

June 16, 2022

The Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Response to Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors [File No. S7-10-22]

Dear Chair Gensler,

We write to you from 120 climate, environment, public interest, racial justice, and Indigenous rights organizations (see full list below).

We are writing this letter to provide input on the proposed rule on the enhancement and standardization of climate-related disclosures for investors (S7-10-22), published on March 21, 2022. We commend the SEC's efforts, and we welcome the proposed rule as a critical first step to forward the Commission's promised focus on climate-related financial risk. However, for reasons we will elaborate below, we believe the rule would be greatly strengthened by inclusion of disclosures regarding Indigenous and tribal peoples' rights risks where Indigenous and tribal peoples are directly or indirectly impacted by listed companies' operations, business models, transition risk mitigation plans, and greenhouse gas emissions.

The rights of Indigenous Peoples are material and relevant to the proposed rule for several reasons, as mentioned in the previous letter many of our organizations signed in response to Acting-chair Lee's Request for Information.¹ As we demonstrated in that letter, disregard for the land rights and human rights of Indigenous and tribal peoples regularly leads to project delays and even cancellation, which means financial losses for companies and their investors. GeoPark (GPRK), for example, lost at least US\$72.7 million and 20% of its proven reserves when it gave up an oil exploration and drilling project in the Peruvian Amazon after fierce community opposition.² Palm oil producer Sime Darby lost over \$200 million and suffered a 3.5% drop in revenue after giving a palm oil concession where communities had not consented to the operations.³ And Energy Transfer Partners' stock price significantly underperformed relative to market expectations during the company's conflict with the Standing Rock Sioux Tribe over construction of the Dakota Access Pipeline, and it experienced a long-term decline in value that persisted after the project was completed.⁴ (Please see the previous letter for detailed information on these cases).

¹ 350.org et. al. (2021). "Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee." Available at: <https://www.sec.gov/comments/climate-disclosure/cli12-9061308-246408.pdf>.

² Analysis by Amazon Watch of GeoPark's 20-F filings. Published in Amazon Watch (2021). "GeoPark Risk Alert." Available at: <https://amazonwatch.org/assets/files/2022-geopark-risk-alert.pdf>.

³ Reuters (27 February 2020). "Malaysia's Sime Darby Q4 flips to loss on Liberia operations, lower FFB production," Available at: <https://www.reuters.com/article/sime-darby-plant-results/malysias-sime-darby-q4-flips-to-loss-on-liberiaoperations-lower-ffb-production-idUSL3N2AR22Z>

⁴ First Peoples Worldwide (2018). "Social Cost and Material Loss: The Dakota Access Pipeline," University of Colorado. Available at: <https://www.colorado.edu/program/fpw/DAPL-case-study>.

Nonetheless, Indigenous Peoples are not referenced even once in the proposed rule. This is a glaring omission, given that Indigenous Peoples reside around the globe, including in the areas that are the central operational environment of many corporations, particularly in the extractive, energy production and transmission, and agricultural sectors. Each of these sectors face climate-related risks related to strategy, governance, risk management, metrics, and targets. The relationship with Indigenous Peoples in these areas, and specifically the management of environmental and human rights risks and impacts to Indigenous and tribal populations, is directly material to each registrant's climate strategy and ability to realize its climate-related objectives.

To illustrate the specific role that Indigenous Peoples play in mitigating climate risk, we cite recent findings⁵ which show that:

- Indigenous Peoples and local communities manage at least 17 percent, or 293,061 million metric tons of the total carbon stored in the forestlands of assessed countries—a global estimate that is 5 times greater than shown in a previous analysis of aboveground tropical forest carbon, equivalent to 33 times the global energy emissions of 2017.
- Twenty two percent (217,991 metric tons of carbon) of the forest carbon found in the 52 tropical and subtropical countries in this analysis is stewarded by communities, and one-third of this (72,079 metric tons of carbon) is in areas where Indigenous Peoples and local communities lack formal recognition of their tenure rights—putting them, their lands, and the carbon stored therein at risk.
- Soil organic carbon accounts for almost 65 percent (113,218 metric tons) and nearly 90 percent (105,606 metric tons) of the total forest carbon managed by communities in tropical and non-tropical forest countries, respectively. By protecting their forests and lands, communities are not only maintaining the carbon stored in the trees (above and below ground) but are also in effect protecting vast reservoirs of carbon that would otherwise be released to the atmosphere if the overlying forests were destroyed.
- Carbon storage in lands managed collectively by Indigenous People and local communities is far greater and more extensive than what can be assessed through available data.

Below we outline specific areas where the nexus between Indigenous Peoples and the requested climate-related data is most salient, and where specific guidance to issuers would be beneficial to improving the quality, availability, and consistency of information.

In this area, the potential risk for investors arises from the failure to identify, assess, and manage Indigenous rights risks and from the failure to do so in alignment with international standards in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Central to the UNDRIP's framework is the process of obtaining the free, prior, and informed consent (FPIC) of Indigenous Peoples prior to development of projects that impact land and territory on which

⁵ Rights and Resources Initiative (2018). *A Global Baseline of Carbon Storage in Collective Lands: Indigenous and Local Community Contributions to Climate Change Mitigation*. Available at: <https://rightsandresources.org/global-baseline-carbon-storage-collective-lands>.

