EXHIBIT H-5

Discussion of Green Governance Standards

I. Introduction

GIX Rules 14.425 through 14.428 incorporate into the Exchange's listing rules certain "Green Governance Standards" that GIX-listed companies will be required to implement, in addition to the quantitative and governance requirements contained in GIX Rules 14.001 through 14.414. The purpose of embedding the Green Governance Standards into the exchange's listing rules is to use the implicit possibility of being delisted for non-compliance to communicate to investors that listed companies' commitments to environmentally sustainable business practices are credible, rather than mere greenwashing.[1] By listing on GIX, companies will give investors focused on green practices confidence that all levels of the company are committed to transparency and accountability for their green and sustainability promises.

This section of Exhibit H is organized as follows:

- Section II introduces the Green Governance Standards
- Section III discusses the role of self-regulatory organizations in promulgating and enforcing corporate governance standards;
- Section IV discusses the relationship between environmental impact and shareholder value, investor protection, and investor decision making, and describes the impact of robust disclosure on investor confidence;
- Section V demonstrates how the proposed corporate governance standards are consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, including specifically Section 6(b) thereof; and
- Section VI concludes the exhibit's statement of the statutory basis for approval of the proposed listing rules.

II. Introduction to the GIX Green Governance Standards

The United States is on the cusp of transitioning to a new green economy. The transition is being influenced and driven by the profound challenges that climate change and other environmental concerns pose to traditional ways of doing business – such as increased risks of disruption due to severe weather events,[2] water scarcity and desertification of previously productive acreage,[3] changes in crop yields,[4] loss of biodiversity,[5] ocean-level increases that threaten coastal

---

[1] As used herein, "greenwashing" refers to marketing puffery about a company's commitment to green practices that does not result in meaningful changes to the company's behaviors or environmental impact. *See infra* notes 13 and 56, and the accompanying discussions.

[2] *See, e.g.*, Jessica Whitt and Scott Gordon, Gloomy forecast: The economic costs of extreme weather, Barclays Capital Inc. (March 2, 2023), https://www.cib.barclays/our-insights/extreme-weather/The-economic-costs-of-extreme-weather.html.

[3] *See, e.g.*, Christopher Flavelle and Mira Rojanasakul, Five Takeaways from Our Investigation into America's Groundwater Crisis, N.Y. Times (August 29, 2023), https://www.nytimes.com/2023/08/29/ climate/groundwater-aquifer-overuse-investigation-takeaways.html.

[4] *See, e.g.*, Env. Protection Agency, https://www.epa.gov/climateimpacts/climate-change-impacts-agriculture-and-food-supply.

development and infrastructure,[6] increased climate-driven migration,[7] and fundamental shifts in consumer and investor attitudes toward environmental and climate risk on the one hand and corporate resiliency on the other.[8] This transition will offer lucrative investment opportunities for businesses transitioning to new sustainable ways of doing business.[9] The amount of investments being directed toward this green transition is of major significance: over $8 trillion of professionally managed funds – one out of every eight professionally managed dollars – was invested during 2022 in funds and investment vehicles with specific sustainability and ESG (environmental, social, and governance) criteria.[10] Climate change and carbon usage were two of the top five biggest concerns among surveyed money managers and institutional investors when making investment decisions.[11] Meanwhile, estimates have put the size of the total market for green investments at upwards of $50 trillion by 2030, with annual investments of up to $3 trillion as a result of energy transition projects in Europe and the Inflation Reduction Act in the US.[12]

Despite the growth of sustainable investment as a percentage of all investments, there remains significant confusion among investors as to what a true sustainable company looks like.[13] And while there has been some progress toward clearer disclosure standards, there is still no reliable way to identify high-quality public companies that are holistically committed to becoming green and sustainable (especially if they are not yet "green").[14] Historically, stock exchanges played

---

[5] *See, e.g.*, U.N. Climate Action, Biodiversity – our strongest natural defense against climate change, https://www.un.org/en/climatechange/science/climate-issues/biodiversity ("[C]limate change is playing an increasingly important role in the decline of biodiversity.").

[6] *See, e.g.,* Env. Protection Agency, https://www.epa.gov/climate-indicators/climate-change-indicators-sea-level ("Rising sea level inundates low-lying wetlands and dry land, erodes shorelines, contributes to coastal flooding, and increases the flow of salt water into estuaries and nearby groundwater aquifers. Higher sea level also makes coastal infrastructure more vulnerable to damage from storms.").

[7] *See, e.g.*, Mia Prange, Climate Change is Fueling Migration. Do Climate Migrants Have Legal Protections?, Council on For. Rel. (December 19, 2022), https://www.cfr.org/in-brief/climate-change-fueling-migration-do-climate-migrants-have-legal-protections ("Climate migration occurs when people leave their homes due to extreme weather events, including floods, heat waves, droughts, and wildfires, as well as slower-moving climate challenges such as rising seas and intensifying water stress. This form of migration is increasing because the world has not been able to reduce greenhouse gas emissions and halt global average temperature rise, which leads to more climate disasters.").

[8] *See, e.g.,* Alexander Gelfand, The ESG Generation Gap: Millennials and Boomers Split on their Investing Goals, Stanford Bus. Sch. (November 10, 2022), https://www.gsb.stanford.edu/insights/esg-generation-gap-millennials-boomers-split-their-investing-goals.

[9] U.N. Conf. on Trade and Development (UNCTAD), World Investment Report 2023, https://unctad.org/publication/world-investment-report-2023.

[10] U.S. Sust. Investment Forum, 2022 Report on US Sustainable Investing Trends, https://www.ussif.org//Files/Trends/2022/Trends%202022%20Executive%20Summary.pdf.

[11] *Id.*

[12] *See* https://www.nasdaq.com/articles/green-energy-and-technology-predictions-for-2023-and-beyond.

[13] *Cf.,* Rel. No. 33-11238 (Sept. 20, 2023), 88 F.R. 70436, 70439 (Oct. 27, 2023), File No. S7-16-22 ("The breadth of ESG-related terms, as well as evolving investor expectations around terms like "sustainable" or "socially responsible," compound the possibility of investor confusion and potential "greenwashing" in fund names."); *see also* U.N. Dept. of Economic and Social Aff., *Recent Development & Analysis of Sustainable Development Investing*, United Nations Information Note to the G20 Sustainable Finance Working Group, 3 (March 2022), https://g20sfwg.org/wp-content/uploads/2022/08/Recent-Development-Analysis-of-Sustainable-Development-Investing-UN-DESA-FSDR-2022.pdf ("[T]he absence of standards to define what constitutes a sustainable investment creates confusion for financial advisors. About 80 percent of financial advisors find it challenging to explain ESG concepts to their clients"); Robin Hicks, Google searches suggest people are still confused by the meaning of 'sustainability', Eco-Business (September 28, 2022), https://www.eco-business.com/news/google-searches-suggest-people-are-still-confused-by-the-meaning-of-sustainability/; *accord*, Adele Peters, 68% of U.S. execs admit their companies are guilty of greenwashing, Fast Company (April 13, 2022), https://www.fastcompany.com/90740501/68-of-u-s-execs-admit-their-companies-are-guilty-of-greenwashing**.**

[14] United Nations Information Note to the G20 Sustainable Finance Working Group,. *supra* note 13 at 11 ("The issues with corporate sustainability reporting are well known: (i) lack of comparability across companies; (ii) voluntary and selective disclosure by companies; (iii) outdated and backward-looking data; and (iv) multiplication of competing reporting frameworks.").

this role, protecting investors by ensuring that they had access to reliable information about the exchanges' listed companies, businesses, and finances, from which investors could evaluate a company and make informed investment decisions.[15] To date, however, the listing exchanges in the United States have chosen not to implement corporate governance standards for their listed companies related to sustainability.[16] Instead, they have taken more indirect paths that do not require either specific corporate governance actions by companies to support their environmental and sustainability commitments or a consistent set of sustainability-related disclosures with which investors can evaluate those commitments.[17]

This results in two gaps in the marketplace. The first is an efficiency gap: because listing agreements are binding contracts by companies to govern themselves in certain ways or risk being delisted, listing shares on an exchange has evolved as a shorthand way for companies to demonstrate their commitment to good corporate governance.[18] In the absence of an exchange with specific green listing standards, companies that want to communicate their commitment to improving their green performance in order to attract green-minded investors have no listing mechanism through which to communicate their message. The second gap is around investor protection: because existing exchange listing standards do not include green governance and green disclosure requirements, green-minded investors who would otherwise rely on those listings to ensure that companies will be held accountable to their green governance and disclosure commitments (through the threat of delisting) have largely been left to their own devices to divine whether companies are credibly committed to transitioning to and maintaining environmentally sustainable business practices.

