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17 June 2022

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

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors
Attention: 87 FR 21334; Docket ID: SEC-2022-06342; File No. S7-10-22

Dear Secretary Countryman,

The Private Equity Stakeholder Project (PESP) is a financial watchdog organization that researches and reports on private equity investments and their impacts on various communities.

We appreciate this opportunity to express our support for the Securities and Exchange Commission's (SEC) proposed rules (the "Proposal") that would require climate-related disclosures from publicly listed companies. The Proposal would provide investors with crucial details related to a company's ability to manage and mitigate climate risks, thereby affording investors with consistent, comparable information to make informed investment decisions. We urge the SEC to move quickly to implement a strong disclosure framework so that investors can assess the range of climate risks faced by companies in their portfolios, including how companies are adapting their finances and business models for the transition to clean energy, decarbonization of assets and operations, and the impacts of climate change.

We strongly support the Proposal as a necessary change that will allow investors to measure the climate-related risks of current and potential investments and incorporate the decision-useful disclosures to adjust investment portfolios to better manage the risks of the unfolding climate crisis. The Proposal is urgently needed because, under current rules, the lack of standardized reporting results in piecemeal and subjective climate disclosures that put investors' capital at risk.

Additionally, although the disclosure requirements in the Proposal constitute meaningful progress for publicly listed companies, we suggest that the SEC pursue further transparency measures and require climate-related disclosures from private fund managers as well (such as private equity and hedge funds). Such parity is crucial because climate-related risks are shared across public and private markets alike. Furthermore, we suggest further transparency would benefit competition within the private equity industry, with managers that bridge both public and private markets – several of the largest managers publicly listed including Blackstone, KKR, Apollo and Carlyle while other large peers remain privately held including Warburg Pincus, Arclight Capital, Energy Capital Partners, and hundreds more.

Support for GHG Emissions Disclosure for Publicly Listed Companies

We support the Proposal's inclusion of Scope 1 and 2 GHG emissions reporting for publicly listed companies (which includes large private equity firms such as Blackstone, Carlyle and KKR), in absolute and intensity terms, not netting out purportedly avoided or reduced emissions, and with third-party assurance.

GHG emissions are a fundamental component of climate risk reporting because they are a prime and comparable indicator of transition risk. Importantly, many companies headquartered in the U.S. or listed on U.S. stock exchanges have assets and financed emissions across the globe, meaning that standardized reporting on GHG emissions would provide investors with an invaluable source of data on a company's climate and transition risk factors.

We encourage the SEC to also mandate disclosure of Scope 3 GHG emissions (emissions from a company's value chain) for all large companies, with reasonable assurance required to ensure reliability. The SEC should not allow companies to self-determine if their Scope 3 emissions are "material," and it should remove the safe harbor from liability for fraudulent Scope 3 disclosures.

Allowing registrants to self-determine whether Scope 3 emissions are material will lead to underreporting of those emissions and their associated risk. As the Proposal notes, the Commission used this approach in its 2010 climate risk guidance and that led to significant underreporting. One can fully expect Scope 3 emissions underreporting unless a clear and specific disclosure mandate is adopted.

Furthermore, the SEC should reconsider granting a safe harbor from liability for fraudulent Scope 3 disclosures and excusing registrants from obtaining assurance for their Scope 3 disclosures. Numerous companies are currently disclosing Scope 3 emissions and successfully navigating the data acquisition and accounting challenges. Providing a safe harbor would only provide bad faith actors cover for underreporting Scope 3 emissions, as those firms that voluntarily disclose such emissions have already shown that it is unnecessary.¹

For registrants that encounter data challenges, the Commission can offer ways for them to describe their Scope 3 emissions as a range of values and disclose reasons for using the range and the underlying assumptions. Looking forward, obtaining reliable Scope 3 emissions data will become easier over time, especially as the deadlines for the initial Scope 3 disclosures arrive. Providing a safe harbor and excluding Scope 3 disclosures from the reasonable assurance requirement is unwarranted and will greatly reduce the reliability of the information provided to investors.

¹ Question 133.

