



June 17, 2022

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Comment submission to the Enhancement and Standardization of Climate-Related Disclosures for Investors Docket, RIN 3235–AM87, on behalf of the Uyghur Human Rights Project.

Dear Chair Gensler,

The Uyghur Human Rights Project (UHRP) conducts research and documentation to defend Uyghurs’ civil, political, social, cultural, and economic rights according to international human rights standards. Since 2004, we have published more than 90 reports and briefings documenting human rights violations, and we frequently submit testimony and policy recommendations to policymakers in the U.S., foreign countries, and multilateral bodies.

The U.S. State Department has determined that the government of China is carrying out crimes against humanity and genocide against the Uyghur people. The determination was first made by Secretary of State Mike Pompeo in January 2021 and formally affirmed by Secretary of State Anthony Blinken in March 2021. Since 2017, an estimated 1.8 to 3 million Uyghurs have been rounded up without charge or trial, and have endured other atrocities crimes including forced labor, torture, sexual violence, coercive birth prevention campaigns, and the widespread destruction of cultural and religious sites.

The global supply chains of many industries are tainted by these human rights violations, including the renewable energy sector. The polysilicon supply—a key component in solar panel manufacturing—is almost completely tainted by forced labor.

We write because we believe the proposed rules’ conception of “transition risks” and the requirement for U.S. companies to make a transition plan will force companies to commit to purchasing additional solar energy, electric vehicles, and wind energy, at a time when the renewable industry itself acknowledges that vital supplies are highly dependent on imports from China, and specifically from companies that are complicit in the Xinjiang government’s state-imposed forced labour scheme.

By driving U.S.-listed companies to make commitments to renewable energy, the SEC drives labor and materials sourcing to China's Xinjiang region. As a result, while companies may mitigate financial risk from changing climate policies, they will have opened themselves up to risks far greater—both moral and fiscal—by intermingling their supply chains with ongoing genocide.

By mandating the disclosure of certain risks which would drive companies towards even riskier behavior, the proposed rule works against the national public interest and thus violates the SEC's mandate under the Exchange Act. *See, e.g.*, 15 U.S.C. § 77g(a)(1) (disclosures “shall contain such other information . . . as the SEC may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors”). Further, by forcing companies to mitigate climate-related risk by entangling themselves in supply chains tainted with forced labor, the proposed rule in effect requires companies to violate existing laws and regulations – particularly the Uyghur Forced Labor Prevention Act, which takes effect June 21, 2022 – making the proposed rule arbitrary and capricious.

The Chinese Government is Committing Genocide and Crimes Against Humanity Against Uyghurs and Other Turkic Peoples, Including by Carrying Out a State-Imposed Large-Scale Forced Labor

The Chinese government's imposition of mass detention and forced-labor targeting an ethno-religious group is happening on a scale not seen since the German atrocities during the 1930s and 1940s. According to the U.S. Department of State:

Over the last four years, the People's Republic of China (PRC) has carried out a mass detention and political indoctrination campaign against Uyghurs, who are predominantly Muslim, and members of other ethnic and religious minority groups in the Xinjiang Uyghur Autonomous Region (Xinjiang), a large region in western China. The courageous voices of survivors, their family members abroad, researchers, and international advocacy groups have thoroughly documented the PRC's discriminatory use of surveillance technologies and trumped-up administrative and criminal charges to abduct and detain more than one million Muslims, including Uyghurs, ethnic Hui, ethnic Kazakhs, ethnic Kyrgyz, ethnic Tajiks, and ethnic Uzbeks, in as many as 1,200 state-run internment camps throughout Xinjiang. Detention in these camps is intended to erase ethnic and religious identities under the pretext of “vocational training.” Forced labor is a central tactic used for this repression.

In Xinjiang, the government is the trafficker. Authorities use threats of physical violence, forcible drug intake, physical and sexual abuse, and torture to force detainees to work in adjacent or off-site factories or worksites producing garments, footwear, carpets, yarn, food products, holiday decorations, building materials, ex-

tractives, *materials for solar power equipment and other renewable energy components*, consumer electronics, bedding, hair products, cleaning supplies, personal protective equipment, face masks, chemicals, pharmaceuticals, and other goods—and these goods are finding their way into businesses and homes around the world.