To bridge the gap between green-minded investors and companies seeking to adopt and operate environmentally sustainable business operations, GIX will be the first registered national

---

[15] *See infra* note 19 and accompanying discussion.
[16] When asked in an interview whether the NYSE would "ever restrict listing based on [sustainability] criteria," NYSE Vice Chair John Tuttle said that "[w]e take a non-opinion based approach to ESG, in that we provide best practices with regard to reporting, but also we provide data… When it comes to putting listing standards in place, it is our view that the job of creating policy is the job of policy makers. So the job of operating the most liquid capital markets in the world that provide access to capital and access to opportunity is what we do best." Steven Goldstein, New York Stock Exchange vice chairman says the IPO market may revive after Labor Day, MarketWatch (May 31, 2022), https://www.marketwatch.com/story/new-york-stock-exchange-vice-chairman-says-the-ipo-market-may-revive-after-labor-day-11653997966.
[17] The NYSE offers issuers an "ESG Resource Center" webpage, with the goal of "help[ing] issuers navigate the evolving ESG landscape," by "provid[ing] resources and platforms for dialogue between issuers and investors to help create more sustainable companies that deliver long-term benefits for all stakeholders." *See* NYSE website, https://www.nyse.com/esg/resource-center (last visited Sept. 20, 2023). Nasdaq similarly offers a suite of "Nasdaq ESG Solutions" to "help[] companies of all ESG maturity levels through a unique combination of technology, tools, data, insights and capital market solutions." *See* Nasdaq website, https://www.nasdaq.com/solutions/corporate-esg-solutions (last visited Sept. 20, 2023). The Long-Term Stock Exchange takes a non-prescriptive-based approach: while its Rule 14.425 requires listed companies to adopt and publish a 'Long-Term Stakeholder Policy" that includes five criteria that the company considers critical to its long-term success, including "the [c]ompany's impacts on the environment and its community", it does not require listed companies to implement any governance infrastructure to support their environmental commitments or to make ongoing disclosures on their progress toward achieving long-term environmental goals. *See* LTSE Rule 14.425. The fundamental thrust of the rule is "long-termism" rather than the environment. *See* Rel. No. 34–86327 (July 8, 2019), 84 F.R. 33293 (July 12, 2019), File No. SR-LTSE-2019-01 ("The proposed rules are based on the belief that transparency of **information relevant to long-term value creation** will be valued by both investors and companies.") (emphasis added).
[18] *See* NYSE, https://www.nyse.com/index ("Our listed companies form a powerful community committed to good governance and societal impact.") (last visited Oct. 16, 2023); *see also* The London Stock Exchange, https://www.londonstockexchange.com/raise-finance/equity/main-market ("Underpinned by London's balanced and globally respected standards of regulation and corporate governance, the Main Market represents a badge of quality for every company admitted to and traded on it, and admission remains an aspiration for many companies worldwide.") (last visited Oct. 16, 2023).

securities exchange in the US designed to provide investors with access to accountable and enforceable information about the quality of a listed company's commitment to sustainable ways of doing business. GIX will initially focus on dual-listing of common equity, meaning that companies that list on GIX can keep their current primary equity listing while also credibly committing to measuring, mitigating, and managing their green impact, and being transparent with investors about their progress and plans.

III. The Role of Exchanges in Promulgating and Enforcing Corporate Governance Standards

The SEC has long recognized that exchanges play a significant role in developing and enforcing corporate governance standards for their listed companies.[19] Indeed, the role of stock exchanges as enforcers of corporate governance standards for the protection of investors predates the establishment of the SEC itself: as early as 1865, the New York Stock Exchange required companies that wanted their securities to trade on the exchange (that is, to be "listed" for sale there) to provide the exchange with "a full statement of capital, numbers of shares, resources &c. [sic]"[20] During the late 19th and early 20th centuries, the NYSE continued to adopt more stringent requirements for listing, including (among other things) appointing an approved transfer agent and registrar, obtaining permission to issue initial or subsequent shares, and publishing various reports and disclosures.[21] By the time the federal securities laws were enacted in 1933 and 1934, companies listed on the NYSE were already required to provide the core information for the protection of investors that the SEC would subsequently impose on all issuers of securities.[22] As one contemporary commentator described it, "One can think of the New York Stock Exchange as solving a collective-action problem between individual investors and firms…If investors value transparency through listing or disclosure requirements, the New York Stock Exchange can require them. That means individual investors need not visit a company's offices if investors know that a stock exchange and auditors have reviewed the company's books."[23]

Perhaps on account of this rich history,[24] the SEC has noted that "[t]he development and enforcement of meaningful listing standards for a national securities exchange is of substantial

---

[19] *See* Rel. No. 34-48745 (Nov. 4, 2003), 68 F.R. 64154 (Nov. 12, 2003), File Nos. SR-NYSE-2002-33, SR-NASD-2002-77, SR-NASD-2002-80, SR-NASD-2002-138, SR-NASD-2002-139, and SR-NASD-2002-141 (collectively, the "Joint Corporate Governance Amendments") ("Through their corporate governance listing standards, the SROs play an important role in assuring that their listed issuers establish good governance practices and maintain effective oversight of the reliability of corporate financial information.")**.**

[20] New York Stock Exchange Constitution and By-Laws, 16–17, *quoted in* Edward Stringham, *The Past and Future of Exchanges as Regulators*, *in* Reframing Financial Regulation: Enhancing Stability and Protecting Consumers 240 (Hester Peirce and Benjamin Klutsey, eds.), Mercatus Center at George Mason University (2016).

[21] *Id. See also* John Steele Gordon, *The Great Game* 173 (1999) ("When the New York Stock Exchange began to require reports for all listed stocks, the managers had little choice but to comply.").

[22] New York Stock Exchange Constitution and By-Laws, *supra* note 20.

[23] Stringham*, supra* note 20*. See also* Gordon, *supra* note 21, at 173-174 ("The establishment of independent accountants and generally accepted accounting principles was an unheralded but vital development in the history of free-market capitalism, and it was accomplished almost entirely by the players in the great game. Government had almost nothing to do with these developments…").

[24] *See* Rel. No. 34-50700 (Nov. 8, 2004), 69 F.R. 71256, 71257 (Dec. 8, 2004), File No. S7-40-04 ("In enacting [the federal securities laws], Congress concluded that self-regulation of both the exchange markets and the OTC market was a mutually beneficial balance between government and securities industry interests…the SROs could set standards that exceeded those imposed by the Commission, such as just and equitable principles of trade and detailed proscriptive business conduct standards.")

importance to financial markets and the investing public. Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities, and the role of an exchange in overseeing its market and assuring compliance with its listing standards."[25] In this vein, over the past thirty years, the Commission has approved the expansion of exchange listing standards to include various non-financial requirements on companies that would enhance investor confidence in a listed company's securities and the market as a whole – such as implementing corporate governance guidelines[26] and codes of business conduct and ethics,[27] requiring board member independence,[28] defining financial competence for audit committee members,[29] establishing qualifications for members of a board's compensation committee,[30] regulating compensation and payments to directors,[31] requiring recovery of erroneously awarded incentive-based pay,[32] and requiring CEO certifications of compliance with various corporate governance requirements.[33] Most recently, the SEC has approved exchanges' implementations of corporate governance requirements covering the adoption of long-term policies[34] and board diversity.[35]

With these precedents as backdrop, GIX is proposing a set of listing standards that include corporate governance requirements related to a company's climate and environmental commitments that may bear on an environmentally-focused investor's decision to purchase or sell a particular company's securities. A fuller discussion of the proposed governance standards follows in Section V of this Exhibit H-5, but broadly speaking, the governance requirements operate at three levels: (i) commitments by the company's board of directors to articulate the company's "green" vision and to engage in meaningful oversight of the company's progress toward achievement of that vision; (ii) actions by management to carry out the board's green vision and ensure holistic compliance at all levels of the company; and (iii) measurement, reporting, and disclosures to investors regarding the company's progress toward achieving, maintaining and/or improving upon the board's green vision and green operations. The requirements phase in over time, and include commitments, tasks, and disclosures that must be completed prior to listing; tasks and disclosures that must be completed within one year of listing; and ongoing tasks and disclosures that must be reported annually. It is important to note

---

(internal short definitions omitted); *see also id.* at 71258 ("it is generally considered that the SRO system has functioned effectively and has served government, industry, and investors well.").

[25] Rel. No. 34-97687 (June 9, 2023), 76 F.R. 70799, 70802 (June 15, 2023), File No. SR-NASDAQ-2023-005. *See also* Rel. No. 34-78223 (July 1, 2016), 81 F.R. 44400, 44403 (July 7, 2016), File No. SR-NASDAQ 2016-013 (approving Nasdaq proposal to require Listed Companies to publicly disclose compensation or other payments by third parties to Board of Director's members or nominees) ("[W]e believe that it is within the purview of a national securities exchange to impose heightened governance requirements, consistent with the Act, that are designed to improve transparency and accountability into corporate decision making and promote investor confidence in the integrity of the securities markets."). *Cf.* S. Rep. 73-1455 at 55 (1934) ("One of the prime concerns of the exchanges should be to make available to the public, honest, complete, and correct information regarding the securities listed.").

[26] Joint Corporate Governance Amendments, *supra* note 19, 68 FR at 64159.

[27] *Id.*

[28] *Id.* at 64157.

[29] *Id.* at 64158.

[30] Rel. No. 34-68639 (Jan. 11, 2013), 78 F.R. 4570 (January 22, 2013), File No. SR-NYSE-2012-49.

[31] Rel. No. 34-78223, *supra* note 25.

[32] Rel. No. 34-97687, *supra* note 25.

[33] Joint Corporate Governance Amendments, *supra* note 19.

