year have emphasized the financial relevance of things like workforce practices around health care and paid sick leave, the resiliency of supply chains, corporate commitments to diversity, equity and inclusion and other ESG-related factors.

The Alliance believes it is well within the Commission’s authorities, responsibilities and mandate to update the disclosure regime for issuers to improve impact transparency. Further, we believe that in doing so, the Commission will improve U.S. economic competitiveness and leadership across jurisdictions, bringing the disclosure regulations squarely into the 21st century.

ESG Disclosure Is Aligned with the Commission’s Mandate

Importantly, mandating climate and ESG disclosures is in clear alignment with the Commission’s stated mission to protect investors; ensure fair, orderly and efficient markets; and facilitate capital formation.¹

Investors are demanding access to clear and comparable information regarding company performance and impacts around ESG factors. For example, investors are eager to understand how a company is working to mitigate its exposure to the climate crisis, or its workforce diversity and inclusion practices. Factors such as these can have significant implications for a company’s bottom line and, as such, are relevant to a rational investor. As one measure of investor interest, there were over 140 climate-related shareholder proposals during the 2020 proxy season that had an average approval vote of over 30%, up from 26% in the previous year.² Furthermore, about 75% of professional investors say they incorporate ESG factors into their investment practices.³

Responding to these market developments, a robust set of private sector standards setting organizations have developed, and today 90% of the S&P 500 index companies issue sustainability reports.⁴ However, the competing and overlapping nature of these privately developed and voluntarily adopted approaches has created confusion and a lack of clarity around ESG disclosure. Without a set of consistent, reliable and comparable ESG metrics, corporate managers are able to “forum shop” for favorable disclosure standards, undercutting the value of voluntary disclosure.

The leadership shown by private sector standard setters is encouraging, and the Commission should certainly leverage their expertise and knowledge as it sets out to issue regulations around ESG disclosure. That said, we have for too long relied on self-regulation by issuers, to the detriment of investors and the broader economy. The Commission therefore has a critical role to play here in quickly moving to mandate ESG disclosures to not only protect individual investors but to also account for the economy-wide risks that climate and other social and economic factors can pose across the capital markets.

Need for Comprehensive ESG Disclosure Framework

While mandating climate disclosures by issuers is vitally important and long overdue, the Alliance urges the commission to institute a comprehensive ESG disclosure framework that reflects the intersectionality of issues like climate change, wealth inequality, environmental racism and other major threats to the U.S. economy. Accounting for climate risks in the capital markets through mandated disclosure is an important first step but neglecting to incorporate disclosures around human capital management and other critical factors would ultimately be inadequate for meeting the Commission’s mandate to protect investors and facilitate healthy and efficient markets.

The Commission should move to adopt rules-based mandatory disclosures of key ESG factors for all corporations subject to reporting requirements. As has been the case regarding the Commission’s 2010

¹ U.S. Securities and Exchange Commission, “[Agency and Mission Information](#).”

² Ceres, “[How climate proposals fared during the 2020 proxy season](#),” September 2020.

³ Natixis Investment Managers, “[ESG Investing Reaches Critical Mass; Ongoing Momentum Depends on What’s Driving the Demand, Finds Natixis Investment Managers Survey](#),” April 2021.

⁴ Governance and Accountability Institute, “[90% of S&P 500 Index Companies Publish Sustainability Reports in 2019, G&A Announces in its Latest Annual 2020 Flash Report](#),” July 2020.

climate disclosure guidance, principles-based disclosures can lead to a mismatch in what companies disclose versus what investors would deem important for their capital allocation and proxy voting decisions.⁵ Instead, specific, comparable rules-based requirements around ESG disclosure will be the most effective path forward and the most in keeping with the Commission’s mission. Covered factors should be developed in consultation with the SEC’s Investor Advisory Committee (“IAC”) and Asset Management Advisory Committee (“AMAC”) as well as key private sector voices, such as existing private sector standards setting organizations and other strategic stakeholders. The Commission should consider the establishment of a Sustainability Standards Advisory Committee to ensure that the rules-based disclosure requirements remain relevant, timely and responsive to market trends through periodic review.

Special priority should be given to ensuring robust and clear disclosure requirements are developed for the following issues:

- Greenhouse gas emissions, tied to compliance with the Paris Accord, and climate change resiliency;
- Labor and workforce practices, and factors related to human capital management;
- Supply chain due diligence practices regarding human rights;
- Racial inclusion and equity practices, including board and senior leadership metrics; and
- Political contributions and lobbying expenditures.

