United States Senate

June 17, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F St, NE
Washington, DC 20549

Dear Chair Gensler,

Communities throughout the United States are facing powerful and frequent environmental disasters, which have become more frequent with the onset of climate change and have caused billions of dollars in damage. Investors have a right to know the extent to which companies are both exposed to climate risks and contributing to climate impacts. We therefore urge the Securities and Exchange Commission (SEC), as part of its proposed rule entitled "Enhancement and Standardization of Climate-Related Disclosures for Investors,"[1] to require disclosure of all greenhouse gas emissions related to a regulated business's supply chain. The final rule should also require the disclosure of risks to environmental justice communities. While we applaud the SEC for rising to the moment through the issuance of this proposed rule, we urge the Commission to strengthen the final version with the inclusion of these additional requirements.

1. **Strengthen the proposed rule by requiring the full disclosure of Scope 3 emissions for all large accelerated filers by Fiscal Year 2023, and other accelerated filers by Fiscal Year 2024.**

The proposed rule takes an important step in the right direction by requiring the disclosures of "direct [greenhouse gas (GHG)] emissions that occur from sources owned or controlled by the company" and "emissions primarily resulting from the generation of electricity purchased and consumed by the company," known as Scope 1 and Scope 2 emissions, respectively.[2] The rule allows Scope 3 emissions—which comprise emissions that are a consequence of a company's full chain of activities in the creation of a product or service—to be slowly phased into disclosures, and only if deemed material to the registrant or as a part of publicly stated GHG emissions targets or goals. As such, the proposed rule fails to present a fully transparent picture of a registrant's GHG emissions to investors. For a more accurate understanding, the SEC should require large accelerated filers to fully disclose their Scope 3 emissions by Fiscal Year (FY) 2023, with limited assurance by FY 2024, and reasonable assurance by FY 2025. Accelerated filers, which includes companies that have an initial public float worth between $75 million and

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[1] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, U.S. Securities and Exchange Commission, 87 Fed. Reg. 21334 (Apr. 11, 2022), https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.
[2] *Id*.

$700 million, should disclose Scope 3 emissions by FY 2024, with limited assurance by FY 2025, and reasonable assurance by FY 2026.

The inclusion of Scope 3 emissions is especially important for industries whose products are responsible for a wide range of emissions down the value chain. An analysis by S&P Global that considered emissions from product use, such as combustion of fuel in aircraft, trucks, heavy equipment, and cars, showed that Scope 3 emissions accounted for nearly 88 percent of total emissions from the oil and gas industry.[3] Investors are aware that transitioning to a low-carbon economy is impossible without addressing these emissions, which is why 61 percent of Chevron shareholders voted to force the company not only to disclose, but reduce, Scope 3 emissions from the use of its carbon-intensive products.[4]

It is particularly important for the Commission to require financial institutions to disclose their Scope 3 emissions, which would cover "real economy" activities that they finance and underwrite. Very few emissions of financial institutions are within Scope 1 and Scope 2. However, a firm that makes loans to, invests in, or insures a registrant that engages in climate-related risks bears a share of responsibility for that risk.[5] Without the disclosure of Scope 3 emissions, the proposed rule would exempt the financial sector from disclosing its contributions to climate change.

Large filers may protest that requiring reporting of Scope 3 emissions with reasonable assurance by FY 2025 would cause them an undue financial burden. But since the 2011 publication of the GHG Protocol reporting standard, which the proposed rule references, thousands of companies around the globe have produced full Scope 3 emissions inventories.[6] An entire marketplace of attestation providers is now available to assist registrants with transparent, expedient, and efficient counting of emissions in all three scopes, some of which even align a registrant's reporting with the Task Force on Climate-Related Financial Disclosures (TCFD) framework.[7] The proposed rule does not need to include a lengthy timeline for accounting and reporting of Scope 3 emissions, as large accelerated filers either already have this information available or could report it with reasonable assurance by Fiscal Year 2025.