[34] Rel. No. 34–86722 (Aug. 21, 2019), 84 F.R. 44952 (August 27, 2019), File No. SR-LTSE 2019-01.

[35] Rel. No. 34-92590 (August 6, 2021), 86 FR 44424 (August 12, 2021), File Nos. SR-NASDAQ-2020-081 and SR-NASDAQ-2020-082.

that these corporate governance standards are in addition to, and designed to supplement, commitments and disclosures contained in the federal securities laws and rules.[36]

IV. The relationship between environmental impact and shareholder value, investor protection, and investor decision making; the impact of robust disclosure on investor confidence

There is a positive connection between market value and cost of capital on the one hand, and tangible action by a company to measure, mitigate and manage its environmental risks and impact, on the other hand.

For example, a meta-study (research that reviews and compares results from previous studies)[37] by NYU Stern School of Business and Rockefeller Asset Management looked at over 1,000 research papers between 2015 and 2020 on environmental, social, and governance measures by companies and the impacts on their financial performance. It found a "positive relationship" between a company's focus on ESG (including, but not limited to climate and environmental topics) and financial performance in 58% of the studies focusing on operational metrics such as return on investment, return on assets, and stock price. Only 8% of the studies showed a negative relationship; the balance showed either neutral impact (13%) or mixed results (21%).[38] Subsequent research has noted that especially when they concern climate and environmental sustainability, investor perceptions about the quality of a company's commitment matter to value; as one such study concluded, "a higher green sentiment is associated with a stock-price out-performance of environmentally responsible firms[…]."[39] Investor perceptions may also translate into a lower cost of capital for companies on a green trajectory; multiple studies have found (in the words of one such study) that "[G]reen sentiment can decrease the relative cost of capital of more environmentally-responsible firms, and increase their investment capacity."[40]

---

[36] *See id*. at 57 ("National securities exchanges may choose to adopt disclosure requirements in their listing rules that supplement or overlap with disclosure requirements otherwise imposed under the federal securities laws, and disclosure-related listing standards that provide investors with information that facilitates informed investment and voting decisions contribute to the maintenance of fair and orderly markets.").

[37] A meta-analysis is the 'statistical analysis of a large collection of analysis results from individual studies for the purpose of integrating the findings'. It is well-established in many fields, including finance, as a methodology for synthesizing research and evaluating evidence that "allows the piecemeal findings reported in several individual studies to be summarized and integrated into a big picture. [It] provides methods to detect and filter out empirical biases, such as model misspecification and preferential reporting of statistically significant results." Jerome Geyer-Klingeberg, Markus Hang, and Andreas Rathgeber, Meta-analysis in Finance Research: Opportunities, Challenges, and Contemporary Applications, Intern. Rev. of Fin. Analysis, vol 71 (October 2020), available at https://doi.org/10.1016/j.irfa.2020.101524.

[38] Tensie Whelan, Ulrich Atz, Tracy Van Holt and Casey Clark, ESG and Financial Performance: Uncovering the Relationship by Aggregating Evidence from 1,000 Plus Studies Published between 2015 – 2020, NYU Stern Center for Sustainable Business and Rockefeller Asset Management (2021), available at https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021%20Rev_0.pdf.

[39] Marie Brière and Stefano Ramelli, Green Sentiment, Stock Returns, and Corporate Behavior, Amundi Asset Management (November 9, 2021) at 29, https://research-center.amundi.com/article/green-sentiment-stock-returns-and-corporate-behavior. ("[A] one-standard-deviation higher green sentiment is associated with an out-performance of…approximately 27 basis points over a one-month horizon and 53 basis points over a six-month horizon, net of the effects of other firm characteristics and sector.").

[40] *Id.* at 30. *See also* Malcolm Baker, Mark L. Egan, and Suproteem K. Sarkar, How do Investors Value ESG?, National Bureau of Economic Research (December 2022), https://www.nber.org/papers/w30708 (finding investors were willing to pay an additional 9 basis points for a fund that has a sustainability mandate and an additional 20 basis points for a fund with a general ESG mandate, and noting that "[i]f investor preferences for ESG continue to rise and fees on ESG funds fall with competition, we can expect much of this benefit to be passed on to firms in the form of a lower cost of capital.").

Environmentally-focused investors' perceptions, in turn, are affected by the quality of a company's climate and sustainability disclosures; this is why GIX's Green Governance Standards include both corporate governance actions and related disclosure obligations. For example, a study by Boston Consulting Group (BCG) of corporate disclosures by companies listed on the Australian Stock Exchange[41] looked at the specific subject matter of company announcements, and noted that an increasing number of companies' climate and sustainability announcements between 2018 and 2021 concerned the actions they were taking, versus highlighting commitments, partnerships and affiliations, accolades, and/or controversies.[42] According to BCG's research, this shift benefitted investors in making their value calculations:

> [T]he most effective [climate and sustainability] announcements were grounded in a company's core business strategy and style of competition (how they differentiate and create value). They were also transparent about cost-benefit trade-offs. Effective announcements also clearly communicated how actions and commitments were integrated into the company's value creation agenda, which made it possible for investors to ascribe appropriate value.[43]

GIX's listing standards promote the dissemination of valuable information that will likely lead to similar results, which should benefit investors, especially retail investors who may not have access to the data and analytical tools available to professional investors. This conclusion is consistent with earlier research suggesting that more disclosure generally can benefit investors (particularly retail investors) and reduce the cost of capital because it reduces or eliminates the amount of "private information" about the company, which tends to reduce the value of information arbitrage.[44] It is also consistent with the twin observations that information is "the lifeblood of strong vibrant markets" and that "market efficiency is closely linked to market transparency."[45]

In the case of climate, environmental, and other green concerns, more and better-detailed disclosure about how companies assess and manage environmental risks aids investor decision-making because, as one commentator put it, "climate risk is a business risk and the transitions it necessitates have been compared in scale to the Industrial Revolution."[46] Increasingly, investors understand the significance of climate risk and sustainability information, and are seeking to factor it into their investment decisions: a 2023 joint survey by the Fletcher School at Tufts University and Deloitte & Touche investigating investor attitudes toward sustainability found

---

[41] *See, e.g.,* Sam Farley and Geoff Healy, When It Comes to Creating Shareholder Value from Climate and Sustainability Commitments, There are No Shortcuts, Boston Consulting Group (June 23, 2022), https://www.bcg.com/publications/2022/environmental-commitments-can-create-shareholder-value. *See also* Betjush Ademi and Nora Johanne Klungseth, Does it pay to deliver superior ESG performance? Evidence from US S&P 500 companies, Journal of Global Responsibility, vol. 13, no. 4 (August 11, 2022), https://www.emerald.com/insight/content/doi/10.1108/JGR-01-2022-0006/full/html (observing that "investors should consider firms' ESG reports when making investment decisions. Because firms with superior ESG performance tend to have a higher market valuation, accounting for the ESG performance of the firm during investment decision-making could potentially lead to better investment performance.").
[42] *See* Farley and Healy, *supra* note 41.
[43] *Id.*
[44] *See* René Stulz, Securities Laws, Disclosure, and National Capital Markets in the Age of Financial Globalization, EGCI Working Paper No. 112/2008, European Corporate Governance Institute (July 2008) at 41 ("A cross-listing that commits a firm to better disclosure reduces the flow of private information for its shares.").
[45] George S. Georgiev, The Market-Essential Role of Corporate Climate Disclosure, 56 U.C. Davis L. Rev. 2105 (2023).
[46] *Id*. at 2107-2108.

that 83% of the asset owners, asset managers, and investment advisors surveyed incorporate sustainability information into their fundamental analyses, and 83% also viewed sustainability information as either “very important” (42%) or “somewhat important” (41%) to their due diligence process.[47] A survey by business intelligence firm Morning Consult and Public Private Strategies Institute similarly found that 55% of investors said that a company's ESG initiatives are either a “top priority” (22%) or an “important, but lower priority” (33%).[48] The Morning Consult survey also found that 63% of respondents felt that ESG investments should be made easier.[49] Despite this, when asked to identify barriers to sustainable investing, 64% of the survey respondents in the Deloitte/Fletcher survey cited a lack of clear strategies by corporations, 62% cited a lack of measurable outcomes discernible from corporate disclosures, and 65% cited a lack of clarity on how to integrate ESG information.[50]

At a generalized level, climate change can be categorized into physical risks (e.g., impacts on infrastructure, health, agricultural productivity, etc.) or transition risks (changes in consumer preferences, new technology, new regulatory regimes, stranded assets, etc.). Both types of risk can affect current economic activity and valuations, and future activity, market stability, and value preservation.[51] Even so, information gaps persist around “the effects of climate change on firms’ operations, financial performance, and prospects, as well as about those firms’ adaptive responses.”[52] Listing rules that can incentivize companies to identify these risks to investors and articulate how a company is mitigating and managing these risks would therefore benefit investors.