Companies’ disclosures around greenhouse gas emissions, as well as their plans for adjusting to an economy transitioning away from fossil fuels, are particularly important given the substantial physical, transition and regulatory risks that the climate crisis poses. As one indication of the financial impacts of climate change, in 2019, 215 of the largest companies globally reported that they valued their near-term climate-related risks to be \$1 trillion collectively.⁶

The Commission has wisely acknowledged human capital management as a critical area for company disclosures, given that a company’s workforce greatly impacts the financial performance of a business, due to factors like health, workforce development and retention rates.⁷ Additionally, companies should be required to be transparent around their supply chain exposures to risk factors such as climate change-related extreme weather events or human rights violations.

Relatedly, corporate governance issues, such as racial equity and inclusion practices have repeatedly shown to be financially relevant. A recent report found that companies with high levels of gender and racial diversity outperformed those with lower levels.⁸ Another study revealed a correlation between corporate board diversity, lower stock volatility and improved performance.⁹ These issues are of

⁵ Commissioners Robert J. Jackson Jr. and Allison Herren Lee, “[Joint Statement of Commissioners Robert J. Jackson, Jr. and Allison Herren Lee on Proposed Changes to Regulation S-K](#),” August 2019; SASB, “[The State of Disclosure: An analysis of the effectiveness of sustainability disclosure in SEC filings](#),” 2017.

⁶ CDP, “[World’s biggest companies face \\$1 trillion in climate change risks](#),” June 2019.

⁷ Commissioner Allison Herren Lee, “[Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference](#),” September 2020.

⁸ McKinsey, “[Diversity wins: How inclusion matters](#),” May 2020.

⁹ Bernile, Gennaro (帅纳) and Bhagwat, Vineet and Yonker, Scott E., Board Diversity, Firm Risk, and Corporate Policies (March 6, 2017). Available at SSRN: <https://ssrn.com/abstract=2733394> or <http://dx.doi.org/10.2139/ssrn.2733394>

material interest to investors as well, given that in 2021, shareholders have submitted 69 proposals related to workforce diversity, with 30 additional proposals related to board diversity in particular.¹⁰

Lastly, investors deserve better insight into corporate lobbying activities and political spending. These activities – if contrary to a company’s stated values or mission – can present significant public relations and perceptions risks that can have financial implications, a trend many companies have acknowledged in light of the January 6 insurrection at the U.S. Capitol. Mirroring growing investor demand around other ESG disclosures, shareholders voted to support greater transparency around these activities 80% of the time when given the opportunity.¹¹ Lastly, according to a cost-benefit analysis submitted to the Commission of mandated disclosures around political activities, “the range of economic benefits of this disclosure rule – to shareholders and the market – would greatly outweigh the nominal costs imposed on corporations for compliance.”¹²

This list is not meant to be comprehensive, but rather to demonstrate the particular importance and financial relevance of these ESG factors for mandated disclosures. These disclosure requirements should be broadly applied, but in select circumstances, additional industry-specific requirements should be considered. To ensure that a rules-based approach remains effective, periodic review of required disclosures should be undertaken and changes should be made with input from the IAC, AMAC and key private sector stakeholders.

Countering Key Misconceptions

Opponents of mandated climate and ESG disclosures may argue that a) those factors are not material or b) even if they are, issuers would already be required to disclose that information under current policy. Those arguments are significantly flawed for several reasons.

Starting with the latter point first, the Commission’s 2010 climate disclosure guidance has not led to meaningful disclosures by issuers and has therefore not adequately served or protected investors. The guidance essentially allows issuers to determine if and when climate risks are material to disclose, permitting them to selectively choose those factors that are favorable and avoid those that are not. Commissioner Allison Herren Lee recently spoke about the common myths and misperceptions around materiality and ESG, including that many skeptics falsely “believe that materiality currently works almost preternaturally, on its own with no need for regulatory involvement, to produce all important information from all public companies at all times.”¹³ Yet, according to a recent report from the International Organization of Securities Commissions (“IOSCO”) “investor demand for sustainability-related information is currently not being properly met.”¹⁴

Second, related to the question of the material relevance of ESG factors, countless studies have shown that ESG factors are not only material but are also effective for risk mitigation and often drive

¹⁰ Politico, “[Shareholders target ‘white man’s world’ with record demands for diversity data](#),” April 2021.

