The Honorable Gary Gensler

Chair – Securities & Exchange Commission

100 F Street, NE

Washington DC, 20549

Re: Input, Perspective and Recommendations on Proposed Climate Change Disclosures

Dear Chair Gensler:

We acknowledge the integrity of the capital markets is upheld through thoughtful and pragmatic regulation. Investor confidence is the cornerstone of any regulatory endeavor, and we appreciate the skills, perspective and resources required to regulate the capital markets in an orderly and efficient manner. We feel it is imperative regulation should simultaneously foster the innovation required for companies to maintain the competitive global position of the U.S. markets. Effective and operational climate-related solutions will only derive from positive incentive structures aimed at encouraging and nurturing continual innovation. The success of the American capital markets has always been predicated on participants' ability to balance regulatory burden and positive economic impact. Unfortunately, this proposed regulation does not offer such a structure or balance.

After careful review of the Securities & Exchange Commission's recommended climate disclosure mandates, we contend there is a high probability of five key unintended, indirect consequences to emerge from this regulatory obligation, if implemented. In particular, this includes:

1. Regulatory mandates of this nature will act as a deterrent for future companies to go public and/or remain publicly traded, thereby negatively impacting technological innovation
2. These measures will lead to an incredible number of frivolous lawsuits, ultimately harming investors and taking attention away from creating functional solutions
3. We feel this regulation does not provide a constructive incentive structure – in other words, legislation and regulation aimed at addressing climate issues should center on implementing a variety of positive incentives which encourage and induce incremental innovation, efficiency, and results
4. Precedent indicates that market forces are materially more effective, efficient, and impactful in creating solutions than regulatory mandates – regulation of this nature does not offer a functional or operational solution
5. The reallocation of resources to monitor climate has the potential to destabilize the credibility of the U.S. capital markets – gathering data does not necessarily drive compliance nor does it facilitate the sense of urgency to create new innovative technologies

We feel the objective costs of this proposal outweigh any potential benefits since investors *are already asking for and receiving* climate related data when they deem it *incrementally material* to the investment decision-making process. Above all, we believe that the SEC's recommended climate disclosure mandates will exacerbate an existing hesitancy for companies to list securities on U.S. public exchanges. The effects of this capital-access-limitation-process will be wide ranging – slowing innovation across multiple industries, weakening economic outcomes across the world, and adding unnecessary incentives for global companies to domicile and list in regions offering less regulatory burden.

THE UNINTENDED CONSEQUENCES IMPACTING THE LONG-TERM GROWTH OF PUBLIC ISSUERS

The waning of the U.S. public markets has been in place for quite some time. The number of companies listed on U.S. stock exchanges peaked at ~8,000 in 1999. Today, that number is ~4,000[1]. We believe one of the primary reasons for this decline is the corresponding costs associated with registration requirements. Publicly traded companies are vital to domestic job creation, play a crucial role in technological innovation, and are an important segment of the American middle class balance sheet. We believe that the burdens imposed by the SEC's proposed climate disclosure mandates may weaken our domestic public capital markets by creating unnecessary registration requirements.

This concern has been expressed in several other reports focused on the long-term health of the U.S. capital markets. The U.S. stock exchanges, namely Nasdaq, have been vocal in addressing this matter. For the last five years, Nasdaq has conveyed to the SEC a variety of concerns regarding market structure and proposed solutions. Specifically, as highlighted in *The Promise of Market Reform – Reigniting America's Economic Engine*, the lasting detrimental impacts to the capital markets and public companies are summarized:

> "There is no question that companies that choose to participate in the equities markets and make their shares available to the public take on a greater obligation for transparency and responsible corporate practices. Regulations are needed to maintain these 'rules of the road.' But as the U.S. continued to add layer after layer of obligation, we have reached a point where companies increasingly question whether the benefits of public ownership are worth the burdens. ***If not addressed, this could ultimately represent an existential threat to our markets***. In fact, in recent years, a growing number of companies have been choosing to remain private – and some public companies are reversing course and going private."[2]