As described in Section V below, GIX’s listing standards will require firms to address many of these information gaps by requiring them not only to select a standard or framework to measure their progress on environmental and climate goals, but also to articulate to investors how they interpret and apply the standard, and then to disclose the results of those measurements. In addition, the GIX standards will require firms to create – and to articulate to investors – short-, medium-, and long-term goals for how they will transition to greener business practices and then maintain and improve on those practices. Put another way, GIX’s standards will require listed companies to provide better information to investors about their “adaptive responses”. As noted by the CFTC in 2020, these kinds of disclosures benefits investors because they are

> an essential building block to ensure that climate risks are measured and managed effectively…Issuers of securities can use disclosure to communicate risk and opportunity information to capital providers, investors, derivatives customers and counterparties,

---

[47] Michael Bender, Bhaskar Chakravorti, et al., Investor Trust in Sustainability Data: An opportunity for corporate leaders, Deloitte & Touche LLP and The Fletcher School at Tufts University (March 2024), https://www2.deloitte.com/content/dam/Deloitte/br/Documents/finance/gx-global-report-investor-trust-in-sustainability-data.pdf.
[48] Morning Consult, ESG Survey Results, Morning Consult and Public Private Strategies Inst. (Feb. 2024), https://irp.cdn-website.com/0dd693a6/files/uploaded/esg%20deck.pdf.
[49] *Id*.
[50] Bender and Chakravorti, *supra* note 47.
[51] *See* CFTC, Managing Climate Risk in the US Financial System: Report of the Climate-Related Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, at 12 (2020) (“CFTC Report”), https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System %20for%20posting.pdf.
[52] Georgiev, *supra* note 45 at 2108.

> markets, and regulators… Investors can use climate-related disclosures to assess risks to firms, markets, cash flows, and valuations, allowing markets to price risk more accurately and facilitating the risk-informed allocation of capital.[53]

Summing up, research shows that both companies and investors benefit from disclosures that communicate not only what a company intends to do around climate, sustainability, and green concerns, but also how the company will do so, the attendant costs and benefits, and the actions the company is taking in support of its goals. For companies, the benefit comes in the potential for increased investment and value and lower cost of capital, while for investors, the benefit is improved confidence in a company's commitment to an issue they are concerned with, due to having access to more and better information about the company's plans *and* actions.

V. How each of the proposed corporate governance standards is consistent with the requirements of Section 6(b)(5) of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder

A. Dual Listing of Companies Focused on their Green Impact

Dual listing of securities is a well-understood and well-used tool for public companies, both within the US markets, and between the US markets and other jurisdictions. In the United States, companies have had the option to list their securities on multiple exchanges simultaneously since at least 2003, when the NYSE repealed its Rule 500, which had previously precluded NYSE-listed companies from listing their securities on another exchange.[54] And companies whose securities primarily trade on a market outside the US have long had the option to simultaneously trade American Depository Receipts (ADRs) in the US market, or even to directly list some or all of their shares simultaneously on their home markets and on US markets.

Companies dually-list their securities on multiple markets for a variety of reasons, including access to larger or more diverse pools of investment capital, or to demonstrate a commitment to stronger listing and regulatory requirements, which can help them stand out from their peers.[55] GIX will provide a venue for companies that want to focus investor attention on their resiliency to climate change and other environmental challenges, and the long-term growth opportunities stemming from conscious management of their green impact. Due to the green focus of its listing standards, listing on GIX may improve an issuer's access to so-called "green capital" because it "provides a valuable signal" to green-minded investors that it is credibly committed to transitioning to and operating under more sustainable green business practices.[56]

---

[53] CFTC Report, *supra* note 51 at iv.

[54] Rel. No. 34-48720 (October 30, 2003), 68 F.R. 62645 (November 5, 2003), File No. SR-NYSE-2003-23.

[55] *See* Rel. No. 34-50741 (Nov. 29, 2004), 69 F.R. 70296 (December 3, 2004), File No. SR-NASD-2004-142 ("Nasdaq believes issuers that become dually listed voluntarily undertake a second set of regulations and therefore demonstrate their commitment to regulatory excellence."). *See also* Stulz, *supra* note 44.

[56] *See* Rel. No. 33-10428 (Oct. 24, 2017), 82 F.R. 50059, 50064 (Oct. 30, 2017), File No. S7-06-17 ("[T]he stringency of an exchange's listing standards may provide a valuable signal to investors about the quality of issuers that are able to list, which may improve the issuers' access to capital.").

B. The Green Governance Standards

GIX's exchange-specific listings rules are contained in proposed Exchange Rules 14.425 through 14.428, which are collectively referred to by GIX as the "Green Governance Standards".

Organizationally, the Green Governance Standards are outlined in four rules: (i) proposed Rule 14.425 covers certain matters and definitions that are common to all the Green Governance Standards; (ii) proposed Rule 14.426 describes the governance standards that a company must meet prior to listing; (iii) proposed Rule 14.427 describes the governance standards that a company must meet within one year of listing; and (iv) proposed Rule 14.428 describes the governance standards that a company must meet on an ongoing or annual basis. Structurally, the GIX Green Governance Standards fall into three main categories: (x) board governance and management requirements;[57] (y) mandatory disclosures;[58] and (z) measuring and reporting progress toward green goals.[59] Listed companies must periodically certify to the Exchange that they are in compliance with the Green Governance Standards (and submit supporting evidence, where appropriate).

As discussed below, GIX believes that the proposed rules are consistent with Section 6(b) of the Act[60] in general, and further its specific objectives of removing impediments to, and perfecting the mechanisms of, a free and open market and a national market system; preventing fraudulent and manipulative acts and practices; and protecting investors and the public interest.[61]

1. GIX's governance and management provisions are consistent with the Exchange Act

As the pace of climate change has accelerated, and the challenges that it poses have become more prevalent in the public consciousness, investors, consumers, employees, and other constituencies with whom companies are concerned have begun to demand that companies take actions to address it. In some cases, this has led to an explosion of so-called "greenwashing", in which (some) companies make promises or commitments to address climate change that they either cannot, or do not intend to, honor.[62] Regardless of why greenwashing occurs, however, the net effect is that investors have learned to be skeptical of company claims around sustainability because they are not backed by a holistic commitment to change or transition by the company. As noted above, these investors would benefit from more and better information about a

---

[57] *See* proposed GIX rules 14.426(b) and (c), 14.427(b) through (g), and 14.428(b) through (j).
[58] *See* proposed GIX rules 14.426(d), 14.427(b)(4), 14.427(c)(2), and 14.427(d)(2).
[59] *See* proposed GIX Rule 14.428(c)(1).
[60] 15 U.S.C. §78f(b).
[61] 15 U.S.C. §78f(b)(5).
[62] *See* Investor.gov, Definition of Greenwashing, https://www.investor.gov/introduction-investing/investing-basics/glossary/greenwashing. *See also* 88 F.R. at 70439, *supra* note 13 ("'Greenwashing' involves the risk that funds marketing ESG strategies may exaggerate their ESG practices or the extent to which their investment products take into account ESG factors."). *Cf.*,, Evan Halper and Aaron Gregg, BP dials back climate pledge amid soaring oil profits, Wash. Post (February 7, 2023) (reducing carbon reduction targets to 20-30%, from 35-40%, as announced in 2020, and noting "the world wants and needs energy that is secure and affordable as well as lower carbon"), https://www.washingtonpost.com/business/2023/02/07/bp-climate-emissions-oil-profits/; Major U.S. Banks threaten to leave Mark Carney's climate alliance, Reuters (September 21, 2022), https://www.reuters.com/business/finance/major-us-banks-threaten-leave-mark-carneys-climate-alliance-ft-2022-09-21/ ("Some members of the alliance have recently said that they 'feel blindsided by tougher UN climate criteria and are worried about the legal risks of participation.').

company's prospective commitment to transitioning toward (and maintaining and improving) sustainable green business practices, the mechanisms that the company employs to ensure alignment with its commitments, and disclosures and information about the company's past practices.

GIX's governance and management standards seek to address the problem of greenwashing by requiring companies to take certain affirmative corporate governance actions in support of their green commitments and to disclose those actions to investors. For example, the requirement that a company's board must adopt a "green values statement"[63] signals to investors that the company's commitments are supported at the highest level of the company. Similarly, the requirement that the board specifically must charge a committee or the board itself to engage in oversight of the company's green commitments[64] provides assurance to investors that those commitments are not relegated to an obscure corner of the company, but rather will be a priority at the highest levels. And the requirement that the board must adopt a sustainability reporting framework[65] reassures investors that transparency with investors is a priority for the board and the company.

At the management level, the requirement that the company must conduct a stakeholder analysis[66] protects investors and the public interest, because it reassures investors that the company has a proper understanding of the costs and benefits of its green commitments to various constituencies about which it is concerned and will plan accordingly. The requirement that the management team must set short-, medium-, and long-term goals[67] protects investors and the public interest because it assures investors that the company is setting accountable milestones by which both the company and its investors can judge its progress. Similarly, the requirement that a company must create a strategy to meet its goals and commitments[68] may deter fraudulent and manipulative acts, and helps protect investors and the public interest, because it reassures investors that the company is appropriately planning in advance for how it will carry out its green commitments and will update and modify its strategy as necessary to meet its commitments[69] rather than abandon them. And finally, the requirement that management must implement and enforce policies and procedures around its green commitments[70] helps to protect investors and the public interest because it increases the likelihood that employees and managers understand the company's commitment and their roles in achieving the Green Goals. This will in turn reduce the likelihood of misalignment between the management team's commitment to the Green Goals and the company's overall actions on sustainability, and will surface potential misalignments to management so that they can be addressed and resolved consistently with the company's Green Values.