Indigenous Peoples live and/or have territorial rights. FPIC is central to safeguarding the right of Indigenous Peoples to self-determine their economic, environmental, and social priorities.⁶

Indigenous Peoples' land rights and human rights are central to how corporations may seek to both mitigate and adapt to climate risk. Given the Commission's interest in ensuring transparency and complete information on corporate plans to address these risks, these rights and considerations should be integrated into the Commission's climate-related disclosure requirements. Indigenous Peoples have knowledge of local conditions related to operational impact, they have knowledge of cumulative climate change impacts over time, and assessment of Indigenous land tenure and resource management is essential to understanding the totality of risk related to physical and transition risks. Failure to include relevant information on Indigenous Peoples would negatively impact investors and issuers because climate disclosures made without a contemporaneous assessment of Indigenous rights risk fail to provide investors with the full scope and context needed for evaluating and comparing a registrant's climate-related disclosures.

The signatories to this letter recommend consideration of Indigenous Peoples in four areas of the proposed rule: 1) the Task Force on Climate Related Disclosures (TCFD) framework; 2) the process of GHG emissions reporting; 3) the management process of assessing potential climate physical and transition related risks; and 4) the use of carbon offsets. The content of IIPWG's recommendations contain both general recommendations and specific responses to requests for comment, as follows.

Recommendations

I: The TCFD Framework

Recommendation: We recommend that the Commission enhance the proposed rules by explicitly referencing Indigenous Peoples, and by explicitly referencing the United Nations Declaration on the Rights of Indigenous Peoples.

The proposed rule's reporting framework is based on the recommendations of the TCFD framework.⁷ In selecting TCFD, the Commission has based its climate disclosure rules on a framework that has been widely adopted by reporting registrants,⁸ incorporated in disclosure rules in various jurisdictions around the globe,⁹ and which contains generally agreed upon guidance for making climate risk disclosures.¹⁰

⁶ N.A (2018). Free, prior, and informed consent: a human-rights based approach. P. 3. Study of the Expert Mechanism of Rights of Indigenous Peoples. United Nations. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/245/94/PDF/G1824594.pdf?OpenElement> (last visited May 23, 2022)

⁷ Ibid. p. 49; *see also* The Task Force on Climate Related Financial Disclosures (N.D), Available at: <https://www.fsb-tcfid.org> (last visited May 20, 2022)

⁸ Security and Exchange Commission. (2022). The Enhancement and Standardization of Climate-Related Disclosures for Investors, [Release Nos. 33-11042; 34-94478; File No. S7-10-22], Available at: <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>, p. 50

⁹ Ibid.

¹⁰ Ibid. p. 51

TCFD is a strong minimum standard. However, the TCFD framework does not mention Indigenous Peoples despite the inseparability of Indigenous rights and climate-related harm.¹¹ Investors would be better able to gauge climate-related impacts with a disclosure regime that required an assessment of the business risks related to Indigenous rights. Accordingly, we recommend that the Commission not rely solely on TCFD in establishing its framework for climate-related disclosures.

The need to conduct due diligence regarding the impacts of corporate activity on Indigenous Peoples has been recognized in other third-party disclosure frameworks, which the Commission itself identifies in the proposed rule. For example, the Commission notes a survey conducted in 2021¹² which found that, of respondents that reported voluntarily following one or more third-party reporting frameworks, 44% reported using Sustainability Accounting Standards Board (SASB),¹³ 31% reported using Global Reporting Initiative (GRI),¹⁴ 29% reported using the TCFD,¹⁵ and 24% use the Carbon Disclosure Project (CDP).¹⁶

The SASB and GRI reporting frameworks explicitly reference the UNDRIP¹⁷ and FPIC.¹⁸ For example, SASB's Oil and Gas Exploration and Production Standard notes that "[I]ndigenous lands are considered those occupied by people who self-identify as indigenous, per Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples."¹⁹ Similarly, GRI's Oil and Gas Sector Standard acknowledges the importance of obtaining FPIC as well as its source in the UNDRIP:

"Before initiating development or other activities that could have potential impacts on lands or resources that indigenous peoples use or own, organizations are expected to seek free, prior, and informed consent (FPIC) from indigenous peoples. This right is recognized in the United Nations Declaration on the Rights of Indigenous Peoples and allows indigenous peoples to give or withhold consent to a project that may affect them or their territories and to negotiate project conditions."²⁰

¹¹ Mengden, Walter. (2017). Indigenous Peoples, Human Rights, and Consultation: The Dakota Access Pipeline. *American Indian Law Review*, 41(2) Available at <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1084&context=ailr> (last visited May 20, 2022)

¹² Security and Exchange Commission. (2022). The Enhancement and Standardization of Climate-Related Disclosures for Investors. [Release Nos. 33-11042; 34-94478; File No. S7-10-22], Available at: <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>; p. 321.

