

June 16, 2022

Global Witness
4th Floor, 700 K Street, NW
Washington, DC 20001

Contact: [REDACTED]

Re: File No. S7-10-22

Re: Comment by Global Witness on the enhancement and standardization of climate-related disclosures

Dear Chair Gensler,

This Comment is being submitted by Global Witness, a non-profit organisation established in 1993 that investigates and challenges abuses of power in order to protect human rights and secure the future of the planet. Our organization has offices in Washington D.C., London and Brussels.

Global Witness supports the Security and Exchange Commission's ("SEC" or "the Commission") introduction of a new rule for expanded climate-related transparency disclosures ([Release No. 33-11042, March 21, 2022](#)). This proposal clearly falls within the SEC's mandate to promote market efficiency and protect investors and financial stability through the disclosure of relevant, comparable, consistently presented, and reliable information about financially material risks.

In this Comment, Global Witness recommends an economy-wide 'double materiality' approach that requires mandatory Scope 1, 2 and 3 emissions reporting by companies and financial institutions, and ensures a just transition. Specifically, we recommend several modifications to the proposed rules so that disclosure **will more effectively meet the specific needs of investors exposed to the climate-related financial risks posed by deforestation**. A holistic approach is particularly important in the agriculture, forestry and land use sector because it produces almost a quarter (23 percent) of global greenhouse gas (GHG) emissions, according to the Intergovernmental Panel on Climate Change (IPCC).¹ An estimated 11% of these emissions – almost half - come from deforestation and forest degradation.²

This is relevant because US companies and financial institutions trade in and finance commodities with a high-risk of links to deforestation, human rights abuses, and land disputes with Indigenous People and traditional communities. According to Forest and Finance data, US banks invested around US\$25 billion in forest-risk companies from 2013-2020.³ Global Witness has demonstrated U.S. financial institutions profited an estimated \$538 million from deals worth billions that were connected to deforestation

¹ Intergovernmental Panel on Climate Change (IPCC), "Special report on climate change and land use," Summary for Policy Makers, A.3, p. 10, 2019, <https://www.ipcc.ch/srccl>.

² IUCN, Forests and Climate Change, 2021, [Forests and climate change | IUCN](#)

³ Global Witness, 'US Congress must pass new bill to help end deforestation around the world', 6 October 2021, <https://www.globalwitness.org/en/press-releases/us-congress-must-pass-new-bill-help-end-deforestation-around-world/>

between 2015-2020.⁴ Up to 40 percent of US GDP is generated from sectors directly exposed to climate-related forest, food, and land use risks.⁵

Our Comment will explain the role of the forest, food, and land sector in driving deforestation and climate-related financial risk and answer specific questions posed by the SEC. It offers the three key recommendations below for how the SEC could improve the rule:

1. **Issue industry specific guidance for the forest, food and land sector:** The SEC should develop industry-specific guidance for climate disclosure in the forest, food, and land sector, as it has done previously in oil and gas; banking; real estate; and insurance. Regulations that do not explicitly mandate industry-specific disclosures across Scope 1, 2 and 3 emissions for the forest, food, and land sector would be incomplete and ineffective in protecting investors because:
 - a. The forest, food and land sector is responsible for almost a quarter (23 percent) of GHG emissions and therefore a significant driver of climate change-related risk.⁶ Scope 3 emissions commonly make up the majority of all GHG emissions in the agriculture, food and other land use value chain.⁷
 - b. Sixty percent of tropical forest loss was driven by commercial agriculture between 2013 and 2019. Almost three-quarters (69 percent) of this agro-conversion was illegally conducted in violation of national laws and regulations.⁸ This ongoing risk places investors at a high risk of funding activities linked to financial crime, criminal environmental damage, and human rights abuses.
 - c. Deforestation poses significant physical risk and transitional risk to the US financial system and individual financial institutions, as independently identified by the Federal Reserve and the U.S. Commodity Futures Trading Commission.⁹
 - d. Deforestation generates GHG emissions in the current year *and* reduces carbon storage capacity in future years, so sectors with high deforestation risk have an outsized impact on climate change mitigation and therefore compounds long term financial risks.
 - e. Most deforestation is not the result of ‘planned’ economic activity, therefore it does not fall within the remit of other reporting instruments or vehicles such as transition plans.

2. **Mandatory Scope 3 emissions disclosure:** Disclosure of Scope 3 emissions should be mandatory for all registrants, including financial institutions, based on the best available data and methodologies. At a minimum, disclosure of Scope 3 emissions should be

⁴ Global Witness, Deforestation Dividends, 2021, <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>

⁵ Climate Advisers, Climate-Related Forest, Food, and Land Risks Threaten US Financial Stability, p. 1, <https://www.climateadvisers.org/wp-content/uploads/2022/02/Climate-Advisers-Climate-Related-Forest-Food-and-Land-Risks-Threaten-US-Financial-Stability.pdf>

⁶ IPCC, “Special report on climate change and land use,” Summary for Policy Makers, A.3, p. 10, 2019, <https://www.ipcc.ch/srcll>.

⁷ See [Food Emissions 50 | Ceres](#) and [Microsoft Word - GHG Protocol Agricultural Guidance \(April 25\).docx](#)

⁸ Forest Trends, Illicit Harvest Complicit Goods, 2021, https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods_rev.pdf

⁹ Financial Stability Oversight Committee, Report on Climate-Related Financial Risk, 2021, <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>, p. 49; Managing Risk in the U.S. Financial System, Report of the Climate-Related Market Risk Subcommittee,

Market Risk Advisory Committee of the

U.S. Commodity Futures Trading Commission, 2020, [https://www.cftc.gov/sites/default/files/2020-09/9-9-](https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf)

[20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf](https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf), p. 31

mandatory for companies and financial institutions at risk of deforestation and land conversion in their value chains. This is necessary because emissions from deforestation and land use produce significant GHG emissions and affect both current year emissions and future carbon storage capacity.¹⁰

- 3. Require the identification and disclosure of climate- and nature-related dependencies and financial risks using a ‘double materiality’ approach:** The SEC should take an overt ‘double materiality’ approach and require registrants to identify and disclose their nature-related dependencies and *impact*, not just those nature- and climate-related risks which are financially material to investors in that reporting year. Without this, the SEC’s proposed approach will enable registrants to exclude vital information about their negative risks and impacts on the climate, nature, human rights and ultimately risk to investors. Corporate human rights obligations are well established in existing legal obligations including the UN Guiding Principles on Business and Human Rights and the OCED Guidelines on Responsible Business Conduct/Multinational Enterprises, as well as numerous industry- and commodity-specific schemes.¹¹ In 2021, Eric Usher, the head of the United Nations Environment Programme Finance Initiative (UNEP FI), confirmed that a double materiality approach should be adopted because the Taskforce on Climate-related Financial Disclosure’s (TCFD) original view of financial ‘materiality’ in the view of the corporation alone is no longer appropriate.¹² This is also the founding view of the Taskforce on Nature-related Financial Disclosures (TNFD).¹³ Impacts on the environment and society cannot be deprioritized on the basis that they are not financially material, or vice versa.

Throughout this Comment, Global Witness relies upon the concept of “materiality,” and “material financial risks” as articulated in U.S. law, including in decisions of the U.S. Supreme Court.¹⁴ This legal precedent reaffirms that the concept of materiality and this new rule are within the purview of the SEC. We argue this extends to ‘double materiality’.

Thank you in advance for considering our comments as you contemplate changes to SEC disclosure requirements. We would be pleased to discuss any questions that you may have on our feedback.

Yours sincerely,

Veronica Oakeshott

¹⁰ IPCC, “Special report on climate change and land use,” Summary for Policy Makers, A.3, p. 10, 2019, <https://www.ipcc.ch/srccl>.

¹¹ Notwithstanding their faults, other initiatives are as diverse as the Aluminium Stewardship Initiative, the Accountability Framework initiative, the IFC Performance Standards, The Equator Principles, the Roundtable on Sustainable Palm Oil, the Universal Standards of the Global Reporting Initiative and many others apply this approach.

¹² ‘TCFD View of Materiality No Longer Adequate – UNEP FI Chief’, 11 February 2021, <https://www.esginvestor.net/tcfd-view-of-materiality-no-longer-adequate-unesp-fi-chief/>

¹³ The SEC should carefully consider the strengths and weaknesses of the TNFD initiative as it develops its final rule. It should test its approach against U.S.-relevant cases and examples to understand if it will be effective in practice. More specifically, it should not adopt the TNFD if it fails to clearly define the concept of double materiality or prioritise human rights and the Free and Prior Informed Consent (FPIC) of Indigenous Peoples.

¹⁴ See *TSC v. Northway*, 426 U.S. 438, 449 (1976)(defining an omission of fact in a proxy statement as material where there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”); *Basic v. Levinson*, 485 U.S. 224 (1988) (the materiality of an uncertain or future event “will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity,” citing *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 862 (2d Cir. 1968) (*en banc*)).

A. **Deforestation as a material financial risk**

1. Why deforestation matters

Climate-related financial disclosures would be ineffective in protecting investors without specific requirements directed to agriculture, forestry, and other land use because globally, the forest, food, and land sector is responsible for almost a quarter (23 percent) of net anthropogenic global greenhouse gas (GHG) emissions, according to the IPCC.¹⁵ A major reason that this sector contributes so substantially to anthropogenic GHG emissions is through deforestation and land conversion, which alone is responsible for around 11 percent of global emissions.¹⁶

Maintaining healthy forests, and reforesting degraded forest land, are critical to achieving the goals of the Paris agreement and the United Nations Sustainable Development Goals. Every IPCC pathway limiting average temperature increases to 1.5 degrees Celsius or less compared to pre-industrial temperatures is premised on no new deforestation after 2030.¹⁷ An estimated 16 to 30 percent of climate mitigation needed to limit global emissions to 1.5-2 degrees Celsius is based on the assumption that all deforestation ceases by 2030 and a quarter of the 2030 climate mitigation promised in countries' Nationally Determined Contributions comes from land-based mitigation options.¹⁸ The agriculture, forestry, and other land use sector is the only economic sector with its own chapter in the Paris Agreement.

Political support for conserving and restoring forests is evident in Executive Order 14072, issued in April 2022, which seeks to protect domestic forests, boost wildfire resilience and combat global deforestation.¹⁹ The Glasgow Leaders Declaration on Forests and Land-Use, signed in October 2021, commits the U.S. and other nations representing more than 90 percent of the world's forests to ending natural forest loss this decade.²⁰ The G7 Nature Compact, signed in June 2021, also commits the U.S. to halting and reversing biodiversity loss by 2030.²¹

The impacts of deforestation are diverse and far reaching, and their emissions have a cascading and compounding effect on climate change resilience going forward for the following reasons:

¹⁵ Intergovernmental Panel on Climate Change, "Special report on climate change and land use," Summary for Policy Makers, A.3, p. 10, 2019, <https://www.ipcc.ch/srccl>.

¹⁶ Pendrill, Florence, U. Martin Persson, Javier Godar, Thomas Kastner, Daniel Moran, Sarah Schmidt, et al. (2019). Agricultural and forestry trade drives large share of tropical deforestation emissions. *Global Environmental Change* 56:1-10. <https://doi.org/10.1016/j.gloenvcha.2019.03.002>.

¹⁷ *Id.*, citing Rogelj, J., et al. (2018). Mitigation pathways compatible with 1.5°C in the context of sustainable development. <https://www.ipcc.ch/sr15/chapter/chapter-2/>.

¹⁸ Intergovernmental Panel on Climate Change, "Special report on climate change and land use," Summary for Policy Makers, A.3, p. 10, 2019, <https://www.ipcc.ch/srccl>.

¹⁹ The White House Briefing Room, FACT SHEET: President Biden Signs Executive Order to Strengthen America's Forests, Boost Wildfire Resilience, and Combat Global Deforestation, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/22/fact-sheet-president-biden-signs-executive-order-to-strengthen-americas-forests-boost-wildfire-resilience-and-combat-global-deforestation/>

²⁰ Georgina Rannard & Francesca Gillett, BBC News, "COP26: World leaders promise to deforestation by 2030, Nov. 2, 2021.

²¹ G7, 2030 Nature Compact, <https://www.gov.uk/government/publications/g7-2030-nature-compact>.

