June 10, 2021

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

Re: Public Input on Climate Change Disclosures

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to share our perspectives on the issues we believe are important for the Securities and Exchange Commission (the "SEC" or "Commission") to consider as it evaluates creating climate change-related disclosure rules in response to Commissioner Lee's March 15, 2021 statement requesting public input on climate change disclosures (the "Request").[2]

In light of the preliminary nature of the Request, our comments are high-level and represent SIFMA's initial thinking on the delineated topics.[3] SIFMA remains available to assist the SEC as it moves towards proposed rules and will provide additional comments in response to any such proposal. SIFMA urges the SEC to take action on climate disclosure through formal rulemaking, thus allowing for appropriate public notice and comment periods to opine on the proposals.

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[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] *See* Then-Acting Chair Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures*, U.S. SECURITIES AND EXCHANGE COMMISSION (March 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

[3] This letter is being submitted on behalf of SIFMA's broker-dealer and investment bank members. SIFMA's Asset Management Group is submitting a separate response. SIFMA appreciates the assistance of Michael Littenberg, Alexander Simkin, and Dominique Rioux of Ropes & Gray LLP in the preparation of this response.

In an effort to avoid duplication and repetition, we address the main thematic points that will facilitate the disclosure by registrants of quality, usable information on climate change. Many of these recommendations respond to more than one of the questions presented in the Request, which we have noted below. We welcome the opportunity to meet with the SEC staff at its convenience to further discuss our recommendations.

SIFMA welcomes the SEC's involvement in facilitating the disclosure of consistent, clear, intelligible, comparable and accurate information on climate change that is useful to investors. Creating enduring rules that meet investor needs but that are not unduly burdensome on registrants will require close coordination between the SEC and multiple domestic and international regulatory bodies and authorities and other stakeholders, as well as a careful balancing of potentially competing priorities. The SEC and the United States should take an active leadership role in the ongoing international work to facilitate global consistency and pragmatism in climate-related disclosure rules and guidelines.[4]

1. The nature and placement of climate-related disclosures should be determined by materiality, which varies by industry and among companies within industries.[5]

SIFMA recommends the SEC adopt a smart mix of climate disclosure requirements, consisting of (A) a principles-based requirement to disclose material climate-related information and (B) a limited set of core metrics that are generally applicable across industries. This approach will result in a balance of tailored, thoughtful, registrant-specific disclosures and comparable quantitative information across registrants, while reducing registrant compliance costs and ensuring a flexible disclosure regime that can meet evolving circumstances.

A. Principles-Based Disclosures

Material climate disclosures should be principles-based, analogous to the approach taken in the SEC's recently adopted human capital disclosure requirements.[6] In other words, climate-related disclosures should largely be limited to the material measures and objectives a registrant focuses on in managing its business. Like for material human capital disclosures, we envision a principles-based requirement or duty to disclose material climate-related information as part of Item 101 of Regulation S-K.

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[4] This letter focuses primarily on climate-related ESG disclosures. As discussed later in this letter, SIFMA believes the SEC should focus its efforts on climate-related disclosure before potentially moving on to other aspects of ESG. Climate-related physical and transition risks and opportunities are increasingly viewed as useful in investment and voting decisions, and therefore more clearly fall within the SEC's three-part mission than many other ESG disclosures.

[5] Request Nos. 1, 2, and 13.

[6] *See* Item 101(c)(2)(ii) of Regulation S-K.

A principles-based disclosure requirement specific to climate will ensure that registrants thoughtfully address climate matters in their disclosures and do not default to a "check the box" approach. This approach also will give registrants the ability to convey material climate-related information in a manner that is tailored to their particular facts and circumstances and therefore more likely to be intelligible and useful to a reader. A principles-based approach also will ensure that registrant disclosures can align, where appropriate, with any global sustainability reporting baseline developed by an International Sustainability Standards Board ("ISSB") established by the International Financial Reporting Standards Foundation ("IFRS Foundation") that may be endorsed by the International Organization of Securities Commissions ("IOSCO"),[7] as well as with the requirements of other U.S. and international financial services industry regulators.