As financial regulators in the United Kingdom have noted, any transition to a low-carbon economy is likely to affect a company's sources of Scope 3 emissions, making Scope 3

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[3] Amena Saiyid, *Oil, Gas Companies Under Pressure to Manage Scope 3 Emissions to Reach Net-Zero goals: Analysts*, HIS Markit (June 22, 2021), https://cleanenergynews.ihsmarkit.com/research-analysis/oil-gas-companies-under-pressure-to-manage-scope-3-emissions-t.html.
[4] Amena Saiyid, *Oil Majors Forced to Reckon with Climate Impacts*, HIS Markit (May 26, 2021), https://cleanenergynews.ihsmarkit.com/research-analysis/oil-majors-forced-to-reckon-with-climate-impacts-.html.
[5] *Banking on Climate Chaos, Fossil Fuel Finance Report 2022,* Rainforest Action Network (Mar. 30, 2022), https://www.ran.org/publications/banking-on-climate-chaos-2022/.
[6] *CDP reports record number of disclosures and unveils new strategy to help further tackle climate and ecological emergency*, CDP Global (Oct. 21, 2022), https://www.cdp.net/en/articles/media/cdp-reports-record-number-of-disclosures-and-unveils-new-strategy-to-help-further-tackle-climate-and-ecological-emergency.
[7] Greenstone, https://www.greenstoneplus.com/tcfd, (last visited on May 23, 2022).

emissions an important barometer of "transition risk." As you noted in your remarks before the Principles for Responsible Investment "Climate and Global Financial Markets" Webinar, a Ceres study found that 92 percent of companies in the S&P 100 plan to set emissions reduction goals.[8] Without a strong and prescriptive standard for Scope 3 reporting, the ad hoc manner in which companies make these disclosures has led to a significant number of "greenwashed" transition plans.

To combat this, the United Kingdom requires reporting of some Scope 3 emissions in Streamlined Energy and Carbon reporting, with assurance "conducted by a qualified, independent third-party reviewer."[9] In contrast, the proposed rule exempts Scope 3 emissions from the requirement of reasonable assurance. To protect U.S. investors, and maintain our global leadership in the fight against climate change, the final rule should require all large filers to fully disclose Scope 3 emissions in their first filing under this Rule, with reasonable assurance by an independent verifier, who can make sure that these disclosures are sufficiently detailed and accurate to provide real protection to investors.

2. **Strengthen the proposed rule by requiring disclosure of the risks to environmental justice communities.**

While all Americans face negative impacts from the climate crisis, Black, Brown, Indigenous, and low-income communities face an additional burden of environmental injustice, driven by decades of historic discrimination and industrial pollution. The historic and discriminatory practice of redlining—which classifies minority neighborhoods as riskier for investment, limits residents' access to loans or insurance, and affects an estimated 45 million people in the United States, the majority of whom are Black or Hispanic[10]—correlates with higher pollution levels and poorer air quality than is found in non-redlined communities. The Fair Housing Act of 1968 technically outlawed redlining, yet zoning laws to protect wealthy white communities from environmental burdens remained. Registrants have the most incentive to take climate-related risks in historically redlined areas.[11]

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[8] Gary Gensler, *Prepared Remarks Before the Principles for Responsible Investment "Climate and Global Financial Markets" Webinar* (July 28, 2021), https://www.sec.gov/news/speech/gensler-pri-2021-07-28.

[9] Her Majesty's Government and the Crown, *Environmental Reporting Guidelines: Including Streamlined Energy and Carbon Reporting Guidance*, (Mar. 2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850130/Env-reporting-guidance_inc_SECR_31March.pdf, at 19.

[10] Zack Budryck, *45M Americans Breathing Dirty Air Due to Redlining, Outlawed 50 years ago: Research*, (Mar. 9, 2021), https://thehill.com/policy/energy-environment/597513-45-million-americans-breathing-dirty-air-due-to-redlining-outlawed/?rl=1.

