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VIA ELECTRONIC FILING

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

Re: Request for Comments on S7-10-22 - The Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chair Gary Gensler,

The Climate Finance Fund (CFF) is pleased to submit information to the SEC on S7-10-22.

CFF is a philanthropic platform that helps mobilize capital for climate solutions, focusing on the world's largest markets of the United States, China, and Europe, as well as capital allocators throughout the supply chain: consumers, small and medium enterprises, large non-financial corporations, banks, and asset managers. Through this work, we have been at the forefront of climate-related disclosures for financial and non-financial companies, small and large. We have also supported many widely adopted and respected voluntary climate disclosure regimes, including the Greenhouse Gas Protocol (GHGP) and the Partnership for Carbon Accounting Financials (PCAF). It is with this financial accounting for climate experience that we submit our comments.

CFF finds that the proposed amendments to the Securities Act and the Exchange Act are both valuable and timely, providing a foundation on which to build with the potential to become one of the world's most useful regulatory frameworks on climate-related disclosures for market participants. The Securities Act was adopted "to provide full and fair disclosure of securities sold…, and to prevent frauds in the sale thereof, and for other purposes."[1]

[1] See also Remarks of Hon. Gary Gensler, before the Annual Conference on Financial Market Regulation, A Century with a Gold Standard, May 6, 2022, available at https://www.sec.gov/news/speech/gensler-acfmr-20220506 ("The core bargain is that investors get to decide which risks to take, as long as public companies provide full and fair disclosure and are truthful in those disclosures.").

The proposed changes further that mission by ensuring that companies are identifying, assessing, and disclosing information that is "indispensable to any accurate judgment upon the value of the security."[2] Today, there can be no accurate assessment of a company or its securities without consideration of its immediate and longer-term climate-related risks and impacts. Importantly, despite the rhetoric of some opponents of the proposals, the proposals do not direct any company or investor to invest, divest, or take any specific investment action related to climate risks or opportunities. Rather, they ensure that market participants engaged in the valuation of securities, including investors, credit rating agencies, index providers, and others, have the information they need to make informed decisions.

Today, investors' capital resources are being misallocated because they lack comprehensive, reliable, comparable, and timely information related to how companies are identifying, assessing, and managing climate-related issues.

There are losers when capital is misallocated based on a lack of information. Not only may investors be saddled with subpar returns on their capital, but also the overall economy suffers from a lack of productive investment.[3] Money is wasted on sub-optimal investments, and good companies go under-funded.

There are also firms that win when there is no comprehensive, reliable, comparable, and timely information, most notably, companies that might not receive investments or might receive less favorable terms from investors if investors had been aware of the undisclosed risks. A quick review of the SEC's comment file suggests that fossil fuel companies have self-identified as those firms that may stand to "lose" by enhanced transparency and market efficiencies. Fossil fuel companies and their industry associations are requesting that the SEC "press pause" on this proposal on account of the global oil price spike.[4] [5] [6] [7] [8] [9] Their reasoning is fairly evident: they consider the imposition of stronger climate-related disclosure rules a threat to their business that will continue the decades old trend of investors moving away from risky carbon intensive assets.[10] These objections show that the fossil fuel industry sees this proposal as a serious threat, indicating that there are financial risks that the industry would like to keep hidden.

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[2] See H.R. Rep. 73-85, at 3 (1933).
[3] See H.R. Rep. 73-85 (1933), at 2-3.
[4] https://www.sec.gov/comments/s7-10-22/s71022-20123257-279571.pdf.
[5] https://www.sec.gov/comments/s7-10-22/s71022-20125360-284834.pdf.
[6] https://www.sec.gov/comments/s7-10-22/s71022-20127831-289013.pdf.
[7] https://www.sec.gov/comments/s7-10-22/s71022-20124226-280808.pdf.
[8] https://www.sec.gov/comments/s7-10-22/s71022-20124150-280551.pdf.
[9] https://www.sec.gov/comments/s7-10-22/s71022-20125318-284774.pdf.
[10] Fossil fuel divestment database. https://divestmentdatabase.org/.

While this rule is very much welcome, there are several areas where we believe the proposal could be strengthened for the benefit of issuers, investors, new companies that depend on the capital markets for capital formation, and the wide array of market participants that rely on fair and efficient markets. To this end, this letter outlines the information gaps that currently exist in the world of climate-related disclosures due to inconsistent, voluntary reporting, and proposes a series of actionable solutions that we encourage the SEC to implement when finalizing the rules. We also highlight the need for a significant strengthening of climate justice components in the framework.

