NEI

June 17, 2022

Attention:
Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE, Washington, DC, USA
20549-1090

Sent by email to: rule-comments@sec.gov (File Number S7-10-22)

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors RIN: 3235-AM87

With approximately C$11 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies can mitigate risk and take advantage of emerging business opportunities by integrating best environmental, social and governance (ESG) practices into their strategies and operations. We commend the Securities Exchange Commission (SEC) for its proposed rule to mandate climate-related disclosures and believe the proposed rule will be beneficial to investors, ultimately leading to the increased efficiency of the market in addressing the systemic risks of climate change.

We have broadly tried to align our comments to the questions in the discussion document and where possible have referenced the specific question number.

Proposed rule overview

Q1&3
We strongly support the proposed revisions to Regulation S-K and Regulation S-X that would mandate climate-related disclosure as part of a registrant's regular business reporting. While there would still be utility in the creation of a new regulation or report, in that investors would have access to mandatory, standardized reporting in either situation, the most efficient path would seem to be the one proposed by the SEC. Investors and companies alike would benefit from the utilization of existing regulations that are both familiar and accessible.

As well, we strongly support the SEC's proposal to model the climate-related disclosure framework on the Taskforce for Climate-Related Financial Disclosure (TCFD) framework. As duly noted by the Commission, the TCFD framework has become the universal framework for almost every major disclosure framework or standard that is relevant to investors. NEI is a public supporter of the TCFD and has committed to providing our own TCFD-aligned reporting in 2023. We note that in response to the demands of their investor clients, all the major third-party ESG data providers now provide TCFD-aligned reporting metrics to aid investors in assessing the climate-related disclosures of portfolio companies. Importantly, the driver for coalescing on the TCFD framework is to provide guidance towards a standardized, comparable suite of metrics that investors can then utilize to assess company performance. In fact, NEI's proprietary ESG evaluation framework utilizes the TCFD framework explicitly for the purpose of creating a standardized, comparable and consistent means of comparing company performance. As such, the Commission's proposal to align with the TCFD is well received, and we believe that all aspects of the framework are relevant and should be addressed in the final framework.

Q2

As noted in our Responsible Investment Policy, "we believe that climate change is one of the biggest systemic challenges facing our society."[1] We believe the impacts of unmitigated climate change will have direct, negative impacts on our ability to generate returns for our unitholders. As such, we believe we "bear a responsibility to actively address climate change through all the tools we have at hand."[2] In practice, that means we have multiple ways we use climate-related data currently, all of which will be enhanced and made more effective through the data that will be provided by the Commission's proposal.

It should be noted that, like many investors, we already use climate-related data in our investment and active ownership processes to assess the eligibility of companies for our ESG-focused funds. For sectors where we have determined climate-related risks and opportunities to be a material factor, we have set expectations within our proprietary ESG evaluation framework that must be met for companies to be deemed eligible for investment. We utilize third-party data providers to furnish some of this data and supplement it with our own assessment of corporate disclosures. Our process has both quantitative and qualitative aspects to it, thus the proposed requirement to disclose assured GHG emissions will be just as important as the qualitative information that will come from disclosure on strategy and governance. Our ability to effectively assess corporate performance across our portfolio is currently hindered by the lack of standardized, comparable, and consistent data.

Board oversight of climate-related risks and opportunities is a core consideration of our proxy voting process. As we state in our Proxy Voting Guidelines, we will "vote against the chair of the board at companies facing a high exposure to climate-related risks where we believe they are not adequately addressing those risks."[3] We also regularly support shareholder proposals where the proponent has made a reasonable request for enhanced climate-related disclosure. Our ability to assess the merits of shareholder proposals, and for the ability of proxy research firms to similarly assess company performance in order to create their voting recommendations, is directly impacted by the availability of climate-related disclosure. Mandating disclosure should also have the effect of reducing the number of shareholder proposals filed on this topic, reducing the burden for companies to respond to the proposals and for investors to research and vote on them.