1. **Indigenous People and Local Communities (IPLC):** Displacement of Indigenous People risks the loss of traditional cultures and valuable expertise in maintaining healthy ecosystems that aid in mitigating climate change. Receding tropical forests have already led to frequent land disputes between commodity producers and Indigenous Peoples and local communities.²² Illegal encroachment onto Indigenous territories and land insecurity have also heightened violence against environmental defenders defending their homes.²³ IPLCs are the most effective protectors of forest carbon and biodiversity, which is vital for investors given that intact ecosystems are worth \$44 trillion to the global economic sector.²⁴ The traditional knowledge of IPLCs continues to be the basis for medicines and foods of priceless value. All climate mitigation measures should include these groups as important partners because at least 36 percent of the world’s large, unbroken swaths of natural forests, known as “intact forests,” are held by Indigenous People, along with about 80 percent of remaining biodiversity.²⁵
2. **Carbon storage:** Terrestrial ecosystems such as forests and peatlands store large amounts of carbon dioxide each year. Deforestation-related emissions should not be conflated with those of other sectors because the role of forests in sequestering carbon today and in future years is essential to the Paris Agreement 1.5c pathway and the financial stability that entails.
3. **Illegal activity:** Complex and opaque supply chains provide a cover for illegal activities, including deforestation and linked economic crimes and human rights abuses. Most deforestation in the developing world linked to internationally traded commodities is illegal (violates local law) and connected to organized crime.²⁶ Corruption, bribery, money laundering, illegal logging, and other illegal acts referred to as “forest crimes” are common in the forest and land-use sectors in many developing countries. Where financial institutions are handling the proceeds of crime, these pose a significant material financial risk. The potential consequences, which can be widespread, include social conflict, injustice, poverty, economic stagnation, and carbon emissions.
4. **Biodiversity loss:** Habitat loss has caused a biodiversity crisis that threatens valuable ecosystem services. Nowhere is this more apparent than in tropical forests, which are home to more than 80 percent of animal, plant, and fungi biodiversity.²⁷ Wildlife populations, including mammals, birds, fish, amphibians, and reptiles, reduced by 68 percent since 1970 and about one million animal and plant species face the threat of extinction.^{28,29} The agriculture sector is responsible for about 80 percent of deforestation globally, but it is also among the sectors most reliant on ecosystem services, particularly pollination.³⁰ Pollinator loss is currently placing USD 235 billion

²² See, for example, Global Witness ‘Beef, Banks and the Brazilian Amazon’, 2021, <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>; Global Witness, ‘The True Price of Palm Oil’, 2021, <https://www.globalwitness.org/en/campaigns/forests/true-price-palm-oil/>; Global Witness, ‘Deforestation Dividends’, 2021, <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>.

²³ Global Witness, ‘Global Witness records the highest number of land and environmental activists murdered in one year – with the link to accelerating climate change of increasing concern,’ 29 July 2020, <https://www.globalwitness.org/en/press-releases/global-witness-records-the-highest-number-of-land-and-environmental-activists-murdered-in-one-year-with-the-link-to-accelerating-climate-change-of-increasing-concern/>.

²⁴ World Economic Forum, ‘The Global Risks Report 2020,’ <https://www.weforum.org/reports/the-global-risks-report-2020/>; see also Garnett, S.T., Burgess, N.D., Fa, J.E. et al. 2018, (July). A spatial overview of the global importance of indigenous lands for conservation. *Natural Sustainability*. 1, 369–374. Available at <https://doi.org/10.1038/s41893-018-0100-6>.

²⁵ Peter G. Veit, ‘9 Facts About Community Land and Climate Mitigation,’ October 2021, <https://files.wri.org/d8/s3fs-public/2021-10/9-facts-about-community-land-and-climate-mitigation.pdf>.

²⁶ Forest Trends, ‘Illegal agriculture is the main reason we’re still losing forests. Is a crackdown coming?’ 19 May 2021, <https://www.forest-trends.org/blog/illegal-agriculture-is-the-main-reason-were-still-losing-forests-is-a-crackdown-coming/>.

²⁷ UN Environment Programme, ‘UNEP and Biodiversity,’ September 2020, <https://www.unep.org/unep-and-biodiversity>.

²⁸ WWF, Living Planet Report 2020, <https://livingplanet.panda.org/en-us/>.

²⁹ UN Sustainable Development Goals, ‘UN Report: Nature’s Dangerous Decline ‘Unprecedented’; Species Extinction Rates ‘Accelerating,’” 6 May 2021, <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>.

³⁰ Id. 14

to 577 billion of annual agricultural production at risk.³¹ The economic cost of biodiversity loss is already estimated to be between USD 2.0 trillion and 4.5 trillion per year.³²

5. **Soil Degradation:** Soil degradation costs an estimated USD 400 billion every year and has been linked to a potential 12 percent reduction in global food productivity and a 30 percent increase in food prices by 2030.³³ Degradation is driven by the loss of organic matter, fertilizers, soil erosion, pesticide and other types of contamination, salinization, acidification, and a loss of genetic diversity.³⁴ Soil erosion, for example, is a major consequence of tropical deforestation because soil can no longer rely on intricate root structures to hold it in place or canopies to protect it from drying in the sun. Although recently deforested land may support productive agricultural activity, soil fertility decreases over time as it is blown or washed away.
6. **Global water cycles:** As deforestation and land use change lead to the conversion of tropical forests to grasslands or savanna, less moisture is stored and released into the atmosphere. Thus, the hydrological cycle is disrupted with a major ripple effect on precipitation patterns around the world. Climate scientists have predicted a tipping point when 20–25 percent of the Amazon is cut down, warning that the rainforest’s hydrological cycle will be unable to support itself and the biome will convert to a savanna.³⁵ Since the Amazon provides water to a region in South America responsible for 70 percent of the continent’s GDP, the risk to the continent’s financial sector is sizeable. This problem is not limited to South America.³⁶ Deforestation in the Amazon could lead to a 25 percent reduction in rainfall in Texas, for example.³⁷ Meanwhile, deforestation in Central Africa could reduce rainfall in the US Midwest by 5-35 percent and deforestation in Southeast Asia can influence rainfall in Europe.³⁸
7. **Clean Drinking Water and Flood Mitigation:** Deforestation and land use change can have devastating implications to the availability and quality of clean drinking water to populations both locally and regionally. Forested land covers about 31 percent of watersheds worldwide and provides essential storage and filtration services.³⁹ By absorbing nutrients and sediment, forests provide clean drinking water to large populations in urban centers downstream and can reduce infrastructure investments and water management costs.⁴⁰ By storing water in roots, branches, and canopies, forests can also reduce the intensity of flooding and mitigate irregular rainfall patterns. Conversely, deforestation and land use change can lead to devastating flooding, increased need for costly infrastructure, and significant pollution because of the loss of ecosystem services and preventing the previously discussed runoff agricultural fertilizers and pesticides.

³¹ Ceres, PRI, Climate Action 100+, “Global Sector Strategies: Recommended Investor Expectations For Food and Beverage,” August 2021, <https://www.climateaction100.org/wp-content/uploads/2021/08/Global-Sector-Strategies-Food-and-Beverage-Ceres-PRI-August-2021.pdf>.

³² The Sustainable Finance Platform, “Biodiversity Opportunities and Risks for the Finance Sector,” June 2020, https://nwbbank.com/download_file/729/783.

³³ Peter M. Kopittke et. al. “Soil and the Intensification of Global Agriculture for Global Food Security,” Environment International, <https://www.sciencedirect.com/science/article/pii/S0160412019315855#bbb0055>.

³⁴ Id.

³⁵ The Nature Conservancy, “The Amazon Approaches Its Tipping Point,” August 2020, <https://www.nature.org/en-us/what-we-do/our-insights/perspectives/amazon-approaches-tipping-point/>.

³⁶ Id.

³⁷ Greenpeace, “Impacts of Deforestation on Weather Patterns and Agriculture,” October 2013, <https://wayback.archive-it.org/9650/20200430193134/http://p3-raw.greenpeace.org/international/Global/international/publications/forests/2013/JN455-An-Impending-Storm.pdf>.

³⁸ Mongabay, “Rainforests Help Maintain the Water Cycle,” July 2020, <https://rainforests.mongabay.com/kids/elementary/404.html>.

³⁹ Katie Lyons and Todd Gartner, “3 Surprising Ways Water Depends on Healthy Forests,” World Resources Institute, 21 March 2017, <https://www.wri.org/insights/3-surprising-ways-water-depends-healthy-forests>.

⁴⁰ Suzanne Ozment et. al. “Protecting Drinking Water At The Source,” World Resources Institute, https://wriorg.s3.amazonaws.com/s3fs-public/Protecting_Drinking_Water_at_the_Source.pdf.

8. **Infectious disease outbreak:** Deforestation and land use change lead to habitat loss and increase the likelihood of zoonotic infectious diseases that result from proximity between humans and animals. As infectious disease emergence is driven primarily by land use change (31 percent), followed by agriculture (15 percent), commodity-driven deforestation is a primary risk factor for future pandemics.⁴¹ Furthermore, according to some studies, 75 percent of emerging infectious diseases are zoonotic compared to 60 percent of all existing infectious diseases, which indicates that habitat loss resulting from land use change is playing an increasing role in infectious disease emergence over time.⁴² The Covid-19 pandemic has provided some insight into the potential costs of infectious diseases to both humans and the economy. In addition to the millions of lives lost, as early as October of 2020, the International Monetary Fund estimated that the pandemic would cost the global economy 28 trillion in lost output.⁴³ Without halting deforestation, the likelihood of society being exposed to more costly zoonotic diseases we are unprepared to manage will continue to increase.
9. **Pollution:** In addition to absorbing CO₂, trees absorb toxic chemicals and filter the air providing noteworthy benefits to human health. Despite only covering 6 percent of land, tropical forests produce 40 percent of the world's oxygen alongside the absorption of harmful pollutants.⁴⁴ Furthermore, particulate matter from fires linked to longer dry seasons and land clearing for agricultural use has been shown to increase pollution-related hospitalizations by 65 percent and to cost the Brazilian public healthcare system the equivalent of USD 660,000 during the 2019 fire season.⁴⁵ With wildfire seasons increasing in severity and longevity, driven by climate change and the effects of global deforestation, a major step in mitigating the potential pollution impacts must include curbing global deforestation.
10. **Environmental refugees and local conflict:** By depleting the ecosystem services that millions of people rely on for food, clean water, and energy, deforestation and land use change are likely to create climate change refugees and exacerbate geopolitical conflict. The inevitable floods, droughts, and repeated crop failures are likely to destabilize economies as they become unable to support their populations. Over 1.2 billion people could become climate change refugees by 2050.⁴⁶ The world is already experiencing climate refugees and will continue to see an increase of this tragedy in the near-term. For example, the 90 percent reduction in the size of Lake Chad has provided some insight into the scale of potential migration patterns with 2.4 million displaced people and increased geopolitical conflict in the region.⁴⁷
11. **Medical Innovation:** Future medical breakthroughs are dependent on the conservation of plant biodiversity today. The market for medicinal plant products is valued at over 100 billion USD and approximately 80 percent of the global population is reliant on botanical drugs.⁴⁸ Moreover, a

⁴¹ Elizabeth Loh et al. "Targeting Transmission Pathways for Emerging Zoonotic Disease Surveillance and Control," July 2015, <https://www.liebertpub.com/doi/abs/10.1089/vbz.2013.1563>.

⁴² UNEP, "Emerging Issues of Environmental Concern," 2016, https://wesr.unep.org/media/docs/assessments/UNEP_Frontiers_2016_report_emerging_issues_of_environmental_concern.pdf.

⁴³ The Guardian, "The IMF Estimates Global Covid Cost at USD 28 Trillion in Lost Output," 2020, <https://www.theguardian.com/business/2020/oct/13/imf-covid-cost-world-economic-outlook>.

⁴⁴ Jeri Curley, "How Does Deforestation Affect the Air?" 16 March 2018, Sciencing, <https://sciencing.com/deforestation-affect-air-10632.html>.

⁴⁵ Andre Albuquerque Sant Anna & Rudi Rocha, "Health Impacts of Deforestation-Related Fires in the Brazilian Amazon," August 2020, https://www.hrw.org/sites/default/files/media_2020/08/Health%20Impacts%20of%20Deforestation-Related%20Fires%20in%20the%20Amazon_EN_0.pdf.

⁴⁶ Tetsuji Ida, "Climate Refugees – the World's Forgotten Victims," 18 June 2021, <https://www.weforum.org/agenda/2021/06/climate-refugees-the-world-s-forgotten-victims/>.

⁴⁷ UN Migration, "Environmental Migration Portal," <https://environmentalmigration.iom.int/country/chad>.

⁴⁸ Abayomi Sofowora, "The Role and Place of Medicinal Plants in the Strategies for Disease Prevention," 12 August 2013, National Library of Medicine, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3847409/>.

quarter of modern medicine originates in tropical forests.^{49,50} Yet, scientists have only scratched the surface of cataloging and understanding the vast biodiversity of the world's forests. It is estimated that up to 100 species of animal and plant species disappear per day as tropical forest habitats are destroyed.⁵¹ A loss of plant biodiversity before medicinal impacts are understood is likely to lead to adverse impacts on human health and a slowdown in innovation in the pharmaceutical industry globally.