...

Around the world, governments, companies, and consumers committed to eliminating human trafficking from global supply chains can all play a role in demanding an end to the use of forced labor in Xinjiang and beyond. *Forced Labor in China's Xinjiang Region*, U.S. Department of State (June 2021). [Emphasis added.]

Renewable Energy Is One of the Sectors Most Bound Up in the Uyghur Genocide

While companies in many sectors are benefiting from human rights violations targeting Uyghurs and other Turkic peoples, of primary relevance to the proposed rule is the renewable energy sector: specifically the raw materials for solar power, electric vehicles, and wind turbines. *See* U.S. Department of Homeland Security, *Xinjiang Business Supply Chain Advisory*, Annex 2 (July 13, 2021).

The primacy of China in the renewable energy market is unsurprising. A little less than half of the world's polysilicon, the ultra-conductive material that makes solar panels work, is produced in Xinjiang. *See Solar Energy Boom Could Worsen Forced Labor in China, Group Says*, Bloomberg News (Mar. 28, 2022). A recent report on forced labor explains,

Once quartz has been processed into metallurgical-grade silicon, it is then ground up and purified even further. The purification process requires extraordinarily high temperatures, which consumes significant electricity, making the Uyghur Region's coal fields an ideal location for polysilicon producers. The Uyghur Region's coal reserves account for 40% of the PRC's reserves and is one of the largest untapped reserves in the world. The mono-grade or multi-grade polysilicon that results from this purification process is a major export of the XUAR region. . . . [T]he last ten years (and in particular the last three or four years) has seen significant growth in polysilicon ingot and wafer manufacturing in the Uyghur Region. By 2020, four of the six highest-capacity polysilicon producers were companies with significant manufacturing bases in the XUAR—Daqo New Energy Corp, GCL-Poly, TBEA/Xinte, and East Hope. All four of them utilise state-sponsored labour transfers, the end products of which are sold into the international solar module market. *See* Laura T. Murphy & Nyrola Elima, *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*, Sheffield Hallam University (May 2021).

It will be difficult for companies to increase reliance on solar energy until global supplies of polysilicon can be sourced from manufacturers that are not tainted by these atrocity crimes. Currently, because “polysilicon can be blended and ingots can be made from several feedstocks, companies downstream of these polysilicon giants run significant risk of having their supply chains tainted by Xinjiang forced labour.” *Id.* See Ella Nilsen, *Solar Energy Projects Are Grinding to a Halt in the US Amid Investigation into Parts From China*, CNN Politics (May 6, 2022).

China is also key supplier of electric vehicle components and wind energy. The International Energy Agency report found that China controls about 85% of the global supply of critical minerals—including rare earths, lithium, copper, and cobalt— necessary for the construction of electric vehicle motors and wind turbines. See Robert Bryce, *The Electric-Vehicle Push Empowers China*, Wall Street Journal (Dec. 23, 2021). Every electric vehicle motor requires 2 pounds of these minerals and offshore wind turbines require as much as 500 pounds of rare earth metals per megawatt capacity. *Id.*

For the foreseeable future, key renewable energy industry supply chains will be at high risk of complicity in forced labor unless alternatives to Xinjiang sourcing can be found. In these circumstances, it would be perverse for the SEC to set up incentives for listed companies to expand American reliance on an energy sector that relies so heavily on imports that are contrary to U.S. foreign policy and U.S. law (The Tariff Act of 1930 and the Uyghur Forced Labor Prevention Act of 2021).

The Proposed Rule Urges Companies to Purchase Products from Sectors Complicit in Uyghur Forced Labor

The SEC’s proposed rule requires publicly traded companies to disclose the “transition risks” posed to their business by hypothetical future regulations that might seek to limit greenhouse gas emissions. The proposed rule also requires registrants to provide detailed descriptions of their plans to handle this transition, or the “registrant’s strategy and implementation plan to reduce climate-related physical and transition risks and increase climate-related opportunities including by reducing its own emissions.” See 87 Fed. Reg. at 21,432.