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[1] Our Responsible Investment Policy can be found on our website here: https://www.neiinvestments.com/documents/Marketing/RI%20Policy.pdf

[2] Ibid

[3] Our Proxy Voting Guidelines can be found on our website here: https://www.neiinvestments.com/documents/ESG/NEI_Proxy_Voting_Guidelines_EN.pdf

Our active ownership program has focused on improving the state of corporate climate-related disclosure for the last 15 years. We continue to dedicate significant resources to engaging with the companies in our portfolio to drive better climate-related disclosures. Climate change issues, and corporate disclosure on climate-related risks, have been a standing priority on our Focus List for well over a decade. Our 2022 Focus List is no exception, and Net-Zero Alignment is one of four key focus areas for our corporate engagement work.[4] In practical terms, this means that we currently expend significant time and resources to engage with portfolio companies on the topic of climate-related disclosure. The Commission's proposal would allow us to spend less resources on simply getting the data, and more resources on constructive conversations with portfolio companies on their transition strategies. In many cases, it would alleviate the need for the filing of shareholder resolutions thus saving both investor and corporate time.

Finally, like many of our peers, we have signaled a commitment to align our portfolio with a net-zero future, as evidenced by our commitment to the Net-Zero Asset Managers Initiative.[5] For that commitment to be meaningful, it must be based on achieving real-world emission reductions. Achieving that goal requires us to set an accurate baseline of actual emissions data and to define precisely the current alignment of portfolio company strategies with a net-zero pathway. The lack of standardized, publicly disclosed data that aligns with the TCFD is one of the most significant challenges facing investors who are looking to live up to their net-zero commitments. In the absence of this data, investors are left to rely on third-party estimates that can vary substantially between methodologies and vendors.

Disclosure of Climate-Related Risks

Q8
We agree that registrants should be required to disclose any climate-related risks that would occur over the short, medium, and long-term. We do not think it important that the SEC should define what constitutes short, medium, and long-term, though we do believe it is important that issuers explicitly define the terms themselves.

Q9&12
The current state of disclosure on the physical risks of climate change is relatively poor, even among those companies that are otherwise voluntarily providing detailed disclosure. The challenge with current disclosures on physical risks, to the extent they exist, is that it is extremely hard to use the information to assess the direct risks to the company. The Commission's proposal to mandate the disclosure of acute and chronic risks of climate change is thus helpful. The recommendation that registrants provide geographic details in relation to the identified physical risks is, however, what makes the disclosure of material risks most useful.

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[4] Our annual Focus List Launcher can be found on our website. The 2022 Focus List is here: https://www.neiinvestments.com/documents/FocusList/NEI_FocusList_2022_EN.pdf
[5] https://www.netzeroassetmanagers.org/

For example, current disclosure on climate-related risks might indicate that rising temperatures will increase the risks of flooding and wildfires. This would not be considered "new" information to anyone who has been following the issue. However, a description of the facilities that operate in areas prone to flooding and/or wildfire, the likelihood of these risks occurring in the short, medium or long-term, and their reasonably precise location brings these risks to life for investors. Moreover, providing the geographic location of their greatest risks would allow investors to perform their own assessment of these risks. We would further note that many of the metrics the Commission is proposing, such as the percentage of water used that is drawn from an area of high water stress, or the percentage of assets operating in high water stress areas, are already common disclosure metrics. As such, we believe it is reasonable and consistent with current best practice to require the disclosure of these metrics.

Disclosure Regarding Climate-Related Impacts on Strategy, Business Model and Outlook

Q19
We agree that the Commission should require registrants to disclose the actual and potential impacts of the material climate-related risks it faces on its strategy, business model and outlook. This is a fundamental piece of climate-related disclosure that gets at the heart of investor concerns. If the current business model of a company is threatened by physical or transition risks it is imperative that investors have some insight into how these risks might play out and more importantly, how the company will mitigate these risks. As the speed of the transition picks up (or conversely, the pace of unmitigated climate change quickens), business models and strategies that are incompatible will become increasingly risky investments and investors who are seeking to align their portfolio with a net-zero pathway need insight into which businesses will be incompatible with that pathway.