The SEC should expand the proposal to include large private companies

Most capital raised by companies and funds in the United States is raised outside of the public offering framework.[11] Even if these private companies have thousands of workers or shareholders or multibillion-dollar valuations, the proposed rules generally would not apply. Many riskier investments, such as fossil fuel production and non-electric transportation, are moving from public to private capital markets. If the SEC is going to empower market participants with the information they need to make informed valuation and investment decisions and prevent easy evasion, the SEC should quickly expand the proposal to large, private companies.

The SEC should clarify its authority for disclosures and decouple disclosures from subjective and easily manipulated definitions of "materiality"

Federal securities laws generally do not limit the SEC's disclosure authority to any concept of "materiality." Furthermore, the application of materiality offered by the SEC in the Proposed Rule is inapposite.[12] The Supreme Court has opined that absent a specific, line-item disclosure requirement by the SEC, information would be required to be disclosed if that information would "significantly alter the total mix" of information for an investor.[13] This was intended to be a high bar, in part, because it was intended to be a "catch all" to apply in absence of any specific mandatory disclosure obligations. There is no such statutory limitation on what disclosures the SEC can require, and many currently mandated disclosures would not meet this bar. For example, a stock buyback of a single share of stock would almost assuredly not "significantly alter the total mix" of information available to an investor; yet this activity is required to be disclosed today.

[11] https://www.sec.gov/files/Report%20to%20Congress%20on%20Regulation%20A.pdf.
[12] See Proposed Rule, 87 Fed. Reg. at 21351.
[13] See Basic Inc. v. Levinson, 485 U.S. 224, 231, 232, and 240 (1988) (quoting TSC Industries, Inc. v. Northway, Inc., 426 U. S. 438, 449 (1977)).

By framing the Proposed Rule so narrowly on “materiality” and the purported use of information by investors only, the SEC appears to be abandoning the clear intent of its authorizing statutes and casting unnecessary doubt over its legal authority to impose not only climate-related information, but also much of its regulatory regime.

The SEC’s mandatory disclosure obligations are intended to provide market participants (not just investors, but others who may also assist in the valuation of securities), regulators, and the public with information that would be significant in their business decisions. This broad objective is severely undermined by treating climate-related disclosures differently than other SEC-mandated disclosures and demanding that each climate-related disclosure first be filtered through the lens of whether the issuer believes it to be “material.”

The Proposal Rule asserts that:

> The materiality determination that a registrant would be required to make regarding climate-related risks under the proposed rules is similar to what is required when preparing the MD&A section in a registration statement or annual report, [including that] a registrant…disclose material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.[14]

This “materiality determination” is not likely to lead to the disclosure of essential information that market participants need. Imposing a “materiality” filter before providing a quantification and aggregation of risks will severely limit the likelihood of anything meeting the threshold.

The SEC disclosure standard should not be whether the issuer or its management team subjectively determine that something is “reasonably likely” to change the predicted future, but rather whether market participants have the information necessary to accurately assess the value of the securities.

[14] Proposed Rule, at 21352.

The SEC should mandate Scope 3 GHG emissions disclosures for all public companies

Investors and other market participants such as credit rating agencies, index providers, consumers, and suppliers, need clarity and transparency in climate-related information. Companies only reporting on Scopes 1 and 2 can lead to misstatements, driving market distortions including a misallocation of investments. Allowing companies to decide if something is material or not for reporting purposes would only bring confusion and unnecessary squabbles to corporate sustainability reporting. Rather than push Scope 3 emissions into a materiality box (which ignores both the broader purposes of the disclosure regime and undermines its administrability), the SEC should require Scope 3 absolute emissions disclosure according to the GHG Protocol and its approved sector guidance such as PCAF for the financial sector, as well as make the use of estimates and emissions factors apparent in the reporting.

The GHGP, founded in 1998, was the first-ever standard developed for companies to measure and disclose their corporate-level greenhouse gas emissions. The standard (Corporate Accounting Standard) for Scopes 1 and 2 was published in 2001. In 2011, the GHG Protocol published its Scope 3 accounting and reporting standard along with a product life cycle accounting and reporting standard. There has since been a broad uptake of these standards worldwide, making them the most commonly used reporting tool across the corporate sector.[15] Like all standards, the GHGP is periodically updated to remain relevant and adequate for the needs of the market.