¹¹ Harvard, “[Transparency and the Future of Corporate Political Spending](#),” March 2021.

¹² Susan R. Holmberg, Ph.D., “[A Cost-Benefit Analysis of Corporate Political Spending Disclosure](#),” November 2011.

¹³ Commissioner Allison Herren Lee, “[Living in a Material World: Myths and Misconceptions about ‘Materiality’](#),” May 2021.

¹⁴ International Organization of Securities Commission, “[Media Release: IOSCO sees an urgent need for globally consistent, comparable, and reliable sustainability disclosure standards and announces its priorities and vision for a Sustainability Standards Board under the IFRS Foundation](#),” February 2021.

outperformance. A 2015 meta-study of over 200 academic studies and industry reports revealed that a company’s sustainability practices and profitability are “wholly complementary,” and other studies have demonstrated a link between ESG performance and financial growth, employee productivity, reduction in costs and other core drivers of value.¹⁵ The vast majority of the studies included in the 2015 meta-analysis showed that positive ESG performance is linked to improved business performance and superior stock price performance.¹⁶ These findings have continued to be supported in other analyses and meta-studies, further cementing the financially material relevance of ESG factors for investors.¹⁷

Though ESG factors have shown to be financially material, there is no statutory or regulatory reason that the Commission should limit its mandated disclosures to what is considered material.¹⁸ Instead, the Commission has long instituted specific disclosures as necessary, as well as factors that a “reasonable investor” would deem important for their investment decisions.¹⁹

Furthermore, investors are increasingly understanding materiality as a dynamic concept, meaning that ESG factors that may not be financially material today may be considered financially material in the future. This is especially true for issues that pose systemic, long-term risks that may be unclear at present but undoubtedly represent information that a reasonable investor would be eager to assess in making capital allocation decisions. The climate crisis is a prime example of this, and according to a recent report from the U.S. Commodity Futures Trading Commission (“CFTC”), climate change is likely to pose systemic shocks to the financial system, exacerbated by the current mispricing of climate risks.²⁰ The crises of the past year also provide a particularly poignant use case regarding dynamic materiality and systemic risk. External shocks to supply chains certainly pose systemic risks,²¹ and considering the significant disruptions caused by the COVID-19 pandemic in 2020, companies are shifting strategy to improve resiliency and transparency.²² Of those surveyed, 85% shared that they are paying more attention to ESG factors in light of the crisis.²³

Mandating climate and ESG disclosures for companies is a key first step toward better understanding and managing exposure to present and evolving systemic risks in the capital markets.

Improving Transparency in the Private Markets

Transparency and accountability are the hallmarks of well-functioning markets, and that is why companies raising capital from public markets are required to disclose material information on

¹⁵ Clark, Gordon L. and Feiner, Andreas and Viehs, Michael, From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance (March 5, 2015). Available at SSRN: <https://ssrn.com/abstract=2508281>; McKinsey, “[Five ways that ESG creates value](#)”, November 2019.

¹⁶ Ibid.

¹⁷ Tensie Whelan, Ulrich Atz, Tracy Van Holt and Casey Clark, CFA, NYU Stern, “[ESG and Financial Performance](#).”

¹⁸ Center for American Progress, “[The SEC Has Broad Authority to Require Climate and Other ESG Disclosures](#),” June 2021.

¹⁹ Tyler Gellasch and Lee Reiners, Global Financial Markets Center, Duke Law, “[From Laggard to Leader: Updating the Securities Regulatory Framework to Better Meet the Needs of Investors and Society](#),” February 2021; U.S. Supreme Court, *TSC Industries, Inc. v. Northway, Inc.*, March 1976.

²⁰ U.S. Commodity Futures Trading Commission, “[Managing Climate Risk in the U.S. Financial System](#),” 2020.

²¹ Fortune, “[Why investing in supply chain resilience pays off](#),” November 2020.

²² Ernst & Young, “[How COVID-19 impacted supply chains and what comes next](#),” February 2021.

²³ Ibid.

everything from financial performance to executive compensation to known business risks. Investors use this information to make informed decisions and engage with corporate managers.

