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

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File No. S7-10-22
Proposal on Climate-Related Disclosures for Investors

To: Commissioners and staff:

I write in strong support for the proposed rule on climate-related disclosures for investors, particularly those related to governance and process.

Government regulation is most needed when there are collective choice issues or conflicts of interest. Both are the case when it comes to corporate disclosures. Executives and board members would prefer to control the information that is – and especially is not – shared with investors. And the informational asymmetry is insurmountable without government intervention because investors are so widely dispersed and unable to communicate or work with each other, in part due to the Commission's own rules. We have seen that this is not a problem the market alone can solve. As the Commission reviews the comments on this proposal, as in any other issue of materiality, the priority should be what investors say they need, not what executives say they want to provide.

According to a new study from IBM[1], 37 percent more CEOs in 2022 rate sustainability as a top priority, compared to 2021, 83 percent of CEOs expect sustainability investments to produce improved business results in the next 5 years, and 57 percent of CEOs identify unclear ROI and economic benefits as a leading challenge.
The study concludes:

> We've reached an inflection point.

[1] https://www.ibm.com/thought-leadership/institute-business-value/c-suite-study/ceo

> For some time, the role of business in sustainability has received steadily increasing attention from companies and their stakeholders. But over the past year, something changed for CEOs worldwide, and sustainability talk turned into action. Continued disruption—including upheaval from the pandemic—has society calling for a new approach to economic activities and business priorities.
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> Our latest CEO study, drawn from interviews with 3,000 CEOs worldwide, reveals sustainability's dramatic emergence onto the mainstream corporate agenda. For a few, this ascent is validation of long-held beliefs and years of planning. For most CEOs, however, an urgency to act is encountering the reality that turning sustainability aspirations and commitments into measurable results is easier said than done.

On the other hand, a recent study from Google found[2]:

> Environmental, Social, and Governance initiatives came out as a top organizational priority, on par with evolving or adjusting business models, with close to 10 percent of a company's budget going to sustainability efforts. Executives are willing to grow their business in a way that is sustainable, even if it means lower revenue in the near future.
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> At face value, 80 percent of executives give their organization an above average rating for their environmental sustainability effort. Eighty-six percent (86 percent) believe their efforts are making a difference in advancing sustainability.
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> The research showed a troubling gap between how well companies think they're doing, and how accurately they're able to measure it. Only 36 percent of respondents said their organizations have measurement tools in place to quantify their sustainability efforts, and just 17 percent are using those measurements to optimize based on results.
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> …
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> Businesses across industries struggle to quantify their sustainability efforts, with 65 percent agreeing they want to advance sustainability efforts, but don't know how to actually do it – executives in Supply Chain/Logistics and Healthcare/Life Science top the list at 79 percent and 74 percent respectively, and retail at just 54 percent.
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> Leadership towards sustainability starts at the top of the organizational chart. When asked which groups are enabling organizational sustainability, 53 percent pointed to board members and senior leaders. But they hunger for more: 82 percent agreed with the statement, "I wish our board or senior leadership gave us more room to prioritize sustainability."

[2] https://cloud.google.com/blog/topics/sustainability/new-survey-reveals-executives-views-about-sustainability

Climate change should be a central concern for every corporation because it affects every aspect of business, from government contracts to supply chains to regulatory risk to consumer and employee demand (discussed further below). Just a few of the many risks and opportunities they should be responding to:

- President Joe Biden's Navy Secretary Carlos Del Toro called climate change an "existential threat" and said it was the "focal point" of his time in the position. The Navy's report[3], "Climate Action 2030," sets forth the stated goals to "build climate resilience" and "reduce climate threat."

- The Biden administration's ambitious 2030 greenhouse gas goals[4] include government-wide initiatives that will affect every part of the US economy.

- The UN's sustainable development goals[5] touch on every part of the global economy.

- Consumers expect brands to address climate change[6]. Deloitte reports:

    - Research shows that consumers expect businesses to step up, especially when it comes to issues of climate change and the environment. To adapt to the growing demand for action, organizations can work harder to anticipate shifts in public opinion. By identifying and responding to such shifts, C-suite leaders can make their organizations more resilient to risk. What's more, executives can build consumer loyalty and drive revenue growth by aligning their actions to stakeholder values.