2. Financially material risks from deforestation

Financial markets have already signalled that they consider deforestation a financially material climate risk. This is true of regulators and the private sector alike. For example, the Network for Greening the Financial System (NGFS), which brings together 114 central banks including the Federal Reserve, has acknowledged biodiversity loss and deforestation are physical and transition risks.⁵² This conclusion has also been independently reached by the Federal Reserve and the U.S. Commodity Futures Trading Commission in their own climate analysis.⁵³

Concern over deforestation is also evident in the private sector. The Investors Policy Dialogue on Deforestation (IPDD) represents over US \$8.5 trillion assets under management, indicating investors' growing concern.⁵⁴ IPDD was established in 2020, and is comprised of 58 financial institutions and investors concerned about the "financial impacts that deforestation and the violation of the rights of indigenous peoples and local communities may have on their clients and investee companies by potentially increasing reputational, operational and regulatory risks."⁵⁵ It identifies three channels by which deforestation risks create financial risk for issuers and investors: ESG risks; supply chain risks; and finance sector risks.⁵⁶

⁴⁹ "Ten things you may not know about forests," Food and Agriculture Organization of the United Nations, September 2017, <https://www.fao.org/zhc/detail-events/en/c/1033884/>.

⁵⁰ Tuhinadri Sen & Samir Kumar Samanta, "Medicinal Plants, Human Health and Biodiversity: A Broad Review," Biotechnological Applications of Biodiversity, https://link.springer.com/chapter/10.1007/10_2014_273.

⁵¹ COP9 Press Kit Forests, "Forest Biodiversity," <https://www.cbd.int/doc/meetings/cop/cop-09/media/cop9-press-kit-forest-en.pdf>.

⁵² Network for Greening the Financial System (NGFS), "2022.

⁵³ Financial Stability Oversight Committee, Report on Climate-Related Financial Risk, 2021, <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>, p. 49; Managing Risk in the U.S. Financial System, Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, 2020, <https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf>, p. 31

⁵⁴ See IPDD, <https://www.tropicalforestalliance.org/en/collective-action-agenda/finance/investors-policy-dialogue-on-deforestation-ipdd-initiative/>. IPDD has a secretariat established by the World Economic Forum, and is supported by PRI (U.N. Principles for Responsible Investment).

⁵⁵ *Id.*

⁵⁶ *Id.* Among ESG risks, IPDD identifies GHG emissions, biodiversity loss, flood and soil erosion, and rainfall reduction among environmental risks; land rights violations, Indigenous peoples' rights violations; and health hazards from increased exposure to haze as among social risks of concern; and illegality of the deforestation, bribery to reduce enforcement of limits on permissible forestry or agriculture, and financial crimes, including tax evasion and money laundering, as among governance concerns. Supply chain risks include productivity declines; property damage; increased security staff costs, inability to adapt to changes in regulation, litigation for failure to manage ESG risks, and cancellation of contracts and reduced demand from consumers concerned about deforestation. Finance sector risks include losses to investors from stranded assets or negative returns on investments; banks' losses from nonperforming loans, increased default risk and loss of revenues; regulatory risks from the inability of companies to meet new regulatory requirements, such as due diligence/ESG requirements and risk weightings; failure to disclose ESG risks in portfolios; possible litigation against investors for breach of fiduciary duty due to failure to integrate ESG; increased accountability for ESG impacts under the new OECD guidelines; and reputational risks from damage to brand value and loss of credibility as a responsible investor or bank. *Id.*

At COP26, 30 financial institutions with more than US\$ 8.7 trillion in assets committed to eliminate agricultural commodity-driven deforestation in their portfolios by 2025.⁵⁷ In 2020, 230 investors with \$16.2 trillion AUM published a joint statement during Brazilian wildfire season urging: “As investors, we see deforestation and the associated impacts on biodiversity and climate change as systemic risks to our portfolios and see the reduction of deforestation as a key solution to managing these risks and contributing to efficient and sustainable financial markets in the longer term.”⁵⁸

The Glasgow Financial Sector Alliance for Net Zero (GFANZ) – launched at President Biden’s climate summit in April 2021 – now represents 450+ members with more than \$130 trillion in assets under management and advice.⁵⁹ GFANZ says financial institutions should have a specific deforestation policy as part of a *credible* transition plan.⁶⁰ Their guidance stipulates that the mere existence of an agricultural or anti-deforestation policy is not enough, it must also include an ‘assessment of financing linked to deforestation activities’.⁶¹ GFANZ also acknowledges that a net zero pathway for the agriculture sector is neglected compared to other carbon-intensive sectors such as energy and transport.⁶² The Alliance considers inconsistent global due diligence standards and the lack of impartial environmental information provided by clients to be a barrier to deforestation-free finance.⁶³

The financial risks of deforestation are particularly acute with respect to seven forest-risk commodity products, namely: cattle (and all derivatives, such as beef and leather), palm oil, soy, timber, natural rubber, cacao, and coffee).⁶⁴ A broad cross-section of industrial and retail sectors in the United States are directly exposed to tropical commodity value chain risks. These sectors include food and beverage processing and production, automobile manufacturing, textiles, chemicals, pharmaceuticals, retail, food services, personal care products, print publishing, forestry, construction, energy and biofuels, and finance.⁶⁵ The degree to which different companies and financial institutions are exposed to each forest risk commodity will depend on their industry and therefore all commodities and sectors should be in scope of any disclosure rules.⁶⁶

Below is a summary of the types of climate change risks in forest, food, and land, according to TCFD classifications.

Physical climate-related financial risks from deforestation:

1. Deforestation exacerbates the physical risk from climate change by reducing the capacity of carbon sinks, eroding fertile soil, changing local precipitation patterns, and increasing the likelihood of more extreme weather events. These changes are, in turn, likely to lead to lower agricultural yields and stranded assets.⁶⁷

⁵⁷ Global Canopy, Eliminating Commodity-Driven Deforestation: Finance Sector Roadmap’, <https://www.globalcanopy.org/insights/video/eliminating-commodity-driven-deforestation-finance-sector-roadmap/>

⁵⁸ ‘Investor statement on deforestation and forest fires in the Amazon’, 2020, <https://www.ceres.org/sites/default/files/Investor%20statement%20on%20deforestation%20and%20forest%20fires%20in%20the%20Amazon.pdf>

⁵⁹ GFANZ membership list as of November 21: <https://www.gfanzero.com/progress-report/>

⁶⁰ GFANZ 2021 Progress Report, <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf>, p. 74

⁶¹ Id., p. 74

⁶² Id., p. 76

⁶³ Id., p. 76

⁶⁴ CDP, “The Collective Effort to End Deforestation: A Pathway for Companies to Raise their Ambitions,” p. 5, March 2021, <https://cdp.net/en/forests>.

⁶⁵ See Figure 1 in the Appendix for more information on the specific risks in various industries.

⁶⁶ CDP, “Revenues in jeopardy as companies reliant on commodities linked to deforestation underestimate risk,” December 2016, <https://www.cdp.net/en/articles/media/press-release-revenues-in-jeopardy-as-companies-reliant-on-commodities-linked-to-deforestation-underestimate-risk>.

⁶⁷ Niamh McCarthy and Matthew Piotrowski, “Climate-Related Forest, Food, and Land Risks Threaten US Financial Stability,” Climate Advisers, January 2021, <https://www.climateadvisers.org/wp-content/uploads/2022/01/Climate-Advisers-Climate-Related-Forest-Food-and-Land-Risks-Threaten-US-Financial-Stability.pdf>.

2. North America is reliant on ecosystem services from healthy intact tropical forests to regulate precipitation patterns vital to agricultural production, inspire medical breakthroughs, prevent mass migration, and curb the emergence of infectious diseases like Covid-19, and much more.⁶⁸

Transition climate-related financial risks from deforestation:

1. Policy and legal risks result from government policy changes, litigation, or law enforcement.
 - a. In 2021, US Senator Brian Schatz and U.S. Representatives Earl Blumenauer and Brian Fitzpatrick unveiled the Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act, a bipartisan legislation that would create a framework for the federal government to combat illegal deforestation by prohibiting the importation of products made wholly or in part of certain commodities produced on illegally deforested land.⁶⁹
 - b. California and New York introduced bills on public procurement legislation which could require state governments that would purchase products to ensure they are free of deforestation.⁷⁰
 - c. The COP26 Glasgow Leaders Declaration that resulted in pledges from over 140 countries to halt deforestation by 2030 is likely to accelerate conservation efforts for high conservation value and high carbon stock land.⁷¹ For example, in Indonesia, as much as 76 percent of unplanted palm oil concessions may experience legal or economic stranding by 2040 due to conservation efforts in line with international pledges and the country's Nationally Determined Contribution.⁷²
 - d. Orbitas Finance estimates that conservation efforts globally will result in a 52 percent decrease in the availability of agricultural land, which would increase the cost of agricultural expansion and, in turn, global commodity prices.⁷³
 - e. International momentum on carbon pricing is estimated to increase the operating costs of emissions-intensive agricultural producers by as much as 14 percent.⁷⁴ Similarly, carbon border adjustment mechanisms being debated or adopted in key financial centres such as the European Union will have significant ripple effects across supply chains.
 - f. New supply chain due diligence obligations in the European Union and the UK will require businesses to prove their products and services are deforestation-free, which could negatively impact global businesses if they are not prepared or cannot or have not developed the resources to do so.⁷⁵

⁶⁸ Id. 21

⁶⁹ See <https://www.congress.gov/bill/117th-congress/senate-bill/2950/text> and <https://www.schatz.senate.gov/news/press-releases/schatz-blumenauer-unveil-new-bipartisan-legislation-to-help-stop-illegal-deforestation-around-the-world-fight-climate-change>

⁷⁰ The California Deforestation Free Procurement Act and the New York Deforestation Free Purchasing Act, see <https://www.nysenate.gov/newsroom/press-releases/anna-m-kaplan/new-york-deforestation-free-procurement-act-introduced> and https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB416

⁷¹ Jake Spring and Simon Jessop, "Over 100 global leaders pledge to end deforestation by 2030," Reuters, November 2021, <https://www.reuters.com/business/environment/over-100-global-leaders-pledge-end-deforestation-by-2030-2021-11-01/>.

⁷² Orbitas, "Climate Transition Risk Analyst Brief: Indonesian Palm Oil", August 2021, <https://orbitas.finance/2021/08/27/indonesian-palm-oil-deforestation-climate-transition-risk/>.

⁷³ Orbitas, "Agriculture in the Age of Climate Transitions: Stranded Assets. Less Land. New Costs. New Opportunities," December 2020, <https://orbitas.finance/2020/12/03/ag-climate-transitions-risk-opportunities/>.

⁷⁴ Id. 66

⁷⁵ Chain Reaction Research, "The Chain: EU Proposal on Deforestation-Linked Products Poses Risks for Companies, Investors," November 2021, <https://chainreactionresearch.com/the-chain-eu-proposal-on-deforestation-linked-products-poses-risks-for-companies-investors/>.

- g. The European Union is set to adopt mandatory human rights and environment due diligence under the Corporate Sustainability Due Diligence Directive, affecting all companies trading into the single market.⁷⁶
 - h. Legal actions are increasingly being taken against high emitting companies that are responsible for escalating climate-related damages, including deforestation cases.⁷⁷ In 2020, the Australia and New Zealand Banking Group repaid Cambodian victims the profits it had made from an estimated \$40 million loan to an alleged land-grabbing sugar company nine years earlier.⁷⁸
2. Technology risks originate from disruptive innovations or the rise of substitute products.
 - a. In a world with land availability constraints due to forest conservation, supply chains that prioritize emissions reduction technologies and investments that increase productivity will be more resilient to supply chain disruptions.⁷⁹
 - b. Alternatively, a lack of investment into new agroforestry techniques and technologies may also lead to lower yields than competitors or reduced resilience to climate change.
 3. Market risks arise from quickly changing market dynamics.
 - a. Consumer demand for low carbon and deforestation-free sourcing has increased No Deforestation, No Peat, No Exploitation (NDPE) requirements in consumer goods companies, manufacturers, and retailers. In turn, NDPE policies now cover around 83 percent of palm oil refineries.⁸⁰ On the other hand, companies without effective mechanisms to prevent deforestation in supply chains risk global market access declines as trends in consumer preferences continue. As the industry moves toward no-deforestation policies and monitoring, climate laggards risk a declining market and rising input costs due to upstream physical and operational risks.
 - b. In November 2021, over 30 financial institutions with USD 8.7 trillion in assets under management committed to ending investment in deforestation-linked activities by 2025, which may jeopardize access to credit for companies that do not mitigate these risks.⁸¹
 - c. In 2020, 230 investors with \$16.2 trillion AUM, asked hundreds of companies to either meet their commodities supply chain deforestation commitments or risk economic consequences. The letter outlines that “[c]onsidering increasing deforestation rates and recent fires in the Amazon, we are concerned that companies exposed to potential deforestation in their Brazilian operations and supply chains will face increasing difficulty accessing international markets”.⁸²
 4. Reputational risks associated with deforestation and linked-human rights abuses damage a company’s public image.
 - a. Investors and consumers alike are demanding that companies align products and services with global emissions-reduction goals and no-deforestation policies.
 - b. Companies face increased scrutiny from NGOs, consumers, and governments if deforestation risk is not accurately disclosed.