A principles-based approach also is important because views on what climate-related information is material are evolving and are likely to continue to do so for the foreseeable future. In addition, material climate-related information varies widely by industry, and even among companies within the same industry. Of course, a primarily principles-based approach would not preclude the SEC from adopting additional prescriptive climate-related disclosure requirements in the future if it determines this to be consistent with its mission.

A criticism of a principles-based approach is that it "presupposes that managers, including their lawyers, accountants, and auditors, will get the materiality determination right."[8] We believe that thoughtful registrants acting in good faith, together with input from their advisors where relevant, usually are aligned with their investors on materiality. Furthermore, there are numerous market mechanisms in place to help ensure alignment as to what is material between registrants and investors. A principles-based rule should therefore be sufficient for ensuring material climate disclosures will be made. For less knowledgeable or sophisticated registrants, this gap can be bridged more efficiently through SEC guidance and other educational outreach than through prescriptive rules. In addition, there already are mechanisms in place to address registrants that do not seek to comply in good faith with principles-based disclosure requirements, such as the SEC's recently formed Climate and ESG Task Force in the Division of Enforcement.

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[7] The SEC should engage in the work underway at the IFRS Foundation, the ISSB, and IOSCO on climate-related disclosures. Once any reporting standards coming out of that work have been finalized, the SEC can assess whether they are aligned with any climate-related disclosure requirements the SEC may have adopted at that time, and whether they are otherwise appropriate for U.S. markets.

[8] Commissioner Allison Herren Lee, *Living in a Material World: Myths and Misconceptions about Materiality*, U.S. SECURITIES AND EXCHANGE COMMISSION (May 24, 2021), https://www.sec.gov/news/speech/lee-living-material-world-052421.

B. Key core metrics should be "furnished" on a separate disclosure form.[9]

Although SIFMA believes that SEC-mandated disclosures should be focused on material information, it is supportive of a requirement that registrants in all industries disclose a limited set of common key metrics, since investors increasingly find this information useful, regardless of whether these metrics are uniformly material. These metrics should, at least for the time being, be limited to Scope 1 and Scope 2 greenhouse gas ("GHG") emissions, since those are the climate-related metrics for which there is a substantial consensus as to their current reliability.[10] Because reliable measurement remains difficult to obtain for many companies and/or industries, we encourage the SEC to clearly define boundaries for emissions tracking and ownership for any key core metrics that it requires to be disclosed.

These metrics should be disclosed on a specialized climate disclosure form[11] that is analogous to Form SD,[12] but that is furnished, not filed. These disclosures should sit outside the SEC's "core" Regulation S-K disclosure framework because, although useful to some investors, the metrics are not necessarily universally material to investment or voting decisions, as "materiality" has been defined through decades of U.S. case law.[13] In addition, the timing for being able to gather and report on these metrics is longer than that required to report on annual financial results. Timing will be further extended if the SEC ultimately requires metrics disclosures (if any) to be externally assured.

Allowing disclosures of useful metrics that are not material to be furnished on a specialized disclosure form will encourage registrants to include, in the same report, additional voluntary climate-related metrics that currently sit on their websites and in sustainability reports. Registrants also would be likely to use this same form to furnish additional narrative climate-related disclosures that are not required as part of their material principles-based climate

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[9] Request Nos. 1, 7, 10, and 12.

[10] Many registrants already disclose these and other climate-related metrics outside of their SEC filings. In order to enhance the benefit of this information during the rulemaking process, the SEC should consider issuing guidance that encourages registrants to voluntarily share in SEC filings the location, such as URLs, of the metrics. It would be useful for the SEC to clarify in its interpretive guidance that when registrants disclose where investors can obtain this additional climate-related information that does not result in the metrics being incorporated into filings under the Securities Act or the Exchange Act.