[1] https://www.theglobaleconomy.com/USA/Listed_companies/
 https://www.theglobaleconomy.com/USA/Listed_companies/
lize_Capital_Markets_April_2018_tcm5044-43175.pdf ; p. 4 (boldened text emphasized by PEP)

<u>THE POTENTIAL FOR FRIVILOUS LAWSUITS & INCREASING COST BURDENS ARE NOT THE INCENTIVE STRUCTURES REQUIRED TO EFFECTIVELY EXECUTE ENERGY TRANSITION</u>

The SEC's proposed climate disclosure mandates will impose time, attention, and financial burden on all sectors of the public markets, particularly the capital-intensive sectors. We believe one of the most adversely impacted sectors will be energy, which (by the very nature and nuances of their business) will likely have the largest disclosure and accounting cost burden associated with the proposed rules.

From a practical perspective, the proposal in its current form is setting up issuers to fail purely because of time constraints associated with tracking Scope 2 & 3. At the very least, the agency should reconsider the proposed 2024 implementation timeline to allow issuers to employ the complex reporting infrastructure required for such tracking. That said, implementing such rules in any case will only provide a counterproductive result since, as we will show, the conventional energy space is critical to the energy transition.

Moreover, the existing guidelines dictating Scope 3 measurement is incredibly confusing, inconsistent and sector nuanced. If different firms were auditing Scope 3, it is highly likely the results would reflect different numbers. Given the complexity of the modern-day supply chain, we encourage the SEC to reconsider the proposed timeline at the very least. In any case, it is reasonable to assume that opportunistic bad actors will attempt to capitalize on this dynamic via lawsuit. Once again, we anticipate a landscape in which baseless lawsuits would drastically outnumber warranted ones. Unfortunately, it is estimated that a securities class action wipes out an average of 3.5% of equity value and companies must also bear the cost of defense, which is estimated to exceed $1B per year. [3] Accordingly, not only will companies bear an increase in associated regulatory costs, both the institutional and retail investor stand to bear the brunt of these costs as well[4].

The anticipated amount of inevitable lawsuits directed at corporate issuers resulting from the proposal's implementation will also become a critical cost consideration and added deterrent to public market participation. We acknowledge the fact that the SEC proposal includes language surrounding potential safe harbor protection. However, the parameters of the safe harbor, as presented, are ambiguous at best. Carbon pricing remains in its relative infancy, price discovery within the carbon markets is more arbitrary than objective and forward-looking, climate-focused scenario analysis is an incredibly slippery slope. Given our society's litigious nature, it is safe to assume that the proportion of warranted lawsuits would pale in comparison to the more baseless ones. At the very least, we urge the SEC to explicitly outline clear, consistent, and reasonable parameters when blueprinting safe harbor considerations.

We also feel the proposed Scope 3 requirement will allow legislative policy decisions to disproportionately distort the evaluation of energy companies. For example, at the time of this letter's

[3] https://www.nasdaq.com/revitalize

[4] The estimated Price Tag for Smaller Companies is $490,000 for Year One: As noted on page 390, "For SRC registrants, the costs in the first year of compliance are estimated to be $490,000 ($140,000 for internal costs and $350,000 for outside professional costs), while annual costs in subsequent years are estimated to be $420,000 ($120,000 for internal costs and $300,000 for outside professional costs)."; https://www.publicchatter.com/2022/03/how-much-is-this-gonna-cost-us-the-secs-climate-economic-analysis/#:~:text=For%20reasonable%20assurance%2C%20we%20estimate,a%20median%20of%20%24175%2C000).%E2%80%9D

draft, the State of California is currently contemplating a gas rebate "relief" program aimed at giving drivers a $400 gas rebate for each car, up to two cars[5]. Clearly publicly traded companies have no say or control over this measure, yet it will impact their Scope 3. In any case, the current geo-political landscape along with the evolving set of macro dynamics our society currently faces (i.e., inflation, Ukraine) provides a series of additional external factors that distorts the interpretation and utility of Scope 3.