Investors need location information for GHG emissions and physical risks, as proposed.

Registrants should also be required to provide location data (U.S. zip code or country for the location of a fixed point source) for disclosed sources of Scopes 1, 2, and 3 emissions over 25 kT CO₂e annually wherever possible to assess risks specific to a location or jurisdiction from climate impacts, climate-related regulation, or trade, geopolitical, or preference changes by consumer or other market participants.²

As proposed, registrants should also be required to provide location data (U.S. zip code and/or country) for assets exposed to physical risks due to climate change. This disclosure should include risks associated with direct financial impacts from climate-induced storms or chronic weather changes, as well as damages arising from unintended emission of GHGs or toxic pollutants due to climate-related physical impacts.

There are co-benefits to managing GHG emissions and other air pollutants related to public health, as well as correlated risks for heavy emitters. Governments have been more willing to address emissions when there are localized air quality and public health benefits and damages, and public health impacts are a key driver of community support for decarbonization that can lead to transition risks.³

Investors need detailed information about corporate transition plans, targets, metrics, and progress, as proposed.

Investment managers with trillions of dollars under management have concluded that transitioning to portfolios aligned with science-based climate targets is part of their fiduciary duty.⁴ As more corporations respond by developing climate transition plans and making public climate commitments, investors and the public need more reliable information to judge the credibility of these plans and to assess progress. In the current information environment, false, misleading, or overly vague climate claims—known as greenwashing—remain common.⁵ Private, voluntary efforts by standard setting bodies like the Science Based Targets Initiative (SBTI) have helped develop a framework for developing credible climate targets. To date, 1,200 targets, including hundreds by US companies, have been validated by SBTI, but the quality of disclosures remains uneven as they are not subject to the SEC’s anti-fraud enforcement measures, making it hard for investors and markets to properly assess transition plans, protect their portfolios, and allocate capital accordingly.

² Question 107

³ <https://www.nature.com/articles/nclimate2009>

⁴ <https://www.unepfi.org/net-zero-alliance/>

⁵ <https://newclimate.org/2022/02/07/corporate-climate-responsibility-monitor-2022/>

We support the Proposal’s requirement that all registrants who have adopted a transition plan must disclose a description of the plan, including relevant metrics and targets, and how the registrant plans to mitigate or adapt to transition risks.⁶ As proposed, all registrants should disclose GHG emissions-related targets, the scope of activities and emissions included in the targets, whether the targets are absolute or intensity-based, the time horizon for achievement, the baseline time period and baseline emissions level, and how the registrant intends to meet the targets.⁷ Additionally, all registrants should be required to disclose whether they have set targets regarding climate-linked factors like energy usage, water usage, conservation or ecosystem restoration, and details of how they plan to meet those targets and progress to date, as proposed.⁸

Investors also need information about carbon offsets to judge the credibility of transition plan claims. A particular source of potentially misleading information for investors and markets is the reliance by many registrants on carbon offsets to meet their stated climate goals. There are major integrity problems in the carbon offsets market, and offsets often do not deliver the purported climate benefits despite their near ubiquitous use in corporate net zero transition plans.⁹ Recognizing this shortcoming, the most prominent standard setter for developing net zero emissions targets—SBTI—does not allow the use of carbon offsets to meet short term targets.

All registrants should be required to disclose details about the carbon offsets they have purchased and how offsets fit into their climate transition strategies.¹⁰ Registrants should report “offset” emissions separately from their gross GHG emissions, as proposed,¹¹ and also report the breakdown of their offset credits based on “avoided” emissions versus atmospheric carbon removal, as well as corresponding project numbers on the carbon offset registries. Registrants already have this information, so disclosure would incur minimal cost.

Growth of Private Markets underscores need for climate-related disclosures

The physical and financial risks from climate change and the energy transition may be the biggest challenge faced by the capital markets, shared by both public and private markets. Investors across these markets do not currently have adequate information about climate-related risks. For private market investors, these risks may be amplified due to illiquidity of closed-end investment vehicles, reliance on leverage and the lack of transparency about the investments held within such funds.