⁷⁶ European Commission, Just and sustainable economy, 23 February 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

⁷⁷ FP, Climate & Systemic Risk: The financial sector’s role in managing risk and accelerating the transition to net-zero,” <https://foreignpolicy.com/2021/11/29/global-finance-and-management-of-climate-related-risk/>.

⁷⁸ ANZ compensates Cambodian families forcibly evicted to make way for sugar plantation - ABC News

⁷⁹ Orbitas, “Agriculture in the Age of Climate Transitions: Stranded Assets. Less Land. New Costs. New Opportunities,” December 2020, <https://orbitas.finance/2020/12/03/ag-climate-transitions-risk-opportunities/>.

⁸⁰ Chain Reaction Research, “NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%,” April 2020, <https://chainreactionresearch.com/report/ndpe-policies-cover-83-of-palm-oil-refineries-implementation-at-75/>.

⁸¹ Global Canopy, “Thirty financial institutions commit to tackle deforestation,” November 2021, <https://globalcanopy.org/press/thirty-financial-institutions-commit-to-tackle-deforestation/>.

⁸² ‘Investor statement on deforestation and forest fires in the Amazon’, <https://www.ceres.org/sites/default/files/Investor%20statement%20on%20deforestation%20and%20forest%20fires%20in%20the%20Amazon.pdf>

- c. Strategic litigation brought in deforestation cases poses a significant risk to the defendant, regardless of the outcome of the case.

Given the systemic material risks to investors and the financial system if limiting temperature increases of 1.5 degrees Celsius is not achieved, specific climate-related disclosure of deforestation risks needs to be more clearly incorporated into the ruling the SEC ultimately promulgates.

3. The Role of Precedent in the Materiality of Forest, Food, and Land Risk

A key factor that has informed the SEC's consideration of expanded climate disclosure has been investors' increasing understanding that climate change data is material to their decisions concerning buying, selling, or voting shares in individual companies.

Investors have consistently called for global governments to mandate climate change related risk disclosures from companies that would be beneficial to aid them in managing investment risk. In April 2021, US investor groups Ceres and the UN sponsored Principles for Responsible Investment in conjunction with the CDP wrote to Congress supporting mandatory climate disclosure that will protect investments.⁸³ In June 2021, more than 450 investors managing \$USD 41 trillion in AUM wrote to world leaders calling for, among other things, the implementation of mandatory climate risk disclosure requirements.⁸⁴ In October 2021, global institutional investors with over \$50 trillion AUM called on governments to implement mandatory climate risk disclosures among a suite of other measures to combat climate change.⁸⁵

This demonstrates that the market considers climate-related risks to be material. In their discussions of materiality, most investors rely upon the U.S. Supreme Court's decision in *TSC v. Northway*, 426 U.S. 438 (1976), which defined material information in the proxy context as information that "a reasonable shareholder would consider important in deciding how to vote." As the Court stated, "[p]ut another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Id.* at 449. The importance of the omitted fact need not be outcome determinative. A plaintiff would not need to show that disclosure would likely have affected the outcome of the proxy vote at issue to prevail. Rather, the significance of an omitted fact in altering the total mix of information available was emphasized.

As articulated, materiality is not a bright-line standard, but is rather a fact intensive analysis in any individual litigation. The perspective from which materiality is to be determined is clear: materiality is to be determined from the perspective of reasonable investors. Investors have increasingly stated that they incorporate climate and ESG information into their portfolio construction, including in relation to deforestation risk, and therefore the SEC has begun the rule-making process at issue here. Information on the social and nature- and climate-related risks and impacts of deforestation clearly of interest to 'reasonable shareholders' today, as outlined throughout this response.

This materiality standard, first set out in the proxy context, was expressly adopted to the context of a Section 10(b)/Rule 10b-5 fraud cause of action in *Basic v. Levinson*, 485 U.S. 224 (1988). At issue in *Basic v. Levinson* was something that might happen—a merger between two companies, and so the U.S. Supreme Court was asked how to define the materiality of "contingent or speculative" information. It did so in *Basic v. Levinson*, 485 U.S. 224 (1988) as follows: "[M]ateriality 'will depend at any given time

⁸³ https://theinvestoragenda.org/wp-content/uploads/2021/04/FINAL_-_US-Investor-Groups_IA-Biden-Letter.pdf

⁸⁴ <https://www.cnn.com/2021/06/10/investing/climate-change-g7-investors/index.html>

⁸⁵ <https://theinvestoragenda.org/wp-content/uploads/2021/09/2021-Global-Investor-Statement-to-Governments-on-the-Climate-Crisis.pdf>

upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity,” citing *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 862 (2d Cir. 1968) (*en banc*). The greater the magnitude of potential impact, the lower the probability of occurrence needed in order to understand information as “material.”

Generally, the materiality of a future event is evaluated from a specific company perspective, such as the materiality of a merger to a target company’s shareholders, as in *Basic v. Levinson*. Still, it is possible to use the *Basic v. Levinson* process of analysis to evaluate some of the implications of deforestation to commodity agriculture companies and the users of those products as a general matter. For example, if companies and financial institutions continue to finance deforestation, the physical and transitional risk is of significant enough magnitude to be understood to be financially “material.” Companies importing significant quantities of forest-risk commodities should disclose information, both quantitative and qualitative, about the risks of deforestation, regulatory risks that might lead to asset stranding and value chain parameters. This information can portend future financial risks of significant magnitude, and the probability of these risks is high, such that the information is material under the *Basic v. Levinson* standard. This “probability/magnitude” process of analysis is also not a bright-line rule, notwithstanding its use of mathematical language.

Also relevant to materiality are voting rights. Prior SEC commissioners have often spoken of investors’ interests narrowly, emphasizing the importance, thus materiality, of information for making decisions on buying or selling securities, and de-emphasizing or entirely ignoring investors’ voting rights. It is therefore useful for the Commission to understand the importance of voting rights in the context of climate change and deforestation. Shareholders voting on expanded climate disclosure proposals at companies’ annual meetings have increasingly been voting in favor of such disclosure, which is another indication that this is “material” information. For example, in 2020, BlackRock voted in favor of a shareholder resolution requesting an assessment report to identify further opportunities to combat deforestation and degradation of intact forests in Procter & Gamble (P&G) supply chains.^{86,87} After the resolution passed by 67 percent, BlackRock clarified its rationale for supporting the proposal: “As a long-term investor, the reputational and operational risks faced by companies being implicated in deforestation allegations is concerning to us.”^{88,89} BlackRock’s statement also highlighted an opportunity for P&G to further align its responsible forestry disclosures with the TCFD framework and the Sustainability Accounting Standards Board (SASB) standards.

A final point to consider under current law and guidance is disclosure pursuant to Regulation S-K’s Item 303, Management Discussion and Analysis, MD&A. For the most part, the SEC encourages but does not require forward-looking information to be disclosed. Item 303 of Regulation S-K, MD&A, is one exception, where known events, trends, or contingencies that may have a material effect on the company’s assets or results of operations are required to be disclosed. The goal of this disclosure is for investors to be able to see and evaluate companies’ financial results “through the eyes of management,” and so to have a clear view of future financial risks to the company.

The SEC has provided guidance on the process of analysis it expects companies to use in preparing their company’s MD&A disclosure. It emphasizes that if a company cannot rule out that an event, trend, or contingency will occur, then it must evaluate the potential effect of that event, trend or contingency on

⁸⁶ “Voting Bulletin: The Procter & Gamble Company,” Blackrock Investor Stewardship Group, 2020, <https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-procter-and-gamble-oct-2020.pdf>, <https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-procter-and-gamble-oct-2020.pdf>.

⁸⁷ P&G 2020 Proxy Statement, 2020, https://s1.q4cdn.com/695946674/files/doc_financials/2020/ar/PG-Bookmarked-Proxy-Statement.pdf.

⁸⁸ “P&G Shareholders Deliver Overwhelming Vote for Better Forest Sourcing,” NRDC, October 2020, <https://www.nrdc.org/media/2020/201013>.

⁸⁹ *Id.* 15

the company's assets, revenues, or profits on the assumption that it will occur.⁹⁰ Where the natural resource constraints imposed by climate change and continued deforestation are known contingencies that firms are currently exposed to, or likely will be exposed to in the future, companies therefore need to evaluate and disclose those resource constraints to meet the requirements of Item 303 under current law. That said, further industry-specific SEC guidance, such as we would recommend should be produced, will clarify issuers' obligations, and provide investors with material information concerning future risks and contingencies.

See page 17 for a discussion of the necessary 'double materiality' approach that should be taken by the SEC to effectively capture all relevant material information for investors. What can be taken from the above is that the concept of materiality is meant to be flexible as contexts change. That underlying principal stems from the Supreme Court's holding rejecting a bright line test for materiality in *Basic*.

B. Priority issues for investors' access to deforestation data

We turn now to discussing three priority recommendations to strengthen the Commission's proposals and better protect investors and communities most affected by climate change.

1. The SEC Should Close Loopholes in Scope 3 Disclosure Recommendations: Disclosure of Scope 3 emissions should be mandatory for all registrants, including financial institutions, based on the best available data and methodologies. At a minimum, disclosure of Scope 3 emissions should be mandatory for companies and financial institutions at risk of deforestation and land conversion in their value chains. This is necessary because emissions from deforestation and land use produce significant GHG emissions and affect both current year emissions and future carbon storage capacity. Reporting Scope 3 emissions – including those related to land use – is compulsory for members of the Race to Zero and therefore GFANZ framework and is required by the Science Based Taskforce initiative (SBTi).⁹¹

The Commission has proposed that companies disclose their Scope 1 and 2 emissions, but predicates Scope 3 emissions disclosures on internal materiality assessments and therefore offers a form of safe harbour. We strongly caution against this approach because leaving Scope 3 disclosure subject to an internal and non-standardized materiality assessment would not serve the interests of investors or communities most affected by climate change.

There are several reasons we support mandatory Scope 3 disclosure.

First, as for many industries with significant climate and transition risk, including forest, agriculture, food, other land use, Scope 3 emissions are the most significant sources of all GHG emissions.⁹² The food sector and fast moving consumer goods, for example, often see 83 and 90 percent of their total GHG emissions in the Scope 3 classification respectively.⁹³ For a company like Nestlé, requiring only scope 1 and 2 emissions would mean that investors see only 5 percent of the company's total GHG emission footprint.⁹⁴ Scope 3 emissions in the downstream companies dependent on tropical commodities typically comprise upwards of 80 percent of total emissions. For example, Mars Inc. estimated that 29

⁹⁰ Management's Discussion and Analysis (MD&A) – fasab.gov/handbook_sffac_3.pdf (fasab.gov)

⁹¹ Race to Zero criteria, <https://racetozero.unfccc.int/system/criteria/>; specific SBTi guidance will be released for forest, land use and agriculture in Summer 2022: <https://www.sciencebasedtargets.org/>

⁹² <https://www.sec.gov/comments/climate-disclosure/cl12-20109655-264012.pdf> and [Microsoft Word - GHG Protocol Agricultural Guidance \(April 25\).docx](https://www.sec.gov/comments/climate-disclosure/cl12-20109655-264012.pdf)

⁹³ World Economic Forum and Boston Consulting Group, "Net-Zero Challenge: The supply chain opportunity," January 2021, https://www3.weforum.org/docs/WEF_Net_Zero_Challenge_The_Supply_Chain_Opportunity_2021.pdf.

⁹⁴ According to Nestlé's 2020 disclosure to CDP, publicly available via: <http://www.cdp.net>.

percent of the company's total scope 1, 2, and 3 emissions are generated from deforestation driven by tropical commodities.⁹⁵ Given that internationally agreed upon climate change targets are predicated on halting deforestation, these supply chain deforestation practices are unsustainable as governments implement climate policies, and present regulatory and transition risk for investors across the economy.

If the goal of the SEC is to provide investors with insight into the financial risk related to a company's or industry's exposure to climate change risks, transparency around only a small fraction of emissions would not effectively achieve this goal. Likewise, the emissions from financial institutions' investing, lending and underwriting activities are on average over 700 times higher than their direct emissions, according to non-profit organisation CDP.⁹⁶ It should be noted that we are only able to evaluate the scale of this issue due to Nestlé and Mars Inc's decision to voluntarily disclose emissions. However, this is not the case for most public companies, and we should not assume that companies will voluntarily share this critical data with investors in the future. Scope 3 emissions reporting is highly unlikely without the SEC's introduction of a new rule.