Q26&27
One of the more useful climate-related disclosures we have seen has been the disclosure of the use of an internal (or shadow) price on carbon to stress test new and future projects and capital expenditures. The utility of this disclosure comes in the form of assurance that the company is planning for a future with a rising price on carbon and has accounted for such an outcome in its strategic planning. It also brings assurance that the imposition of a carbon price will not lead to a situation of "stranded assets." Further, the disclosure of the use of an internal price on carbon provides valuable context for policy makers who are seeking to find the most efficient and cost-effective way of incenting emissions reductions. Placing a price on carbon is widely held to be one of the most market-friendly ways of driving down emissions, and detailed corporate disclosure on the potential impacts of a price on carbon provides necessary market information to help guide effective and fair policy development.

We do however believe that for the disclosure of an internal price on carbon to be decision-useful, it must be provided with the appropriate context regarding the total range of prices considered, the boundaries for which the price was applied, and how the company utilized the metric to assess and manage its climate-related risks. In particular, the company should provide some insight into the impact of the range of prices considered. This disclosure could be precise (e.g. a dollar figure of the potential impact) or directionally useful (e.g. the internal rate of return will still exceed our minimum threshold of 15%), but either way the company should provide some useful context beyond simply the price that was considered.

Q30
Regarding the disclosure of scenario analysis, we do not believe that it should be mandatory at this time. We do, however, believe that companies should be required, based on a comply or explain model, to disclose if they use scenario analysis and if not, the reasons why. Further, if a company has performed scenario analysis it would be beneficial to have disclosure on the assumptions and key signposts used in the scenario, the source of the scenario and the number of different scenario outcomes utilized.

Scenario analysis is an evolving tool and while we strongly encourage companies that face material climate-related risks to utilize this tool, we do not as yet find that disclosure to be decision-useful. However, based on our experience working with companies that have undergone scenario analysis, the exercise itself can be extremely useful and allow for an expanded view of potential risks and opportunities. We believe that most, if not all companies that have utilized scenario analysis have seen a net benefit from its use, and that benefit has translated into a more robust corporate strategy. Thus, we believe the information on whether a company has used scenario analysis is a material piece of information that should be shared with investors. This information will directly inform our engagement priorities and having a comply or explain approach would be the most beneficial.

What we would want to avoid is a situation where companies are encouraged to not utilize scenario analysis simply to avoid the requirement to disclose the results. The Commission's proposed "if/then" approach could run the risk of just such an outcome, as companies may be reticent to undertake scenario analysis if there is a perceived disclosure burden *only* if they use the tool. If companies are required to provide the rationale for why they haven't performed scenario analysis and explain how they determined that such an exercise would not provide a material benefit, the incentive to simply not perform the analysis may be diminished.

Q31
We believe that the "safe-harbor" provisions of the Private Securities Litigation Reform Act of 1995 would indemnify issuers looking to provide more advanced analysis of possible future scenarios. We believe the current provisions already allow issuers to provide the needed nuance and complexity investors require while ensuring they do not run the risks of legal peril. There does not appear to be a need to create a new statute specific to climate-related disclosures as the current measures are adequate.

Governance Disclosure

We strongly agree with the Commission's proposed requirements for governance disclosure. The board is ultimately the entity tasked with guiding and overseeing corporate strategy and as such it is critical that the board be engaged in the complex task of navigating the energy transition. The disclosure requirements should disclose the board members responsible for assessing climate-related risks and how the board is kept informed on climate-related risks and opportunities relevant to the company. Climate change might be the purview of a single committee, the entire board, or elements of the responsibility may span several committees. There is no one right way for boards to organize themselves, but this does place the imperative on the board to provide adequate disclosure on how it stewards the issue.

We agree that where applicable, boards should disclose the nature of any climate-related expertise of board members. We believe it would be useful to provide guidance on how to distinguish between actual expertise (e.g. a climate scientist or direct oversight of climate risks at another company) versus familiarity (e.g. sitting on the board of another company that is also addressing the risks of climate change). Our experience in sifting through thousands of proxies is that where a board has furnished a skills matrix, it often blurs the distinction between real expertise and indirect experience, with the result that most everyone is, for example, an expert on ESG issues – when this is often not the case. A simple requirement to provide two options – actual expertise versus familiarity (or indirect experience) would provide valuable context.