⁶ Questions 48 and 171

⁷ Question 169

⁸ Question 168

⁹ <https://www.bloomberg.com/news/articles/2021-11-17/carbon-offsets-have-an-integrity-problem-cop26-may-help-fix-it>; <https://newclimate.org/wp-content/uploads/2022/02/CorporateClimateResponsibilityMonitor2022.pdf>; <https://www.bloomberg.com/news/articles/2022-02-14/green-groups-want-offsets-disclosed-as-part-of-sec-s-climate-rule>

¹⁰ Question 24

¹¹ Question 101

We encourage the SEC to extend the principles guiding the development of the Proposal on climate disclosures for public markets to private funds and private companies. Doing so would provide investors in private funds and private equity with consistent, comparable, reliable information on climate change.

Private markets have grown enormously, and the SEC has tabulated the gross assets at \$18 trillion.¹² Research by Vanguard found that “the asset size of the private equity market has been gradually growing on an absolute basis and relative to the public equity market over the last 20 years.”¹³ The number of companies backed by private equity has grown – McKinsey found that the number of US-private-equity backed companies doubled to 8,000 between 2006 and 2017 – while the number of publicly traded firms dropped to 4,300.¹⁴

The shift from public to private markets is happening for carbon-intensive assets as well, with publicly-listed companies seeking to shed conventional energy assets through sales where private equity is frequently on the buying side of the deal. *The Economist* noted several “multibillion-dollar deals, with giants such as Blackstone, Carlyle and KKR carving out huge oilfields, coal-fired power plants or gas grids from energy groups, miners and utilities. Many other deals, sealed by smaller rivals, get little publicity.”¹⁵

The capital private equity firms deploy for such deals comes in large part from institutional investors with fiduciary obligations to public and private pension funds, all of which need fuller disclosure to understand the risks.¹⁶

Public pension funds have diversified portfolios that are invested across capital markets in publicly traded and alternative assets, with \$5.85 trillion in assets.¹⁷ These funds invest on behalf of nearly 15 million public sector workers and over 11 million retirees, distributing \$323 billion in benefits each year.¹⁸

¹² *Statement on Private Fund Advisers Proposal, SEC, February 2022*; <https://www.sec.gov/news/statement/gensler-statement-private-fund-advisers-proposal-020922>

¹³ Vanguard, “The role of private equity in strategic portfolios,” October 2020

¹⁴ McKinsey Global Private Markets Review 2019

<https://www.mckinsey.com/~media/mckinsey/industries/private%20equity%20and%20principal%20investors/our%20insights/private%20markets%20come%20of%20age/private-markets-come-of-age-mckinsey-global-private-markets-review-2019-vf.ashx>

¹⁵ *The Economist*, Feb. 12, 2022, “Who buys the dirty energy assets public companies no longer want?”

<https://www.economist.com/finance-and-economics/who-buys-the-dirty-energy-assets-public-companies-no-longer-want/21807594>

¹⁶ Institutional Investors, “The World’s Dominant Investors in Private Equity,” November 6, 2020

<https://www.institutionalinvestor.com/article/b1p4bkg405f9k3/The-World-s-Dominant-Investors-in-Private-Equity>

¹⁷ <https://www.nasra.org/content.asp?admin=Y&contentid=200>

¹⁸ <https://publicplansdata.org/quick-facts/national/>

Alternative assets such as private equity have grown in importance to public pension funds, reaching an average allocation of 19 percent.¹⁹ Pension funds and other institutional investors continue to increase their allocations to private equity.²⁰ Additionally, private equity firms and other private funds managers have been seeking to expand from institutional clients to retail investors.²¹

The convergence of the increasing risks of climate change with the growth of private markets, paired with increasing reliance of institutional investors on private market alternatives to achieve their rates of return all underscore the value of the SEC providing regulatory guidance on climate disclosures across both public and private markets.

