

Comments on The Enhancement and Standardization of Climate-Related Disclosures for Investors

The following is presented by InfluenceMap CIC in response to the Securities and Exchange Commission's [proposed](#) Rules to Enhance and Standardize Climate-Related Disclosures for Investors, File Number S7-10-22, released March 21, 2022 with a comment period ending June 17, 2022.

1. Introduction

InfluenceMap CIC is a global think tank providing open-source data on corporate performance on climate change to investors and other stakeholders. InfluenceMap's "LobbyMap" platform is the world's only database assessing corporate climate policy engagement, now covering over 350 companies and 150 industry associations globally.

InfluenceMap's data and investor interactions show a combination of poor disclosure by the corporate sector on climate-related policy engagement combined with robust demand from investors for detailed, accurate, and decision-useful information from companies on this topic. This submission aims to provide the SEC with an evidentiary base to understand why a comprehensive picture of corporate climate policy engagement is material to investors and should be included in final rulemaking on *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. It also aims to show that current disclosures and voluntary frameworks are lacking. It concludes by suggesting some relatively simple requirements which could significantly increase meaningful disclosure by companies. As summarized below, and explained in more detail in section 4, it is recommended that the final rule require registrants to disclose the following:

1. **Policy Positions** on all existing and potential future climate-related policy, regulatory and other government interventions that may materially impact the registrant's operations, including quantification of these impacts.
2. **Direct Policy Engagement** conducted by the registrant and its subsidiaries on positions noted in (1).
3. **Indirect Policy Engagement** on the positions noted in (1) conducted by external groups the registrant funds and/or is a member of (industry associations, advocacy groups, chambers of commerce, etc.) and any misalignments between the registrant's own advocacy and that of its external groups.
4. **Governance** of the climate-related policy engagement process, including how policy positions are set and engagement activities are determined. Describe the role of the board and senior management in decision making and oversight.

2. Why Corporate Climate Policy Engagement is Material

Understanding corporate engagement with climate policy represents increasingly material information for investors, as poor climate policy engagement can result in investor loss or potential loss due to company risk, regulatory fines, and lawsuits.

- The automotive sector provides telling case studies as to how a deeper understanding of corporate climate policy engagement could have served to protect investors from material loss. In the Volkswagen emissions scandal beginning in 2015, often referred to as “Dieselgate,” Volkswagen Group presented itself as a climate and sustainability leader while its actual policy engagement represented dramatically different behavior. A lack of understanding as to how the company (along with others in the sector) was managing regulatory risk shocked shareholders, caused Volkswagen’s share prices to plummet, and resulted in an SEC lawsuit in [March 2019](#). In this case, Volkswagen chose to defraud NOx-related rules to comply with increasingly stringent and climate-motivated Corporate Average Fuel Economy standards in the US.
- Legal action has emerged as a route to address issues of policy influence ‘greenwashing.’ In 2019, Massachusetts Attorney General Maura Healey filed a civil suit against ExxonMobil, [Commonwealth of Massachusetts v. ExxonMobil Corporation](#), alleging a wide range of violations of the state’s consumer and investor protection laws. The lawsuit accused ExxonMobil of intentionally misleading consumers in the state about the central role its fossil fuel products play in causing climate change, and misleading Massachusetts investors about material climate-driven risks to its business, referencing InfluenceMap [research](#). In May 2022, the Massachusetts Supreme Judicial Court [rejected](#) Exxon’s bid to have the lawsuit dismissed on First Amendment grounds. As [reported](#) by E&E News in May 2022, similar state-level climate liability lawsuits against fossil fuel companies may soon reach the US Supreme Court. Lawsuits may lead to fines and reputational risk that affect a company’s financials.
- Many large, diversified owners such as pension funds regard negative policy engagement as a systemic portfolio risk, given that it can lead to delays to policies deemed necessary by governments to reduce the impacts of climate change. This view has been articulated, [for example](#), by a group of investors including Sweden’s AP7, BNP Paribas Asset Management, and the Church of England’s Pension Board. AP7 notes in its 2020 [Theme Report](#) on Climate Lobbying “*the importance of climate lobbying has become firmly established as a new norm on the sustainability agenda, but there is still much to do before negative climate lobbying is*

brought to an end." The fund has blacklisted ExxonMobil, among others, based on climate policy engagement criteria. **Information about policy engagement behavior serves a proxy for true management thinking on how a company is approaching the material risks relating to climate change.** This is especially true in sectors primarily or heavily driven by regulations, such as the Utilities, Energy, and Materials sectors in the Global Industry Classification Standard (GICS). If companies are using policy influence to sustain outdated business models, they may be ill-prepared for the future.