Perhaps more important for most boards than the direct climate-related experience of the directors is the manner in which the board is kept informed. We strongly support the proposed requirement to disclose how the board is kept apprised of climate-related risks, by whom, and how frequently. Board members are not valuable because they know everything there is to know about a business or a sector. Instead, they are valuable because they are able to apply their own experience, expertise and knowledge to new challenges and situations. Therefore, information on how the board is constantly challenged and informed on climate-related risks is very important.

Regarding the disclosure of any linkages between executive compensation and the achievement of climate-related targets and goals, we believe that this information is material to the understanding of the corporate commitment to address its climate-related risks. We believe this information should be easy to provide and many companies already disclose how they link the two. Further, we note that linking executive renumeration to climate-related targets and goals is an explicit ask of the Climate Action 100+ (CA100+) investor collaboration.[6] We anticipate that the CA100+ expectations will become standard best practice and investors such as ourselves have already expanded the asks of the CA100+ collaboration to other companies. Therefore, the expectation to provide this information will only continue to grow.

Risk Management Disclosure

Q46-51

Adequate disclosure of a registrant's transition plan is a singularly important piece of information that brings necessary detail to any corporate commitments. Concerns about greenwashing are growing as the number of companies who commit to a net-zero future grow but detailed strategies to hit net-zero are less

[6] https://www.climateaction100.org/

prevalent. Absent a transition plan, corporate commitments to hit long-term targets can appear to be based on good intentions alone, not on objective and thorough business planning. As such, the disclosure of a transition plan will be both a timely and a necessary requirement for investors seeking to make sense of competing corporate net-zero commitments. We agree that the transition plan should address how the company plans to mitigate both transition and physical risks and agree that the disclosure should detail how it plans to achieve any climate-related opportunities such as those outlined by the Commission. However, we do not believe the "if/then" approach is the best approach, at least not as written. Similar to our concerns about the disclosure of scenario analysis, the proposed approach might be a disincentive to set transition plans. Instead, we believe the disclosure of a transition plan should be mandatory. The "if/then" statement should then only apply to registrants who do not have a transition plan to disclose. In other words, if a company does not have a transition plan then it should be required to provide the reason why and whether investors can expect it to have one in the future. We believe this approach would bear more fruitful information, since the rationale for not having a transition plan would also be helpful and potentially material.

We believe the TCFD's inclusion of a recommendation that companies publish a transition plan, *after* the initial release of the framework is evidence that the material, decision-useful information the TCFD was created to incent would be incomplete without a transition plan. We believe the inclusion of a transition plan in the International Sustainability Standards Board's (ISSB) climate-related exposure draft is an indication that this piece of information will become a global standard.[7]

We support the recommendation that transition plans be updated annually but believe this could be approached with a comply or explain approach. If there are no material updates to a transition plan, companies should be allowed to state as such. We do not see any utility in updating transition plans more frequently than annually.

GHG Emissions Metrics Disclosure

Q93

Accurate GHG emissions data is a foundational element of climate-related disclosure, and we believe that GHG emissions reporting should be mandatory for Scope 1, Scope 2, and where material, Scope 3 emissions. This information is critical to understanding the systemic risks of climate change but is also a critical indication of the ability of companies to monitor, measure and mitigate their GHG footprint. The GHG data that would come from the Commission's proposal would be immediately utilized by investors such as NEI who have identified carbon-efficiency as a core indicator of management quality. The Commission's proposed requirements to disclose emissions on a disaggregated basis (by scope and by greenhouse gas) seems appropriate and would align with current best practice.

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[7] IFRS ISSB S2 Climate-related Disclosure. https://www.ifrs.org/content/dam/ifrs/groups/trwg/trwg-climate-related-disclosures-prototype.pdf

Investors do not currently have an accurate picture of GHG emissions across our portfolios because the data is often inconsistent, incomplete or missing entirely. Our ability to meet our own TCFD reporting requirements is hindered by this lack of quality data. Further, investors who have committed to align their portfolio with a net-zero pathway will require accurate GHG data to meet the various decarbonization targets they have set. Currently, much of this data is extrapolated through algorithms created by third-party data providers, which can vary significantly between providers and is often inaccurate.[8] This is problematic from an accuracy perspective, which impacts the decision-usefulness of the data, but also from a cost perspective, as investors are reliant on these third parties to derive GHG emissions data. Mandatory disclosure of GHG data will address a critical data gap.