[11] Alternatively, a more streamlined approach would be to allow registrants to indicate on the specialized disclosure form where they disclose the metrics, with a link to the disclosure. This approach would reduce costs for registrants.

[12] Alternatively, a new furnished item could be added to Form SD. This would be analogous to the approach taken on Form 8-K, which has both filed and furnished disclosure requirements.

[13] *See, e.g.*, *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

disclosures. Even though all of these disclosures may not be material, investors will benefit from a mechanism that encourages registrants to consolidate many of their climate disclosures in one place and publicly submit them through the SEC's EDGAR system.

A registrant should not be held to a higher disclosure standard for disclosing immaterial metrics than for material principles-based climate disclosures. Accordingly, metrics disclosures should be on a "comply or explain" basis, which the SEC has used in other contexts.[14] A registrant should be able to opt out of providing metrics disclosures, so long as it indicates why it is doing so. This will reduce costs for registrants whose investors clearly do not find this information useful (such as, perhaps, a development stage biotech company with 25 employees operating out of leased premises), without the SEC having to differentiate among categories of registrants in its rule-making.

As the SEC is aware, other jurisdictions are also moving toward requiring companies to disclose specific climate-related metrics. To the extent the SEC requires the disclosure of specific climate-related metrics, to ease the burden on foreign issuers, it should proactively determine other jurisdictions that have comparable metrics disclosure requirements and allow registrants based in those jurisdictions to use home country disclosures to satisfy SEC metrics disclosure requirements.[15] This would be analogous to the approach taken by the SEC under the Multijurisdictional Disclosure System and with respect to resource extraction payment disclosures.[16]

Furthermore, many foreign issuers already have climate-related disclosure obligations in other jurisdictions that do not align with the timeline of the SEC's annual reporting cycle, and may not align with the due date (if any) of a specialized climate disclosure report. The SEC should be mindful of this timing conflict and permit foreign issuers to report climate-related information at the same time as they are required to do so under home country requirements, or at other times that are conducive to their business cycles. Use of a separate specialized disclosure form would accommodate this.

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[14] *See* Item 407(d)(5)(C) of Regulation S-K.

[15] SIFMA recommends that the SEC defer to other regulatory and enforcement regimes, based on similar outcomes in accordance with the June 2020 IOSCO Report. *See Good Practices for Processes for Deference*, OICV-IOSCO (June 2020), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf.

[16] *See* Disclosure of Payments by Resource Extraction Issuers, Exchange Act Release No. 34-90679, 86 Fed. Reg. 4662 (Dec. 16, 2020) (codified at 17 C.F.R. §§ 240, 249b), https://www.sec.gov/rules/final/2020/34-90679.pdf and Order Recognizing the Resource Extraction Payment Disclosure Requirements of the European Union, the United Kingdom, Norway, and Canada as Alternative Reporting Regimes that Satisfy the Transparency Objectives of Section 13(q) under the Securities Exchange Act of 1934 (Dec. 16, 2020), https://www.sec.gov/rules/other/2020/34-90680.pdf.

The Request also asks whether disclosures should be subject to audit or another form of assurance. While it is important to have reliable data, the professional capacity to audit or assure climate-related metrics or other disclosures by all registrants is still being developed and, as a result, it would be premature to require mandatory audit or external assurance at this time. We encourage the SEC to revisit this issue after two years, to evaluate the professional capacity of appropriate accounting, engineering, consulting and other competent professional services firms to audit or assure such disclosures at that time. Of course, registrants should seek to comply with their disclosure obligations, including metrics calculations, in good faith and the lack of an audit or external assurance should not be used as a basis to disclose wholly unsubstantiated metrics.

C. Disclosures should have safe harbor protection.

In order to encourage robust climate-related disclosures, there should be appropriate safe harbor protections against both SEC enforcement actions and private litigation based on these nascent disclosures.