¹³ Sustainability Accounting Standards Board. (N.D). Landing Page, available at <https://www.sasb.org/about/sasb-and-other-esg-frameworks/> (last visited May 20, 2022); *see also* Sustainability Accounting Standards Board Oil and Gas Standard. (N.D). available at https://www.sasb.org/wp-content/uploads/2018/11/Oil_Gas_Exploration_Production_Standard_2018.pdf; Sustainability Accounting Standards Board Mining Standard. (N.D). available at https://www.sasb.org/wp-content/uploads/2018/11/Metals_Mining_Standard_2021.pdf.

¹⁴ Global Reporting Initiative Standards Landing Page. (N.D). available at: <https://www.globalreporting.org/standards/> (last visited May 20, 2022)

¹⁵ Task Force on Climate-related Financial Disclosures Landing Page. (N.D). available at <https://www.fsb-tcfd.org> (last visited May 20, 2022)

¹⁶ Climate Disclosure Project. (N.D) available at <https://www.cdp.net/en/guidance/guidance-for-companies> (last visited May 20, 2022)

¹⁷ Global Reporting Initiative. (2021). Oil and Gas Standard. P 48, available at <https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language> (last visited May 20, 2022)

¹⁸ *Ibid.*, p. 46

¹⁹ SASB. Oil and Gas Standard. p 27

²⁰ GRI. Oil and Gas Sector Standard. p. 48

These frameworks also provide Indigenous rights risk reporting metrics.²¹ The results from the survey noted above indicate that most registrants that report using a voluntary framework have used SASB and GRI. Accordingly, the Commission should require a similar consideration of Indigenous rights risks in its climate-related disclosures. Not only are registrants familiar with these disclosures, but the familiarity with these disclosures is due in part to investors deeming the consideration of Indigenous rights in alignment with internationally recognized standards to be a decision-useful metric in investment decisions.

When investors are not provided information regarding Indigenous rights risk, they face several burdens if they want to maintain a portfolio that accounts for all pertinent risks. First, due to the current lack of reporting and due diligence requirements, investors often only become aware of a registrant's Indigenous rights risks *after* a controversy or environmental damage has already occurred. Second, to understand and mitigate risks, investors must engage individually with issuers to encourage them to adopt policies or to undertake due diligence. Third, registrants deploy inconsistent use of terminology and fail to adopt consistent best practices in conducting Indigenous rights due diligence, making it difficult for an investor to compare how one registrant is addressing exposure to Indigenous rights risks and impacts compared with another. Relatedly, the failure of registrants to rely on legal frameworks mandating standard and uniform disclosures again leads to inconsistent use of terminology and widely varying standards. Thus, issues critical to addressing Indigenous rights risk, such as establishing robust FPIC policies aligned with the UNDRIP, cannot be assessed or compared across registrants prior to material events.

Therefore, we recommend that the Commission enhance the proposed rules by explicitly referencing Indigenous Peoples, and by explicitly referencing the UNDRIP.

II: GHG Emissions Reporting

Recommendation: We recommend that the Commission specifically reference the need to assess impacts to Indigenous Peoples within disclosures of Scope 1, 2, and 3 emissions.

We are encouraged that the Commission recognizes the usefulness of greenhouse gas (GHG) emissions production disclosures for investors. A registrant's GHG emissions serve as decision-useful indicators of its climate-related impacts, as well as its progress over time toward emissions-reduction targets.

The proposed rule requires registrants to report emissions data in accordance with the GHG Protocol which, again, does not mention Indigenous Peoples within its corporate standards.²² Scope 1, 2, and 3 are typically quantitative measurements expressed in numbers and based on an increasingly standardized methodology without significant qualitative analysis of emission impact. Therefore, we urge the Commission to include consultation with Indigenous Peoples in the methodologies used to calculate Scope 1, 2, and 3 emissions. An approach to climate change focused exclusively on quantitative air emissions may not fully reflect the impacts to water, soil,

²¹ SASB. Oil and Gas Standard. p .27

²² The Greenhouse Gas Protocol. (N.D) available at <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>.

biodiversity, and ecology. Without requiring GHG impact assessments to include Indigenous Peoples, investors lack crucial context for understanding a registrant’s emissions disclosures and climate impact.

The impacts of corporate actions on the environment have long lasting effects on the rights, cultural practices, and livelihoods of Indigenous populations. Many Indigenous Peoples live in areas that are in proximity to industrial activity with a large GHG footprint - such as mining and agriculture. They are often also directly impacted by tropical deforestation, which contributes to about 20% of annual GHG emissions. Because Indigenous Peoples are disproportionately impacted by climate change, GHG intensive development can often create climate and rights-driven opposition, which may create a business risk for the corporation proposing such development. It is increasingly understood that unresolved conflicts between corporate practices and local Indigenous rights holders can significantly augment the financial risks for companies in infrastructure, mining, agriculture and forestry. By themselves, delays caused by land tenure problems can inflate a project's expenditures by an order of magnitude; in some cases, these losses have even been great enough to endanger the future of the corporate parent itself.²³

Investors would benefit from additional disclosures explaining how robustly a registrant has evaluated this risk and any measures in place to mitigate such risk, such as through conducting risk assessments, consultation, and processes to undertake FPIC. Accordingly, consideration of emissions-related impacts on Indigenous Peoples should be explicitly included within Scope 1, 2, and 3 emissions disclosures.