THIS REGULATION DOES NOT INCENTIVIZE THE MARKET TO CREATE OPERATIONAL SOLUTIONS

We see this financial burden as representing a substantial opportunity cost for a global low-carbon future. Objective data and empirical research show that the marginal investment being made by energy companies ***right now*** is primarily focused on green research and development[6]. Contrary to the current public sentiment around incumbent energy companies' stances on green innovation, domestic energy companies have led the way in low-carbon technology development and are increasingly investing actively in that space. We feel a better allocation of resources would center on nurturing this type of innovation as opposed to layering on yet another set of regulatory mandates.

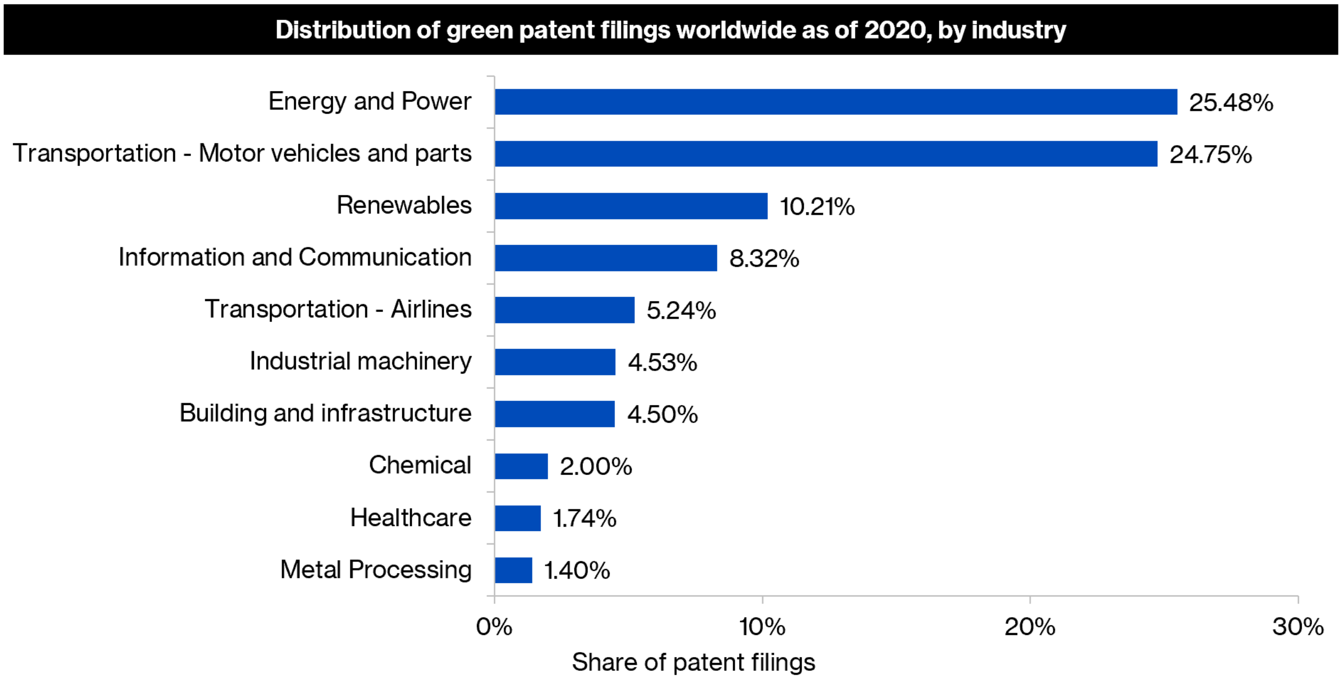
Further, we want to note the irony that much of the important green patenting shown below is not driven by firms with high Environmental, Social, and Governance (ESG) scores but instead by firms that are explicitly excluded from ESG funds investment universe.[7] Unfortunately, we feel a portion of the motivation influencing the SEC's decision potentially derives from ESG ratings data that is littered with inaccuracies, incomplete evaluations, and bias[8]. As a result, the conventional depiction of energy transition and traditional energy sector does not necessarily reflect economic reality. Empirical evidence, highlighted by the chart below, highlights the energy and power space is outpacing the renewables space in the creation of green patents. Once again, this proposal does not foster, endorse, or even acknowledge that specific trend, yet it is such a vital data point to consider when developing policy.