The Science Based Targets Initiative (SBTi), launched in 2015, requires all companies to do a complete Scope 3 inventory and set targets when those emissions are significant. In practical terms, this requirement is triggered when over 40% of a company's total emissions lie within Scope 3. Since that threshold was introduced by SBTi, there has been much broader adoption of the Scope 3 GHG Protocol standard. More than 3,000 companies across multiple economic sectors have now made a commitment to setting a science-based target. Of those commitments, 1,400 targets have now been validated by SBTi, with 220 of them coming from U.S. companies.[16]

However, an aggregate total of Scope 3 emissions is less meaningful and comparable than granular disclosure of the 15 categories of Scope 3 emission in the GHG Protocol. GHG corporate inventories were created to record a given company's GHG inventory over time, to track progress on reducing emissions and associated liabilities and risks. They were not initially intended to

[15] https://ghgprotocol.org/companies-and-organizations.
[16] https://sciencebasedtargets.org/companies-taking-action/;
https://sciencebasedtargets.org/resources/files/SBTiProgressReport2021.pdf (p. 6).

provide company-by-company comparisons, so the context and additional disclosures about how the company calculated its inventory, what choices it made, and underlying assumptions is an important part of reading these disclosures for comparability.

The SEC should:

- Clearly state within the rules the sectors and industries that must disclose Scope 3 disaggregated by 15 categories. These sectors should include, but not be limited to energy, transportation, agriculture, and financial services, including banks and asset managers as per Scope 3, Category 15 of the GHG Protocol.[17]
- Require companies to report on their Scope 3 emissions that allows companies to follow the most recent version of the GHG Protocol (GHG Protocol is planning updates in the Scope 3 standard with additional guidance; requiring the most recent version will ensure SEC rules can be implemented reflecting the most up to date best practice).
- Require disclosures of assumptions and methodological choices to provide a complete picture of climate risk. This is not vastly different from current financial reporting in which companies are permitted to make assumptions that must be analyzed by auditors, analysts, and investors.
- Set out clear guidelines and standards against which companies must disclose these “contextual” details in addition to the topline emissions numbers. Under SEC Regulation S-K[18], companies are currently required to report on the quality of earnings, including whether earnings are likely to be replicable from year to year, or whether these are anomalous or influenced by temporary conditions. Requiring that same level of context for climate disclosures would be a means to encourage consistent accounting methodologies annually.

The SEC should mandate financed emissions disclosures for all financial institutions

The Partnership for Carbon Accounting Financials (PCAF) is an accounting and disclosure methodology for Category 15 of the GHG Protocol Scope 3 inventory – so-called “financed emissions.” PCAF comprises Scopes 1, 2, and 3 emissions from companies that banks, asset managers, and other financial institutions are investing in or lending to. The North American PCAF standard was launched in 2019. To date, $74 trillion in assets have been committed to the PCAF standard, including small and large financial institutions.

[17] https://ghgprotocol.org/sites/default/files/standards/Scope3_Calculation_Guidance_0.pdf (p. 136).
[18] https://www.ecfr.gov/current/title-17/chapter-II/part-229.

The most recent guidance from the Task Force on Climate-Related Financial Disclosures (TCFD) recommends the use of PCAF for measuring and disclosing financed emissions,[19] and it is also referenced in new banking regulations in the European Union.[20]

The SEC should:

- Introduce a requirement for financial institutions, especially banks, to disclose financed emissions under PCAF in the first year of reporting under the new SEC disclosure regime.
- Require that financial institutions follow the latest versions of the standard within one year after each release, as periodic updates become available. The PCAF standard is expanding to include emissions removals, sovereign bonds, as well as "facilitated" emissions, namely new categories of financed emissions including insured emissions and capital markets.

The SEC should require explicit disclosure on the climate impacts on communities, the bedrock of markets

The SEC proposed rule does not yet contain sufficient measures concerning an issuer's role on climate impacted communities.