Private Markets Investors Face Climate-Related Risks

The current limited transparency in private markets means investors in private equity and other private funds have exposure to undisclosed risks due to climate change, greenhouse gas emissions and the energy transition. These risks exist across portfolios but may be most acute in carbon-intensive industries like energy. Pitchbook data show that private equity has invested over \$1.1 trillion in energy between 2010 and 2021.²²

The risks to investors in energy investments through private funds are illustrated through an examination of fund performance and particular examples of failures. For example, the private equity-backed Limetree Bay Refinery in the U.S. Virgin Islands filed for bankruptcy in 2021, resulting in hundreds of millions in losses for investors in private equity firm Arclight Capital Partners.²³ The Environmental Protection Agency invoked emergency powers to shut the facility down just weeks after Arclight resumed operations as part of a revival of the previously mothballed facility.²⁴

¹⁹ <https://www.nasra.org/investment>

²⁰ McKinsey, Global Private Markets Review 2021, published April 2021 and Wall Street Journal, “Retirement Funds Bet Bigger on Private Equity,” Jan. 10, 2022 <https://www.wsj.com/articles/retirement-funds-bet-bigger-on-private-equity-11641810604>

²¹ McKinsey, Global Private Markets Review 2021, published April 2021

²² *Private Equity Stakeholder Project*, “Private Equity Propels the Climate Crisis” October 2021, https://pestakeholder.org/wp-content/uploads/2021/10/PESP_SpecialReport_ClimateCrisis_Oct2021_Final.pdf

²³ Laura Sanicola, Tim McLaughlin “Private equity bet on troubled Caribbean refinery blows up on retirement funds,” Reuters, June 3 2021. <https://www.reuters.com/business/energy/exclusive-private-equity-bet-troubled-caribbean-refinery-blows-up-retirement-2021-06-03/>

²⁴ <https://www.epa.gov/newsreleases/epa-uses-emergency-powers-protect-st-croix-communities-and-orders-limetree-bay-refinery>

In 2017, a \$2 billion energy-focused private equity fund managed by firm EnerVest collapsed under the weight of its debt and was reduced to virtually nothing when commodity prices in the oil market plunged, causing investors to lose millions.²⁵

Private equity investments in coal plants also serve as an illustration of the risks of acquiring assets on the decline. The Institute for Energy Economics and Financial Analysis (IEEFA) pointed out that public pension funds have private fund exposure to coal even as investors increasingly shun fossil fuels. “Right now, investors in fossil fuels in private equity funds are facing a bumpy exit. They face investment losses,” said IEEFA’s Tom Sanzillo.²⁶

One example of private equity’s risk appetite in coal is in KKR’s failed bet on the Longview Power coal plant in West Virginia. Four years after acquiring the plant out of bankruptcy, KKR landed the plant in its second bankruptcy in 2020, retiring \$350 million in debt.²⁷ Through the plant’s restructuring, KKR lost nearly all of its 42 percent equity stake and subordinated debt in the company “with cumulative losses of several hundred million dollars,” according to a KKR attorney.²⁸

Another example of a troubled coal plant is the General J.M. Gavin coal plant in Ohio, owned Blackstone Group and Arlight Capital Partners. An analysis by IEEFA noted that “Gavin is the fourth-largest carbon dioxide emitter among power plants in the United States, according to the Environmental Protection Agency. In 2021, the plant emitted more than 7.3 million tons of CO2 during the first six months of the year.”²⁹ The *Wall Street Journal* reported on April 20 that Gavin’s owners are “preparing to ask lenders to let the struggling company push off an upcoming debt repayment” after two credit downgrades last year.³⁰

²⁵ *Wall Street Journal*, “From \$2 billion to zero: A private-equity fund goes bust in the oil patch,”

<https://www.wsj.com/articles/from-2-billion-to-zero-a-private-equity-fund-goes-bust-in-the-oil-patch-1500210002>

²⁶ <https://ieefa.org/ieefa-u-s-pension-funds-investing-in-ohios-gavin-coal-plant-face-financial-and-reputational-risks/>

²⁷ *S&P Global*, “Longview emerges from bankruptcy, retires \$350m in debt” August 3, 2020,

<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/longview-power-emerges-from-bankruptcy-retires-350m-in-debt-59724693>