[5] https://www.gov.ca.gov/2022/03/23/governor-newsom-proposes-11-billion-relief-package-for-californians-facing-higher-gas-prices/

[6] "The ESG-Innovation Disconnect" (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3438533) highlighted "we document a strong empirical pattern in green patent production. Specifically, we find that oil, gas, and energy producing firms – firms with lower Environmental, Social, and Governance (ESG) scores, and who are often explicitly *excluded* from ESG funds' investment universe – are key innovators in the United States' green patent landscape. These energy producers produce more, and significantly higher quality, green innovation."

[7] Cohen, Lauren, Gurun Umit, Nguyen, Quoc. "The ESG-Innovation Disconnect: Evidence from Green Patenting." https://corpgov.law.harvard.edu/2020/11/18/the-esg-innovation-disconnect-evidence-from-green-patenting/

[8] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3438533 - The research team at MIT Sloan, Florian Berg, Julian Koelbel, and Roberto Rigobon, all associated with MIT Sloan's Sustainability Initiative, found the correlation among five of the most utilized ESG ratings providers was on average 0.61; by comparison, credit ratings from Moody's and Standard & Poor's are correlated at 0.99. The authors conclude "the information the decision-makers receive from [ESG] ratings agencies is relatively noisy," a condition researchers call "aggregate confusion."



Source - The ESG-Innovation Disconnect: Evidence from Green Patenting; Posted by Lauren Cohen (Harvard Business School), Umit G. Gurun (University of Texas at Dallas), and Quoc H. Nguyen (Driehaus College of Business)

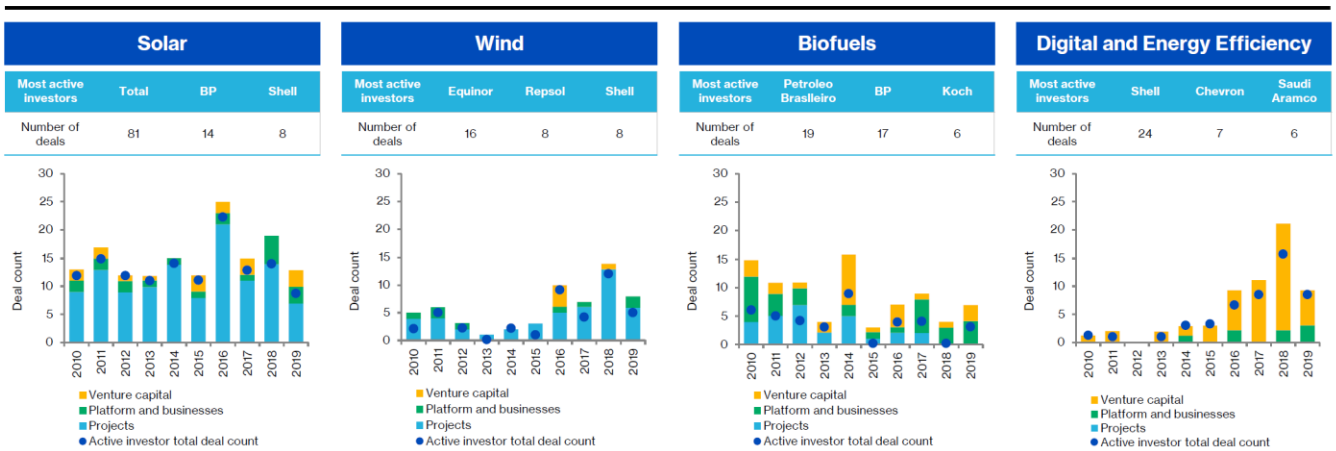
In terms of addressing climate risk, the oil and gas industry and the energy transition are not mutually exclusive. Allowing the market to evolve *organically* is a far more effective and quicker means of achieving the transition than adding yet another layer of regulatory directives. Moreover, the concept of energy mix is a regional consideration in that different parts of the world require different sources of energy. Assuming developing countries have the same energy mix requirements as an established economy is both incorrect and misleading.