The Climate Change Report of the Financial Stability Oversight Council ("FSOC"), published in October 2021 concluded that "Scope 3 emissions provide a more complete picture of the transition risks facing an organization, because it includes the risks of increased costs or restrictions throughout its value chain".⁹⁷ The newly released TCFD guidance in October 2021 strongly encourages Scope 3 disclosure, calling it an "essential component" of climate risk analysis.⁹⁸ The World Economic Forum and the Boston Consulting Group have also recognized that Scope 3 disclosures are critical for understanding material climate risks in many industries in a recent report, concluding that "[a]ddressing Scope 3 emissions is fundamental for companies to realize credible climate change commitments."⁹⁹

Furthermore, advocates for investor protection argue that disclosing Scope 3 emissions provides necessary insight into a company's value chain and the impact of products and services after the point of sale. This is vital for better understanding of the company's exposure to both physical impacts of climate change and transition risks, such as new government policies to address emissions, market access and financing risk, reputation risk, and changing consumer demand. In 2022, investors representing USD 4.7 trillion in assets under management stated that:

"As the financial system moves to address climate risk, the lack of adequate data is increasingly clear. Reporting of Scope 1 and 2 emissions leaves gaping information holes that banks, insurance companies, asset managers, governments, investors, and innovators must traverse, impeding action and sound decision making."¹⁰⁰

Second, as governments and consumers respond to the risks of climate change, the lack of Scope 3 emissions disclosure means investors are unable to discern which companies are best positioned to weather these changes. Scope 3 emission disclosures would show investors which companies have business strategies and operations that are able to contend with these changes that could have major impacts on costs, create stranded assets, and threaten profitability.

⁹⁵ Mars, "Mars – Climate Change 2019 report to CDP," 2019. Downloadable from the CDP website: <https://www.cdp.net/en>

⁹⁶ CDP, Financial Services Disclosure Report 2020, <https://www.cdp.net/en/research/global-reports/financial-services-disclosure-report-2020>

⁹⁷ Financial Stability Oversight Council: <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>

⁹⁸ TCFD Guidance on Metrics, Targets, and Transition Plans: <https://www.fsb.org/wp-content/uploads/P141021-2.pdf>

⁹⁹ World Economic Forum and Boston Consulting Group, "Net-Zero Challenge: The supply chain opportunity," p.5, January 2021, https://www3weforum.org/docs/WEF_Net_Zero_Challenge_The_Supply_Chain_Opportunity_2021.pdf.

¹⁰⁰ As You Sow, "75 Investors With \$4.7 Trillion AUM Weigh in on Upcoming SEC Climate Disclosure Rulemaking", March 8, 2022, <https://www.asyousow.org/press-releases/2022/3/8/sec-climate-disclosure-rulemaking>.

Finally, non-disclosure of Scope 3 emissions based on that registrant's own materiality assessment may leave investors with a false sense of an investment's risk/return profile. It may become far more difficult to compare risks and potential returns between companies within the same industries where materiality determinations differ, particularly since it would increase burden on the investor (retail or otherwise) to understand and compare the basis for those materiality determinations.

The lack of required disclosure similarly poses additional risk to responsible leaders in the corporate sector. Companies that choose to disclose Scope 3 emissions may face a disadvantage as their emission profiles may look drastically different than those who do not disclose, particularly if investors are not well versed in emissions terminology. This would punish the highest performing actors and investors will not have the necessary data to accurately compare the risks of investing in similar companies within an industry if emissions data is not standardized.

Multiple large financial institutions and investors responding to the March 15, 2021, Request for Information on climate change disclosure actively supported a Scope 3 disclosure requirement. Although we disagree with some of these responders that there is any need for a safe harbor or phased in approach, we agree that Scope 3 emissions disclosure is material and should therefore be mandatory.¹⁰¹ If the SEC is determined to keep the current materiality qualifier to Scope 3 in the final rule, as opposed to adopting mandatory disclosure as we recommend, the Commission should add a requirement that all registrants provide a methodology and explanation of how a registrant came to the determination and decision their emissions were immaterial. Whether the data on Scope 3 emissions is material depends upon whether reasonable investors would find this information useful in their investing decisions. The Proposed Rule acknowledges that "it may be useful to investors to understand the basis for that determination". Those disclosures should be publicly filed so that companies and financial institutions can be held liable for material misstatements that would incur risks to investors because of these statements.

The general importance of sector-specific disclosure guidance in the agriculture, land and food sector is discussed in our second and third recommendation.

- 2. Require the identification and disclosure of climate- and nature-related risks and dependencies using a 'double materiality' approach:** The SEC should take an overt 'double materiality' approach which requires registrants to identify and disclose their nature-related dependencies *and impact*, not just those nature- and climate-related risks which are internally deemed to be financially material to investors in that reporting year. This reflects existing legal human rights obligations including the UN Guiding Principles on Business and Human Rights and the OCED Guidelines on Responsible Business Conduct/Multinational Enterprises, as well as numerous industry-specific schemes.¹⁰² If this obligation is not introduced, the SEC's proposed approach will enable registrants to exclude vital information about their negative risks and impacts on the climate, nature, human rights and ultimately material risk to investors. In 2021, Eric Usher, the head of the United Nations Environment Programme Finance Initiative (UNEP FI), confirmed that a double materiality perspective should be adopted because the Taskforce on

¹⁰¹ See response from BlackRock, BNP Paribas, Credit Suisse, T. Rowe Price, Vanguard and Bloomberg LP at U.S. Securities and Exchange Commission, "Comments on Climate Change Disclosures," 14 June 2021, <https://www.sec.gov/comments/climate-disclosure/ccl12.htm>.

¹⁰² Notwithstanding their faults, other initiatives are as diverse as the Aluminium Stewardship Initiative, the Accountability Framework initiative, the IFC Performance Standards, The Equator Principles, the Roundtable on Sustainable Palm Oil, the Universal Standards of the Global Reporting Initiative and many others apply this approach.

Climate-related Financial Disclosure’s original view of financial ‘materiality’ in the view of the corporation alone is no longer appropriate.¹⁰³

The drivers and impacts of nature-based risks are inseparable from those of climate change and its effect on the most impacted communities. More than 50 percent of the world’s economic output – USD 44 trillion – is “moderately or highly dependent on nature and its services, and is therefore exposed to nature loss”, according to a 2020 report by the World Economic Forum and PwC.¹⁰⁴ The research underlying the report was conducted by assessing the reliance on natural capital assets of 163 economic sectors and examining them at an industry and regional level.¹⁰⁵ As that report states, “[p]rimary industries such as food and beverages, agriculture and fisheries, and construction exhibit the highest nature dependency.”¹⁰⁶ They rely directly on extracting resources from forests or oceans, or they rely on the provision of other natural services such as healthy soils, clean water, pollination and a stable climate.¹⁰⁷ These three sectors alone generate close to USD 8 trillion of economic value annually: construction (USD 4 trillion); agriculture (USD 2.5 trillion); and food and beverages (USD 1.4 trillion).¹⁰⁸

Businesses not directly dependent on forests, land, or oceans are also indirectly affected by nature loss through impacts on operations, supply chains, and markets.¹⁰⁹ Changes in natural environments, including through deforestation, and loss or degradation of ecosystem services, present material risks to companies and the U.S. financial system, but are not currently being incorporated into financial reporting or qualitative disclosures in any systematic way. Investors have clearly demonstrated in their shareholder voting activities and public statements that information on the environmental *and* social outcomes of an investment is something “a reasonable shareholder would consider important in deciding how to vote.”¹¹⁰

For this reason and others, the SEC should adopt an explicit ‘double materiality’ approach that requires registrants to report both their dependency and *impact* on nature and human rights.¹¹¹ Accordingly, the SEC’s disclosure rule should ask companies and financial institutions how nature may impact their organisation, but also how their organisation positively and negatively impacts nature and human rights. This is logical and practical, because understanding impacts on the economy, the environment and people is essential to identifying financially material risks and opportunities in the short, medium and long-term. This has been embraced by the European Union in their Sustainable Finance Disclosure Regulation and Corporate Sustainability Reporting Directive, which cover the financial sector and real economy respectively, and require investors to disclose their adverse impacts on both the planet and society.¹¹²

¹⁰³ ‘TCFD View of Materiality No Longer Adequate – UNEP FI Chief’, 11 February 2021, <https://www.esginvestor.net/tcf-view-of-materiality-no-longer-adequate-unesp-fi-chief/>

¹⁰⁴ World Economic Forum and PwC, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters to Business and the Economy* (2020), p.8, https://www3.weforum.org/docs/WEF_New_Nature_Economy_Report_2020.pdf.

¹⁰⁵ *Id.*, at 13.

¹⁰⁶ *Id.*, at 7.

¹⁰⁷ *Id.*, at 13.

¹⁰⁸ *Id.*, at 7.

¹⁰⁹ *Id.*, at 2.

¹¹⁰ *TSC v. Northway*, 426 U.S. 438 (1976).

¹¹¹ ‘Double materiality’: what is it and why does it matter?, London School of Economics, 2021, <https://www.lse.ac.uk/granthaminstitute/news/double-materiality-what-is-it-and-why-does-it-matter/>

¹¹² European Commission, Corporate sustainability reporting, https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en

It is also essential because of the well-established legal obligations that businesses must adhere to international human rights standards. Notwithstanding their own respective flaws, existing instruments include the OECD Guidelines on Responsible Business Conduct/Multinational Enterprises, the Global Reporting Initiative, the Equator Principles, ISO standards, the UN Guiding Principles on Business and Human Rights, IFC Performance Standards, the Science-Based Targets initiative, the Roundtable on Responsible Palm Oil and the Accountability Framework Initiative. Impacts on the environment and society cannot be deprioritized on the basis that they are not financially material, or vice versa.

Recognising the gap in existing instruments such as the TCFD, senior executives from financial institutions, corporations, and accounting firms have cooperated in the development of the Taskforce on Nature-related Financial Disclosures, known as the TNFD. The TNFD process is supported by the G7 Finance Ministers and the G20 Sustainable Finance Roadmap process and takes a double materiality approach.¹¹³ It is developing an analytic approach to physically locating companies' interfaces with nature, evaluating nature-based dependencies and impacts; assessing risks and opportunities; and preparing to respond to nature related risks and opportunities; and report to investors.¹¹⁴ It is explicitly being modeled to align with the TCFD, using the governance, strategy, risk management, metrics and targets framework.¹¹⁵

In its proposed technical scope, the TNFD notes:

“This [double materiality] approach to risk is consistent with TCFD’s broad approach to financial materiality that extends beyond immediate risks to consider transition risks through the use, for example, of scenarios. Moreover, it reflects the direction of emerging debate and practice across financial institutions and regulators concerning how environmental risks and opportunities should be managed. Each organisation’s governance, strategy, risk management, metrics and targets should be designed to mitigate risks to the organisation (“outside in”) including risks associated with its impact on nature (“inside out”). This two-way approach is necessary to robustly identify, assess and manage systemic nature-related risks and, in turn, inform estimations of long-term risks to individual organisations.”¹¹⁶

The SEC should carefully consider the strengths and weaknesses of the TNFD initiative as it develops its final rule. It should test its approach against U.S.-relevant cases and examples to understand if it will be effective in practice. For example, given the widespread impunity for forest crimes conducted in lesser developed economies and the opaque, complex nature of modern value chains, a U.S.-based business or financial institution could merely argue that it does not consider deforestation to be financially material despite the fact it is directly financing and/or sourcing illegally produced goods. This must be safeguarded against in the SEC’s rule.

More specifically, it should not adopt the TNFD if it fails to clearly define the concept of double materiality or prioritise human rights and the Free and Prior Informed Consent (FPIC) of Indigenous Peoples.¹¹⁷ Impacts on marginalized groups, labor violations, and illegal activity are often obscured by

¹¹³ Taskforce on Nature-related Financial Disclosures, <https://tnfd.global/>.

¹¹⁴ TNFD, The TNFD Nature-related Risk and Opportunity Management and Disclosure Framework, <https://tnfd.global/the-tnfd-framework/tnfd-framework-summary/>.

¹¹⁵ *Id.*

¹¹⁶ TNFD Proposed Technical Scope, 2021, <https://tnfd.global/wp-content/uploads/2021/07/TNFD-%E2%80%93-Technical-Scope-3.pdf>, p. 5

¹¹⁷

complex commodity supply chains, leaving victims unable to seek redress and remedy and investors unable to reliably assess exposure or alignment to personal/institutional values. Just three American financial institutions made an estimated \$538 million from deals worth billions that were connected to deforestation over the five years since the Paris Climate Agreement, according to Global Witness, yet these deals and the material risks they pose to investors were not captured under current reporting mechanisms.¹¹⁸ This demonstrates a company should start with the assessment of the outward impact component of the double-materiality principle followed by the identification of the subset of information that is financially material to the company and their stakeholders to produce the most accurate disclosure.

Moving forward, a question of sequencing also remains. Under the current timeline, TNFD will be finalised in 2023, take effect in 2024 and businesses will have a five-year phase-in period before they are expected to fully report under TNFD. This means that by the time TNFD takes full effect in 2029, business will still not be reporting on their adverse risks and impacts to nature unless regulatory action is forthcoming by the SEC and other U.S. regulators. This is too late to enable the U.S. government to meet its 2030 target to halt and reverse biodiversity loss and deforestation under the G7 Nature Compact or Glasgow Leaders' Declaration.