Indigenous-led opposition to polluting infrastructure is clearly a financial risk, with frontline groups having taken significant action in recent years. For example, Indigenous land defenders have been leading campaigns to stop fossil fuel projects, including "victories in infrastructure fights alone representing the carbon equivalent of 12 percent of annual U.S. and Canadian pollution [in 2019], or 779 million metric tons of CO_2 equivalent."[21] If current defense plans are successful, this would mean Indigenous resistance would have stopped GHG emissions equivalent to 24% of annual total U.S. and Canadian emissions in 2019 (the equivalent pollution of approximately 400 new coal-fired power plants).[22]

In an oft-cited example, the Standing Rock Sioux Tribe opposed development of the Dakota Access Pipeline in 2014, 2016, and 2017. When the pipeline eventually became operational in 2017, their consent was not given and there was very little engagement of the Tribe. Due to public opposition arising from the situation, which was widely covered in the media, the company

[19] https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf (p. 58).
[20] https://www.eba.europa.eu/eba-publishes-binding-standards-pillar-3-disclosures-esg-risks (see final report).
[21] Goldtooth, D., Saldamando, A., Gracey, K. (2021). Indigenous Resistance Against Carbon, Indigenous Environmental Network & Oil Change International.
[22] Ibid, p. 12.

stock value of the pipeline owner declined by about 20% from August 2016 to the end of 2018; there was reputational damage and the project was met with significant construction delays.[23]

Companies engaged in activities that exacerbate climate change impacts and associated inequities face increasing reputational, operational, and legal risks that will only grow in the future.[24] This is true for both physical and transition risks. For example, physical risks, such as increased temperatures, wildfires, and extreme weather events increase risks to frontline communities, workers, and public health and safety. In the transition to a low-carbon economy, companies in carbon-intensive industries face unprecedented community resistance—a result of both growing public support for climate action and historical harms to local communities–especially communities of color–that have undermined their access to clean air and water, land rights, and healthy neighborhoods.[25] This resistance derails projects and can result in often underestimated and under-disclosed operational, legal, and regulatory costs for companies.[26] There are clear correlations among social risk, community consent, and the bottom line of a company.

The SEC should:

- Require GHG and related pollutants to be disclosed by zip codes, both in the United States and to the extent feasible globally, which would result in vital information being disclosed in transparency to local communities and other market participants about where toxic pollutants are released.
- Require explanations of how investments into fossil fuel and other GHG emitting infrastructure can cause financial damages due to delays and the cancellations of projects.
- Require the disclosure of the presence or absence of Free, prior, and informed consent (FPIC). The FPIC framework can be applied to any climate impacted community to understand risks, opportunities, and impacts.[27]
- Require disclosures of how registrants manage intersecting climate and community risks that stem from regular business operations, climate mitigation efforts, or transition activities. For example, intersecting risks include those caused by land use change and

[23] https://www.colorado.edu/program/fpw/DAPL-case-study.
[24] https://www.sec.gov/comments/climate-disclosure/cll12-9061308-246408.pdf; https://www.colorado.edu/program/fpw/DAPL-case-study; https://sites.google.com/berkeley.edu/toxictides/home?authuser=0; https://www.ciel.org/reports/formosa-plastics-group-a-serial-offender-of-environmental-and-human-rights/.
[25] https://ourworld.unu.edu/en/energy-investing-the-indigenous-rights-bubble.
[26] http://www.csrm.uq.edu.au/media/docs/603/Costs_of_Conflict_Davis-Franks.pdf.
[27] https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/.

deforestation, natural resources use, air and water pollution, infringement of land rights, disruption to local economies, harm to public health and safety, and worker dislocation.
- Require a description of company outreach and engagement efforts toward members of communities that have been or are likely to face climate-related impacts due to corporate activities and any grievance resolution procedures in place.

As society reorients around a low-carbon economy, market participants involved in the valuation of securities and investment decisions (including investors, credit rating agencies, index providers and more) need to have comprehensive, reliable, comparable, and timely climate-related information; this includes how those issuers are addressing the transition for their affected workers and communities. Investors have already been seeking more information related to climate, environmental, and racial justice, and community-level impacts, and using this information to make investment decisions, to vote proxies, to file shareholder proposals, and to engage directly with registrants.

We welcome that the SEC is seeking advice to inform its work to enhance and standardize climate-related disclosures for market participants. This is a timely intervention and an essential means of creating a fair and efficient market.

Yours truly,

Marilyn Waite
Managing Director, Climate Finance Fund