GIX notes that the governance and management actions required by the Green Governance Standards will be imposed on all GIX-listed companies as either a condition of initial listing,[71]

---

[63] Proposed GIX Rule 14.426(b)(1).
[64] Proposed GIX Rule 14.426(b)(2).
[65] Proposed GIX Rule 14.426(b)(4).
[66] Proposed GIX Rule 14.427(b)(1).
[67] Proposed GIX Rule 14.427(c)(1).
[68] Proposed GIX Rule 14.427(d).
[69] Proposed GIX Rule 14.428(d).
[70] Proposed GIX Rule 14.427(e).
[71] Proposed GIX Rule 14.426(a).

continued listing after the first year,[72] or ongoing listing starting in the second year that the company is listed on GIX.[73] The rules provide a variety of mechanisms through which a company may satisfy the standards, but no company will be exempted from any of the standards except pursuant to an exception clearly stated in the various rules. As such, GIX does not believe that the Green Governance Standards are designed to permit unfair discrimination between issuers.

2. GIX's disclosure mandates are consistent with the Exchange Act

An emerging problem among companies and investors is a phenomenon known as "green hushing", in which companies that are engaged in climate transition activities or carbon reduction don't disclose or publicize their efforts, in order to avoid attracting negative political attention or consumer backlash from ESG opponents.[74] For example, a 2022 joint study by The Conference Board, Heidrick & Struggles, and Esuage found that while 71% of S&P 500 companies reported their greenhouse gas emissions, only 28% of smaller companies did so; meanwhile, the study found that only 15% of S&P 500 companies disclosed information on biodiversity and deforestation, and 12% on water risks.[75] As a result, investors who are concerned about climate change and looking for investment opportunities (or who are seeking information about companies' climate risk exposure) are potentially losing access to information that could be relevant to their investment decisions.

It is axiomatic that "[t]he federal corporate disclosure regime was established by Congress and serves as a cornerstone of the Commission's tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The underlying premise of the Commission's disclosure regime is that if investors have the appropriate information, they can make rational and informed investment decisions."[76] GIX's disclosure requirements,[77] while limited only to the companies that choose to list on GIX, are consistent with that premise: they would enhance the total mix of information available to investors regarding those companies' commitment to addressing their green impacts; who their relevant stakeholders are; the goals through which they believe investors should measure their progress toward addressing their green impact; the strategy that they intend to implement to achieve those goals; and their overall progress toward achieving those goals.

By requiring companies to disclose more and better information to investors about their approach to management and governance of their green impact, GIX's listing rules ensure that investors

[72] Proposed GIX Rule 14.427(a).
[73] Proposed GIX Rule 14.428(a).
[74] See Nadia Kähkönen et al., Net Zero and Beyond: A deep-dive on climate leaders and what's driving them, South Pole (2022), https://www.southpole.com/news/going-green-then-going-dark (finding that 23% of 1,200 companies with a sustainability head are not publicizing achievements "beyond the bare minimum."); *see also* Talib Visram, What is 'green hushing'? The new negative sustainability trend, explained, Fast Company (March 10, 2023), https://www.fastcompany.com/90858144/what-is-green-hushing-the-new-negative-sustainability-trend-explained.
[75] Thomas Singer, Sustainability Disclosure Practices in the Russell 3000, S&P 500, and S&P Midcap 400: 2022 Edition, The Conference Board (2022).
[76] Daniel M. Gallagher, "the Importance of the SEC Disclosure Regime", Harvard Law School Forum on Corporate Governance, (July 16, 2013).
[77] *See* proposed GIX Rules 14.426(d), 14.427(b)(4), 14.427(c)(2), 14.427(d)(2), 14.428(b), 14.428(c)(2), and 14.428(d)(2).

have access to detailed, high-quality information with which to evaluate a listed company's green commitment. In this way, the rules requiring the disclosure of such information remove impediments to, and perfect the mechanisms of, a free and open market and national market system that may result from green hushing (and/or greenwashing), as well as promote the protection of investors and the public interest.[78]

As with the corporate governance and management requirements discussed in Section V.B.1 above, GIX's disclosure standards will be imposed on all GIX-listed companies as either a condition of initial listing, continued listing after the first year, or ongoing listing starting in the second year that the company is listed on GIX. The rules provide a variety of mechanisms through which a company may satisfy the disclosure requirements, but no company will be exempted from any of the various disclosure requirements except pursuant to an exception clearly stated in the rule. As such, GIX does not believe that the green disclosure standards are designed to permit unfair discrimination between issuers. GIX further notes that as discussed in Section III above, self-regulatory organizations have the ability to impose disclosure requirements on their listed companies that are over and above what is required by the SEC pursuant to the federal securities laws.[79] Accordingly GIX does not believe that the green disclosure requirements in GIX Rules 14.425 *et seq*. inappropriately regulate by virtue of any authority conferred by the Exchange Act matters that are not related to the purposes of the Act or the administration of the Exchange.

3. GIX's requirements that issuers measure and report progress are consistent with the Exchange Act

The essence of adequate disclosure is verifiable facts and figures that will make statements in the disclosures not misleading.[80] Put another way, for a disclosure not to be fraudulent, it must be based on either some objective set of facts and circumstances, or it must describe any assumptions or gaps in the facts so that investors understand how much reliance to place on the accuracy of the stated facts.[81] In the context of providing information to investors about a company's progress in addressing its green impact, this requires the company to affirmatively measure and report environmental and sustainability information in a manner and format that will tend to make such information not misleading.[82] To address this concern, GIX's listing requirements will therefore require listed companies to adopt and apply a generally accepted framework for measuring sustainability,[83] and to disclose information to investors based on that framework.[84]

---

[78] *See e.g.*, Insightia and Vinson & Elkins, ESG 2023 (2023), https://www.insightia.com/press/reports/ ("A more thoughtful, modern approach to disclosure centers on linking each board seat to the company's strategic direction... A primary goal of this approach is to inspire investor confidence.").
[79] *See supra* note 24 and accompanying discussion.
[80] *See, e.g.*, TSC v. Northway, 426 U.S. 438 (1976).
[81] *See* Meyer v. Jinkosolar Holdings Co., Ltd., 761 F.3d 245, 250 (2d Cir. 2014) ("Even when there is no existing independent duty to disclose information", "once a company speaks on an issue or topic, there is a duty to tell the whole truth"); *see also* Slayton v. Am. Exp. Co., 604 F.3d 758, 771, n.8 (2d Cir. 2010) (determining whether cautionary language is adequate requires an inquiry into the scope of risks that defendants faced).
[82] Intercontinental Indus., Inc. v. Am. Stock Exch., 452 F.2d 935, 940 (5th Cir. 1971) ("The requirement of full disclosure of all corporate information which might influence investment decisions is the very heart of the federal securities regulations.").
[83] Proposed GIX Rule 14.426(b)(4).
[84] Proposed GIX Rule 14.428(c).

GIX does not believe it is beneficial to GIX's listed companies or to investors to mandate that listed companies choose a particular framework, due to the diversity of industries and sectors that GIX expects to be represented within the GIX listed companies; the wide variety of ways in which different industries, companies, and investors determine what is most efficacious to focus on with respect to sustainability (which can affect the choice of one or more sustainability reporting frameworks); and the continually evolving state of sustainability reporting in the United States and globally. Rather, GIX believes that allowing listed companies a measure of flexibility in sustainability reporting ensures that the reporting will more consistently reflect a company's approach to sustainability rather than forcing a company to report on elements that may not be germane to its sustainability program, which benefits investors and other interested stakeholders. That flexibility is not unfettered, however: GIX's listed companies must choose from a reasonably limited universe of potential frameworks; they must articulate to investors in a disclosure how they approach sustainability reporting under their chosen framework(s); and they are generally precluded from "arbitraging" differences between frameworks by switching from one to another as their primary reporting framework (listed companies will be required to run the old and new frameworks in parallel for a year, which will uncover any material differences between them).

A. GIX's proposed reporting frameworks are widely recognized as leading reporting frameworks

The Exchange has identified six reporting frameworks as being "generally accepted" for purposes of complying with GIX's listing rules.[85] The phrase "generally accepted" with respect to sustainability frameworks refers to standards that have been established by a body or group that has followed established procedures, including the broad distribution of the framework for public comment, and have been validated by public adoption across a broad range of market participants.

Two of the designated frameworks – the Sustainability Accounting Standards Board ("SASB") and the Task Force for Climate-Related Financial Disclosure ("TCFD") – have merged into the International Sustainability Standards Board ("ISSB") but will be maintained as distinct reporting frameworks. In 2023, ISSB's parent organization, the International Financial Reporting Standards Foundation ("IFRS Foundation") itself promulgated two global reporting standards, known as "IFRS S1" (containing general requirements for disclosure of sustainability-related financial information) and "IFRS S2" (containing requirements for climate-related disclosures) that would apply to the 2024 reporting cycle, for publication beginning in 2025.