[11] Sacoby Wilson, Malo Hutson, and Mahasin Mujahid, *How Planning and Zoning Contribute to Inequitable Development, Neighborhood Health, and Environmental Injustice*, Environmental Justice Vol. 1, No. 4, (2008), http://www.ced.berkeley.edu/downloads/pubs/faculty/hutson_2008_environ-health.pdf.

Recent cancellations of proposed projects such as the Keystone XL and Constitution pipelines in the wake of massive protests have made environmental justice issues a priority for investors.[12] Environmental justice considerations have been a driving factor behind the growth of Environment, Sustainability, and Government (ESG)-focused funds, which grew to $649 billion worldwide through November 2021, up from the $542 billion and $285 billion that flowed into these funds in 2020 and 2019, respectively.[13] This rulemaking and associated GHG accounting methods should account for the amplification of risk to investors that environmental justice considerations pose.

The risks to these environmental justice communities are a part of the "mix of information" a reasonable investor would need to make decisions. Without their full consideration and integration into definitions of climate-related risks, these definitions will be less rigorous and incomplete. For example, the Task Force for Climate Related Financial Disclosures (TCFD) guidance lists "increased severity of extreme weather events"[14] as "acute physical risks"[15] that could result in "write-offs and early retirement of existing assets."[16] In addition to GHGs, many registrants introduce co-pollutants such as polychlorinated biphenyls and coal ash into the environment as either ingredients or byproducts of company operations. Several studies performed in the last decade have shown that environmental justice communities face the greatest exposure to co-pollutants, and community members suffer from a range deleterious environmental and health effects as a result.[17] Extreme weather events amplify these risks, which can cause unpermitted discharges of co-pollutants from vulnerable facilities or disperse already discharged pollutants across a much wider region.

The BioLab chlorine factory fire in Louisiana during Hurricane Laura in August 2020 underscored this reality; the factory was but one of many chemical facilities along the Gulf Coast that are vulnerable to the impacts of stronger and more frequent hurricanes.[18] The high-risk facility was located near the predominately Black and low-income community of Lake Charles. The Louisiana Department of Environmental Quality declined to fine the company for the disaster. But as the climate crisis deepens, incidents like this are likely to lead to environmental enforcement activities and litigation. Thus, harm to environmental justice communities can

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[12] Rebecca Adamson, *Protesting Corporations Does Have an Impact- Here's How!*, Women's Media Center (Jan. 23, 2020), https://womensmediacenter.com/news-features/protesting-corporations-does-have-an-impact-heres-how.
[13] Ross Kerber and Simon Jessup, *Analysis: How 2021 became the year of ESG investing, Reuters* (Dec. 23, 2021), https://www.reuters.com/markets/us/how-2021-became-year-esg-investing-2021-12-23/.
[14] Task Force on Climate-Related Financial Disclosures, *Final Report, Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017), https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf, at 62.
[15] *Id*. at 6.
[16] *Id*. at 10.
[17] Mary B. Collins, Ian Munoz, and Joseph JaJa. *Linking 'Toxic Outliers' to Environmental Justice Communities*. Environmental Research Letters, Vol. 11, No. 1, (2016), https://iopscience.iop.org/article/10.1088/1748-9326/11/1/015004/pdf.
[18] Kristen Mosbrucker, *Burned to the Ground after Hurricane Laura, a Chemical Plant Wants Millions in Tax Breaks to Rebuild*, The Advocate (Apr. 26, 2021), https://www.theadvocate.com/baton_rouge/news/business/article_69cfc020-a6c5-11eb-926f-d7af9c910e5b.html.

complete the picture of investor risk by providing visibility into the impact of increased litigation and enforcement. We urge you to strengthen the proposed rule by requiring registrants conducting operations near environmental justice communities to disclose the physical risk of co-pollutants; including the potential amplification of these risks by extreme weather events, as well as possible penalties and litigation against registrants found liable for disasters.