With respect to SEC enforcement, all forward-looking climate-related information, whether quantitative or qualitative and whether in a "core" SEC disclosure filing or furnished on a specialized disclosure form, should have safe harbor protection. Given the inherent uncertainties in this information, the widely acknowledged challenges with data collection, and the evolving methodologies and assumptions for calculating forward-looking climate information, it would be unfair and counterproductive to expose registrants to SEC enforcement action premised on good-faith efforts to provide forward-looking climate information. Accordingly, in connection with the adoption of climate disclosure requirements, the SEC should publish a clear statement that it will not commence an enforcement action against a registrant that discloses forward-looking climate-related information in good faith.

There also should be a safe harbor from SEC enforcement for historical quantitative climate-related disclosures. Because there is presently a lack of complete, accurate, and reliable data and no widely-accepted standardized metrics, such disclosures are inherently based on approximations, estimates and assumptions. While good-faith disclosures based on approximations, estimates and assumptions can still be useful, and should be appropriately disclosed if they meet prescribed requirements, such disclosures should not be the basis for SEC enforcement action. This safe harbor should also apply to any later restatement of metrics due to the availability of more accurate data or the refinement of methodologies and assumptions.

With respect to private litigation, existing safe harbor protections under the federal securities laws also are insufficient to appropriately protect registrants from frivolous suits by private plaintiffs based on novel climate-related disclosures. Because all forward-looking climate-related disclosures are inherently speculative at this stage, the SEC should publish guidance concerning what it views as meaningful cautionary statements in the context of forward-looking climate information. This will help discourage frivolous suits based on arguments that registrants should have used different language to appropriately caution investors about the uncertainties inherent in forward-looking climate disclosures at this time.

In addition, for both historical and forward-looking climate-related disclosures, the SEC should publish guidance indicating that a registrant cannot have scienter for disclosures that are based on third-party information. While this seems obvious, the SEC's affirmative recognition of this proposition will help reduce the risk of frivolous third-party claims under Exchange Act Section 10(b) and Rule 10b-5 under the Exchange Act.

These safe harbor protections will encourage registrants to disclose more, rather than less, climate-related information, which will help facilitate the policy objectives of encouraging widespread disclosure of emissions and other climate-related information.

2. There is a need for a coordinated and consistent approach to climate disclosures.[17]

SIFMA urges the SEC to continue to work with other domestic and international regulators and standards setters as it develops its updated climate-related disclosure framework. In order to facilitate this coordination, the SEC should consider establishing an advisory council that includes industry representatives to support the agency in engaging with other domestic and international regulators and standard-setters, including, but not limited to, investors, investment managers, climate change experts, banking regulators, securities regulators, the National Association of Insurance Commissioners, and the Treasury Department's newly-formed Climate Hub.

A. National coordination is critical.

As stated in President Biden's May 20, 2021 Executive Order on Climate-Related Financial Risk,[18] it is the policy of the Administration to advance consistent, clear, intelligible, comparable and accurate disclosure of climate-related financial risk. The largely principles-based approach recommended in this letter is aligned with that policy. However, the SEC should coordinate closely with the other agencies represented on the Financial Stability Oversight Council. This is critical to ensuring the climate-related data that various U.S. regulators require registrants to measure is harmonized to the greatest extent possible.

The SEC also should closely coordinate with other U.S. regulatory bodies and agencies that are charged with considering climate-related disclosures. For example, the Executive Order requires the Federal Acquisition Regulatory Council, in consultation with the Chair of the Council on Environmental Quality and the heads of other agencies as appropriate, to consider amending the Federal Acquisition Regulation to require major Federal suppliers to publicly disclose GHG emissions and climate-related financial risk. A significant number of these suppliers are U.S.

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[17] Request Nos. 3, 5, 6, 9.

[18] *See* Executive Order on Climate-Related Financial Risk, THE WHITE HOUSE (May 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/.

public companies. Coordination by the SEC with these efforts is critical to ensuring comparable disclosure.