Wall Street Journal, Becky Yerak, “KKR-Backed Longview Power Files for Bankruptcy, WSJ Reports KKR - The Fly,”

April 14, 2020, <https://www.wsj.com/articles/kkr-backed-power-company-files-for-bankruptcy-after-tapping-stimulus-funds-11586891236> and [https://thefly.com/landingPageNews.php?id=3072249&headline=KKR-](https://thefly.com/landingPageNews.php?id=3072249&headline=KKR-KKRbacked-Longview-Power-files-for-bankruptcy-WSJ-reports)

[KKRbacked-Longview-Power-files-for-bankruptcy-WSJ-reports](https://thefly.com/landingPageNews.php?id=3072249&headline=KKR-KKRbacked-Longview-Power-files-for-bankruptcy-WSJ-reports)

²⁸ *Bloomberg Law*, Yerak; Jeremy Hill, “KKR Power Plant Sought Federal Cash Without Firm’s Knowledge,” April 17, 2020.

²⁹ <https://ieefa.org/ieefa-u-s-pension-funds-investing-in-ohios-gavin-coal-plant-face-financial-and-reputational-risks/> and <https://ampd.epa.gov/ampd/>

³⁰ *Wall Street Journal*, “Coal plant owner Lightstone seeks \$1.7 billion loan extension, sources say,” April 20, 2022

<https://www.wsj.com/articles/coal-plant-owner-lightstone-seeks-1-7-billion-loan-extension-sources-say-11650482524>

Another indicator of the risks faced by private market investors is the string of bankruptcies in the oil and gas sector in 2020, driven by price swings in oil markets induced by the COVID pandemic. The majority of oil produce bankruptcies were filed by private-equity backed companies.³¹ Notably, 2020 saw an increase in bankruptcies with debt loads greater than \$1 billion, with an unusually high number relative to the prior six years. More than two thirds (71%) of 2020's multibillion-dollar bankruptcies by oil and gas producers were backed by private equity.³²

Private energy funds have experienced disappointing returns overall for investors. Based on an analysis of Preqin data, *Bloomberg* reported in April 2020 that oil- and gas-focused funds have been among the lowest-yielding asset classes for private capital over the prior 10 years. The median internal rate of return (IRRs) for these funds was about five percentage points lower than those of comparable buyout firms.³³

According to Cambridge Associates, for the 184 mature and maturing private equity energy funds with vintage years between 2004 to 2014, performance on average lagged broader private equity returns by 0.56x on a net multiple of paid-in capital basis (MOIC).³⁴

Private Fund Managers can disclose climate-related risk through Form ADV

As we suggested in our comment letter from April 25, 2022 regarding investor protections and private fund managers, Form ADV is the optimal mechanism by which the SEC can require private fund managers to disclose climate-related risks, including emissions information.³⁵ We suggest that given the shared climate risks across both public and private markets, the disclosures in the current proposal should apply to private fund managers as well to capture the true scale of the effect of climate change in the financial sector.

Under Section 203(c)(1) of the Advisers Act of 1940, the SEC has authority to require "information and documents as the [SEC], by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors" including "the nature of the business of such

³¹ Private Equity Stakeholder Project, "Private Equity-backed companies dominate 2020 oil and gas bankruptcies," <https://pestakeholder.org/private-equity-backed-companies-dominate-2020-oil-and-gas-bankruptcies/>

³² Private Equity Stakeholder Project, "Private Equity-backed companies dominate 2020 oil and gas bankruptcies," <https://pestakeholder.org/private-equity-backed-companies-dominate-2020-oil-and-gas-bankruptcies/>

³³ Rachel Adams-Heard, "Private Equity Can't Escape the Pain of Shale Country's Collapse," *Bloomberg*, April 1, 2020, <https://www.bloomberg.com/news/articles/2020-04-01/private-equity-can-t-escape-the-pain-of-shale-country-s-collapse>

³⁴ Cambridge Associates, "Real Asset Dynamics: PE Energy," Cambridge Associates, May 2020, pg. 4 <https://www.cambridgeassociates.com/insight/real-asset-dynamics-pe-energy/>

³⁵ 'Comment Letter: Public Input Welcomed Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Chair Gary Gensler, Feb. 9, 2022,' Private Equity Stakeholder Project, April 25, 2022; <https://www.sec.gov/comments/s7-03-22/s70322-20126686-287390.pdf>

investment adviser” to be disclosed on Form ADV. The SEC currently requires that financial risks be disclosed on Form ADV to protect potential investors, a disclosure which touches on the nature of an investment adviser’s business.