Our singular recommendation addresses and is applied to Scope 1, 2, and 3 disclosures below:

a. Scope 1

Scope 1 emissions are “direct GHG emissions that occur from sources owned or controlled by the company.”²⁴ Scope 1 disclosures would give investors a tool for ascertaining a registrant’s direct emissions impacts. A registrant’s own emissions-producing operations - such as oil and gas or mining development - are often the operations which jeopardize Indigenous People’s access to clean air and water.

Extractive industries have historically been known for practices that have permanently degraded Indigenous Peoples’ territories and ways of life. For example, in 2021 Enbridge Energy construction crews ruptured three groundwater aquifers while building the Line 3 pipeline across Northern Minnesota.²⁵ The largest of the three ruptures occurred at the reservation of the Fond du Lac Band of Lake Superior Chippewa where over 200 million gallons of groundwater was released.²⁶ On March 21, 2022 the Fond du Lac announced that the rupture released amounts of groundwater which threatened to violate the Fond du Lac’s stringent water quality standards as

²³ Rights and Resources Initiative (2012) *The Financial Risks of Insecure Land Tenure: An Investment View*. Available at: <https://rightsandresources.org/publication/the-financial-risks-of-insecure-land-tenure/>.

²⁴ *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. p. 39

²⁵ Fox9. (March 22, 2022). “Minnesota DNR: Line 3 work harmed groundwater more than we knew. *Associated Press* available at <https://www.fox9.com/news/dnr-enbridge-punctured-3-aquifers-on-line-3-groundwater-damage-severe> (last visited May 20, 2022)

²⁶ *Ibid.*

well as wild rice waters - a crucially important cultural natural resource.²⁷ These impacts are irreversible and are most acute for those living where the impacts take place. Similarly, the infrastructure necessary to place pipelines or to build mines requires the construction of roads and power transmission grids that both increase GHG emissions and permanently impact the local environment.

A review by First Peoples Worldwide in 2016 of 52 US-based oil, gas and mining companies found that about 39% of current production and 46% of reserves are on or near Indigenous land.²⁸ These figures indicate that Indigenous Peoples are disproportionately impacted by the release of GHG emissions through the activity of the extractive industry on or near Indigenous land. They will be most affected and, therefore, best placed to gauge the local and cumulative impacts of in situ GHG emissions.

Thus, an investor will be unable to comprehend the true scope of impact and risk presented by Scope 1 disclosures unless these disclosures are accompanied by an assessment of the Indigenous rights risks posed by these climate-related harms.

b. Scope 2

Scope 2 emissions are those emissions primarily resulting from the generation of electricity purchased and consumed by the company.²⁹ A registrant's purchase of electricity resulting in emissions must reflect the impacts that consuming that electricity have on Indigenous Peoples.

Fossil fuel transmission, via pipelines for example, still requires electricity consumption despite an increasing reliance on low or non-GHG emitting sources of electricity production.³⁰ Thus, consumption of significant amounts of electricity on or near Indigenous land carries emissions related environmental risks like those generated by extractive activities on the land.

c. Scope 3

Scope 3 emissions are all other indirect emissions not accounted for in Scope 2 emissions.³¹ These emissions occur along a registrant's value chain and are meant to provide a picture of the registrant's cumulative emissions production.

Scope 3 emissions inevitably impact Indigenous Peoples whether they are produced at the sourcing stage of a registrant's value chain or produced by the activities of an end user. Accordingly, if companies were required to assess the impacts of Scope 3 emissions on

²⁷ Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee. (March 21, 2022). Enbridge Notification. *Press Release*. Available at https://www.fdlrez.com/downloads/PR/AquiferStatementPR_20220321.pdf.

²⁸ Pelosi, N., & Adamson, R. (2016). Managing the "S" in ESG: The Case of Indigenous Peoples and Extractive Industries. *Journal of Applied Corporate Finance*, 28(2). Available at https://www.colorado.edu/program/fpw/sites/default/files/attached-files/managing_the_s_in_esg.pdf.

²⁹ Ibid.

³⁰ Environmental Protection Agency. (N.D). Sources of Greenhouse Gas Emissions. Available at <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions#:~:text=Greenhouse%20gas%20emissions%20from%20electricity.and%20Sinks%3A%201990%E2%80%932020> (last visited May 20, 2022)

³¹ Pelosi, *Managing the "S"*.

Indigenous Peoples, investors would be able to identify the links in a registrant's value chain which produce emissions that impact Indigenous land. This information would be beneficial to investors seeking to contextualize a registrant's quantitative emissions disclosures because it would inform them of the material Indigenous risks associated with emissions production which are otherwise unrepresented in a purely quantitative analysis.