B. Global coordination also is critical.

SIFMA also encourages the SEC to take an even more active leadership role in ongoing international work to ensure global consistency in the resultant climate-related disclosure frameworks. In order for climate-related reporting to be useful to investors and aligned with the SEC's mission, it is important that there not be a patchwork of varying national or supranational standards that are inconsistent or—worse—at odds with one another. A coordinated approach by the SEC with other jurisdictions also will help to mitigate the potential for investor confusion and decrease the compliance cost for companies that are subject to multiple disclosure regimes. While U.S. rule-making must be consistent with U.S. law and tailored to the needs of U.S. markets, it would at a minimum be helpful for terms like "emissions," "renewable energy," and "carbon offsets" (just to name a few) to be defined consistently across jurisdictions. And, as discussed earlier, where appropriate, home country climate metrics disclosures by foreign issuers should be accepted and deemed to satisfy SEC disclosure requirements.

As part of a coordinated approach, the SEC also should leverage the substantial experience, know-how and work of non-governmental standards setters, such as the Task Force on Climate-related Financial Disclosures ("TCFD") and the Climate Disclosure Standards Board ("CDSB"). As its activities ramp up, the SEC also should take into account the work of the ISSB. Various jurisdictions—such as states within the United States, like New York, as well as other countries—have begun to structure their risk management and disclosure regimes based on the frameworks already developed by some of these organizations. Accordingly, companies already are taking these frameworks into account in their management systems, data gathering and reporting. While SIFMA does not recommend that the SEC adopt one of these frameworks at this time, adopting a similar—or at least not inconsistent—approach in the United States could decrease registrants' costs of compliance and improve their ability to attract capital from international investors in U.S. markets. Harmonized global disclosure frameworks also will help strengthen the quality, transparency, and comparability, and therefore usefulness, of climate risk and opportunity information. Recognition of existing disclosure frameworks, where appropriate, also will facilitate consistent ex ante policy development and ex post supervisory oversight, which will ultimately support global climate finance, efficient markets, and capital formation.[19]

Regardless of whether the SEC ultimately adopts any of the frameworks or standards that already exist or are under development, we commend the SEC for its co-leadership of the recently formed Technical Expert Group under IOSCO's Sustainable Finance Task Force. At a minimum, through IOSCO, the SEC should continue to engage in shaping global climate

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[19] *GFMA Principles for Achieving Consistent Regulatory Regimes and Supervisory Practices*, GFMA (April 2018), https://www.gfma.org/wp-content/uploads/0/83/197/231/64665979-572d-4887-9edf5ebebbe6dd27.pdf.

disclosure standards, and to ensure that rulemaking and standard-setting outside of the United States do not create untenable inconsistencies to the detriment of U.S. registrants and markets. We encourage the SEC to become even more directly engaged in the work of the IFRS Foundation and the ISSB, since it will undoubtedly play an important role in developing global climate disclosure standards. In order to ensure that the SEC's views and priorities are reflected in the resultant work of the IFRS Foundation, the SEC could make its support contingent on certain goals and objectives that are important to the U.S. markets. The SEC's involvement would be an excellent opportunity to work toward developing standards likely to be appropriate for U.S. adoption. However, we would recommend that the SEC abstain from making any commitment to the ISSB's standards until after they have been created and appropriately considered by the SEC.

3. Climate-related disclosure requirements should keep compliance burdens in mind and minimize these burdens to the greatest extent possible.[20]

The disclosure approach recommended in this letter will encourage robust climate disclosures while minimizing the burden on registrants that is inevitable with any new disclosure requirement. Requiring disclosure of information that is not relevant to investors would create additional burden and cost with no added investor benefit and detract from the primary, informative purpose of disclosure. In addition, disclosure should be able to be straightforward to facilitate the review and understanding of the significance of the disclosure to the registrant. To the extent the SEC decides to implement disclosure requirements that are more prescriptive than those recommended herein—such as requiring the disclosure of Scope 3 GHG emissions as part of its initial rule-making—the SEC should remain mindful of the substantial burdens this will place on registrants at this time. For instance, while some companies are starting to disclose certain Scope 3 metrics, it is still beyond the capacity of many market participants, including many financial institutions.[21]

In addition, because financial institutions will be required to meet the climate change-related data requirements of multiple domestic and international financial services industry regulators, they do not need the "stick" of prescriptive SEC metrics disclosures to require them to measure this data. They already will be doing so (as are registrants in many other industries for a variety of reasons) and will under a principles-based disclosure requirement report this information to the extent material. Accordingly, a more prescriptive approach by the SEC will likely require

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[20] Request Nos. 2, 9, 12.