The TCFD guidance also stresses considering risks to "reputation" such as "stigmatization of sector" and "increased stakeholder concern and negative stakeholder feedback" in transitioning to net-zero operations.[19] These transition risks could have such financial impacts as "reduced demand for goods and services" and "reduced revenue from decreased production capacity (e.g., delayed planning approvals and supply chain disruptions.)"[20] "Exposure to litigation" is a related risk,[21] particularly in the case of open Resource Conservation and Recovery Act claims against the registrant.[22] We urge you to strengthen the proposed rule by requiring registrants to include in disclosed transition risks negative feedback from stakeholders on proposed projects as well as projects' compliance with environmental laws.

Registrants may view the requirement that they must disclose Scope 3 emissions only "if material" as a loophole—one through which they can ignore downstream emissions such as those in their supply chain. However, it is far more likely that a registrant's Scope 3 emissions will be material when considered concurrently with the cumulative impacts of the registrant's activities on the surrounding community. For example, the Environmental Protection Agency's guidance on counting greenhouse gas emissions identifies emissions from operational waste and solid waste disposal as two of the five Scope 3 emission factors currently available.[23] If registrants attempt to qualify these Scope 3 emissions as non-material from a climate-risk perspective, the consideration and integration of environmental justice risks in that framework would require them to reconsider. Nearly 80 percent of municipal solid waste disposal facilities are located in close proximity to environmental justice communities.[24] Indisputably, environmental justice risks linked to Scope 3 activities—and the resulting financial risks to investors—provide a material basis for requiring the full disclosure of Scope 3 emissions.

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[19] Task Force on Climate-Related Financial Disclosures, *2021 TCFD Report: Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures* (Oct. 2021), https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf, at 74, 75.
[20] *Id*. at 75.
[21] *Id*.
[22] Tucker Ellis and West, LLP, *RCRA Citizen Suits for Injunctive Relief*, https://www.tuckerellis.com/files/rcra_citizen_suits_for_injunctive_relief.pdf (last visited May 23, 2022).
[23]EPA Center for Corporate Climate Leadership, *GHG Inventory Development Process and Guidance: Scope 3 Inventory Guidance*, https://www.epa.gov/climateleadership/scope-3-inventory-guidance (last visited Apr. 19, 2022).
[24] Celine Yang, *Q&A: Addressing the Environmental Justice Implications of Waste*, Environmental and Energy Study Institute (May 14, 2021), https://www.eesi.org/articles/view/qa-addressing-the-environmental-justice-implications-of-waste.

Environmental agencies have labored to understand the health, climate, and socioeconomic impacts of GHG emissions and other pollutants on communities since President Bill Clinton directed them to do so in Executive Order 12898.[25] There is enough such data for registrants engaging in climate-related risks near environmental justice communities to define and disclose them according to the federal government's standards. We urge you urge you to expand the proposed rule to include definitions of disadvantaged communities—including how environmental agencies may geospatially identify them with screening tools—and require disclosure of projected cumulative impacts on them, which will facilitate more accurate disclosures of physical and transition risks and a meticulous method of considering the materiality of Scope 3 emissions.

In order to better support investors in assessing climate-related risk, we urge that you to require all large registrants to assess Scope 3 greenhouse gas emissions throughout their entire value chain with reasonable assurance by Fiscal Year 2025 for large accelerated filers. We also urge you to require an assessment of the risks that a registrant may pose to environmental justice communities as part of the definition of climate-related risks. We believe these additional requirements will strengthen the proposed rule and better protect investors and our financial system by ensuring no emissions, risks, or impacts on communities go uncounted. We look forward to the issuance of the final rule and the SEC's future actions to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Sincerely,

Edward J. Markey
United States Senator

Corey L. Booker
United States Senator

Bernard Sanders
United States Senator

Alex Padilla
United States Senator

[25] *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 16, 1994).

Elizabeth Warren
United States Senator

Jeffery A. Merkley
United States Senator