Therefore, we recommend that the Commission specifically reference the need to assess impacts to Indigenous Peoples within disclosures of Scope 1, 2, and 3 emissions. Because the quantitative methodology reflected in Scope 1, 2, and 3 reporting fails to capture qualitative impact data of emissions on Indigenous Peoples, investors lack the context necessary for interpreting the totality of risk associated with a registrant's emissions disclosures, and thus are incapable of contextualizing the impact of those emissions on the environment.

III: Identifying, Assessing, and Managing Climate-Related Transition Risk

Recommendation: We recommend that the Commission specifically require a registrant to disclose how it considers Indigenous land tenure and resource management in assessing potential transition risks.

We are encouraged that the Commission recognizes the decision-making value of disclosures related to how a registrant's board and management assess potential transition-related risks.

However, we note that with respect to both climate and transition related risks, the accompanying list of required disclosures does not include mention of the harms Indigenous Peoples face because of the transition to a low carbon economy.³² Crucially these harms often result in material business risk for corporations and thus reporting on them provides a decision-useful tool for investors.

The transition to a low-carbon economy is aimed primarily at stabilizing the effects of climate change caused by carbon-intensive global development. Accordingly, the climate-related goals achieved by preserving Indigenous land tenure and resource management practices would complement those achieved by a transition to a low-carbon economy if, and only if, sourcing the materials required to facilitate that transition protects the ability of Indigenous Peoples to continue their traditional practices. Traditional Indigenous agricultural and agroecological practices are less-carbon intensive and preserve more of the natural environment than modern practices but this depends on the maintenance of relatively pollutant-free hydrological systems and surface environments.³³

Because the transition to a low carbon economy will likely lead to an increase in extractive activity on or near Indigenous lands, it is important for a registrant to consult with impacted Indigenous Peoples using FPIC as the minimum standard for due diligence.

³² Ibid.

³³ The International Energy Agency. (2021). The Role of Critical Minerals in Clean Energy. Available at <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions> (last visited May 20, 2022)

For example, the transition to a low-carbon economy is proceeding rapidly and this is driving a need to source specific minerals which are needed to build the infrastructure needed to achieve various carbon-reduction goals. A report published by the International Energy Agency (IEA) states that meeting the Paris Agreement’s climate targets would send demand skyrocketing for the “critical minerals” used to produce clean energy technologies.³⁴ The figures for the raw materials used to manufacture electric vehicles are daunting: by 2040, the IEA forecasts that demand for lithium will have increased 42 times relative to 2020 levels.³⁵ The skyrocketing demand for these minerals is driving the expansion of mining in geographic “hotspots” throughout the world, with disproportionately negative impacts in the Global South and specifically to Indigenous Peoples.³⁶ Among these key transition metals, 97% of nickel, 89% of copper, 79% of lithium and 68% of cobalt reserves and resources in the U.S. are located within 35 miles of Native American reservations.³⁷

Whenever Indigenous land tenure and resource management come into conflict with a registrant’s operations, the registrant faces material business risks in the form of operational delays, protests, and increased costs of litigation. Many of these risks can be addressed and potentially mitigated in FPIC-aligned consultations with impacted Indigenous Peoples. Incentivizing registrants to consult in FPIC-aligned consultations with Indigenous Peoples would assist in preserving traditional practices which help stabilize the rapidly changing climate. Accordingly, a specific disclosure regarding how a registrant assesses the nature of Indigenous land tenure and resource management would provide investors with decision-useful information for interpreting the scope of transition risks facing a registrant and shed light on how they operationalize FPIC to do so.

Therefore, we recommend that the Commission specifically require a registrant to disclose how it considers Indigenous land tenure and resource management in assessing potential transition risks.

IV: Identifying, Assessing, and Managing Climate-Related Physical Risk

Request for Comment #43: “How does the registrant determine the materiality of climate-related risks, including how it assesses the potential size and scope of an identified climate-related risk?”

Recommendation: We recommend that the Commission specifically require a registrant to disclose how it assesses Indigenous knowledge, cultures, and traditional practices when assessing or responding to the physical impacts of changing weather and climate on business infrastructure.

³⁴ The International Energy Agency. (2021). The Role of Critical Minerals in Clean Energy. Available at <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions> (last visited May 20, 2022)

³⁵ Ibid.

³⁶ Earthworks. (2021). Recharge The Environmental and Social Footprint of Mining Cobalt, Lithium, and Nickel for Electric Vehicle Batteries. Available at <https://41p14t2a856b1gs8ii2wv4k4-wpengine.netdna-ssl.com/assets/uploads/2021/03/Recharge-Responsibly-Final.pdf>.

³⁷ Block, Samuel. (2021). Mining Energy-Transition Metals: National Aims, Local Conflicts. MSCI. Available at <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947> (last visited May 20, 2022)

We are encouraged that the Commission recognizes the informational value of disclosures related to how a registrant’s board and management assess risks related to the physical impacts of climate change on business infrastructure.