Investment advisors are already including disclosures related to climate change in Part 2A of Form ADV, the brochure. However, the disclosures are limited, subjective, not quantitative, and difficult to compare between firms – leaving investors without adequate information to assess relative risks within an asset manager’s portfolio or among several asset managers.

Therefore, in line with current practice, we recommend clarifying that risk disclosures through Form ADV should include quantitative metrics and qualitative information about climate-related risks for private equity firms overall as well as fund-level details, including exposure to energy and fossil fuels, direct and indirect emissions, and individual portfolio companies’ risks, leverage and environmental impacts.³⁶ Essentially, the information required in Scopes 1, 2 and 3 for publicly listed companies under this Proposal.

Consider Climate Related Political Lobbying Disclosure

In line with the March 15, 2022 letter from Senators Whitehouse, Schatz, Warren, Sanders, Van Hollen, Merkley, Blumenthal and Markey, we encourage the SEC to require disclosures about corporate lobbying and other influencing activities as they relate to climate change in this Proposal or as a standalone rule. We agree with the Senators that while “[i]ndividual issuers often make conspicuous public statements about their support for climate action . . . many of these same companies actively contribute to anti-climate lobbying efforts through their membership in trade associations[, and that] [s]ome even work proactively to undermine climate action in Congress.”³⁷

It is anathema to the spirit of this Proposal to allow corporations, publicly listed or private, to make grandiose statements about their commitments to fighting climate change while at the same time working to undermine that effort politically. We agree with the Senators that, rather than circumventing the rider preventing the SEC from creating a rule that addresses political contributions, this type of disclosure constitutes material information that would allow investors to make informed decisions about their investments.

³⁶ ‘Comment Letter: Public Input Welcomed on Climate Change Disclosures, Acting Chair Allison Herren Lee, March 15, 2021,’ Private Equity Stakeholder Project, July 14, 2021; <https://www.sec.gov/comments/climate-disclosure/cl12-8916249-244994.pdf>

³⁷ Letter from Senator Whitehouse, et al. to the SEC Regarding Climate Disclosures Proposal,” Sen. Whitehouse, et al., March 15, 2022; <https://www.whitehouse.senate.gov/imo/media/doc/Letter%20to%20SEC%20on%20Climate%20Disclosure%20Final.pdf>

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Therefore, we urge the SEC to require climate related lobbying disclosures under this Proposal or in a standalone rule.

Conclusion

PESP reiterates its strong support for the Proposal. The Scope 1, 2 and enhanced Scope 3 disclosure requirements would be a major step forward in creating transparency for investors in publicly-listed companies by providing investors with consistent, comparable, and decision-useful information for making their investment decisions. However, we encourage the SEC to prevent abrogation of the Scope 3 disclosure by removing the proposed safe harbor and requiring reasonable assurance from a third party to determine materiality of emissions.

Additionally, since private funds like private equity and hedge funds are susceptible to climate-related investment risks similar to publicly-listed companies, the disclosure requirements in the Proposal should apply to them as well. Institutional investors like pension funds that invest heavily in private markets would benefit greatly from parity between public and private market climate-related disclosures. Finally, we encourage the SEC to seriously consider Senator Whitehouse's letter and address the issue of climate related lobbying by corporate entities as it constitutes material information for investors.

Thank you again for the opportunity to comment on the Proposal. We applaud the SEC's work on this Proposal and others to address investor concerns related to climate change and other issues. If you have any questions regarding our comment letter or would generally like to reach out to us, please contact PESP Policy Coordinator Chris Noble at [REDACTED].

Best,



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