- Employees are increasingly insistent on employers addressing climate change.[7]

The proposed rule is an essential step toward improving the ability of corporate executives to make better and more transparent decisions on matters they themselves consider a priority and they themselves admit they are failing at. These are steps they cannot take without this kind of support and clarity. I have reviewed a number of the comments already filed and note that those objecting to this proposal make unsupported assertions that are not only inconsistent with the overwhelming consensus of scientists and investment professionals who assess risk and return. I strongly endorse the consistency with TCFD. And, since my own focus

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[3] https://www.navy.mil/Portals/1/Documents/Department%20of%20the%20Navy%20Climate%20Action%202030%20220531.pdf?ver=3Q7ynB4Z0qUzlFg_2uKnYw%3d%3d&timestamp=1654016322287

[4] https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/

[5] https://www.un.org/sustainabledevelopment/

[6] https://deloitte.wsj.com/articles/consumers-expect-brands-to-address-climate-change-01618945334

[7] https://www.reuters.com/business/sustainable-business/society-watch-how-employees-are-taking-their-companies-task-over-climate-change-2022-04-18/

and expertise are in the field of corporate governance and my work for more than three decades has been on behalf of shareholders, I want to emphasize my support for that portion of the proposal. One of the most significant ways shareholders have to understand investment risk is to review the qualifications, responsibilities and priorities of the board of directors. One of the most significant ways shareholders have to express their concerns is casting votes on director candidates. The proposed rule's new disclosures will make this essential market function more efficient. Ideally, it would also include disclosure of campaign and lobbying expenditures, direct and indirect relating to climate change, including the funding of fake front groups to comment on rulemakings like this one.

As in previous comments, I note for the record that I use letterhead for identification but want to make clear that no one is paying me to comment on this or any other rulemaking and neither my firm nor our clients have any financial interest in the outcome of the rulemaking beyond the impact on anyone who is an investor or taxpayer. I strongly urge the staff to consider any undisclosed financial interests from purportedly objective and independent commenters including industry-funded "public interest groups" and academics whose research is supported by dark money, and to evaluate the assessment of conflicts of interest and the value of their comments accordingly.

For example, the comment signed by Lawrence A. Cunningham and a number of other professors ("the Cunningham letter") does not disclose whether any of those who signed it or their programs are receiving financial support from industry-connected sources. Even assuming that they do not, the comment reflects little understanding of the facts and the law behind the proposed rule. I will spend some time responding to that letter in particular because it includes many of the claims made by those who are opposing this rule.

Even the signers of the Cunningham letter have to admit in the first paragraph that environmental risk is "perhaps the most compelling issue of our time." And yet, somehow they are still able to claim that the Commission, whose most important duties concern the disclosure of material investment risks, should not pursue them here. Their dismissal of "investor demand" as a relevant factor is a surprising renunciation of basic free market economics. Who is better at determining relevant factors in making buy, sell, and hold decisions than the investors who are the very definition of the market?

The professors call these factors "divisive political topics of uncertain and inchoate corporate significance" and claim "such a consensus is elusive." They apparently forgot that consensus is elusive on even well-established disclosure rules like GAAP. Nearly a century after those rules were established, they are constantly being revised, updated, and argued over.[8] Indeed, GAAP's failure to adequately assess environmental risk is the very reason that this proposed rule and

[8] https://fasb.org/page/PageContent?pageId=/standards/accounting-standards-updates-issued.html#2021

efforts like those from SASB[9] and others[10] are vitally important to improve the efficiency of capital formation. Furthermore, failure to adopt this rule puts US companies and investors at a significant disadvantage in the global markets.

It is disappointing that professors have failed to do their homework. They have overlooked the overwhelming evidence showing that while the topics may be considered "divisive" because of the outsized distorting role of fossil fuel company money in politics, they are not divisive at all in the context that matters here, the factual basis for including climate risk in the disclosures essential for robust, vital markets. There is overwhelming evidence that climate risk affects just about any industry. There are regulatory risks[11], supply chain risks[12], liability risks[13], insurance[14] and lending risks[15]. Tourism[16] is affected by the increase in storms and fires. Food production and distribution is affected[17]. Manufacturing is affected[18]. Even cybercurrency is affected[19]. This is information investors need to understand. And it will have the collateral benefit, as so many SEC disclosure requirements do, of giving corporate executives and board members information they need to make better decisions.