However, the proposed rule misses an opportunity. In asking registrants to disclose how they understand, respond, adapt, and mitigate the physical impacts of climate change on their businesses, the Commission fails to ask registrants to disclose how they integrate Indigenous expertise and traditional ecological knowledge regarding adapting to and mitigating physical changes in the environment such as temperature fluctuation, droughts, unseasonably strong storms, and flooding. This is a missed opportunity for two interrelated reasons: (1) Indigenous Peoples have close ties with the land and are some of the first to experience the impacts of the physical degradation or destruction of a registrant’s business infrastructure on or near their lands and hydrological systems; and (2) Indigenous Peoples possess a vast body of traditional ecological knowledge passed generation-to-generation that would greatly assist a registrant looking build climate-resilient infrastructure or to mitigate the physical impacts of climate change on their business.

And as the impacts of climate change intensify, registrants should be urged to engage in FPIC-aligned consultations with Indigenous Peoples to mitigate and adapt to the physical impacts of climate change using Indigenous traditional knowledge before that knowledge is lost. For example, the Gwich’in, an Indian Nation³⁸ who live in small communities that stretch from northeast Alaska to the northern regions of Canada, have recently sounded the alarm around the impacts of climate change:

“Climate change poses serious threats to food security for Indigenous peoples across Alaska. In some cases, changing environmental conditions have made hunting and fishing more dangerous. In others, the migratory patterns of animals have shifted, affecting their locations and timing of movements. These changes are more than a threat to food security - they present unjust and severe challenges to many Indigenous cultures’ long-proven, adaptive ways of flourishing.”³⁹

Therefore, we recommend that the Commission specifically require a registrant to disclose how it assesses the presence and impact of its business activity on Indigenous knowledge, cultures, and traditional practices when assessing the materiality and size and scope of an identified climate-related risk. Important for the Commission’s consideration is that investors are already asking registrants to disclose how Indigenous rights-violating activity aligns with climate-related objectives.

A letter signed by investors representing upwards of \$2 trillion in assets under management or advertisement called on major financiers of Enbridge Inc.’s “Line 3” oil sands pipeline to answer questions as to how the bank is conducting its own due diligence of project financing which threatens the Indigenous rights, and how that due diligence is consistent with banks’ own human

³⁸ Gwich’in Steering Committee. (N.D). About the Gwich’in. Available at <https://ourarcticrefuge.org/about-the-gwichin/> (last visited May 20, 2022)

³⁹ Gwich’in Steering Committee. (June 2019). Arctic Indigenous Climate Summit Report. P. 8. Available at <https://ourarcticrefuge.org/wp-content/uploads/2020/11/aics2019-report-final.pdf>.

rights policies, and how such financing is consistent with the banks' own carbon reduction commitments.⁴⁰ The pipeline continues to harm critical resources needed for maintaining Anishinaabe cultural practices, such as wild rice and clean freshwater.

The letter was prompted by the failure of Enbridge to receive FPIC from the Anishinaabe surrounding the Line 3 replacement project in Northern Minnesota, which generated significant social conflict. The investors who signed the letter noted that when projects like Line 3 move forward absent the consultation with impacted Indigenous Peoples, they incur material business risks such as increased costs through litigation, project delays, and reputational damage.

It is important that a registrant report on these Indigenous rights risk assessment strategies, not only to telegraph the attendant risks noted above to shareholders but for financing purposes as well. Banks and issuers of different sizes and sectors rely on registrants to furnish this risk-related information for purposes of underwriting or extensions of general or project-specific corporate financing. If an institution extends financing in the form of insurance or direct finance to a company that fails to adequately report on its Indigenous due diligence strategies and the Indigenous risk attendant to a given project or all operations, the financing institution and its shareholders assume many of the same reputational risks facing the corporation involved in the Indigenous human rights violations.

The letter is one of many similar investor-backed letters demonstrating strong investor interest in this kind of disclosure. Projects that threaten Indigenous Peoples' lands, waters, and resources garner costly opposition because these actions threaten human rights and contribute to the worsening effects of climate change by inhibiting the ability of Indigenous Peoples to steward the land in accordance with their historical best practices. Accordingly, the disclosure of consistent, comparable, and comprehensive information on how registrants assess Indigenous rights risk in relation to an identified climate and/or transition risk would furnish decision-useful information for investors.

IV: Carbon Offsets

Request for Comment #173: "Are there other items of information about carbon offsets or RECs that we should specifically require to be disclosed when a registrant describes its targets or goals and the related use of offsets or RECs?"

Recommendation: We urge the Commission to understand the link between offsets and conducting due diligence with respect to Indigenous rights risk.

The Commission's recognition of the importance of disclosure of offsets and RECs is encouraging. After all, offset quality remains a persistent and significant challenge for the offset industry, and is increasingly leading to credibility concerns and reputational risk for market participants. There is a risk that systemic integrity issues will lead to negative reputational impacts for companies who purchase credits of dubious quality. These integrity issues are

⁴⁰ IIPWG. (March 30, 2022). Investor Statement on Line 3, Oil Sands, and FPIC. Available at https://www.colorado.edu/program/fpw/sites/default/files/attached-files/line_3_investor_statement_sign-on_2022-03-30_final.pdf.

widespread throughout current markets and are not currently disclosed to investors. The SEC's offset disclosure provisions, particularly the offset level information in 1506(d), will fill critical gaps for investors seeking to invest in companies that are using high-quality credits.⁴¹ In addition to the financial risks posed by offsets, we are also pleased to see the Commission recognizes that investors rely on disclosures to understand how companies use offsets in their climate targets and strategies.