Q98
Disclosure of Scope 3 emissions should be required if the issuer has assessed Scope 3 emissions to be a material part of its emissions footprint. If the SEC decides to define what constitutes a material Scope 3 footprint, we would point to the Science Based Targets Initiative (SBTi) and its threshold for when a company should set a Scope 3 target – namely, if Scope 3 emissions constitute 40% or more of its total Scope 1,2 and 3 footprint.[9]

While we understand that methodologies for assessing Scope 3 emissions continue to evolve, the true value of a Scope 3 emissions assessment is not in the number itself. Rather, it is a lens with which companies, and investors, can view the company's strategy through. If, for example, a company's strategy is predicated on the production of a commodity or product that has significant emissions associated with its use, then that company and its investors are exposed to direct regulatory and reputational risks. Similar to scenario analysis, we believe the real value in Scope 3 reporting is in the process and would like to see all companies with a material Scope 3 footprint undertake the exercise of assessing their exposure.

We note that under the Partnership for Carbon Accounting Financials (PCAF) Global GHG Accounting and Reporting Standard for the Financial Industry, financial institutions (including several American banks) are required to disclose absolute Scope 3 emissions in a phased-in approach, starting with the highest emitting sectors in 2021, and all sectors by 2026. We believe the international trend is towards the disclosure of Scope 3 emissions.

If the Commission decides to not make the reporting of material Scope 3 emissions mandatory, a comply or explain approach would be more appropriate than a strictly voluntary approach. As noted previously,

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[8] Kalesnik, Wilkens, and Zink, *Green Data or Greenwashing? Do Corporate Carbon Emissions Data Enable Investors to Mitigate Climate Change? November 24*, 2020 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3722973; and FTSE Russell, *Mind the gaps: Clarifying corporate carbon*. May 9, 2022 https://www.ftserussell.com/research/mind-gaps-clarifying-corporate-carbon
[9] Science Based Targets, SBTi Criteria and Recommendations TWG-INF-002, V. 5.0

requiring a company to provide a rationale for why it has chosen to not disclose can provide information that is useful for engagement purposes.

Q114
Where reasonably available, we agree with the proposal to require the disclosure of historical GHG emissions data for the fiscal years included in the registrant's consolidated financial statements. The availability of historical data will allow investors to perform important trend analysis. We note that investor net-zero strategies will lean heavily on encouraging their portfolio companies to reduce their emissions on a trajectory that aligns with a net zero pathway. Understanding existing GHG emission trends will play a significant role in assessing progress.

Q115
While the Commission does not explicitly require the use of the GHG Protocol, we believe its use should be mandated for all issuers, with alternative reporting standards to be used in addition, not instead of the GHG Protocol. A core objective of mandatory climate-related disclosure is to provide comparable data. As such, it is in the best interests of all actors to utilize a consistent, and mandated, standard.

The GHG Protocol is the most widely used methodology and other methodologies utilize the GHG Protocol as the foundation for their work. For example, the Partnership for Carbon Accounting Financials (PCAF) Global GHG Accounting and Reporting Standard for the Financial Industry, uses the GHG Protocol in its methodology. As PCAF is emerging as the central standard used by the financial sector to assess its financed emissions, aligning mandatory reporting requirements with the GHG Protocol will provide important consistency.

Q133
To provide comfort to issuers who choose to disclose Scope 3 emissions, it might be suitable to enact a safe harbour provision specifically for Scope 3. The GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard can be utilized to report on Scope 3 emissions. The PCAF standard specifically utilizes Category 15 of this standard to measure financed emissions and disclosure of financed emissions should be guided by the same methodology.