The Cunningham letter suggests that beneficial holders may be less interested in these disclosures than institutional investors. To the extent that is true, beneficial holders are less interested in all corporate disclosures than the financial professionals who make the buy/sell/hold decisions. But beneficials are very interested in having the professionals who have access to all material information as well investment expertise, the latest technology and all other resources that are the reason customers entrust their savings and retirement security to highly respected professionals.

While we are well aware of conflicts of interest in the relationship between institutional investors and beneficial holders and have discussed and documented those issues in the context of proxy voting in our comments to the Commission on proxy advisors and other proposed rules, there is no evidence of conflicts when it comes to getting better information about investment risk. The interests are completely aligned. The reason that ESG-themed

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[9] https://www.sasb.org

[10] For example: https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en https://www.fsb-tcfd.org

[11] https://www.epa.gov/coalash/legislative-and-regulatory-timeline-fossil-fuel-combustion-wastes and https://ec.europa.eu/clima/eu-action/european-green-deal/2030-climate-target-plan_en

[12] https://e360.yale.edu/features/how-climate-change-is-disrupting-the-global-supply-chain

[13] https://www.lexology.com/library/detail.aspx?g=da3af3f8-ae61-4396-9352-42f33f7cfbb3

[14] https://www.mckinsey.com/industries/financial-services/our-insights/climate-change-and-p-and-c-insurance-the-threat-and-opportunity

[15] https://www.hklaw.com/en/insights/publications/2021/01/climate-risk-for-lenders-an-overview-of-potential-actions

[16] https://publications.iadb.org/publications/english/document/Climate-Change-Risk-Management-Options-for-the-Tourism-Sector.pdf

[17] https://www.usda.gov/oce/energy-and-environment/food-security

[18] https://www.c2es.org/document/a-climate-of-change-manufacturing-must-rise-to-the-risks-and-opportunities-of-climate-change-2/

[19] https://www.scientificamerican.com/article/biden-orders-report-on-climate-risk-of-cryptocurrencies/

investment strategies are the fastest-growing segment of the industry is demand by the beneficial holders. This is how markets work. Consumers have a preference and service providers respond to it. In this case, the service providers recognize that they need better, more consistent disclosures to be able to provide that service and get better returns for their clients. In this case, their interests are the same. Indeed, the only group who can object to the proposed rule are corporate executives and board members who do not want investors and consumers and the press to know what environmental risks they are creating, ignoring, or increasing.

Contrary to the Cunningham letter's assertions, there are no demonstrable differences between the interests of passive and active investors with regard to the proposed disclosures. Are they trying to suggest that passive investors do not benefit from disclosures? Should we abandon disclosures entirely because index fund managers do not read them? On the contrary, passive investment funds benefit indirectly from disclosures relied upon by active managers in making their buy/sell/hold decisions. Again, the Cunningham letter raises the specter of conflicts of interest (again, without disclosing their own funders and any conflicts that those relationships create) without documenting any actual conflicts.

It is entirely consistent for signatories to the UN policies to raise those same concerns with the Commission. Those institutional investors represent the largest part of the market. They are sophisticated, they are successful, and they are fiduciaries. They are the foundation of the market. The Cunningham letter's attempt to marginalize public pension funds as somehow more "political" than financial is not supported by law or by performance. CalPERS is the market, too, and its need for the proposed disclosures is entirely to protect the retirement security of its plan participants.[20] The letter provides no evidence of "political" rather than financial investment decisions. If there is any evidence that any fund manager is making anything but financial performance a priority, we encourage the enforcement staff to use the authority it already possesses to pursue all appropriate remedies.

The Cunningham letter purports to argue on behalf of individual investors with no documentation of their expertise or authenticity in doing so. Individual investors have already spoken for themselves by choosing to rely on experts, the institutional investors. Perhaps the signers of the Cunningham letter do some stock-picking on their own but it is likely that their primary investments are through the superb managers at TIAA-CREF. It is the institutional investors who have the expertise and the obligation as fiduciaries to read financial disclosures. The signers of the letter are unable to come up with any reason that individual investors would not want the people who manage their 401(k)s, IRAs, and mutual funds to have access to better information about climate risk. It is a basic principle of economics that better information makes markets more efficient and it is distressing to see a letter signed by law and business professors fail to support that.

