

Commentary on the SEC Proposed Rule on Climate Change Disclosure

Chairman Gary Gensler
Securities and Exchange Commission 100 F Street, N.E.
Washington, D.C.
20549-1090

June 17, 2022

Re: Request for Public Input on the Proposed Enhancement and Standardization of Climate-Related Disclosures for Investors

Dear Chairman Gensler,

Entelligent Inc. (Entelligent) welcomes the opportunity to present this letter in response to the request for public comments on the proposed enhancement and standardization of climate-related disclosure for investors [Release Nos. 33-11042; 34-94478; File No. S7-10-22]. This response seeks to collectively answer **questions that cover the themes of assurance and attestation; safe harbor; mandating climate opportunity disclosure; and consistency with other regulation.** We hope the U.S. Securities and Exchange Commission (the SEC) finds our comments useful in this critical rule-making process.

A Brief on Entelligent

Entelligent Inc. (Entelligent) was established with the primary mission to provide climate risk solutions to a wide variety of financial market participants. Our products and services have helped asset owners and asset managers, among others, boost the climate resiliency of their portfolios, design climate risk-resilient indices and annuities, and incorporate climate scenario analysis into their products and services. As a financial technology firm dedicated to helping market participants understand and factor climate risk into their risk management processes, we recognize the invaluable role that accurate, material disclosure plays in advancing the protection of investors' resources and interests.

General Statement: Climate Risk Measurement and Disclosure is a Fiduciary Duty

It is important to acknowledge that there are alternative views regarding the role of the SEC in regulating climate risk disclosure. Debate is often productive, forcing reconsideration of positions and ideas. However, all parties in this debate must recognize that climate risk exposure is an immediate, present and systematic risk that permeates every aspect of society.

Commented [WB1]: Systematic or systemic?

Commented [NYAD2R1]: Systematic risk is a one of the two main types of risk. The other is idiosyncratic risk.

As it has been with most things in global economics, policy and regulation tend to play catch-up with respect to the movement of capital. Policy and regulation of sustainability-related matters like ESG and climate change have been no exceptions. Yet, to delay any longer expecting the market to figure itself out, to wait for tools, processes, and measurement methodologies to be perfect — before establishing some guardrails and yardsticks for conduct — would be imprudent. This matter is too critical for investors.

Thus, we support the SEC's action putting in place regulation for climate risk disclosure, even while recognizing its inherent imperfections, and the need for later improvement. We agree that since climate risks do, in fact, affect investor decision-making, the SEC is within its rights to be the ultimate standard setter in this matter for companies under its jurisdiction.

As we stated in our earlier input submitted in June of 2021, identifying and preparing for the perils that climate change presents to business operations and profitability is a fiduciary duty owed by agents to stakeholders. Stakeholders must be made aware of the risk and threat of climate change to their holdings, as well as steps taken to ensure resilience.

Additionally, as climate change is an existential threat to humanity, the collective of citizens has itself become a stakeholder and issuers have, in essence, become agents of the collective. It is therefore the duty of issuers to act and disclose those actions in relation to climate-related risk mitigation and adaptation. The upfront economic cost to mandating climate risk disclosure is not insignificant, but the cost of not requiring it at all would set economic participants up for even greater potential costs and losses.

Commentary on Proposal

On Assurance and Attestation

One of the reasons for mandating climate risk disclosure, when it has otherwise been a voluntary matter so far, is to extend the reliability of audited company-reported financial information to such disclosures.

However, unlike traditional financial statements where there are established financial reporting and audit standards that ensure clarity in the reporting process, there is not as yet an established standard for climate-related disclosures. At best, there are independently developed standards that issuers are not required by regulation to adhere to. Whatever standards chosen in the reporting and attestation process are arbitrary and likely to affect comparability.

Nonetheless, it is imperative that certain representations made be attested to by independent third-party entities resourced for the purpose. Requiring it for the Scope 3 emissions disclosures is good, but not nearly adequate considering the magnitude of materiality inherent in climate risks.

On Safe Harbor

The proposal to provide safe harbor coverage should be kept if the aim is to incentivize issuers to make extensive disclosures. This provision will remove any hesitancy to participate owing to liability for unintentional misrepresentations. We are a long way from precision, and estimates can attempt accuracy only as far as the data, tools, and resources available can allow.

We also recommend requiring retrospective correction of prior year disclosures once new, more reliable information becomes available that reveals a material error. This would ensure issuers continue to bear responsibility for accurate representations.

On Mandating Disclosure of Climate Change-Related Opportunities

It is not the duty of the SEC to remove risk. That would mean it is removing a crucial ingredient of return generation. Its work is to ensure that investors and market participants are aware of risks. Requiring issuers to disclose climate-related opportunities does not fall within that domain; it goes contrary to the principle of competition that makes a capitalist market run so well.

If an issuer decides to reveal what it may consider to be an opportunity resulting from climate change in their reports, nothing should stand in their way. But it would be ammunition for the opposition of this regulation should the SEC require such disclosure — an unnecessary incursion into the domain of the free market.

On Consistency with other Regulations

It is laudable that the SEC heeded earlier contributions that admonished it not to reinvent the wheel. Making adaptations from the widely adopted Task Force on Climate-Related Financial Disclosures (TCFD) recommendations and Greenhouse Gas Protocol means that US companies who are issuers in other jurisdictions are not totally at a loss when making climate disclosures in those jurisdictions.

For example, US companies disclosing in Europe, the United Kingdom, Japan and India would be able to do so without drastically changing their processes and methods because their climate risk disclosure regulations are also largely adapted from the TCFD.

Seeing that the proposal substantially applies all the rules to foreign private issuers (FPIs), the reverse of this is that they would also be able to disclose their furnished information in the Form 6-K without much more hassle than it would already be.

Conclusion

Climate risk disclosure falls within the general sustainability conversation. Uncharacteristically, the US has been a laggard in the acknowledgement of how crucial this is to the economic welfare of its market. Taking the lead in in this space have been the European Union, the United Kingdom, France and Hong Kong. Even further, these jurisdictions have recognized the importance of having a semblance of unity in their adaptation of the TCFD recommendations to various degrees.

There is a lot at stake for US companies . The SEC is obligated to help companies retain their long-term competitiveness on the global stage by developing this regulation that helps investors maintain confidence in the US market in terms of climate risks. Investors in other jurisdictions are being protected. Those in the United States deserve it, too.

We hope that our response helps the SEC with this critical task. We are available for further commentary should the SEC require it.

Thank you.
The Entelligent Team