This perspective is also endorsed by the United Nations when addressing the role of fossil fuels within the sustainable energy system:

> “Carbon capture and storage (CCS) technology and managing methane emissions throughout the fossil energy value chain can help meet ambitious CO2 emission reduction targets, while fossil fuels remain part of the energy system. This will thereby allow fossil fuels to become "part of the solution", rather than remain "part of the problem. ***All technologies have a role to play in an energy system guided by rational economics***.”[9]

[9] https://www.un.org/en/chronicle/article/role-fossil-fuels-sustainable-energy-system

Executing the energy transition requires the experience, expertise, and balance sheet of the oil and gas space for technological development and implementation. Large Energy companies typically vilified by energy detractors (i.e., Shell, Total, BP, Chevron, Equinor to name a few) have growing, large venture capital arms exclusively focused on renewable energy, carbon sequestration, energy storage, and hydrogen. As evidenced by the chart below, nearly all facets of the renewable space are an increasing focus of these companies. And more importantly, a substantial portion of these campaigns originated via market forces and economic considerations as opposed to regulatory coercion. Mandating emissions disclosure for any company, especially companies "in the trenches," does not provide incremental perspective or progress on these efforts.



Source: BloombergNEF, Bloomberg, CBInsights
Note: Investment activity since 2010 as of August 2019

Given the immense cost burden associated with the proposed disclosure mandates, we anticipate a wave of consolidation to inevitably occur as well. Unfortunately, the attempt to scale regulatory cost would adversely impact the growth and focus of the various corporate venture capital arms aimed at figuring out how to compete in a decarbonizing world. In other words, a competitive ecosystem made up of several nimble energy transition VCs supported by the financial backing of several large companies is far more effective than a few consolidated players. ***Simply put, disclosing climate data does not materially contribute to the tangible solutions required to execute the energy transition***. You cannot better understand the strategic vision any company or coerce climate-focused technology/solutions by forcing them to provide this type of data.

REGULATORY RESOURCES MUST FOSTER THE EFFICIENT FLOW & ACCESS TO CAPITAL

We are generally concerned that implementing climate focused reporting mandates will ultimately destabilize the long-term integrity and confidence of the publicly traded markets. According to the SEC website (sec.gov), there are twelve key areas of focus stemming from 2021 enforcement[10]. None of these areas of focus align with climate reporting. We understand that agency focus may evolve, however, there are several regulatory disclosures and data points required by the EPA which makes the SEC requirements redundant.[11]

We would be remiss if we didn't highlight our thoughts on the partisan nature of this proposed ruling. We have two distinct concerns in this respect. First, the U.S. stock exchanges have already stipulated their inherent concern on the matter. In their respective Revitalize proposition, Nasdaq explicitly recommended:

> "**Roll back politically-motivated disclosure requirements** – we can and should make a clearer distinction between disclosure of material information that investors require to evaluate a company's financial performance and economic prospects and those that are motivated by social and political causes or otherwise aren't relevant to a company's bottom line."[12]

Secondly, according to the SEC website, the agency filed 697 total enforcement actions in fiscal year 2021, including the 434 new actions, 120 actions against issuers who were delinquent in making required filings with the SEC, and 143 "follow-on" administrative proceedings seeking bars against individuals based on criminal convictions, civil injunctions, or other orders. Fiscal year 2021 also was a record year for whistleblower awards, with the SEC awarding a total of $564 million to 108 whistleblowers. The whistleblower program also surpassed $1 billion in awards over the life of the program[13].