In addition to showing broad consensus over the need for a double materiality approach, the TNFD's work and the adoption of a similar approach in the European Union and other jurisdictions means the cost of compliance with the SEC's rule will be far lower than it would otherwise be if the SEC were acting alone, as many companies will already be required to collect and disclose such information.

3. **Industry specific guidance:**

*The SEC should develop industry-specific guidance for climate disclosure in the forest, food, and land sector, much as it has done previously in oil and gas; mining; banking; real estate; and insurance.*¹¹⁹

Due to the outsized emissions produced by the sector, the climate-related financial risks related to deforestation, and the essential role of forests in mitigating climate change, climate disclosure would be incomplete and ineffective in protecting investors without explicitly requiring sector-specific disclosures for the forest, food, and land sector. Environmental defenders, Indigenous Peoples and affected communities must be consulted in the design of industry-specific SEC guidance, to ensure the metrics capture the most relevant and material information on the ground, in line with the double materiality approach recommended above. GFANZ has noted that sectoral pathway guidance is lacking in the agriculture, forestry and land use sector compared to other high-emitting sectors.¹²⁰

The specificity of industry risks and opportunities requires particularized, sector-specific, comparable disclosure. Thus, we encourage the SEC to take an active role in either developing sector-specific

¹¹⁸ Global Witness, Deforestation Dividends, 2021, <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>

¹¹⁹ See List of Industry Guides, Reg. S-K, Item 800, 17 C.F.R. § 229.800; Securities Act Industry Guides, Reg. S-K, Item 801, 17 C.F.R. § 229.801 (identifying industry guides in oil and gas; banking; real estate; and insurance); Exchange Act Industry Guides, Reg. S-K, Item 802 (identifying industry guides in banking and insurance). See [47 FR 11401](#), Mar. 16, 1982, as amended at [49 FR 47600](#), Dec. 6, 1984; [57 FR 36468](#), Aug. 13, 1992; [61 FR 30401](#), June 14, 1996; [74 FR 2193](#), Jan. 14, 2009; [83 FR 66448](#), Dec. 26, 2018; [85 FR 66140](#), Oct. 16, 2020. Of these, the guides in oil and gas disclosure; statistical information on bank holding companies; and real estate limited partnerships have eventually been promulgated into specific rules, and thus disclosure obligations, within Regulation S-K.

¹²⁰ GFANZ 2021 Progress Report, <https://assets.bbhub.io/company/sites/63/2021/11/GFANZ-Progress-Report.pdf>, p. 74

Industry Guidance for this sector. As recognized in a securities law professors' Comment in response to the SEC's March 15, 2021, RFI, "[i]n formulating specific ESG disclosure requirements, the SEC indisputably possesses the legal authority either to incorporate in rules and regulations standards developed by private entities or to develop its own expertise to establish the operative standards internally."¹²¹ Developing an Industry Guide for the forest, food, and land use sectors would help to ensure that climate risk and deforestation information of decision-relevance to investors is produced and disclosed in reliable, consistently presented and comparable form.

In agricultural commodity industries, for instance, which due diligence procedures and measures a company uses to ensure human rights abuse and deforestation-free supply chains, what percentage of its supplies are certified deforestation-free, from what countries and regions it sources its commodities, whether suppliers are involved in land or other disputes with Indigenous People or traditional communities, whether there are historic grievances against a company or financial institution, and what "know your supplier" monitoring systems are in place are decision-useful data for investors. These are the kinds of specific disclosure requirements that an SEC Industry Guide would be well positioned to develop. Industry-focused standards should be science-based and regularly updated.

In its response to the SEC's March 15 Request for Information, the National Association of Manufacturers, which is the largest industrial trade association in the United States, endorsed the SEC's climate disclosure initiative, and supported industry-specific disclosure requirements. It stated that:

National Association of Manufacturers: "The NAM believes strongly in the importance of ensuring that investors have access to disclosures on material climate-related metrics, risks, and opportunities. . . . Any reporting framework should be conducive to flexible and diverse climate change or ESG disclosures that reflect the disparate risks and opportunities faced by different companies and industries. . . . Given that risk factors differ from company to company and from industry to industry, the resulting disclosures under any reporting framework should be correspondingly diverse. . . ."

C. Responses to Specific SEC Questions

We now turn to specific SEC questions and provide our perspective on how to ensure that financially material deforestation risks are incorporated into required disclosure pursuant to the final rule. Question numbers align with those in the proposed Rule.

Question 1: Should the SEC promulgate rules to require climate-related qualitative and quantitative disclosure as proposed?

Yes, Global Witness strongly supports the SEC's promulgation of rules to require more specific qualitative and quantitative climate risk disclosure in order to protect investors, to promote the integrity of the U.S. capital markets, and to bring the United States climate disclosure regime into alignment with international developments. We urge the SEC to take a double materiality approach to disclosure that incorporates nature-related risks and impacts.

¹²¹ Jill E Fisch et al., Securities Law Professors' Comment Letter, p. 14, June 11, 2021, <https://www.sec.gov/comments/climate-disclosure/cl12.htm>.

Question 9. Should we define “climate-related risks” to mean the actual or potential negative impacts of climate-related conditions and events on a registrant’s consolidated financial statements, business operations, or value chains, as proposed? Are there any aspects of the definitions of climate-related risks, physical risks, acute risks, chronic risks, and transition risks that we should revise?

Global Witness supports the broad definition of “climate-related risks,” and supports including both physical (chronic and acute) and transition risks as risks to be evaluated. We note, however, that deforestation risk is not specifically identified, and we assert that deforestation risk needs to be specifically included as both a physical risk and a transition risk. The Forest500, which is a project of the UK charity Global Canopy, has tracked deforestation commitments and performance over the past eight years from the 350 global operating companies most highly exposed to deforestation risk in their value chains, and from the 150 financial institutions similarly exposed in their loan portfolios and investments.¹²² Results published in 2022 indicate that three-quarters of operating companies do not have deforestation policies covering all of the forest risk in commodities in their value chains, nor do 93 of 150 financial institutions have such policies for their financed forest risk.¹²³ The quality of those policies which do exist varies, as does the level of compliance with the measures proscribed therein.¹²⁴

These risks need to be clearly disclosed in registration statements and annual reports for the protection of U.S. investors, particularly given the Glasgow Leaders Declaration on Forest and Land Use and incoming legislation on deforestation-free supply chains in the European Union and UK. As such, it presents material risk of stranding assets, producing negative returns on invested capital, increasing non-performing loans previously extended in the forest, food, and land sectors, and reducing revenues in those sectors.

Question 11. Some chronic risks might give rise to acute risks, e.g., drought (a chronic risk) that increases acute risks, such as wildfires, or increased temperatures (a chronic risk) that increases acute risks, such as severe storms. Should we require a registrant to discuss how the acute and chronic risks they face may affect one another?

Global Witness strongly supports requiring registrants to discuss how exposure to deforestation (an acute physical risk) in supply chains increases the chronic risks of drought, decreased soil productivity, and changing water cycles, and how these in turn increase the risks of further acute physical risks such as access to irrigation, soil erosion, flooding during acute weather events, and increased frequency of infectious disease. We support this disclosure where these interactions are relevant to the material climate risks in the registrant’s own operations or value chains, including through knock on price fluctuations and supply chain disruptions.

The Amazon biome is an excellent example of the systemic financial risk that would increase exponentially, should the tipping point for ecosystem collapse arrive. Already, around 17 percent Amazon has been deforested.¹²⁵ However, climate scientists have predicted a tipping point when 20 – 25 percent of the Amazon is cut down, warning that the rainforest’s hydrological cycle will be unable to

¹²² Forest500, 2022 Report, January, 2022, www.forest500.org.

¹²³ *Id.*, Executive Summary, p. 4.

¹²⁴ See, for example, Global Witness, Deforestation Dividends, 2021, <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>.

¹²⁵ Diana Roy, “Deforestation of Brazil’s Amazon Has Reached a Record High. What’s Being Done?” Council on Foreign Relations, 17 March 2022, <https://www.cfr.org/in-brief/deforestation-brazils-amazon-has-reached-record-high-whats-being-done>.

support itself and the biome will convert to a savanna.¹²⁶ Some parts of the Amazon rainforest are already emitting more CO₂ than they absorb, due to deforestation and climate change.¹²⁷ Since the Amazon provides water to a region in South America responsible for 70 percent of the continent's GDP, the risk to the continent's financial sector is sizeable, as is the risk to downstream U.S. companies reliant on agricultural supply chains or U.S. financial institutions with regional investments.¹²⁸ This problem is not limited to South America, and the negative financial impact on U.S. investments, supply chains, and revenues is likely to multiply when these tipping points are surpassed, which necessitates holistic analysis of critical ecosystems in risk management processes.

These physical risks give rise to indivisible human rights concerns, for frontline environmental defenders, Indigenous Peoples and affected local communities. These impacts should be reflected in company reporting, in line with the double materiality approach recommended above and already adopted by the TNFD and European Union, among other actors. The UN Guiding Principles on Business and Human Rights (UNGPs) establish that companies and financial institutions have responsibilities to respect national and international human rights law. As a result, companies and financial institutions must carry out due diligence to 'identify, prevent, mitigate and account for how they address their impacts on human rights (para 15b). The OECD Guidelines on Multinational Enterprises impose the same expectations, as do numerous sector- or industry-specific business initiatives. Businesses should be required to report on how chronic risks affect acute and chronic human rights risks in specific projects, locations and industries.

Question 12. For the location of its business operations, properties or processes subject to an identified material physical risk, should we require a registrant to provide the ZIP code of the location or, if located in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location, as proposed?

Global Witness supports the SEC's proposed granular approach to disclosure of the location of material physical risks in a company's business operations, properties, or processes, including the risk of tropical deforestation in supply chains. This location information is highly significant to an accurate evaluation of the financial risks in commodity importers' supply chains. The granularity of the information, specified to a zip code or other similarly precise location descriptor (such as GPS coordinates), is needed in the forest, food, and other land use industries for investors to accurately evaluate future financial implications of deforestation in their investees' supply chains. Affected communities and investors alike require this evidence base to definitively track a company's activities and exposure, thereby enabling the identification of 'greenwashing', misinformation and fraud.

For registrants with direct ownership or control of forested land, we recommend disclosure of not only country specific location information, as proposed by the SEC, but also specific disclosure of nature and value of the business relationship; the area of land owned by land type (forest, savannah, agricultural land, etc.); percentage of land covered by natural forests; percentage of land covered by certification schemes such as the Forest Stewardship Council, Roundtable on Sustainable Palm Oil, the Round Table

¹²⁶ The Nature Conservancy, "The Amazon Approaches Its Tipping Point," August 2020, <https://www.nature.org/en-us/what-we-do/our-insights/perspectives/amazon-approaches-tipping-point/>.

¹²⁷ Gatti et al, Amazonia as a carbon source linked to deforestation and climate change, 2021, <https://www.nature.com/articles/s41586-021-03629-6>

¹²⁸ Id.

on Responsible Soy Association, the Global Roundtable for Sustainable Beef, among others; and area of land converted from natural ecosystems.

Question 14. If a material risk concerns the location of assets in regions of high or extremely high water stress, should we require a registrant to quantify the assets (e.g., book value and as a percentage of total assets) in those regions in addition to their location, as proposed?

Global Witness supports these requirements. Given the effects on productivity, water stress in a registrants' supply chain is material information for commercial agricultural and timber producers, and for large commodities importers. The effects of water stress are not limited to those producers, of course. Increasing water stress by the activities of large commercial entities, particularly in cattle and rice (agricultural products with high water needs) can have serious consequences for the livelihoods of small producers throughout the developing world. These consequences may exacerbate existing stresses in societies and increase political risk for companies operating globally. Water stress affecting large, publicly listed agriculture and forestry companies presents material financial risk to U.S. investors, and so we commend the SEC for having identified it as among items of required disclosure.

It is also important that risk disclosures related to water stress also include the potential impacts of surpassing scientific tipping points in key ecosystems that provide ecosystem services in a registrant's supply chain.

Question 15: Are there other specific metrics that would provide investors with a better understanding of the physical and transition risks facing issuers?

Yes. As stated above, climate-related financial risks from agriculture, forest, and other land use are relevant to both current year emissions and future emissions, because of reduced carbon storage capacity and soil erosion. In addition to contributing close to one-quarter (23%) of all global greenhouse gas emissions according to the IPCC, agriculture, forestry and land use emissions weaken future efforts to mitigate climate risks and they also often come with significant human rights risks.¹²⁹ Most notably:

1. Most deforestation in the developing world linked to internationally traded agri-commodities is illegal because it violates local law and is associated with money laundering, corruption and tax evasion among other offences.¹³⁰
2. Land insecurities, along with illegal encroachments and land grabbing of indigenous territories, have heightened violence against environmental defenders. In 2020, Global Witness recorded 227 deaths among environmental defenders, 70 percent of which were related to protecting forested land - this represents an average of four murders a week.¹³¹
3. Receding tropical forests because of deforestation have led to land grabbing by commodity producers, violently displacing Indigenous People and traditional communities.¹³²
4. Loss of native lands risks a loss of indigenous culture, traditions, and knowledge. Moreover, Indigenous forest management improves environmental outcomes and reduces both deforestation and forest greenhouse gas emissions.¹³³

¹²⁹ Intergovernmental Panel on Climate Change, "Special report on climate change and land use," Summary for Policy Makers, A.3, p. 10, 2019, <https://www.ipcc.ch/srccl>.