Attestation of Scope 1 and Scope 2 Emissions Disclosure

Q135
We agree with the proposal to phase in the requirement of reasonable assurance on Scope 1 and Scope 2 emissions for accelerated and large accelerated filers. The practice of assuring GHG emissions is common among many of these firms already, and the confidence that comes with reasonable assurance will benefit registrants and investors alike. The use of attestation will ensure a level playing field while providing confidence to investors. If the Commission were to limit the attestation requirement to a subset of accelerated and large accelerated filers, we believe the criteria should be sector-based, with registrants in

sectors designated as high-impact by the Paris Aligned Investor Initiative's Net Zero Investor Framework required to achieve assurance.[10]

Targets and Goals Disclosure

Q168&170
We support the proposal to require registrants to disclose whether they have set any targets related to the reduction of GHG emissions. Further, we agree that registrants should also disclose how they plan on meeting the disclosed targets. Our experience has shown that corporate disclosure on how companies plan to meet the targets they are currently setting is scarce, providing little insight into whether targets are realistic or attainable. See earlier comments on the requirement to disclose transition plans (Q46-51).

Registrants Subject to the Climate-Related Disclosure Rules and Affected Forms

Q181
Canadian issuers eligible to report under the Multijurisdictional Disclosure System ("MJDS") should be required to comply with the Commission's proposed climate-related disclosure requirements. While Canadian climate-related disclosure requirements are currently being formalized by the Canadian Securities Administrators (CSA), we are concerned there may be material gaps between the requirements in the CSA standard and what the Commission has proposed. As both the CSA and the SEC have not finalized their respective frameworks, this concern may become moot and if so, could be revisited. At present, we believe the best way to ensure a consistent disclosure standard across registrants is to require all issuers to follow the Commission's disclosure requirements. Ideally, the Commission would outline the specific gaps between the CSA framework and the SEC framework such that Canadian issuers could easily identify the key disclosures required to achieve compliance with the SEC.

We are aware that the IFRS International Sustainability Standards Board (ISSB) has issued an exposure draft on climate-related disclosures.[11] The ISSB guidelines are widely expected to act as a consolidating framework that brings a level of international consistency to ESG disclosure more broadly, and to climate-related disclosure more specifically in this instance. To the degree that the ISSB framework meets the requirements of the Commission's proposal, we believe there would be significant utility in aligning the two regimes such that they are interchangeable for compliance purposes. It is in the best interest of all actors for there to be a strong, universal framework that applies globally.

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[10] Paris Aligned Investor Initiative, *Net Zero Investment Framework: Implementation Guide*, Appendix B: High Impact Sectors. https://www.iigcc.org/resource/net-zero-investment-framework-implementation-guide/
[11] https://www.ifrs.org/content/dam/ifrs/groups/trwg/trwg-climate-related-disclosures-prototype.pdf

In conclusion, we are very supportive of the Commission's proposed framework for climate-related disclosure. The proposal is a thoroughly researched and incredibly detailed treatment of one of the largest systemic risks our financial system faces. As such, we commend the ambition that is inherent in the proposal and look forward to seeing the final framework. Please let us know in the meantime if you have any questions or follow-up related to our comments.

Best regards,

Adelaide Chiu, CPA CA CFA
Vice President, Head of Responsible Investing & ESG Services
NEI Investments

Jamie Bonham
Director, Corporate Engagement
NEI Investments

Michela Gregory
Director ESG Services
NEI Investments

Appendix (Additional Materials)

1. NEI Investments Submission to the 2021 SEC Request for Information: https://www.neiinvestments.com/documents/PublicPolicyAndStandards/2021/11_NEI%20Feedback%20on%20SEC%20Consultation%20on%20Climate%20Change%20Disclosure.pdf

2. NEI Investments Responsible Investment Policy: https://www.neiinvestments.com/documents/Marketing/RI%20Policy.pdf

3. NEI Investments Climate Strategy: https://www.neiinvestments.com/documents/FocusList/NEI_ClimateStrategyCommitment_NOV21_EN.pdf

4. NEI Investments Proxy Voting Guidelines: https://www.neiinvestments.com/documents/ESG/NEI_Proxy_Voting_Guidelines_EN.pdf

5. NEI Investments Focus List: https://www.neiinvestments.com/documents/FocusList/NEI_FocusList_2022_EN.pdf