Presumably, the sheer magnitude of these efforts is already incredibly resource intensive and egregiously expensive. Given the complexity and extent of the proposed climate disclosure regulations, we can reasonably foresee resources allocated to climate at the expense of oversight and enforcement. Current resource constraints would imply that as financial violations increase over time due to the agency's increased focus on climate, the long-term credibility and stability of the capital markets would suffer. In short, the complexity, cost, and burden of climate reporting (when investors can already just simply ask issuers for climate related data when deemed appropriate) would drastically withdraw resources from battling traditional financial crime, thereby weakening the already fragile confidence in the public markets.

---

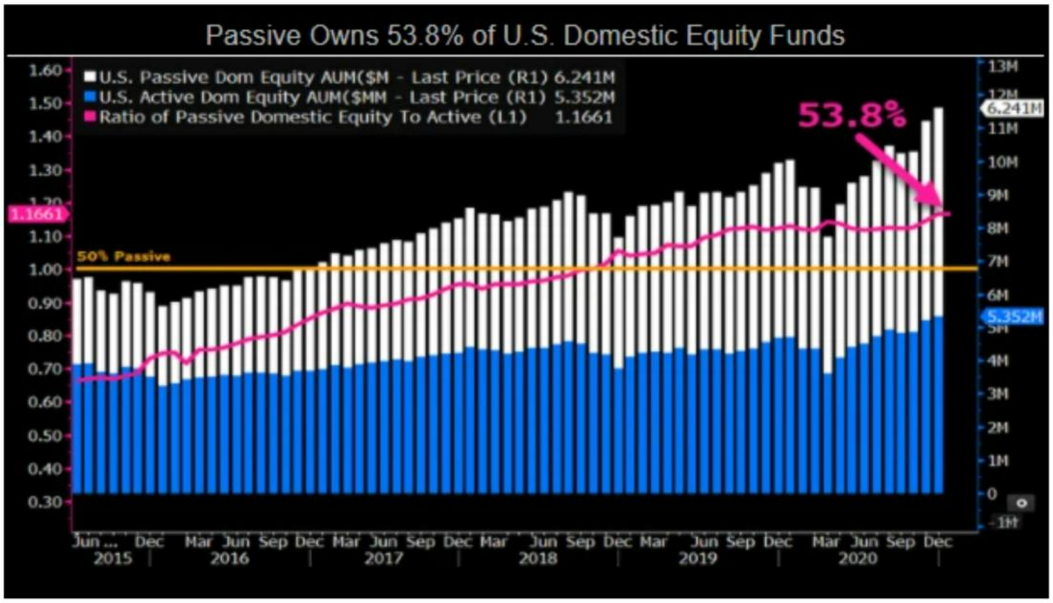
[10] https://www.sec.gov/news/press-release/2021-238

[11] https://www.epa.gov/ghgreporting - The GHGRP requires reporting of greenhouse gas (GHG) data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO2 injection sites in the United States. According to the website, approximately 8,000 facilities are required to report their emissions annually, and the reported data are made available to the public in October of each year.

[12] https://www.nasdaq.com/revitalize

[13] https://www.sec.gov/news/press-release/2021-238

Moreover, as previously stated, investors already have access to climate related data, and more importantly*, its current conveyance* comes with almost zero regulatory costs.



Source: Bloomberg Intelligence

According to Bloomberg Intelligence, 54% of U.S. Domestic Equity Funds are passively owned[14]. The passive index fund industry is primarily dominated by Blackrock, State Street and Vanguard. Together, the "Big Three" constitute the largest shareholder in 88% of the S&P 500 firms[15]. Our research indicates this ownership trend extends into the broader market benchmarks, i.e., S&P 400, S&P 600, Russell 1000, etc., as well. Over the last five years, Blackrock, State Street and Vanguard have been incredibly vocal when conveying their thoughts, concerns, and approach to mitigating climate risk.