The Financial Stability Board[86] originally created the TCFD to "develop recommendations on the types of information that companies should disclose to support investors, lenders, and

[85] Proposed GIX Rule 14.426(b)(4), Supplementary Material .04(3). The frameworks identified are: The Task Force for Climate-Related Disclosure ("TCFD"); the International Sustainability Standards Board ("IFRS") and Sustainability Accounting Standards Board ("SASB"); the Science-Based Targets Initiative ("SBTI"); the Global Reporting Initiative ("GRI"); CDP (formerly the Carbon Disclosure Project); and the European Union Corporate Sustainability Reporting Directive ("CSRD").
[86] The Financial Stability Board ("FSB") is an international body that coordinates with national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory, and other financial sector policies. Its goal is to "foster a level playing field by encouraging coherent implementation of these policies across sectors and jurisdictions." See "About the FSB", FSB website, available at https://www.fsb.org/about/.

insurance underwriters in appropriately assessing and pricing a specific set of risks… related to climate change."[87] In 2023, TCFD published its final status report and announced that it had fulfilled its remit and would disband. The FSB asked the IFRS Foundation to take over monitoring of companies' climate-related disclosures.[88] The TCFD recommendations were subsequently incorporated into IFRS S1 and IFRS S2, such that companies that report using those standards will also meet the TCFD recommendations.[89] The IFRS Foundation has taken the position that companies may continue to use the TCFD recommendations as the basis for sustainability reporting (and pointed out that some companies may be required to do so) or may adopt IFRS S1 and S2.[90]

ISSB has also committed to maintaining and enhancing the SASB Standards as a stand-alone reporting framework and as a source of guidance for applying IFRS S1. According to IFRS Foundation, the SASB Standards "help companies identify and disclose material information about sustainability-related risks and opportunities in the absence of specific IFRS Sustainability Disclosure Standards." They "were developed using a rigorous and transparent standard-setting process that included evidence-based research; broad and balanced participation from companies, investors and subject-matter experts; and oversight and approval from the independent SASB Standards Board."[91] According to data collected and published by SASB, in 2023, 1,411 companies in the United States utilized the SASB standards for sustainability reporting. Globally, the number of SASB reporting companies grew from 556 in 2020 to 2,499 in 2023.[92]

The Global Reporting Initiative ("GRI") originated with two not-for-profit organizations (CERES and the Tellus Institute) in 1997, with involvement of the United Nations Environment Programme, and was established as an independent non-profit entity in 2001. GRI published its first environmental reporting guidelines in 2000, and updated guidelines in 2002, 2006, and 2013. In 2016, GRI moved away from publishing guidelines in favor of publishing global standards for sustainability reporting. These have been periodically updated and expanded since that time.[93] According to information published by GRI, numerous stock exchanges and exchange regulators around the world reference the GRI standards or require listed companies to use them for sustainability (or ESG) reporting.[94] GRI also reports that it collaborates with, among others, the Sustainable Stock Exchanges (SSE) initiative and the Sustainable Working Group of the World Federation of Exchanges (WFE).[95] Media reports suggest that more than

---

[87] https://www.fsb-tcfd.org/about/.
[88] *Id.*
[89] *See* https://www.ifrs.org/sustainability/tcfd/.
[90] *Id.*
[91] https://www.ifrs.org/issued-standards/sasb-standards/. For a detailed description of the process undertaken by SASB to develop its standards, *see* https://sasb.org/standards/process/.
[92] *See* https://sasb.ifrs.org/about/global-use/.
[93] https://www.globalreporting.org/about-gri/mission-history/.
[94] GRI lists the following exchanges and regulatory bodies: Australian Securities Exchange (ASX), Australian Securities & Investments Commission, Brasil Bolsa Balcao (BBB), Bolsas Y Mercandos Espanoles, Borsa Istanbul (BIST), Bolsa Devalores De Guayaquil, Bursa Malaysia, Capital Markets Development Authority of the Maldives (CMDA), Deutsche Borse (DB), Egyptian Exchange (EGX), Hong Kong Exchange (HKE), Johannesburg Stock Exchange (JSE), NASDAQ, New Zealand Exchange (NZX), Ontario Securities Commission (OSC), Oslo Bors (OSB), Securities Exchange Commission of Pakistan (SECP), Securities and Exchange Commission of the Philippines, Securities & Exchange Board of India, Stock Exchange of Thailand (SET), Singapore Exchange (SGX), Swiss Exchange (SIX), Taiwan Stock Exchange (TAIEX), US Securities & Exchange Commission, and Zimbabwe Stock Exchange (ZSE). See https://www.globalreporting.org/public-policy-partnerships/capital-markets/.
[95] *Id.*

11,000 companies around the world report using GRI standards, including 73% of members of The Business Roundtable and more than 60% of Fortune 500 and S&P 500 companies.[96]

CDP is a not-for-profit company that operates "a global disclosure system for investors, companies, cities, states and regions to manage their environmental impacts." CDP's global headquarters are in London, with regional and local offices in 50 countries. According to CDP, in 2023, 1,945 companies in the United States (public and private) disclosed climate information through CDP annually, which represented a 24% increase over the 2022 reporting cycle.[97]

The Science Based Targets initiative ("SBTi") is a collaboration between CDP, the United Nations Global Compact, World Resources Institute (WRI), and the World Wide Fund for Nature (WWF).[98] SBTi assists companies in developing and validating emissions-reduction targets and certifies them as "science based" if they meet certain criteria. Participating companies agree to announce their targets to stakeholders, and then to track and annually report on their progress toward those targets.[99] According to data published by SBTi, as of 2023, 7,427 companies have set science-based targets for emissions.[100]

The Corporate Sustainability Reporting Directive ("CSRD") was adopted by the European Union in January 2023. It will apply to all large companies and all listed companies (except listed micro-enterprises) in the E.U. and will require them "to disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment."[101] The CSRD will begin applying for the 2024 financial year, with reporting beginning in 2025. Companies subject to the CSRD will have to report according to European Sustainability Reporting Standards (ESRS), which were finalized and published in December 2023.[102] The Exchange expects that most US-listed companies will not elect to report based on the CSRD standards, but included these standards as being "generally accepted" in order to avoid creating duplicative reporting obligations for European-domiciled listed companies that either directly list their equity securities in the United States, or indirectly trade their equity securities in the United States via ADRs or other derivative instruments, and for U.S.-domiciled listed companies with European subsidiaries or businesses that are required to report under CSRD.

Overall, the Exchange notes that, according to data collected and published by the accounting and advisory firm BDO USA, 99% (494) of the companies in the S&P 500 reported some form of ESG data and information in 2021.[103] 452 of them aligned to SASB standards, 395 aligned to

---

[96] Natalie Runyon, "How Global Reporting Initiative standards meet the EU's ESG reporting requirements", Thomson Reuters Institute (January 16, 2024), available at https://www.thomsonreuters.com/en-us/posts/esg/gri-standards/ ("EFRAG sought to leverage existing standards and included GRI as a collaborator for the impact pillar because more than 11,000 organizations already use GRI standards for voluntary reporting.").

[97] https://www.cdp.net/en/responses?queries%5Bname%5D=&filters%5Bcountries%5D%5B%5D=United+States+of+America&filters%5Byears%5D%5B%5D=2023&filters%5Bprogrammes%5D%5B%5D=Investor&filters%5Bstatuses%5D%5B%5D=Submitted.

[98] https://sciencebasedtargets.org/about-us.

[99] https://sciencebasedtargets.org/how-it-works.

[100] https://sciencebasedtargets.org/companies-taking-action#dashboard.

[101] https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en.

[102] *Id.*

[103] Dan Harris, "99% of the S&P 500 is Reporting on ESG and 65% are Obtaining ESG Assurance" BDO USA (July 21, 2023)

the TCFD standards, and 346 aligned with the Global Reporting Initiative ("GRI") standards. Most of the S&P 500 companies were using three standards simultaneously.[104] The Exchange also notes that both SASB and GRI are evolving into globally significant standards: as reported by Thomson Reuters, "[o]n a global scale, there are two sets of standards that are proving to be the most relevant to meet the requirements for CSRD, [the European Sustainability Reporting Standards], and most other regulations and rules for ESG reporting: GRI's standards, and those from the International Sustainability Standards Board (ISSB) [which, as noted above, includes SASB and TCFD]."[105]

In light of these data and the data cited above regarding the rates of adoption of the various standards, the Exchange believes that there is an emerging global consensus around the value of the enumerated frameworks for organizing and reporting decision-useful information for investors about a company's sustainability activities and results.

b. The designated sustainability frameworks are all similarly rigorous

As discussed more fully below, all of the frameworks that GIX has designated as "generally accepted" have in common a degree of rigor and reliability in their design and application. Because of that rigorous process for creating and vetting each of the standards, and the mutual support and interoperability among the frameworks, GIX believes that regardless of the framework a listed company chooses, the resulting disclosures to investors will be similarly meaningful and useful.

The selection of a sustainability reporting framework by a company requires it to evaluate and balance several factors that will determine what is best suited to its business, industry, and sector; and which framework (or combination of frameworks) best serves the interests and needs of its investors and stakeholders. Although each of the frameworks have unique features compared to the other designated frameworks, they cover an overlapping set of sustainability topics and themes, and are all similarly comprehensive in their scope and application; one framework is not objectively easier to apply than the others, and the fact that a company may choose from several frameworks does not thereby imply that a company can "game the system" by choosing one framework instead of another. In fact, as noted above, many companies are already reporting using several frameworks simultaneously, which further ensures that investors get comprehensive, timely, and relevant information.