[21] SIFMA recognizes that some market participants see value in disclosing Scope 3 emissions, but does not believe that disclosure of Scope 3 emissions data should be required at this time given the existing data limitations, ambiguities regarding methodologies, and other practical hurdles to meaningful comparable disclosures. In all events, disclosure of Scope 3 emissions data should be protected by a safe harbor.

registrants to measure yet another set of metrics, creating significant cost and other compliance burdens, without any correspondingly significant advancement of the SEC's mission.

To the extent the SEC does require detailed, prescriptive climate change-related disclosures beyond Scope 1 and Scope 2 GHG emissions at the outset, disclosure requirements should specifically take smaller registrants into account. For smaller registrants, having to gather additional data on climate change risks and impacts arising from their activities will be onerous. Prohibitive disclosure requirements will disproportionately tax the financial and other resources of smaller firms. It also may result in some privately-owned firms deciding not to go public.

Many existing SEC rules take registrant size and/or maturity into account, including scaled and phased-in disclosure requirements for smaller reporting companies and emerging growth companies. New climate disclosure requirements should similarly be appropriately scaled and subject to phase-in based on the size and complexity of the registrant.

4. **The SEC should be mindful of how it sequences climate-related disclosures, since registrants may need data from other companies for their disclosures.**[22]

As discussed, the SEC should not require disclosure of Scope 3 GHG emissions as part of any initial climate-related disclosure rule-making. To the extent the SEC does require disclosure of climate change-related metrics that require registrants to incorporate data from other companies, such as Scope 3 GHG emissions, these disclosure requirements need to be intelligently sequenced so that market participants can provide meaningful, accurate data about such emissions, and all disclosures are not due at the same time. For example, to the extent SEC climate-related disclosures would require banks, investment banks, and other financial institutions to disclose information about their business counterparties and/or clients, the timing of these requirements needs to be aligned with any corresponding counterparty disclosure requirements necessary to facilitate such secondary disclosures.

5. **Data and methodologies must improve, and consideration should be given to inevitable data gaps.**[23]

Today, there are significant gaps in both historical and forward-looking climate change data. Improving access to relevant data and creating reliable methodologies are key to any climate disclosure requirements. SEC registrants, including financial institutions, should not be forced to obtain or try to create data managed by their counterparties and clients that they cannot or will not provide.

It is likely to be impossible for registrants to obtain timely, reliable data from many third parties. Many, if not most, of these third parties will not be SEC registrants and will not otherwise be

[22] Request No. 2.

[23] Request Nos. 2, 14.

preparing comparable data. Although the context is different, the challenges associated with data collection and reporting under the Conflict Minerals Rule are analogous. After almost ten years of reporting, a substantial portion of the information that registrants receive from suppliers is inaccurate, incomplete and not timely. In fact, many counterparties ignore registrant information requests under that rule.

In addition, depending upon the climate disclosure requirements ultimately adopted by the SEC, if disclosures require data that registrants do not have, they also may need to rely at least in part on third-party service providers that purport to have access to the necessary data. SIFMA has serious concerns over the quality and robustness of the data currently offered by various third-party service providers. There are also concerns with the assumptions and methodologies underlying data from various third-party service providers, including the lack of transparency around these assumptions and methodologies.

For all of these reasons, to the extent metrics disclosures require third-party data inputs, there is a high likelihood of that data being inaccurate, unreliable and incomplete. Accordingly, these disclosures will not result in useful information being shared. Furthermore, as data reliability improves, reports based on more accurate data may vary significantly from prior reports that are based on estimates.