Presumably, this has led to all three firms endorsing both the SASB and TCFD reporting frameworks. Considering they are three of the largest asset managers on the planet and the top shareholders in the vast majority of *global* equities, they most likely have direct access to and continual dialogue with management. If there is a material data point required to make a better-informed decision or to provide additional context in terms of risk, that access already exists. In other words, there is not the need to pile on an added substantial incremental cost when there is already access to a data point should an investor need it and/or deem it material to price discovery.

We feel market forces are far more effective than regulatory burdens based on a variety of material trends observed among issuers. Nasdaq's Revitalize further reiterates this perspective as well. In particular, the exchange has stated, "by addressing ESG proactively, *and on their terms*, companies can keep their focus on more orderly long-term business planning and execution. ESG reporting shouldn't become so prescriptive that it loses its values." We 100% agree. If the end goal is to better understand

[14] https://www.bloomberg.com/professional/blog/passive-likely-overtakes-active-by-2026-earlier-if-bear-market/

[15] https://www.cambridge.org/core/journals/business-and-politics/article/hidden-power-of-the-big-three-passive-index-funds-reconcentration-of-corporate-ownership-and-new-financial-risk/30AD689509AAD62F5B677E916C28C4B6

how to navigate and succeed within a decarbonizing world, global stakeholders are not going to get there by layering in excessive regulatory cost upon any company, let alone public issuers.

THIS PROPOSAL DOES NOT ENCOURAGE FUNCTIONAL SOLUTIONS

In sum, partnership and collaboration will be the key to finding viable, operational solutions. Functional results aimed at resolving climate considerations will not be achieved by mandating incremental climate disclosures. The benefits of this proposal are marginal at best relative to the to the immense anticipated cost, especially considering this distinct omission. According to the Governance and Accountability Institute, 90% of the companies in the S&P 500 Index published sustainability reports in 2019. Further, 65% of the Russell 1000 Index companies published sustainability reports in 2019, up from 60% in 2018[16].

These stats not only showcase the inherent power of ***organic market-driven "peer pressure,"*** but also directly implies investors will request a certain variety of *bottom-up, nuanced data points* when they individually deem it material to that specific investment opportunity. Further, this is a supplemental opportunity for corporate management teams to convey which ESG-related factors are material to the long-term performance of their specific business. Sustainability reporting has already emerged as a best practice over the last two years – the need to impose additional regulatory burden into the mix will prove unnecessary and counterproductive in the long-run

The SEC must pinpoint and nurture the balance between ensuring the long-term credibility of the capital markets, fostering innovative competition, and facilitating consistent access to quality capital. Given the immense importance U.S. public issuers play in terms of modernization, job creation and accomplishment, this proposal provides little upside.

Highlighting emissions data, although helpful in some cases, is also not going to solve any functional or operational aspect of climate risk. Instead, a disproportional amount of attention and efforts resulting from this type of disclosure, especially the Scope 3 requirements, will most likely be allotted towards unnecessarily targeting companies not required to provide disclosure as part of their best practice. Inevitably, this will prove counterproductive since it will augment the existing reluctance to supply capital inflows and investment to companies materially addressing climate solutions.

If the question at hand centers on figuring out how to efficiently create and successfully execute decarbonization strategies and optionality, then we believe this proposal is detrimental and counterproductive to the energy transition. Climate solutions should instead center on fostering and incentivizing the technology required to increase the efficiencies and capabilities essential to competing in the decarbonizing 21st century. Investors require more color and perspective on a company's strategic path forward, not an expensive data retrospective that falls outside of the SEC's traditional expertise and purview. Efforts across all facets of the capital markets should incentivize and reward innovation and efficiencies while simultaneously boosting the competitive global positioning of the U.S. economy. This proposal unfortunately misses the mark.

[16] https://www.gao.gov/assets/gao-20-530.pdf

On behalf of Pickering Energy Partners, very respectfully,

Daniel Romito
Consulting Partner – ESG Strategy & Implementation
Pickering Energy Partners