¹³⁰ Forest Trends, Illicit Harvest Complicit Goods, 2021, https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods_rev.pdf

¹³¹ Global Witness, "Last line of defense," September 2021, <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

¹³² See, for example, Global Witness, The True Price of Palm Oil, October 2021, <https://www.globalwitness.org/en/campaigns/forests/true-price-palm-oil>

¹³³ Allen Blackman & Peter Veit, "Titled Amazon Indigenous Communities Cut Forest Carbon Emissions," Ecological Economics, Vol. 153, pp. 56-67 (2018). Blackman and Veit found statistically significant reductions in deforestation and forest GHG emissions from Indigenous community management of forests in Bolivia, Brazil, and Columbia in a study based on data from 2001-2013; no statistically significant reductions were observed in Ecuador from Indigenous community management.

5. Impacts on marginalized groups, labor violations, and illegal activity are often obscured by complex commodity supply chains, leaving investors unable to reliably assess exposure or alignment to personal/institutional values. Just three American financial institutions made an estimated \$538 million from deals worth billions that were connected to deforestation over the five years since the Paris Climate Agreement, according to Global Witness, yet affected communities are unable to seek redress and remedy or prevent these deals from recurring.¹³⁴

Due to the outsized nature, climate, and social risks, **regulations that do not explicitly mandate industry-specific disclosures for the forest, food, and land sector would not be effective in protecting investors.** Creating industry-specific metrics will reduce the burden on issuers, as their disclosure obligations will be clear, and will increase decision-useful information for investors and communities affected by deforestation. In line with a double materiality approach, the metrics should capture the impact of the business or financial institution on deforestation and human rights, as well the impact of deforestation on the business or financial institution.

Question 16: Are there other physical risks about which disclosure should be required?

Yes. As discussed above in response to question 9, deforestation risk as a physical risk needs to be explicitly specified in the rule. Since deforestation both generates GHG emissions in the current year, and reduces the carbon storage capacity for years to come, the magnitude of its impact on climate change is immense and deforestation accelerates other climate risks. It increases soil degradation, heat stress, changes local precipitation patterns, and increases the likelihood of more extreme weather events. It also intensifies other social risks such as land disputes and human rights violations by commodity producers against Indigenous Peoples or traditional communities. Since each of these physical changes can cause changes in firms' costs, revenues, litigation risk and license to operate, disclosure is needed so that investors can weigh investments with appropriate risk weightings.

Furthermore, deforestation harms the biodiversity and the productivity of agriculture in key regions that produce these commodities as well.¹³⁵ Recent analysis from investors highlights how warmer global temperatures will eliminate 20 percent of the global value of beef production and seven percent of dairy production by the end of the century, and stresses that 10 percent of land currently suitable for major crops and livestock will be unsuitable by mid-century under some warming scenarios.¹³⁶ The Amazon rainforest is a key source of precipitation for key US agricultural areas in the Midwest and were the ecosystem to collapse, it would have drastic knock-on effects for global agricultural production that feeds billions of people and supports the global economy.¹³⁷ Investors who recognize and measure these risks from deforestation will benefit from understanding the extent to which their investments are resilient to climate-related financial risks.

Question 17: Should we include the negative impacts on a registrant's value chain in the definition of climate-related risks, as proposed?

Yes, the negative impacts of climate change on a registrant's value chain should be included in the definition of climate-related risks, as proposed. These climate change risks have the potential to

¹³⁴ Global Witness, Deforestation Dividends, 2021, <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>.

¹³⁵ Sarah Ruiz, "Climate change is pushing Brazil's farmland out of agricultural suitability range", Woodwell Climate Research Center, 12 November, 2021, <https://www.woodwellclimate.org/brazils-farms-losing-agricultural-suitability/>.

¹³⁶ Eline Reintjes, "Food Systems and Livestock Production Under Climate Change: The IPCC's Sixth Assessment", FAIRR, 3 May, 2022, <https://www.fairr.org/article/food-systems-and-livestock-production-under-climate-change/>.

¹³⁷ American Geophysical Union, "Water scarcity predicted to worsen in more than 80% of croplands globally this century", 5 May, 2022, <https://www.eurekalert.org/news-releases/951856>.

increase costs and decrease supplies of necessary inputs into registrants' businesses, so they are clearly material risks to be disclosed.

This is essential to understanding the climate exposure of financial institutions. There is growing evidence that forest-related risks are negatively affecting the financial sector. Investors have seen material impact from company connections to deforestation. Companies that operate in tropical forest commodities have experienced suspensions from sustainability organizations, loss of buyers for their products, divestment from investors, substantial reputation risk, and loss in equity value. Consumer-facing downstream companies that source from tropical commodity supply chains contend with reputation risks, changing consumer demand, and increasing risk of supply chain disruptions. A detailed list of physical and transition risks in the forest, food, and land sector is included above.

Below are a few examples of companies that have experienced significant financial impacts as a result of deforestation risks:

1. *Palm Oil Companies Suspended From Sustainability Markets.* From 2015-2019, the equity value of four palm oil companies fell by \$1.1 billion due to suspensions from No Deforestation, No Peat, No Exploitation (NDPE) supply chains.¹³⁸ The four palm oil companies, Sawit Sumbermas Sarana (SSMS), Austindo Nusantara Jaya (ANJ), Tunas Baru Lampung, and Indofood Agri Resources, were suspended for deforestation, peatland clearing, or worker abuses. Under NDPE supply chain rules, buyers and sellers commit to sustainability standards or risk being suspended. Analysis from Chain Reaction Research shows that the four companies saw \$8 million to \$50 million in quarterly revenues, gross profit, EBITDA, and net profit per company, while also experiencing higher receivables, inventories, and net debt.¹³⁹ The suspensions cut the companies off from selling to market actors – such as Unilever, Nestlé, and Wilmar – with strict sustainability criteria, limiting their options and market access.
2. *IOI Corporation.* IOI Corporation, a Malaysian palm oil company, saw material impact after being suspended from the Roundtable on Sustainable Palm Oil (RSPO) for illegally clearing forested land. After the RSPO suspended IOI Corporation, its share price fell by 18 percent and 27 companies – including major commodity traders and large food companies like Mondelez, Procter & Gamble, and Kellogg's – halted purchases of IOI Corporation's palm oil.¹⁴⁰ Once IOI Corporation addressed its deforestation-related sustainability issues in its supply chains, it regained its RSPO membership, saw its equity value recover, and re-established its relationship with its buyers.
3. *JBS.* Brazilian meatpacker JBS has seen repeated material impacts from its ties to deforestation in the Amazon rainforest.¹⁴¹ In 2020, Nordea Asset Management sold its shares in JBS over ESG concerns, including deforestation. The action by Nordea reflected longstanding concerns that NGOs and financiers have had over the company's corruption and environmental record. These reputation risks have also contributed to increased scrutiny, which have undermined JBS' multiple attempts to launch an initial public offering in the United States. JBS had initially wanted to launch the U.S. IPO in 2017.¹⁴² But scandals prompted the company to drop its

¹³⁸ Chain Reaction Research, "Palm Oil Growers Suspended Over Deforestation Lose USD 1.1B in Equity Value," August 2019, <https://chainreactionresearch.com/report/palm-oil-growers-suspended-over-deforestation-lose-usd-usd-1-1b-in-equity-value/>.

¹³⁹ Id.

¹⁴⁰ Chain Reaction Research, "The Chain: IOI Corporation Commits To Improving its Supply Chain Risk Management," May 2017, <https://chainreactionresearch.com/2278-2/>.

¹⁴¹ Global Witness, 'Beef, Banks and the Brazilian Amazon', December 2020, <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

¹⁴² United States Securities and Exchange Commission, "JBS Foods International B.V., 2011, <https://www.sec.gov/Archives/edgar/data/1691004/000119312516785274/d304020df1.htm>.

plans.¹⁴³ JBS revived its plans in late 2019 with the anticipation of launching the IPO in 2020, but remains delayed in large part because of NGO pressure on the company and its investors due to ESG violations.¹⁴⁴

Question 19: Should the SEC require disclosure of actual and potential impacts of climate change on strategy, business model, and outlook?

Yes. This disclosure is core to investors being able to evaluate the quality of engagement of the board and management with the significant risks of climate change, particularly in the context of countries and companies making net zero commitments that will need to drive strategy, business model, and outlook. This disclosure will allow investors to have insights into how management is thinking about future implications of climate change on strategy, the company's business model, and outlook. As such, it is comparable to the policy rationale underlying Management Discussion and Analysis, where the SEC has sought to allow investors to see the company's financial results through the eyes of management and understand risks to those results going forward.¹⁴⁵ Specifically, actual and potential impacts of climate-related financial risks from deforestation on strategy, business model, and outlook should be included for companies and financial institutions in line with the disproportionate contribution of deforestation-related emissions to climate change, as outlined above.

Question 34: Should we require a registrant to describe, as applicable, the board's oversight of climate-related risks, as proposed?

Yes. Investors should have clear and consistent insights into the role of the board regarding identifying, evaluating, and incorporating climate risk into strategy, oversight, and disclosure. We agree that the disclosure should be specific, as proposed, about which board members have climate experience and which committees have carriage of the climate risk issues. In any company with significant deforestation exposure, board expertise on that issue should be disclosed. These will be data points by which investors can gauge the seriousness with which the company is undertaking its evaluation of climate risks and its responses. In June 2022, the Race to Zero introduced a 'Persuade' pillar introducing increased board-level duties for aligning lobbying with climate- and nature-related commitments including the Paris Agreement.¹⁴⁶

Question 38: Should we require a registrant to describe, as applicable, management's role in assessing and managing climate-related risks, as proposed? Should the required disclosure include whether certain management positions or committees are responsible for assessing and managing climate-related risks and, if so, the identity of such positions or committees, and the relevant expertise of the position holders or members in such detail as necessary to fully describe the nature of the expertise, as proposed?

Yes. Having a clear view of the management structure for evaluating and responding to climate change is as important as understanding the role of the board in climate risk oversight and strategy development. The specificity of the SEC's proposal is important for the reasons above in question 34. Specific information on the management of climate risk issues provides data points for understanding a

¹⁴³ Chain Reaction Research, "The Chain: JBS Cancels 2018 subsidiary IPO, Suspends Slaughter at 7 Locations while Investigations Continue," October 2017, <https://chainreactionresearch.com/the-chain-jbs-cancels-2018-subsiary-ipo-suspends-slaughter-at-7-locations-while-investigations-continue/>.

¹⁴⁴ Forests & Finance, "Beefing Up Risk: The Exposure Of JBS' Financiers To Financial, Regulatory And Reputational Risks," February 2021, <https://forestsandfinance.org/news/beefing-up-risk-the-exposure-of-jbs-financiers-to-financial-regulatory-and-reputational-risks/>.

¹⁴⁵ See In re: Caterpillar, Inc., SEC Administrative Proceedings, Administrative Proceedings No. 3-7692, SEC Rel. No. 34-30532 (1992) (company's MD&A did not allow investors to understand the importance of Brazil to the company's consolidated financial results, and therefore general statements about currency risk in Brazil did not adequately meet the company's obligations to allow investors to understand future risks to the financial results).

¹⁴⁶ Race to Zero criteria, <https://racetozero.unfccc.int/system/criteria/>; <https://www.sciencebasedtargets.org/>

company's approach to understanding and managing this issue, and as one mechanism for gauging the seriousness of any commitments the company has made to a net zero transition. In forest, food, and land industries, any specific committees or management positions responsible for evaluating and mitigating deforestation risk should be specifically described and included in the industry-specific guidance that Global Witness argues is critical to providing decision-useful information to investors. It is also essential to establishing corporate criminal liability and to communities seeking redress and remedy for nature- and climate- related offences and associated human rights abuses.

Question 40. Should we specifically require a registrant to disclose any connection between executive remuneration and the achievement of climate-related targets and goals? Is there a need for such a requirement in addition to the executive compensation disclosure required by 17 CFR 229.402(b)?

Clarity in the disclosure requirements is useful for registrants, and adding climate-related targets and goals, where applicable, is unlikely to produce duplicative disclosure. If the SEC determines that it is useful to add a specific requirement to discuss how remuneration is connected to achieving climate-related targets and metrics, then any remuneration metrics related to avoiding deforestation, promoting reforestation, or improving soil productivity should be included. Tying executive pay to ESG outcomes is being increasingly trialled in the market and this disclosure would allow for investors and other affected parties to ensure the integrity of the process.¹⁴⁷

Question 43. When describing the processes for identifying and assessing climate-related risks, should we require a registrant to disclose, as applicable, the factors as proposed for new Item 1503? Are there additional aspects of the analytic process that should be included?