It will take time for data collection and reporting mechanisms to be put in place. Therefore, any required metrics that require third-party data should be phased in over time. In addition, any metrics that incorporate third-party data should be furnished (not filed) via a separate specialized disclosure form, subject to a safe harbor from SEC enforcement and expressly acknowledged to have been made without scienter. These concepts are described earlier in this letter. Requirements to disclose metrics based at least in part on third-party data also should be expressly limited by the registrant's ability to obtain relevant underlying data from applicable third parties. This approach would be consistent with Rule 409 under the Securities Act and Rule 12b-21 under the Exchange Act.[24]

Financial institutions also may be unable to disclose information relating to private clients. They will not be able to do so unless the requisite information is provided directly by the client or derived from public disclosures by the client under potential future banking regulations.

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[24] Rules 409 and 12b-21 provide that required information need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions: (a) the registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and (b) the registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

Accordingly, in adopting disclosure requirements that may incorporate third-party disclosures, the SEC should coordinate with domestic and international bank regulators (and relevant regulators in other industries) to ensure that registrants are not put in the untenable position of being forced to violate other laws and regulations to meet SEC climate disclosure requirements.

6. **Disclosure requirements should be phased in over time, once reliable metrics and methodologies are adopted.**[25]

New climate disclosure requirements should be phased in over time, for all registrants. As earlier discussed, methodologies underlying many metrics are not yet settled. There also are presently significant limitations in the ability to obtain data underlying metrics. Methodologies need time to mature and the market needs time to address data gaps. In addition, even where methodologies are relatively settled and data will be available, registrants, and the parties they will need to source data from, need time to be able to build internal expertise and data gathering capabilities. As earlier discussed, there also should be phase-ins that take into account the additional burdens on and challenges to smaller registrants.

The SEC also should take a phased approach to proposing climate-related disclosure requirements, not just in implementing the disclosures it decides to adopt as part of an initial rulemaking. The SEC should continue to evaluate the possible scope of required disclosures, especially metrics disclosures. Which metrics companies and investors use, and how they use these metrics, continues to evolve and there is not a consensus as to the usefulness of most metrics. Premature prescriptive disclosure requirements will result in registrants being required to produce a significant volume of data that is not useful, at great cost. It also will unnecessarily result in U.S. requirements that are out of sync with global disclosures (whether voluntary or mandatory) in areas where the SEC ultimately determines consistency is important and/or another disclosure approach is a more thoughtful, tailored solution.

7. **The SEC should focus its resources on climate-related disclosures separate from other potential ESG disclosures.**[26]

SIFMA recognizes that ESG information beyond climate may be useful, but SIFMA recommends that the SEC prioritize its resources to address climate-related disclosures before focusing on other ESG factors. As discussed earlier in the context of climate disclosure, if and when the SEC addresses other ESG disclosures, it should take into account the work the IFRS Foundation will be doing under the ISSB, as well as the work of the TCFD, IOSCO, and other standard setters and regulators. In addition, the SEC should actively work with the ISSB in this area. Furthermore, if the SEC establishes broader ESG disclosure requirements that go beyond

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[25] Request Nos. 2, 6, 12.

[26] Request No. 15.

climate matters, where appropriate, it should allow foreign issuers to meet these requirements through home-country social and governance disclosures.

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SIFMA appreciates the SEC's efforts to carefully deliberate about its approach to climate disclosures. Our members sincerely appreciate the opportunity to provide these recommendations and your consideration of these views. SIFMA supports the SEC's efforts to create a meaningful and useful framework for climate-related disclosures, and we believe that the recommendations and considerations outlined in this letter will help the SEC achieve its goals in a manner consistent with its three-part mission.

If you have any questions or would like to discuss these points further, please feel free to contact me at [redacted] or [redacted].

Sincerely,

Melissa MacGregor

Melissa MacGregor
Managing Director and Associate General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
John C. Coates, Acting Director, Division of Corporate Finance
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