However, the Commission can strengthen the usefulness of this part of the proposed rule, and provide more utility to investors, if it deepens the proposal to address the risks deriving from the potential for conflicts with communities that inhabit areas of land used as offset tracts. As much as 80% of land-based carbon mitigation potential is in developing and least-developed countries,⁴² and the establishment of offset programs can create conflicts with Indigenous and local peoples that live in these areas.

Concerns that growing awareness of carbon offset integrity issues will lead to reputational risks are not speculative. We note that the environmental, social and accounting integrity of the projects that are the underlying assets of the tradeable offset and offset derivatives are of great concern to investors and market participants more generally. According to a survey of buyers and prospective buyers of carbon offset credits released by the Taskforce on Scaling Voluntary Carbon Markets (TSVCM), 45 percent of those surveyed were concerned about “a lack of environmental and social integrity of certain projects.”⁴³

One such example is the Cordillera Azul National Park in the Peruvian Amazon, which is currently facing a legal challenge from Indigenous Kichwa communities who were not properly consulted during the formation of the project.⁴⁴ As a result, the validity of the offset credits generated by this project is in question, creating legal, climate-related, and reputational risks for the companies that purchased them.

Therefore, we urge the Commission to require companies to account for the link between offsets and due diligence with respect to Indigenous rights risk. Specifically, we suggest the SEC include the registry project ID, or if not available, sufficient information to identify the specific project from which offsets are sourced. In the case of pooled credit portfolios, disclosure should identify the pool from which credits are purchased. To support investors in identifying risky activity, disclosure should note if a registrant has purchased offsets from block-chain based technologies like cryptocurrencies.

Conclusion

⁴¹ This is because certain categories of credits, for instance, older avoided emissions credits for underlying projects like hydropower, are commonly understood to be at greater risk of representing less robust environmental outcomes.

⁴² Roe, S., Streck, C., Beach, R., Busch, J., Chapman, M., Daioglou, V., ... & Lawrence, D. (2021). Land-based measures to mitigate climate change: Potential and feasibility by country. *Global Change Biology*, 27(23), 6025-6058.

⁴³ Taskforce on Scaling Voluntary Carbon Markets (2021). *Public Consultation Report*. Washington, DC: Institute of International Finance. https://www.iif.com/Portals/1/Files/TSVCM_Public_Consultation.pdf, at 50.

⁴⁴ Forest Peoples Programme (1 July 2021). “Press Release: Indigenous Kichwa Community Take Peruvian ...” <https://www.forestpeoples.org/en/press-release/kichwa-take-Peru-state-PNAZ-court> (last visited May 20, 2022)

Companies operating in areas where Indigenous People live have often proved that **many of these risks often remain unknown to investors until they result in material losses**. The way to protect investors, in accordance with the Commission's core mission, includes thorough integration of disclosures regarding the risks related to Indigenous Peoples' land rights and human rights where they are directly or indirectly impacted by the issuers' business models and/or specific projects.

Finally, we remind you of the example set of disclosures that many of our organizations called for in our response to the Request for Information from Acting-Chair Herron Lee, sent to the SEC on June 14, 2021.⁴⁵ That letter called on the SEC to require all companies to document, for their direct operations as well as direct and indirect suppliers, the following information:

- A. How their business model involves issues of Indigenous and/or tribal peoples' rights, including through their supply chains, contractors and subcontractors, finance, etc.;
- B. The names of all Indigenous and/or tribal peoples whose territories (both legally recognized as well as any territories currently under request of legal recognition) in any way overlap with operations or would be directly impacted by them, for example by downstream pollution from oil drilling waste products;
- C. All land rights grievances or complaints filed by local communities in the company's areas of operations (for a comparable example, see Land Conflict Watch in India or Environmental Justice Atlas), the company's response, and statements from complainants on how they assess the response;
- D. Description of any open processes in which the issuer is seeking to consult with or obtain the consent of Indigenous or tribal peoples that would be impacted by a planned or in-process activity by the issuer, subsidiary, or supplier;
- E. List of all consultation processes carried out in the past reporting year, including information on what entity carried out the consultation, and if consent was obtained, how the impacted Indigenous Peoples expressed that consent;
- F. List of all legal processes in U.S. and/or foreign jurisdictions related to land rights disputes, consultation or consent processes, or other Indigenous rights matters;
- G. List of all relevant environmental social impact assessments assessing the environmental and human rights impacts of operations on Indigenous and tribal peoples in accordance with international frameworks and best practices;
- H. A list of all projects undertaken by the issuer or subsidiaries that require the relocation of Indigenous and/or tribal communities, including all compensation, monetary or otherwise, provided in exchange for relocation; and
- I. A list of all payments or related expenditures made by the registrant to address and/or repair past harm.