We have argued that the SEC should specifically identify climate-related financial risks from deforestation as among the physical risks and transitional that registrants should evaluate. Here, to be certain that investors in agriculture, forestry, and land use are specifically apprised of deforestation risk, proposed Item 1503 (c)(2)(i) should be amended in parallel to add deforestation risks specifically to the identified risks to be evaluated in the context of registrants' transition plans. Thus amended, Item 1503(c)(2)(i) would provide:

“1503 (c)(2): If the registrant has adopted a transition plan, discuss, as applicable:

(i) How the registrant plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, **deforestation**, or water use and management; . . .”

Question 48. If a registrant has adopted a transition plan, should we require it to disclose, if applicable, how it plans to mitigate or adapt to any identified transition risks, including the following, as proposed: • Laws, regulations, or policies that: . . . Require the protection of high conservation value land or natural assets?

Yes. Given the importance of protecting tropical forests to achieving the ambitions of the Paris Agreement and that governments (and investors) are increasingly understanding that importance, new laws, regulations, and policies requiring protection of these high conservation value lands and natural assets constitute a transition risk for tropical commodity companies and importers. This includes incoming regulations in the European Union and UK, preventing the trade in commodities grown on illegally deforested land. Evaluation of that transition risk and disclosure of how it will be mitigated or how forest, food, and land companies will adapt to it within a company's transition plan is decision-useful information for investors in those sectors.

¹⁴⁷ 17 Major Companies Linking Executive Pay to ESG Performance, 2021, <https://www.perillon.com/blog/17-major-companies-linking-executive-pay-to-esg-performance>

For example, economic and financial modeling done by Orbital Finance estimates that climate transitions will lead to a 52 percent reduction in agricultural land globally by 2050, partially driven by government moratoriums on deforestation as a part of Nationally Determined Contributions.¹⁴⁸ As a result, agricultural expansion will become more expensive, while commodity prices are estimated to rise as a result of land availability constraints and a growing global population. Further commodity price fluctuations are likely as countries around the world put a price on carbon emissions. For companies reliant on land-intensive imports, the risk of extreme commodity price fluctuations and supply chain disruptions has the potential to threaten the profitability of entire product lines.¹⁴⁹

Question 50. If a registrant has disclosed its transition plan in a Commission filing, should we require it to update its transition plan disclosure each fiscal year by describing the actions taken during the year to achieve the plan’s targets or goals, as proposed?

Yes. Annual updates would provide useful benchmarks for active investors to use to judge the sincerity of companies’ statements concerning transition plans, and the quality of management in operationalizing those plans.

However it should be noted that for companies and financial institutions do not explicitly ‘plan’ deforestation in most cases. Deforestation, ecosystem degradation and associated human rights abuses are instead the result of choosing to operate in high-risk jurisdictions or value chains with insufficient due diligence. Yet despite this, the transition planning approach assumes Members will be willing and able to identify and measure ‘planned emissions’ and therefore devise a ‘plan’ to reduce them accordingly. In the case of deforestation, companies or financial institutions may attempt to frame related emissions as ad hoc, one-off events. Further, a company or financial institution with evidence of so-called ‘unplanned emissions’ may not report this non-compliance if they believe that it is unlikely to be picked up by existing monitoring and disclosure processes. It is therefore essential the rule is devised to address and capture retrospective ‘unplanned emissions’ that arise due to active neglect or other reasons.

The SEC should ensure registrants are obligated to report unplanned deforestation and unplanned emissions (including those related to deforestation and land-use) in the year they occur, disaggregated by sector and Scope 1, 2 and 3 emissions in their disclosures. This would provide investors and affected communities with the necessary information to assess exposure to associated physical and transitional risks, identifying whether the company involved has a credible mitigation and redress and remedy strategy.

Question 98. Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed? Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality? Should we use a quantitative threshold, such as a percentage of total GHG emissions (e.g., 25%, 40%, 50%) to require the disclosure of Scope 3 emissions? If so, is there any data supporting the use of a particular percentage threshold? Should we require registrants

¹⁴⁸ Orbital, “Agriculture in the Age of Climate Transitions: Stranded Assets. Less Land. New Costs. New Opportunities,” December 2020, <https://orbital.finance/2020/12/03/ag-climate-transitions-risk-opportunities/>.

¹⁴⁹ Chain Reaction Research, “Chain Reaction Research Applies TCFD-aligned Framework to Assess Deforestation Risks,” January 2021, <https://chainreactionresearch.com/report/chain-reaction-research-applies-tcf-aligned-framework-to-assess-deforestation-risks/>.

in particular industries, for which Scope 3 emissions are a high percentage of total GHG emissions, to disclose Scope 3 emissions?

Disclosure of Scope 3 emissions should be mandatory for all registrants, including financial institutions, based on the best available data and methodologies. At a minimum, disclosure of Scope 3 emissions should be mandatory for companies and financial institutions at risk of deforestation and land conversion in their value chains. This is necessary because emissions from deforestation and land use produce significant GHG emissions and affect both current year emissions and future carbon storage capacity. Reporting Scope 3 emissions – including those related to land use – is compulsory for members of the Race to Zero and therefore GFANZ framework and is a requirement of the Science Based Taskforce initiative (SBTi).¹⁵⁰

The Commission has proposed that companies disclose their Scope 1 and 2 emissions, but predicates Scope 3 emissions disclosures on internal materiality assessments and therefore offers a form of safe harbour. We strongly caution against this approach because leaving Scope 3 disclosure subject to an internal and non-standardized materiality assessment would not serve the interests of investors or communities most affected by climate change.

Scope 3 emissions are the most significant sources of GHG emissions in the agriculture, food and land use sector.¹⁵¹ The food sector and fast moving consumer goods, for example, often see 83 and 90 percent of their total GHG emissions in the Scope 3 classification respectively.¹⁵² For a company like Nestlé, requiring only scope 1 and 2 emissions would mean that investors see only 5 percent of the company’s total GHG emission footprint.¹⁵³ Scope 3 emissions in the downstream companies dependent on tropical commodities typically comprise upwards of 80 percent of total emissions. For example, Mars Inc. estimated that 29 percent of the company’s total scope 1, 2, and 3 emissions are generated from deforestation driven by tropical commodities.¹⁵⁴ Given that internationally agreed upon climate change targets are predicated on halting deforestation, these supply chain deforestation practices are unsustainable as governments implement climate policies, and present regulatory and transition risk for investors across the economy.

If the SEC is determined to keep the current materiality qualifier to Scope 3 in the final rule, as opposed to adopting mandatory disclosure as we recommend, the Commission should add a requirement that all registrants provide a methodology and explanation of how a registrant came to the determination and decision their emissions were immaterial. Whether the data on Scope 3 emissions is material depends upon whether reasonable investors would find this information useful in their investing decisions. The Proposed Rule acknowledges that “it may be useful to investors to understand the basis for that determination”. Those disclosures should be publicly filed so that companies and financial institutions can be held liable for material misstatements that would incur risks to investors because of these statements.

¹⁵⁰ Race to Zero criteria, <https://racetozero.unfccc.int/system/criteria/>; <https://www.sciencebasedtargets.org/>

¹⁵¹ <https://www.sec.gov/comments/climate-disclosure/cl12-20109655-264012.pdf>

¹⁵² World Economic Forum and Boston Consulting Group, “Net-Zero Challenge: The supply chain opportunity,” January 2021, https://www3.weforum.org/docs/WEF_Net_Zero_Challenge_The_Supply_Chain_Opportunity_2021.pdf.

¹⁵³ According to Nestlé’s 2020 disclosure to CDP, publicly available via: <http://www.cdp.net>.

¹⁵⁴ Mars, “Mars – Climate Change 2019 report to CDP,” 2019. Downloadable from the CDP website: <https://www.cdp.net/en>

As an example, the world’s largest supplier of cattle, JBS, which a recent Bloomberg investigation concluded was “one of the biggest drivers of Amazon deforestation”, in March 2021 stated it would become net zero by 2040.¹⁵⁵ This target cannot be achieved without addressing JBS’ deforestation footprint, which it routinely denies exists.¹⁵⁶ Federal prosecutors in Brazil concluded in October 2021 that JBS had purchased over 300,000 cattle from ranches with significant ‘irregularities’ the previous year, including illegal deforestation.¹⁵⁷ The New Climate Institute’s analysis of JBS’s net zero commitments concludes ‘Although the company states its net-zero target covers the entire supply chain, the lack of disclosure of its entire emissions footprint makes it questionable whether enteric fermentation of non-JBS farms and deforestation emissions – accounting for an estimated 97% of JBS’s emission footprint – are covered under the net-zero target.’¹⁵⁸ This underscores the importance of including Scope 3 emissions in the SEC’s rule.

Question 99. Should we require a registrant that has made a GHG emissions reduction commitment that includes Scope 3 emissions to disclose its Scope 3 emissions, as proposed?

Yes. That information will be useful to investors to be able to judge the seriousness of a registrant’s commitment to its reduction targets, as well as to judge the quality of the registrant’s management and operational efficiency. However, it is likely to mislead investors and consumers alike if some companies make goals that include Scopes 1, 2, and 3, while others only include Scopes 1 and 2. The scope of a goal or target is frequently missed by an untrained eye or included in small print in footnotes, which may disincentivize companies from making more ambitious goals with a broader scope, since their total emissions may seem uncompetitive compared to a company that only includes Scope 1 and 2. It also may accidentally create incentives for vertically integrated companies to increasingly shift emissions-intensive operations into their Scope 3 category through divestments because these rules may inadvertently create a loophole for downstream, horizontal companies and financial institutions with the majority of their emissions in Scope 3. The emissions from financial institutions’ investing, lending and underwriting activities are on average over 700 times higher than their direct emissions, according to non-profit organisation CDP.¹⁵⁹ For this reason, Scope 3 reporting and reductions targets should be mandatory.

Question 100. Should Scope 3 emissions disclosure be voluntary? Should we require Scope 3 emissions disclosure in stages, e.g., requiring qualitative disclosure of a registrant’s significant categories of upstream and downstream activities that generate Scope 3 emissions upon effectiveness of the proposed rules, and requiring quantitative disclosure of a registrant’s Scope 3 emissions at a later date? If so, when should we require quantitative disclosure of a registrant’s Scope 3 emissions?

For the reasons set out in full above, we do not believe that disclosure of Scope 3 emissions should be voluntary. It should be mandatory for all companies and financial institutions.

Question 127. Should we require a registrant to disclose any material change to the methodology or assumptions underlying its GHG emissions disclosure from the previous year, as proposed? If so, should we require a registrant to restate its GHG emissions data for the previous year, or for the

¹⁵⁵ Shefali Sharma, Institute for Agriculture and Trade Policy, *The Great Climate Greenwash: Global Meat Giant JBS’ emissions leap by 51% in 5 years*, Apr. 20, 2022, <https://www.iatp.org/jbs-emissions-rising-despite-net-zero-pledge>; New Climate Institute, 2022, Corporate Climate Responsibility Monitor <https://newclimate.org/wp-content/uploads/2022/02/CorporateClimateResponsibilityMonitor2022.pdf>.

¹⁵⁶ See, for example, Global Witness ‘Beef, Banks and the Brazilian Amazon’, 2021, <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>; Global Witness, *Deforestation Dividends*, 2021, <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>.

¹⁵⁷ Brazil’s JBS bought 301,000 cattle from ‘irregular’ farms in the Amazon, audit finds, Reuters, 7 October 2021, <https://www.reuters.com/business/sustainable-business/brazil-audit-finds-32-jbs-cattle-amazon-state-irregular-farms-2021-10-07/>

¹⁵⁸ New Climate Institute (2022) Corporate Climate Responsibility Monitor <https://newclimate.org/wp-content/uploads/2022/02/CorporateClimateResponsibilityMonitor2022.pdf>, p. 85

¹⁵⁹ CDP, Financial Services Disclosure Report 2020, <https://www.cdp.net/en/research/global-reports/financial-services-disclosure-report-2020>

number of years for which GHG emissions data has been provided in the filing, using the changed methodology or assumptions?

Yes. Registrants should be asked to disclose any material changes in methodologies or assumptions underlying their GHG emissions disclosure from year to year. Given the useful information that is gained from year-over-year comparisons, changes in methodologies should be described and a qualitative assessment given of how using the changed methodology would have affected the prior year's emissions if it had been applied. See Question 50 for a full discussion of the role of 'unplanned emissions' in emissions reporting in the agriculture, forestry and land use sector, which should be safeguarded against in the SEC rule.

Question 128. Should we require a registrant to disclose, to the extent material, any gaps in the data required to calculate its GHG emissions, as proposed? Should we require the disclosure of data gaps only for certain GHG emissions, such as Scope 3 emissions?

Yes. Data gaps disclosure and how a registrant has addressed those gaps should be provided for each of the registrant's Scopes 1, 2, and 3 emissions disclosures. This is essential to an assessment of the quality of the information being provided.