GIX's designated frameworks generally fall into three categories: voluntary disclosure frameworks; guidance frameworks; and regulatory requirements.[106]

- Voluntary disclosure frameworks provide a platform and mechanism for disclosure that is applicable across different industry sectors or regions, using surveys or questionnaires that are scored. CDP is an example of a voluntary disclosure framework that allows companies to report on their business risks and opportunities related to climate change,

---

https://www.bdo.com/insights/sustainability-and-esg/99-of-the-s-p-500-is-reporting-on-esg-and-65-are-obtaining-esg-assurance.
[104] *Id*.
[105] Natalie Runyon, "How Global Reporting Initiative standards meet the EU's ESG reporting requirements", *supra* note 96.
[106] *See, e.g.*, "Nareit Guide to ESG Reporting Frameworks," National Association of Real Estate Investment Trusts (2019), available at https://www.reit.com/sites/default/files/2021-05/Nareit_Guide_to_ESG_Reporting_ 2_21_19_0.pdf.

water security, and deforestation, through detailed questionnaires on each topic. Performance is benchmarked against industry peers, scored and ranked publicly.

- Guidance frameworks provide methodologies and metrics for measuring sustainability outcomes (e.g., water usage or greenhouse gas emissions) in specific areas. Examples of guidance frameworks include GRI and TCFD, both of which focus on universal and topic-based sustainability standards like governance, strategy, risk management, and climate-related metrics and targets; and SASB, which contains specifications on disclosing financially material sustainability information across 77 industries and lists subsets of relevant sustainability issues for each industry.
- Regulatory frameworks such as the ESRS create mandatory reporting requirements for covered issuer participants. Multi-national issuers may be subject to these mandatory requirements for some or all of their operations (depending on the jurisdiction's view on extra-territorial application). Even if a company's entire operations are not subject to extra-territorial application, issuers may elect to comply with the regulatory framework for all of its reporting rather than segregating its operations into reporting-eligible and non-reporting-eligible components.

The voluntary and guidance frameworks that GIX has designated as "generally accepted" have all been developed through a consensus process that included input and guidance from subject matter experts, and resulted in draft standards that were vetted through public exposure and an opportunity for interested participants to provide feedback prior to finalization (regulatory frameworks are similarly developed using a public process).[107] Several of the standards have subsequently been consolidated under a single governing body – as noted above both TCFD and SASB have consolidated under the umbrella of the ISSB, which has begun integrating those standards into a unified set of standards while continuing to maintain those frameworks as stand-alone tools – which further ensures that they will be mutually rigorous.

The GIX-designated frameworks are also mutually supporting across standards-setting organizations: for example, CDP reports that its framework is aligned with IFRS S2, TCFD, and GRI, and is in the process of aligning its framework with the SEC's climate disclosure rules and the ESRS;[108] similarly, GRI and the European Financial Reporting Advisory Group (EFRAG) released a statement in September 2023 "confirming that they have achieved a high level of

---

[107] *See, e.g.*, "SASB Standards overview", SASB, ("The Standards were developed using a rigorous and transparent standard-setting process that included: evidence-based research; broad and balanced participation from companies, investors and subject-matter experts; and oversight and approval from the independent SASB Standards Board.") available at https://fsa.sasb.org/standards/. *See also* "Recommendations of the Task Force on Climate-related Financial Disclosures (Final Report)," Taskforce on Climate-related Financial Disclosures (June 2017) ("In developing and finalizing its recommendations, the Task Force solicited input throughout the process. [I]n April 2016, the Task Force sought public comment on the scope and high-level…As the Task Force developed its disclosure recommendations, it continued to solicit feedback through hundreds of industry interviews, meetings, and other touchpoints…[I]n December 2016, the Task Force issued its draft recommendations and sought public comment on the recommendations as well as certain key issues, receiving over 300 responses. This final report reflects the Task Force's consideration of industry and other public feedback received throughout 2016 and 2017."), available at https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf.

[108] https://www.cdp.net/en/2024-disclosure/disclosure-frameworks-and-standards ("CDP's collaboration with leading framework and standard setters will ensure corporate disclosures have the widest possible application in the market – driven by the highest ambition – and that they deliver consistent, comparable and decision-useful environmental data to capital markets, procurement teams and policymakers worldwide.").

interoperability" between ESRS and GRI.[109] Other designated frameworks contain similar assurances of interoperability and mutual compatibility.[110]

c. Reporting under the designated sustainability reporting frameworks will be subject to third party assurance

To promote the protection of investors and the public interest as required by Section 6(b)(5) of the Exchange Act,[111] and to further ensure the quality of the information being reported, the listed company will be required to attest that it applies the framework accurately, and to provide a third-party certification to that effect.[112] As noted above, to ensure that the information is understandable to investors, the listed company will be required to publish an explanation of why it selected the chosen framework, and how it intends to interpret and apply the framework to its reporting.[113] In short, the listed company will be required to provide investors a key for reading and interpreting its sustainability data.

The third-party assessment will review whether a listed company is reporting data and information in conformity with the terms and instructions for the selected framework, and convey whether, based on the procedures performed and evidence obtained, any matter has come to the reviewer's attention to cause the reviewer to believe that the sustainability information is not prepared, in all material aspects, in accordance with the applicable criteria. This approach draws on (among others) the International Auditing and Assurance Standards Board's Proposed International Standard on Sustainability Assurance 5000 - General Requirements for Sustainability Assurance Engagements. As designed, GIX's assessment requirement will provide investors with limited assurance as to the reliability of the company's sustainability reporting.[114]

---

[109] *See, e.g.,* Mark Segal, "EFRAG, GRI Confirm High Interoperability of European Sustainability Reporting Rules and GRI Standards, Avoiding Double Reporting Concerns", ESG Today (September 5, 2023) available at https://www.esgtoday.com/efrag-gri-confirm-high-interoperability-of-european-sustainability-reporting-rules-and-gri-standards-avoiding-double-reporting-concerns/.

[110] *See, e.g.,* "SBTi Financial Sector and TCFD Reporting Guidance," Science Based Targets Initiative (January 2023) ("The TCFD recommendations and the SBTi-FI target setting guidance are complementary frameworks. Together they enhance the assessment, management and disclosure of FIs' exposure to climate-related risks, maximize opportunities for portfolio companies to cut emissions and reduce the climate impact on portfolios."). *See generally* Rel. No. 33-11275 (March 6, 2024) at 633, 89 F.R. 21668, 21844 (March 28, 2024), File No. S7-10-22 (hereafter, "SEC Climate Disclosure Rule") ("According to one report, the GRI standards exhibit 'Reasonable' alignment with the TCFD, while the SASB standards generally exhibit 'Moderate' or 'Reasonable' alignment with the majority of the TCFD disclosure items. Additionally, the CDP Climate Change questionnaire fully incorporates the TCFD framework and thus exhibits full alignment.").

[111] 15 U.S.C. §78f(b)(5).

[112] Proposed GIX Rule 14.428(f). The Exchange notes that a significant number of companies already obtain third-party assurance. *See, e.g.,* Harris, *supra* note 103 (65% of S&P 500 obtain third-party assurance for ESG reporting); *see also* Natalie Runyon, "The growing role of audit in ESG information integrity and assurance," Thomson Reuters Institute (October 27, 2022), available at https://www.thomsonreuters.com/en-us/posts/tax-and-accounting/esg-audit-integrity/.

[113] Proposed GIX Rules 14.426(d)(iii) and (iv).

[114] "Limited assurance" is presented in the negative, namely that the assessor is not aware of any information that would contradict the assessor's conclusion that information was prepared in all material respects in accordance with the applicable criteria. This is in contrast to a "reasonable assurance", which is presented in the affirmative, namely that the assessor affirms the information was prepared in all material respects in accordance with the applicable criteria accurately. Limited assurance engagements typically review policies, procedures, and controls to identify potential areas where misstatements may arise, but do not independently verify the reported data and information. *See* Proposed International Standard on Sustainability Assurance 5000 – General Requirements for Sustainability Assurance Engagements, para. 178L, International Auditing and Assurance Standards Board, available at https://ifacweb.blob.core.windows.net/publicfiles/2023-08/IAASB-International-Standard-Sustainability-5000-Exposure-Draft_0.pdf.

d. The designated sustainability reporting frameworks are consistent with the requirements of the Exchange Act.

For the reasons described below, GIX believes that the designated "generally accepted sustainability reporting frameworks" support the goals of, and are consistent with the goals and requirements of, Section 6(b)(5) of the Exchange Act,[115] which include (in pertinent part) removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. As such, GIX believes that the requirements in Rules 14.426 and 14.428 to report using one of the generally accepted sustainability reporting frameworks designated by the Exchange are consistent with the requirements and goals of Section 6(b)(5), because they ensure that investors will receive accurate, timely, and reliable information about listed companies and their sustainability programs.