Investors have led efforts to understand corporate performance on climate change, highlighting the clear investor demand for this information from companies.

- Several investor-representative groups (e.g. [PRI](#), [IIGCC](#), [ICCR](#), and [CERES](#)) have formalized sets of expectations regarding how companies should manage their climate policy engagement processes. In March 2022, building on these sets of expectations, leading international investor groups managing a collective \$130 trillion launched the new [Global Standard on Responsible Climate Lobbying](#). The goal of the Global Standard is that *"companies, investors, and other stakeholders can ensure that all lobbying efforts – whether delivered at first-hand or through an intermediary such as a trade association – are directed towards activities that positively support attainment of the Paris Goals."*
- The Climate Action 100+ engagement process [engages companies](#) representing up to 80% of global corporate emissions on their climate impacts, including lobbying activity. The CA100+ [Net Zero Company Benchmark](#) expects companies to have a "Paris Agreement-aligned climate lobbying position" and to align all direct lobbying activities with this position. The benchmark also asks companies to disclose trade association memberships and ensure trade associations lobby in accordance with the Paris Agreement.
- Growing investor scrutiny on corporate lobbying behavior has resulted in companies facing increasing numbers of shareholder resolutions on climate policy engagement. According to a [May 2022 InfluenceMap briefing](#), 25 shareholder resolutions on corporate climate policy engagement have been filed in 2022 so far. The number of resolutions filed in this category has significantly increased throughout the previous four years: 17 in 2021 and in 2020, 13 in 2019, and 8 in 2018. InfluenceMap's data was directly referenced in 7 of these resolutions in 2021. InfluenceMap has published a series of [investor briefings](#) on companies facing climate lobbying resolutions, which act as an ongoing resource for investors. Often, corporate climate policy engagement resolutions state concerns about trade association lobbying that

is misaligned with companies' public positions, as can be seen in the supporting statements of the resolutions filed in 2022 at [Boeing](#), [American Airlines](#), [Abbot Laboratories](#), and [Travelers Companies](#), among others.

These developments highlight the clear investor concern for the issue of climate policy engagement. However, as explained in further detail below, InfluenceMap's analysis shows that these voluntary frameworks tend to be seriously insufficient, with companies failing to provide robust and transparent information on their policy engagement activities to the investment community,

3. Why Existing Disclosure Frameworks and Practices are Inadequate

Existing disclosure frameworks to address investor need for accurate and useful information on corporate climate policy engagement are likely inadequate as noted by the analysis below. This inadequacy may suggest a need for the SEC to step in and promulgate climate policy engagement disclosure requirements in line with its mandate of protecting investors.

The key US regulatory framework is the **Lobbying Disclosure Act (LDA) of 1995** and its subsequent updates. LDA reports are required for any lobbyist who makes more than one "lobbying contact" and spends 20% or more time during a quarter on federal "lobbying activities," as defined in the statute, and lobbying expenses must exceed a *de minimis* amount to trigger the reporting requirement under the LDA. Information generated by the LDA falls short in two important respects:

- Under the statute, the definition of the term 'lobbying' is relatively narrow, referring to oral or written communications to executive or legislative branch officials with regard to federal legislation, rules, regulations, Executive orders, programs, positions, or nominations or confirmations of a person for a position subject to confirmation by the Senate. This definition does not include a broader range of activities covered by the [UN Guide for Responsible Corporate Engagement in Climate Policy](#), which includes political contributions, the use of legal strategies, PR/advertising research funding, etc., both directly by corporations and indirectly by third party organizations. This information is crucial for investors to gain a complete picture of corporate policy influence.
- The LDA does not mandate disclosure of the *nature* of the policy engagement at hand. Reports often do not indicate whether the company is supporting, opposing, or neutral on the policy it is engaging with. Investors need to know details of how the company views

pending strands of climate-related policy that could materially affect business, results of operations, or financial condition.