Privately held companies, however, are largely exempt from these reporting requirements. A range of reasons can be offered for why this is the case – such as claims that privately held companies are smaller and have more sophisticated investors. Yet, this logic is dated and ignores concerning trends over the past decade that have allowed very large privately held companies to skirt around disclosure requirements.²⁴ This means that these companies lack a basic mechanism for remaining accountable to investors.

Those who oppose mandated ESG disclosures for issuers often cite the concern that such requirements could exacerbate developments related to the shrinking of the public markets compared to the private markets. Indeed, there are concerning trends to consider, such as that fact that privately held companies today account for more than 70% of capital raised in the United States each year and are exempt from SEC registration and reporting requirements.²⁵ This is a dramatic inversion of historical norms that means markets are rapidly becoming more private and more opaque. This can obscure any number of potentially material issues, from failure to address climate change to unethical labor practices to corrupt governance practices and beyond. Without transparency through required disclosure of these material factors, there are few avenues for investors or regulators to intervene.

Rather than allowing these concerns to dissuade the Commission from taking the long overdue step toward mandated ESG disclosures for public companies, the Commission should instead consider how to incorporate the same disclosures for large privately held companies.

At a minimum, the SEC should undertake a study of this issue and the effect that it is having on capital markets and investors. Specific focus should be paid to the following:

- Causes for increased reliance on private markets for capital raises;
- Prevalence of non-accredited investors exposed to non-disclosing investments, including through pension or retirement plan investments;
- Impacts on the Commission’s ability to effectively regulate capital markets; and
- Ability of the Commission to promote disclosure standards for privately held companies through existing statutory frameworks.

This study should include requests for information or other forms of public input, including from key non-investor stakeholders such as employees, suppliers and affected communities.

U.S. Economic Leadership and Global Convergence

The Alliance is greatly encouraged by the Commission’s leadership in publishing this request for public input and devoting time and resources to thoughtfully considering these issues around ESG disclosure.

In terms of regulatory action and progress, the United States has unfortunately lagged behind other countries to date. A number of markets around the world have moved to standardize and require corporate disclosure on ESG factors, including the European Union, the United Kingdom and New

²⁴ Tyler Gellasch and Lee Reiners, Global Financial Markets Center, Duke Law, “[From Laggard to Leader: Updating the Securities Regulatory Framework to Better Meet the Needs of Investors and Society](#),” February 2021.

²⁵ Ibid.

Zealand. Earlier this year, the Alliance was one of many organizations that submitted comments to the International Financial Reporting Standards (“IFRS”) Foundation in support of their proposed creation of a new International Sustainability Standards Board (ISSB) that would look to promote consistent and comparable corporate reporting on key sustainability issues across their jurisdictions.

Without the United States’ leadership in this regard, American investors will be at a disadvantage to their peers in these markets. American economic leadership will be undermined as domestic corporations fail to account for material ESG factors, while multinational corporations will move to align with the more effective and commonly accepted disclosure regimes of other markets.

Further, investors – including the largest asset manager in the world, BlackRock – have been increasingly vocal regarding the need to reach global convergence around ESG reporting.²⁶ In this sense, the Alliance believes that U.S. leadership on ESG disclosure standards is critical, not only for advancing U.S. economic competitiveness, but also for laying the groundwork toward global convergence in the future.

Conclusion

To briefly conclude, the Alliance strongly urges the Commission to move forward with mandated ESG disclosures for public and large private companies in order to meet its responsibility to protect investors, support fair and efficient markets and facilitate capital formation. The Commission should pursue rules-based disclosure requirements around factors and practices related to climate, human capital management, supply chains, racial diversity and inclusion, and political activities.

Empirical research has repeatedly demonstrated the connection between financial performance and ESG factors, and corporate leaders are continuing to acknowledge the importance of understanding their impacts on a broader set of stakeholders to include workers, suppliers, affected communities and the physical environment.

The proliferation of private sector standards for ESG disclosure has been transformative for investors seeking greater transparency, and the Commission should look to the expertise of those groups in any future rulemakings. It is incumbent on the Commission to take up the mantle and mandate clear, comparable and meaningful ESG disclosures by public and large private companies.

The Alliance looks forward to engaging with the Commission on these issues in the future. Thank you for the opportunity to provide comment.

Sincerely,



Fran Seegull
President
U.S. Impact Investing Alliance

²⁶ BlackRock, “[Sustainability Reporting: Convergence to Accelerate Progress](#),” October 2020.