SASB: The SASB standards promote fair disclosure, capital formation, and the protection of investors. Accordingly, permitting listed companies to report using the SASB standards is consistent with the requirements and goals of Section 6(b)(5) of the Exchange Act.[116] In particular, the standards help investors identify sustainability information that has a financial impact on a company's long-term value; they also promote consistency and comparability across companies within a sector, which allows investors to easily analyze the sustainability performance of different companies and facilitates efficient price discovery. SASB disclosures also protect investors by highlighting potential financial risks to a company as a result of climate and environmental factors. This facilitates capital formation because investors can better assess a company's long-term prospects, identify companies with strong sustainability practices, and more accurately assess the level of climate-related risk that a company faces and whether a company is positioned to take advantage of climate-related opportunities.[117]

TCFD: As the SEC has articulated, "[t]he TCFD framework was designed to elicit information to help investors better understand [an issuer]'s climate-related risks to make more informed investment decisions… Indeed, the core categories of the framework, which focus on governance, risk management, strategy, and metrics, align with the type of information called for by existing disclosure requirements within Regulation S-K."[118] The SEC further noted that many issuers and their investors are already familiar with the framework and are voluntarily making disclosures consistent with the framework, and therefore cited this familiarity with TCFD as justification for relying on it in devising its

---

[115] *See supra* note 111.
[116] In view of the consolidation of the SASB and TCFD standards under the umbrella of the IFRS Foundation's International Sustainability Standards Board, GIX believes that the arguments for how these standards are consistent with the Exchange Act apply equally to the ISSB standards themselves.
[117] Letter from Janine Guillot to Chair Gary Gensler (May 19, 2021) in response to US Securities and Exchange Commission (SEC) Public Statement of Commissioner Allison Herren Lee, "Public Input Welcomed on Climate Change Disclosures," (March 15, 2021) ("SASB's approach … winnows down the broader universe of potential stakeholder impacts to those most relevant to financial performance and enterprise value for the typical company in an industry."), available at https://www.sec.gov/comments/climate-disclosure/cll12-8819945-238161.pdf.
[118] SEC Climate Disclosure Rule, *supra* note 110, at 25, 89 F.R. at 21673.

own rules for climate disclosure.[119] GIX similarly believes that issuer and investor familiarity with the standards removes impediments to and perfects the mechanism of a free and open market and a national market system because it will mitigate the compliance burden for registrants in complying with GIX's standards, and promote more timely, relevant, and material disclosures to investors. Accordingly, GIX believes that permitting listed companies to report using the TCFD framework is consistent with the requirements and goals of Section 6(b)(5) of the Act.

GRI: As the SEC itself has explained,

> "[t]he GRI standards outline both how and what to report regarding the material economic, social and environmental impacts of an organization on sustainable development. For 33 potentially material sustainability topics, the GRI standards contain disclosure requirements. Three series of GRI standards support the reporting process: the GRI Topic Standards, each dedicated to a particular topic and listing disclosures relevant to that topic; the GRI Sector Standards, which are applicable to specific sectors; and the GRI Universal Standards, which apply to all organizations. The GRI Standards can be used in sustainability reports, as well as in annual or integrated reports that are oriented at a broad range of stakeholders."[120]

Given the breadth and detail of reporting provided under GRI, the utility of the GRI standards for a "broad range of stakeholders", and the standard's focus on materiality as an underlying component of the disclosure regime, GIX believes that permitting issuers to report using the GRI standards removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest. The GIX rules relating to sustainability reporting are therefore consistent with, and promote the goals of, Section 6(b)(5) of the Exchange Act.

CDP: CDP operates a global disclosure system that enables companies to measure and manage their environmental risks, opportunities and impacts. As the SEC has noted, "despite not being a framework like GRI, SASB and TCFD, CDP's questionnaires gather both qualitative and quantitative information from across governance, strategy, risk, impact and performance."[121] Because the CDP questionnaires facilitate the disclosure of decision-useful information to investors, GIX believes that permitting listed companies to report using CDP is consistent with, and promotes the goals of, Section 6(b)(5) of the Exchange Act, in that it removes impediments to and perfects the mechanism of a free and open market and a national market system.

SBTi: As noted previously, SBTi assists companies in developing and validating emissions-reduction targets and certifies them as "science based" if they meet certain criteria. Participating companies agree to announce their targets to stakeholders, and then to track and annually report on their progress toward those targets. GIX believes that the

---

[119] *Id*. at 37, 89 F.R. at 21676.
[120] Rel No. 33-11042 at 313, fn. 769 (March 21, 2022), 87 F.R. 21334, 21422 (April 11, 2022), File No. S7-10-22.
[121] *Id*. at 311, fn. 761, 87 F.R. at 21422.

SBTi process and standards are consistent with the requirements and goals of Section 6(b)(5) of the Exchange Act because they provide investors with objective, measurable, and verifiable information regarding a company's emissions reductions and GHG usage, which may be material to investors' evaluation of the company's ability to meet its sustainability goals. As such, GIX believes that permitting companies to use SBTi to meet its sustainability reporting obligations removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

CSRD: GIX notes that the CSRD is a regulatory requirement for issuers domiciled in the European Union, and for certain non-EU issuers that have qualifying connections to the EU that make them subject to CSRD in whole or in part. GIX believes that given its regulatory nature, as well as the scope of the CSRD's disclosure requirements, investors generally will be significantly and robustly protected by the deterrent effect of regulatory action against issuers who violate the directive, and therefore investors can rely on CSRD disclosures to provide timely, relevant, and material information about issuers and their sustainability risks and commitments. If a GIX-listed company elects to comply with CSRD requirements for some or all of its business, GIX believes that that disclosure would materially benefit investors in that issuer, and therefore that permitting issuers to comply with Rule 14.426 and 14.428 by reporting using CSRD disclosures is consistent with the requirements and goals of Section 6(b)(5).

As outlined in Section III above, relevant precedents are clear and well-settled that self-regulatory organizations may promulgate standards for their listed companies that exceed the strict boundaries of SEC requirements, provided that the listing standards themselves meet the criteria for exchange rules under Section 6(b)(5) of the Act.[122] In this case, GIX's mandatory sustainability reporting meets the standards for exchange rules under the Act. Among other things, as described above, the mandatory reporting requirements will facilitate the creation and dissemination of detailed information about sustainability to investors who are looking for such information as part of their investment decision. This will remove one of the key impediments that voluntary, non-standardized sustainability reports present to the mechanism of a free and open market and the national market system: the inability of investors to rely on voluntary reporting that does not adequately define key terms and interpretations, is incompletely compiled and reported, is not verified, may be inconsistently reported year-over-year, and may contain significant gaps in the topics that it covers.

At least with respect to GIX-listed companies, investors will be able to rely on the exchange's requirements to ensure that they are receiving timely, accurate, and complete sustainability information, as well as an explanation from the issuer as to how it assembled and interpreted the

---

[122] *See supra* note 19 and accompanying text. GIX notes that the data collection and reporting requirements are an integral component of the green governance standards because they underpin a number of the disclosure requirements, and because the associated data are the catalyst for listed companies' ongoing compliance with the requirement that they monitor progress toward their green goals, and if necessary, update their green goals and strategy. Accordingly, GIX believes that the proposed rules are not designed to regulate by virtue of any authority conferred by the act matters not related to the purposes of the act or the administration of the exchange. *See* 15 U.S.C. 78f(b)(5). *See also* Business Roundtable v. SEC, 905 F.2d 406 (D.C. Cir. 1990) (finding that exchanges wield delegated authority under the Securities Exchange Act only with respect to the regulation of their members and therefore "an exchange may adopt listing rules on … corporate governance matters" that exceed the SEC's own authority, because such listing rules "do not regulate members and do not rely on government regulatory authority.").

data. This rigor should also tend to deter and prevent fraudulent manipulations of the data by listed companies, since they will be subject to both a self-certification of its accuracy, and a third-party verification of their reporting practices. Taken together, GIX believes that the combination of robust measurement and reporting requirements promote investor protection and the public interest because they bring a measure of accountability to a system that has thus far relied on voluntary compliance, with no meaningful ability for investors to verify the depth and accuracy of the information reported, or to understand what information may have been omitted or downplayed by the reporting company in order to deflect attention from negative results or pump up positive results disproportionately to their actual impact.[123]

VI. Conclusion

GIX's listing standards represent a market-based effort to bring consistency and reliability to the current approach to sustainability, using the mechanism of a self-regulatory organization to focus on the internal infrastructure of a company's sustainability efforts, in order to ensure that representations to investors regarding sustainability are credible, subject to robust accountable oversight at the highest levels of the company, and supported by reliable disclosures that allow investors and other stakeholders to meaningful evaluate the company's commitments and progress. For all of the reasons outlined above, GIX believes that the proposed rules are consistent with the requirements and goals of Section 6(b)(5) of the Exchange Act and are not intended to regulate matters not related to the purpose of the Exchange Act or the administration of the Exchange. Accordingly, GIX believes that approval of the Exchange's rules is consistent with the authority granted to the Commission under the Exchange Act.

[123] GIX is not implying that such practices would necessarily meet the definition of fraud under Section 10(b) of the Act and Rule 10b-5 thereunder, because the statements by a company could be deemed to be not material under prevailing precedents, or could be deemed marketing "puffery", or other reasoning. *See, e.g.,* ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co. 553 F.3d 187 (2d Cir. 2009) (dismissing claims as non-actionable puffery even if the subject matter was material). Nevertheless, GIX believes that more clarity is in the public interest because it will tend to make greenwashing more difficult.