Existing non-binding disclosure systems are insufficient. Their voluntary nature leads to gaps in information, and some contain little to no mention of climate policy engagement.

- To understand corporate performance on climate, investors have created frameworks such as the *Carbon Disclosure Project* (CDP), *UN Principles for Responsible Investment* (UN PRI), *Sustainability Accounting Standards Board* (SASB), *International Sustainability Standards Board* (ISSB), as well as the Financial Stability Board-initiated *Task Force on Climate-Related Financial Disclosures* (TCFD). While some of these initiatives have expanded requirements to include qualitative information on policy engagement, others make little mention of policy engagement, and none are backed by regulatory force.
- The CDP system for companies to disclose climate-related information contains *two questions* (12.3a and 12.3c) on policy engagement and industry associations. The results of these do not feed into the CDP scoring used by investors and there is no external verification of company responses. InfluenceMap’s independent verification of the responses to these questions shows generally omitted, incomplete, and often misleading responses.

Existing SEC requirements mandate disclosure of material risks including regulatory risks, with the guidance referring to disclosure of the impact of policies on the company. There is no guidance at present to disclose details of policy positions or engagement. In its *proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors*, the SEC states that “investors need information about climate-related risks – and it is squarely within the Commission’s authority to require such disclosure in the public interest and for the protection of investors – because climate-related risks have present financial consequences that investors in making investment and voting decisions.”¹ InfluenceMap suggests that ‘information about climate-related risks’ includes information about the ways that companies are engaging on climate-related policy, as this engagement is evidence of how companies are assessing the financial and business impacts of various climate-related policies.

¹ p. 9

4. What Disclosure is Needed

All three disclosure questions below, when comprehensively answered, would help investors to more fully understand the material climate-related risks a company faces and how the company is responding to these risks. InfluenceMap suggests these questions could be added to **§ 229.1503** of the rule, which deals with disclosure of climate-related risk management. The proposal asks the registrant to describe how, in the process of identifying and assessing climate-related risks, the registrant *“considers existing or likely regulatory requirements or policies, such as GHG emissions limits, when identifying climate-related risks.”*² The climate-related policy engagement disclosure questions proposed below could likely follow from the question on how companies consider regulatory requirements and policies in identifying climate-related risks:

- 1. Climate-Related Policy Positions:** Provide a full and detailed account of company advocacy positions on all existing and potential future climate-related policy, regulatory and other government interventions that may materially impact the registrant’s operations, including quantification of these impacts.
- 2. Direct Policy Engagement:** Describe in detail corporate engagement activities conducted directly by the registrant and its subsidiaries (with engagement defined by the [UN Guide for Responsible Corporate Engagement in Climate Policy](#)) on the climate-related policy positions noted in (1).
- 3. Indirect Policy Engagement:** Describe in detail the engagement activities, as defined in (2) on the positions noted in (1) conducted by external groups the registrant funds and/or is a member of (industry associations, advocacy groups, chambers of commerce, etc.) and any misalignments between the company’s own advocacy and that of its external groups.
- 4. Policy Engagement Governance:** Describe in detail governance of the climate-related policy engagement process within the company, including the process by which policy positions are set and advocacy activities are determined. Describe any internal auditing, monitoring, and review processes in place for climate-related policy engagement, including the role of the board and senior management.

² p. 467

The proposal states that the climate-related disclosure rules would be included in Regulation S-K and Regulation S-X because “*the required disclosure is fundamental to investors’ understanding the nature of a registrant’s business and its operating prospects and financial performance.*”³ While InfluenceMap does not have legal expertise in disclosure regulations, the evidence in this submission demonstrates that climate-related policy engagement information is a key part of this understanding and as such could be similarly included in applicable SEC filings and financial statements.