⁴⁵ 350.org et. al, (2021). "Re: Response to Call for Public Input on Climate Change Disclosures from Commissioner Allison Herren Lee." Available at: <https://www.sec.gov/comments/climate-disclosure/cl112-9061308-246408.pdf>.

We trust these insights will be useful for your deliberations. Thank you for your consideration of these concerns.

Signed:

Amazon Watch

First Peoples Worldwide

Endorsed by:

- . Action Center on Race and the Economy
- . Accelerate Neighborhood Climate Action
- . AFGE Local 704
- . Alabama Interfaith Power & Light
- . Americans for Financial Reform Education Fund
- . Animals Are Sentient Beings Inc
- . Association of Young Americans (AYA)
- . Between the Waters
- . Businesses for a Livable Climate
- . Call to Action Colorado
- . Capitol Heights Presbyterian
- . CatholicNetwork US
- . Connecticut Citizens Action Group
- . Cedar Lane Environmental Justice Ministry
- . Center for International Environmental Law
- . Centre for Citizens Conserving Environment & Management (CECIC)
- . Citizen's Alliance for a Sustainable Englewood
- . Citizens United for Renewable Energy (CURE)
- . CO Businesses for a Livable Climate
- . Colorado Community Rights Network (COCRN)
- . Community for Sustainable Energy
- . Divest Oregon
- . Don't Waste Arizona
- . Due Process of Law Foundation
- . Earth Guardians
- . Endangered Species Coalition
- . Environmental Justice Team, Cedar Lane UU Church
- . Extinction Rebellion Delaware
- . FracTracker Alliance
- . Friends of the Earth U.S.
- . Future Nexus
- . Giniw Collective
- . Greater New Orleans Housing Alliance
- . Greater Park Hill Community
- . Green Map System
- . Hands Across the Sand / Land
- . Honor the Earth
- . Humboldt Unitarian Universalist Fellowship's Climate Action Campaign
- . I-70 Citizens Advisory Group
- . Indivisible Ambassadors
- . Indivisible Tacoma
- . Institute for Agriculture and Trade Policy
- . Ji Montgomery
- . Justice for Formosa's Victims
- . Justice Institute Guyana
- . LaPlaca and Associates LLC
- . Larimer Alliance for Health, Safety and Environment
- . Long Beach Alliance for Clean Energy
- . Louisiana Bucket Brigade
- . Mayfair Park Neighborhood Association Board
- . Media Alliance
- . Mental Health & Inclusion Ministries
- . MN350

- . Montana Environmental Information Center
- . Montbello Neighborhood Improvement Association
- . Mothers Out Front Colorado
- . Movement Training Network
- . New Mexico Environmental Law Center
- . NC Climate Solutions Coalition
- . New Mexico Climate Justice
- . North American Climate, Conservation and Environment (NACCE)
- . North Range Concerned Citizens
- . Occupy Bergen County (New Jersey)
- . Palms To Pines Democratic Network
- . Panhandle Watershed Alliance
- . Physicians for Social Responsibility Pennsylvania
- . Physicians for Social Responsibility, Arizona Chapter
- . Positive Money US
- . Presente.org
- . Protect All Children's Environment
- . PSR Arizona
- . Public Citizen
- . Rainforest Action Network
- . RapidShift Network
- . Resist the Pipeline
- . Revolving Door Project
- . San Antonio Bay Estuarine Waterkeeper
- . San Luis Valley Ecosystem Council
- . Santa Barbara Standing Rock Coalition
- . Save EPA (former employees)
- . Save the Pine Bush
- . SEE (Social Eco Education)
- . Small Business Alliance
- . Solar Wind Works
- . South Asian Fund For Education Scholarship and Training Inc
- . Southwest Organization for Sustainability
- . Spirit of the Sun, Inc.
- . Sunnyside United Neighbors, Inc (SUNI)
- . System Change Not Climate Change
- . Tetta Advocati
- . The Consortia
- . The Green House Connection Center
- . The People's Justice Council
- . Thrive at Life: Working Solutions
- . Tri-Valley Citizens' Climate Education
- . Turtle Island Restoration Network
- . Urban Climate Action Network (UCAN)
- . Unitarian Universalist Justice Florida
- . Unitarian Universalists for a Just Economic Community
- . Unite North Metro Denver
- . United For Clean Energy
- . Vote Climate
- . Wall of Women
- . Waterway Advocates
- . Western Slope Businesses for a Livable Climate
- . Wilwerding Consulting, also Co-Chair, Littleton Business Alliance
- . Women's Earth and Climate Action Network (WECAN)
- . Womxn from the Mountain
- . Working for Racial Equity
- . North American Water Office
- . Union of Concerned Scientists
- . 1000 Grandmothers for Future Generations
- . 350 Humboldt
- . 350 Seattle
- . 350 Wisconsin
- . 350.org
- . 350Hawaii
- . 7 Directions of Service