[20] https://www.calpers.ca.gov/docs/board-agendas/202006/invest/item08c-01_a.pdf

While it is permissible in litigation to argue in the alternative, that is not the case with rulemakings. Therefore, arguing on page one of the Cunningham letter that demand is irrelevant, suggesting that sophisticated, professional, fiduciary investors responsible for billions of dollars do not know what information they need to assess investment risk and then claiming on page 5 that because the individual investors who entrust their money to those investors have not demanded that information the Commission should not require it shows a lack of consistency demonstrating an awareness of the weakness of their position.

The letter claims that the Commission "Staff indicated that it will not permit exclusions of proposals so long as they 'relate to a significant social policy issue.' The Staff thus acknowledges that many climate-related proposals are not related to a company's business operations." That is a misreading of the Commission's policy, which, like all 14a-8 rulings are grounded in materiality. The Cunningham letter does not even try to explain why a significant social policy issue could have no material ramifications for investors. Instead, it counts the number and level of support for shareholder proposals, overlooking the steady rise in levels of votes in favor and the number of proposals withdrawn following successful negotiation.

The letter again reveals the sketchiness of its arguments by characterizing a proponent, As You Sow, as a "climate activist." Even if that was a fair characterization, which it is not, the issue is not the motivation of the proponent but the level of support. The Cunningham letter cannot characterize the broad range of institutional and individual investors who voted (even the Cunningham letter concedes, in some cases overwhelmingly) for the proposals as "climate activists." Many of them are large institutional investors acting under the strictest legal standard, fiduciary obligation, as well as the many regulations of the Commission for investment managers and the Labor Department for pension fund fiduciaries. Again, these are the very definition of market forces. The Cunningham letter dismisses the successful proxy contest at ExxonMobil as "only" 62 percent. Given the executive's expenditure of over $35 million of shareholder money to fight the contest and the many obstacles to any dissident slate, this is, as reported at the time, an astonishing success only made possible by the strong, substantiated arguments by Engine No. 1 that ExxonMobil's business strategy was failing, one indicator the $22 billion loss the year before.

Again, we find in the Cunningham letter claims based on the assumption that market forces are somehow irrational, and professors know better than investment professionals when it comes to climate risk. And yet, when it suits their argument, they point to an unregulated free market as the ideal. The clear rebuttal to the claim that issues like climate change are not financial is in the 2022 letter Blackrock CEO Larry Fink wrote to clients[21],

> Stakeholder capitalism is not about politics. It is not a social or ideological agenda. It is not "woke." *It is capitalism*, driven by mutually beneficial relationships between you and the employees, customers, suppliers, and communities your company relies on to *prosper*. **This is the power of**

[21] https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter

> **capitalism….Every company and every industry will be transformed by the transition to a net zero world. The question is, will you lead, or will you be led?** (emphasis in the original)

The Cunningham letter raises a First Amendment issue of compelled speech with disclosure requirements. It is clear none of the signatory scholars are specialists in First Amendment law. Courts have consistently ruled that there is less protection for commercial speech.[22] The core principle of the laws underlying the Commission's authority is that public companies have a great deal of freedom in the way they operate but they must disclose the details so that investors can decide whether those operations are a worthy investment. It is the best-in-the-world transparency rules that enabled the US markets to rebound from the 1929 stock market crash, the Enron-era accounting scandals, and the financial crisis, and kept our markets the most robust, efficient, and innovation-friendly in history.

The letter also raises concerns about the reliability of the proposed disclosures. It is true that the market for all ESG issues is ahead of the ability to provide it. But this proposed rule itself is a critical step forward, establishing a baseline of apples-to-apples data that will hugely improve the ability of investors to compare and evaluate investment opportunities. This is also why I especially appreciate the proposed rule's focus on governance and process disclosures, an essential element in giving investors confidence that climate risk is being monitored and guided by people with the necessary experience, expertise, and incentives.

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My thanks to the Commission and staff for this excellent proposed rule and for all of the detailed research that went into finding the best possible balance to give investors (and employees and consumers) the information they need while allowing corporate directors and executives the flexibility they need to plan according to their best judgment and individual circumstances. I appreciate the opportunity to comment and may file a supplement if new comments require a response. If I can be of any assistance as you develop the final rule, please do not hesitate to get in touch.

Sincerely.

Nell Minow

[22] https://sgp.fas.org/crs/misc/R45700.pdf and https://www.sec.gov/comments/climate-disclosure/cll12-8916231-244991.pdf

Nell Minow
Vice Chair
[redacted]