The proposal states that “*much of the disclosure proposed to be required reflects discussion of a company’s own climate risk assessment and strategy, which is not dependent on external sources of information.*”⁴ Climate-related policy assessments and engagement strategy are developed within a company, and as such, disclosure on climate-related policy engagement is not dependent on information or data from external sources.

Additionally, policy engagement disclosure would not be subject to the attestation requirements proposed for greenhouse gas emissions disclosure. Given that companies already have all the information they need to meet these policy engagement disclosure requirements, and because no external verification would be required, the time and effort needed to meet these disclosure requirements would likely be minimal. The ease with which companies can report on policy engagement indicates that companies need not worry about liability risks when it comes to engagement disclosure, as a registrant should be confident on its own reporting of its own activities. As the proposal notes,⁵ the treatment of climate-related disclosures as “filed,” and therefore subject to potential liability under Section 18 of the Exchange Act,⁶ could bolster investors’ confidence in the accuracy of the disclosures.

5. Global Consistency

InfluenceMap’s research tracks efforts in the UK and EU to introduce climate-related disclosure requirements for companies. In April 2021, the European Commission adopted the [proposal](#) for a Corporate Sustainability Reporting Directive (CSRD) which introduced the [requirement](#) for companies to report information based on European Sustainability Reporting Standards (ESRS). In April 2022, the

³ p. 51

⁴ p. 288

⁵ p. 287

⁶ p. 286

European Financial Reporting Advisory Group (EFRAG) released for comment *draft ESRS*. In the “*Business conduct*” (*ESRS G2*) draft, **Disclosure Requirement G2-9** requires disclosure of “*political contributions and lobbying or advocacy activities.*”⁷ This requirement includes information about board and management oversight of political engagement, which policies the company has engaged on, and what positions the company holds toward the policies on which it has engaged. The proposal also asks companies to disclose monetary value of political contributions, monetary amount of financial and in-kind lobbying or advocacy expenses, and total amount paid for membership to professional or advocacy associations.

The inclusion of corporate policy engagement in EFRAG’s draft standards demonstrates that the EU recognizes the importance of companies reporting on such information. To try and achieve some degree of consistency, particularly for companies operating in both the US and EU, the SEC could include a requirement for companies to disclose information on climate-related policy engagement in its final rules on *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. InfluenceMap recognizes that EFRAG has drafted its recommendations on the basis of the “double materiality” principle, which differs from the SEC’s approach. However, the evidence in this submission has shown that corporate policy engagement *is* financially material to investors, and therefore the recommendations would be consistent with the SEC’s “single materiality” approach.

6. Conclusion

Mandating disclosure on corporate climate-related policy engagement likely falls within the SEC’s mandate to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Company transparency on climate-related policy engagement enables investors to manage risk, engage with companies, and make decisions about capital allocation. In the absence of rigorous disclosure from the corporate sector on the topic of climate-related policy engagement, InfluenceMap’s methodology has generated meaningful metrics on corporate performance in widespread use by investors globally. The methodology does not require the cooperation of the companies being scored, but does rely on numerous amounts of direct disclosures from the companies including submissions to regulatory consultation processes (many of which are obtained by Freedom of Information requests) and existing SEC filings within the public domain.

⁷ *ESRS G2 Business conduct Exposure Draft, p. 9*

The aggregation of all this data and information is likely beyond the scope of individual investors who have limited time and resources to conduct extensive research on company behavior. A binding requirement for companies to report on climate-related policy engagement in SEC filings would centralize this information, making it easier for investors to access. This could vastly improve the ability of individual and institutional investors to assess companies' performance and risk. Conversely, the lack of a binding requirement to provide detailed and complete information on engagement could continue to hold back the ability of investors to manage risks, conduct stewardship activities, and make fully informed decisions about their investments. Questions about climate-related policy engagement fit into the proposed disclosure framework and would likely require little effort by registrants to answer, as the information does not rely on external data and does not require attestation. InfluenceMap appreciates the opportunity to provide input on the SEC's rulemaking and would be happy to answer any questions about the topics raised in this submission.