To reduce “transition risk” companies must plan to reduce their greenhouse gas emissions. To reduce greenhouse gas emissions, the proposed rule repeatedly suggests companies must convert to solar power, wind power, and electric vehicles. For example:

- “An electric utilities company might disclose an increase in the amount of electricity generated from less carbon-intensive sources, such as wind turbines, nuclear, hydroelectric, or solar power to meet current or likely regulatory constraints.” 87 Fed. Reg. at 21,354.

- “. . . might develop strategies to reduce their emissions to the extent possible through operational changes—such as modifications to their product offerings or the development of solar or other renewable energy sources.” 87 Fed. Reg. at 21,355.
- “An automobile manufacturer that transitions from the production of internal combustion engine vehicles to the production of electric vehicles might disclose that it expects to incur costs in the short term to change its manufacturing processes, but over the longer term, it expects to realize increased sales, protect its market share against transition risks, including reputational risks, and potentially avoid regulatory fines or other costs as consumer and regulatory demands change.” 87 Fed. Reg. 21,355.
- “Another similarly situated registrant may elect to switch to using electric vehicles for shipping.” 87 Fed. Reg. 21,380.

It seems the only real way a company could comply with the proposed rule is by planning to buy more solar panels and more electric cars. As noted above, until the renewable energy sector can purchase the necessary components from non-Xinjiang suppliers, such an expansion of demand will be impossible to carry out in compliance with U.S. law.

Pushing Companies to Mitigate Climate Risk Requires Them to Adopt the Moral and Legal Risks of Enmeshing Their Supply Chains with Forced Labor

Because the only way a company could comply with the SEC’s proposed rule is to commit to purchasing renewable energy—in other words, purchasing materials bound up in forced labor—the proposed rule is in effect a mandate for companies to risk violating existing law and policy. As a result, the proposed rule requires companies behave in a way that will likely harm their reputation and stock price, that works against the public interest, and that runs afoul of current law and potential future regulations.

Involving a company with forced labor risks stimulating public outrage. See, for example, the massive backlash which Tesla faced after opening a dealership in Xianjiang. Lora Kolodny, *Tesla Opened a Dealership in Xinjiang, China, Despite Widespread Reports of Uyghur Oppression There*, CNBC (Jan. 4, 2022).

Enmeshing a company’s supply chain with forced labor is also not in the public interest. As the Uyghur Forced Labor Prevention Act (UFLPA) notes, “It is the policy of the United States . . . to regard the prevention of atrocities as in its national interest, including efforts to prevent torture, enforced disappearances, severe deprivation of liberty, including mass internment, arbitrary detention, and widespread and systematic use of forced labor, and persecution targeting any identifiable

ethnic or religious group.” Public Law 117–78. Forced labor is a deeply embedded tool of repression, punishment, and control. Encouraging it or even quietly accepting it directly harms the Uyghur victims, morally and reputationally harms the Americans who are complicit in it.

Finally, by effectively requiring companies to commit to purchasing products entangled in forced labor to avoid potential climate regulation, the rule puts companies at risk of violating the ban on imports of forced-labor goods under the Tariff Act of 1930, which will be rigorously enforced under the Uyghur Forced Labor Prevention Act when it comes into effect June 21. See published guidance, and forthcoming guidance to be issued by the Department of Homeland Security next week, at <https://www.cbp.gov/trade/forced-labor/UFLPA>.

The enhanced enforcement of the Tariff Act prohibition under the UFLPA is likely to create substantial risks for companies that seek to comply with the proposed SEC rule by installing renewable energy generation capacity in their own operations, and purchasing electric vehicles built with raw materials subject to the UFLPA. Because it encourages illegal behavior and forces companies to adopt risks larger than those they are avoiding, the proposed rule is arbitrary and capricious.

For these and all the above reasons, the proposed rule should be altered or rejected. Thank you for the opportunity to submit these comments.

Sincerely yours,

[signed]

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